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STATUTORY INSTRUMENTS

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**2013 No. 359**

The Civil Enforcement of Road Traffic Contraventions  
(Representations and Appeals) (Wales) Regulations 2013

PART 2

REPRESENTATIONS AND APPEALS IN RELATION TO NOTICES TO OWNER

**Scope of Part 2 and duty to notify rights to make representations and to appeal**

- 3.—(1) Regulations 4 to 7 have effect where—
- (a) a penalty charge notice has been served by a civil enforcement officer under regulation 9 of the General Provisions Regulations, and a notice to owner has been served by the enforcement authority under regulation 18 of those Regulations; or
  - (b) a penalty charge notice has been served under regulation 10 of those Regulations.
- (2) A penalty charge notice served under regulation 9 of the General Provisions Regulations must, in addition to the matters required to be included in it under paragraph 1 of Schedule 1 to those Regulations, include the following information—
- (a) that a person on whom a notice to owner is served is entitled to make representations to the enforcement authority against the penalty charge and may appeal to an adjudicator if those representations are rejected; and
  - (b) that if, before a notice to owner is served, representations against the penalty charge are received at such address as may be specified for the purpose —
    - (i) those representations will be considered;
    - (ii) but that if a notice to owner is served notwithstanding those representations, representations against the penalty charge will be considered, provided that they are made in the form and manner and within the time specified in the notice to owner.
- (3) A notice to owner served under regulation 18 of the General Provisions Regulations must, in addition to the matters required to be included in it under that regulation, include the following information—
- (a) that representations on the basis specified in regulation 4 against the payment of the penalty charge may be made to the enforcement authority but that any representations made outside the period of 28 days beginning with the date on which the notice is served (“the payment period”) may be disregarded;
  - (b) the nature of the representations which may be made under regulation 4;
  - (c) the address (including if appropriate any email address or FAX telephone number, as well as the postal address) to which representations must be sent and the form in which they must be made;
  - (d) that if representations which have been made—
    - (i) within the payment period; or

- (ii) outside that period but not disregarded,  
are not accepted by the enforcement authority the recipient of the notice may appeal against the authority's decision to an adjudicator; and
  - (e) in general terms, the form and manner in which an appeal may be made.
- (4) A penalty charge notice served under regulation 10 of the General Provisions Regulations must, in addition to the matters required to be included in it under paragraph 2 of Schedule 1 to those Regulations, include the following information—
- (a) that representations on the basis specified in regulation 4 may be made to the enforcement authority against the imposition of the penalty charge but that representations made outside the period of 28 days beginning with the date on which the penalty charge notice is served ("the representations period") may be disregarded;
  - (b) the nature of the representations which may be made under regulation 4;
  - (c) the address (including if appropriate any email address or FAX telephone number, as well as the postal address) to which representations must be sent and the form in which they must be made;
  - (d) that, if representations which have been made—
    - (i) within the representations period; or
    - (ii) outside that period but not disregarded,  
are not accepted by the enforcement authority the recipient of the penalty charge notice may appeal against the authority's decision to an adjudicator;
  - (e) where the penalty charge notice is served by virtue of regulation 10(1)(a) of the General Provisions Regulations<sup>(1)</sup>, a statement of the effects of paragraph (5) and (6).
- (5) The recipient of a penalty charge notice served under regulation 10(1)(a) of the General Provisions Regulations may, by notice in writing to the enforcement authority, request it—
- (a) to make available at one of its offices specified by the recipient, free of charge and at a time during normal office hours so specified, for viewing by the recipient or by a representative, the record of the road traffic contravention produced by the approved device pursuant to which the penalty charge was imposed; or
  - (b) to provide the recipient, free of charge, with such still images from that record as, in the authority's opinion, establish the road traffic contravention.
- (6) Where the recipient of the penalty charge notice makes a request under paragraph (5), the enforcement authority must comply with the request within a reasonable time.

### **Representations against notice to owner**

- 4.—(1)** The recipient may make representations against a notice to owner to the enforcement authority which served that notice.
- (2) Any representations under this regulation must—
- (a) be made in such form as may be specified by the enforcement authority;
  - (b) be to either or both of the following effects—
    - (i) that in relation to the alleged road traffic contravention on account of which the notice to owner was served, one or more of the grounds specified in paragraph (4) applies; or

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(1) Regulation 10(1)(a) of the General Provisions Regulations applies to a penalty charge notice served on the basis of a record produced by an approved device.

(ii) that, whether or not any of those grounds apply, there are compelling reasons why, in the particular circumstances of the case, the enforcement authority should cancel the penalty charge and refund any sum paid to it on account of the penalty charge.

