
SCOTTISH STATUTORY INSTRUMENTS

2011 No. 442

ROAD TRAFFIC

**The Bus Lane Contraventions (Charges, Adjudication
and Enforcement) (Scotland) Regulations 2011**

Made - - - - 15th December 2011
Laid before the Scottish
Parliament - - - - 19th December 2011
Coming into force - - 6th February 2012

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 44(1), (5), (6), (7) and (8) and 81(2) of the Transport (Scotland) Act 2001⁽¹⁾ and all other powers enabling them to do so.

PART I
PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Bus Lane Contraventions (Charges, Adjudication and Enforcement) (Scotland) Regulations 2011 and come into force on 6th February 2012.

Interpretation

2.—(1) In these Regulations—

“the 1994 Act” means the Vehicle Excise and Registration Act 1994⁽²⁾;

“the 2001 Act” means the Transport (Scotland) Act 2001;

“the 28 day period”, in relation to a charge notice, means the period of 28 days beginning with the date of service of the notice;

“adjudicator”, except in the expression “parking adjudicator”, means a bus lane adjudicator in terms of regulation 11(a);

“appeal” means an appeal against the imposition of a charge;

(1) 2001 asp 2.
(2) 1994 c.22.

“appeal period” means the period of 28 days specified in regulation 12(4);

“approved local authority” means an authority which is an approved local authority in terms of section 44(2) of the 2001 Act;

“charge certificate” has the meaning given by regulation 30(1)(b);

“charge notice” has the meaning given by regulation 8(1);

“contravention” means a bus lane contravention in terms of section 44(3) of the 2001 Act in which a vehicle is involved;

“the detection date” in relation to a contravention, means the date on which, according to a record produced by an approved device, the contravention occurred;

“enforcing authority” in relation to a charge means the approved local authority which imposed the charge;

“notice of rejection” means a notice served under regulation 10(3);

“proper officer” means a person appointed under regulation 11(b)(ii);

“the recipient”, in relation to a charge notice, means the person on whom the charge notice is served;

“register” means the register of appeals and decisions kept in accordance with regulation 29;

“relevant vehicle” means the vehicle involved in the contravention;

“statutory grounds of appeal” means the grounds, as specified in regulation 9(2), on which—

- (a) representations against a charge notice may be made under regulation 9 to an approved authority; or
- (b) an appeal may be made to an adjudicator under regulation 12;

“vehicle” means motor vehicle; and

“working day” means any day which is not a Saturday, a Sunday or a bank holiday in Scotland by virtue of section 1 of the Banking and Financial Dealings Act 1971(3).

(2) In these Regulations, in relation to an appeal or any process connected with an appeal—

“appellant” means the person making the appeal;

“authority” means the approved local authority which made the decision to impose the charge;

“charge notice concerned” means the charge notice conveying the authority’s decision to impose the charge;

“hearing” means an oral hearing;

“notice of appeal” means a notice sent under regulation 12; and

“party” means the appellant or the authority.

(3) In determining, for the purposes of these Regulations, whether and when a charge has been paid, it is to be taken to have been paid when the whole of the amount of the charge applicable in the circumstances of the case is received by the approved local authority concerned.

(4) References to the service of a notice or other document include service by post and, in determining for the purposes of these Regulations the date on which a notice or other document is served by post, it is to be presumed that service of a notice or other document sent by—

- (a) first class post was effected on the person to whom it was addressed on the second working day after the day on which it was posted; or
- (b) second class post was effected on the person to whom it was addressed on the third working day after the day on which it was posted,

unless the contrary is shown.

PART II

CHARGES FOR BUS LANE CONTRAVENTIONS

Charges

3.—(1) Subject to paragraph (2) and regulation 4, an approved local authority may impose a charge in respect of a contravention relating to any road within their area, except a road which is a special road in accordance with section 7 of the Roads (Scotland) Act 1984(4).

(2) A charge may be imposed only on the basis of a record produced by an approved device.

Level of charges

4.—(1) An approved local authority must not impose a charge in accordance with these Regulations unless—

- (a) it has first set the rate of charge that is to apply within its area;
- (b) the Scottish Ministers have approved those rates; and
- (c) it has published in at least one local newspaper circulating in its area a notice specifying—
 - (i) the circumstances in which a charge may be imposed;
 - (ii) the rate of the charge; and
 - (iii) the date, being a day which falls after the end of the period of 15 days beginning with the day on which the notice is published, on which the authority will start to impose charges at that level,

and no charge is to be imposed before the date so specified.

(2) Each approved local authority is to make available, at all reasonable times, free of charge and in a form which is readily accessible to any member of the public, information about the level of the charge for the time being in force in its area.

(3) In the circumstances described in regulation 8(5)(f), an authority must accept a sum equivalent to one half of the rate of charge approved by the Scottish Ministers, in full payment of a charge.

