Draft Regulations laid before Parliament under section 89(5) of the Traffic Management Act 2004, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2013 No.

ROAD TRAFFIC, WALES

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

Made - - - - 2013

Coming into force in accordance with regulation 1(1)

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These Regulations are made by the Lord Chancellor, in exercise of the powers conferred by sections 80 and 89 of the Traffic Management Act 2004(**a**)

In accordance with paragraph 24 of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007(**b**), the Lord Chancellor has consulted the Administrative Justice and Tribunals Council.

A draft of this instrument has been laid before and approved by a resolution of each House of Parliament pursuant to section 89(5) of the Traffic Management Act 2004.

PART 1

PRELIMINARY

Citation, commencement and application

1.—(1) These Regulations may be cited as the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 and they come into force on the day after the day on which they are made.

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

"the 1984 Act" means the Road Traffic Regulation Act 1984(**c**);

"the 2004 Act" means the Traffic Management Act 2004;

"appellant" in relation to an appeal under these Regulations or any process connected with such an appeal, means the person bringing the appeal;

"charge certificate" has the meaning given by regulation 20(1) of the General Provisions Regulations;

"the General Provisions Regulations" means the Civil Enforcement of Road Traffic Contraventions (General Provisions)(Wales) Regulations 2013(**d**);

(**a**) 2004 c.18.
(**b**) 2007 c.15.
(**c**) 1984 c.27.
(**d**) S.I. 2013/xxxx (W.).

"notice of rejection" means a notice served by an enforcement authority rejecting or not accepting representations made to it under regulation 4 or 8;

"notice to owner" has the meaning given in paragraph (2);

"owner", in relation to a vehicle, includes any person who by virtue of regulation 5 of the General Provisions Regulations, falls to be treated as the owner of the vehicle for the purposes of those Regulations(**a**);

"penalty charge" means a penalty charge relating to a road traffic contravention in accordance with regulation 4 of the General Provisions Regulations;

"penalty charge notice" has the meaning given by regulation 8(1) of the General Provisions Regulations;

"procedural impropriety" has the meaning given by regulation 4(5);

"recipient" has the meaning given in paragraph (2);

"register" means the register required to be kept under paragraph 21 of the Schedule; and

"road traffic contravention" means any of the following:

(a) a parking contravention as described in paragraph 4, Part 1 of Schedule 7 to the 2004 Act;

(b) a bus lane contravention as described in Part 2 of Schedule 7 to the 2004 Act; or

(c) a moving traffic contravention as described in Part 4 of Schedule 7 to the 2004 Act.

(2) In these Regulations (except regulation 3)—

(a) references to a "notice to owner" are to be taken—

(i) in a case where a penalty charge notice has been served under regulation 9 of the General Provisions Regulations, as references to a notice to owner as defined by regulation 18 of those Regulations;

(ii) in a case where a penalty charge notice has been served under regulation 10 of the General Provisions Regulations, as references to that penalty charge notice; and

(b) references to "the recipient" in relation to a notice to owner are to be taken as references to the person on whom the notice to owner was served.

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 —

(**a**) "owner" is defined in section 92 Traffic Management Act 2004.

(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(**a**), 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

(**a**) 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.

(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

(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(**a**) 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—

(**a**) 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).

(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

(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(**a**)

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.

(**a**) 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.

(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 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—

(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.

PART 3

REPRESENTATIONS AND APPEALS IN RELATION TO THE IMMOBILISATION OF VEHICLES

Right to make representations

8.—(1) This regulation applies to the owner or person in charge of a vehicle where—

(a) in accordance with regulation 12 of the General Provisions Regulations an immobilisation device has been fixed to a vehicle found in a civil enforcement area; and

(b) the owner or person in charge of the vehicle secures the release of the vehicle from the device on payment of an amount in accordance with regulation 14 of those Regulations.