(3) In determining the form for making representations the enforcement authority must act through the joint committee through which, in accordance with regulation 15 of the General Provisions Regulations, it exercises its functions relating to adjudicators.

(4) The grounds referred to in paragraph (2)(b)(i) are—

- (a) that the alleged road traffic contravention did not occur;
- (b) that the recipient—
  - (i) never was the owner of the vehicle in question;
  - (ii) had ceased to be its owner before the date on which the alleged road traffic contravention occurred; or
  - (iii) became its owner after that date;
- (c) that at the time that the road traffic contravention was committed, the vehicle in question was in the control of a person who did not have the consent of the owner;
- (d) that the recipient is a vehicle-hire firm and—
  - (i) the vehicle in question was at the material time hired from that firm under a hiring agreement; and
  - (ii) the person hiring it had signed a statement of liability acknowledging their liability in respect of any penalty charge notice served in respect of any road traffic contravention involving the vehicle during the currency of the hiring agreement;
- (e) that the penalty charge exceeded the amount applicable in the circumstances of the case;
- (f) that there has been a procedural impropriety on the part of the enforcement authority;
- (g) that the order which is alleged to have been contravened in relation to the vehicle concerned, except where it is an order to which Part VI of Schedule 9 to the 1984 Act<sup>(2)</sup> applies, is invalid;
- (h) in a case where a penalty charge notice was served by post because a civil enforcement officer was prevented by some person from fixing it to the vehicle concerned or handing it to the owner or person in charge of the vehicle, that a civil enforcement officer was not so prevented;
- (i) that the notice to owner should not have been served because—
  - (i) the penalty charge has already been paid in full;
  - (ii) the penalty charge has been paid, reduced by the amount of any discount set in accordance with Schedule 9 to the 2004 Act, within the period specified in paragraph 1(h) of Schedule 1 to the General Provisions Regulations.

(5) In these Regulations, “procedural impropriety” means a failure by the enforcement authority to observe any requirement imposed on it by the 2004 Act, by the General Provisions Regulations, or by these Regulations, in relation to the imposition or recovery of a penalty charge or other sum and includes in particular—

- (a) the taking of any step, whether or not involving the service of any document, otherwise than—
  - (i) in accordance with the conditions subject to which; or

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(2) See Schedule 9, paragraph 34(1) of the 1984 Act as to the Orders to which Part VI of that Schedule applies; paragraph 34 of Schedule 9 was amended by the Local Government Act 1985 (c.51), Schedule 17 and by the Road Traffic Regulation (Special Events) Act 1994 (c.11), Schedule, paragraph 5(3).

- (ii) at the time or during the period when, it is authorised or required by the General Provisions Regulations or these Regulations to be taken; and
- (b) in a case where an enforcement authority is seeking to recover an unpaid charge, the purported service of a charge certificate under regulation 20 of the General Provisions Regulations before the enforcement authority is authorised to serve it by those Regulations.
- (6) Where the ground mentioned in paragraph (4)(b)(ii) is relied on in any representations made under this regulation, those representations must include a statement of the name and address of the person to whom the vehicle was disposed of (if that information is known).
- (7) Where the ground mentioned in paragraph 4(b)(iii) is relied on in any representations made under this regulation, those representations must include a statement of the name and address of the person from whom the vehicle was acquired by the person making the representations (if that information is known).
- (8) Where the ground mentioned in paragraph (4)(d) is relied on in any representations made under this regulation, those representations must include a statement of the name and address of the person to whom the vehicle was hired at the material time.
- (9) In this regulation “hiring agreement” and “vehicle-hire firm” have the same meanings as in section 66 of the Road Traffic Offenders Act 1988<sup>(3)</sup>

#### **Duty of enforcement authority to which representations are made**

- 5.—(1) The enforcement authority may disregard any representations which it receives after the end of the period of 28 days beginning with the date of service of the relevant notice to owner.
- (2) Subject to paragraph (1), where representations are made to the enforcement authority by virtue of regulation 4(1) and in accordance with regulation 4(2) it is the duty of the enforcement authority—
- (a) to consider the representations and any supporting evidence which the person making them provides; and
  - (b) within the period of 56 days beginning with the date on which the representations were served on it, to serve on that person notice of its decision as to whether or not it accepts that—
    - (i) one or more of the grounds specified in regulation 4(4) applies; or
    - (ii) there are compelling reasons why, in the particular circumstances of the case, the notice to owner should be cancelled and any sum paid in respect of it should be refunded.
- (3) Where the enforcement authority accepts that a ground specified in regulation 4(4) applies or that there are such compelling reasons it must—
- (a) cancel the notice to owner; and
  - (b) state in the notice served under paragraph (2)(b) that the notice to owner has been cancelled and at the same time refund any sum paid in relation to the notice to owner.
- (4) The cancellation of a notice to owner under this regulation is not to be taken to prevent the enforcement authority from serving, in accordance with the General Provisions Regulations, a fresh notice to owner on another person.
- (5) If the enforcement authority fails to comply with paragraph (2)(b) within the period of 56 days there specified, it is to be deemed for the purposes of these Regulations to have accepted—