(4) In the circumstances described in regulation 8(5)(k), an authority may increase a charge to a sum equivalent to one and a half times the rate of charge approved by the Scottish Ministers.

Liability of registered keeper for charges

5. A charge is to be paid by the registered keeper of the relevant vehicle unless regulation 6 applies.

Liability of persons other than the registered keeper for charges

6.—(1) A charge is to be paid—

- (a) where the relevant vehicle is not registered under the 1994 Act, by the person by whom the relevant vehicle is kept at the time of the contravention;
- (b) where the relevant vehicle—

(4) 1984 c.54. Section 7 was amended by the [Water Industry \(Scotland\) Act 2002 \(asp 3\)](#), Schedule 7, paragraph 14 and the [Transport and Works \(Scotland\) Act 2007 \(asp 8\)](#), Schedule 2, paragraph 2 and Schedule 3.

- (i) was at the time of the contravention the subject of a hiring agreement; and
 - (ii) the person hiring it, or an individual authorised to sign on that person’s behalf, has signed a statement of liability acknowledging that person’s liability in respect of any charge incurred during the currency of that hiring agreement,
- by the person who has hired the vehicle under that hiring agreement;
- (c) where—
 - (i) the relevant vehicle is kept by a vehicle trader; and
 - (ii) at the time of the contravention, a person other than the vehicle trader is the registered keeper of the relevant vehicle,
 by the vehicle trader;
 - (d) where the registered keeper has sold or transferred the relevant vehicle before the time of the contravention, by the person by whom the relevant vehicle is kept at the time of the contravention.
- (2) In this regulation—
- “hiring agreement” means an agreement for the hire of a vehicle—
- (a) under the terms of which the vehicle is let to the hirer for a fixed period of any duration (whether or not that period is capable of extension by agreement between the parties or otherwise);
 - (b) which contains such particulars as may for the time being be prescribed for the purpose of section 66 (hired vehicles) of the Road Traffic Offenders Act 1988⁽⁵⁾; and
 - (c) which is not a hire purchase agreement within the meaning of the Consumer Credit Act 1974⁽⁶⁾; and
- “vehicle trader” has the same meaning as in regulation 20(6) (change of keeper: general provisions) of the Road Vehicle (Registration and Licensing) Regulations 2002⁽⁷⁾.

Circumstances in which a charge need not be paid or is to be refunded

- 7.—(1) A charge is not payable under these Regulations 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.
- (2) Where, notwithstanding the provisions of paragraph (1)—
- (a) a charge has been paid in respect of a contravention; and
 - (b) the circumstances are as mentioned in paragraph (1)(a) or (b),
- the approved local authority must, as soon as reasonably practicable after those circumstances come to their notice, refund the amount of the charge.

⁽⁵⁾ 1988 c.53.

⁽⁶⁾ 1974 c.39; the definition of “hire purchase agreement” is in section 189(1).

⁽⁷⁾ S.I. 2002/2742, to which there are amendments not relevant to these Regulations.

⁽⁸⁾ Section 52 was amended by the Access to Justice Act 1999 (c.22), Schedule 13, paragraph 147, and by the Statute Law (Repeals) Act 2004 (c.14), Schedule 1, Part 14.

PART III

NOTIFICATION OF, AND REPRESENTATIONS ABOUT, CHARGES

Charge notices

8.—(1) Where an approved local authority has reason to believe that a charge is payable under Part II with respect to a vehicle, it may, in accordance with paragraphs (2) and (5), serve a notice (“charge notice”) on the registered keeper or on the person appearing to it to be the person liable to pay the charge.

(2) Subject to paragraph (3), a charge notice is to be served before the end of the period of 28 days beginning with the detection date.

(3) Where—

- (a) within 14 days of the detection date an approved local authority has made a request to the Secretary of State for the supply of relevant particulars; and
- (b) those particulars have not been supplied before the date after which the authority would not be entitled to serve a charge notice by virtue of paragraph (2),

the authority will continue to be entitled to serve a charge notice for a further period of 6 months beginning with the date mentioned in sub-paragraph (b).

(4) In paragraph (3) “relevant particulars” means particulars relating to the identity of the keeper of the vehicle contained in the register of mechanically propelled vehicles maintained by the Secretary of State under the 1994 Act.

