
WELSH STATUTORY INSTRUMENTS

2008 No. 1214 (W.122)

ROAD TRAFFIC, WALES

**The Civil Enforcement of Parking Contraventions
(General Provisions) (Wales) (No. 2) Regulations 2008**

<i>Made</i>	- - - -	<i>29 April 2008</i>
<i>Laid before the National Assembly for Wales</i>	- -	<i>30 April 2008</i>
<i>Coming into force</i>	- -	<i>22 May 2008</i>

The Welsh Ministers, in exercise of the powers conferred upon the National Assembly for Wales by sections 72, 73(3), 79, 88 and 89 of the Traffic Management Act 2004⁽¹⁾ and now vested in them⁽²⁾, hereby make the following Regulations:

PART 1

PRELIMINARY

Title, commencement and application

1.—(1) The title of these Regulations is the Civil Enforcement of Parking Contraventions (General Provisions) (Wales) (No. 2) Regulations 2008. They come into force on 22nd May 2008.

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations—

“the 2004 Act” (“*y Ddeddf 2004*”) means the Traffic Management Act 2004;

“adjudicator” (“*dyfarnydd*”) means an adjudicator appointed under regulation 9 of the Enforcement and Adjudication Regulations;

(1) 2004 c. 18. Section 79 was amended by the Disability Discrimination Act 2005 (c. 13), Schedule 1, paragraph 48 and section 81 was amended by S.I. 2006/1016. By virtue of section 92, the National Assembly for Wales was designated as the “appropriate national authority” as regards Wales, for the purposes of regulations made under Part 6.

(2) The functions of the National Assembly for Wales under the Traffic Management Act 2004 were transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

“approved device” (“*dyfais a gymeradwyir*”) has the meaning given by article 2 of the Civil Enforcement of Parking Contraventions (Approved Devices) (Wales) (No.2) Order 2008(3);

“civil enforcement area” (“*ardal gorfodi sifil*”) has the meaning given by paragraph 8 of Schedule 8 to the 2004 Act;

“civil enforcement officer” (“*swyddog gorfodi sifil*”) has the meaning given by section 76 of the 2004 Act;

“the Enforcement and Adjudication Regulations” (“*y Rheoliadau Gorfodi a Dyfarnu*”) means the Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication) (Wales) Regulations 2008(4);

“enforcement authority” (“*awdurdod gorfodi*”) in relation to a penalty charge or the immobilisation or removal of a vehicle means the enforcement authority in relation to the alleged contravention in consequence of which the charge was incurred or the vehicle was immobilised;

“outstanding” (“*dyledus*”) in relation to a penalty charge is to be construed in accordance with paragraphs (2) to (4);

“owner” (“*perchennog*”) in relation to a vehicle includes any person who falls to be treated as the owner of the vehicle by virtue of regulation 4;

“pedestrian crossing contravention” (“*tramgwydd croesfan i gerddwyr*”) means a parking contravention consisting of an offence referred to in paragraph 4(2)(c) of Schedule 7 to the 2004 Act (prohibition on stopping of vehicles on or near pedestrian crossings);

“penalty charge” (“*tâl cosb*”) means a penalty charge relating to a parking contravention and payable in accordance with regulation 3;

“penalty charge notice” (“*hysbysiad o dâl cosb*”) has the meaning given in regulation 4 of the Enforcement and Adjudication Regulations;

“regulation 6 penalty charge notice” (“*hysbysiad rheoliad 6 o dâl cosb*”) means a penalty charge notice served under regulation 6 of the Enforcement and Adjudication Regulations;

“the Welsh enforcement authorities” (“*awdurdodau gorfodi Cymru*”) means those enforcement authorities which are local authorities in Wales;

“the Representations and Appeals Regulations” (“*y Rheoliadau Sylwadau ac Apelau*”) means the Civil Enforcement of Parking Contraventions (Representations and Appeals)(Wales) Regulations 2008(5).

(2) For the purposes of these Regulations a penalty charge is outstanding in relation to a vehicle if—

- (a) the charge has not been paid and the enforcement authority to which the charge is payable has not waived payment, whether by cancellation of the penalty charge notice or notice to owner or otherwise;
- (b) the owner of the vehicle when it was immobilised was also the owner of the vehicle when the penalty charge was imposed; and
- (c) either—
 - (i) a notice to owner or regulation 6 penalty charge notice has been served in respect of the charge and the conditions in paragraph (3) are satisfied; or
 - (ii) no notice to owner or regulation 6 penalty charge notice has been served in respect of the charge and the conditions in paragraph (4) are satisfied.

(3) S.I. 2008/1215 (W.123).

(4) S.I. 2008/609.

(5) S.I. 2008/608.

