

2012 No. 258

ROAD TRAFFIC AND VEHICLES

**The Goods Vehicles (Enforcement Powers) Regulations
(Northern Ireland) 2012**

Made - - - - - *28th June 2012*

Coming into operation - - - - - *1st July 2012*

The Department of the Environment makes the following Regulations in exercise of the powers conferred by section 44 of and Schedule 2 to the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010(a).

The Department has consulted with such representative organisations as the Department thinks fit in accordance with section 57(11) of that Act.

Citation and commencement

1. These Regulations may be cited as the Goods Vehicles (Enforcement Powers) Regulations (Northern Ireland) 2012 and shall come into operation on 1st July 2012.

Interpretation

2. In these Regulations—

“the 2010 Act” means the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010;

“hiring agreement” means an agreement for the hire of a vehicle being an agreement which contains such particulars as may be prescribed under Article 71 of the Road Traffic Offenders (Northern Ireland) Order 1996(b);

“immobilisation notice” has the meaning given in regulation 5(3);

“licence” means an operator’s licence (whether standard or restricted) as defined in section 1(1) of the 2010 Act;

“owner” means, in relation to a vehicle or trailer which has been detained in accordance with regulation 3—

- (a) in the case of a vehicle which at the time of its detention was not hired from a vehicle-hire firm under a hiring agreement but was registered under the Vehicle Excise and Registration Act 1994(c), the person who can show to the satisfaction of an authorised person that at the time of its detention that person was the lawful owner (whether or not that person was the person in whose name the vehicle was registered);

(a) 2010 c. 2 (N.I.)
(b) S.I. 1996/1320 (N.I. 10)
(c) 1994 c. 22

- (b) in the case of a vehicle or trailer which at the time of its detention was hired from a vehicle-hire firm under a hiring agreement, the vehicle-hire firm; or
 - (c) in the case of any other vehicle or trailer, the person who can show to the satisfaction of an authorised person that at the time of its detention that person was the lawful owner;
- “release” in relation to a vehicle means release from an immobilisation device;
- “vehicle” has the same meaning as “goods vehicle” in section 58(1) of the 2010 Act but excludes those vehicles specified in section 1(2) of that Act; and
- “vehicle-hire firm” has the same meaning as in Article 71 of the Road Traffic Offenders (Northern Ireland) Order 1996.

Detention of property

3. Where an authorised person has reason to believe that a vehicle is being, or has been, used on a road in contravention of section 1 of the 2010 Act, the authorised person may detain the vehicle and its contents.

Release of detained vehicles

4.—(1) In the circumstances described in paragraph (2), a vehicle detained by virtue of regulation 3 shall be returned to the owner, without the need for an application under regulation 9.

(2) The circumstances are that the authorised person is satisfied that one or more of the grounds specified in paragraph (3) is made out.

(3) The grounds are that—

- (a) at the time the vehicle was detained, the person using the vehicle held a valid licence (whether or not authorising the use of the vehicle);
- (b) at the time the vehicle was detained, the vehicle was not being, and had not been, used in contravention of section 1 of the 2010 Act;
- (c) although at the time the vehicle was detained it was being, or had been, used in contravention of section 1 of the 2010 Act, the owner did not know that it was being, or had been, so used; or
- (d) although knowing at the time the vehicle was detained that it was being, or had been, used in contravention of section 1 of the 2010 Act, the owner—
 - (i) had taken steps with a view to preventing that use; and
 - (ii) has taken steps with a view to preventing any further such use.

Power to immobilise vehicles

5.—(1) This regulation applies where a vehicle has been detained in accordance with regulation 3.

(2) Where this regulation applies, without prejudice to the institution of proceedings for any offence under the 2010 Act, the authorised person may—

- (a) fix an immobilisation device to the vehicle in the place where it has been detained; or
- (b) move the vehicle, or require it to be moved, to a more convenient place and fix an immobilisation device to the vehicle in that other place.

(3) Where an immobilisation device is fixed to a vehicle in accordance with this regulation, the person fixing the immobilisation device shall also fix to the vehicle a notice (an “immobilisation notice”) which indicates that—

- (a) the immobilisation device has been fixed to the vehicle;
- (b) the vehicle may only be released from the immobilisation device by or under the direction of an authorised person (and provides details as to where an authorised person may be contacted);

- (c) an application may be made for the release of the vehicle (and provides information about the procedure under which such an application may be made);
- (d) the notice shall not be removed or interfered with except by or on the authority of an authorised person; and
- (e) no attempt should be made to drive the vehicle or otherwise put it in motion.

