WELSH STATUTORY INSTRUMENTS

2008 No. 1214 (W.122)

ROAD TRAFFIC, WALES

The Civil Enforcement of Parking Contraventions (General Provisions) (Wales) (No. 2) Regulations 2008

Made - - - -	*29 April 2008*
Laid before the National Assembly for Wales - -	*30 April 2008*
Coming into force - -	*22 May 2008*

The Welsh Ministers, in exercise of the powers conferred upon the National Assembly for Wales by sections 72, 73(3), 79, 88 and 89 of the Traffic Management Act 2004(**1**) and now vested in them(**2**), hereby make the following Regulations:

PART 1

PRELIMINARY

Title, commencement and application

1.—(1) The title of these Regulations is the Civil Enforcement of Parking Contraventions (General Provisions) (Wales) (No. 2) Regulations 2008. They come into force on 22nd May 2008.

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

"the 2004 Act" ("*y Ddeddf 2004*") means the Traffic Management Act 2004;

"adjudicator" ("*dyfarnydd*") means an adjudicator appointed under regulation 9 of the Enforcement and Adjudication Regulations;

(**1**) 2004 c. 18.Section 79 was amended by the Disability Discrimination Act 2005 (c. 13), Schedule 1, paragraph 48 and section 81 was amended by S.I. 2006/1016. By virtue of section 92, the National Assembly for Wales was designated as the "appropriate national authority" as regards Wales, for the purposes of regulations made under Part 6.

(**2**) The functions of the National Assembly for Wales under the Traffic Management Act 2004 were transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

"approved device" ("*dyfais a gymeradwyir*") has the meaning given by article 2 of the Civil Enforcement of Parking Contraventions (Approved Devices) (Wales) (No.2) Order 2008(**3**);

"civil enforcement area" ("*ardal gorfodi sifil*") has the meaning given by paragraph 8 of Schedule 8 to the 2004 Act;

"civil enforcement officer" ("*swyddog gorfodi sifil*") has the meaning given by section 76 of the 2004 Act;

"the Enforcement and Adjudication Regulations" ("*y Rheoliadau Gorfodi a Dyfarnu*") means the Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication) (Wales) Regulations 2008(**4**);

"enforcement authority" ("*awdurdod gorfodi*") in relation to a penalty charge or the immobilisation or removal of a vehicle means the enforcement authority in relation to the alleged contravention in consequence of which the charge was incurred or the vehicle was immobilised;

"outstanding" ("*dyledus*") in relation to a penalty charge is to be construed in accordance with paragraphs (2) to (4);

"owner" ("*perchennog*") in relation to a vehicle includes any person who falls to be treated as the owner of the vehicle by virtue of regulation 4;

"pedestrian crossing contravention" ("*tramgwydd croesfan i gerddwyr*") means a parking contravention consisting of an offence referred to in paragraph 4(2)(c) of Schedule 7 to the 2004 Act (prohibition on stopping of vehicles on or near pedestrian crossings);

"penalty charge" ("*tâl cosb*") means a penalty charge relating to a parking contravention and payable in accordance with regulation 3;

"penalty charge notice" ("*hysbysiad o dâl cosb*") has the meaning given in regulation 4 of the Enforcement and Adjudication Regulations;

"regulation 6 penalty charge notice" (" *hysbysiad rheoliad 6 o dâl cosb*") means a penalty charge notice served under regulation 6 of the Enforcement and Adjudication Regulations;

"the Welsh enforcement authorities" ("*awdurdodau gorfodi Cymru*") means those enforcement authorities which are local authorities in Wales;

"the Representations and Appeals Regulations" ("*y Rheoliadau Sylwadau ac Apelau*") means the Civil Enforcement of Parking Contraventions (Representations and Appeals)(Wales) Regulations 2008(**5**).

(2) For the purposes of these Regulations a penalty charge is outstanding in relation to a vehicle if—

(a) the charge has not been paid and the enforcement authority to which the charge is payable has not waived payment, whether by cancellation of the penalty charge notice or notice to owner or otherwise;

(b) the owner of the vehicle when it was immobilised was also the owner of the vehicle when the penalty charge was imposed; and

(c) either—

(i) a notice to owner or regulation 6 penalty charge notice has been served in respect of the charge and the conditions in paragraph (3) are satisfied; or

(ii) no notice to owner or regulation 6 penalty charge notice has been served in respect of the charge and the conditions in paragraph (4) are satisfied.

(**3**) S.I. 2008/1215 (W.123).
(**4**) S.I. 2008/609.
(**5**) S.I. 2008/608.