(5) A charge notice must include the following information—

- (a) the registration mark of the vehicle involved in the alleged contravention;
- (b) the detection date and the time at which the alleged contravention occurred;
- (c) the reasons why the authority believe that a charge is payable;
- (d) the amount of the charge;
- (e) that the charge must be paid before the end of the 28 day period;
- (f) that if the charge is paid before the end of the period of 14 days beginning with the date of service of the notice, the charge will be reduced by 50 per cent;
- (g) that representations may be made, on any of the statutory grounds of appeal, to the authority against the imposition of the charge but that representations made outside the 28 day period may be disregarded;
- (h) the statutory grounds of appeal;
- (i) the postal address to which representations are to be sent;
- (j) any email address or fax number to which representations may be sent as an alternative to the postal address;
- (k) that if at the end of the 28 day period—
 - (i) no representations have been made; and
 - (ii) the charge has not been paid,

the authority may increase the charge by 50 per cent and take steps to enforce payment of the charge as so increased;

- (l) the manner in which the charge may be paid;
- (m) that if the representations are rejected an appeal may be made on any of the statutory grounds of appeal to an adjudicator in respect of a charge; and

- (n) that the recipient may, by notice in writing to the authority, request it to provide the recipient, free of charge, with a copy of the record of contravention produced by the approved device pursuant to which the charge was imposed or with such still images from that record as, in the authority's opinion, establish the contravention.

(6) Where the recipient makes a request under paragraph (5)(n), the authority must comply with the request within a reasonable time.

Representations in respect of charges

9.—(1) The recipient may make written representations on any of the statutory grounds of appeal to the approved local authority against the imposition of the charge; but the authority may disregard any such representations which are received by them after the end of the 28 day period.

(2) The grounds are—

- (a) that the alleged contravention did not occur;
- (b) that regulation 7(1) (other proceedings pursued) applies;
- (c) in a case where the charge notice has been served on the recipient on the basis that the recipient was the registered keeper of the vehicle, that the recipient was not the registered keeper on the detection date;
- (d) that the recipient was the registered keeper of the relevant vehicle on the detection date, but—
 - (i) on that date the circumstances were as mentioned in regulation 6(1)(b);
 - (ii) on that date the circumstances were as mentioned in regulation 6(1)(c);
 - (iii) the circumstances were as mentioned in regulation 6(1)(d); or
 - (iv) on that date the vehicle was in the control of a person who had assumed control of it without the recipient's consent;
- (e) in a case where the charge notice has been served on the recipient on the basis that the recipient was the person by whom the relevant vehicle was kept on the detection date, that the recipient was not the keeper of the relevant vehicle on that date;
- (f) in a case where the charge notice has been served on the recipient on the basis that the recipient was the hirer of the relevant vehicle, that the recipient was not liable to pay the charge under regulation 6(b);
- (g) in a case where the charge notice has been served on the recipient on the basis that the recipient was a vehicle trader, that the recipient was either not a vehicle trader or was a vehicle trader but not the vehicle trader keeping the vehicle; and
- (h) that the charge exceeded the amount applicable in the circumstances of the case.

(3) Where the ground mentioned in paragraph (2)(d)(i) is relied on in any representations made under paragraph (1), those representations must include a statement of the name and address of the person who hired the vehicle.

(4) Where the ground mentioned in paragraph (2)(d)(iii) is relied on in any representations made under paragraph (1), those representations must include a statement of the name and address of the person to whom the vehicle was disposed of by the recipient (if that information is in the recipient's possession).

Response to representations

10.—(1) Where representations are made to an authority under regulation 9 within the 28 day period, it is the duty of the authority—

- (a) to consider them and any supporting evidence provided; and
 - (b) in relation to each ground on which representations are made, to serve on the person by whom the representations are made notice of its decision as to whether or not it accepts that the ground has been established.
- (2) Where an authority accepts that at least one ground on which representations are made is established, the authority must—
- (a) cancel the charge notice; and
 - (b) serve notice on the recipient stating that the charge notice has been cancelled.
- (3) Where an authority is not satisfied that any of the statutory grounds of appeal is established, the notice served in accordance with paragraph (1)(b) must be a notice stating that they do not accept that the ground has been established (“a notice of rejection”).
- (4) A notice of rejection must—
- (a) state the reasons for the authority’s decision;
 - (b) state that an appeal against the imposition of the charge may be made to an adjudicator within the appeal period;
 - (c) specify the statutory grounds of appeal;
 - (d) describe in general terms the procedure for making an appeal;
 - (e) state that an adjudicator has power to make an award of expenses;
 - (f) indicate the circumstances in which the power may be exercised; and
 - (g) state that unless, before the end of the appeal period—
 - (i) the charge is paid; or
 - (ii) an appeal is made to an adjudicator against the imposition of the charge, the authority may increase the charge by 50 per cent and take steps to enforce payment.
- (5) Where a charge notice is cancelled under paragraph (2), the authority may serve on any person other than the person on whom the original charge notice was served a fresh charge notice in relation to the alleged contravention that was the subject of the cancelled notice.
- (6) Regulation 8 applies in relation to a fresh notice served under paragraph (5) as if—
- (a) in paragraph (2), for “the detection date”, there were substituted “the date on which the charge notice is cancelled”; and
 - (b) in paragraph (3)—
 - (i) in sub-paragraph (a), for “the detection date”, there were substituted “the date on which the charge notice is cancelled”; and
 - (ii) in sub-paragraph (b), the reference to paragraph (2) were a reference to that paragraph as modified by sub-paragraph (a) of this paragraph.

