

2016 No. 90

ROAD TRAFFIC AND VEHICLES

**The Taxis Act (Northern Ireland) 2008 (Retention and Disposal
of Seized Motor Vehicles, Equipment and Items) Regulations
(Northern Ireland) 2016**

Made - - - - *1st March 2016*

Coming into operation - *31st May 2016*

The Department of Justice makes the following Regulations in exercise of the powers conferred on it by section 42 of the Taxis Act (Northern Ireland) 2008(a). These powers are now vested in the Department of Justice (b).

Citation and commencement

1. These Regulations may be cited as the Taxis Act (Northern Ireland) 2008 (Retention and Disposal of Seized Motor Vehicles, Equipment and Items) Regulations (Northern Ireland) 2016 and shall come into operation on 31 May 2016.

Interpretation

2. In these Regulations—

“the 2008 Act” means the Taxis Act (Northern Ireland) 2008;

“the 1994 Act” means the Vehicle Excise and Registration Act 1994(c);

“certificate of insurance” is to be construed in accordance with Article 92(4) of the 1981 Order;

“MAM” means maximum authorised mass as defined in regulation 2(1) of the Motor Vehicles (Driving Licences) Regulations (Northern Ireland) 1996(d);

“registration mark” means a registration mark as defined in section 23(1) of the 1994 Act;

“the register” means the register maintained by the Secretary of State under Part 2 of the 1994 Act;

“relevant motor vehicle” means a motor vehicle which has been seized under section 41 of the 2008 Act;

“seizure notice” means a notice complying with regulation 5 or 6;

“valid licence” means a licence to drive a motor vehicle granted under Part II of the 1981 Order, a Community licence, an exchangeable licence or a Great Britain driving licence, and

(a) 2008 c. 4 (N.I.); section 42(1) was amended by paragraph 92 of Schedule 14 to S.I. 2010 No. 976.

(b) Paragraph 92 of Schedule 14 to the Northern Ireland Act 1998 Order 2010 (S.I. 2010/976) transferred the regulation making powers of the Secretary of State to the Department of Justice.

(c) 1994 c. 22.

(d) S.R. 1996 No. 542.

for this purpose the terms “Community licence” and “exchangeable licence” have the same meaning as given in Article 19D(a) of that Order;

“working days” shall be taken to exclude Saturdays, Sundays, Christmas Day and any day which, under the Banking and Financial Dealings Act 1971(b), is a bank holiday in Northern Ireland.

Retention and safe keeping of relevant motor vehicles

3.—(1) A constable or authorised officer may deliver a relevant motor vehicle into the custody of an identified person if—

- (a) the identified person agrees to accept delivery; and
- (b) a receipt is provided by the identified person to the constable or authorised officer to confirm that the identified person has taken safe custody of the vehicle.

(2) An “identified person” is a person who—

- (a) is capable of accepting delivery of the vehicle; and
- (b) has agreed arrangements with the Department for accepting custody of vehicles, including arrangements regarding security and access.

(3) The arrangements made by virtue of paragraph (2)(b) may include provision as to the payment of a sum to the identified person.

(4) While the relevant motor vehicle is in the custody of the identified person, that person shall be under a duty to take such steps as are reasonably necessary for its safe keeping until -

- (a) it is released from that person’s custody in accordance with regulation 7; or
- (b) it has been disposed of under these Regulations.

Retention of equipment and items

4.—(1) Any equipment or item that has been seized and removed by a constable or authorised officer under section 38 or 41 of the 2008 Act may be retained for so long as is necessary in all the circumstances.

(2) Without prejudice to the generality of paragraph (1) anything seized for the purposes of a criminal investigation may be retained—

- (a) for use as evidence at a trial for an offence; or
- (b) for forensic examination or for investigation in connection with an offence.

Giving of seizure notice in respect of a relevant motor vehicle

5.—(1) A constable or authorised officer, on seizing a relevant motor vehicle, shall give a seizure notice in accordance with this regulation to the driver of the vehicle being seized unless the circumstances make it impracticable to do so.

(2) The Department shall, as soon as it is able after the relevant motor vehicle has been taken into custody, take such steps as are reasonably practicable to give a copy of the seizure notice in accordance with this regulation to the owner of that vehicle, except where—

- (a) the Department is satisfied that a seizure notice has already been given to the owner of the vehicle under paragraph (1), or
- (b) the vehicle has been released from the custody of the constable, authorised officer, or identified person in accordance with these Regulations.

(a) Article 19D was inserted by Schedule 1 to S.I. 1991 No. 197 (N.I. 3) and amended by paragraph 12(2)(b) of Schedule 1 to SR 1996 No. 426, and by Article 35(b) of S.I. 2007/916 (N.I. 10).
(b) 1971 c. 80.

(3) A seizure notice shall, in respect of the relevant motor vehicle to which it relates, contain such of the following information as can be or could have been ascertained from an inspection of the vehicle, or has been ascertained from any other source, that is to say—

- (a) the registration mark; and
 - (b) the make of the vehicle.
- (4) A seizure notice shall, in respect of the relevant motor vehicle to which it relates, state—
- (a) the place where the vehicle was seized;
 - (b) the place where it is now being kept;
 - (c) that the owner of the vehicle is required to make an application to the Department for the release of the vehicle on or before the date specified in the notice, being a date not less than 7 working days from the day when the notice is given to the owner;
 - (d) that, subject to regulation 7(3), a fee is payable under regulation 7 by the owner of the vehicle to the Department for an application for release, and that the vehicle may be retained until such a fee is paid;
 - (e) that unless the application is made on or before that date the Department intends to dispose of it;
 - (f) that, subject to regulation 7(3), charges are payable under regulation 7 by the owner of the vehicle to the Department in respect of the removal and retention of the vehicle, and that the vehicle may be retained until such charges are paid; and
 - (g) that the registered keeper or owner of the vehicle must either—
 - (i) produce at the address specified on the seizure notice proof of ownership of that vehicle, a valid certificate of insurance covering his use of that vehicle and a valid licence authorising him to drive that vehicle; or
 - (ii) nominate for this purpose a person who produces at the address specified on the seizure notice proof of ownership of the vehicle, a valid certificate of insurance covering that person's use of that vehicle and a valid licence authorising that person to drive that vehicle,

and that the vehicle may be retained until this requirement is satisfied.

