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STATUTORY INSTRUMENTS

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**2005 No. 2757**

**The Bus Lane Contraventions (Penalty Charges,  
Adjudication and Enforcement) (England) Regulations 2005**

**PART 5**

**APPEALS AGAINST PENALTY CHARGES**

**Interpretation of Part 5**

- 13.** In this Part, 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 penalty charge;
  - “charge notice concerned” means the penalty charge notice conveying the authority’s decision to impose the charge;
  - “hearing” means an oral hearing; and
  - “party” means the appellant or the authority.

**Initiating an appeal**

- 14.—(1)** A person on whom a penalty charge notice has been served may appeal against the imposition of the penalty charge if—
- (a) he has made representations to the authority under regulation 9; and
  - (b) he has received from the authority a notice of rejection.
- (2) An appeal shall be made by delivering a notice of appeal to the proper officer.
- (3) A notice of appeal—
- (a) must be in writing and signed by the appellant or his duly authorised agent;
  - (b) must state the name and address of the appellant;
  - (c) may specify some other address as being the address to which he wishes documents to be sent to him 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; and
  - (e) may include any additional representations on any of the statutory grounds of appeal which the appellant desires to make.
- (4) The notice of appeal shall be delivered 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 delivered to the proper officer outside the appeal period, the appellant must include in the notice a statement of the reasons on which he relies for justifying the delay.

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

### **Action on receipt of notice of appeal**

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

(2) If he is satisfied that the notice is in accordance with regulation 14, the proper officer shall—

- (a) enter particulars of the appeal in the register; and
- (b) send to the authority a copy of the notice of appeal; and
- (c) notify both the appellant and the authority of any direction given by the adjudicator under regulation 14(6).

(3) Within seven days of the receipt of a copy of a notice of appeal, the authority shall 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 he considers that it is not in accordance with regulation 14; or
- (b) is delivered 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 shall inform the appellant of the reasons why he considers that the notice does not accord with regulation 14 or, as the case may be, that adjudicator has declined the request for an extension and shall record the action taken in the register.

### **Further representations**

**16.**—(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 deliver to the proper officer representations dealing with such matters relating to the appeal as may be specified and any such representations shall be so delivered 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 him proper.

(4) Any representations delivered under this regulation shall be signed by the party in question or his authorised representative.

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

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

### **Disposing of an appeal without a hearing**

**17.**—(1) Subject to the provisions of this Part of these Regulations, 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 his 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 shall 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, he—

- (a) shall inform the parties of that intention; and
- (b) shall not dispose of the appeal without a hearing unless and until either—
  - (i) there has elapsed a period of four weeks beginning with the date on which an acknowledgement is sent in accordance with regulation 15(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**

**18.**—(1) This regulation shall have effect where a hearing is to be held for the purpose of disposing of an appeal.

(2) The proper officer shall—

- (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 he thinks fit.

(3) The adjudicator may alter the time and place of any hearing, and the proper officer shall, 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 he 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 shall be required.

#### **Power to require attendance and production of documents**

**19.**—(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 his custody or under his control, relating to any matter in the proceedings,

and any such notice shall 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 the requirement.

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

- (a) he has been given at least seven days' notice of the hearing; or

(b) if less than seven days' notice has been given, he has informed the adjudicator that he accepts such notice as he has been given.

(4) No person shall be required under paragraph (1) to give any evidence or produce any document which he could not be required to give or produce on the trial of an action in a court of law.

(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, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

### **Procedure at a hearing**

**20.**—(1) At the beginning of the hearing of an appeal the adjudicator shall explain the order of proceeding which he proposes to adopt.

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

(3) Any hearing of an appeal by the adjudicator shall 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 shall be entitled to attend the hearing of an appeal whether or not it is in private—

(a) any other adjudicator; and

(b) (for the purpose of discharging his functions as a member of that Council) a member of the Council on Tribunals.

(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) 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 his case himself (with assistance from any person if he 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, he 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 shall be 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 him 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 notice of the hearing of an appeal, or otherwise informed of the hearing in accordance with regulation 18, fails to attend or be represented at the hearing, the adjudicator may dispose of the appeal in his absence.

### **Evidence by production of record**

**21.**—(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), shall be treated as such a record or certificate, unless the contrary is proved.