PART IV

BUS LANE ADJUDICATORS

Conferral of the function of bus lane adjudicator

- 11.** Where an approved local authority has resolved to impose charges under regulation 3(1)—

- (a) any person appointed from time to time to act as a parking adjudicator for the purposes of Part II of the Road Traffic Act 1991⁽⁹⁾ shall be a bus lane adjudicator for the purposes of these Regulations;
- (b) the approved local authority must—
 - (i) provide, or make arrangements for the provision of, accommodation and administrative staff and facilities for adjudicators acting in relation to its area;
 - (ii) appoint a person to fulfil the functions of proper officer under these Regulations and one or more persons to act as the proper officer's deputy when the proper officer is unable to act; and
 - (iii) determine the places at which the adjudicators are to sit; and
- (c) the approved local authority may enter into arrangements for the remuneration of the adjudicators.

PART V

APPEALS AGAINST CHARGES

Making an appeal

12.—(1) A person on whom a charge notice has been served may, on any of the statutory grounds of appeal, appeal to the adjudicator against the imposition of the charge if—

- (a) that person has made representations to the authority under regulation 9; and
- (b) that person has received from the authority a notice of rejection.

(2) An appeal is to be made by a notice of appeal sent to the proper officer.

(3) A notice of appeal—

- (a) must be in writing and signed by the appellant or the appellant's authorised agent;
- (b) must state the full name and address of the appellant;
- (c) may specify some other address as being the address to which the appellant wishes documents to be sent to him or her in connection with the appeal;
- (d) must state the name of the authority by which the decision to impose the charge was made and the date and reference number of the charge notice concerned;
- (e) may include any additional representations on any of the statutory grounds of appeal which the appellant desires to make; and
- (f) may include a request for a hearing.

(4) The notice of appeal is to be sent to the proper officer within the period of 28 days beginning with the date of service of the notice of rejection (“the appeal period”).

(5) If the notice of appeal is sent to the proper officer outside the appeal period, the appellant must include in the notice a statement of the reasons on which the appellant relies for justifying the delay.

(6) The adjudicator is to treat any such statement as a request to extend the appeal period and, if the adjudicator thinks fit, may direct that the period be extended accordingly.

(9) 1991 c.40, to which there are amendments not relevant to these Regulations.

Action on receipt of notice of appeal

13.—(1) On receiving a notice of appeal the proper officer is to send an acknowledgement of its receipt to the appellant.

(2) If the proper officer is satisfied that the notice is in accordance with regulation 12, the proper officer is to—

- (a) enter particulars of the appeal in the register;
- (b) send to the authority a copy of the notice of appeal; and
- (c) notify the appellant and the authority of any direction given by the adjudicator under regulation 12(6).

(3) Within 21 days of the receipt of a copy of a notice of appeal, the authority is to deliver to the proper officer a copy of—

- (a) the charge notice concerned;
- (b) any representations made to the authority in respect of the decision to impose the charge; and
- (c) the notice of rejection.

(4) If a notice of appeal—

- (a) is received by the proper officer and the proper officer considers that it is not in accordance with regulation 12; or
- (b) is sent outside the appeal period with a request to extend the appeal period and the adjudicator declines to direct that the period be extended,

the proper officer must inform the appellant of the reasons why the proper officer considers that the notice does not accord with regulation 12 or, as the case may be, that the adjudicator has declined the request for an extension and must record the action taken in the register.

Further representations

14.—(1) A party may, at any time before the determination of the appeal, deliver further representations on any of the statutory grounds of appeal to the proper officer.

(2) The adjudicator may invite a party to send to the proper officer representations dealing with such matters relating to the appeal as may be specified and any such representations are to be sent within the time and in the manner specified.

(3) Where a party fails to respond to an invitation under paragraph (2), the adjudicator may draw such inferences as appear to the adjudicator proper.

(4) Any representations sent under this regulation are to be signed by the party in question or the party's authorised representative.

(5) The proper officer is to send to the authority a copy of any representations sent by the appellant under paragraph (1) or (2).

(6) Where the authority sends representations to the proper officer under either of those paragraphs, it is at the same time to send a copy to the appellant.

Disposing of an appeal without a hearing

15.—(1) Subject to the provisions of this Part, the adjudicator may decide the general procedure to be followed in connection with appeals and may dispose of an appeal without a hearing, unless in the adjudicator's opinion the appeal raises issues of public importance such as to require that a hearing be held.

(2) If either party has requested a hearing, the adjudicator must not dispose of an appeal without a hearing unless—

- (a) the request is withdrawn before notice of a hearing has been sent to the other party; or
- (b) both parties have subsequently consented to the appeal being disposed of without a hearing.

