

# **The Road User Charging Scheme (Enforcement) (England) Regulations 2013**

## **Consultation Response**

July 2013

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Department for Transport

Great Minster House

33 Horseferry Road

London SW1P 4DR

Telephone 0300 330 3000

Website [www.dft.gov.uk](http://www.dft.gov.uk)

General email enquiries [FAX9643@dft.gsi.gov.uk](mailto:FAX9643@dft.gsi.gov.uk)

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# 1. Introduction

- 1.1** *The Future of Transport*, published in July 2004, set out a long-term strategy for a modern, efficient and sustainable transport system backed up by sustained high levels of investment over 15 years. Effective management of the road network is a key part of this, and this will include road user charging. The introduction of free-flow collection methods, to replace schemes operated with barriers and booths, is one way of managing congestion on the road network.
- 1.2** On 5 November 2012 the Department published detailed proposals to provide fair and effective enforcement of free-flow road user charging schemes in accordance with the Transport Act 2000. The consultation on these proposals ran for a period of twelve weeks, and closed on 28 January 2013.
- 1.3** The provisions contained in the proposal will be implemented by the Department using regulations made under the Transport Act 2000 (“TA 2000”). These are the Road User Charging Schemes (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2013 (the “Enforcement Regulations”). These are the regulations that were consulted on in November 2012, and the change of name has been made to more accurately describe their subject matter. Part 3 of TA 2000 provides powers for the Secretary of State and the Lord Chancellor to make regulations providing a national legislative framework for the civil enforcement of a charging scheme through the imposition of penalty charges.
- 1.4** The consultation was made available on the Department’s website and sought views on the following:
- Introduction of powers to enable enforcement against drivers who do not pay the road user charge.

- Powers to enable the immobilisation, removal, storage and disposal of vehicles when there are three or more outstanding penalty charges.
- The maximum penalty charge levels that a charging scheme can impose.
- The provisions for appealing and making representations against a charging authority's decision to issue a penalty charge notice or enforce against a vehicle

**1.5** This document is the Department's response to the consultation. It sets out the views expressed during the consultation, as well as the Department's response and the conclusions it has reached. The document also explains how the Department intends to take forward its conclusions.

**1.6** The Highways Agency conducted a parallel consultation on proposals to introduce a new Charging Scheme Order for the Dartford-Thurrock River Crossing which would draw on the Enforcement Regulations.<sup>1</sup>

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<sup>1</sup> <http://www.highways.gov.uk/dartfordcsoconsultation>

## 2. Responses to the consultation

**2.1** The Department was keen to receive the views of as many people as possible and provided a number of different ways of being able to respond to the consultation. Respondents could reply directly via the Department's website by completing an on-line questionnaire or emailing comments to a dedicated consultation email address. Respondents were also able to send their responses in writing directly to the Department.

**2.2** In total the Department received 60 responses during the consultation period. 38 responses were received on-line via the Department's website, 20 responses were received through the consultation email address, and 2 responses were received in writing.

**2.3** Respondents to the consultation represented a number of different areas, which included:

- Local Government
- Members of the public
- Not for profit organisation
- Representative Organisation
- Research Organisation

**2.4** Not every respondent answered every consultation question and in some cases the responses did not express a clear opinion in favour, or against, the Department's proposals. Only respondents answering the specific questions have been included in the analysis set out below. However, a number of respondents made additional general comments and these have been considered by the Department in formulating its response.

**2.5** Many respondents to the consultation on the Enforcement Regulations took the opportunity to raise objections to a charge being levied at the Dartford-Thurrock River Crossing. The proposal to introduce a new Charging Scheme Order for the Dartford Crossing was consulted on

period referred to above.

## 3. Analysis of consultation responses

**3.1** The Department's consultation document included seven questions about the detailed proposals for introducing enforcement measures against drivers who do not pay a road user charge to be collected using the free-flow approach. The consultation questions were as follows:

1. Do you agree, in principle, with this proposal to enable enforcement against drivers who do not pay the road user charge, for schemes that operate under the Transport Act 2000?
2. Do the proposals to be put into effect by the Regulations provide a charging authority with sufficient powers to enforce a road user charging scheme?
3. The proposals will enable a charging authority to immobilise, store or dispose of a vehicle when there are three or more outstanding penalty charges. Is this an appropriate number of outstanding charges before vehicle enforcement can take place?
4. Do you agree with the proposed maximum penalty charge levels to be put into effect by the Regulations?
5. Do the proposals to be put into effect by the Regulations provide a registered keeper with sufficient powers to appeal to an adjudicator against a charging authority's decision?
6. A registered keeper or keeper must pay all charges before being permitted to make representation (or appealing) against the immobilisation, removal or disposal of the vehicle. Should the payment of a lesser amount be permitted to entitle the person to make representations?

7. Do you foresee any unintended consequences for traffic authorities of the proposals to be put into effect by the Regulations?

## 4. Consultation Question 1

**4.1** Do you agree, in principle, with this proposal to enable enforcement against drivers who do not pay the road user charge, for schemes that operate under the Transport Act 2000?

**4.2** There were 52 responses to the question, with 34 respondents stating that they agreed with the proposal and 18 stating they disagreed.

Table 1: Summary Analysis of Responses to Question 1		
	Agree	Disagree
Member of the public	14	16
Local Government	7	1
Not for profit organisation	1	0
Representative organisation	10	1
Research organisation	1	0
Unknown	1	0
TOTAL	34	18

**4.3** Of the total number of responses received during the consultation process, 8 did not specifically indicate whether they agreed or disagreed with this question. These responses have therefore not been included in the summary analysis above, but where such responses provided related comments, these comments have been considered.

**4.4** 1 respondent to this question did not indicate whether they represented a specific category of respondent and have therefore been recorded in the 'unknown' category.

## What respondents said

### Road User Charge

- 4.5** Although the majority of respondents agreed with the proposals, a number commented that in their opinion it was not necessary to have a road user charge at the Dartford Crossing at all, which is outside the scope of this consultation. Also several respondents suggested that the road infrastructure improvements should be paid for through the collection of road tax rather than road user charging.
- 4.6** Local Government responses provided a number of reasons to support these proposals which included the need for enforcement to support free-flow road user charging and to ensure compliance.

### Foreign registered or unregistered UK vehicles

- 4.7** Some respondents raised concern that it will be very difficult to ensure non payment of the road use charge is enforced against non UK registered or unregistered vehicles as the free-flow system relies on unpaid charges being addressed by a penalty charge notice sent to the registered keeper of the vehicle. Such information is not currently available where the keeper's vehicle is not registered in the UK. This was seen to be unfair, discriminating against UK registered vehicles. There was specific concern over deliberately inaccurate vehicle registration or licence plate cloning.

### Hire Vehicles

- 4.8** Several representative organisations felt that the Enforcement Regulations need to take into consideration situations when a vehicle is subject to a lease or hire agreement, to allow leasing or rental companies to transfer liability to customers under hire agreements, whether or not they are more than six months in duration.

## Other comments

- 4.9** Some respondents felt that the power to remove a vehicle was inappropriate and disproportionate to the level of unpaid penalty charge.
- 4.10** Predominantly it was the responses from Local Government and Transport for London that support the proposals, citing the need for enforcement arrangements in order to encourage compliance to pay the road user charge when collected by free-flow means. Concern was expressed that if compliance reduces then traffic flows will increase resulting in congestion. On the whole, it was felt that the Enforcement Regulations are consistent with other free-flow road user charging schemes, such as the Central London congestion charge.

## Department's Response

### Road User Charge

- 4.11** The Enforcement Regulations are considered necessary in order to ensure that road users continue to pay the road user charge under a barrier-free, free-flow operation. Effective provision to enforce against non payers is necessary to encourage road users to be compliant and would serve as a mechanism to increase awareness of the requirements of the road user charging scheme.

### Foreign registered or unregistered UK vehicles

- 4.12** Many respondents commented that enforcement should be the same for UK and non-UK registered vehicles. In reality this distinction is an over simplification, as the determinant for being able to issue a penalty charge notice is the ability to identify the registered keeper of the vehicle. The fact that a vehicle is registered in a jurisdiction outside the UK is the main, but not the only, reason why registered keeper details will be unavailable.

- 4.13** Having had regard to the responses it is proposed that the policy position remain unchanged from that consulted on. Where registered keeper details are available a penalty charge notice will be served. This will cover the majority of UK registered vehicles. Where a vehicle is registered overseas it may be possible to locate the overseas keeper through the use of a European debt recovery agency. Whilst the introduction of free-flow road user charging schemes cannot be evasion free, the Enforcement Regulations provide for all non-compliant vehicles to be enforced against where the registered keeper cannot be identified and there are three or more outstanding penalty charges.
- 4.14** The power to enforce against vehicles – through immobilisation, removal and disposal is contained in Part 3 of the Transport Act 2000. The Enforcement Regulations will limit the use of these powers to situations where the registered keeper of the vehicle cannot be traced and the vehicle has accrued at least three penalty charges – meaning that they will be focused on persistent evaders.

## Hire Vehicles

- 4.15** The Department has worked with the British Vehicle Leasing and Rental Association to include provisions within the Enforcement Regulations which are consistent with the arrangements in Schedule 4 of the Protection of Freedoms Act 2012<sup>2</sup> dealing with the recovery of unpaid parking charges. These will enable hire companies to transfer liability to the person renting the vehicle by providing a copy of the rental agreement identifying the hirer to the charging authority.

## Other comments

- 4.16** As explained above, the Transport Act 2000 permits enforcement of unpaid penalty charges against the vehicle (through immobilisation,

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<sup>2</sup> <http://www.legislation.gov.uk/ukpga/2012/9/contents/enacted>

removal and disposal). Having reflected on the consultation responses it has been decided that the Enforcement Regulations will allow the use of these powers only where the registered keeper of the vehicle cannot be traced and the vehicle has accrued at least three unpaid penalty charges.

## 5. Consultation Question 2

- 5.1** Do the proposals to be put into effect by the Regulations provide a charging authority with sufficient powers to enforce a road user charging scheme?
- 5.2** There were 34 responses to the question with 28 respondents agreeing with the proposal and 6 stating they disagreed.

Table 1: Summary Analysis of Responses to Question 2		
	Yes	No
Member of the public	13	4
Local Government	6	0
Not for profit organisation	0	1
Representative organisation	8	1
Research organisation	1	0
Unknown	0	0
TOTAL	28	6

- 5.3** Of the total number of responses received during the consultation process, 26 did not indicate whether they agreed or disagreed with this specific question. These responses have therefore not been included in the summary analysis above, but where such responses provided related comments, these comments have been considered.

## What respondents said

## Foreign registered vehicles

- 5.4** The majority of respondents agreed that the Enforcement Regulations do provide a charging authority with enough power, particularly for UK registered vehicles. However, concern was raised that the regulations do not make adequate provision for enforcement of unpaid charges against foreign registered vehicles as there is the lack of an international framework allowing registered keeper details to be exchanged.

## Incorrect registration details

- 5.5** It was suggested that the Enforcement Regulations do not take into account the possibility that penalty charge notices will be issued incorrectly when the Driver Vehicle and Licensing Agency (DVLA) has been provided with insufficient or incorrect information or where the keeper of a vehicle has changed but the DVLA has not been provided with this information.

## Other comments

- 5.6** General comments were again raised suggesting that the road user charge at the Dartford–Thurrock River Crossing should be removed altogether.

## Department's Response

### Foreign registered vehicles

- 5.7** As explained in the response to question 1, many respondents commented that enforcement powers should be the same for UK and non-UK registered vehicles. In reality this distinction is an over simplification, as the determinant for being able to issue a penalty charge notice is the ability to identify the registered keeper of the

not the only, reason why registered keeper details will be unavailable.

