

2005 No. 2757

ROAD TRAFFIC, ENGLAND

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

<i>Made</i> - - - -	<i>6th October 2005</i>
<i>Laid before Parliament</i>	<i>11th October 2005</i>
<i>Coming into force</i> - -	<i>1st November 2005</i>

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SCHEDULE

Bus lane adjudicators

The Lord Chancellor, in exercise of the powers conferred upon him by sections 144(11) and (12) and 160 of the Transport Act 2000^(a), so far as these Regulations relate to the notification, adjudication and enforcement of penalty charges, and the Secretary of State for Transport, in exercise of the powers conferred by sections 144(1), (2) and (8) to (10) and 160 of that Act, so far as these Regulations relate to other matters, hereby make the following Regulations:

^(a) 2000 c. 38.

PART 1

PRELIMINARY

Citation, commencement and application

1.—(1) These Regulations may be cited as the Bus Lane Contraventions (Penalty Charges, Adjudication and Enforcement) (England) Regulations 2005 and shall come into force on 1st November 2005.

(2) These Regulations apply only to England exclusive of Greater London.

Interpretation

2.—(1) In these Regulations—

“the 2000 Act” means the Transport Act 2000;

“adjudicator”, except in the expression “parking adjudicator”, means a bus lane adjudicator appointed under regulation 11(1)(a);

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

“appeal period” means the period of 28 days specified in regulation 14(4);

“contravention” means a bus lane contravention in which a vehicle is involved;

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

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

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

“proper officer” means a person appointed under regulation 11(1)(c);

“register” means the register of appeals and decisions kept in accordance with regulation 31;

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

(a) representations against a penalty charge notice may be made under regulation 9 to an approved authority; or

(b) an appeal made to an adjudicator under regulation 14;

“vehicle” means motor vehicle; and

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

(2) Subject to regulation 10(2), for the purposes of these Regulations, the owner of a vehicle shall be taken to be the person by whom the vehicle is kept.

(3) In determining, for the purposes of these Regulations, who was the owner of a vehicle at any time, it shall, subject to regulation 10(2), be presumed that the owner was the person in whose name the vehicle was registered under the Vehicle Excise and Registration Act 1994(b) at that time.

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

(5) References to the service of a 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

(a) 1971 c. 80.

(b) 1994 c. 22.

shall be presumed that service of a notice sent by 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.

PART 2

PENALTY CHARGES FOR BUS LANE CONTRAVENTIONS

Penalty charges

3.—(1) Subject to paragraph (2) and regulation 4, an approved local authority may impose a penalty 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 16 of the Highways Act 1980(a).

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

Level of penalty charges

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

- (a) it has first set the level of penalty charge that is to apply within its area;
- (b) the Secretary of State has approved that level; and
- (c) it has published in at least one local newspaper circulating in its area a notice specifying—
 - (i) the circumstances in which a penalty charge may be imposed;
 - (ii) the level of the penalty 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 penalty charges at that level,

and no charge shall be imposed before the date so specified.

(2) In setting the level of penalty charge an approved local authority shall have regard to any guidance for the time being issued by the Secretary of State.

(3) Each approved local authority shall 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 penalty charge for the time being in force in its area.

(4) In the circumstances described in regulation 8(5)(f), an authority must accept a sum equivalent to one half of the level of charge approved by the Secretary of State, in full payment of a penalty charge.

(5) In the circumstances described in regulation 8(5)(j), an authority may increase a penalty charge to a sum equivalent to one and a half times the level of charge approved by the Secretary of State.

Person by whom penalty charge is to be paid

5.—(1) Subject to paragraphs (2) and (3), a penalty charge shall be paid by the owner of the vehicle involved in the contravention.

(2) Where the vehicle involved in the contravention—

- (a) was at the material time the subject of a hiring agreement; and

(a) 1980 c. 66.

- (b) the person hiring it, or an individual authorised to sign on his behalf, has signed a statement of liability acknowledging his liability in respect of any penalty charge incurred during the currency of the hiring agreement,

the penalty charge shall be paid by the person who has hired the vehicle under the agreement.

(3) Where—

- (a) the vehicle involved in the contravention is kept by a vehicle trader; and
- (b) at the time of the contravention, a person other than the vehicle trader is the registered keeper of the vehicle,

the penalty charge shall be paid by the vehicle trader.

(4) In this regulation—

“hiring agreement” means an agreement for the hire of a vehicle—

- (i) 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);
- (ii) which contains such particulars as may for the time being be prescribed for the purpose of section 66(8) (offences relating to hired vehicles) of the Road Traffic Offenders Act 1988(a); and
- (iii) which is not a hire purchase agreement within the meaning of the Consumer Credit Act 1974(b); 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(c).