(3) Where the adjudicator is minded to dispose of an appeal without a hearing, the adjudicator—

- (a) is to inform the parties of that intention; and
- (b) must not dispose of the appeal without a hearing unless—
 - (i) there has elapsed a period of 28 days beginning with the date on which an acknowledgement is sent in accordance with regulation 13(1) during which neither party has requested a hearing; or
 - (ii) both parties have consented to its disposal without a hearing.

Notice of time and place of hearing

16.—(1) This regulation applies where a hearing is to be held for the purpose of disposing of an appeal.

(2) The proper officer must—

- (a) fix the time and place of the hearing; and
- (b) not less than 21 days before the time so fixed, or such shorter time as the parties agree—
 - (i) send to each party a notice that the hearing is to be at that time and place; or
 - (ii) inform them of those matters in such other manner as the proper officer thinks fit.

(3) The adjudicator may alter the time and place of any hearing, and the proper officer must, not less than seven days before the date on which the hearing is then to be held, or such shorter time as the parties agree—

- (a) send to each party notice of the new time and place of the hearing; or
- (b) inform them of those matters in such other manner as the proper officer thinks fit.

(4) This regulation applies to an adjourned hearing but, if, before the adjournment, the time and place of the adjourned hearing are notified to all persons expected to attend, no further notice will be required.

Power to require attendance and production of documents

17.—(1) The adjudicator may, by notice in writing sent to any person, require that person—

- (a) to attend, at a time and place specified by the adjudicator, to give evidence at the hearing of an appeal; and
- (b) to produce any documents in that person's custody or under that person's control, relating to any matter in the proceedings,

and any such notice is to contain a statement of the effect of paragraphs (2) to (5) below.

(2) A person in respect of whom a requirement has been made under paragraph (1) may apply to the adjudicator to vary or set aside that requirement.

(3) A person is not bound to comply with a requirement under paragraph (1)(a) unless—

- (a) that person has been given at least seven days' notice of the hearing; or
- (b) if less than seven days' notice has been given, that person has informed the adjudicator that that person accepts such notice as that person has been given.

(4) No person is to be required under paragraph (1) to give any evidence or produce any document which that person would be entitled to refuse to give or produce in proceedings in a court.

(5) If any person who is required under paragraph (1) to attend a hearing held by an adjudicator, or to produce any document to an adjudicator, fails without reasonable excuse to do so, that person commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Procedure at a hearing

18.—(1) At the beginning of the hearing of an appeal the adjudicator is to explain the procedure which the adjudicator proposes to adopt.

(2) Subject to the provisions of this regulation, the adjudicator is to conduct the hearing of an appeal in such manner as the adjudicator considers most suitable to the clarification of the issues before the adjudicator and generally to the just handling of the proceedings and the adjudicator is to seek, so far as appears to the adjudicator appropriate, to avoid formality in the proceedings.

(3) Any hearing of an appeal by the adjudicator is to be in public except where the adjudicator is satisfied that, by reason of exceptional circumstances, it is just and reasonable for the hearing, or part of it, to be in private.

(4) The following persons are entitled to attend the hearing of an appeal whether or not it is in private—

- (a) any other adjudicator; and
- (b) a member of the Administrative Justice and Tribunals Council or of the Scottish Committee of that Council.

(5) The adjudicator, with the consent of the parties, may permit any other person to attend the hearing of an appeal which is held in private or, where part of it is so held, that part.

(6) The adjudicator may exclude from the hearing of an appeal, or part of it, any person whose conduct has disrupted or is likely, in the opinion of the adjudicator, to disrupt the hearing.

(7) Subject to paragraph (9), at the hearing the authority may be represented by a solicitor, counsel or any other person.

(8) At the hearing of an appeal, the appellant may conduct the appellant's case personally (with assistance from any person if the appellant wishes) or may be represented by a solicitor, counsel or any other person.

(9) If in any particular case the adjudicator is satisfied that there are good and sufficient reasons for doing so, the adjudicator may refuse to permit a particular person to assist or represent either party at the hearing.

(10) At the hearing of an appeal—

- (a) the parties are entitled to give evidence, to call witnesses, to question any witness and to address the adjudicator both on the evidence and generally on the subject matter of the appeal; and
- (b) the adjudicator may receive evidence of any fact which appears to the adjudicator to be relevant notwithstanding that such evidence would be inadmissible in proceedings before a court of law.

(11) Where a party who has been sent a notice of the hearing of an appeal, or otherwise informed of the hearing in accordance with regulation 16, fails to attend or be represented at the hearing, the adjudicator may dispose of the appeal in the absence of that party.

Evidence by production of record

19.—(1) The adjudicator may permit evidence of the fact of a contravention to be given by the production of—

- (a) a record produced by an approved device; and
- (b) in the same or another document, a certificate as to the circumstances in which the record was produced, signed by a person authorised in that behalf by the authority.