(2) A person to whom paragraph (1) applies must immediately upon the release of the vehicle be informed—

(a) of their right to make representations to the enforcement authority in accordance with this regulation; and

(b) of their right to appeal to an adjudicator if those representations are not accepted,

and that information must include a statement of the effect of paragraphs (4) and (5).

(3) The enforcement authority must give that information, or cause it to be given, in writing.

(4) A person to whom paragraph (1) applies may make representations to the effect—

(a) that one or more of the grounds specified in paragraph (5) apply; or

(b) 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 refund some or all of the amount paid to secure the release of the vehicle,

and any such representations must be in such form as may be specified by the enforcement authority.

(5) The grounds are—

(a) that the circumstances in which the vehicle had been permitted to remain at rest in a civil enforcement area were not circumstances in which a penalty charge was payable under regulation 4 of the General Provisions Regulations;

(b) that 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) that the place where the vehicle was at rest was not in a civil enforcement area;

(d) that, in accordance with regulation 13 of the General Provisions Regulations (limitations on the power to immobilise vehicles), 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) that the penalty charge or other charge paid to secure the release of the vehicle exceeded the amount applicable in the circumstances of the case; or

(f) that there has been a procedural impropriety on the part of the enforcement authority.

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

Duty of enforcement authority to which representations are made

9.—(1) The enforcement authority may disregard any representations which are received by it after the end of the period of 28 days beginning with the date on which the person making them is informed under regulation 8(2) of their right to make representations.

(2) Subject to paragraph (1) it is the duty of the enforcement authority, where representations are made to it in accordance with regulation 8(4), within the period of 56 days beginning with the date on which it receives the representations—

(a) to consider them and any supporting evidence which the person making them provides; and

(b) to serve on that person notice of its decision as to whether or not it accepts that—

(i) a ground specified in regulation 8(5) applies; or

(ii) 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.

(3) Where an authority serves notice under paragraph (2)(b)(i) that it accepts that such a ground applies, it must (when serving that notice) refund any sums that the person to whom the vehicle was released was required to pay under regulation 14 of the General Provisions Regulations, except to the extent (if any) to which those sums were properly paid.

(4) Where an authority serves no notice under paragraph (2)(b)(i), but does serve a notice under paragraph (2)(b)(ii) that it accepts that there are such compelling reasons, it must refund the sums referred to in paragraph (3) or such of them as it considers appropriate.

(5) Where an authority serves notice under paragraph (2)(b), that notice must—

(a) inform the person on whom it is served 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 in general terms the form and manner in which such an appeal is required to be made.

(6) Where an authority fails to comply with paragraph (2) within the period of 56 days mentioned there—

(a) it is to be deemed to have accepted the representations and to have served notice to that effect under paragraph (2)(b); and

(b) must immediately after the end of that period refund all such sums as are mentioned in paragraph (3).

Appeals to an adjudicator in relation to decisions under regulation 9

10.—(1) Where an enforcement authority serves a notice of rejection under regulation 9(2)(b) in relation to representations made under regulation 8(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 that notice; 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—

(a) that any of the grounds referred to in regulation 8(5) apply; and

(b) that the enforcement authority would have been under the duty imposed by regulation 9(3) to refund any sum if it had served notice that it accepted that the ground in question applied,

the adjudicator must direct that authority to make the necessary refund.

(4) It is the duty of an enforcement authority to which a direction is given under paragraph (3) to comply with it forthwith.

(5) If the adjudicator gives no direction under paragraph (3) but 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 the enforcement authority to make such a refund.

(6) It is the duty of an enforcement authority to which a recommendation is made under paragraph (5) to consider afresh the making of a refund of those sums taking full account of any observations by the adjudicator and, within the period of thirty-five days ("the 35-day period") beginning with the date on which the direction was given, 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 make the recommended refund within the 35-day period.

(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 make the recommended refund immediately after the end of that period.

PART 4

OFFENCES AND PROCEDURE

False representations

11.—(1) A person who makes any representation under Part 2 or 3 of these Regulations or under the Schedule so far as it relates to an appeal under Part 2 or 3, which is false in a material particular, and does so recklessly or knowing it to be false, is guilty of an offence.