- 5.8** Having had regard to the responses it is proposed that the policy position remain unchanged from that consulted on. Where registered keeper details are available a penalty charge notice will be served. This will cover the majority of UK registered vehicles. Where a vehicle is registered overseas it may be possible to locate the overseas keeper through the use of a European debt recovery agency. Whilst the introduction of free-flow road user charging schemes cannot be evasion free, the Enforcement Regulations provide for all non-compliant vehicles to be enforced against where the registered keeper cannot be identified and there are three or more outstanding penalty charges
- 5.9** The power to enforce against vehicles – through immobilisation, removal and disposal is contained in Part 3 of the Transport Act 2000. The Enforcement Regulations will limit the use of these powers to situations where the registered keeper of the vehicle cannot be traced and the vehicle has accrued at least three penalty charges – meaning that they will be focused on persistent evaders.

## Incorrect registration details

- 5.10** In order to issue a penalty charge notice the charging authority will need to know the name and address of the registered keeper of the vehicle at the time the unpaid road user charged was incurred. This information is provided by the DVLA. Where requests for information from DVLA are unsuccessful it may be that the vehicle is a new one and has yet to be registered, that a new keeper of a used vehicle has not yet notified DVLA or that the vehicle is registered overseas. As explained above, if it is determined that there are no registered keeper details and the vehicle has incurred three or more outstanding penalty charges then the charging authority may immobilise, remove and dispose of the vehicle.

## Other comments

- 5.11** The Dartford-Thurrock River Crossing is a key part of the strategic road network. It consists of two two-lane tunnels carrying traffic to the north, and a four-lane cable stayed bridge carrying traffic to the south. The Crossing spans the River Thames between Dartford and Thurrock, forming a trunk road link (A282 Trunk Road) in the M25 orbital motorway.
- 5.12** On 5 November 2012 the Highways Agency published detailed proposals for introducing post-payment and enforcement measures for 'free-flow' charging at the Crossing. These would use the arrangements envisaged by the Enforcement Regulations. In a similar way to the Enforcement Regulations, the consultation on these proposals ran for a period of twelve weeks, and closed on 28 January 2013. The consultation response for the Dartford-Thurrock River Crossing Charging Scheme Order was published in parallel to the consultation response on the Enforcement Regulations consultation on the Highways Agency website.

## 6. Consultation Question 3

- 6.1** The proposals will enable a charging authority to immobilise, store or dispose of a vehicle when there are three or more outstanding penalty charges. Is this an appropriate number of outstanding charges before vehicle enforcement can take place?
- 6.2** There were 44 specific responses to the question with 23 respondents stating they agreed with the proposal and 21 who stated they disagreed.

Table 1: Summary Analysis of Responses to Question 3		
	Yes	No
Member of the public	8	20
Local Government	6	0
Not for profit organisation	1	0
Representative organisation	7	1
Research organisation	1	0
Unknown	0	0
TOTAL	23	21

- 6.3** Of the total number of responses received during the consultation process, 16 respondents did not indicate whether they agreed or disagreed with this specific question. These responses have therefore not been included in the summary analysis above, but where such responses provided related comments, these comments have been considered.

## What respondents said

### Outstanding Penalty Charges

- 6.4** Several members of the public felt that three outstanding charges are insufficient to trigger the use of the powers, particularly when using the crossing everyday in both directions. Suggestions to increase the

estimated that  
high and that this should be reduced to two, or in  
some instances, one charge.

## Other comments

- 6.5** A member organisation suggested that vehicle immobilisation etc should be time based, rather than based on a number of outstanding penalty charges, for example allowing up to 3 months to pay the road user charge and only after that time permitting the vehicle to be immobilised and/or removed and disposed of.

## Department's Response

### Outstanding Penalty Charges

- 6.6** Some vehicle owners will contravene the road user charging scheme deliberately and often, and fail to settle any debts they incur. The Department considers that a vehicle owner should be classed as a 'persistent evader' if there are three or more outstanding penalty charges, and these have either not been appealed against within the requisite time limits, or such representations and appeals have been rejected and the penalty charges have still not been paid.
- 6.7** For vehicles where the registered keeper's address is in England or Wales, outstanding penalty charges would, after the prescribed period of time has passed and the required procedure been followed, be registered as debts at the Traffic Enforcement Centre (TEC) and then enforced as if payable under a county court order. Where the registered keeper resides in Scotland or Northern Ireland equivalent arrangements will need to be considered by charging authorities as the TEC cannot be used for claims against defendants in those jurisdictions. Where registered keeper details are unknown, for example where the registered keeper lives outside the UK, the

rage and  
s where three or more outstanding  
penalty charges have been incurred.

- 6.8** The Department considers that this approach is consistent with current arrangements for the enforcement of parking contraventions and non payment of the Central London Congestion Charge.

## Other comments

- 6.9** A time based approach to enforcing against vehicles is not considered practical. It is unlikely that a road user charging scheme would contemplate allowing up to three months for the payment of the road user charge (or any penalty charge subsequently incurred) to be made.

## 7. Consultation Question 4

**7.1** Do you agree with the proposed maximum penalty charge levels to be put into effect by the Regulations?

**7.2** There were 45 responses to the question with 22 responses stating they agreed with the proposal and 23 responses stated they disagreed.

Table 1: Summary Analysis of Responses to Question 4		
	Agree	Disagree
Member of the public	9	19
Local Government	4	1
Not for profit organisation	1	0
Representative organisation	7	2
Research organisation	1	0
Unknown	0	1
TOTAL	22	23

**7.3** Of the total number of responses received during the consultation process, 15 responses did not indicate whether they agreed or disagreed with this question. These responses have therefore not been included in the summary analysis above, but where such responses provided related comments, these comments have been considered.

**7.4** One respondent to this question did not indicate whether they represented a specific category of respondent and have therefore been recorded in the unknown category.

## What respondents said

### Penalty Charge Levels

**7.5** Several members of the public felt that the penalty charge should be as low as practicably possible, suggesting that the charge be set at a level that reflects the cost to administer it. Those that disagreed felt

the Road User Charge at Dartford, which for a car is currently £2.

## Single Penalty Charge

- 7.6** Some suggestions were made that a single penalty charge, which is subject to a reduction or increase depending if payment is made within 14 days of the penalty charge notice being served or delayed until after 28 days when a charge certificate has been issued should be applied to be consistent with penalty charges payable for parking contraventions under the Traffic Management Act 2004.

## Other comments

- 7.7** Several of the responses from Local Government and member organisations felt that the penalty charge needs to be sufficient to cover the cost of administering the penalty regime and needs to be high enough to be seen as a deterrent for those who do not pay the road user charge.
- 7.8** A large number of respondents agreed it was sensible to adopt the rates already in place for the Central London Congestion Scheme, although it was highlighted that Transport for London (TfL) are currently consulting on a proposed adjustment to the maximum penalty charge levels.

## Department's Response

### Penalty Charge Levels

- 7.9** The penalty charge levels consulted on in the Enforcement Regulations are maximums and are considered to be both fair and proportionate and are in line with the current levels for the Central London Congestion Charge Scheme. It is for an individual Charging

Authority to determine the appropriate penalty charge level in their Charging Scheme Order, up to the maximum permissible.

## Single Penalty Charge

- 7.10** In response to the consultation the Regulations have been amended to provide for a single penalty charge of £120 if paid within 28 days of the penalty charge notice being issued. If the penalty charge is paid within 14 days of the notice being served then it is reduced from £120 to £60. If it is not paid within 28 days of service and a charge certificate has been issued it is increased to a maximum of £180. This does not relate to vehicle type. The Department does not intend to increase the maximum permitted levels to be in line with the recent consultation by TfL, as this development post dated its consultation.

## Other comments

- 7.11** It is for an individual Charging Authority to determine the appropriate level of a penalty charge and assess the relative costs of administering a road user charging scheme within the permitted maximums, as stated in the Regulations.
- 7.12** In addition the Enforcement Regulations now specify the maximum levels that a Charging Authority can charge for vehicle immobilisation, removal, storage and disposal. These have been set at: immobilisation £70, removal £200, storage £40 per day and disposal £70. These rates are consistent with the current levels used in the Central London Congestion Charge Scheme.

## 8. Consultation Question 5

**8.1** Do the proposals to be put into effect by the Regulations provide a registered keeper with sufficient powers to appeal to an adjudicator against a charging authority's decision?

**8.2** There were 42 responses to the question with 21 respondents stating they agreed with the proposal and 21 stated they disagreed.

Table 1: Summary Analysis of Responses to Question 5		
	Yes	No
Member of the public	8	17
Local Government	4	1
Not for profit organisation	1	0
Representative organisation	7	2
Research organisation	1	0
Unknown	0	1
TOTAL	21	21

**8.3** Of the total number of responses received during the consultation process, 18 responses did not indicate whether they agreed or disagreed with this specific question. These responses have therefore not been included in the summary analysis above, but where such responses provided related comments, these comments have been considered.

**8.4** One respondent to this question did not indicate whether they represented a specific category of respondent and have therefore been recorded in the unknown category.

## What respondents said

### Making a Representation

- 8.5** Members of the public generally had concerns that the Enforcement Regulations did not protect the registered keeper enough, for example where the registered keeper was not driving the vehicle at the time the unpaid road user charge was incurred. It was felt that the registered keeper should be allowed more time to show who was driving the vehicle before being liable for the road user charge.
- 8.6** General comments related to the lack of clarity of the registered keeper's rights to make representations to the charging authority about alleged non payment. It was felt that the process for appealing against the issue of a penalty charge notice by a charging authority was not clearly set out in the Regulations and that the appeal process should mirror that typically in place for parking contraventions.

### Other comments

- 8.7** Some members of the public were concerned with the increasing incidence of unlawful number plate duplication (cloning) and the Enforcement Regulations' lack of a compensation mechanism for those who fall victim to this and then receive a penalty charge notice.

## Department's Response

### Making a Representation

- 8.8** Having had regard to the responses, the Regulations have been amended to clarify the circumstances in which people can make representations about the issue of a penalty charge notice, for example if their vehicle has been taken without consent.

**8.9** When a keeper feels that a penalty charge notice has been unfairly issued or there are compelling reasons why it should be revoked they will be able to submit a representation in writing to the Charging Authority explaining why.

## Other comments

**8.10** If a vehicle has been cloned or has a duplicate number plate then this would be a reasonable ground for making representation to a Charging Authority asking for the penalty charge notice to be revoked.

## 9. Consultation Question 6

**9.1** A registered keeper or keeper must pay all outstanding charges before being permitted to make a representation (or appealing) against the immobilisation, removal or disposal of the vehicle. Should the payment of a lesser amount be permitted to entitle the person to make representations?

Table 1: Summary Analysis of Responses to Question 6		
	Yes	No
Member of the public	6	22
Local Government	2	4
Not for profit organisation	0	1
Representative organisation	5	4
Research organisation	1	0
Unknown	0	1
TOTAL	14	32

**9.2** There were 46 specific responses to the question with 14 agreeing with the proposition and 32 disagreeing with the proposals, however, a proportion of those that responded no to this question provided comments that contradicted this.

- 9.3** Of the total number of responses received during the consultation process, 14 did not indicate whether they agreed or disagreed with this specific question. These responses have therefore not been included in the summary analysis above, but where such responses provided related comments, these comments have been considered.
- 9.4** One respondent to this question did not indicate whether they represented a specific category of respondent and have therefore been recorded in the unknown category.