### **Decisions on appeals**

**22.**—(1) The adjudicator shall 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 his decision.

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

(4) If the adjudicator decides to allow the appeal he shall give the authority such directions as he considers appropriate.

(5) It shall be the duty of an authority to whom a direction is given under paragraph (4) to comply with it forthwith.

(6) Upon the decision being given (whether at a hearing or otherwise), the proper officer shall—

- (a) forthwith 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**

**23.**—(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 costs, 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 his 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 interlocutory decision.

(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 parties; and
  - (b) state the grounds in full.
- (4) The parties shall 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, he shall substitute such decision as he thinks fit or order a re-determination by either himself or a different adjudicator.
- (6) Regulation 22 shall apply to a confirmation, revocation or variation of a decision under this regulation as it applies to a decision made on the disposal of an appeal.

### **Costs**

- 24.**—(1) The adjudicator shall not normally make an order awarding costs and expenses, but may, subject to paragraph (2), make such an order—
- (a) against a party (including an appellant who has withdrawn his appeal or an authority that has consented to an appeal being allowed) if he is of the opinion that the party has acted frivolously or vexatiously or that his conduct in making, pursuing or resisting an appeal was wholly unreasonable; or
  - (b) against the authority, where he considers that the decision appealed against was wholly unreasonable.
- (2) An order shall not 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) shall require the party against whom it is made to pay the other party a specified sum in respect of the costs and expenses incurred by that other party in connection with the proceedings.

### **Recovery of amount payable under an adjudication**

**25.** Any amount which is payable under an adjudication of an adjudicator shall, if a county court so orders, be recoverable by the person to whom the amount is payable, as if it were payable under a county court order.

### **Consolidation of proceedings**

- 26.**—(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 all the appeals, or such of the appeals as he may specify, shall be conducted together, and may give such consequential directions as appear to him to be necessary.
- (2) An order shall not 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**

- 27.**—(1) The adjudicator may, if he 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 his 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 23, may be exercised on his own initiative or on the application of a party.

### **Correction of clerical mistakes and errors**

**28.** 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**

**29.—**(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 shall be regarded as having been sent to that party if it is—

- (a) delivered to him;
- (b) left at his proper address;
- (c) sent by first class post to him at that address; or
- (d) transmitted to him by fax or other means of electronic data transmission in accordance with paragraph (3).

(3) A document may be transmitted to a party by fax or by other means of electronic data transmission where—

- (a) the party has indicated in writing that he is willing to regard a document as having been duly sent to him if it is transmitted to a specified fax telephone number or, as the case may be, a specified electronic 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 they are 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 shall 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, and of section 7 (references to service by post) of the Interpretation Act 1978(1) (“the 1978 Act”) in its application to this regulation,—

- (a) the proper address of the appellant is the address for service specified pursuant to regulation 14(3)(c) or, if no address is so specified, the address specified pursuant to regulation 14(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 specify in a notice delivered to the proper officer as being the authority’s address for service in all such proceedings.

(7) If no address for service has been specified, the proper address for the purposes of this Part, and section 7 of the 1978 Act, shall be—

- (a) in the case of an individual, his usual or last known address;
- (b) in the case of a partnership, the principal or last known place of business of the firm within the United Kingdom;
- (c) in the case of an incorporated or unincorporated body, the registered or principal office of the body.

(8) A party may at any time, by notice in writing delivered to the proper officer, change his proper address for the purposes of this Part and section 7 of the 1978 Act.

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

(10) A notice or document—

- (a) left at the proper address of a party shall 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 shall 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**

**30.**—(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 other means of electronic data transmission, but only to a telephone number or, as the case may be, electronic 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 shall 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 shall be taken to have been delivered on the second working day after the day on which it was left.

(5) Regulations 14(3)(a) and 16(4)—

- (a) shall, 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) shall not apply in relation to a document transmitted by other means of electronic data transmission.

### **The register**

**31.**—(1) The joint committee set up pursuant to regulation 12(1) shall establish and maintain the register for the purposes of recording proceedings conducted under this Part of these Regulations.

(2) The register shall 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 to be a true copy of any entry of a decision in the register shall be evidence of the entry and of the matters contained in it.