(2) A person convicted of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Procedure to be followed by adjudicators, service of documents and recovery of sums payable

12.—(1) The Schedule to these Regulations has effect as to the procedure and service of documents in adjudication proceedings and the register.

(2) Subject to the provisions of that Schedule, an adjudicator may regulate their own procedure.

(3) Any amount which is payable—

(a) under an adjudicator's adjudication;

(b) by virtue of any other provision of these Regulations which requires an enforcement authority to refund any sum,

is, if a county court so orders, to be recoverable by the person to whom the amount is payable as if it were payable under a county court order.

Revocation

13. The Civil Enforcement of Parking Contraventions (Representations and Appeals) (Wales) Regulations 2008(**a**) are hereby revoked.

Name
Parliamentary Under Secretary of State
Ministry of Justice

Address
Date

(**a**) S.I. 2008/608.

SCHEDULE

Regulation 12

PROCEDURE IN ADJUDICATION PROCEEDINGS

PART 1

INTERPRETATION

Interpretation of Schedule

1.—(1) In this Schedule—

"appeal" means an appeal under regulation 7(1) or 10(1);

"document exchange" means a document exchange providing a system of delivery of documents by reference to numbered boxes at document exchanges (DX);

"fax" means the making of a facsimile copy of a document by the transmission of electronic signals;

"hearing" means an oral hearing;

"proper officer" means a member of the administrative staff provided under section 81(4)(a) of the 2004 Act who has been appointed to perform the functions of the proper officer under this Schedule;

"registered keeper" means the person in whose name a vehicle is registered under the Vehicle Excise and Registration Act 1994(**a**); and

"working day" means any day except a Saturday, a Sunday, Good Friday, Christmas Day or a Bank Holiday in Wales by virtue of the Banking and Financial Dealings Act 1971(**b**).

(2) In this Schedule in relation to an appeal or any process connected with an appeal—

"disputed decision" means the decision appealed against;

"the enforcement authority" means the enforcement authority which made the disputed decision; and

"the original representations" means the representations to the enforcement authority under regulation 4(1) or 8(4).

PART 2

PROCEDURE RELATING TO APPEALS

Initiating an appeal

2.—(1) An appeal is to be made by delivering a notice of appeal to the proper officer.

(2) A notice of appeal—

(a) must be in writing and signed by the appellant or someone authorised by the appellant to sign the notice of appeal;

(b) must state the name and address of the appellant;

(c) may specify some other address as being the address at which the appellant wishes documents to be sent in connection with the appeal;

(**a**) 1994 c.22.
(**b**) 1971 c.80.

(d) must state the date and any reference number of the disputed decision and the name of the enforcement authority; and

(e) may include any representations which the appellant desires to make in addition to the original representations.

(3) If the notice of appeal is delivered to the proper officer later than the time limit specified in regulation 7(1)(a) or 10(1)(a) (as the case may be), the appellant must include in the notice a statement of the reasons which are relied upon for justifying the delay, and the adjudicator must treat any such statement of reasons for delay as a request for extending that time limit.

Action upon receipt of notice of appeal and copy of such notice

3.—(1) Upon receiving a notice of appeal the proper officer must —

(a) send an acknowledgement of its receipt to the appellant; and

(b) enter particulars of the appeal in the register.

(2) Subject to sub-paragraph (3), if satisfied that the notice is in accordance with paragraph 2, the proper officer must send to the enforcement authority a copy of the notice of appeal and any directions extending the time limit for appealing.

(3) The requirement under sub-paragraph (2) does not apply where the adjudicator has declined a request under paragraph 2(3) to extend the appeal period.

(4) Upon receipt of a copy of the notice of appeal sent to it under sub-paragraph (2), the enforcement authority must within 7 days deliver to the proper officer copies of—

(a) the original representations;

(b) the relevant penalty charge notice (if any); and

(c) the relevant notice of rejection.