## What respondents said

### Payment of charges before making formal representation

- 9.5** More than half of the members of the public who responded felt that it was unfair that the outstanding penalty charge is payable in full before any representation or appeal can be made.
- 9.6** Of those who disagreed, many respondents felt that 50% should be the maximum payable, whilst others felt that no fee should be paid as a precondition to making an appeal against the immobilisation, removal or disposal of the vehicle.
- 9.7** Those who suggested that no payment should be required in advance of lodging an appeal or the making of representations felt that the charges should only be applied if the appeal is unsuccessful and that the registered keeper is proven to be responsible for them.

## Department's Response

### Payment of charges before making formal representation

- 9.8** Having had regard to the responses it is proposed that the policy position remain unchanged from that consulted on. Whilst it will be necessary for a keeper to pay all of the outstanding charges before making representations to the charging authority against the immobilisation, removal and disposal of a vehicle this will only arise in respect of persistent non-compliant vehicles that have incurred at least three unpaid penalty charges. The keeper will have the right to appeal if these representations are rejected and may receive a full or partial refund (depending on the circumstances of the case) if their representations or an appeal are successful.

## 10. Consultation Question 7

**10.1** Do you foresee any unintended consequences for traffic authorities of the proposals to be put into effect by the Regulations?

**10.2** There were 41 specific responses to the question with 27 agreeing with the proposition and 14 disagreeing with the proposals.

Table 1: Summary Analysis of Responses to Question 7		
	Yes	No
Member of the public	19	5
Local Government	3	2
Not for profit organisation	0	1
Representative organisation	4	5
Research organisation	0	1
Unknown	1	0
TOTAL	27	14

**10.3** Of the total number of responses received during the consultation process, 19 did not indicate whether they agreed or disagreed with this specific question. These responses have therefore not been included in the summary analysis above, but where such responses provided related comments, these comments have been considered.

**10.4** One respondent to this question did not indicate whether they represented a specific category of respondent and have therefore been recorded in the unknown category.

## What respondents said

### Impact on local roads

- 10.5** A number of respondents felt that traffic will be shifted onto local roads to avoid paying the road user charge. Several members of the public suggested that more traffic will use the Blackwall Tunnel as motorists seek to minimise costs.

### Other comments

- 10.6** Concern was raised by members of the public that the Enforcement Regulations could allow local authorities free reign to introduce charging schemes throughout the country.
- 10.7** Some respondents reiterated their concern regarding the ability to trace foreign registered vehicles for non payment of a road user charge and the potential for increased cloning of vehicles registrations to avoid paying the road user charge.

## Department's Response

### Impact on local roads

- 10.8** This response is specifically related to the implementation of free-flow charging at the Dartford Crossing which has been consulted on separately by the Highways Agency. Whilst the Enforcement Regulations will be used at Dartford they are not specific to the road user charging scheme there. The enforcement measures will not increase costs to compliant users.

### Other comments

- 10.9** Part 3 of the Transport Act 2000 explains the requirement for proposed charging schemes to be made the subject of public consultation.
- 10.10** The Enforcement Regulations provide for the non payment of penalty charges to be enforced, whether a vehicle has a registered keeper resident in the UK or is foreign registered. The determinant for being able to issue a penalty charge notice is the ability to identify the registered keeper of the vehicle. The majority of vehicles will have a registered keeper who can be identified and be sent a penalty charge notice. The fact that a vehicle is registered overseas is the main, but not the only, reason why registered keeper details may be unavailable, but in such circumstances, where the vehicle has incurred three or more unpaid penalty charges, the enforcement powers against the vehicle become available.
- 10.11** For foreign registered vehicles, a European debt recovery agency can be used by a Charging Authority to try and locate the keeper, and if successful this would allow a penalty charge notice to be issued.
- 10.12** The Enforcement Regulations permit enforcement against the vehicle (through immobilisation, removal and disposal) where the registered keeper cannot be traced and the vehicle has incurred at least three unpaid penalty charges. These measures will ensure processes are available to minimise any financial losses occurring through evasion of the road user charge.

## 11. Summary of the Department's decisions

11.1 In light of the consideration of the consultation responses received the Department has taken the following action:

- a. the maximum level of a single penalty charge will be £120 if paid within 28 days of the penalty charge notice being issued. If the penalty charge is paid within 14 days of issue then it is reduced by half from £120 to £60. If it is not paid within 28 days and a charge certificate is served it is increased to a maximum of £180.
- b. a vehicle will only be immobilised, removed or disposed of where there are no available registered keeper details and it has incurred three or more outstanding penalty charges.
- c. a person whose vehicle has been immobilised etc. will be required to pay all of the outstanding charges and penalty charges before appealing but may be entitled to a full or partial refund (depending on the circumstances of the case) if that appeal is successful.
- d. the Enforcement Regulations now specify the maximum levels that a Charging Authority can charge for vehicle immobilisation, removal, storage and disposal as: immobilisation £70, removal £200, storage £40 per day and disposal £70. These are consistent with the current levels used in the Central London Congestion Charge Scheme.
- e. the circumstances in which people can make representations and appeals have been clarified, for example alleging that a vehicle has been taken without consent.
- f. the Enforcement Regulations have been amended to re-state when a hire company can pass liability to the driver, and that this now applies if the hire agreement is capable of lasting for more than 6 months.

## 12. Next Steps

- 12.1** The Department for Transport has considered all the responses made on its proposal to introduce the Enforcement Regulations. A copy of the revised Regulations is attached in Annex A.
- 12.2** It is anticipated that the Enforcement Regulations will come into force on 2 September 2013.

# 13. Annex A

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## STATUTORY INSTRUMENTS

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**2013 No. XXXX**

### **ROAD TRAFFIC, ENGLAND**

#### **The Road User Charging Schemes (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2013**

<i>Made</i>	- - - -	2013
<i>Laid before Parliament</i>		2013
<i>Coming into force</i>	- -	2nd September 2013

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The Secretary of State for Transport in exercise of the powers conferred by sections 163(2), 173(1) to (3), 174(1), (2) and (5), 175(1) and 197(1) of the Transport Act 2000<sup>(3)</sup> and the Lord Chancellor in exercise of the powers conferred by sections 173(4), 195(1)(b) to (d) and (2) and 197(1) of that Act, make the following Regulations.

## PART 1

### PRELIMINARY

#### **Citation, commencement and application**

1.—(1) These Regulations may be cited as the Road User Charging Schemes (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2013 and come into force on 2nd September 2013.

(2) These Regulations apply only to England.

(3) These Regulations do not apply to road user charges imposed under the County Council of Durham (Market Place leading to Saddler Street, Durham City) (Road User Charging Scheme) Order 2002.

#### **Interpretation**

2.—(1) In these Regulations—

“adjudicator” means a person appointed to be a road user charging scheme adjudicator in accordance with regulation 12(1) or (2);

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

“authorised person” has the meaning given by regulation 21;

“charge certificate” has the meaning given by regulation 17(1);

“custodian” in relation to a motor vehicle removed under regulation 27 means—

(i) if the motor vehicle has been delivered to the charging authority, that charging authority; or

(ii) if the motor vehicle has been delivered to a person authorised by the charging authority to keep motor vehicles so removed in their custody, that other person;

“designated road” means a road designated by a charging scheme as a road to which a road user charge applies;

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<sup>(3)</sup> 2000 c.38. Section 198(1) of the Act contains definitions of “charging authority”, “charging scheme”, “charging scheme penalty charges”, “motor vehicle”, “registered keeper” and “road”. The powers conferred by section 163(2)(b), 173(1) and (3)(b) and 175(1) are conferred on “the appropriate national authority”. By virtue of section 198(1) the Secretary of State is the appropriate national authority in relation to charging schemes relating only to England. Section 174(1)(bb) was substituted by the Local Transport Act 2008 (c.26) section 115(2)(a); section 174(2)(a) was amended by sections 115(2)(b) and (c) of that Act and section 174(2)(b) was also amended by section 115(2)(c) of that Act.

“electronic transmission” means a communication transmitted—

- (i) by means of an electronic communications network; or
- (ii) by other means but while in electronic form;

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

“joint committee” means the joint committee set up in accordance with regulation 16 of the Civil Enforcement of Parking Contraventions (England) General Regulations 2007<sup>(4)</sup>;

“keeper” (other than in the phrase “registered keeper”) means the person by whom a motor vehicle was kept at the time it was immobilised, removed or disposed of under the powers in Part 6;

“notice of appeal” means a notice initiating an appeal delivered by an appellant to the proper officer under regulation 11(3), 34(2) or 37(2) in each case in accordance with paragraph 2 of the Schedule;

“notice of rejection” means a notice served by a charging authority under regulation 10(1), 33(4) or 36(4) rejecting, or not accepting, representations made to it;

“penalty charge” means a charging scheme penalty charge;

“penalty charge notice” has the meaning given by regulation 7(1);

“procedural impropriety” has the meaning given by regulation 8(4);

“proper officer” means a person appointed under regulation 13(1);

“road user charge” means a charge imposed under a charging scheme which is not a penalty charge;

“witness statement” means a statement which is a witness statement for the purposes of the Civil Procedure Rules 1998<sup>(5)</sup> and which is supported by a statement of truth in accordance with Part 22 of those Rules.

(2) In determining for the purposes of any provision of these Regulations whether a road user charge or penalty charge has been paid within a particular period, it is to be taken to be paid when it is received by the charging authority.

### **Service of documents**

**3.—**(1) Subject to paragraph (9) a notice or other document to be served by a charging authority on any person (“the recipient”) in accordance with these Regulations—

- (a) may be served by first class post; and
- (b) where the recipient is a body corporate, is duly served if it is sent by first class post to the secretary or clerk of that body.

(2) Where the address of the registered keeper of a motor vehicle upon which a penalty charge arising under regulation 4(1) has been imposed is contained in the register of mechanically propelled vehicles maintained by the Secretary of State under section 21 of the Vehicle Excise and Registration Act 1994<sup>(6)</sup> the penalty charge notice relating to that penalty charge is to be served on the registered keeper at that address.

(3) Where—

- (a) the address of the registered keeper of a motor vehicle upon which a penalty charge arising under regulation 4(1) has been imposed is not contained in the register referred to in paragraph (2); or
- (b) in accordance with regulation 6, the penalty charge is payable by a person other than the registered keeper of the motor vehicle,

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<sup>(4)</sup> S.I. 2007/3483.

<sup>(5)</sup> S.I. 1998/3132. Relevant amending instruments for Rule 22.1 are S.I. 2001/1769, 2001/4015 and 2004/3419.

<sup>(6)</sup> 1994 c.22.

the penalty charge notice may (where sub-paragraph (a) applies) be served on the recipient at an address at which the recipient resides or can conveniently be contacted, or (where sub-paragraph (b) applies) at the address notified to the charging authority by the registered keeper.

(4) Unless the contrary is proved—

- (a) service of a notice or other document by first class post to an address in the United Kingdom is to be taken to have been effected on the second working day after the day on which it was posted;
- (b) service of a notice or other document by first class post to an address outside the United Kingdom is to be taken to have been effected on the fifth working day after the day on which it was posted;
- (c) service of a notice or other document by electronic transmission is to be taken to have been effected on the second working day after the day on which it was transmitted.

(5) For the purpose of receiving notices or other documents in accordance with these Regulations, the recipient may at any time, by notice in writing delivered to the charging authority—

- (a) change the recipient's address; or
- (b) consent to the use of electronic transmission in accordance with paragraphs (6) to (8).