(2) A document stated in evidence to be such a record as is mentioned in paragraph (1)(a), or such a certificate as is mentioned in paragraph (1)(b), is to be treated as such a record or certificate, unless the contrary is proved.

Decisions on appeals

20.—(1) The adjudicator must determine the appeal after considering all the evidence and all representations made by or on behalf of the parties.

(2) The adjudicator must state the reasons for the decision.

(3) Where an appeal is disposed of at a hearing, the adjudicator may give the adjudicator's decision and the reasons orally at the end of the hearing, or may reserve the adjudicator's decision and give the adjudicator's reasons subsequently in writing.

(4) An adjudicator who decides to allow an appeal may give the authority such directions as the adjudicator considers appropriate.

(5) It is the duty of an authority to whom a direction is given under paragraph (4) to comply with it without delay.

(6) When the decision is given (whether at a hearing or otherwise), the proper officer must—

- (a) without delay record in the register the decision, the adjudicator's reasons and any directions given; and
- (b) send a copy of the register entry to each party.

Review of adjudicator's or proper officer's decision

21.—(1) The adjudicator may, on the application of a party, review and revoke or vary any decision to reject a notice of appeal or to dismiss or allow an appeal, or any decision as to expenses, on the grounds (in each case) that—

- (a) the decision was wrongly made as the result of an administrative error;
- (b) the proper officer was wrong to reject the notice of appeal;
- (c) a party who failed to appear or be represented at a hearing had good and sufficient reason for that party's failure to appear;
- (d) where the decision was made after a hearing, new evidence has become available since the conclusion of the hearing, the existence of which could not reasonably have been known or foreseen;
- (e) where the decision was made without a hearing, new evidence has become available since the decision was made, the existence of which could not reasonably have been known or foreseen; or
- (f) the interests of justice require such a review.

(2) The adjudicator may, on the application of a party, review and revoke or vary any decision not specified in paragraph (1).

(3) An application under paragraph (1) or (2) must—

- (a) be delivered to the proper officer within the period of 14 days beginning with the date on which the copy of the register entry is served on the party making the application; and
- (b) state the grounds in full.

(4) The parties are to have the opportunity to be heard on any application for review under paragraph (1) or (2).

(5) If, having reviewed the decision, the adjudicator directs that it be set aside, the adjudicator must substitute such decision as the adjudicator thinks fit or order a re-determination by the same or a different adjudicator.

(6) Regulation 20 applies to a decision under this regulation as it applies to a decision made on the disposal of an appeal.

Expenses

22.—(1) The adjudicator must not normally make an order as to expenses, but may, subject to paragraph (2), make such an order—

- (a) against a party (including an appellant who has withdrawn an appeal or an authority that has consented to an appeal being allowed) if the adjudicator is of the opinion that the party has acted frivolously or vexatiously or that the party's conduct in making, pursuing or resisting an appeal was wholly unreasonable; or
- (b) against the authority, where the adjudicator considers that the decision appealed against was wholly unreasonable.

(2) An order is not to be made under paragraph (1) against a party unless that party has been given an opportunity to make representations against the making of the order.

(3) An order under paragraph (1) must require the party against whom it is made to pay the other party a specified sum in respect of the expenses incurred by that other party in connection with the proceedings.

Recovery of amount payable under regulation 22

23. Any amount which is payable under an order under regulation 22 is recoverable by the person to whom the amount is payable, as if it were payable under an extract decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.

Conjoining of appeals

24.—(1) Where two or more appeals are pending and it appears to the adjudicator—

- (a) that a question of law or fact common to both or all the appeals arises; or
- (b) for some other reason it is desirable to make an order under this regulation,

the adjudicator may order that some or all of the appeals as may be specified in the order, are to be conducted together, and may give such consequential directions as appear to the adjudicator to be necessary.

(2) An order is not to be made under this regulation unless all parties concerned have been given an opportunity to make representations against the making of such an order.

Miscellaneous powers of the adjudicator

25.—(1) The adjudicator may, if the adjudicator thinks fit—

- (a) extend the time appointed by or under this Part for doing any act notwithstanding that the time appointed may have expired;

- (b) if the appellant at any time delivers to the proper officer notice of the withdrawal of the appellant's appeal, dismiss the proceedings;
- (c) if the authority consents to an appeal being allowed, allow the appeal;
- (d) if the parties agree in writing on the terms of a decision to be made by an adjudicator, decide accordingly; or
- (e) adjourn a hearing.

(2) The powers of the adjudicator conferred by these Regulations, other than regulation 21, may be exercised on the adjudicator's own initiative or on the application of a party.