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(3) 1988 c.53. Section 66 was amended by the Road Safety Act 2006, section 5, Schedule 1, paragraphs 1,8 and 9 and section 59, Schedule 7.

- (a) that such of the grounds referred to in paragraph (2)(b)(i) as were relied upon in the representations apply; or
  - (b) in a case where paragraph (2)(b)(ii) is relied upon, there are compelling reasons of the kind referred to in that paragraph.
- (6) Where paragraph (5) applies, the enforcement authority must—
- (a) cancel the notice to owner;
  - (b) refund any sum paid in relation to the notice to owner; and
  - (c) serve a notice on the person making the representations informing them that the notice to owner has been cancelled because the enforcement authority failed to serve notice of their decision in accordance with paragraph (2)(b).

### **Rejection of representations against notice to owner**

6.—(1) Where representations are made under regulation 4 and the enforcement authority serves a notice of rejection under regulation 5(2)(b), that notice must—

- (a) state that a charge certificate may be served unless within the period of 28 days beginning with the date of service of the notice of rejection—
  - (i) the penalty charge is paid; or
  - (ii) the person on whom the notice is served appeals to an adjudicator against the penalty charge;
- (b) indicate the nature of an adjudicator’s power to award costs; and
- (c) describe in general terms the form and manner in which an appeal to an adjudicator must be made.

(2) A notice of rejection served in accordance with paragraph (1) may contain such other information as the enforcement authority considers appropriate.

(3) Where the notice of rejection relates to a penalty charge notice served under regulation 10 of the General Provisions Regulations that notice of rejection must state that the enforcement authority will allow the applicable discount to apply for a further 21 days beginning with the date upon which the notice of rejection is served.

(4) In paragraph (3), “applicable discount” has the same meaning as in regulation 2 of the General Provisions Regulations.

### **Appeals to an adjudicator in relation to decisions under regulation 5**

7.—(1) Where an enforcement authority serves a notice of rejection under regulation 5(2)(b) in relation to representations made under regulation 4, the person making those representations may appeal to an adjudicator against the authority’s decision—

- (a) within the period of 28 days beginning with the date of service of the notice of rejection; or
- (b) within such longer period as an adjudicator may allow.

(2) On an appeal under this regulation, the adjudicator must consider the representations in question and any additional representations which are made by the appellant together with any representations made to the adjudicator by the enforcement authority.

(3) If the adjudicator concludes that a ground specified in regulation 4(4) applies, the adjudicator may give appropriate directions to the enforcement authority which may in particular include directions requiring—

- (a) the cancellation of the penalty charge notice;
- (b) the cancellation of the notice to owner; and

- (c) the refund of such sum (if any) as may have been paid to the enforcement authority in respect of the penalty charge.
- (4) It is the duty of an enforcement authority to which such a direction is given to comply with it forthwith.
- (5) If no direction is given under paragraph (3) but the adjudicator is satisfied that there are compelling reasons why, in the particular circumstances of the case, the notice to owner should be cancelled the adjudicator may recommend the enforcement authority to cancel the notice to owner.
- (6) It is the duty of an enforcement authority to which a recommendation is made under paragraph (4) to consider afresh the cancellation of the notice to owner taking full account of any observations by the adjudicator and, within the period of thirty-five days beginning with the date on which the recommendation was given (“the 35-day period”), to notify the appellant and the adjudicator as to whether or not it accepts the adjudicator’s recommendation.
- (7) If the enforcement authority notifies the appellant and the adjudicator that it does not accept the adjudicator’s recommendation it must at the same time inform them of the reasons for its decision.
- (8) No appeal to the adjudicator lies against the decision of the enforcement authority under paragraph (7).
- (9) If the enforcement authority accepts the adjudicator’s recommendation it must forthwith cancel the notice to owner and refund to the appellant any sum paid in respect of the penalty charge.
- (10) If the enforcement authority fails to comply with the requirements of paragraph (6) within the 35-day period, the authority is to be taken to have accepted the adjudicator’s recommendation and must cancel the notice to owner and refund to the appellant any sum paid in respect of the penalty charge immediately after the end of that period.