
STATUTORY INSTRUMENTS

2005 No. 1964

The Traffic Management (Northern Ireland) Order 2005

Immobilisation and removal of vehicles

Immobilisation of vehicles

18.—(1) The Department may fix an immobilisation device to a stationary vehicle on a public road or in a parking place if—

- (a) a traffic attendant has fixed a penalty charge notice to the vehicle; or
- (b) an amount is recoverable from the owner of the vehicle under Article 15 and prescribed conditions are satisfied.

(2) The Department shall also fix to the vehicle a notice—

- (a) indicating that an immobilisation device has been fixed to the vehicle and warning that no attempt should be made to drive the vehicle or otherwise put it in motion unless it has been released from the device;
- (b) specifying the steps to be taken in order to secure its release; and
- (c) giving such other information as the Department may determine.

(3) A notice fixed to a vehicle in accordance with this Article shall not be removed or interfered with except by or under the authority of—

- (a) the owner, or person in charge, of the vehicle; or
- (b) the Department.

(4) A person contravening paragraph (3) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(5) The power conferred by paragraph (1) includes power to move the vehicle to another place and fix an immobilisation device to the vehicle in that other place.

(6) It shall be the duty of the Department to prescribe conditions for the purposes of paragraph (1) (b).

Exemptions from Article 18

19.—(1) An immobilisation device shall not be fixed to a vehicle under Article 18 if a current disabled person's badge is displayed on the vehicle.

(2) Where under Article 5(1)(a) a traffic attendant fixes a penalty charge notice to a vehicle in a parking place in respect of a contravention which consists of, or arises out of, a failure to—

- (a) pay a parking charge;
- (b) display a ticket or parking device properly; or
- (c) remove the vehicle from the parking place by the end of a period for which the appropriate charge was paid,

the Department shall not fix an immobilisation device to the vehicle under Article 18(1)(a) until 15 minutes have elapsed from the time when the traffic attendant fixes the penalty charge notice to the vehicle.

(3) If, in a case in which an immobilisation device would have been fixed to a vehicle but for paragraph (1), the vehicle was not being used—

- (a) in accordance with regulations under section 14 or 14A of the Chronically Sick and Disabled Persons (Northern Ireland) Act 1978 (c. 53); and
- (b) in circumstances falling within section 14B(1)(b) or (2)(b) of that Act (disabled person's concession),

the person in charge of the vehicle shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Release of immobilised vehicle

20.—(1) Subject to paragraph (3), a vehicle to which an immobilisation device has been fixed in accordance with this Order shall be released from that device on payment of the relevant charges.

(2) In paragraph (1) “relevant charges” means—

- (a) the penalty charge payable if a penalty charge notice was fixed to the vehicle;
- (b) any amount recoverable from the owner of the vehicle under Article 15; and
- (c) such charge in respect of the immobilisation and release of the vehicle as may be prescribed.

(3) A vehicle to which an immobilisation device has been fixed in accordance with this Order may only be released from the device by or under the direction of a person authorised by the Department.

(4) A person who, without being authorised to do so in accordance with this Article removes or attempts to remove an immobilisation device fixed to the vehicle in accordance with this Order shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Removal of vehicles by the Department

21.—(1) The Department may remove to another place a stationary vehicle on a public road or in a parking place if—

- (a) a traffic attendant has fixed a penalty charge notice to the vehicle; or
- (b) an amount is recoverable from the owner of the vehicle under Article 15 and prescribed conditions are satisfied.

(2) The Department may remove a vehicle under paragraph (1) in such manner as it thinks necessary and may take such measures in relation to the vehicle as it thinks necessary to enable the vehicle to be removed.

(3) The power of removal conferred by paragraph (1) in relation to a vehicle before it was moved shall continue to be exercisable in relation to the vehicle while it remains in the place to which it was moved.

(4) The Department shall take such steps as are reasonably necessary for the safe custody of a vehicle which is removed under paragraph (1) to a place which is not on a public road.

