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**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<sup>(1)</sup>, subsequently transferred to the National Assembly for Wales and now vested in them<sup>(2)</sup> make the following Regulations:

**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<sup>(3)</sup>;

“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;

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(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).

(3) 2004 c. 18.

“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;
- (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;

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(4) S.I. 2013/362.

(5) S.I. 2013/359.

- (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
- (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.

#### **Appeals to an adjudicator in relation to decisions under regulation 4**

5.—(1) Where an authority serves a notice of rejection under regulation 4(2)(b) in relation to representations under regulation 3(4), the person making those representations may—

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

appeal to an adjudicator against the authority's decision.

(2) On an appeal under this regulation, the adjudicator must consider the representations in question and any additional representations that are made by the appellant.

(3) If the adjudicator concludes—

- (a) that any of the grounds referred to in regulation 3(5) apply; and
- (b) that the enforcement authority would have been under the duty imposed by regulation 4(3) to refund any sum if it had served notice that it accepted that the ground in question applied,

the adjudicator must direct that authority to refund that sum.

(4) The enforcement authority to which a direction is given under paragraph (3) must comply with it forthwith and ceases to have any 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.

(5) If the adjudicator makes no direction under paragraph (3) 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 vehicle, or deducted from the proceeds of sale, should be refunded, the adjudicator may recommend that the enforcement authority should make such a refund.

(6) It is the duty of an enforcement authority to which a recommendation is made under paragraph (5) 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 thirty five days ("the 35-day period") beginning on the date on which the direction was given, to notify the appellant and the adjudicator as to whether or not it accepts the adjudicator's recommendation.

(7) If the enforcement 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.

(8) No appeal to the adjudicator lies against the decision of the enforcement authority under paragraph (7).

(9) If the enforcement authority accepts the adjudicator's recommendation it must make the recommended refund within the 35-day period.

(10) If the enforcement authority fails to comply with the requirements of paragraph (6) within the 35-day period, the authority is to be taken to have accepted the adjudicator's recommendation and must make the recommended refund immediately after the end of that period.

#### **Procedure to be followed by adjudicators, service of documents and recovery of sums payable**

6.—(1) The Schedule to the Representations and Appeals Regulations ("the Schedule") has effect as to the procedure and the service of documents in adjudication proceedings under these Regulations as if it were incorporated in these Regulations subject to the modifications specified in paragraph (3).

(2) Accordingly references in that Schedule as it has effect by virtue of paragraph (1) to these Regulations are to be taken as references to these Regulations and not to the Representations and Appeals Regulations.

(3) The modifications referred to in paragraph (1) are—

- (a) in paragraph 1(1), in the definition of “appeal” for “regulation 7(1) or 10(1)” there is substituted “regulation 5”;
  - (b) in paragraph 2(3), for “regulation 7(1)(a) or 10(1)(a) (as the case may be)” there is substituted “regulation 5(1)(a)”;
  - (c) in paragraph 4(1) for “regulation 4(2)(b) or 8(4), whichever is appropriate in the circumstances” there is substituted “regulation 3(4)”.
- (4) Subject to the provisions of that Schedule as so modified, an adjudicator may regulate their own procedure.
- (5) Any amount which is payable—
- (a) under an adjudicator’s decision;
  - (b) by virtue of any provision of the Representations and Appeals Regulations which requires an enforcement authority to refund any sum,
- 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.
- (6) Paragraph (5) does not apply to a penalty charge which remains payable following an adjudication under regulation 7 of the Representations and Appeals Regulations.

#### **Revocation**

7. The Civil Enforcement of Parking Contraventions (Representations and Appeals) Removed Vehicles (Wales) Regulations 2008(7) are hereby revoked.

26 February 2013

*Carl Sargeant*  
Minister for Local Government and  
Communities, one of the Welsh Ministers

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

The Regulations provide for the making of representations and appeals against charges for the removal, storage and disposal of a vehicle removed under the Road Traffic Regulation Act 1984 from an area which is a civil enforcement area in accordance with Part 6 of the Traffic Management Act 2004.

These Regulations revoke and replace the Civil Enforcement of Parking Contraventions (Representations and Appeals) Removed Vehicles (Wales) Regulations 2008 (S.I.2008/615).

These Regulations are to be read in conjunction with the Civil Enforcement of Road Traffic Contraventions (General Provisions) (Wales) Regulations 2013 (S.I. 2013/362) and the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 (S.I. 2013/359).

Regulation 3 allows a person whose vehicle has been removed from a civil enforcement area under section 99 of the Road Traffic Regulation Act 1984 (removal of vehicles illegally, obstructively or dangerously parked, abandoned or broken down) to make representations to the enforcement authority and to appeal to an adjudicator where such representations are rejected. Regulation 4 sets out the duties of the enforcement authority to which representations are made and regulation 5 provides for an appeal to be made to an adjudicator where representations are rejected under regulation 4.

Regulation 6 applies the Schedule to the Civil Enforcement of Road Traffic Contraventions (Representations and Appeals) (Wales) Regulations 2013 to procedure and the service of documents in adjudicator proceedings under these Regulations.

Regulation 7 deals with the revocation of the Civil Enforcement of Parking Contraventions (Representations and Appeals) Removed Vehicles (Wales) Regulations 2008, which these Regulations replace.

A full Regulatory Impact Assessment and Explanatory Memorandum can be obtained from the Public Transport Division, Transport, Local Government and Communities, Welsh Government, Cathays Park, Cardiff, CF10 3NQ.