Removal of, or interference with, an immobilisation notice or device

6.—(1) An immobilisation notice shall not be removed or interfered with except by or on the authority of an authorised person.

(2) A vehicle to which an immobilisation device has been fixed in accordance with regulation 5(2) may be released from the immobilisation device only by or under the direction of an authorised person.

(3) A person contravening paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(4) A person who removes or attempts to remove, otherwise than in accordance with paragraph (2), an immobilisation device fixed to a vehicle in accordance with regulation 5(2), is guilty of an offence.

(5) A person guilty of an offence under paragraph (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Removal and delivery of property detained

7.—(1) An authorised person may direct in writing that any property detained in accordance with regulation 3 be removed and delivered into the custody of a person specified in the direction.

(2) A vehicle may be driven, towed or removed by such means as are reasonable in the circumstances and any necessary steps may be taken in relation to the vehicle in order to facilitate its removal.

(3) The contents of a vehicle may be removed separately in cases where—

- (a) it is reasonable to do so to facilitate removal of the vehicle;
- (b) there is good reason for storing them at a different place from the vehicle; or
- (c) their condition requires them to be disposed of without delay.

(4) A person may be specified in a direction only if that person—

- (a) is appointed by an authorised person;
- (b) has made arrangements with the Department and agreed to accept delivery of the property in accordance with those arrangements; and
- (c) has agreed with the Department to take such steps as are necessary for the safe custody of such property.

(5) The arrangements made by virtue of paragraph (4) may include the payment of a sum to a person into whose custody any property is delivered.

(6) Where an authorised person has given a direction by virtue of paragraph (1) in respect of a vehicle, the authorised person may allow the driver of the vehicle to deliver its contents to their destination or some other suitable place before delivering the vehicle into the custody of the person specified in the direction.

(7) Subject to the powers of a person specified in a direction by virtue of paragraph (1) to sell or destroy property, it shall be the duty of that person while any property is in that person's custody to take such steps as are necessary for the safe custody of that property.

Notification of detention of a vehicle and its contents

8.—(1) Where a vehicle has been detained in accordance with regulation 3, an authorised person shall—

- (a) publish a notice in the Belfast Gazette—
 - (i) giving a brief description of the property detained and the vehicle's registration mark (if any);
 - (ii) indicating the time and place at which, and the powers under which, it was detained by the authorised person;
 - (iii) describing the procedure under which, and the period within which, an application may be made to the Department for the return of any property so detained;
 - (iv) stating that, if no-one establishes within the period specified in the notice their entitlement to the return of the vehicle, the authorised person intends to dispose of it after the expiry of that period in accordance with regulation 14;
 - (v) stating that any contents which are not disposed of in accordance with regulation 16(1) may be claimed at the place and at the times specified in the notice and that, if no-one establishes within the period specified in the notice their entitlement to the return of the contents, the authorised person intends to dispose of them after the expiry of that period in accordance with regulation 16(2); and
- (b) not less than 21 days before the expiry of the period given in the notice serve a copy of the notice on—
 - (i) the owner of the vehicle;
 - (ii) the Chief Constable;
 - (iii) the Association of British Insurers; and
 - (iv) the British Vehicle Rental and Leasing Association where the vehicle was hired from a vehicle-hire firm under a hiring agreement.

(2) The period specified in a notice under paragraph (1)(a)(iii), (iv) and (v) shall be a minimum of 21 days, beginning with the date on which the notice is published under paragraph (1)(a) or, if later, a copy of the notice is served under paragraph (1)(b).

Applications to the Department

9.—(1) The owner of a vehicle detained in accordance with regulation 3 may, before the expiry of the period specified in regulation 8(2), apply to the Department for the return of the vehicle.

- (2) An application under paragraph (1) shall be made in writing and shall be accompanied by—
 - (a) a statement of one or more of the grounds specified in regulation 4(3) on which the application is declared to be based; and
 - (b) a statement indicating whether the applicant wishes the Department to hold a hearing.
- (3) The period referred to in paragraph (1) is subject to regulation 21.

