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DRAFT STATUTORY INSTRUMENTS

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**2022 No.**

The Civil Enforcement of Road Traffic Contraventions  
(Representations and Appeals) (England) Regulations 2022

PART 3

Representations and appeals in relation to the immobilisation of vehicles

**Representations against immobilisation**

- 8.—(1) This regulation applies where—
- (a) an immobilisation device is fixed, in accordance with regulation 13 of the 2022 General Regulations, to a vehicle found in a civil enforcement area, and
  - (b) a relevant person secures its release from the device on payment of an amount in accordance with regulation 15 of those Regulations.
- (2) For the purposes of this regulation, a relevant person is—
- (a) the owner of the vehicle to which the immobilisation device was fixed, or
  - (b) the person in charge of that vehicle.
- (3) The relevant person must be notified by the enforcement authority, or a person acting on behalf of the enforcement authority—
- (a) of their right to make representations to the enforcement authority in accordance with this regulation, including the effect of paragraphs (5) and (6),
  - (b) that any representations made outside the period of 28 days beginning with the date on which the person is so notified may be disregarded,
  - (c) of the form in which representations must be made,
  - (d) the address to which representations must be sent, including, as appropriate—
    - (i) an email address,
    - (ii) a FAX telephone number,
    - (iii) the address of any website where representations may be submitted online (and the place on that website where the relevant facility may be accessed),as well as a postal address, and
  - (e) of their right to appeal to an adjudicator if those representations are not accepted.
- (4) A notice under paragraph (3) must be given, in writing, immediately upon release of the vehicle.
- (5) The relevant person may make representations to the enforcement authority to either or both of the following effects—
- (a) that one or more of the grounds specified in paragraph (6) apply, or

- (b) whether or not any of those grounds apply, that there are compelling reasons why, in the particular circumstances of the case, the enforcement authority should refund some or all of the amount paid to secure the release of the vehicle.
- (6) The grounds mentioned in paragraph (5)(a) are—
  - (a) the circumstances in which the vehicle had been permitted to remain at rest in the civil enforcement area were not circumstances in which a penalty charge was payable under regulation 5 of the 2022 General Regulations;
  - (b) the vehicle had been permitted to remain at rest in the place where it was by a person who was in control of the vehicle without the consent of the owner;
  - (c) the place where the vehicle was at rest was not in a civil enforcement area;
  - (d) in accordance with regulation 14 of the 2022 General Regulations, there was in the circumstances of the case no power under those Regulations to immobilise the vehicle at the time at which it was immobilised or at all;
  - (e) the penalty charge or other charge paid to secure the release of the vehicle exceeded the amount applicable in the circumstances of the case;
  - (f) there has been a procedural impropriety on the part of the enforcement authority.
- (7) Representations under this regulation must be in such form as may be specified by the enforcement authority.
- (8) In determining the form for making representations, the enforcement authority must act through the joint committee.

#### **Duties of an enforcement authority to which representations are made under regulation 8**

9.—(1) This regulation applies where an enforcement authority receives representations under regulation 8.

(2) The enforcement authority may disregard any representations which it receives after the end of the period of 28 days beginning with the date on which the person making them (“R”) is informed under regulation 8(3) of their right to make representations under that regulation.

- (3) If the representations are—
  - (a) are made in accordance with regulation 8(5), and
  - (b) are not disregarded by the enforcement authority under paragraph (2),

the authority must, within the period of 56 days beginning with the date on which the enforcement authority receives the representations (“the 56-day period”), comply with the requirement specified in paragraph (4).

- (4) The requirements mentioned in paragraph (3) are that the enforcement authority must—
  - (a) consider the representations and any supporting evidence which R provides, and
  - (b) serve on R a notice of its decision (a “decision notice”) as to whether or not it accepts that—
    - (i) there are compelling reasons of the kind mentioned in regulation 8(5)(b), or
    - (ii) any of the grounds specified in regulation 8(6) apply.