- (3) The conditions referred to in paragraph (2)(c)(i) are that—
- (a) the penalty charge was imposed, in accordance with these Regulations, by an enforcement authority in respect of a parking contravention;
 - (b) the penalty charge is the subject of a charge certificate served under regulation 13 of the Enforcement and Adjudication Regulations which has not been set aside in accordance with regulation 15 of those Regulations.
- (4) The conditions referred to in paragraph (2)(c)(ii) are that—
- (a) the penalty charge related to a vehicle which, when the penalty charge became payable—
 - (i) was not registered under the Vehicle Excise and Registration Act 1994(6); or
 - (ii) was so registered, but without the inclusion in the registered particulars of the correct name and address of the keeper of the vehicle;
 - (b) having taken all reasonable steps, the enforcement authority to which the penalty charge was payable was unable to ascertain the name and address of the keeper of the vehicle and was consequently unable to serve a notice to owner under regulation 11 of the Enforcement and Adjudication Regulations, or a regulation 6 penalty charge notice; and
 - (c) the period of 42 days beginning with the date on which the penalty charge became payable has expired.

PART 2

PENALTY CHARGES

Imposition of penalty charges

3. Subject to the provisions of these Regulations a penalty charge is payable with respect to a vehicle where there has been committed in relation to that vehicle a parking contravention within paragraph 4 of Schedule 7 to the 2004 Act in a civil enforcement area in Wales.

Person by whom a penalty charge is to be paid

4.—(1) Where a parking contravention occurs, the person by whom the penalty charge for the contravention is to be paid, will be determined in accordance with the following provisions of this regulation.

(2) In a case not falling within paragraph (3), the penalty charge is payable by the person who was the owner of the vehicle involved in the contravention at the material time.

(3) Where—

- (a) the vehicle is a mechanically propelled vehicle which was, at the material time, hired from a vehicle-hire firm under a hiring agreement;
- (b) the person hiring it had signed a statement of liability acknowledging his or her 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; and
- (c) in response to a notice to owner served on him or her, the owner of the vehicle made representations on the ground specified in regulation 4(4)(d) of the Representations and Appeals Regulations and the enforcement authority accepted those representations,

the penalty charge is payable by the person by whom the vehicle was hired and that person will be treated as if he or she were the owner of the vehicle at the material time for the purposes of these Regulations.

- (4) In this regulation—
- (a) “hiring agreement” (“*cytundeb llogi*”) and “vehicle-hire firm” (“*ffyrm llogi cerbydau*”) have the same meanings as in section 66 of the Road Traffic Offenders Act 1988(7); and
 - (b) “the material time” (“*yr adeg berthnasol*”) means the time when the contravention giving rise to the penalty charge is said to have occurred.

Evidence of contravention

5. A penalty charge must not be imposed except on the basis of—
- (a) a record produced by an approved device; or
 - (b) information given by a civil enforcement officer as to conduct observed by that officer.

Criminal proceedings for parking contraventions in civil enforcement areas

6.—(1) No criminal proceedings may be instituted and no fixed penalty notice may be served in respect of any parking contravention occurring in a civil enforcement area, except a pedestrian crossing contravention.

(2) A penalty charge will not be payable in relation to a pedestrian crossing contravention 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.

(3) Where, notwithstanding the provisions of paragraph (2)—

- (a) a penalty charge has been paid in respect of a pedestrian crossing contravention; and
- (b) the circumstances are as mentioned in paragraph (2)(a) or (b),

the enforcement authority must, as soon as reasonably practicable after those circumstances come to its notice, refund the amount of the penalty charge.

PART 3

IMMOBILISATION OF VEHICLES

Power to immobilise vehicles

7.—(1) Subject to regulation 8, (limitations on the power to immobilise vehicles) where a civil enforcement officer has reason to believe that a vehicle has been permitted to remain at rest in any place in a civil enforcement area in circumstances in which a penalty charge has become payable, he or she or a person acting under his or her direction may fix an immobilisation device to the vehicle while it remains in the place where it was found.

(2) On any occasion when an immobilisation device is fixed to a vehicle in accordance with this regulation, the person fixing the device must also fix to the vehicle a notice—

(7) 1988 c. 53.

(8) Section 52 was amended by the Access to Justice Act 1999 (c. 22), paragraph 147, by the Courts Act 2003 (c. 39) Schedule 8, paragraph 314 and by the Statute Law (Repeals) Act 2004 (c. 14), Schedule 1, Part 14.