Hearings

10.—(1) If—

- (a) an application under regulation 9(1) is accompanied by a statement to the effect that the applicant wishes the Department to hold a hearing; or
- (b) having received an application under regulation 9(1) the Department decides that it would be appropriate to hold a hearing before making a determination on the application,

the Department shall hold a hearing within 28 days of receipt of the application (subject to the power of the Department to extend the period in accordance with regulation 21).

(2) A hearing shall take place at the time and place specified by the Department in its notice of hearing.

(3) At a hearing the parties shall be entitled to give evidence, to call witnesses, to cross examine witnesses and to address the Department both on the evidence and generally on the subject matter of the proceedings.

(4) Subject to paragraph (5), a hearing shall be held in public.

(5) The Department may direct that the whole or any part of a hearing be held in private if it is satisfied that by reason of—

- (a) the likelihood of disclosure of intimate personal or financial circumstances;
- (b) the likelihood of disclosure of commercially sensitive information or information obtained in confidence; or
- (c) exceptional circumstances not falling within sub-paragraph (a) or (b),

it is just and reasonable for it to do so.

(6) Where the hearing is held in private the Department may admit such persons as it considers appropriate.

Notification of determination

11. The Department shall notify the applicant in writing of its determination of an application as soon as reasonably practicable and, subject to regulation 21—

- (a) where no hearing is held, within 21 days after receiving the application; and
- (b) where a hearing is held within 14 days of the conclusion of the hearing.

Appeals from a determination of the Department to the Upper Tribunal

12. An appeal may be made to the Upper Tribunal against a determination of the Department.

Return of a vehicle detained

13. If—

- (a) an application is made to the Department in accordance with regulation 9; or
- (b) an appeal is made to the Upper Tribunal in accordance with regulation 12,

and the Department or the Upper Tribunal, as the case may be, determines that one or more grounds specified in regulation 4(3) is made out, the authorised person shall return the vehicle to the owner.

Disposal of vehicles

14.—(1) If—

- (a) no application for the return of a vehicle is made in accordance with regulation 9; or
- (b) such an application is made but the Department, or the Upper Tribunal in the event of an appeal under regulation 12, determines that none of the grounds specified in regulation 4(3) is made out,

the authorised person may sell or destroy the vehicle.

(2) After disposing of a vehicle under paragraph (1), the authorised person shall serve notice of the disposal on the following persons—

- (a) the owner of the vehicle;
- (b) the Chief Constable;
- (c) the Driver and Vehicle Agency;
- (d) the Association of British Insurers; and
- (e) the British Vehicle Rental and Leasing Association where the vehicle was hired from a vehicle-hire firm under a hiring agreement.

Return of contents

15.—(1) The person specified in a direction by virtue of regulation 7 may retain custody of the contents of a vehicle until they are disposed of in accordance with regulation 16, or returned to a person who establishes their entitlement to them in accordance with paragraphs (2) to (4).

(2) Unless the contents of a vehicle have already been disposed of in accordance with regulation 16, an authorised person shall return any contents detained under regulation 3 to a person who has given notice in writing of a claim to an authorised person within the period specified in the notice given under regulation 8(1)(a)(v) and who—

- (a) produces satisfactory evidence of their entitlement to them and of their identity and address; or
- (b) where that person seeks to recover the contents as the agent of another person, produces satisfactory evidence of their status as agent and of their principal's identity, address and entitlement to the contents.

(3) Where a person claiming to be entitled to a vehicle establishes their entitlement to it, that person shall be treated for the purposes of this regulation as also entitled to its contents unless and to the extent that another person has claimed them.

(4) Where there is more than one claim to the contents, an authorised person shall determine which person is entitled to them on the basis of the evidence provided.

Disposal of contents

16.—(1) Where the condition of the contents of a vehicle requires them to be disposed of without delay they may be disposed of without the authorised person complying with the requirements of regulation 8.

(2) Where the contents of a vehicle are not disposed of in accordance with paragraph (1) and either—

- (a) one or more persons has given notice of a claim in respect of them in accordance with regulation 15(2) but no person establishes their entitlement to them in accordance with regulation 15; or
- (b) no notice of a claim has been given in respect of them in accordance with regulation 15(2),

the authorised person may sell or destroy those contents.