(3) The conditions referred to in paragraph (2)(c)(i) are that—

(a) the penalty charge was imposed, in accordance with these Regulations, by an enforcement authority in respect of a parking contravention;

(b) the penalty charge is the subject of a charge certificate served under regulation 13 of the Enforcement and Adjudication Regulations which has not been set aside in accordance with regulation 15 of those Regulations.

(4) The conditions referred to in paragraph (2)(c)(ii) are that—

(a) the penalty charge related to a vehicle which, when the penalty charge became payable—

(i) was not registered under the Vehicle Excise and Registration Act 1994(**6**); or

(ii) was so registered, but without the inclusion in the registered particulars of the correct name and address of the keeper of the vehicle;

(b) having taken all reasonable steps, the enforcement authority to which the penalty charge was payable was unable to ascertain the name and address of the keeper of the vehicle and was consequently unable to serve a notice to owner under regulation 11 of the Enforcement and Adjudication Regulations, or a regulation 6 penalty charge notice; and

(c) the period of 42 days beginning with the date on which the penalty charge became payable has expired.

PART 2

PENALTY CHARGES

Imposition of penalty charges

3. Subject to the provisions of these Regulations a penalty charge is payable with respect to a vehicle where there has been committed in relation to that vehicle a parking contravention within paragraph 4 of Schedule 7 to the 2004 Act in a civil enforcement area in Wales.

Person by whom a penalty charge is to be paid

4.—(1) Where a parking contravention occurs, the person by whom the penalty charge for the contravention is to be paid, will be determined in accordance with the following provisions of this regulation.

(2) In a case not falling within paragraph (3), the penalty charge is payable by the person who was the owner of the vehicle involved in the contravention at the material time.

(3) Where—

(a) the vehicle is a mechanically propelled vehicle which was, at the material time, hired from a vehicle-hire firm under a hiring agreement;

(b) the person hiring it had signed a statement of liability acknowledging his or her liability in respect of any penalty charge notice served in respect of any parking contravention involving the vehicle during the currency of the hiring agreement; and

(c) in response to a notice to owner served on him or her, the owner of the vehicle made representations on the ground specified in regulation 4(4)(d) of the Representations and Appeals Regulations and the enforcement authority accepted those representations,

(**6**) 1994 c. 22.

the penalty charge is payable by the person by whom the vehicle was hired and that person will be treated as if he or she were the owner of the vehicle at the material time for the purposes of these Regulations.

(4) In this regulation—

(a) "hiring agreement" ("*cytundeb llogi*") and "vehicle-hire firm" ("*ffyrm llogi cerbydau*") have the same meanings as in section 66 of the Road Traffic Offenders Act 1988(**7**); and

(b) "the material time" ("*yr adeg berthnasol*") means the time when the contravention giving rise to the penalty charge is said to have occurred.

Evidence of contravention

5. A penalty charge must not be imposed except on the basis of—

(a) a record produced by an approved device; or

(b) information given by a civil enforcement officer as to conduct observed by that officer.

Criminal proceedings for parking contraventions in civil enforcement areas

6.—(1) No criminal proceedings may be instituted and no fixed penalty notice may be served in respect of any parking contravention occurring in a civil enforcement area, except a pedestrian crossing contravention.

(2) A penalty charge will not be payable in relation to a pedestrian crossing contravention where —

(a) the conduct constituting the contravention is the subject of criminal proceedings; or

(b) a fixed penalty notice, as defined by section 52 of the Road Traffic Offenders Act 1988(**8**), has been given in respect of that conduct.

(3) Where, notwithstanding the provisions of paragraph (2)—

(a) a penalty charge has been paid in respect of a pedestrian crossing contravention; and

(b) the circumstances are as mentioned in paragraph (2)(a) or (b),

the enforcement authority must, as soon as reasonably practicable after those circumstances come to its notice, refund the amount of the penalty charge.

PART 3

IMMOBILISATION OF VEHICLES

Power to immobilise vehicles

7.—(1) Subject to regulation 8, (limitations on the power to immobilise vehicles) where a civil enforcement officer has reason to believe that a vehicle has been permitted to remain at rest in any place in a civil enforcement area in circumstances in which a penalty charge has become payable, he or she or a person acting under his or her direction may fix an immobilisation device to the vehicle while it remains in the place where it was found.

(2) On any occasion when an immobilisation device is fixed to a vehicle in accordance with this regulation, the person fixing the device must also fix to the vehicle a notice—

(**7**) 1988 c. 53.

(**8**) Section 52 was amended by the Access to Justice Act 1999 (c. 22), paragraph 147, by the Courts Act 2003 (c. 39) Schedule 8, paragraph 314 and by the Statute Law (Repeals) Act 2004 (c. 14), Schedule 1, Part 14.