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SCOTTISH STATUTORY INSTRUMENTS

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**2023 No. 373**

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

**PART 1**

**Preliminary**

**Citation, commencement and interpretation**

**1.—**(1) These Regulations may be cited as the Parking Prohibitions (Enforcement and Accounts) (Scotland) Regulations 2023 and come into force on 11 December 2023.

(2) In these Regulations—

“the Act” means the Transport (Scotland) Act 2019,

“authorised enforcement officer” and “registered keeper” have the meanings given in section 58(6) of the 2019 Act,

“contravention” means, as the case may be, a contravention of—

- (a) the pavement parking prohibition (see section 50(1) of the Act),
- (b) the double parking prohibition (see section 54(1) of the Act),
- (c) the dropped footway parking prohibition (see section 56(1) of the Act),

“enforcement notice” means a notice served under regulation 5 or 6,

“First-tier Tribunal” and “Upper Tribunal” mean (respectively) the First-tier Tribunal for Scotland and the Upper Tribunal for Scotland (see section 1 (establishment of the tribunals) of the Tribunals (Scotland) Act 2014<sup>(1)</sup>),

“increased charge” means the penalty charge payable in respect of an enforcement notice in accordance with a charge certificate served in relation to that notice under regulation 9(2),

“notice of rejection” means the notice served on a person by a local authority under regulation 11(3),

“payment period”, in relation to an enforcement notice, means the period of 28 days beginning with the date of service of the notice,

“relevant vehicle” means the motor vehicle in respect of which the contravention occurred.

## 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(2), 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—

(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(3), 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(4),

“vehicle trader” has the same meaning as in regulation 3(1) (interpretation) of the Road Vehicle (Registration and Licensing) Regulations 2002(5).

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(2) [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 \(c. 4\)](#).

(3) [1988 c. 53](#). Section 66 was relevantly amended by paragraph 1 of schedule 7 of the Road Safety Act [2006 \(c. 49\)](#).

(4) [1974 c. 39](#).

(5) [S.I. 2002/2742](#). Regulation 3(1) was relevantly amended by [S.I. 2015/403](#).

**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),

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>(6)</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
  - (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 sub-paragraph (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—

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<sup>(6)</sup> 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).

- (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.

## PART 3

### Representations and appeals

#### **Representations against an enforcement notice**

**10.—**(1) The recipient of an enforcement notice may make representations within the payment period to the local authority against the decision to serve that notice on any of the grounds specified in paragraph (4).

(2) Where representations are made under paragraph (1), the recipient of the enforcement notice must include any available evidence relevant to the specified ground relied upon.

(3) The local authority may, if it considers it appropriate to do so, take account of representations made under paragraph (1) which are received by them after the end of the payment period.

(4) The specified grounds are—

- (a) that the alleged contravention did not occur,

- (b) that the penalty charge exceeds the amount payable in the circumstances of the case,
- (c) that the penalty charge—
  - (i) is payable by a person other than the registered keeper of the relevant vehicle, and
  - (ii) is instead payable by a person specified in regulation 3,
- (d) that the recipient—
  - (i) never was the registered keeper of the relevant vehicle, or
  - (ii) became the registered keeper after the alleged contravention occurred,
- (e) that at the time that the alleged contravention occurred, the relevant vehicle was in the control of a person who did not have the consent of the registered keeper,
- (f) that the conduct in respect of which the penalty charge is imposed is the subject of proceedings or a notice as mentioned in regulation 8(1)(a) to (c),
- (g) that the enforcement notice should not have been served because—
  - (i) the penalty charge has been paid in full, or
  - (ii) in the circumstances specified in regulation 2(2), the reduced penalty charge has been paid before the end of the period of 14 days specified in that regulation,
- (h) that, in the case of an enforcement notice which is served under regulation 5(1)(a), no person prevented an authorised enforcement officer from—
  - (i) fixing a penalty charge notice to the relevant vehicle, or
  - (ii) handing such a notice to the person appearing to the officer to be in charge of the relevant vehicle,
- (i) that, in the case of an enforcement notice which is served under regulation 5(1)(b), an authorised enforcement officer had not begun to prepare a penalty charge notice when the relevant vehicle was driven away,
- (j) that, whether or not any of the grounds specified in paragraph (4)(a) to (i) apply, there are compelling reasons why, in the particular circumstances of the case, the local authority should cancel the penalty charge and refund any sum paid to it on account of the penalty charge.

(5) Where the ground mentioned in paragraph (4)(c) is relied on in any representations made under paragraph (1), those representations must (if the information is known by the recipient) include a statement of the name and address of the person who is considered by the recipient of the penalty charge notice to be responsible for payment of the penalty charge.

### **Response to representations**

**11.—**(1) Where representations are made to a local authority under regulation 10(1) within the payment period, or taken account of by the local authority under regulation 10(3), it must—

- (a) consider those representations and any supporting evidence provided,
- (b) serve on the person by whom the representations were made a notice under paragraph (2) or, as the case may be, paragraph (3).