Application of proceeds of sale

17.—(1) Subject to paragraph (2), the proceeds of sale of any property sold under regulation 14 or 16 shall—

- (a) be applied towards meeting expenses incurred by an authorised person exercising functions by virtue of these Regulations in relation to the property in question; and
- (b) in so far as they are not so applied, be applied in meeting any claim to the proceeds of sale which is made and established in accordance with paragraph (3).

(2) Where the proceeds of sale of any property sold under regulation 14 or 16 exceed the expenses referred to in paragraph (1)(a) and—

- (a) no person has established entitlement to the proceeds of sale of the property; or
- (b) a person has established entitlement to the proceeds of sale of the property, but excess proceeds remain once the claim has been satisfied,

the excess proceeds may be applied towards meeting expenses incurred by any authorised person exercising functions in relation to any other property detained by virtue of regulation 3.

(3) For the purposes of paragraph (1), a claim to the proceeds of sale of any property is established if—

- (a) the claim is made not later than one year after the date on which the property was sold; and
- (b) the authorised person is satisfied that—
 - (i) if the property consists of a vehicle, the person making the claim was the owner of the vehicle immediately before it was sold by virtue of regulation 14; or
 - (ii) if the property consists of contents, the person making the claim would, had the person made an appropriate claim at the prescribed time, have been entitled to the return of the property by virtue of regulation 15.

(4) Where the conditions specified in paragraph (3) are fulfilled, there shall be payable to the person making the claim by the authorised person a sum calculated in accordance with paragraph (5).

(5) The sum payable under paragraph (4) shall be calculated by deducting from the proceeds of sale the expenses incurred by the authorised person in exercising functions under these Regulations, including the detention, removal, storage and disposal of the property.

Disputes

18.—(1) This regulation applies where a dispute has arisen in relation to the return or disposal of the contents of a vehicle, or the application of the proceeds of sale of a vehicle or its contents.

(2) The claimant in a dispute to which this regulation applies may apply in writing to the Department on the grounds that the authorised person did not comply with the requirements of regulation 8, 15, 16 or 17.

(3) The Department shall consider any representations duly made and any evidence provided in support of them and notify the claimant in writing whether or not it accepts that the grounds of the application have been established and—

- (a) if the Department notifies the claimant that the grounds have been established, the authorised person shall pay the claimant any amount due to the claimant; or
- (b) if the Department rejects the application it shall so inform the claimant in writing and at the same time notify the claimant of the right to make an appeal under paragraph (4).

(4) An appeal may be made from the Department's determination to a court of summary jurisdiction by a claimant whose—

- (a) application under paragraph (2) has been rejected under paragraph (3) and the subsequent appeal is made within 21 days of the claimant being served with notification to the effect under paragraph (3)(b); or
- (b) the Department has not notified the claimant of the outcome of the application in accordance with paragraph (3) and 56 days have elapsed since the application was made,

and, if that court finds the grounds of the appeal have been established, the authorised person shall be ordered to pay the claimant the amount due to the claimant.

Offences as to securing possession of property

19.—(1) Where a person makes a declaration with a view to securing the return of a vehicle and the declaration is that the vehicle was not being, or had not been, used in contravention of section 1 of the 2010 Act, and the declaration is to the person's knowledge either false or in any way material respect misleading, that person is guilty of an offence.

(2) A person guilty of an offence under paragraph (1) shall be liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or to a fine or to both.

Giving of notice

20.—(1) Any notice or application under these Regulations may be served by post (or in such other form as is agreed between the person to be served and the person serving the notice).

(2) Subject to paragraph (1), any such document shall be regarded as having been served on that party if it is—

- (a) delivered to that party;
- (b) left at that party's proper address;
- (c) sent by post to that party at that address; or
- (d) transmitted to that party by FAX or other means of electronic data transmission in accordance with paragraph (3).

(3) A document may be transmitted by FAX or other electronic means of electronic data transmission where the receiving party has indicated in writing to the sending party a willingness to regard a document as having been duly sent if it is transmitted in a specified manner and the document is accordingly transmitted to the receiving party.

(4) Where the proper address includes a numbered box number at a document exchange, delivery of a document may be effected by leaving the document addressed to that numbered box at that document exchange or at a document exchange which transmits documents on every business day to that exchange.