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

6.—(1) A penalty charge shall not be 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(d), has been given in respect of that conduct.

(2) Where, notwithstanding the provisions of paragraph (1)—

- (a) a penalty charge has been paid in respect of a contravention; and
- (b) the circumstances are as mentioned in paragraph (1)(a) or (b),

the authority shall, as soon as reasonably practicable after those circumstances come to their notice, refund the amount of the penalty charge.

PART 3

NOTIFICATION OF, AND REPRESENTATIONS ABOUT, PENALTY CHARGES

Interpretation of Part 3

7. In this Part—

“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;

(a) 1988 c. 53.

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

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

(d) Section 52 was amended by the Access to Justice Act 1999 (c. 22), Schedule 13, 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.

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

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

Penalty charge notices

8.—(1) Where an approved local authority have reason to believe that a penalty charge is payable under Part 2 with respect to a vehicle, they may, in accordance with paragraphs (2) and (5) below, serve a notice (“penalty charge notice”) on the person appearing to them to be the owner of the vehicle or on the person appearing to them to be the person liable to pay the charge.

(2) Subject to paragraph (3), a penalty charge notice shall 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 have 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 penalty charge notice by virtue of paragraph (2),

the authority shall continue to be entitled to serve a penalty charge notice for a further period of six 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 Vehicle Excise and Registration Act 1994.

(5) A penalty charge notice must state—

- (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 penalty charge is payable;
- (d) the amount of the penalty charge;
- (e) that the penalty charge must be paid before the end of the 28 day period;
- (f) that if the penalty charge is paid before the end of the period of 14 days beginning with the date of service of the notice, the penalty charge will be reduced by one half;
- (g) that representations may be made, on any of the statutory grounds of appeal, to the authority against the imposition of the penalty charge but that representations made outside the 28 day period may be disregarded;
- (h) what are the statutory grounds of appeal;
- (i) the postal address to which representations are to be sent;
- (j) any electronic mail 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 penalty charge has not been paid,the authority may increase the penalty charge by a half and take steps to enforce payment of the charge as so increased;
- (l) the manner in which the penalty charge may be paid;
- (m) that if the representations are rejected an appeal may be made on any of the statutory grounds of appeal may be made to an adjudicator in respect of a penalty charge; and
- (n) that the recipient may, by notice in writing to the authority, request them—
 - (i) to make available at an office of theirs specified by him, free of charge and at a time during normal office hours so specified, for viewing by him and by his representative

(if any), the record of the contravention produced by the approved device pursuant to which the penalty charge was imposed; or

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

(6) Where the recipient of the notice makes a request under paragraph (5)(m), the authority shall comply with the request within a reasonable time.

Representations in respect of penalty charges

9.—(1) The recipient may make written representations on any of the statutory grounds of appeal to the authority against the imposition of the penalty 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 6(1) (other proceedings pursued) applies;
- (c) in a case where the penalty charge notice has been served on the recipient on the basis that he was the owner of the vehicle concerned, that the recipient—
 - (i) never was the owner of the vehicle in question;
 - (ii) had ceased to be its owner before the detection date; or
 - (iii) became its owner after the detection date;
- (d) in a case where the penalty charge notice has been served on the recipient on the basis that he was the hirer of the vehicle concerned, that he was not liable to pay the penalty charge under regulation 5(2);
- (e) that the recipient was the registered keeper of the vehicle in question on the detection date, but on that date—
 - (i) the circumstances were as mentioned in regulation 5(2) (vehicle subject to hiring agreement);
 - (ii) the circumstances were as mentioned in regulation 5(3) (vehicle kept by a vehicle trader), and the recipient was either not a vehicle trader or was a vehicle trader but not the vehicle trader keeping the vehicle; or
 - (iii) the vehicle was in the control of a person who had assumed control of it without the recipient's consent; and
- (f) that the penalty charge exceeded the amount applicable in the circumstances of the case.

(3) Where the ground mentioned in paragraph (2)(c)(ii) 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 his possession).

(4) Where the ground mentioned in paragraph (2)(c)(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 from whom the vehicle was acquired by the recipient (if that information is in his possession).

Response to representations

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

- (a) to consider them and any supporting evidence provided;
- (b) in relation to each ground on which representations are made, to serve on the person by whom the representations are made notice of their decision as to whether or not they accept that the ground has been established.