(5) Paragraph (4) shall not apply if in the opinion of the Department the vehicle is in such a condition that it ought to be destroyed.

(6) The power of removal conferred by paragraph (1) in relation to a vehicle includes power to remove from the vehicle any of its contents where—

- (a) it is reasonable to do so to facilitate the removal of the vehicle;
- (b) there is good reason for storing them at a different place from the vehicle; or
- (c) their condition requires them to be disposed of without delay.

(7) A person who intentionally obstructs or impedes, or assists another person to obstruct or impede, the removal of a vehicle under this Article shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(8) It shall be the duty of the Department to prescribe conditions for the purposes of paragraph (1) (b).

Exemption from Article 21

22. Where under Article 5(1)(a) a traffic attendant fixes a penalty charge notice to a vehicle in a parking place in respect of a contravention which consists of, or arises out of, a failure to—

- (a) pay a parking charge;
- (b) display a ticket or parking device properly; or
- (c) remove the vehicle from the parking place by the end of the period for which the appropriate charge was paid,

the Department shall not remove the vehicle under Article 21(1)(a) until 15 minutes have elapsed from the time when the traffic attendant fixes the penalty charge notice to the vehicle.

Disposal or recovery of vehicles removed under Article 21

23.—(1) Subject to paragraphs (2) and (3), the Department may, in such manner as it thinks fit, dispose of a vehicle which has been removed by the Department under Article 21.

(2) The Department shall not dispose of a vehicle under paragraph (1)—

- (a) before the end of the period of 35 days from the removal date; and
- (b) unless—
 - (i) the owner of the vehicle has failed to comply with a notice served on him requiring him to remove the vehicle from the custody of the Department within 21 days from the date of the notice; or
 - (ii) the Department has been unable to serve such a notice.

(3) If before a vehicle is disposed of by the Department under paragraph (1), the vehicle is claimed by a person who satisfies the Department—

- (a) that he is the owner of the vehicle or is acting with the authority of the owner, and
- (b) that the relevant charges have been paid,

the Department shall permit him to remove the vehicle from its custody.

(4) If, before the expiration of one year from the date on which a vehicle is sold in pursuance of this Article, any person satisfies the Department that at the time of the sale he was the owner of the vehicle, the Department shall pay him any sum by which the proceeds of sale exceed the relevant charges.

(5) If the relevant charges exceed the proceeds of sale, the amount of the difference shall be recoverable by the Department from the person who was the owner of the vehicle on the removal date and Article 15(5) shall apply to that amount and any costs reasonably incurred by the Department as it applies in relation to a sum recoverable under that Article.

(6) The Department may dispose of the contents of a vehicle (including those removed from the vehicle under Article 21(6)) and references in paragraphs (4) and (5) to the proceeds of sale include any proceeds of sale of the contents.

(7) In this Article—

“relevant charges” means—

- (a) the penalty charge payable if a penalty charge notice was fixed to the vehicle;
- (b) any amount recoverable under Article 15 from the person who was the owner of the vehicle on the removal date; and
- (c) such charges in respect of the removal and storage, and in paragraph (4) disposal, of the vehicle as may be prescribed;

“removal date” means the date on which the vehicle was removed (or first removed) under Article 21.

(8) If in the case of any vehicle it appears to the Department that more than one person is or was the owner of the vehicle at the time of the sale, such one of them as the Department thinks fit shall be treated as the owner of the vehicle for the purposes of paragraphs (3) and (4).

Application of Articles 18 to 23 in relation to amounts recoverable under Article 15

24.—(1) The Department may make regulations modifying the application of Articles 18 to 23 in relation to amounts recoverable under Article 15.

(2) The power conferred by paragraph (1) includes power to make additional provisions.