(5) If the proper officer receives a notice of appeal and considers that it may not be in accordance with paragraph 2, the proper officer must refer the issue of its validity to an adjudicator.

(6) If the adjudicator determines that a notice of appeal referred under sub-paragraph (5) is in accordance with paragraph 2, the proper officer must deal with it in accordance with sub-paragraph (2).

(7) If—

(a) a notice of appeal is delivered outside the appeal period with a request to extend the appeal period and the adjudicator declines to direct that the period be extended; or

(b) the adjudicator determines that a notice of appeal is not in accordance with paragraph 2,

the proper officer must inform the appellant that the adjudicator has declined the request for an extension or, as the case may be, of the reasons why the adjudicator considers that the notice does not accord with paragraph 2 and must record the action taken in the register.

Further representations

4.—(1) Any party may deliver representations in relation to the matters referred to in regulation 4(2)(b) or 8(4), as appropriate in the circumstances, to the proper officer at any time before the appeal is determined.

(2) The adjudicator may invite a party to deliver to the proper officer representations dealing with such matters relating to the appeal as may be specified and any such representations must be so delivered within the time and in the manner specified.

(3) Where a party fails to respond to an invitation under sub-paragraph (2), the adjudicator may draw such inferences as appear proper to the adjudicator.

(4) Any representations delivered under this paragraph must be signed by the party in question or by someone authorised by that party to sign those representations.

(5) Where the appellant delivers representations to the proper officer under this paragraph, the proper officer must send a copy of the representations to the enforcement authority.

(6) Where the enforcement authority delivers representations to the proper officer under this paragraph, it must at the same time send a copy of the representations to the appellant.

(7) This paragraph is without prejudice to the powers of an adjudicator under paragraph 10.

Adjudicator's power to require attendance of witnesses and production of documents

5.—(1) The adjudicator may, by notice in writing sent to any person (including a party to the proceedings), require that person—

(a) to attend, at a time and place specified by the adjudicator, to give evidence at the hearing of an appeal; and

(b) to produce any documents in that person's custody or under that person's control, relating to any matter in the proceedings,

and any such notice must contain a statement of the effect of sub-paragraphs (2) to (6) below.

(2) A person in respect of whom a requirement has been made under sub-paragraph (1) may apply to the adjudicator to vary or set aside the requirement.

(3) A person is bound to comply with a requirement under sub-paragraph (1) if that person has been given at least 7 days' notice of the hearing or, if less than 7 days, that the person has informed the adjudicator that the shorter notice period is accepted.

(4) No person, other than the appellant, is bound to comply with a requirement under sub-paragraph (1) unless the necessary expenses of that person's attendance are paid or tendered to that person.

(5) No person is required to give any evidence or produce any documents under sub-paragraph (1) which they would not be required to give or produce in the trial of an action in a court of law.

(6) Any person who fails to comply with a requirement made under sub-paragraph (1) is guilty of an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Disposal of an appeal without a hearing

6.—(1) Subject to the following provisions of this paragraph, the adjudicator may dispose of an appeal without a hearing.

(2) The adjudicator must not dispose of an appeal without a hearing if, in the opinion of the adjudicator, the appeal raises issues of public importance such as to require that a hearing be held.

(3) The adjudicator must not dispose of an appeal without a hearing if either party has requested a hearing unless—

(a) the party who made the request withdraws the request before notice of a hearing has been sent to the other party under paragraph 7;

(b) both parties have subsequently consented to the appeal being disposed of without a hearing; or

(c) the party requesting the hearing having been sent a notice of the hearing of an appeal in accordance with paragraph 7, fails to attend or be represented at the hearing.

(4) Where the adjudicator is minded to dispose of an appeal without a hearing, the appeal must not be disposed of unless and until either—

(a) there has elapsed a period of 28 days beginning with the date on which an acknowledgment is sent in accordance with paragraph 3(1) during which neither party has requested a hearing; or

(b) both parties have consented to its disposal without a hearing.