(5) If the enforcement authority accepts that any of the grounds specified in regulation 8(6) apply, it must, when serving its decision notice, refund any sums that the person to whom the vehicle was released was required to pay under regulation 15 of the 2022 General Regulations.

- (6) If the enforcement authority—
  - (a) accepts there are compelling reasons of a kind mentioned in regulation 8(5)(b), but

(b) if representations are also made that any of the grounds specified in regulation 8(6) apply, does not accept that any of the stated grounds apply, the authority must refund the appropriate sums.

(7) For the purposes of paragraph (6) “the appropriate sums” means—

(a) any sums that the person to whom the vehicle was released was required to pay under regulation 15 of the 2022 General Regulations, or

(b) such of those sums as the enforcement authority considers appropriate.

(8) If the enforcement authority does not accept that there are compelling reasons of a kind mentioned in regulation 8(5)(b) or that any of the grounds specified in regulation 8(6) apply, the enforcement authority’s decision notice must—

(a) inform R of the right to appeal to an adjudicator under regulation 10,

(b) indicate the nature of an adjudicator’s power to award costs, and

(c) describe the form and manner in which such an appeal is required to be made.

(9) If an enforcement authority fails to comply with the requirements specified in paragraph (4) within the 56-day period, it—

(a) is to be deemed to have accepted the representations and to have served a decision notice to that effect, and

(b) must refund any sums that the person to whom the vehicle was released was required to pay under regulation 15 of the 2022 General Regulations.

(10) Paragraphs (6), (8) and (9) do not require an enforcement authority to refund any sum to the extent (if any) to which it was properly paid.

### **Appeal to an adjudicator against enforcement authority’s decision to reject representations**

**10.**—(1) A person (“P”) may appeal to an adjudicator against an enforcement authority’s decision not to accept that—

(a) any of the grounds specified in regulation 8(6) apply, or

(b) there are compelling reasons of the kind mentioned in regulation 8(5)(b).

(2) An appeal under this regulation must be made within—

(a) the period of 28 days beginning with the date of service of the decision notice under regulation 9(4)(b) informing P of P’s right to appeal to an adjudicator under this regulation, or

(b) such longer period as the adjudicator may allow.

(3) Parts 1 to 3 of Schedule 1 make further provision in connection with appeals (including procedural matters).

(4) On an appeal under this regulation, the adjudicator must consider—

(a) the representations made under regulation 8,

(b) any additional representations which are made by the appellant, and

(c) any representations made to the adjudicator by the enforcement authority.

(5) If the adjudicator concludes that—

(a) any of the grounds specified in regulation 8(6) apply, and

(b) the enforcement authority would have been under the duty imposed by regulation 9(5) to refund any sums if it had accepted that the ground in question applied,

the adjudicator must direct the authority to refund the relevant sums.

(6) An enforcement authority which is given a direction under paragraph (5) must comply with it immediately.

(7) If the adjudicator—

(a) does not give a direction under paragraph (5), but

(b) is satisfied that there are compelling reasons why, in the particular circumstances of the case, some or all of the sums paid to secure the release of the vehicle should be refunded,

the adjudicator may recommend that the enforcement authority make such a refund.

(8) An enforcement authority to which a recommendation is made under paragraph (7) must—

(a) consider afresh the making of a refund of those sums taking full account of any observations by the adjudicator, and

(b) within the period of thirty-five days beginning with the date on which the recommendation was given (“the 35-day period”), notify the appellant and the adjudicator as to whether or not it accepts the adjudicator’s recommendation.

(9) If the enforcement authority does not accept the recommendation, the notification under paragraph (8)(b) must include the reasons for that decision.

(10) No appeal to the adjudicator lies against a decision of the enforcement authority not to accept an adjudicator’s recommendation.

(11) If the enforcement authority accepts the adjudicator’s recommendation it must make the recommended refund within the 35-day period.

(12) If the enforcement authority fails to comply with the requirements in paragraph (8) within the 35-day period, the authority—

(a) is to be deemed to have accepted the adjudicator’s recommendation, and

(b) must make the recommended refund.