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SCOTTISH STATUTORY INSTRUMENTS

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**2023 No. 373**

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

**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.”, and

(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).