(2) Where a local authority accepts that at least one of the grounds specified in regulation 10(4) is established, it must—

- (a) cancel the enforcement notice,
- (b) serve a notice on the person by whom the representations were made—
  - (i) stating that the enforcement notice has been cancelled,

- (ii) explaining the local authority’s decision, and its reasons for that decision, on each of the grounds on which representations were made,
    - (c) refund any penalty charge paid in relation to the cancelled enforcement notice.
  - (3) Where a local authority is satisfied that none of the grounds on which representations are made is established, it must serve on the person by whom those representations were made a notice of rejection.
  - (4) The notice of rejection must—
    - (a) state the reasons for the local authority’s decision on each ground on which representations were made,
    - (b) state that an appeal against the decision to serve an enforcement notice may be made to the First-tier Tribunal within the appeal period, or such longer period as the First-tier Tribunal may allow,
    - (c) state the grounds upon which an appeal may be made (being the same grounds as are specified in regulation 10(4)),
    - (d) describe in general terms the manner and form for making an appeal,
    - (e) state that the First-tier Tribunal has power to make an award of expenses,
    - (f) state that unless, before the end of the appeal period—
      - (i) the penalty charge is paid, or
      - (ii) an appeal is made to the First-tier Tribunal against the decision to serve an enforcement notice,
- the local authority may issue a charge certificate under regulation 9(2) (and describe the effect of that regulation were it to do so).
- (5) The cancellation of an enforcement notice under this regulation does not prevent the local authority from serving a new enforcement notice on another person (other than the person on whom the original enforcement notice was served).
  - (6) Regulation 5 applies in relation to a notice served under paragraph (5) as if—
    - (a) for paragraph (5) there were substituted—

“(5) An enforcement notice given in accordance with this regulation must be served before the end of the period of 28 days beginning with the date on which notification of cancellation of an enforcement notice is given under regulation 11(2).”
    - (b) for sub-paragraph (a) of paragraph (6) there were substituted—

“(a) within 14 days of the date on which notification of cancellation of an enforcement notice is given, a local authority has made a request to the Secretary of State for the supply of relevant information.”
    - (c) in paragraph (6)(b), the reference to paragraph (5) were a reference to that paragraph as modified by sub-paragraph (a) of this paragraph.
  - (7) In this regulation and regulation 12—

“the appeal period” means the period of 28 days beginning with the date of service of the notice of rejection.

### **Appeal to the First-tier Tribunal**

**12.** A person on whom an enforcement notice has been served may, on any of the grounds set out in regulation 10(4) and before the end of the appeal period, or such longer period as the First-tier Tribunal may allow, appeal to the First-tier Tribunal against the decision to serve an enforcement notice if—

- (a) that person has made representations to the local authority under regulation 10(1), and
- (b) that person has received from the local authority a notice of rejection under regulation 11(3).

## PART 4

### Financial provisions

#### Accounts and application of surplus

- 13.**—(1) A local authority must—
- (a) prepare a statement of account showing, for each financial year—
    - (i) their income and expenditure in connection with their functions under Part 6 of the Act,
    - (ii) how any surplus in such an account has been applied,
  - (b) publish the statement of account, in such manner as is required by proper accounting practices, in the annual accounts of the authority for the financial year,
  - (c) send a copy of the statement of account to the Scottish Ministers.
- (2) A statement of account prepared under this regulation must be—
- (a) based on adequate accounting records, and
  - (b) in such form as is required by proper accounting practices.
- (3) A local authority may apply any surplus in the account only for the purposes—
- (a) of facilitating the local authority’s local transport strategy,
  - (b) specified in section 55(4)(b) to (d) (financial provisions relating to designation orders) of the Road Traffic Regulation Act 1984(7).
- (4) In this regulation—
- “adequate accounting records” has the meaning given in regulation 6 (accounting records and control systems) of the Local Authority Accounts (Scotland) Regulations 2014(8),
- “local transport strategy” has the meaning given in section 82(1) (interpretation) of the Transport Scotland Act 2001(9),
- “proper accounting practices” has the meaning given in section 12(2) (proper accounting practices) of the Local Government in Scotland Act 2003(10),
- “surplus” means the amount of money (if any) by which the gross amount received by the local authority in charges under Part 6 of the Act for a financial year exceeds the expenditure incurred by the local authority during that year in connection with their functions under that Part.

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(7) 1984 c. 27. In relation to Scotland, section 55(4) was amended by paragraph 42 of schedule 12 of the Local Government (Finance) Act 1988 (c. 41), by paragraph 46 of schedule 8 of the New Roads and Street Works Act 1991 (c. 22) and by paragraph 46 of schedule 8 of the Road Traffic Act 1991 (c. 40).

(8) S.S.I. 2014/200.

(9) 2001 asp 2. Section 82(1) was amended by section 51(8) of the Transport (Scotland) Act 2005 (asp 12).

(10) 2003 asp 1. Section 12 was modified by S.S.I. 2013/121.



St Andrew's House,  
Edinburgh  
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*FIONA HYSLOP*  
Authorised to sign by the Scottish Ministers