(6) A notice or other document mentioned in these Regulations may be served by the charging authority on the recipient by means of electronic transmission where—

- (a) the recipient of the notice or document to be transmitted has given consent to the use of electronic transmission in writing to the charging authority;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(7) Where the recipient of a notice or other document served by electronic transmission notifies the charging authority within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the charging authority must provide such a copy as soon as reasonably practicable. The making of such a request by the recipient has no effect on the date on which the notice or other document was served in accordance with paragraph (4)(c).

(8) Where a person is no longer willing to accept the use of electronic transmission—

- (a) that person must give notice to the charging authority in writing revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) Nothing in this regulation applies to—

- (a) the service of any notice or other document required or authorised by the Schedule to be sent to a party to an appeal or served in connection with adjudication proceedings; or
- (b) the service of any notice or order made by a county court.

(10) In this regulation—

- (a) “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form; and
- (b) “working day” means any day except a Saturday, a Sunday, New Year's Day, Good Friday, Christmas Day or any other day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971<sup>(7)</sup>.

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<sup>(7)</sup> 1971 c.80.

## PART 2

### PENALTY CHARGES

#### **Imposition of penalty charge**

**4.**—(1) A charging scheme may provide that a penalty charge is to be imposed in respect of a motor vehicle where—

- (a) the motor vehicle has been used or kept on a designated road;
- (b) events have occurred by reference to the happening of which a road user charge is imposed by the charging scheme; and
- (c) the road user charge has not been paid in full within the time and in the manner in which it is required by the charging scheme to be paid.

(2) A charging scheme may further provide that a penalty charge is to be imposed in respect of—

- (a) the release of a motor vehicle from an immobilisation device fixed to it in accordance with regulation 25;
- (b) the removal of a motor vehicle in accordance with regulation 27;
- (c) the storage and release from storage of a motor vehicle so removed; and
- (d) the disposal of a motor vehicle so removed in accordance with regulation 28.

(3) If a charging scheme so provides a penalty charge is to be payable.

(4) A charging scheme is to specify whether a penalty charge referred to in paragraph (1) or (2) is payable in addition to the road user charge or instead of such charge.

#### **Setting the rates and maximum amounts of penalty charge**

**5.**—(1) The rates of penalty charges imposed by a charging scheme are to be—

- (a) specified in the charging scheme; or
- (b) communicated to users of the designated road in the manner specified in the charging scheme.

(2) A charging scheme is to provide that a penalty charge arising under regulation 4(1) is to be paid in full within the period of 28 days beginning with the date on which a penalty charge notice is served.

(3) If the penalty charge of the type described in regulation 4(1) is paid prior to the end of the fourteenth day of the period referred in paragraph (2) the charging scheme is to provide that it is reduced by one half.

(4) If the penalty charge of the type described in regulation 4(1) is not paid before a charge certificate to which it relates is served by the charging authority in accordance with regulation 17, the charging scheme is to provide that the penalty charge is increased by one half.

(5) The maximum amount of the penalty charge that a charging scheme may impose of the type described in regulation 4(1) is £120.

(6) The maximum amount of the penalty charge that a charging scheme may impose of the type described in regulation 4(2)(a) is £70.

(7) The maximum amount of the penalty charge that a charging scheme may impose of the type described in regulation 4(2)(b) is £200.

(8) The maximum amount of the penalty charge that a charging scheme may impose of the type described in regulation 4(2)(c) is £40 for each day or part of a day during which the motor vehicle is stored.

(9) The maximum amount of the penalty charge that a charging scheme may impose of the type described in regulation 4(2)(d) is £70.

## Person by whom penalty charge is to be paid

6.—(1) Unless any of the circumstances in paragraphs (2) to (5) apply, road user charges and penalty charges imposed upon a relevant vehicle by a charging scheme are to be paid by the registered keeper of that vehicle.

(2) Where the relevant vehicle is not registered under the Vehicle Excise and Registration Act 1994 road user charges and penalty charges are to be paid by the person by whom the relevant vehicle was used or kept on the designated road at the relevant time.

(3) Where before the relevant time the registered keeper had notified the Secretary of State in writing, in accordance with regulation 22, 23 or 24 of the Road Vehicles (Registration and Licensing) Regulations 2002 (“the 2002 Regulations”)<sup>(8)</sup>, that there had been a change of ownership of the relevant vehicle so that it was no longer kept by that person, road user charges and penalty charges are to be payable by the person by whom the relevant vehicle was used or kept at the relevant time.

(4) Where at the relevant time the relevant vehicle was used or kept by a person who was a vehicle trader and that vehicle trader was not the registered keeper road user charges and penalty charges are payable by that person.

(5) Where—

(a) at the relevant time—

- (i) the registered keeper of the relevant vehicle was a vehicle-hire firm; and
- (ii) the relevant vehicle was hired to any person under a hiring agreement with the vehicle-hire firm; and

(b) the charging authority has been given a copy of—

- (i) a statement signed by or on behalf of the vehicle-hire firm to the effect that at the relevant time the vehicle was hired to a named person under a hiring agreement;
- (ii) a copy of the hiring agreement (or, at the discretion of the charging authority, a copy of relevant extracts from the hiring agreement); and
- (iii) a copy of a statement of liability signed by the hirer under the hire-agreement—
  - (aa) containing a statement by the hirer to the effect that the hirer acknowledges liability for any road user charges or penalty charges that may be incurred with respect to the vehicle while it is hired to the hirer; and
  - (bb) including an address given by the hirer (whether a residential, business or other address) as one at which documents may be given to the hirer,

road user charges and penalty charges are to be paid by the person who hired the vehicle under the hiring agreement.

(6) The date on which the registered keeper is to be taken for the purposes of these Regulations to have notified the Secretary of State as mentioned in paragraph (3) is the date on which service on the Secretary of State is to be taken to have been effected in accordance with section 7 of the Interpretation Act 1978<sup>(9)</sup> of—

- (a) in a case where regulation 22 of the 2002 Regulations applies, parts of the registration document in accordance with regulation 22(2)(b);
- (b) in a case where regulation 23 of the 2002 Regulations applies, notification in accordance with regulation 23(2); or
- (c) in a case where regulation 24 of the 2002 Regulations applies, the information and declarations in accordance with regulation 24(5)(a).

(7) In this regulation—

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<sup>(8)</sup> S.I. 2002/2742. Relevant amending instruments for regulation 22 are S.I. 2003/3073, 2003/2154, 2004/238, 2004/1773 and 2007/1018. Relevant amendments were made to regulation 23 by S.I. 2003/3073. Relevant amending instruments for regulation 24 are S.I. 2003/3073, 2004/238, 2004/1773, 2007/1018, 2003/2154, 2004/238, 2004/1773 and 2007/1018.

<sup>(9)</sup> 1978 c.30.

- (a) “relevant vehicle” means a motor vehicle in respect of which road user charges or penalty charges are imposed by a charging scheme due to it having been used or kept on a designated road;
- (b) “relevant time” means the time at which a relevant vehicle was used or kept on a designated road so as to incur road user charges under a charging scheme;
- (c) “hiring agreement” and “vehicle-hire firm” have the same meanings as in section 66 of the Road Traffic Offenders Act 1988<sup>(10)</sup>; and
- (d) “vehicle trader” has the same meaning as in regulation 20(6) of the 2002 Regulations.

## PART 3

### NOTIFICATION OF, AND REPRESENTATIONS ABOUT, PENALTY CHARGES

#### **Penalty charge notice**

7.—(1) Where a road user charge with respect to a motor vehicle under a charging scheme has not been paid by the time by which it is required by the charging scheme to be paid and, in those circumstances, the charging scheme provides for the payment of a penalty charge, the charging authority may serve a notice (a “penalty charge notice”).

(2) A penalty charge notice must be served on the registered keeper of the motor vehicle unless, in accordance with regulation 6, the penalty charge to which it relates is payable by another person, in which case the penalty charge notice must be served on that other person.

(3) A penalty charge notice must state—

- (a) the date of the notice, which must be the date on which it is posted or sent by electronic transmission;
- (b) the name of the charging authority;
- (c) the registration mark of the motor vehicle to which it relates;
- (d) the date and time at which the charging authority claims that the motor vehicle was used or kept on the designated road in circumstances in which, by virtue of a charging scheme, a road user charge was payable in respect of the motor vehicle;
- (e) the grounds on which the charging authority believes that the penalty charge is payable with respect to the motor vehicle;
- (f) the amount of penalty charge that is payable if the penalty charge is paid in full—
  - (i) within 14 days of the day on which the penalty charge notice is served;
  - (ii) after the expiry of such 14 day period but within 28 days of the day on which the penalty charge notice is served;
  - (iii) after the service of a charge certificate;
- (g) the manner in which the penalty charge must be paid and the address to which payment of the penalty charge must be sent;
- (h) that the recipient of the penalty charge notice is entitled to make representations to the charging authority against the imposition of the penalty charge on any of the grounds specified in regulation 8(3);
- (i) the address (including if appropriate any email address or fax telephone number, as well as the postal address) to which such representations must be sent and the form in which they must be made;
- (j) that the charging authority may disregard any such representations received by it more than 28 days after the penalty charge notice was served; and
- (k) in general terms, the form and manner in which an appeal to an adjudicator may be made.

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<sup>(10)</sup> 1988 c.53.

## Representations against penalty charge notice

8.—(1) Where it appears to the person on whom the penalty charge notice is served (“the recipient”) that—

- (a) one or more grounds mentioned in paragraph (3) apply; or
- (b) whether or not any of those grounds apply there are compelling reasons why, in the particular circumstances of the case, the penalty charge notice should be cancelled,

the recipient may make representations in writing to that effect to the charging authority that served the penalty charge notice on the recipient.

(2) The charging authority may disregard any such representations which it receives after the end of the period of 28 days beginning with the date on which the penalty charge notice was served.

(3) The grounds are that—

- (a) in relation to a motor vehicle that is registered under the Vehicle Excise and Registration Act 1994<sup>(11)</sup> the recipient—
  - (i) never was the registered keeper of the motor vehicle in question;
  - (ii) had ceased to be the registered keeper before the time at which the motor vehicle was used or kept on the designated road and incurred the road user charge under the charging scheme; or
  - (iii) became the registered keeper after that time.
- (b) at the time it incurred the road user charge under the charging scheme the motor vehicle was being used or kept on the designated road by a person who was in control of the motor vehicle without the consent of the recipient;
- (c) the recipient is a vehicle-hire firm (as defined in regulation 6(7)(c)) and liability for payment of the penalty charge had been transferred to the hirer of the motor vehicle in accordance with regulation 6(5);
- (d) the road user charge payable for the use or keeping of the vehicle on the occasion in question was paid at the time and in the manner required by the charging scheme;
- (e) no road user charge or penalty charge is payable under the charging scheme;
- (f) the penalty charge exceeded the amount applicable in the circumstances of the case; or
- (g) there has been a procedural impropriety on the part of the charging authority.

(4) In these Regulations “procedural impropriety” means a failure by the charging authority to observe any requirement imposed on it by the Transport Act 2000<sup>(12)</sup> 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 notice or 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 these Regulations to be taken; and
- (b) in a case where a charging authority is seeking to recover an unpaid penalty charge, the purported service of a charge certificate under regulation 17(1) of these Regulations before the charging authority is authorised to serve it.

(5) Where the ground mentioned in paragraph (3)(a)(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 motor vehicle was disposed of by the person making the representations (if that information is known).

(6) Where the ground mentioned in paragraph (3)(a)(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 motor vehicle was acquired by the person making the representations (if that information is known).

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<sup>(11)</sup> 1994 c.22.  
<sup>(12)</sup> 2000 c.38.

