Draft Regulations laid before Parliament under section 134(5) of the Road Traffic Regulation Act 1984 and section 89(5) of the Traffic Management Act 2004, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2007 No. 0000

ROAD TRAFFIC, ENGLAND

The Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007

Made - - - -	*2007*
Coming into force - -	*31st March 2008*

The Lord Chancellor makes these Regulations, in exercise of the powers conferred upon him by section 101B of the Road Traffic Regulation Act 1984(**1**) and by sections 80 and 89 of the Traffic Management Act 2004(**2**):

In accordance with section 134(5) of the Road Traffic Regulation Act 1984 and section 89(5) of the Traffic Management Act 2004, a draft of these Regulations was laid before and approved by a resolution of each House of Parliament.

PART 1

PRELIMINARY

Citation, commencement and application

1.—(1) These Regulations may be cited as the Civil Enforcement of Parking Contraventions (England) Representations and Appeals Regulations 2007 and shall come into force on 31st March 2008.

(2) These Regulations apply only to England.

Interpretation

2.—(1) In these Regulations—

(**1**) 1984 c. 27; section 99 was amended by the Road Traffic Act 1991 (c. 40), Schedule 4, paragraph 32, and Schedule 8 and by the Clean Neighbourhoods and Environment Act 2005 (c. 16), section 15 and Schedule 5, Part 1; sections 101A and 101B were inserted by the Traffic Management Act 2004, Schedule 11, paragraph 3(2); and section 134(5) was amended by the Lord Chancellor (Modification of Functions) Order 2007 (S.I. 2007/1756) article 2.

(**2**) 2004 c. 18.

"the 1984 Act" means the Road Traffic Regulation Act 1984;

"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;

"the General Regulations" means the Civil Enforcement of Parking Contraventions (England) General Regulations 2007(**3**);

"notice of rejection" means a notice served by an enforcement authority rejecting, or not accepting, representations made to it under regulation 4, 8 or 11;

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

"penalty charge" and "penalty charge notice" have the same meanings as in the General Regulations (see regulation 2(1) of those Regulations);

"owner", in relation to a vehicle, includes any person who, by virtue of regulation 5(3) of the General Regulations, falls to be treated as the owner of the vehicle for the purposes of those Regulations;

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

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

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

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

(i) in a case where a penalty charge notice has been served under regulation 9 of the General Regulations, as references to a notice to owner as defined by regulation 2(1) of those Regulations;

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

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

PART 2

REPRESENTATIONS AND APPEALS IN RELATION TO NOTICES TO OWNER

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

3.—(1) Regulations 4 to 7 have effect where a penalty charge which has become payable under the General Regulations has not been paid and either—

(a) a penalty charge notice has been served by a civil enforcement officer under regulation 9 of the General Regulations, and a notice to owner served by the enforcement authority under regulation 19 of those Regulations; or

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

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

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

(**3**) S.I. 2007/xxxx.

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

(i) those representations will be considered;

(ii) but that, if a notice to owner is served notwithstanding those representations, representations against the penalty charge must be made in the form and manner and at the time specified in the notice to owner.

(3) A notice to owner served under regulation 19 of the General 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 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 Regulations must, in addition to the matters required to be included in it under paragraph 2 of the Schedule 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 Regulations (evidence produced by an approved device), the effect of paragraphs (5) and (6).

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

(a) to make available at one of its offices specified by him, free of charge and at a time during normal office hours so specified, for viewing by him or by his representative, the record of

the contravention produced by the approved device pursuant to which the penalty charge was imposed; or

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

(6) Where the recipient of the penalty charge notice makes a request under paragraph (5), the enforcement authority shall 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 the notice on him.

(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 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, an enforcement authority which is a London authority must act through the joint committee through which, in accordance with regulation 15 of the General Regulations, it exercises its functions relating to adjudicators.

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

(a) that the alleged 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 contravention occurred; or

(iii) became its owner after that date;

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

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

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

(ii) the person hiring it had signed a statement of liability acknowledging his 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;

(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(**4**) applies, is invalid;

(**4**) *See* Schedule 9, paragraph 34(1) 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.

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

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

(ii) the penalty charge had 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 the Schedule to the General 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 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 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 21 of the General 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 by the person making the representations (if that information is in his possession).

(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 in his possession).

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

(9) In this regulation "hiring agreement" and "vehicle-hire firm" have the same meanings as in section 66 of the Road Traffic Offenders Act 1988(**5**).

Duty of enforcement authority to which representations are made

5.—(1) The enforcement authority may disregard any representations which are received by it after the end of the period of 28 days beginning with the date on which the relevant notice to owner was served.

(2) Where representations are made to an enforcement authority by virtue of regulation 4(1) and in accordance with regulation 4(2), it shall subject to paragraph (1) be the duty of the enforcement authority—

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

(b) within the period of 56 days beginning with the date on which the representations were served on it, to serve on that person notice of its decision as to whether or not it accepts that—

(i) one or more of the grounds specified in regulation 4(4) applies; or

(**5**) 1988 c. 53.