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DRAFT SCOTTISH STATUTORY INSTRUMENTS

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**2023 No.**

**The Parking Prohibitions (Enforcement and  
Accounts) (Scotland) Regulations 2023**

**PART 2**

**Penalty charges and enforcement**

**Amount of penalty charge**

2.—(1) The penalty charge payable in respect of a contravention is £100.

(2) If a penalty charge is paid before the end of a period of 14 days beginning with the date on which notice of a penalty charge is given under regulation 4 or served under regulation 5, the penalty charge is reduced by 50 percent.

(3) Where a charge certificate is served under regulation 9(2), the penalty charge is increased by 50 percent.

**Person by whom a penalty charge is to be paid**

3.—(1) A penalty charge is payable by a person other than the registered keeper of the relevant vehicle in the circumstances specified in paragraphs (2) to (5).

(2) Where the relevant vehicle is not registered in terms of section 21 (registration of vehicles) of the Vehicle Excise and Registration Act 1994<sup>(1)</sup>, a penalty charge is payable by the person by whom the relevant vehicle was used or kept at the time of the contravention.

(3) Where the registered keeper sold or transferred the relevant vehicle before the time of the contravention, a penalty charge is payable by the person by whom the relevant vehicle was used or kept at the time of the contravention.

(4) Where at the time of the contravention—

(a) the registered keeper of the relevant vehicle was a vehicle hire firm, and

(b) the relevant vehicle was hired to a person under a hiring agreement with the vehicle hire firm,

a penalty charge is payable by the person hiring the relevant vehicle.

(5) Where at the time of the contravention the relevant vehicle was used or kept by a person who was a vehicle trader and that vehicle trader was not the registered keeper, a penalty charge is payable by that person.

(6) In this regulation—

“hiring agreement” means an agreement for the hire of a vehicle—

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(1) 1994 c. 22. Section 21(1) was substituted by paragraph 2 of schedule 3 of the Finance Act 1997 (c. 16), and section 21(2) was amended, and section 21(4) inserted, by paragraph 33 of schedule 4 of the Finance Act 1995 (c. 4).

- (a) under the terms of which the vehicle is let to the hirer for a fixed period of any duration (whether or not that period is capable of extension by agreement between the parties or otherwise),
  - (b) which contains such particulars as may for the time being be prescribed for the purpose of section 66 (hired vehicles) of the Road Traffic Offenders Act 1988<sup>(2)</sup>, and
  - (c) which is not a hire-purchase agreement within the meaning given to that term by section 189(1) (definitions) of the Consumer Credit Act 1974<sup>(3)</sup>,
- “vehicle trader” has the same meaning as in regulation 3(1) (interpretation) of the Road Vehicle (Registration and Licensing) Regulations 2002<sup>(4)</sup>.

#### **Penalty charge notices: notification by authorised enforcement officer**

4.—(1) Where an authorised enforcement officer has reason to believe that a penalty charge is payable in respect of a contravention, that officer may give notification of the penalty charge by—

- (a) fixing a penalty charge notice to the relevant vehicle, or
- (b) giving a penalty charge notice to the person appearing to the authorised enforcement officer to be in charge of the relevant vehicle.

(2) A penalty charge notice given under this regulation must contain the information set out in paragraph 2 of the schedule.

#### **Enforcement notices: service where notification under regulation 4 is not completed**

5.—(1) This regulation applies where—

- (a) an authorised enforcement officer attempted to give a penalty charge notice in accordance with regulation 4 but was prevented from doing so by any person, or
- (b) an authorised enforcement officer had begun to prepare a penalty charge notice to be given in accordance with regulation 4, but the relevant vehicle was driven away from the place where it was stationary before the officer had finished preparing the notice or had given it in accordance with regulation 4.

(2) For the purposes of paragraph 1(b), an authorised enforcement officer who observes conduct which appears to constitute a contravention is not because of that observation to be taken to have begun to prepare a penalty charge notice.

(3) Where this regulation applies, an enforcement notice may be served on—

- (a) the registered keeper of the relevant vehicle, or
- (b) a person by whom the penalty charge is payable under regulation 3.

(4) An enforcement notice served under this regulation must contain the information set out in paragraph 3 of the schedule.

(5) An enforcement notice served in accordance with this regulation must be served before the end of the period of 28 days beginning with the contravention date.

(6) But where—

- (a) within 14 days of the contravention date a local authority has made a request to the Secretary of State for the supply of relevant information, and
- (b) that information has not been supplied before the end of the period specified in paragraph (5),

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(2) 1988 c. 53. Section 66 was relevantly amended by paragraph 1 of schedule 7 of the Road Safety Act 2006 (c. 49).

(3) 1974 c. 39.

