WELSH STATUTORY INSTRUMENTS

2013 No. 361(W. 43)

ROAD TRAFFIC, WALES

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

Made - - - - 26 February 2013

Coming into force in accordance with regulation 1(1)

The Welsh Ministers, in exercise of the powers conferred on the Secretary of State for Transport by section 101B of the Road Traffic Regulation Act 1984(**1**), subsequently transferred to the National Assembly for Wales and now vested in them(**2**) make the following Regulations:

In accordance with paragraph 24 of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007, the Welsh Ministers have consulted the Administrative Justice and Tribunals Council(**8**).

Title, commencement and application

1.—(1) The title of these Regulations is the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) Removed Vehicles (Wales) Regulations 2013 and they come into force on the day after the day on which they are made.

(2) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

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

"the 2004 Act" ("*Deddf 2004*") means the Traffic Management Act 2004(**3**);

(**1**) 1984 c. 27. Section 101B was inserted, in relation to England and Wales, by the Traffic Management Act 2004 (c. 18), section 91 and paragraph 3(2) of Schedule 11.

(**2**) The powers of the Secretary of State for Transport and the Lord Chancellor in relation to sections 99 to 103 of the Road Traffic Regulation Act 1984 were transferred to the National Assembly for Wales under the provisions of the National Assembly for Wales (Transfer of Functions) Order 2004 (S.I. 2004/3044). The functions of the National Assembly for Wales in relation to sections 99 to 103 of the Road Traffic Regulation Act 1984 were transferred to the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006 (c. 32).

(**8**) 2007 c.15.

(**3**) 2004 c. 18.

"adjudicator" ("*dyfarnydd*") means an adjudicator appointed under Part 4 of the General Provisions Regulations;

"civil enforcement area" ("*ardal gorfodi sifil*"), "enforcement authority" ("*awdurdod gorfodi*") and "penalty charge" ("*tâl cosb*") have the same meanings as in Part 6 of the 2004 Act;

"the General Provisions Regulations" ("*y Rheoliadau Darpariaethau Cyffredinol*") means the Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013(**4**); and

"the Representations and Appeals Regulations" ("*y Rheoliadau Sylwadau ac Apelau*") means the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013(**5**).

Right to make representations about a removed vehicle

3.—(1) This regulation applies where a vehicle has been found in a civil enforcement area and removed under section 99 of the 1984 Act, and a person—

(a) is required to pay an amount on recovery of the vehicle under section 101A of that Act;

(b) receives a sum in respect of the vehicle under section 101A(2) of that Act;

(c) is informed that the proceeds of sale of the vehicle did not exceed the aggregate amount of the relevant charges as described in section 101A(2) and (3) of that Act; or

(d) is informed that the vehicle was disposed of without there being any proceeds of sale.

(2) Immediately upon the happening of an occurrence referred to in paragraph (1), a person to whom paragraph (1) applies must be informed—

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

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

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

(3) The enforcement authority must give the information referred to in paragraph (2), or must cause it to be given, in writing.

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

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

(b) that, whether or not any of those grounds apply, there are compelling reasons why, in the particular circumstances of the case, the enforcement authority should—

(i) refund some or all of the amount that was paid to secure the release of the vehicle;

(ii) refund some or all of the amount that was deducted from the proceeds of sale in respect of relevant charges; or

(iii) waive its right to recover all or any of the sums due to it on account of the removal or disposal of the vehicle,

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

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

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

(**4**) S.I. 2013/362.
(**5**) S.I. 2013/359.

(b) that a civil enforcement officer had not, in accordance with regulation 9 of the General Provisions Regulations, fixed a penalty charge notice to the vehicle or handed such a notice to the person appearing to that officer to be in charge of the vehicle, before the vehicle was removed;

(c) that at the time the vehicle was removed, the power to remove the vehicle conferred by paragraph (2) of regulation 5C of the Removal and Disposal of Vehicles Regulations 1986(**6**) was, by virtue of paragraph (3) of that regulation, not exercisable;

(d) that the vehicle had been permitted to remain at rest in the place where it was by a person who was in control of the vehicle without the consent of the owner;

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

(f) that the penalty charge or other charge paid to secure the release of the vehicle exceeded the amount applicable in the circumstances of the case; or

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

(6) In determining the form for making representations under paragraph (4) the enforcement authority must act through the joint committee through which, in accordance with regulation 15 of the General Provisions Regulations, it exercises its functions relating to adjudicators.

Duty of enforcement authority to which representations are made

4.—(1) The enforcement authority may disregard any representations under regulation 3 which are received by it after the end of the period of 28 days beginning with the date on which the person making them is informed under regulation 3(2) of their right to make representations.

(2) Subject to paragraph (1), if representations are made to it in accordance with regulation 3(4), the enforcement authority must, within the period of 56 days beginning with the date on which it receives the representations—

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

(b) serve on that person notice of its decision as to whether it accepts that—

(i) a ground specified in regulation 3(5) applies; or

(ii) there are compelling reasons of the kind referred to in regulation 3(4)(b).

(3) Where an authority serves notice under paragraph (2)(b)(i) that it accepts that a ground specified in regulation 3(5) applies it must (when serving that notice)—

(a) refund any sums that—

(i) the person to whom the vehicle was released was required to pay under section 101A(1) of the 1984 Act; or

(ii) were deducted from the proceeds of sale of the vehicle in accordance with section 101A(2) of that Act,

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

(b) inform the person making representations that it has waived the right to recover any sum which might otherwise have been due to it by way of a penalty charge or on account of the removal, storage or disposal of the vehicle.

(4) Where an authority serves no notice under paragraph (2)(b)(i) but does serve a notice under paragraph (2)(b)(ii) that it accepts that there are such compelling reasons, it must (when serving that notice)—

(a) refund the sums referred to in paragraph (3)(a) or such of them as it considers appropriate in the circumstances of the case; and

(**6**) S.I. 1986/183. Regulation 5C was inserted in relation to Wales by S.I. 2008/612 (W.64).