Notice of time and place of hearing

7.—(1) This paragraph has effect where a hearing is to be held for the purpose of disposing of an appeal.

(2) The proper officer must—

(a) fix the time and place of the hearing; and

(b) not less than 21 days before the time so fixed, or such shorter time as the parties agree—

(i) send to each party a notice that the hearing is to be at that time and place; or

(ii) inform them of those matters in such other manner as the proper officer thinks fit.

(3) The adjudicator may alter the time and place of any hearing, and, not less than 7 days before the date on which the hearing is then to be held, or such shorter time as the parties agree, the proper officer must —

(a) send to each party notice of the new time and place of the hearing; or

(b) inform them of those matters in such other manner as the proper officer thinks fit.

(4) This paragraph applies to an adjourned hearing but, if before the adjournment, the time and place of the adjourned hearing are notified to all persons expected to attend, no further notice is required.

Admission to a hearing

8.—(1) Subject to the provisions of this paragraph, a hearing is to be held in public.

(2) The adjudicator may direct that the whole or any part of a hearing be held in private if satisfied that it is just and reasonable to do so by reason of—

(a) the likelihood of disclosure of intimate personal or financial circumstances;

(b) the likelihood of disclosure of commercially sensitive information or information obtained in confidence; or

(c) exceptional circumstances not falling within paragraph (a) or (b).

(3) Any other adjudicator is entitled to attend the hearing of an appeal which is held in private.

(4) The adjudicator, with the consent of the parties, may permit any other person to attend the hearing of an appeal, which is held in private or, where part of it is so held, that part.

(5) Without prejudice to any other powers an adjudicator may have, the adjudicator may exclude from the hearing of an appeal, or part of it, any person whose conduct has disrupted or is likely, in the opinion of the adjudicator, to disrupt the hearing.

Appearances at a hearing

9.—(1) The appellant and the enforcement authority are entitled to appear at the hearing of an appeal.

(2) Any other person may appear at a hearing at the discretion of the adjudicator.

(3) At the hearing of an appeal, the appellant may conduct their case in person (with assistance from any person if the appellant wishes) or may be represented by a solicitor, counsel or any other person.

(4) If in any particular case the adjudicator is satisfied that there are sufficient reasons for doing so, the adjudicator may prohibit a particular person from assisting or representing either party at the hearing.

Procedure at a hearing

10.—(1) At the beginning of the hearing of an appeal the adjudicator must explain the order of proceedings.

(2) Subject to the provisions of this paragraph, the adjudicator must conduct the hearing of an appeal in the manner most suitable to the clarification of the issues and generally to the just handling of the proceedings, and the adjudicator must seek to avoid formality in the proceedings so far as appears to the adjudicator to be appropriate.

(3) At the hearing of an appeal—

(a) the parties are entitled to give evidence, to call witnesses and to address the adjudicator both on the evidence and generally on the subject matter of the appeal;

(b) the adjudicator may receive evidence of any fact which appears to the adjudicator to be relevant notwithstanding that such evidence would be inadmissible in proceedings before a court of law.

(4) Without prejudice to paragraph 6(3)(c), where a party who has been sent a notice of the hearing of an appeal or has otherwise been notified of the hearing in accordance with paragraph 7 fails to attend the hearing, the adjudicator may dispose of the appeal in that party's absence.

Decisions on appeals

11.—(1) The adjudicator must give the reasons for a decision on an appeal.

(2) Where an appeal is disposed of at a hearing, the adjudicator may give the decision and the reasons orally at the end of the hearing, or may reserve the decision and give it and the reasons subsequently in writing.

(3) Upon the decision being given (whether at a hearing or otherwise), the proper officer must—

(a) as soon as practicable record the decision in the register, together with the adjudicator's reasons and any directions given; and

(b) send a copy of the register entry to each party.