Correction of clerical mistakes and errors

26. Clerical mistakes in any document recording a direction or decision of the adjudicator, or errors in such a document arising from an accidental slip or omission, may be corrected by the proper officer on the direction of the adjudicator.

Service of documents on the parties

27.—(1) This regulation has effect in relation to any notice or other document required or authorised by these Regulations to be sent to a party to an appeal.

(2) Any document is to be regarded as having been sent to that party if it is—

- (a) delivered personally to that party;
- (b) left at that party's proper address;
- (c) sent by post to that party at that address; or
- (d) transmitted to that party by fax or by email in accordance with paragraph (3).

(3) A document may be transmitted to a party by fax or by email where—

- (a) the party has indicated in writing that the party is willing to regard a document as having been duly sent to the party if it is transmitted to a specified fax telephone number or, as the case may be, a specified email address; and
- (b) the document is transmitted to that number or address.

(4) In the case of an authority, an indication under paragraph (3)(a) may be expressed to apply in relation to any appeal to which it is the respondent.

(5) Where the proper address includes a box number at a document exchange the delivery of such a document may be effected by leaving the document addressed to that box number—

- (a) at that document exchange; or
- (b) at a document exchange which transmits documents every working day to that exchange,

and any such document so left is to be taken to have been delivered on the second working day after the day on which it was left.

(6) For the purposes of these Regulations—

- (a) the proper address of the appellant is the address for service specified pursuant to regulation 12(3)(c) or, if no address is so specified, the address specified pursuant to regulation 12(3)(b); and
- (b) the proper address of an authority in proceedings in which it is the respondent is such address as the authority from time to time specifies in a notice delivered to the proper officer as being the authority's address for service in all such proceedings.

(7) A party may at any time, by notice in writing delivered to the proper officer, change that party's proper address for the purposes of this Part.

(8) A party may, by notice in writing delivered to the proper officer, vary or revoke any indication given under paragraph (3)(a).

(9) A notice or document—

(a) left at the proper address of a party is to be taken to have been delivered on the first working day after the day on which it was left;

(b) sent by fax or other means of electronic transmission is to be taken to have been delivered on the first working day after the day on which it was transmitted.

Delivery of notices or documents to the proper officer

28.—(1) This regulation has effect in relation to any notice or other document required or authorised by or under this Part to be delivered to the proper officer.

(2) Any such notice or document may be delivered to the proper officer by being transmitted to the proper officer by fax or by email, but only to a telephone number or, as the case may be, email address for the time being published by the proper officer for the purpose of receiving such notices or documents.

(3) Any notice or document so transmitted is to be taken to have been delivered on the first working day after the day on which it was transmitted.

(4) Where the address of the proper officer includes a box number at a document exchange the delivery of such a document may be effected by leaving the document addressed to that box number—

(a) at that document exchange; or

(b) at a document exchange which transmits documents every working day to that exchange, and any such document so left is to be taken to have been delivered on the second working day after the day on which it was left.

(5) Regulations 12(3)(a) and 14(4)—

(a) will, in the case of a document transmitted by fax, be satisfied if a copy of the signature of the relevant person appears on the transmitted copy; and

(b) will not apply in relation to a document transmitted by email.

The register

29.—(1) The adjudicator for each approved local authority must establish and maintain a register for the purposes of recording proceedings conducted under this Part.

(2) The register is to be kept open for inspection by any person without charge at all reasonable hours at the accommodation provided for adjudicators.

(3) The register may be kept in electronic form.

(4) If the register is kept in electronic form, the duty to allow inspection is to be treated as a duty to allow inspection of a reproduction in legible form of the recording of the entry the inspection of which is being sought.

(5) A document purporting to be certified by the proper officer as a true copy of any entry of a decision in the register is to be evidence of the entry and of the matters contained in it.

PART VI

ENFORCEMENT OF CHARGES

Charge certificates

30.—(1) Where—

- (a) a charge notice is served on any person; and
- (b) the charge to which it relates is not paid before the end of the relevant period, the enforcing authority may serve on that person a statement (a “charge certificate”) to the effect that the charge in question is increased by 50 per cent.

(2) The “relevant period” for the purposes of paragraph (1) means—

- (a) where a notice of rejection is served but no appeal is made, the period of 28 days beginning with the date of service of the notice of rejection;
- (b) where there has been an unsuccessful appeal against the imposition of the charge, the period of 28 days beginning with the date on which the adjudicator’s decision is sent to the appellant pursuant to regulation 20(6);
- (c) where an appeal is withdrawn, the period of 14 days beginning with the date on which it is withdrawn; and
- (d) where no representations are made, the period of 28 days beginning with the date on which the charge notice is served.

Enforcement of charges

31. Where, in relation to a charge notice—

- (a) the relevant period for the purposes of regulation 30(1) has expired; and
- (b) the increased charge for which the charge certificate provides is not paid before the end of the period of 14 days beginning with the date on which the certificate is served,

the authority concerned may recover the charge as if it were payable under an extract registered decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.