(2) Where an authority accept that at least one ground on which representations are made is established, they shall—

- (a) cancel the penalty charge notice; and
- (b) serve notice on the recipient stating that the penalty charge notice has been cancelled,

and where the ground that is accepted is that mentioned in regulation 9(2)(e)(ii), the person hiring the vehicle shall be deemed to be its owner for the purposes of these Regulations.

(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 shall—

- (a) state the reasons for the authority’s decision;
- (b) state that an appeal against the imposition of the penalty 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 costs;
- (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 penalty charge is paid; or
 - (ii) an appeal is made to an adjudicator against the imposition of the penalty charge, the authority may increase the penalty charge by 50 per cent and take steps to enforce payment.

(5) Where a penalty charge notice is cancelled under paragraph (2), the authority may serve on any person other than the person on whom the original penalty charge notice was served a fresh penalty charge notice in relation to the alleged contravention that was the subject of the cancelled notice.

(6) Regulation 8 shall apply 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 penalty 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 penalty 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 4

BUS LANE ADJUDICATORS

Appointment of, and provision of facilities for, bus lane adjudicators

11.—(1) Those approved local authorities which have resolved to impose penalty charges under regulation 3(1) shall—

- (a) with the consent of the Lord Chancellor, appoint at least one person to act as a bus lane adjudicator for the purposes of these Regulations;
- (b) provide, or make arrangements for the provision of, accommodation and administrative staff and facilities for adjudicators;

- (c) appoint a person to fulfil the functions of the proper officer under these Regulations and one or more persons to act as his deputy when the proper officer is unable to act; and
- (d) determine the places at which adjudicators are to sit.

(2) The Schedule to these Regulations, which makes provision relating to the appointment of bus lane adjudicators, shall have effect.

Discharge of functions under regulation 11

12.—(1) Where two or more approved local authorities (“the participating authorities”) have resolved to impose penalty charges pursuant to regulation 3(1), the functions conferred on them by regulation 11 shall be discharged through a joint committee (“the joint committee”) set up in pursuance of arrangements entered into under section 101(5) of the Local Government Act 1972(a).

(2) All the participating authorities must be constituent authorities of the joint committee.

(3) The expenses of the joint committee incurred in the discharge of functions conferred on the participating authorities by this regulation shall be defrayed by them in such proportions as they may decide or, in default of a decision by them, as may be determined by an arbitrator nominated by the Chartered Institute of Arbitrators on the application of the joint committee.

(4) The costs of any reference to arbitration under paragraph (3) shall be borne by the participating authorities in equal shares.

(5) Where the Secretary of State is satisfied that there has been, or is likely to be, a failure on the part of the participating authorities to agree on the proportions in which the expenses of the joint committee are to be defrayed by them under paragraph (3), he may give the joint committee such directions as he considers appropriate in order to require it to refer the matter to arbitration under that paragraph.

(6) In accordance with such requirements as may be imposed by the joint committee, each bus lane adjudicator shall make an annual report to the joint committee on the discharge of his functions.

(7) The joint committee shall make and publish an annual report in writing to the Secretary of State on the discharge by the bus lane adjudicators of their functions.

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.

(a) 1972 c. 70.

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^(a) (“the 1978 Act”) in its application to this regulation,—

(a) 1978 c. 30.

- (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.

PART 6

ENFORCEMENT OF PENALTY CHARGES

Charge certificates

32.—(1) Where—

(a) a penalty charge notice is served on any person; and

(b) the penalty 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 penalty 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 penalty charge, the period of 28 days beginning with the date on which the adjudicator’s decision is sent to the appellant pursuant to regulation 22(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 penalty charge notice is served.

Enforcement of penalty charges

33. Where, in relation to a penalty charge notice—

(a) the relevant period for the purposes of regulation 32(1) has expired; and

(b) the increased penalty 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, if the county court so orders, recover the charge as if it were payable under a county court order.

Cancellation of charge certificates, etc

34.—(1) This regulation applies where—

(a) a county court makes an order under regulation 33;

(b) the person against whom it is made makes a statutory declaration complying with paragraph (2); and

(c) subject to paragraph (3), the declaration is, before the end of the period of 21 days beginning with the date on which notice of the county court’s order is served on him, served on the county court which made the order.

(2) The statutory declaration must state (as the case may be) that the person making it—

- (a) did not receive the penalty charge notice in question;
- (b) made representations under regulation 9 but had no response to those representations; or
- (c) appealed to the adjudicator under regulation 14 but had no response to the appeal.

(3) Where it appears to the court, on the application of a person on whom a charge certificate has been served, that it would be unreasonable in the circumstances of his case to insist on his serving his statutory declaration within the period mentioned in paragraph (1)(c), the court may allow such longer period for service of the statutory declaration as it considers appropriate.