Review of adjudicator's decision

12.—(1) The adjudicator may, on the application of a party, review—

(a) any interlocutory decision; or

(b) any decision to determine that a notice of appeal does not accord with paragraph 2 or to dismiss or allow an appeal, or any decision as to costs, on one or more of the following grounds—

(i) the decision was wrongly made as the result of an administrative error;

(ii) the adjudicator was wrong to reject the notice of appeal;

(iii) a party who failed to appear or be represented at a hearing had good and sufficient reason for failing to appear;

(iv) where the decision was made after a hearing, new evidence has become available since the conclusion of the hearing, the existence of which could not reasonably have been known or foreseen;

(v) where the decision was made without a hearing, new evidence has become available since the decision was made, the existence of which could not reasonably have been known or foreseen; or

(vi) the interests of justice require such a review.

(2) An application under sub-paragraph (1) must—

(a) be delivered to the proper officer within the period of 14 days beginning with the date on which the decision is given to the parties; and

(b) state the grounds in full.

(3) The parties must have the opportunity to be heard on any application for review under sub-paragraph (1).

(4) Having reviewed the decision, the adjudicator may direct that it be confirmed, that it be revoked or that it be varied.

(5) If, having reviewed a decision, the adjudicator directs that it be revoked, the adjudicator must substitute a new decision or order a re-determination by that adjudicator, the original adjudicator or a different adjudicator.

(6) Paragraph 11 applies to the confirmation, revocation or variation of a decision under this paragraph as it applies to a decision made on the disposal of an appeal.

Costs

13.—(1) The adjudicator is not normally to make an order awarding costs and expenses, but may, subject to sub-paragraph (2) make such an order—

(a) against a party (including an appellant who has withdrawn an appeal or an enforcement authority which has consented to an appeal being allowed) if the adjudicator considers that that party has acted frivolously or vexatiously or that the party's conduct in making, pursuing or resisting an appeal was wholly unreasonable; or

(b) against an enforcement authority where the adjudicator considers that the disputed decision was wholly unreasonable.

(2) An order must not be made under sub-paragraph (1) against a party unless that party has been given an opportunity of making representations against the making of the order.

(3) An order under sub-paragraph (1) must require the party against whom it is made to pay to the other party a specified sum in respect of the costs and expenses incurred by that other party in connection with the proceedings.

Consolidation of proceedings

14.—(1) Where there are pending two or more appeals and at any time it appears to an adjudicator that—

(a) some common question of law or fact arises in both or all appeals; or

(b) for some other reason it is desirable to make an order under this paragraph,

the adjudicator may order that both or all of the appeals or those specified in the order are to be considered together and may give such consequential directions as may appear to the adjudicator to be necessary.

(2) An order must not be made under this paragraph unless all parties concerned have been given an opportunity of making representations against the making of the order.

Miscellaneous powers of adjudicators

15.—(1) An adjudicator may—

(a) extend the time appointed by or under this Schedule for the doing of any act notwithstanding that the time appointed has expired;

(b) if an appellant at any time gives notice of the withdrawal of an appeal, dismiss the proceedings;

(c) if an enforcement authority consents to an appeal being allowed, allow the appeal;

(d) if both or all of the parties agree in writing on the terms of a decision to be made by an adjudicator, decide accordingly; or

(e) adjourn a hearing.

(2) An adjudicator may exercise the powers conferred by this Schedule (other than paragraph 12) on the application of a party or on the adjudicator's own motion.

Clerical errors

16. Clerical mistakes in any document recording a direction or decision of the adjudicator, or errors in such a document arising from an accidental slip or omission, may be corrected by the proper officer on the direction of the adjudicator.

PART 3

SERVICE OF DOCUMENTS AND NOTICES

Service of documents on the parties

17.—(1) This paragraph has effect in relation to any notice or other document required or authorised by these Regulations to be sent to a party to an appeal.

(2) Any document is to be regarded as having been sent to that party if it is—

(a) delivered to that party;

(b) left at that party's proper address;

(c) sent by first class post to that party at that address: or

(d) transmitted to that party by fax or other means of electronic data transmission in accordance with sub-paragraph (3).