(5) Any document which is left at a document exchange in accordance with paragraph (4) shall, unless the contrary is proved, be deemed to have been delivered on the second business day after the day on which it is left.

(6) If no address for service has been specified, the proper address for the purposes of these Regulations and of section 24 of the Interpretation Act (Northern Ireland) 1954 Act^(a) shall be—

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

(7) A party may at any time by notice to another party change their proper address for service for the purposes of these Regulations and of section 24 of the Interpretation Act (Northern Ireland) 1954 Act.

(8) A party may by notice in writing delivered to another party vary or revoke any indication given by them under paragraph (3).

Extension of time

21.—(1) Where the Department considers it to be necessary in order for a particular case to be dealt with fairly and justly, it may extend any of the periods described in paragraph (3).

(2) A period described in paragraph (3) may only be extended for such period as the Department considers appropriate in the circumstances of the case.

(3) The periods are those referred to in—

- (a) regulation 9;
- (b) regulation 10(1); and
- (c) regulation 11.

Sealed with the Official Seal of the Department of the Environment on 28th June 2012

(a) 1954 c. 33 (N.I.)



Iain Greenway
A senior officer of the
Department of the Environment

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 44 of and Schedule 2 to the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010 (“the 2010 Act”) enable Regulations to be made permitting an authorised person to detain a goods vehicle to which the 2010 Act applies and its contents in circumstances where the person using the vehicle did not hold an operator’s licence for that or any other vehicle. These Regulations are made pursuant to Schedule 2.

Regulation 3 empowers an authorised person to detain a vehicle and its contents where the authorised person has reason to believe it is being operated without a licence.

Regulation 4 provides for the release of a detained vehicle to an owner (without the need for an application under regulation 9) in circumstances where at the time the vehicle was detained, the person using the vehicle held an operator’s licence (whether or not authorising the use of the vehicle) or the vehicle was not being, and had not been, used in contravention of section 1 of the 2010 Act.

Regulations 5 and 6 provide for the immobilisation of vehicles, the details to be included in the immobilisation notice, criminal offences arising from the unlawful removal of, or interference with, immobilisation devices, and the release of immobilised vehicles.

Regulations 7 and 8 provide for the removal and delivery of vehicles and contents detained and the giving of notice of detention.

Regulations 9 to 11 provide for the owner of a vehicle to make an application to the Department of the Environment (“the Department”) for the return of the vehicle. There is provision for a hearing to be held if a party to an application requests one or the Department so decides.

Regulation 12 provides for appeals from a determination of the Department to the Upper Tribunal (such appeals are governed by procedures under the Tribunal Procedure (Upper Tribunal) Rules 2008).

Regulation 13 provides for the return of a vehicle detained where the Department determines that one or more of the grounds specified in regulation 9(4) is made out.

Regulation 14 empowers authorised persons to sell or destroy vehicles in other cases and requires an authorised person to serve a notice of disposal of a vehicle on specified persons after the vehicle has been disposed of.

Regulation 15 and 16 provide for the return of contents of detained vehicles and the disposal of such contents.

Regulation 17 provides for the application of proceeds of sale of any property sold by an authorised person under regulation 14 or 16. It also provides for any proceeds from the sale of property which exceed expenses incurred by the detention of a vehicle and contents, and which are not claimed by any person, to be used to offset costs incurred in the detention of other property under the Regulations.

Regulation 18 concerns disputes about the return or disposal of contents of a vehicle or the application of the proceeds of sale of a vehicle or its contents. Such applications are to be made to the Department. There is provision for an appeal to be made from the Department’s determination to a court of summary jurisdiction.

Under regulation 19 it is a criminal offence to make a declaration intended to secure the return of property where the declaration is to the person’s knowledge false or in any material respect misleading.

Regulation 20 regulates the service of notices under the Regulations.

Regulation 21 enables the Department to extend specified periods described in the Regulations where they consider it necessary in order to ensure that a case is dealt with fairly and justly.

A Regulatory Impact Assessment has been prepared and copies are available from Transport Regulation Unit, Department of the Environment, Bedford House, 16 – 22 Bedford Street, Town Parks, Belfast BT2 7FD or viewed online at <http://www.legislation.gov.uk/nisr>

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