(7) Where the ground mentioned in paragraph (3)(b) is relied on in any representations made under this regulation, those representations must include a statement of—

- (a) the crime reference number, police unique reference number, insurance claim reference or other evidence of the motor vehicle having been stolen from that person or taken without that person's authority, and
- (b) the name and address of the person who used or kept the motor vehicle on the designated road without the consent of the recipient (if that information is known).

(8) Where the ground mentioned in paragraph (3)(c) 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 motor vehicle was hired.

(9) It is the duty of a charging authority to whom representations are duly made under this regulation—

- (a) to consider them 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—
  - (i) that one or more of the grounds in paragraph (3) has been established; or
  - (ii) that there are compelling reasons why, in the particular circumstances of the case, the penalty charge notice should be cancelled.

(10) Where a charging authority fails to comply with paragraph (9) within the period of 56 days mentioned there—

- (a) it is deemed to have accepted the representations made under paragraph (1) and to have served notice to that effect under regulation 9(1); and
- (b) it must as soon as reasonably practicable refund any sum paid in respect of the penalty charge notice and (if applicable) the road user charge.

### **Cancellation of penalty charge notice**

**9.**—(1) Where a charging authority accepts that a ground in regulation 8(3) has been established, or that there are compelling reasons why, in the particular circumstances of the case, the penalty charge notice should be cancelled, it must—

- (a) cancel the penalty charge notice;
- (b) state in the notice served under regulation 8(9)(b) that the penalty charge notice has been cancelled; and
- (c) refund any sum paid in respect of the penalty charge notice.

(2) The cancellation of a penalty charge notice under paragraph (1) is not to be taken to prevent the charging authority from serving a fresh penalty charge notice on the same or another person.

### **Rejection of representations against penalty charge notice**

**10.**—(1) Where a charging authority does not accept that a ground in regulation 8(3) has been established, nor that there are compelling reasons why the penalty charge notice should be cancelled, the notice served in accordance with regulation 8(9)(b) (a “notice of rejection”) must—

- (a) state that a charge certificate may be served under regulation 17(1) 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 of rejection is served appeals to an adjudicator against the penalty charge;
- (b) indicate the nature of an adjudicator's power to award costs against any person appealing; 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 may contain such other information as the charging authority considers appropriate.

### **Appeals to an adjudicator in relation to decisions under regulation 10**

**11.**—(1) Where a charging authority serves a notice of rejection under regulation 10(1) in relation to representations made under regulation 8, the person making those representations may appeal to an adjudicator against the charging 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) An adjudicator may allow a longer period for an appeal under paragraph (1)(b) whether or not the period specified in paragraph (1)(a) has expired.

(3) An appeal pursuant to this regulation must be made by delivering a notice of appeal to the proper officer in accordance with paragraph 2 of the Schedule.

(4) An appeal pursuant to this regulation must be determined by an adjudicator in accordance with the procedure set out in the Schedule.

(5) 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 charging authority.

(6) If the adjudicator concludes that a ground specified in regulation 8(3) applies, the adjudicator must allow the appeal and the proper officer must notify the appellant and the charging authority of the outcome in accordance with paragraph 11(3) of the Schedule.

(7) Where an appeal is allowed the adjudicator may give such directions to the charging authority as the adjudicator may consider appropriate for the purpose of giving effect to the adjudicator's decision, and such directions may in particular include directions requiring—

- (a) the cancellation of the penalty charge notice; and
- (b) the refund of such sum (if any) as may have been paid to the charging authority in respect of the penalty charge or the road user charge it relates to.

(8) A charging authority to which a direction under paragraph (7) is given must comply with it as soon as reasonably practicable.

(9) If the adjudicator does not allow the appeal but is satisfied that there are compelling reasons why, in the particular circumstances of the case, the penalty charge notice should be cancelled the adjudicator may recommend to the charging authority in writing that it cancels the penalty charge notice.

(10) It is the duty of a charging authority to which a recommendation is made under paragraph (9) to consider afresh the cancellation of the penalty charge notice taking account of any observations made by the adjudicator and, within the period of 35 days beginning with the date on which the recommendation is received, to notify the appellant and the adjudicator as to whether or not it accepts the adjudicator's recommendation.

(11) If the charging authority notifies the appellant and the adjudicator that it does not accept the adjudicator's recommendation under paragraph (9), it must at the same time inform them of the reasons for its decision.

(12) No appeal to an adjudicator lies against the decision of the charging authority under paragraph (11).

(13) If the charging authority accepts the adjudicator's recommendation under paragraph (9) it must cancel the penalty charge notice and refund to the appellant any sum paid in respect of the penalty charge and (if applicable) the road user charge it relates to as soon as reasonably practicable.

(14) If the charging authority fails to comply with the requirements of paragraph (10) within the 35 day period mentioned in that paragraph, the authority is to be taken to have accepted the adjudicator's recommendation and must cancel the penalty charge notice and refund to the appellant any sum paid in respect of the penalty charge and (if applicable) the road user charge it relates to as soon as reasonably practicable after the end of that period.

(15) If, on an appeal under this regulation, the adjudicator, after considering the representations made by the appellant or the charging authority, concludes that none of the grounds specified in regulation 8(3) applies, nor that there are compelling reasons why the penalty charge notice should be cancelled, the adjudicator must dismiss the appeal and the proper officer must notify the appellant and the charging authority of the outcome in accordance with paragraph 11(3) of the Schedule.

## PART 4

### ROAD USER CHARGING SCHEME ADJUDICATORS

#### **Appointment of, and provision of facilities for, adjudicators**

**12.**—(1) Adjudicators who—

- (a) were appointed by the joint committee under regulation 17 of the Civil Enforcement of Parking Contraventions (England) General Regulations 2007<sup>(13)</sup> (“the 2007 Regulations”); and
- (b) held office immediately before the coming into force of these Regulations,

are to be treated as having been appointed under this regulation on the same terms as those on which they held office at that time.

(2) The appointment of an adjudicator by the joint committee under regulation 17 of the 2007 Regulations after the coming into force of these Regulations will be effective to appoint that adjudicator as an adjudicator for the purpose of these Regulations (on the same terms as that adjudicator was appointed under regulation 17).

(3) Each adjudicator is to make an annual report to the joint committee on the discharge of their functions under these Regulations.

(4) The joint committee is to make and publish an annual report in writing to the Secretary of State on the discharge by road user charging scheme adjudicators of their functions.

#### **Administrative support and defrayal of expenses**

**13.**—(1) Charging authorities are to arrange with the joint committee for the provision of accommodation, administrative staff and facilities for adjudicators, including the appointment of a member of the administrative staff to fulfil the function of the proper officer for the purpose of these Regulations.

(2) Charging authorities are to meet the expenses of the joint committee incurred under paragraph (1) and in remunerating adjudicators in such proportions as they agree or, in default of agreement, as may be determined by an arbitrator nominated by the Chartered Institute of Arbitrators on the application of any charging authority.

#### **Procedure to be followed by adjudicators**

**14.**—(1) The Schedule to these Regulations is to have effect as to the procedure to be followed in adjudication proceedings.

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

#### **Evidence produced by a prescribed device**

**15.**—(1) Evidence of a fact relevant to proceedings conducted in accordance with the Schedule may be given by the production of—

- (a) a record produced by a prescribed device; and

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<sup>(13)</sup> S.I. 2007/3483

(b) (in the same or another document) a certificate as to the circumstances in which the record was produced, signed by a person authorised to do so by the charging authority who installed the device.

(2) In paragraph (1) “prescribed device” means a camera or other device designed to produce a record of—

(a) the presence of a particular motor vehicle which is being used or kept on a designated road; and

(b) the date and time at which the motor vehicle is present,

and includes any equipment used in conjunction with the camera or other device for the purpose of producing such a record.

(3) A document purporting to be a record or a certificate of the kind described in paragraph (1) is to be deemed to be such a record unless the contrary is proved.

### **Recovery of amounts payable under an adjudication**

16. Any amount which is payable under an adjudication of an adjudicator 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.

## **PART 5**

### **ENFORCEMENT OF PENALTY CHARGES**

#### **Charge certificates**

17.—(1) Where a penalty charge notice is served on a person and the penalty charge to which it relates is not paid before the end of the relevant period, the charging authority serving the penalty charge notice may serve on that person a statement (a “charge certificate”) to the effect that the penalty charge in question is increased to the sum specified in the charging scheme under which it was incurred.

(2) A charging authority which has served a charge certificate on any person may cancel the charge certificate and serve or cancel such further charge certificates as it thinks fit.

(3) The “relevant period” in paragraph (1) means the period of 28 days beginning—

(a) where no representations are made under regulation 8, with the date on which the penalty charge notice is served;

(b) where—

(i) such representations are made;

(ii) a notice of rejection is served under regulation 10(1) by the charging authority concerned; and

(iii) no appeal against the notice of rejection is made,

with the date on which the notice of rejection is served; or

(c) where there has been an unsuccessful appeal to an adjudicator against a notice of rejection, with the date on which notice of the adjudicator’s decision is served on the appellant.

(4) Where an appeal against a notice of rejection is made but is withdrawn before the adjudicator gives notice of the adjudicator’s decision, the “relevant period” in paragraph (1) in relation to a penalty charge notice is the period of 14 days beginning with the date on which the appeal is withdrawn.

#### **Enforcement of charge certificates**

18. Where a charge certificate has been served on any person and the increased penalty charge provided for in the charge certificate (and, if applicable, the road user charge payable under the charging scheme) is not paid within the period of 14 days beginning with the date on which the

rt so orders,  
oad user charge payable under the  
charging scheme) as if it (or they) were payable under a county court order.

### **Invalid notices**

**19.**—(1) This regulation applies where—

- (a) a county court makes an order under regulation 18;
- (b) the person against whom it is made makes a witness statement complying with paragraph (2); and
- (c) that witness statement is, within the period of 21 days beginning with the date on which notice of the county court's order is served on the maker of the witness statement, served on the county court which made the order.

(2) The witness statement must state that the person making it—

- (a) did not receive the penalty charge notice in question;
- (b) made representations to the charging authority under regulation 8 but did not receive a notice of rejection from that charging authority;
- (c) appealed to an adjudicator under regulation 11 against the rejection by that charging authority of representations made by that person under regulation 8 but—
  - (i) had no response to the appeal; or
  - (ii) the appeal had not been determined by the time that the charge certificate had been served; or
  - (iii) the appeal was determined in that person's favour; or
- (d) has paid the penalty charge to which the charge certificate relates.

(3) Where it appears to the court, on the application of a person on whom a charge certificate has been served, that it would be unreasonable in the circumstances of that person's case to insist on the witness statement being served within the period mentioned in paragraph (1)(c), the court may allow such longer period for service of the witness statement as it considers appropriate.

(4) Where a witness statement is served under paragraph (1)(c), or within such longer period as may be allowed under paragraph (3)—

- (a) the order of the court is to be treated as revoked;
- (b) the charge certificate is to be treated as cancelled;
- (c) in the case of a witness statement containing such a statement as is mentioned in paragraph (2)(a), the penalty charge notice to which the charge certificate relates is to be treated as cancelled; and
- (d) the court must serve written notice of the effect of service of the witness statement on the person making it and on the charging authority concerned.

(5) Serving a witness statement containing such a statement as is mentioned in paragraph (2)(a) is not to be taken as preventing the charging authority from serving a fresh penalty charge notice on the person making the witness statement or any other person.

(6) Where a witness statement contains such a statement as is mentioned in paragraph (2)(b) or (c)(i) or (ii), the charging authority may refer the case to an adjudicator, who may give such directions as the adjudicator considers appropriate, and the provisions of Part 4 of the Schedule are to apply.

