

SECOND SUPPLEMENT TO THE GIBRALTAR GAZETTE

No. 3,076 of 3rd December, 1998

LEGAL NOTICE NO. 112 OF 1998

TRAFFIC ACT

TRAFFIC (IMMOBILISATION OF VEHICLES) (NO. 2) REGULATIONS 1986 (AMENDMENT) REGULATIONS 1998

In exercise of the powers conferred on him by section 92 and 104 of the Traffic Act, and of all other enabling powers, the Governor has made the following Regulations –

Title and commencement.

1. These regulations may be cited as the Traffic (Immobilisation of Vehicles) (No. 2) Regulations 1986 (Amendment) Regulations 1998.

Amendments to the Traffic (Immobilisation of Vehicles) (No. 2) Regulations 1986.

2.(1) The Traffic (Immobilisation of Vehicles) (No. 2) Regulations 1986 shall be amended in accordance with this regulation.

(2) After regulation 9 there shall be inserted the following regulation –

“Representations to the Commissioner of Police and appeals to the magistrates’ court.

10.(1) Where an immobilisation device has been affixed to a vehicle, the person who settles payment to secure the release of the vehicle, shall have the right –

- (a) to make written representations to the Commissioner of Police on the grounds set out in sub-regulation (4), and
- (b) where the Commissioner of Police has served notice under sub-regulation (5) that no ground has been made out, to appeal to the magistrates’ court.

(2) A person shall be informed, on payment to secure the release of a vehicle, of his rights under sub-regulation (1).

(3) Representations to the Commissioner of Police under sub-regulation (1) above shall be made not later than 28 days after the representing person makes payment to secure the release of the vehicle.

(4) Representations made to the Commissioner of Police under this regulation shall be on one or more of the following grounds –

- (a) that there were no reasonable grounds for the person responsible for affixing the immobilisation device to believe that the vehicle had been permitted to remain at rest in the parking place in the specified circumstances;
- (b) that in the circumstances of the case it was unreasonable for the vehicle to be immobilised;
- (c) that the relevant statutory provision did not apply to the vehicle at the time in question;
- (d) that the penalty or other charge in question exceeded the amount applicable in the circumstances of the case; or
- (e) that insufficient steps were taken to advertise the fact that permitting a vehicle to remain at rest in the parking place in the specified circumstances, would constitute an offence.

(5) Not later than 56 days after receiving the representations made under this regulation, the Commissioner of Police shall serve on the representing party, notice of his acceptance or otherwise that a ground has been reasonably made out.

(6) Notices under sub-regulation (5) may be served by hand, by registered post or by facsimile transmission.

(7) Where sufficient evidence is adduced to the satisfaction of the Commissioner of Police –

- (a) that there was proper service on him of representations under this regulation; and
- (b) that he has failed to serve a notice under sub-regulation (5),

it shall be conclusively presumed that the Commissioner of Police has accepted that the ground on which the representation was founded has been established, and any payment settled to secure the release of the vehicle from an immobilisation device shall be reimbursed forthwith.

(8) Where, on receiving representations made under this regulation, the Commissioner of Police accepts that a ground has been reasonably made out, a notice under sub-regulation (5) shall include the following information –

- (a) that payment made to secure the release of the vehicle from an immobilisation device shall be reimbursed; and
- (b) details of the arrangements made to effect such reimbursement.

(9) Where the Commissioner of Police does not accept that a ground has been established, a notice under sub-regulation (5) shall inform the representing party of his right to appeal to the magistrates' court, indicate the court's power to award costs against any person making such an appeal and state that information may be requested from the Clerk to the Justices with regard to the form and manner in which such an appeal is required to be made.

(10) An appeal to the magistrates' court under this regulation shall be lodged within 28 days of the date of service of the notice under sub-regulation (5), unless an extension of time to lodge the appeal is granted by the magistrates' court.

(11) Appeals to the magistrates' court under this regulation shall be by complaint.

(12) If the magistrates' court concludes that any of the representations are justified, it shall direct that any payment

made to secure the release of the vehicle from an immobilisation device shall be reimbursed forthwith, together with costs as appropriate. The Commissioner of Police, so directed, shall take the necessary steps to comply with the direction.

(13) A person who makes any representations to the Commissioner of Police or on appeal to the magistrates' court under this regulation, and does so recklessly or knowing it to be false in any material particular, is guilty of an offence and is liable on summary conviction to a fine not exceeding level 1 on the standard scale.”.

Dated this 3rd day of December, 1998.

By Command,

P SPELLER,

Deputy Governor.