PART VII

FINANCIAL PROVISIONS

Accounts and application of sums paid by way of charges

32.—(1) Each approved local authority which has resolved to impose charges under regulation 3(1) must—

- (a) keep an account of the sums paid to that authority by way of charges under these Regulations; and
- (b) as soon as practicable after the end of the financial year, forward a copy of the account for that year to the Scottish Ministers.

(2) Any sums paid to an approved local authority by way of charges under these Regulations must be applied by that authority for the purpose of directly or indirectly facilitating the achievement of policies in that authority’s local transport strategy.

St Andrew's House,
Edinburgh
15th December 2011

KEITH BROWN
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the enforcement of bus lane contraventions, by local authorities which are approved local authorities for the purposes of section 44 of the Transport (Scotland) Act 2001. The names of the authorities concerned are set out in the Schedule to the Bus Lane Contraventions (Approved Local Authorities) (Scotland) Order 2011 ([S.S.I. 2011/443](#)).

In Part 1, regulation 2 defines expressions used in the Regulations.

In Part 2, regulation 3 authorises the imposition of a charge in respect of a bus lane contravention only on the basis of a record produced by an approved device. The devices that are approved for these purposes are described in the Bus Lanes (Approved Devices) (Scotland) Order 2011 ([S.S.I. 2011/444](#)).

Regulation 4 provides for the level of a charge to be set by each approved authority. A charge may only be imposed if the level has been approved by the Scottish Ministers and a notice, stating the circumstances in which a charge may be imposed and the level of the charge has been published in accordance with paragraph (1). The charge is liable to be increased or reduced by half in the circumstances set out in paragraphs (3) and (4).

Subject to specified exceptions, regulation 5 requires the registered keeper of the vehicle involved in the contravention to pay the charge. The exceptions are set out in regulation 6.

Regulation 7 provides that an approved local authority cannot recover a charge (or a charge must be refunded) where criminal proceedings are taken, or where a fixed penalty notice has been given, in respect of the conduct that constituted the contravention.

In Part III, regulation 8 provides for service of a charge notice on the person appearing to the approved authority to be the person by whom it is payable. The notice is to be served within 28 days after the contravention occurred, but that period can be extended where the local authority is awaiting from the Secretary of State further details as to the identity of the keeper of the vehicle concerned. Paragraph (5) specifies the matters of which particulars must be given in the charge notice, including a statement that the charge will be reduced by a half if paid within 14 days of the date of service of the notice, and may be increased by a half if not paid within 28 days of that date.

Regulation 9 enables a person on whom a charge notice has been served to make representations to the authority concerned. Regulation 10 requires the authority to consider the representations and any supporting evidence, and to respond to the representations. Where representations are rejected (by a “notice of rejection”), the authority are required to notify the person concerned of his right to appeal the matter to an adjudicator.

Parts IV and V relate to appeals. Regulation 11 provides that parking adjudicators will be bus lane adjudicators and that the approved local authorities will make provision for their accommodation, facilities and staff (one of whom must be the “proper officer” on whom specific functions are conferred by the Regulations).

Regulations 12 sets out the procedure for making an appeal, and specifies that appeals must, subject to a right to ask the adjudicator to extend the period, be made within 28 days from the date of service of the notice of rejection. Regulation 13 provides for the procedure on service of notice of appeal and regulation 14 for the making of further representations. Regulations 15 to 19 make provision for the appeal procedure. Regulation 15 enables the adjudicator to dispense with an oral hearing save in specified circumstances. Regulation 16 requires the proper officer to fix the time and place of a hearing and notify the parties and regulation 17 empowers the adjudicator to require

persons to give evidence or produce documents. Regulation 18 deals with the procedure at hearings and regulation 19 provides for the production of documentary evidence of the alleged contravention. Regulation 20 makes provision about adjudicators' decisions; in particular it requires them to be recorded in the register kept pursuant to regulation 29.

Regulation 21 enables a party to an appeal to ask for the adjudicator's decision to be reviewed.

Regulation 22 to 26 deal with miscellaneous matters, including provision that expenses will not normally be awarded save in specified circumstances and provision about the correction of clerical errors.

Regulations 27 and 28 make provision about the service and delivery of documents.

Part VI deals with the enforcement of payment of charges. Regulation 30 provides for a charge to be increased by a half if it is not paid within "the relevant period" as defined in paragraph (2). In Part VII, regulation 32 requires each approved local authority to keep an account of the sums paid by way of charges.

No Business Regulatory Impact Assessment has been undertaken since the Regulations are concerned with the enforcement of existing traffic restrictions and prohibitions and do not therefore constitute an additional burden on business. The costs incurred by local authorities undertaking enforcement are expected to be defrayed by charge income.