(4) Where a statutory declaration is served pursuant to paragraph (1)(c) or within such longer period as may be allowed under paragraph (3)—

- (a) the order of the court shall be treated as revoked;
- (b) the charge certificate shall be treated as cancelled;
- (c) where the declaration contains such a statement as is mentioned in paragraph (2)(a), the penalty charge notice shall be treated as cancelled; and
- (d) the court shall serve written notice of the effect of service of the declaration on the person making it and on the enforcing authority concerned.

(5) Where a declaration contains such a statement as is mentioned in paragraph (2)(a), nothing in regulation 8(2) shall prevent the enforcing authority serving a fresh penalty charge notice on the person making the declaration or any other person.

(6) Where a declaration contains such a statement as is mentioned in paragraph (2)(b) or (c), the enforcing authority shall refer the case to the adjudicator, who may give such directions as he considers appropriate.

Enforcement by execution

35.—(1) Subject to paragraph (2), a sum of money—

- (a) representing an increased penalty charge recoverable in accordance with regulation 33; and
- (b) payable by a person (other than the enforcing authority) under an adjudication of an adjudicator which is recoverable in accordance with regulation 25,

as if it were payable under a county court order shall be treated for the purposes of enforcement by execution as if it were a specified debt in article 2 of the Enforcement of Road Traffic Debts Order 1993^(a) (“the 1993 Order”).

(2) For the purposes of enforcement of payment of a sum referred to in paragraph (1)—

- (a) any reference in the 1993 Order to the authority shall be a reference to the enforcing authority; and
- (b) the reference in article 3(1) of the 1993 Order to the time for serving a statutory declaration shall be a reference to (as the case may be)—
 - (i) the period of 21 days allowed by regulation 34(1)(c); or
 - (ii) where a longer period has been allowed pursuant to regulation 34(3), that period.

(a) S.I. 1993/2073, amended by S.I. 2001/1386.

PART 7
FINANCIAL PROVISIONS

Accounts and application of sums paid by way of penalty charges

36.—(1) Each approved local authority shall keep an account—

- (a) of the sums paid to them by way of penalty charges under these Regulations; and
- (b) of the expenditure incurred by them in relation to the enforcement of contraventions.

(2) As soon as reasonably practicable after the end of each financial year, the authority shall forward to the Secretary of State a copy of the account for that year.

(3) At the end of each financial year, any deficit in the account shall be made good out of that authority's general fund.

(4) Subject to paragraph (5), any surplus shall be applied for all or any of the purposes specified in paragraph (6) and, in so far as it is not so applied, shall be appropriated to the carrying out of some specific project falling within those purposes and carried forward until applied to that project.

(5) If the authority so determine, any amount not applied in any financial year, instead of being or remaining so appropriated, may be carried forward in the account kept under paragraph (1) to the next financial year.

(6) The purposes referred to in paragraph (4) are—

- (a) the making good to the general fund of any amount charged to that fund under paragraph (3) in the four years immediately preceding the financial year in question;
- (b) meeting costs incurred, whether by the authority or by some other person, in the provision or operation of, or of facilities for, public passenger transport services; and
- (c) the purposes of a highway improvement project in the authority's area.

(7) For the purposes of paragraph (6)(c), a highway improvement project means a project connected with the carrying out by the appropriate highway authority (whether the approved local authority or not) of any operation which constitutes the improvement (within the meaning of the Highways Act 1980) of a highway.

Signed by authority of the Lord Chancellor

6th October 2005

Catherine M. Ashton
Parliamentary Under Secretary of State,
Department for Constitutional Affairs

Signed by authority of the Secretary of State for Transport

28th September 2005

Karen Buck
Parliamentary Under Secretary of State,
Department for Transport

BUS LANE ADJUDICATORS

1. To be qualified for appointment as a bus lane adjudicator, a person must have a 5 year general qualification (within the meaning of section 71 of the Courts and Legal Services Act 1990**(a)**).
2. A person may be appointed as a bus lane adjudicator notwithstanding that he is appointed to act as a parking adjudicator for the purposes of Part 2 of the Road Traffic Act 1991**(b)**.
3. A bus lane adjudicator shall be appointed for such term, not exceeding five years, as may be specified in the instrument of appointment.
4. On the expiry of his term of appointment, a bus lane adjudicator shall be eligible for re-appointment.
5. A bus lane adjudicator may be removed from office only for misconduct or on the ground that he is unable or unfit to discharge his functions but shall otherwise hold and vacate office in accordance with the terms of his appointment.