Representations in relation to immobilisation or removal of vehicles

25.—(1) Where—

- (a) a vehicle to which an immobilisation device has been fixed is released in accordance with Article 20;
- (b) a vehicle is removed from the custody of the Department in accordance with Article 23(3); or
- (c) the owner of a vehicle receives any sum under Article 23(4) or is informed that the proceeds of sale of the vehicle did not exceed the relevant charges,

the Department shall inform the relevant persons as soon as practicable in writing of their rights to make representations under this Article and of the effect of Articles 26 to 28.

(2) For the purposes of this Article the relevant persons are the owner of the vehicle and, if he is not the owner, the person who paid the relevant charges under Article 20 or 23.

(3) Where it appears to a relevant person that one or more of the relevant grounds are satisfied, he may make representations in writing to the Department before the end of the period of 28 days from the date on which he is informed under paragraph (1) of his right to make representations.

(4) The grounds are—

- (a) in a case within paragraph (1)(a)—
 - (i) that an immobilisation device should not have been fixed to the vehicle because of Article 19(1); or
 - (ii) that the Department did not comply with Article 19(2);
- (b) where an immobilisation device was fixed to the vehicle under Article 18(1)(a) or the vehicle was removed under Article 21(1)(a)—

- (i) that there were no reasonable grounds for the traffic attendant to believe that a penalty charge was payable in respect of the vehicle;
 - (ii) that at the time of the alleged contravention the vehicle was in the control of a person without the consent of the owner; or
 - (iii) that it would be unreasonable to regard the owner as responsible for the alleged contravention because the vehicle had previously been in the control of a person without his consent;
- (c) where an immobilisation device was fixed to the vehicle under Article 18(1)(b) or the vehicle was removed under Article 21(1)(b), that no amount was recoverable from the owner of the vehicle under Article 15 or that prescribed conditions mentioned in Article 18(1)(b) or 21(1)(b) were not satisfied;
- (d) where the vehicle was removed under Article 21(1)(a), that the Department did not comply with Article 22;
- (e) that the charges under Article 20(1) or 23(3)(b) exceeded the amount applicable in the circumstances of the case.
- (5) The Department shall before the end of the period of 56 days beginning with the date on which it receives any representations under this Article—
- (a) consider any representations made under this Article and any supporting evidence which the person making them provides; and
 - (b) serve on that person notice of its decision as to whether it accepts that the ground in question has been established.

Refund of sums if representations accepted

26.—(1) Where the Department serves notice under Article 25(5)(b) that it accepts that a ground has been established, it shall (when serving that notice) refund any sums—

- (a) paid under Article 20(1) or 23(3), or
- (b) deducted from the proceeds of sale under Article 23(4),

except to the extent (if any) to which those sums were properly paid.

(2) Where the Department fails to comply with Article 25(5)(b) before the end of the period of 56 days mentioned there—

- (a) the Department shall be taken to have accepted that the ground in question has been established and to have served notice to that effect under Article 25(5)(b); and
- (b) paragraph (1) shall have effect as if it required any refund to be made immediately after the end of that period.

Rejection of representations

27. Where the Department serves a notice of rejection, the notice must—

- (a) inform the person on whom it is served of his right to appeal to an adjudicator under Article 28;
- (b) describe in general terms the form and manner in which such an appeal must be made;
- (c) indicate the nature of an adjudicator's power to award costs; and
- (d) contain such other information as the Department considers appropriate.

Appeal to an adjudicator

28.—(1) Where the Department serves a notice of rejection, the person making representations under Article 25 may appeal to an adjudicator against the Department's decision before the end of the period of 28 days from the date of that notice or such longer period as an adjudicator may allow.

(2) On an appeal under this Article, the adjudicator shall consider the representations in question and any additional representations which are made by the appellant on any of the grounds mentioned in Article 25(4).

(3) If the adjudicator concludes—

- (a) that any ground has been established; and
- (b) that the Department would have been under the duty imposed by Article 26(1) to refund any sum if it had served notice that it accepted that the ground in question had been established,

he shall serve notice of his decision on the appellant and the Department and shall direct the Department to make the necessary refund.

(4) The Department shall comply with any directions under paragraph (3) forthwith.