### **Enforcement by execution**

**20.**—(1) Subject to paragraph (2)—

- (a) a sum to be paid by a person (other than a charging authority) under an adjudication of an adjudicator which is recoverable in accordance with regulation 16 as if it were payable under a county court order; or

- (b) an unpaid penalty charge (and, if applicable, the road user charge payable under the charging scheme) which is recoverable in accordance with regulation 18 as if it were payable under a county court order,

are to be treated for purposes of enforcement by execution as if they were specified debts in regulation 2 of the Enforcement of Road Traffic Debts Order 1993 (“the 1993 Order”)<sup>(14)</sup>.

(2) For the purposes of the enforcement of the payment of a sum referred to in paragraph (1)(a) or the enforcement of an unpaid penalty charge (and, if applicable an unpaid road user charge payable under a charging scheme) referred to in paragraph 1(b)—

- (a) any reference in the 1993 Order to “the authority” is to be read as a reference to a charging authority; and
- (b) the reference in articles 3(1) and (2) of the 1993 Order to “the time for serving a statutory declaration” is to be read as a reference to “the time for serving a witness statement” and is—
  - (i) the period of 21 days allowed by regulation 19(1)(c); or
  - (ii) where a longer period has been allowed pursuant to regulation 19(3), that period.

## PART 6

### POWERS IN RESPECT OF MOTOR VEHICLES

#### Authorised persons

**21.**—(1) In these Regulations a reference to an authorised person is to a person authorised by a charging authority for the purpose of Part 6.

(2) An authorised person may be a charging authority, an employee of a charging authority, a constable or any other person authorised in writing by a charging authority to act as an authorised person.

(3) An authorised person who is about to exercise, is in the course of exercising or has exercised, any power conferred under these Regulations must, if so requested, produce that person’s authority.

#### Power to examine motor vehicles

**22.**—(1) A charging scheme may confer powers on an authorised person to examine a motor vehicle whilst on a road for the purpose of ascertaining—

- (a) whether any document required by a charging scheme to be displayed while the motor vehicle is on a designated road is so displayed;
- (b) whether any equipment required by a charging scheme to be carried in or fitted to the motor vehicle while it is on such a road—
  - (i) is so carried or fitted;
  - (ii) is in proper working order;
  - (iii) has been interfered with, or its functioning has been interfered with, with intent to avoid payment of, or to avoid any person being identified as having failed to pay, a road user charge imposed by the charging scheme; or
- (c) whether any conditions relating to the use of any such equipment are satisfied.

#### Power to enter motor vehicles

**23.**—(1) A charging scheme may confer powers on an authorised person to enter a motor vehicle whilst on a road where the authorised person has reasonable grounds for suspecting that—

- (a) any equipment required by a charging scheme to be carried in or fitted to the motor vehicle while it is on a road designated by the charging scheme and in respect of which road user

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<sup>(14)</sup> S.I. 1993/2073, amended by SI 2001/1386.

charges have been imposed has been interfered with, or its functioning has been interfered with, by a person who intends to avoid payment of, or to be identified as having failed to pay, a road user charge imposed by the charging scheme; or

- (b) there is in the motor vehicle a false document which has been made or used by a person who intends to avoid payment of, or be identified as having failed to pay, such a road user charge.

(2) The power conferred by paragraph (1) must not be exercised by an authorised person who is not a constable except in the presence of a constable.

### **Power of seizure**

**24.**—(1) A charging scheme may confer powers on an authorised person to seize anything (if necessary by detaching it from a motor vehicle) and detain it as evidence of the commission of an offence under section 173(5) or (6) of the Transport Act 2000<sup>(15)</sup> (acts done with intent to avoid a road user charge).

(2) The power conferred by paragraph (1) must not be exercised by an authorised person who is not a constable except in the presence of a constable.

### **Power to immobilise motor vehicles**

**25.**—(1) Provided—

- (a) none of the circumstances in paragraph (2) apply; and
- (b) the conditions in paragraph (3) apply;

a charging scheme may provide for an authorised person to immobilise a motor vehicle in accordance with paragraphs (4) and (5).

(2) The circumstances are that—

- (a) a current disabled person's badge or a current recognised badge is displayed on the motor vehicle;
- (b) the motor vehicle appears to the authorised person to have been abandoned;
- (c) the motor vehicle is a public service vehicle being used for the carriage of passengers;
- (d) the motor vehicle is being used for the purpose of the removal of any obstruction to traffic, the maintenance, improvement or reconstruction of a public road, or the laying, erection, alteration, repair or cleaning in or near a road of any traffic sign or sewer or of any main, pipe or apparatus for the supply of gas, water or electricity, or of any telegraph or telephone wires, cables, posts or supports; or
- (e) the motor vehicle is being used by a universal service provider (within the meaning of the Postal Services Act 2000)<sup>(16)</sup> in relation to the provision of a universal postal service (within the meaning of that Act) and each side of the vehicle is clearly marked with the name of the universal service provider concerned.

(3) The conditions are that—

- (a) the charging authority has imposed at least three penalty charges of the type described in regulation 4(1) in respect of the motor vehicle which have not been paid;
- (b) the charging authority has been unable to serve a penalty charge notice in respect of the unpaid penalty charges because the motor vehicle—
  - (i) was not registered under the Vehicle Excise and Registration Act 1994<sup>(17)</sup>; or
  - (ii) was so registered but without inclusion in the registered particulars of the correct name or address of the keeper of the motor vehicle;

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<sup>(15)</sup> 2000 c.38. Section 173(5)(a) was amended by the Local Transport Act 2008 (c.26) section 115(1).

<sup>(16)</sup> 2000 c.26.

<sup>(17)</sup> 1994 c22.

- (c) a period of 14 days, beginning with the date on which the third unpaid penalty charge was imposed, has elapsed; and
  - (d) the motor vehicle is stationary on a road.
- (4) An authorised person, or a person acting under the direction of the authorised person may—
- (a) fix an immobilisation device to the motor vehicle whilst on a road while it remains in the place where it is found; or
  - (b) move it, or require or arrange for it to be moved, to another place on that road or another road and fit an immobilisation device to the motor vehicle in that other place.
- (5) When an immobilisation device is fixed to a motor vehicle in accordance with this regulation, the person fitting the device is also to fix to the motor vehicle an immobilisation notice—
- (a) indicating that the device has been fixed to the motor vehicle and warning that no attempt should be made to drive it or otherwise put it in motion until it has been released from the device;
  - (b) stating the reason why the device has been fixed to the motor vehicle;
  - (c) stating that the motor vehicle may only be released from the device by or under the direction of an authorised person;
  - (d) stating that the notice or the device must not be removed or interfered with except by or on the authority of an authorised person; and
  - (e) specifying the steps to be taken to secure the motor vehicle’s release including—
    - (i) giving contact information (including a telephone number) which may be used in order to request that the motor vehicle be released from the immobilisation device;
    - (ii) the amount of—
      - (aa) the penalty charges of the type described in regulation 4(1);
      - (bb) if applicable, the road user charges payable under the charging scheme; and
      - (cc) such penalty charge as is imposed by the charging scheme for the release of the motor vehicle,
 that are to be paid before the release of the motor vehicle; and
    - (iii) the person to whom, and the means by which the charges described in sub-paragraph (ii) are to be paid.
- (6) In this regulation—
- (a) “disabled person’s badge” is a badge issued by local authorities for motor vehicles driven by or used for the carriage of disabled persons pursuant to section 21 of the Chronically Sick and Disabled Persons Act 1970<sup>(18)</sup>;
  - (b) “recognised badge” has the same meaning as in section 21A(1) of the Chronically Sick and Disabled Persons Act 1970<sup>(19)</sup>; and
  - (c) “third unpaid penalty charge” means the third unpaid penalty charge in sequence beginning with the earliest in time.

### **Release of immobilised motor vehicles**

**26.—**(1) A motor vehicle to which an immobilisation device has been fitted in accordance with regulation 25 may only be released from that device by or under the direction of an authorised person.

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<sup>(18)</sup> 1970 c.44; section 21 was amended by the Disabled Persons’ Parking Badges Act 2013 (c.4) sections 1(1) to (5), 2(1) to (4), 4(1) to (4), 5(1) and (2) and 6, the Local Government Act 1972 (c.70) section 272(1) and Schedule 30, the Transport Act 1982 (c.49) section 68, the Road Traffic Regulation Act 1984 (c.27) section 146 and Schedule 13, the Local Government Act 1985 (c.51) section 8 and Schedule 5 paragraph 1, the Road Traffic Act 1991 (c.40) sections 35(2) to (5) and 83 and Schedule 8, the Traffic Management Act 2004 (c.18) section 94(1) to (4), the Disability Discrimination Act 2005 (c.13) section 19(1), Schedule 1 Part 2 paragraph 41 and the Tribunals, Courts and Enforcement Act 2007 (c.15) section 48(1) and Schedule 8 paragraph 2.

<sup>(19)</sup> Section 21A inserted by the Disability Discrimination Act 2005 (c.13) section 9.

(2) Subject to paragraph (1), such a motor vehicle must be released from the immobilisation device on payment in any manner specified in the immobilisation notice fixed to the motor vehicle under regulation 25(5) of the charges mentioned in regulation 25(5)(e)(ii).

(3) The person who takes control of a motor vehicle following its release pursuant to paragraph (2) must be given a notice by the authorised person releasing it in accordance with regulation 32(2).

### **Power to remove motor vehicles**

**27.**—(1) A charging scheme may provide for an authorised person, where—

- (a) an immobilisation device has been fixed to a motor vehicle in accordance with regulation 25 and any of the charges described in regulation 25(5)(e)(ii) remain unpaid; or
- (b) irrespective of whether the motor vehicle has been immobilised—
  - (i) none of the circumstances in regulation 25(2) apply; and
  - (ii) the conditions in regulation 25(3) apply,

to remove a motor vehicle and deliver it to a custodian for storage.

(2) A motor vehicle removed by virtue of paragraph (1) may be driven, towed or removed by an authorised person by such means as are reasonable in the circumstances and any necessary steps may be taken in relation to the motor vehicle in order to facilitate its removal.

(3) The contents of a motor vehicle removed by virtue of this regulation may be removed by an authorised person, or a person acting under the authorised person's direction, from the motor vehicle where—

- (a) it is reasonable to do so to facilitate removal of the motor vehicle;
- (b) there is good reason for storing them at a different place from the motor vehicle; or
- (c) their condition requires them to be disposed of without delay.

### **Disposal of removed motor vehicles and contents**

**28.**—(1) Subject to the provisions of this regulation, the custodian to whom a motor vehicle is delivered in accordance with regulation 27(1) may store it and dispose of it or its contents by selling them or dealing with them as scrap, as the custodian thinks fit.

(2) Where the keeper of a motor vehicle has been identified and has disclaimed all rights of ownership of the motor vehicle or its contents, they may be disposed of by the custodian pursuant to this regulation at any time.

(3) In a case not falling within paragraph (2), a motor vehicle or its contents must not be disposed of pursuant to this regulation—

- (a) within the period of 28 days beginning with the date on which the motor vehicle was removed in accordance with regulation 27(1); and
- (b) until the custodian has made such inquiries as appear to the custodian to be practicable to ascertain the identity of the keeper of the motor vehicle and either—
  - (i) the custodian has failed to ascertain the name and address of the keeper; or
  - (ii) the keeper has failed to comply with a notice complying with paragraph (4).

