

EXPLANATORY MEMORANDUM TO
THE ROAD USER CHARGING SCHEMES (PENALTY CHARGES, ADJUDICATION
AND ENFORCEMENT) (ENGLAND) REGULATIONS 2013

2013 No. [XXXX]

1. This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 These Regulations make provision for charging authorities responsible for road user charging schemes made under Part 3 of the Transport Act 2000 (“TA 2000”) to impose penalty charges where the applicable road user charge is not paid and, where the penalty charge is unpaid, to pursue civil enforcement through the county court. The Regulations specify the grounds on which representations against a penalty charge notice may be made to a charging authority and the adjudication procedure to be adopted if those representations are not accepted.

2.2 The Regulations enable a charging authority to draw on powers contained in Part 3 of TA 2000 and include in its charging scheme the power for an authorised person to examine, enter and search a vehicle to ascertain (i) that it is displaying any documents or carrying any equipment required by the charging scheme, and (ii) whether those documents are falsified or that equipment is in proper working order. The entry and seizure powers are exercisable only by a constable or in the presence of a constable.

2.3 The Regulations also enable a charging authority to draw on powers contained in Part 3 of TA 2000 and include in its charging scheme the power to immobilise, remove and, ultimately, dispose of a vehicle whose keeper fails to pay a penalty charge, with accompanying provisions dealing with the right for the keeper to make representations and seek adjudication in respect of the exercise of such powers. The use of the immobilisation and removal powers is limited to situations where it has not been possible to serve a penalty charge notice on the registered keeper of the vehicle, the vehicle has incurred three or more unpaid penalty charges and a grace period of 14 days has expired. The disposal power can only be used where the vehicle has been held by a custodian for at least 28 days and the custodian has made such inquiries as are practicable to identify its keeper.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

- 4.1 Section 173(1) of TA 2000 allows the Secretary of State (as the appropriate national authority) by regulations to make provision for or in connection with the imposition and payment of charges (“charging scheme penalty charges”) in respect of acts, omissions, events or circumstances relating to or connected with road user charging schemes. Section 173(2) allows the regulations to include provision for or in connection with setting the rates of charging scheme penalty charges. Section 173(3) provides for penalty charges in respect of any motor vehicle to be payable by the registered keeper of the vehicle or, in circumstances specific in regulations, by such person as is so specified.
- 4.2 Section 173(4) of TA 2000 allows the Lord Chancellor to make regulations about the notification, adjudication and enforcement of charging scheme penalty charges.
- 4.3 Section 174(1) of TA 2000 allows the Secretary of State by regulations to make provision enabling or requiring charging schemes to confer powers on specified persons to examine motor vehicles to ascertain (a) whether any document required to be displayed by the charging scheme is being carried and displayed (b) whether any equipment required to be carried in or fitted to the vehicle by the charging scheme is in proper working order or (c) whether any such equipment, or the functioning of any such equipment, has been interfered with, with intent to avoid a road user charge.
- 4.4 Section 174(2) of TA 2000 allows the Secretary of State by regulations to also make provision enabling or requiring charging schemes to confer power on authorised persons to enter vehicles where there are reasonable grounds for suspecting that (a) any equipment required to be carried or fitted has been interfered with, or its functioning interfered with or (b) that the vehicle contains a false document, in both cases with the intent to avoid payment of a charge imposed by the charging scheme.
- 4.5 Section 174(5) of TA 2000 allows the Secretary of State by regulations to make provision enabling a charging scheme to confer power on an authorised person to seize anything and detain it as evidence of the commission of an offence under section 173(5) or (6) of TA 2000 (a person with intent to avoid payment of a charge interferes with equipment, causes or permits the registration plate of a vehicle to be obscured or makes or uses a false document).
- 4.6 The Powers described in paragraphs 4.4 and 4.5 are exercisable only by, or in the presence of, a constable.
- 4.7 Section 175 of TA 2000 allows the Secretary of State by regulations to make provision enabling or requiring charging schemes to make provision for or in connection with the fitting of immobilisation devices to vehicles, the removal and storage of vehicles, their release (which can be made subject to conditions) or their sale or destruction.

- 4.8 The instrument provides that it does not apply to road user charges under the County Council of Durham (Market Place leading to Saddler Street, Durham City) (Road User Charging Scheme) Order 2002 (a charging scheme under Part 3 of the TA 2000). This is because that Order currently relies on the Road User Charging (Enforcement of Charging Scheme Penalty Charges) (England and Wales) Regulations 2002 (SI 2002/3029) in respect of enforcement. These 2013 Regulations are intended to be used in respect of new charging schemes. However it is expected that in due course consideration will be given to bringing the existing Durham scheme within the scope of these Regulations instead of relying on the 2002 Regulations.
- 4.9 This instrument does not apply to road user charges under the Greater London (Central Zone) Congestion Charging Order 2004 which is made under different legislation (the Greater London Authority Act 1999) and has its own enforcement provisions also made under that Act namely SI 2001/2285 and SI 2001/2313.