- (a) indicating that such a device has been fixed to the vehicle and warning that no attempt should be made to drive it or otherwise put it in motion until it has been released from that device;
 - (b) specifying the steps to be taken in order to secure its release; and
 - (c) warning that unlawful removal of an immobilisation device is an offence.
- (3) A notice fixed to a vehicle in accordance with this section must not be removed or interfered with except by or under the authority of—
- (a) the owner, or person in charge of the vehicle; or
 - (b) the enforcement authority.
- (4) A person contravening paragraph (3) is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.
- (5) Any person who, without being authorised to do so in accordance with these Regulations, removes or attempts to remove an immobilisation device fixed to a vehicle in accordance with this regulation is guilty of an offence and will be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Limitations on the power to immobilise vehicles

8.—(1) An immobilisation device must not be fixed to a vehicle if there is displayed on the vehicle—

- (a) a current disabled person's badge; or
- (b) a current recognised badge.

(2) If, in a case in which an immobilisation device would have been fixed to a vehicle but for paragraph (1)(a), the vehicle was not being used—

- (a) in accordance with regulations under section 21 of the Chronically Sick and Disabled Persons Act 1970⁽⁹⁾;
- (b) in circumstances falling within section 117(1)(b) of the Road Traffic Regulation Act 1984⁽¹⁰⁾ (use where a disabled persons' concession would be available),

the person in charge of the vehicle will be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) If, in a case in which an immobilisation device would have been fixed to a vehicle but for paragraph (1)(b), the vehicle was not being used—

- (a) in accordance with regulations under section 21A of the Chronically Sick and Disabled Persons Act 1970⁽¹¹⁾;
- (b) in circumstances falling within section 117(1A)(b) of the Road Traffic Regulation Act 1984 ⁽¹²⁾(use where a disabled person's concession would be available by virtue of displaying a non-GB badge),

the person in charge of the vehicle will be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

⁽⁹⁾ 1970 c. 44: in relation to Wales, section 21 was amended by the Local Government Act 1972 (c. 70), Schedule 30, by the Transport Act 1982 (c. 49) section 68, by the Road Traffic Regulation Act 1984 (c. 27), Schedule 13, by the Local Government Act 1985 (c. 51), Schedule 5, paragraph 1, by the Road Traffic Act 1991 (c. 40), section 35(2)-(5), Schedule 8, by the Local Government (Wales) Act 1994, Schedule 10, paragraph 8, Schedule 18, by the Traffic Management Act 2004 section 94(1)-(4) and by the Disability Discrimination Act 2005 (c. 13) Schedule 1, paragraph 41.

⁽¹⁰⁾ 1984 (c. 27); in relation to Wales section 117(1) was substituted by the Road Traffic Act 1991 section 35(6) and amended by the Disability Discrimination Act 2005, Schedule 1, paragraph 44(1), (2) and by the Traffic Management Act 2004, section 94(5).

⁽¹¹⁾ Section 21A was inserted by the Disability Discrimination Act 2005, section 9.

⁽¹²⁾ Subsection (1A) was inserted by the Disability Discrimination Act 2005, Schedule 1, paragraph 44.

(4) An immobilisation device must not be fixed to a vehicle which is in a parking place in respect of a contravention consisting of, or arising out of, a failure—

- (a) to pay a parking charge with respect to the vehicle;
- (b) properly to display a ticket or parking device; or
- (c) to remove the vehicle from a parking place by the end of the period for which the appropriate charge was paid,

until the appropriate period has elapsed since the giving of a penalty charge notice under regulation 5 of the Civil Enforcement of Parking Contraventions (Penalty Charge Notices, Enforcement and Adjudication)(Wales) Regulations 2008 in respect of the contravention.

(5) For the purposes of paragraph (4) the appropriate period is—

- (a) in the case of a vehicle in respect of which there are 3 or more penalty charges outstanding, 15 minutes;
- (b) in any other case 30 minutes.

Release of immobilised vehicles

9.—(1) A vehicle to which an immobilisation device has been fixed in accordance with regulation 7 may only be released from that device by or under the direction of a person authorised by the enforcement authority to give such a direction.

(2) Subject to paragraph (1), such a vehicle must be released from the device on payment in any manner specified in the notice fixed to the vehicle under regulation 7(2) of—

- (a) the penalty charge payable in respect of the parking contravention;
- (b) such charge in respect of the release as may be required by the enforcement authority.

PART 4

FINANCIAL PROVISIONS

Modification of section 55 of the Road Traffic Regulation Act 1984

10.—(1) Section 55 of the Road Traffic Regulation Act 1984(13) applies in relation to the income and expenditure of enforcement authorities in connection with their functions under Part 6 of the 2004 Act in relation to parking contraventions, subject to the following modifications.

(2) For subsection (1) there is substituted—

“(1) A local authority in Wales which is an enforcement authority must keep an account—

- (a) of its income and expenditure in respect of any designated parking places in its area which are not in a civil enforcement area;
- (b) of its income and expenditure (otherwise than as an enforcement authority) in respect of designated parking places in its area which are in a civil enforcement area; and
- (c) of its income and expenditure in connection with its functions as an enforcement authority in relation to parking contraventions within paragraph 4 of Schedule 7 to the 2004 Act.”.