(4) S.I. 2002/2742. Regulation 3(1) was relevantly amended by S.I. 2015/403.

the local authority may serve an enforcement notice within 14 days beginning with the date on which the information is received under sub-paragraph (a).

(7) In this regulation—

“the contravention date” is the date on which, according to information given by an authorised enforcement officer, the contravention occurred,

“relevant information” means information relating to the identity and address of the registered keeper of the vehicle.

#### **Enforcement notices: service where payment is not made following notification under regulation 4**

6.—(1) This regulation applies where—

- (a) notification of a penalty charge has been given under regulation 4, and
- (b) the period of 28 days specified in the notice as the period within which the penalty charge is to be paid has expired without that charge being paid.

(2) Where this regulation applies, an enforcement notice may be served on—

- (a) the registered keeper of the relevant vehicle, or
- (b) a person by whom the penalty charge is payable under regulation 3.

(3) An enforcement notice served under this regulation must contain the information set out in paragraph 4 of the schedule.

#### **Removal of, or interference with, a penalty charge notice**

7.—(1) A penalty charge notice fixed to a vehicle in accordance with regulation 4(1)(a) must not be removed or interfered with except by or under the authority of—

- (a) the registered keeper or person in charge of the vehicle, or
- (b) the local authority.

(2) A person who contravenes paragraph (1) is—

- (a) guilty of an offence, and
- (b) liable on summary conviction to a fine not exceeding level 2 on the standard scale.

#### **Circumstances in which a charge is not payable or is to be refunded**

8.—(1) No penalty charge is payable in relation to a contravention where the conduct in respect of which the penalty charge is imposed is the subject of—

- (a) criminal proceedings,
- (b) a fixed penalty notice (within the meaning of section 52(1) (fixed penalty notices) of the Road Traffic Offenders Act 1988), or
- (c) a penalty charge notice issued under section 66(1) (parking penalties in London) of the Road Traffic Act 1991<sup>(5)</sup> (as applied by an order under paragraph 1 or 2 of schedule 3 of that Act).

(2) Where, despite paragraph (1)—

- (a) a penalty charge is paid in respect of a contravention, and

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(5) 1991 c. 40. Section 66 was repealed in relation to England and Wales by paragraph 1 of schedule 12 of the Traffic Management Act 2004 (c. 18).

- (b) the conduct in respect of which the penalty charge is imposed is the subject of proceedings or a notice as mentioned in paragraph (1)(a) to (c),

the local authority must, as soon as reasonably practicable after the circumstances in subparagraph (b) come to its notice, refund the amount of the penalty charge which has been paid.

### **Charge certificates**

9.—(1) This regulation applies where—

- (a) an enforcement notice is served on a person, and
- (b) the penalty charge to which it relates is not paid before the end of the relevant period.

(2) Where this regulation applies, the local authority that served the enforcement notice may serve on that person a statement (a “charge certificate”) to the effect that the penalty charge to which the notice relates is increased by 50 percent.

(3) The “relevant period” for the purposes of paragraph (1) means—

- (a) where a notice of rejection is served under regulation 11(3) but no appeal is made under regulation 12, the period of 28 days beginning with the date of service of the notice of rejection,
- (b) where there has been an unsuccessful appeal against the service of an enforcement notice to the First-tier Tribunal and no subsequent application for review, or review, of the First-tier Tribunal’s decision or appeal to the Upper Tribunal, the period of 28 days beginning with the date on which the decision of the First-tier Tribunal is sent to the appellant,
- (c) where an application for review of the decision of the First-tier Tribunal in an appeal against the service of an enforcement notice has been rejected and there has been no subsequent appeal to the Upper Tribunal, the period of 28 days beginning with the date on which the decision rejecting the application for review is sent to the applicant,
- (d) where there has been an unsuccessful review of the decision of the First-tier Tribunal in an appeal against the service of an enforcement notice and no subsequent appeal to the Upper Tribunal, the period of 28 days beginning with the date on which the decision refusing the review is sent to the applicant,
- (e) where there has been an unsuccessful appeal against the service of an enforcement notice to the Upper Tribunal, the period of 28 days beginning with the date on which the decision of the Upper Tribunal is sent to the appellant,
- (f) where an appeal to either the First-tier Tribunal or Upper Tribunal is withdrawn, the period of 14 days beginning with the date on which it is withdrawn,
- (g) where no representations are made under regulation 10(1) within the payment period, that period.

(4) If representations are received by a local authority after the payment period and taken account of under regulation 10(3), the local authority must cancel a charge certificate served under paragraph (2).

(5) Where in relation to an enforcement notice—

- (a) the relevant period for the purposes of paragraph (1) has expired, and
- (b) the increased charge for which the charge certificate provides is not paid before the end of the period of 14 days beginning with the date on which the certificate is served,

the local authority may recover the increased charge as if it were payable under an extract registered decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.