5. Territorial Extent and Application

This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 At present the usual means of enforcing charges payable under a road user charging scheme is to use physical barriers that require payment (either in cash or through the use of equipment that register a charge is due) before the vehicle can proceed. In order to improve traffic flow the government is considering the promotion of “free-flow charging” whereby barriers will be removed and instead users of the road subject to the charging scheme will pay remotely.
- 7.2 Enforcement provisions are considered necessary in order to ensure that road users continue to pay the specified road user charge under a barrier-free, free-flow operation. Currently there is no legal mechanism to enforce non-payment where the use of barriers is dispensed with. Provision to enforce against non-payers using free-flow is necessary to encourage road users to be compliant, and active enforcement serves as a mechanism for increasing awareness of the requirements of the road user charging scheme.
- 7.3 How the enforcement of road user charges will operate in a particular case will depend on the way in which a particular traffic authority wishes to operate the road user charging scheme(s) it is responsible for in its capacity as charging authority. Traffic authorities wanting to introduce a road user charging scheme must do so by making a charging scheme order (“CSO”) under section 168 of TA 2000. It will be for each traffic authority, when making a charging scheme, to

decide if it wishes to enforce the collection of unpaid road user charges using these enforcement Regulations.

- 7.4 Sections 171 to 172 of TA 2000 set out the content which must be included in a CSO – for example, the location of the road to be charged, how the charges are defined, the classes of motor vehicles that will be subject to a charge, the levels of road user charge that will apply and the duration of the scheme. These elements are for the traffic authority to determine.
- 7.5 Section 173(4) of TA 2000 allows the Lord Chancellor to make regulations about the notification, adjudication and enforcement of penalty charges incurred by those who incur penalty charges under a charging scheme. The regulations are countersigned on behalf of the Lord Chancellor, as well as by a Department for Transport Minister, to reflect his role in overseeing the adjudication and civil recovery processes.
- 7.6 As permitted by section 173(1) of TA 2000, the regulations make provision for the imposition of charging scheme penalty charges by a charging authority where the road use charge is not paid. The regulations specify the maximum amount of penalty charge that can be imposed in a charging scheme, and provide for this to be discounted by 50% where it is paid within 14 days of the penalty charge notice being served or surcharged by 50% where it is not paid within 28 days of service and charge certificate has been issued. The regulations explain the procedure for issuing and serving penalty charge notices. A penalty charge notice will be served on the registered keeper of a vehicle, unless the circumstances specified in the regulations specify otherwise.
- 7.7 The regulations explain the right of the recipient of a penalty charge notice to make representations to the charging authority challenging its issue. If the charging authority does not accept such representations there is a right to appeal to an adjudicator. The Schedule to the regulations sets out the procedure that will apply to such adjudications.
- 7.8 The regulations explain that after 28 days from service of the penalty charge notice if the penalty charge is not paid or appealed against the charging authority may serve a charge certificate, with the amount payable then recoverable as if it were the subject of a county court order.
- 7.9 The regulations go on to describe the powers of examination, entry, search and seizure that a charging authority may include in a charging scheme allowing it to check whether any documents or equipment required by the charging scheme are being carried by a vehicle and are being displayed or functioning correctly. The entry and seizure powers are only exercisable by or in the presence of a constable.
- 7.10 The regulations also describe the powers that a charging authority may choose to include in its charging scheme allowing it to immobilise, remove, store and dispose of a vehicle. The regulations provide that the immobilisation and removal powers may only be exercised where the registered keeper of the vehicle cannot be

ascertained, there are three or more unpaid penalty charges in respect of the vehicle and a grace period of 14 days has passed since the last of the unpaid penalty charges was imposed. The disposal power can only be used where the vehicle has been held by a custodian for at least 28 days and the custodian has made such inquiries as are practicable to identify its keeper. Again there is a right to make representations concerning the exercise of such powers and the opportunity to seek adjudication if the charging authority rejects such representations.

8. Consultation outcome

8.1 The consultation on the instrument took place over a period of 12 weeks from 5 November 2012 until 28 January 2013. In total the Department for Transport received 60 responses during the consultation from a number of different areas including local Government, members of the public, not for profit organisations, representative organisations and a research organisation. 65% of respondents supported the proposal to enable enforcement against drivers who do not pay the road user charge under a free-flow arrangement.

8.2 Following an assessment of the consultation responses the Department revised has its original proposal as follows:

(a) the Regulations will specify maximum levels of penalty charge that can be imposed by a charging scheme for vehicle immobilisation, removal, storage and disposal;

(b) a vehicle may only be immobilised, removed or disposed of where there are no available registered keeper details, there are three or more unpaid penalty charges in respect of it and a grace period of 14 days has expired.

9. Guidance

9.1 The Department does not consider that any guidance is needed for these regulations as they have no direct effect on business or individuals. It will be for individual charging authorities to explain the effect of the regulations when they choose to make a charging scheme that draws on the provisions they contain.

10. Impact

10.1 The impact of this instrument on business, charities or voluntary bodies is nil.

10.2 The impact on the public sector is nil.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply directly to small business.

12. Monitoring & review

12.1 As these regulations do not themselves impose a regulatory burden on business no provisions for monitoring or review have been included. These regulations enable road user charging schemes to contain provisions concerning penalty charges, adjudication and enforcement. Any road user charging scheme that draws on these regulations will contain a review and sunset clause.

13. Contact

Kevin Nason at the Department for Transport, Kevin.Nason@dft.gsi.gov.uk can answer any queries regarding the instrument.