(13) In relation to Wales, section 55 was amended by the Local Government Finance Act 1988 (c. 41), Schedule 12, paragraph 42, by the New Roads and Street Works Act 1991 (c. 22), Schedule 8, paragraph 46, by the Road Traffic Act 1991, Schedule 7, paragraph 5, Schedule 8 and by the, Traffic Management Act 2004, section 95.

(3) For subsection (3A) there is substituted—

“(3A) A local authority in Wales which is an enforcement authority must after the end of each financial year send a copy of the account kept under subsection (1) to the Welsh Ministers.”.

(4) In subsection (3B) for the words “the end of” there is substituted “the conclusion of the audit of the accounts of the body concerned for”.

(5) In subsection (10) after “in this section—” there is inserted—

““the 2004 Act” means the Traffic Management Act 2004;

“enforcement authority” means an authority which is an enforcement authority for the purposes of Part 6 of the 2004 Act (pursuant to paragraphs 1(2), and 8(5) of Schedule 8) and references to the functions of an authority as an enforcement authority are to its functions under that Part of that Act;”.

Surpluses to be carried forward

11. Where, immediately before the coming into force of these Regulations there is a surplus in an account which is—

- (a) kept under section 55 of the Road Traffic Regulation Act 1984 as modified in relation to that authority by an order made under Schedule 3 to the Road Traffic Act 1991(14); and
- (b) kept by a local authority,

the surplus must be carried forward and treated as a surplus arising under section 55 as it is modified by regulation 10.

Revocation of the Civil Enforcement of Parking Contraventions (General Provisions) (Wales) Regulations 2008

12. The Civil Enforcement of Parking Contraventions (General Provisions) (Wales) Regulations 2008 (15) are revoked.

29 April 2008

Ieuan Wyn Jones
Minister for the Economy and Transport, one of
the Welsh Ministers

(14) In relation to Wales, Schedule 3 was amended by S.I. 1996/500.

(15) S.I. 2008/614 (W.66).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Civil Enforcement of Parking Contraventions (General Provisions) (Wales) Regulations 2008 (S.I.2008/614 (W.66)). The Regulations provide for the civil enforcement of parking contraventions in Wales in accordance with Part 6 of the Traffic Management Act 2004. Part 6 of the 2004 Act and Regulations made thereunder supersede the provisions of Part II and Schedule 3 of the Road Traffic Act 1991.

Regulation 3 enables a penalty charge to be imposed for specified types of parking contravention. A penalty charge is payable by the owner of the vehicle concerned (regulation 4(1)), except in the circumstances specified in regulation 4(2) to (4) (vehicle hired from a vehicle hiring firm under a vehicle hiring agreement). In accordance with regulation 5, a penalty charge is not to be imposed except on the basis of a record produced by an “approved device” (see section 92(1) of the Traffic Management Act 2004 and the Civil Enforcement of Parking Contraventions (Approved Devices) (Wales) (No.2) Order 2008 (S.I. 2008/1215 (W.123)) or information given by a civil enforcement officer as to conduct observed by that officer. Regulation 6 provides that a penalty charge is not to be payable for a parking contravention where the contravention is the subject of criminal proceedings or a fixed penalty notice has been given under the Road Traffic Offenders Act 1988, but, if a penalty charge is in fact paid in either of those circumstances, it must be refunded by the enforcement authority.

Provision is made by Part 3 as to the immobilisation of vehicles. Regulation 7 defines when an immobilisation device may be fixed to a vehicle, requires a notice to be fixed to the vehicle at the time of immobilisation and creates the offences of interfering with the notice or the immobilisation device. Regulation 8 specifies exceptions to the general power to immobilise and regulation 9 specifies the pre-requisites for the release of a vehicle from an immobilisation device.

In Part 4, regulation 10 applies section 55 of the Road Traffic Regulation Act 1984, with modifications, to the income and expenditure of enforcement authorities under Part 6 of the Traffic Management Act 2004 and regulation 11 provides for the carrying forward of the surpluses by local authorities in accounts kept under section 55 as that section applied to those authorities under orders made under Schedule 3 to the Road Traffic Act 1991.

A full Regulatory Impact Assessment and Explanatory Memorandum can be obtained from the Integrated Transport Unit, Transport, Planning and Administration Division, Transport Wales, Welsh Assembly Government, Crown Offices, Cathays Park, Cardiff, CF10 3NQ or on the Welsh Assembly Government website at <http://www.assemblywales.org/bus-home/buslegislation/bus/bus-legislation-sub/bus-legislation-sub-annulment.htm>