(4) A notice under paragraph (3)(b)(ii) is a notice addressed to the keeper of the motor vehicle in question which—

- (a) states—
  - (i) the registration mark and make of the motor vehicle;
  - (ii) the place from which the motor vehicle was removed;
  - (iii) the place to which the motor vehicle has been removed;
  - (iv) the amount of—
    - (aa) the unpaid penalty charges of the type described in regulation 4(1);
    - (bb) if applicable, the unpaid road user charges payable under the charging scheme;

- (cc) such penalty charges as are imposed by the charging scheme in respect of removal, storage and release from storage and (if the motor vehicle is disposed of) disposal,

that are payable in respect of the motor vehicle;

- (v) the steps to be taken to obtain possession of the motor vehicle in accordance with regulation 30;
- (vi) that unless the motor vehicle is removed by the keeper or a person authorised in writing by the keeper on or before the date specified under paragraph (b), the custodian intends to dispose of it; and

- (b) requires the keeper of the motor vehicle, or a person authorised by the keeper in writing, to remove the motor vehicle from the custody of the custodian within 28 days of the date on which the notice was served.

(5) The custodian is entitled to treat the keeper of the motor vehicle, or a person authorised by the keeper in writing, as the person entitled to its contents unless and to the extent that some other person satisfies the custodian of their claim to all or part of them.

(6) Where there is more than one claim to the motor vehicle or its contents, the custodian must determine which person is entitled to the motor vehicle or its contents on the basis of the evidence provided.

### **Recovery of penalty charges and road user charges in relation to removed motor vehicles**

**29.**—(1) Where a motor vehicle has been removed and delivered into the custody of a custodian under regulation 27(1) the charging authority or the custodian may (whether or not any claim is made under regulation 30 or 31) recover from the person who was the keeper of the motor vehicle when it was removed all the penalty charges and road user charges mentioned in regulation 28(4)(a)(iv) that remain unpaid in respect of the motor vehicle.

(2) Where, by virtue of paragraph (1), any sum is recoverable in respect of a motor vehicle by a charging authority or a custodian, the charging authority or the custodian is entitled to retain custody of it until that sum is paid or the vehicle is disposed of in accordance with these Regulations.

### **Taking possession of a removed motor vehicle**

**30.**—(1) A person may take possession of a motor vehicle (with its contents) which has been removed and delivered to a custodian and has not been disposed of under regulation 28, if the conditions specified in paragraph (2) are satisfied.

(2) The conditions are that—

- (a) the person wanting to take possession of the motor vehicle satisfies the custodian that that person is the keeper of the motor vehicle or is authorised by the keeper to take possession of the motor vehicle; and
- (b) all the penalty charges and road user charges mentioned in regulation 28(4)(a)(iv) that remain unpaid in respect of the motor vehicle are paid to the charging authority or the custodian.

(3) The person taking possession of a motor vehicle pursuant to paragraph (2) must be given a notice by the custodian in accordance with regulation 35(2).

### **Claim by the keeper of a motor vehicle after its disposal**

**31.**—(1) If, after a motor vehicle has been disposed of by a custodian pursuant to regulation 28, a person claims to have been the keeper of the motor vehicle at the time when it was disposed of and the conditions specified in paragraph (2) are fulfilled, there is payable to that person by the custodian a sum calculated in accordance with paragraph (3).

(2) The conditions are that—

- (a) the person claiming satisfies the custodian that such person was the keeper of the motor vehicle at the time it was disposed of; and

- (b) the claim is made within the period of one year beginning with the date on which the motor vehicle was disposed of.

(3) The sum payable under paragraph (1) is calculated by deducting from the proceeds of sale of the motor vehicle any of the sums payable under regulation 28(4)(a)(iv) that remain unpaid with respect to the motor vehicle.

## PART 7

### REPRESENTATIONS AND APPEALS IN RELATION TO POWERS EXERCISED IN RESPECT OF MOTOR VEHICLES

#### **Right to make representations in respect of the immobilisation of a motor vehicle**

**32.**—(1) This regulation applies to the keeper or person in charge of a motor vehicle where—

- (a) in accordance with regulation 25 an immobilisation device has been fixed to the motor vehicle; and
- (b) the keeper or person in charge of the motor vehicle secures the release of the motor vehicle through the payment of an amount in accordance with regulation 26(2).

(2) A person to whom paragraph (1) applies must immediately upon the release of the motor vehicle be given notice in writing—

- (a) of their right to make representations to the charging authority in accordance with this regulation;
- (b) that the charging authority may disregard any such representations received by it more than 28 days after the notice is served; and
- (c) of their right to appeal to an adjudicator if the representations are not accepted,

and that notice must include a statement of the effect of paragraphs (3) and (4).

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

- (a) that one or more of the grounds specified in paragraph (4) 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 charging authority should refund some or all of the amount paid to secure the release of the motor vehicle from the immobilisation device,

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

(4) The grounds referred to in paragraph (3)(a) are that—

- (a) the circumstances in which the motor vehicle was used or kept on the designated road were not circumstances in which a penalty charge became payable under the charging scheme;
- (b) there was in the circumstances of the case no power under these regulations or the charging scheme to immobilise the motor vehicle at the time at which it was immobilised or at all;
- (c) the penalty charge paid to secure the release of the motor vehicle exceeded the amount applicable in the circumstances of the case;
- (d) there has been a procedural impropriety on the part of the charging authority.

#### **Duty of charging authority to which representations in respect of immobilisation are made**

**33.**—(1) A charging authority may disregard any representation received by it after the end of the period of 28 days beginning with the date on which the person making them is notified under regulation 32(2) of the right to make representations.

(2) Subject to paragraph (1) it is the duty of a charging authority, if representations are made to it in accordance with regulation 32(3), 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 a notice of its decision as to whether it accepts that—

- (i) a ground specified in regulation 32(4) 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 motor vehicle from the immobilisation device should be refunded.

(3) Where a charging authority serves notice under paragraph (2)(b) that it accepts that a ground specified in regulation 32(4) has been established, or that there are compelling reasons for making a refund, it must as soon as reasonably practicable refund any sums that the person to whom the motor vehicle was released was required to pay under regulation 26(2), except to the extent (if any) to which those sums were properly paid.

(4) Where a charging authority serves notice under paragraph (2)(b) that it does not accept that a ground specified in regulation 32(4) has been established or that there are compelling reasons for making a refund, that notice (a “notice of rejection”) must—

- (a) inform the person on whom it is served of the right to appeal to an adjudicator under regulation 34;
- (b) indicate the nature of the 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.

(5) The notice of rejection issued under paragraph (4) may contain such other information as the charging authority considers appropriate.

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

- (a) it is deemed to have accepted the representations made under regulation 32(3) and to have served notice to that effect under paragraph (2)(b); and
- (b) it must as soon as reasonably practicable 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 33**

**34.—**(1) Where a charging authority serves a notice of rejection under regulation 33(4) in relation to representations made under regulation 32(3) the person making those representations may, within—

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

appeal to an adjudicator against the charging authority’s decision.

(2) An appeal pursuant to this regulation must be made by delivering a notice of appeal to the proper officer.

(3) If the notice of appeal is delivered to the proper officer after the period described in paragraph (1)(a) and the appellant includes a statement of reasons for the delay the proper officer may at the proper officer’s discretion allow the appeal to proceed.

(4) 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 charging authority.

(5) If the adjudicator concludes—

- (a) that any of the grounds referred to in regulation 32(4) apply; and
- (b) that the charging authority would have been under the duty imposed by regulation 33(3) to refund any sum if it had served notice that it accepted that the ground in question applied,

the adjudicator must direct the charging authority to refund that sum.

(6) It is the duty of a charging authority to which a direction is given under paragraph (5) to comply with it as soon as reasonably practicable.

(7) If the adjudicator gives no direction under paragraph (5) but is satisfied that there are compelling reasons why, in the particular circumstances of the case, some or all of the sums paid to

charging authority in writing that it makes such a refund.

(8) It is the duty of a charging authority to which a recommendation is made under paragraph (7) 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 35 days beginning with the date on which the recommendation is received to notify the appellant and the adjudicator as to whether or not it accepts the adjudicator's recommendation.

(9) If the charging 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.

(10) No appeal to the adjudicator lies against the decision of the charging authority under paragraph (9).

(11) If the charging authority accepts the adjudicator's recommendation it must make the recommended refund as soon as reasonably practicable.

(12) If the charging authority fails to comply with the requirements of paragraph (8) within the 35 day period, the charging authority is to be taken to have accepted the adjudicator's recommendation and must make the recommended refund as soon as reasonably practicable after the end of that period.

### **Right to make representations in respect of the removal and disposal of a motor vehicle**

**35.**—(1) This regulation applies to a person where, as respects a motor vehicle that has been removed under regulation 27(1)—

- (a) the person is required to pay an amount to take possession of the motor vehicle under regulation 30(2)(b);
- (b) the person receives a sum in respect of the motor vehicle under regulation 31(3);
- (c) the person is informed that the proceeds of sale of the motor vehicle did not exceed the aggregate amount of the penalty charges and any road user charges under the charging scheme due to the charging authority under regulation 28(4)(a)(iv); or
- (d) the person is informed that the motor vehicle was disposed of without there being any proceeds of sale.

(2) A person to whom paragraph (1) applies must immediately upon the happening of an occurrence referred to in paragraph (1), be notified in writing—

- (a) of their right to make representations to the charging authority in accordance with this regulation;
- (b) that the charging authority may disregard any such representations received by it more than 28 days after such notice was served;
- (c) of their right to appeal to an adjudicator if the representations are not accepted,

and that notice must include a statement of the effect of paragraphs (3) and (4).

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

- (a) that one or more of the grounds specified in paragraph (4) 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 charging authority should—
  - (i) refund some or all of the amount paid to take possession of the motor vehicle or deducted from the proceeds of sale,
  - (ii) waive its right to recover all or any of the sums due to it on account of the removal or disposal of the motor vehicle,

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

(4) The grounds referred to in paragraph (3)(a) are—

- (a) that the circumstances in which the motor vehicle was used or kept on the designated road were not circumstances in which a penalty charge became payable under the charging scheme;

- (b) that there was in the circumstances of the case no power under these Regulations or the charging scheme to remove or dispose of the motor vehicle;
- (c) that the penalty charge paid to take possession of the motor vehicle exceeded the amount applicable in the circumstances of the case;
- (d) that there has been a procedural impropriety on the part of the charging authority.

**Duty of charging authority to which representations in respect of removal etc are made**

**36.**—(1) A charging authority may disregard any representation received by it after the end of the period of 28 days beginning with the date on which the person making them is notified under regulation 35(2) of the right to make representations.

(2) Subject to paragraph (1) it is the duty of a charging authority, if representations are made to it in accordance with regulation 35(3), within 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 a notice of its decision as to whether it accepts that—
  - (i) a ground specified in regulation 35(4) applies; or
  - (ii) there are compelling reasons why, in the particular circumstances of the case, some or all of the sums paid to take possession of the motor vehicle or deducted from the proceeds of sale should be refunded.

(3) Where a charging authority serves notice under paragraph (2)(b) that it accepts that a ground specified in regulation 35(4) has been established or that there are compelling reasons for making a refund it must (when serving that notice) refund any sums that—

- (a) the person taking possession of the motor vehicle was required to pay under regulation 30(2)(b), or
- (b) were deducted from the proceeds of sale of the motor vehicle in accordance with regulation 31(3)

except to the extent (if any) to which those sums were properly paid or deducted.

(4) Where a charging authority serves notice under paragraph (2)(b) that it does not accept that a ground specified in regulation 35(4) has been established or that there are compelling reasons for making a refund, that notice (a “notice of rejection”) must—

- (a) inform the person on whom it is served of the right to appeal to an adjudicator under regulation 37;
- (b) indicate the nature of the 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.