(a) 1990 c. 41; section 71 was amended by the Access to Justice Act 1999 (c. 22) Schedule 6, paragraph 9 and Schedule 15, Part II.

(b) Part II of the Road Traffic Act 1991 applies to Greater London, but provisions of it can also be applied to areas outside Greater London by virtue of paragraph 3(3) of Schedule 3.

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 144 of the Transport Act 2000. The names of the authorities concerned are set out in the Schedule to the Bus Lane Contraventions (Approved Local Authorities) (England) Order 2005 (S.I. 2005/2755).

In *Part 1*, *regulation 2* defines expressions used in the Regulations. Definitions of other expressions are also contained in *regulations 7* (for *Part 3*) and *13* (for *Part 5*).

In *Part 2*, *regulation 3* authorises the imposition of a penalty 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 Lane Contraventions (Approved Devices) (England) Order 2005 (S.I. 2005/2756).

Regulation 4 provides for the level of a penalty charge to be set by each approved authority. A charge may only be imposed if the level has been approved by the Secretary of State (who may issue guidance) and a notice, stating the circumstances in which a penalty charge may be imposed and the level of the charge, has been published in accordance with *paragraph (4)*. The charge is liable to be increased or reduced by half in the circumstances set out in *paragraphs (6) and (7)*. Each approved local authority is required to give public notice of the standard level of the charge and the date from which it will be imposed and charges not duly approved or charges imposed before the specified date may not be recovered.

Subject to specified exceptions, *regulation 5* requires the owner of the vehicle involved in the contravention to pay the penalty charge. The exceptions are (i) where a vehicle is the subject of a hiring agreement, in which case the charge is to be paid by the person who has hired the vehicle, and (ii) where a vehicle is kept by a vehicle trader who is not the vehicle's registered keeper, in which case the charge is to be paid by the trader.

Regulation 6 provides that an approved local authority cannot recover a penalty 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 3*, *regulation 8* provides for service of a penalty 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 Secretary of State is not able to identify the keeper of the vehicle concerned. *Paragraph (5)* specifies the matters of which particulars must be given in the penalty 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 penalty 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 refer the matter to adjudication.

Parts 4 and 5 relate to appeals. *Regulation 11* (with *the Schedule*) provides for the appointment of bus lane adjudicators by the approved local authorities, subject to the consent of the Lord Chancellor, and for their accommodation, facilities and staff (one of whom must be the "proper officer" on whom specific functions are conferred by the Regulations). *Regulation 12* requires the authorities to discharge their functions under *regulation 11* through a joint committee where more than one authority has resolved to impose charges. The joint committee is required to publish an annual report to the Secretary of State on the discharge of the bus lane adjudicators' functions.

Regulation 14 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 initiated within 28 days from the date of service of the notice of rejection. *Regulation 15* provides for the procedure on service of notice of appeal and *regulation 16* for the making of further representations. *Regulations 17 to 19* make provision for the appeal procedure. *Regulation 17* enables the adjudicator to dispense with an oral hearing save in specified circumstances. *Regulation 18* requires the proper officer to fix the time and place of a hearing and notify the parties and *regulation 19* empowers the adjudicator to require persons to give evidence or produce documents. *Regulation 20* deals with the procedure at hearings and *regulation 21* provides for the production of documentary evidence of the alleged contravention. *Regulation 22* makes provision about adjudicators' decisions; in particular it requires them to be recorded in the register kept pursuant to *regulation 31*.

Regulation 23 enables a party to an appeal to ask for the adjudicator's decision to be reviewed. *Regulation 24 to 28* deal with miscellaneous matters, including provision that costs and expenses will not normally be awarded save in specified circumstances and the correction of clerical errors.

Regulations 29 and 30 make provision about the service and delivery of documents.

Part 6 deals with the enforcement of payment of penalty charges. *Regulation 32* provides for a penalty charge to be increased by a half if it is not paid within "the relevant period" as defined in *paragraph (2)*. *Regulation 33* enables unpaid penalty charges to be recovered through county court procedures. *Regulation 34* specifies the circumstances in which an order under *regulation 33* is to be treated as cancelled. *Regulation 35* provides for the recovery of unpaid penalty charges and other sums payable under the Regulations by execution under the Enforcement of Road Traffic Debts Order 1993.

In *Part 7*, *regulation 36* requires each approved local authority to keep an account of the sums paid by way of penalty charges, and of their expenditure in relation to the enforcement of bus lane contraventions. It also provides for the treatment of deficits and surpluses on the account, including the application of surpluses towards highway improvement projects.

No 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 penalty charge income.

2005 No. 2757

ROAD TRAFFIC, ENGLAND

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