(3) A document may be transmitted to a party by fax or by other means of electronic data transmission where—

(a) the party has indicated in writing to the party sending the notice or document that this form of communication is acceptable if it is transmitted to a specified fax telephone number or, as the case may be, a specified electronic address; and

(b) the document is transmitted to that number or address.

(4) In the case of an enforcement authority, an indication under sub-paragraph (3)(a) may be expressed to apply in relation to any appeal to which it is the respondent.

(5) Where the proper address includes a box number at a document exchange the delivery of such a document may be effected by leaving the document addressed to that box number—

(a) at that document exchange; or

(b) at a document exchange which transmits documents every working day to that exchange,

and unless the contrary is proved, any such document so left is to be taken to have been delivered on the second working day after the day on which it was left.

(6) For the purposes of this Schedule, and of section 7 (references to service by post) of the Interpretation Act 1978(**a**) ("the 1978 Act") in its application to this paragraph—

(a) the proper address of the appellant is the address for service specified pursuant to paragraph 2(2)(b) or, if no address is so specified, the address specified pursuant to paragraph 2(2)(c), and

(b) the proper address of an authority in proceedings in which it is the respondent is such address as the authority may from time to time specify in a notice delivered to the proper officer as being the authority's address for service in all such proceedings.

(7) If no address for service has been specified, the proper address for the purposes of this Schedule, and section 7 of the 1978 Act, is—

(a) in the case of an individual, their usual or last known address;

(b) in the case of a partnership, the principal or last known place of business of the firm within the United Kingdom;

(**a**) 1978 c.30.

(c) in the case of an incorporated or unincorporated body, the registered or principal office of the body.

(8) A party may at any time, by notice in writing delivered to the proper officer, change their proper address for the purposes of this Schedule and section 7 of the 1978 Act.

(9) A party may, by notice in writing delivered to the proper officer, vary or revoke any indication given under sub-paragraph (3)(a).

(10) Unless the contrary is proved, a notice or document—

(a) left at the proper address of a party is to be taken to have been delivered on the first working day after the day on which it was left;

(b) sent by fax or other means of electronic transmission is to be taken to have been delivered on the first working day after the day on which it was transmitted.

Delivery of notices or documents to the proper officer

18.—(1) This paragraph has effect in relation to any notice or other document required or authorised by or under this Part to be delivered to the proper officer.

(2) Any such notice or document may be delivered to the proper officer by being transmitted to the proper officer by fax or other means of electronic data transmission, but only to a telephone number or, as the case may be, electronic address for the time being published by the proper officer for the purpose of receiving such notices or documents.

(3) Unless the contrary is proved, any notice or document so transmitted is to be taken to have been delivered on the second working day after the day on which it was transmitted.

(4) Where the address of the proper officer includes a box number at a document exchange the delivery of such a document may be effected by leaving the document addressed to that box number—

(a) at that document exchange; or

(b) at a document exchange which transmits documents every working day to that exchange,

and any such document so left is to be taken to have been delivered on the second working day after the day on which it was left.

(5) Paragraphs 2(2)(a) and 4(4)—

(a) are satisfied, in the case of a document transmitted by fax, if a copy of the signature of the relevant person appears on the transmitted copy; and

(b) do not apply in relation to a document transmitted by other means of electronic data transmission.

PART 4

DIRECTIONS AS TO INVALID NOTICES

Scope of Part 4

19. Paragraph 20 applies where—

(a) the order of a county court which has been made against a person ("a relevant person") in accordance with regulation 21 of the General Provisions Regulations is deemed to have been revoked following the making of a witness statement; and

(b) the enforcement authority has referred the case to the adjudicator for directions.

Procedure

20.—(1) In a case to which this paragraph applies—

(a) the proper officer must enter particulars of the case in the register; and

(b) the adjudicator must give directions as to the conduct of the proceedings unless the adjudicator decides that no such directions are necessary.