(5) The notice of rejection issued under paragraph (4) may contain such other information as the charging authority considers appropriate.

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

- (a) it is deemed to have accepted the representations made under regulation 35(3) and to have served notice to that effect under paragraph (2)(b); and
- (b) it must as soon as reasonably practicable after the end of that period refund all such sums as are mentioned in paragraph (3).

**Appeals to adjudicator in relation to decisions under regulation 36**

**37.**—(1) Where a charging authority serves a notice of rejection under regulation 36(4) in relation to representations made under regulation 35(3) the person making those representations may, within—

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

appeal to an adjudicator against the charging authority's decision.

(2) An appeal pursuant to this regulation must be made by delivering a notice of appeal to the proper officer.

(3) If the notice of appeal is delivered to the proper officer after the period described in paragraph (1)(a) and the appellant includes a statement of reasons for the delay the proper officer may at the proper officer's discretion allow the appeal to proceed.

(4) 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 charging authority.

(5) If the adjudicator concludes—

(a) that any of the grounds referred to in regulation 35(4) apply; and

(b) that the charging authority would have been under the duty imposed by regulation 36(3) to refund any sum if it had served notice that it accepted that the ground in question applied,

the adjudicator must direct the charging authority to refund that sum.

(6) It is the duty of a charging authority to which a direction is given under paragraph (5) to comply with it as soon as reasonably practicable.

(7) If the adjudicator gives no direction under paragraph (5) 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 motor vehicle or deducted from the proceeds of sale should be refunded, the adjudicator may recommend to the charging authority in writing that it makes such a refund.

(8) It is the duty of a charging authority to which a recommendation is made under paragraph (7) 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 35 days beginning with the date on which the recommendation is received to notify the appellant and the adjudicator as to whether or not it accepts the adjudicator's recommendation.

(9) If the charging 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.

(10) No appeal to the adjudicator lies against the decision of the charging authority under paragraph (9).

(11) If the charging authority accepts the adjudicator's recommendation it must make the recommended refund as soon as reasonably practicable.

(12) If the charging authority fails to comply with the requirements of paragraph (8) within the 35 day period, the charging authority is to be taken to have accepted the adjudicator's recommendation and must make the recommended refund as soon as reasonably practicable after the end of that period.

Signed on behalf of the Secretary of State for Transport

Date

*Name*  
Parliamentary Under Secretary of State  
Department for Transport

Signed by authority of the Lord Chancellor

Date

*Name*  
Parliamentary Under Secretary of State  
Ministry of Justice

## PROCEDURE IN ADJUDICATION PROCEEDINGS

## PART 1

## INTERPRETATION

**Interpretation of Schedule****1.—(1) In this Schedule—**

“appeal period” means the period of 28 days beginning with the date of service of a notice of rejection under regulation 10(1), 33(4) or 36(4) (as the case may be);

“hearing” means an oral hearing and includes a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication;

“register” means the register maintained by the proper officer in accordance with paragraph 21.

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

“the charging authority” means the charging authority which made the decision which is the subject of the appeal;

“the original representations” means the representations made to the charging authority under regulation 8(1), 32(3) or 35(3) (as the case may be);

“the relevant notice of rejection” means a notice of rejection issued by the charging authority under regulation 10(1), 33(4) or 36(4) (as the case may be).

## PART 2

## PROCEDURE RELATING TO APPEALS

**Initiating an appeal****2.—(1) An appeal is to be made by serving 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 served in connection with the appeal;

(d) must state the date and any reference number of the penalty charge notice being appealed against and the name of the charging authority by which the decision to impose the penalty charge was made; and

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

**(3) The notice of appeal must be served on the proper officer within the appeal period.**

(4) If the notice of appeal is served on the proper officer after the expiry of the appeal period, the appellant must include in the notice a statement of the reasons on which the appellant relies for justifying the delay, and the adjudicator must treat any such statement of reasons for delay as a request to extend the appeal period.

**Action upon receipt of notice of appeal and copy of such notice****3.—(1) On receiving a notice of appeal the proper officer must—**

- (a) serve 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 serve on the charging 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 served on it under sub-paragraph (2) the charging authority must within 14 days serve on the proper officer copies of—

- (a) the penalty charge notice giving rise to the appeal;
- (b) the original representations; 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 served 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 serve representations in relation to the matters referred to in regulations 8(3), 32(4) or 35(4) (as the case may be) to the proper officer at any time before the appeal is determined.

(2) The adjudicator may invite a party to serve on the proper officer representations dealing with such matters relating to the appeal as may be specified and any such representations must be so served 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 served under this paragraph must be signed by the party in question or someone authorised by that party to sign those representations.

(5) Where an appellant serves representations on the proper officer under this paragraph the proper officer must serve a copy of the representations on the charging authority.

(6) Where the charging authority serves representations on the proper officer under this paragraph, it must at the same time serve a copy of the representations on 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 served on 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 (5) 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' notice has been given, that 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 that person could not be required to give or produce in the trial of an action in a court of law.

### **Disposing 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 adjudicator's opinion, 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 it before notice of a hearing has been served on 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 served with a notice of the hearing of an appeal under 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 acknowledgement is served in accordance with paragraph 3(1)(a) 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) serve on 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) serve on 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 charging 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 the appellant's 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 served with 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 person'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) serve 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 of 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 of or foreseen; or
  - (vi) the interests of justice require such a review.

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

- (a) be served on 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). The adjudicator considering the application may direct the means by which that hearing will be conducted.

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

(5) If, having reviewed the 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 a charging authority which has consented to an appeal being allowed) if the adjudicator considers that the party has acted frivolously or vexatiously or that their conduct in making, pursuing or resisting an appeal was wholly unreasonable; or
- (b) against the charging authority where the adjudicator considers that the decision made by it giving rise to the appeal 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 doing 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 the charging 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 errors 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 IN ADJUDICATION PROCEEDINGS**

#### **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 served on a party to an appeal.

(2) A document is to be regarded as having been served on 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 transmission in accordance with sub-paragraph (3).

(3) A document may be transmitted to a party by fax or by other means of electronic 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 or website; and
- (b) the document is transmitted to that number, address or website.

(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 service 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, unless the contrary is proven, to have been served 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<sup>(20)</sup> (“the 1978 Act”) in its application to this paragraph—

(a) the proper address of the appellant is the address for service specified under paragraph 2(2)(b) or, if such an address is so specified, the address specified under paragraph 2(2)(c) or ascertained in accordance with sub-paragraph (7), and

(b) the proper address of a charging authority in proceedings in which it is the respondent is such address as the charging authority may from time to time specify in a notice delivered to the proper officer as being the charging 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;

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

(b) sent by first class post is taken to have been served at the time at which the notice or document would be delivered in the ordinary course of post;

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

### **Service 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 Schedule to be served on the proper officer.

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

(3) Unless the contrary is proved, any notice or document transmitted to the proper office in accordance with sub-paragraph (2) 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 service of such a document may be effected by leaving the document addressed to that box number—

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<sup>(20)</sup> 1978 c.30.

- (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, unless the contrary is proved, to have been served 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 facsimile copy, 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 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 18 is deemed under regulation 19(4) to have been revoked following the making of a witness statement; and
- (b) the charging 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 the 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 make provision for the civil enforcement of a penalty charge imposed in respect of a motor vehicle by a road user charging scheme made under Part 3 of the Transport Act 2000 (c.38).

Part 1 (regulations 1 to 3) deals with preliminary matters. Regulation 1(3) provides that these Regulations do not apply to the enforcement of road user charges imposed by the County Council of Durham (Market Place leading to Saddler Street, Durham City) (Road User Charging Scheme) Order 2002. Regulation 2 defines words and terms used in the Regulations. Regulation 3 contains provisions dealing with the service of penalty charge notices and other documents, apart from in adjudication proceedings (in which case Part 3 of the Schedule applies) or where notices or orders are being served by a county court.

Part 2 (regulations 4 to 6) deals with the imposition of, amount and liability for penalty charges. Regulation 4 explains the circumstances in which a penalty charge will be payable. Regulation 5 requires that the rates of penalty charge imposed by a charging authority are to be specified in the charging scheme or communicated to users of the road over which they apply. Regulation 5 also prescribes the maximum level of penalty charge that a charging scheme may impose for the use of a designated road and where the powers exercisable in respect of motor vehicles described in Part 6 are exercised. Regulation 6 explains that primary liability for a penalty charge resides with the registered keeper of a vehicle, but may be transferred to another person in the circumstances specified.

Part 3 (regulations 7 to 11) contains provisions about penalty charge notices. Regulation 7 explains when a penalty charge notice can be served and what information it must contain. Regulation 8 explains the right of the recipient of a penalty charge notice to make representations to the charging authority, which may accept the representations and cancel the penalty charge notice under regulation 9, or reject the representations under regulation 10. Regulation 11 explains the right to appeal to an adjudicator against a refusal by the charging authority to accept any representations made.

Part 4 (regulations 12 to 16) makes provision for the appointment of road user charging scheme adjudicators, their procedure and the recovery of sums that are the subject of an adjudicator's award.

Part 5 (regulations 17 to 20) provides for the civil enforcement of penalty charges. Where a penalty charge remains unpaid after the relevant period specified in regulation 17, the charging authority may issue a charge certificate, after which, in accordance with regulation 18, if the penalty charge continues to remain unpaid the sum due may be enforced as if it were payable under a county court order. Any sum to be paid under an adjudication or unpaid penalty charge which in either case is recoverable as if it was payable under a county court order may, under regulation 20, be enforced in accordance with the Enforcement of Road Traffic Debts Order 1993 (S.I. 1993/2073).

Part 6 (regulations 21 to 31) explain the range of enforcement powers in respect of motor vehicles that a charging authority may provide for in a charging scheme.

The powers to examine and enter motor vehicles in regulations 22 and 23 apply to any motor vehicle where the charging scheme so provides and enable an authorised person (as defined by regulation 21) to ascertain that any document or equipment required by the charging scheme to be carried, used or displayed in a motor vehicle is being properly carried, used or displayed. Regulation 24 allows items to be seized (if the charging scheme so provides) if they are evidence of the commission of an offence under section 173(5) or (6) of the Transport Act 2000.

Where there are three or more unpaid penalty charges in respect of a vehicle, the registered keeper's address cannot be ascertained, a period of 14 days from the date on which the third unpaid penalty charge was imposed has elapsed and the charging scheme so provides the motor vehicle may be immobilised (regulation 25), removed (regulation 27) and, if not released or returned, disposed of (regulation 28) to recover such unpaid penalty charges (and, where the charging scheme provides, any unpaid road user charges).

Regulation 30 provides that a person may take possession of a removed motor vehicle subject to the conditions stated, including payment of all unpaid road user charges and penalty charges. Regulation 31 allows the keeper of a motor vehicle that has been disposed of to recover any excess proceeds following payment of all unpaid road user charges and penalty charges provided the claim is made within one year of such disposal.

Part 7 (regulations 32 to 37) provides for representations to be made to the charging authority, and appeals to be made to an adjudicator, arising from the exercise of the powers to immobilise, remove or dispose of a motor vehicle. The charging authority may accept such representations and make an appropriate refund under regulation 33 or 36, or reject them. Where the charging authority rejects the representations an appeal to an adjudicator may be made under regulation 34 or 37.

The Schedule to the Regulations provides for the procedure for appeals to an adjudicator against the issue of a penalty charge notice or the exercise of powers in respect of a motor vehicle.

A regulatory impact assessment has not been produced for this instrument as it has negligible impact on the costs of business. An Explanatory Memorandum is available alongside the instrument on the UK legislation website, [www.legislation.gov.uk](http://www.legislation.gov.uk)