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

DRAFT STATUTORY INSTRUMENTS

2013 No.

ROAD TRAFFIC, WALES

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

Made - - - - 2013

Coming into force in accordance with regulation 1(1)

These Regulations are made by the Lord Chancellor, in exercise of the powers conferred by sections 80 and 89 of the Traffic Management Act 2004(**1**)

In accordance with paragraph 24 of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007(**2**), the Lord Chancellor has consulted the Administrative Justice and Tribunals Council.

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

PART 1

PRELIMINARY

Citation, commencement and application

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

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

"the 1984 Act" means the Road Traffic Regulation Act 1984(**3**);

(**1**) 2004 c.18.
(**2**) 2007 c.15.
(**3**) 1984 c.27.

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

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

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

"the General Provisions Regulations" means the Civil Enforcement of Road Traffic Contraventions (General Provisions)(Wales) Regulations 2013(**4**);

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

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

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

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

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

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

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

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

"road traffic contravention" means any of the following:

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

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

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

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

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

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

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

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

PART 2

REPRESENTATIONS AND APPEALS IN RELATION TO NOTICES TO OWNER

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

3.—(1) Regulations 4 to 7 have effect where—

(**4**) S.I. 2013/xxxx (W.).
(**5**) "owner" is defined in section 92 Traffic Management Act 2004.

(a) a penalty charge notice has been served by a civil enforcement officer under regulation 9 of the General Provisions Regulations, and a notice to owner has been served by the enforcement authority under regulation 18 of those Regulations; or

(b) a penalty charge notice has been served under regulation 10 of those Regulations.

(2) A penalty charge notice served under regulation 9 of the General Provisions Regulations must, in addition to the matters required to be included in it under paragraph 1 of Schedule 1 to those Regulations, include the following information—

(a) that a person on whom a notice to owner is served is entitled to make representations to the enforcement authority against the penalty charge and may appeal to an adjudicator if those representations are rejected; and

(b) that if, before a notice to owner is served, representations against the penalty charge are received at such address as may be specified for the purpose —

(i) those representations will be considered;

(ii) but that if a notice to owner is served notwithstanding those representations, representations against the penalty charge will be considered, provided that they are made in the form and manner and within the time specified in the notice to owner.

(3) A notice to owner served under regulation 18 of the General Provisions Regulations must, in addition to the matters required to be included in it under that regulation, include the following information—

(a) that representations on the basis specified in regulation 4 against the payment of the penalty charge may be made to the enforcement authority but that any representations made outside the period of 28 days beginning with the date on which the notice is served ("the payment period") may be disregarded;

(b) the nature of the representations which may be made under regulation 4;

(c) the address (including if appropriate any email address or FAX telephone number, as well as the postal address) to which representations must be sent and the form in which they must be made;

(d) that if representations which have been made—

(i) within the payment period; or

(ii) outside that period but not disregarded,

are not accepted by the enforcement authority the recipient of the notice may appeal against the authority's decision to an adjudicator; and

(e) in general terms, the form and manner in which an appeal may be made.

(4) A penalty charge notice served under regulation 10 of the General Provisions Regulations must, in addition to the matters required to be included in it under paragraph 2 of Schedule 1 to those Regulations, include the following information—

(a) that representations on the basis specified in regulation 4 may be made to the enforcement authority against the imposition of the penalty charge but that representations made outside the period of 28 days beginning with the date on which the penalty charge notice is served ("the representations period") may be disregarded;

(b) the nature of the representations which may be made under regulation 4;

(c) the address (including if appropriate any email address or FAX telephone number, as well as the postal address) to which representations must be sent and the form in which they must be made;

(d) that, if representations which have been made—

(i) within the representations period; or

(ii) outside that period but not disregarded,

are not accepted by the enforcement authority the recipient of the penalty charge notice may appeal against the authority's decision to an adjudicator;

(e) where the penalty charge notice is served by virtue of regulation 10(1)(a) of the General Provisions Regulations(**6**), a statement of the effects of paragraph (5) and (6).

(5) The recipient of a penalty charge notice served under regulation 10(1)(a) of the General Provisions Regulations may, by notice in writing to the enforcement authority, request it—

(a) to make available at one of its offices specified by the recipient, free of charge and at a time during normal office hours so specified, for viewing by the recipient or by a representative, the record of the road traffic contravention produced by the approved device pursuant to which the penalty charge was imposed; or

(b) to provide the recipient, free of charge, with such still images from that record as, in the authority's opinion, establish the road traffic contravention.

(6) Where the recipient of the penalty charge notice makes a request under paragraph (5), the enforcement authority must comply with the request within a reasonable time.

Representations against notice to owner

4.—(1) The recipient may make representations against a notice to owner to the enforcement authority which served that notice.

(2) Any representations under this regulation must—

(a) be made in such form as may be specified by the enforcement authority;

(b) be to either or both of the following effects—

(i) that in relation to the alleged road traffic contravention on account of which the notice to owner was served, one or more of the grounds specified in paragraph (4) applies; or

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

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

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

(a) that the alleged road traffic contravention did not occur;

(b) that the recipient—

(i) never was the owner of the vehicle in question;

(ii) had ceased to be its owner before the date on which the alleged road traffic contravention occurred; or

(iii) became its owner after that date;

(c) that at the time that the road traffic contravention was committed, the vehicle in question was in the control of a person who did not have the consent of the owner;

(d) that the recipient is a vehicle-hire firm and—

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

(i) the vehicle in question was at the material time hired from that firm under a hiring agreement; and

(ii) the person hiring it had signed a statement of liability acknowledging their liability in respect of any penalty charge notice served in respect of any road traffic contravention involving the vehicle during the currency of the hiring agreement;

(e) that the penalty charge exceeded the amount applicable in the circumstances of the case;

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

(g) that the order which is alleged to have been contravened in relation to the vehicle concerned, except where it is an order to which Part VI of Schedule 9 to the 1984 Act(**7**) applies, is invalid;

(h) in a case where a penalty charge notice was served by post because a civil enforcement officer was prevented by some person from fixing it to the vehicle concerned or handing it to the owner or person in charge of the vehicle, that a civil enforcement officer was not so prevented;

(i) that the notice to owner should not have been served because—

(i) the penalty charge has already been paid in full;

(ii) the penalty charge has been paid, reduced by the amount of any discount set in accordance with Schedule 9 to the 2004 Act, within the period specified in paragraph 1(h) of Schedule 1 to the General Provisions Regulations.

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

(a) the taking of any step, whether or not involving the service of any document, otherwise than—

(i) in accordance with the conditions subject to which; or

(ii) at the time or during the period when,

it is authorised or required by the General Provisions Regulations or these Regulations to be taken; and

(b) in a case where an enforcement authority is seeking to recover an unpaid charge, the purported service of a charge certificate under regulation 20 of the General Provisions Regulations before the enforcement authority is authorised to serve it by those Regulations.

(6) Where the ground mentioned in paragraph (4)(b)(ii) is relied on in any representations made under this regulation, those representations must include a statement of the name and address of the person to whom the vehicle was disposed of (if that information is known).

(7) Where the ground mentioned in paragraph 4(b)(iii) is relied on in any representations made under this regulation, those representations must include a statement of the name and address of the person from whom the vehicle was acquired by the person making the representations (if that information is known).

(8) Where the ground mentioned in paragraph (4)(d) is relied on in any representations made under this regulation, those representations must include a statement of the name and address of the person to whom the vehicle was hired at the material time.

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