(2) The adjudicator may, in particular—

(a) if it appears to the adjudicator that no appeal has been made by the relevant person in relation to the subject matter of the case, direct that the case proceed as an appeal and, in that event, this Schedule (except paragraphs 2 and 3) applies as if an appeal had been duly made by the relevant person; or

(b) if it appears to the adjudicator that an appeal has been made by the relevant person in relation to the subject matter of the case and that the appeal has been dismissed, direct that the case proceed as an application under paragraph 12 to review that decision.

PART 5

THE REGISTER

The register

21.—(1) The proper officer must establish and maintain, in accordance with the following provisions of this paragraph, a register for the purpose of recording proceedings conducted under these Regulations.

(2) The register must be kept open for inspection by any person without charge at all reasonable hours at the principal office of the adjudicators.

(3) The register may be kept in electronic form.

(4) If the register is kept in electronic form, the duty to allow inspection is to be treated as a duty to allow inspection of a reproduction in legible form of the recording of the entry the inspection of which is being sought.

(5) A document purporting to be certified by the proper officer to be a true copy of any entry of a decision in a register is to be evidence of the entry and of the matters contained in it.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations which apply to Wales, make provision entitling a person who is or may be liable to pay a penalty charge in respect of a road traffic contravention or who secures the release of a vehicle from an immobilisation device which has been fixed to it on account of such a contravention, to make representations to the enforcement authority regarding liability for those charges and to appeal to an adjudicator if those representations are not accepted. These Regulations should be read in conjunction with the Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (S.I.2013/xxxx (W.) ("the General Provisions Regulations") and the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) Removed Vehicles (Wales) Regulations 2013 (S.I.2013/xxxx).

These Regulations revoke and replace the Civil Enforcement of Parking Contraventions (Representations and Appeals) (Wales) Regulations 2008 (S.I.2008/608).

Part 1 contains preliminary provisions. *Part 2* concerns representations and appeals against penalty charge notices and notices to owner given under the General Provisions Regulations. *Regulation 3* defines the scope of *Part 2* and specifies the information to be given to the recipients of penalty charge notices and notices to owner. *Regulation 4* confers on the recipient of a notice to owner or penalty charge notice given under *regulation 10* of the General Provisions Regulations the right to make representations to the enforcement authority which served it. *Regulations 5 and 6* set out the duties of an enforcement authority to which representations are made. *Regulation 7* enables a person who has made representations under *regulation 4* to appeal to an adjudicator against an enforcement authority's rejection of those representations.

Part 3 makes equivalent provisions to *Part 2* for representations and appeals in relation to vehicles which have been immobilised in accordance with the General Provisions Regulations. *Regulation 8* confers, on the owner or person in charge of a vehicle who secures its release from an immobilisation device , a right to make representations to the enforcement authority and to appeal to an adjudicator, where those representations are rejected. The enforcement authority is required to inform the person securing the release of the vehicle of their rights in writing. The basis for making representations is specified in *regulation 8(4) and (5)*. *Regulation 9* sets out the duties of an enforcement authority to which representations are made and *regulation 10* provides for an appeal to be made to an adjudicator where representations are rejected under *regulation 9*.

Part 4 relates to offences and procedure. *Regulation 11* creates an offence of making false or reckless representations under these Regulations. *Regulation 12* introduces *the Schedule*, which makes detailed provision as to the procedure to be followed in adjudication proceedings, the service of documents in such proceedings and the requirements to keep a register. Otherwise the procedure is in the discretion of the adjudicator. *Regulation 13* revokes the Civil Enforcement of Parking Contraventions (Representations and Appeals) (Wales) Regulations 2008 (SI 2008/608).

A full Regulatory Impact Assessment and Explanatory Memorandum can be obtained from the Integrated Transport Unit, Transport Planning and Governance Division, Transport Wales, Welsh Government, Crown Offices, Cathays Park, Cardiff, CF10 3NQ or on the Welsh Government website at http://www.xxxxxxxxxx

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