- (5) The copy of the seizure notice given under paragraph (2) shall be given—
- (a) by delivering it to the person to whom it is directed;
 - (b) in respect of the owner—
 - (i) by leaving it at the address which is entered on the register as being the address of the owner; or
 - (ii) by sending it by registered post, addressed to the owner to the address which is entered on the register as being the address of the owner; or
 - (c) if the person is a body corporate, by delivering it to the secretary or clerk of the body at its registered or principal office, or sending it by registered post, addressed to the secretary or clerk of the body at that office.

Giving of seizure notice in respect of equipment and items

6.—(1) A constable or authorised officer, on seizing equipment or items under section 38 or 41 of the 2008 Act, shall serve notice in accordance with this regulation on any person who, to the knowledge of the constable or authorised person, was at the time of the seizure the owner of the equipment or items seized.

- (2) A seizure notice under paragraph (1) shall state—
- (a) where the equipment or items were seized;
 - (b) the place where they are now being kept;
 - (c) that, subject to the requirements of regulation 4, the owner of the equipment or items is required to make an application to the Department for their release on or before the date

specified in the notice, being a date not less than 7 working days from the day when the notice is given;

- (d) that unless the application is made on or before that date the Department intends to dispose of the equipment or items;
- (e) that, subject to regulation 11(4), a fee is payable under regulation 11 by the owner of the equipment or items to the Department for an application for the release of the equipment or items, and that the equipment or items may be retained until such fee is paid to the Department; and
- (f) that the owner of the equipment or items must either—
 - (i) produce at the address specified on the seizure notice satisfactory evidence of ownership of the equipment and items; or
 - (ii) nominate for this purpose a third person as an agent who produces at the address specified on the seizure notice satisfactory evidence of their own identity, address and authority to act on behalf of the principal and proof of the principal's ownership of the equipment and items,

and that the equipment or items may be retained until this requirement is satisfied.

Release of relevant motor vehicles

7.—(1) Subject to the provisions of these Regulations, where an application is made to the Department by the owner of the vehicle for the release of the relevant motor vehicle and—

- (a) the Department or the identified person is satisfied that the requirements of regulation 5(4)(g) have been met, and
- (b) such charges in respect of its removal and retention and any fee in respect of an application to release as are provided for in regulation 8 have been paid,

the Department or the identified person shall permit the owner or their agent to remove the vehicle from their custody.

(2) In determining whether a person who claims to be the owner of the relevant motor vehicle is in fact the owner, the Department or the identified person shall refer to the register.

(3) A person who would otherwise be liable to pay a charge for removal and retention or fee for an application to release under paragraph (1) shall not be liable to pay if they did not know that the vehicle was being used to provide a taxi service, had not consented to its being so used and could not, by the taking of reasonable steps, have prevented it from being so used.

Charges in relation to the removal and retention, and fee for an application to release a relevant motor vehicle

8.—(1) The charges for the removal and retention of, and the fee for an application to release, a relevant motor vehicle, payable by the owner of the vehicle under regulation 7(1), shall be determined in accordance with the Table in the Schedule and are payable to the Department.

(2) In the Table, in the Schedule -

- (a) the MAM of a relevant motor vehicle includes the MAM of any trailer attached to that vehicle; and
- (b) each period of 24 hours in respect of the retention of a relevant motor vehicle shall be calculated from noon on the first day after seizure during which the place at which the relevant motor vehicle is stored is open for the claiming of vehicles before noon.

Disposal of relevant motor vehicles

9.—(1) Subject to paragraph (2), the Department or the identified person may, in such manner as they think fit, dispose of the relevant motor vehicle at any time if—

- (a) the owner of the vehicle fails to comply with any requirement in a seizure notice given under regulation 5; or
 - (b) the Department was not able, having taken such steps as were reasonably practicable, to give a seizure notice to the owner.
- (2) The Department or identified person may not dispose of the relevant motor vehicle under this regulation—
- (a) during the period of 14 days starting with the date on which the vehicle was seized;
 - (b) if the period in sub-paragraph (a) has expired, until after the date specified in the seizure notice in accordance with regulation 5(4)(c); or
 - (c) if the periods in sub-paragraphs (a) and (b) have expired, during the period of 7 working days starting with the date on which an application is made under regulation 5(4)(c).

Disposal of equipment and items

10.—(1) Subject to the requirements of regulation 4 and paragraph (2), the Department may dispose of equipment or items seized under section 38 or 41 of the 2008 Act at any time if the owner of the equipment or items fails to comply with any requirement in a seizure notice given under regulation 6.

- (2) The Department shall not dispose of equipment or items under this regulation—
- (a) during the period of 14 days starting with the date on which the equipment or items were seized;
 - (b) if the period in sub-paragraph (a) has expired, until after the date specified in the seizure notice in accordance with regulation 6(2)(c); or
 - (c) if the periods in sub-paragraphs (a) and (b) have expired, during the period of 7 working days starting with the date on which the equipment or items are claimed under regulation 11(1).

Return of equipment and items

11.—(1) Unless equipment or items seized under section 38 or 41 of the 2008 Act have already been disposed of under regulation 10 or are required to be retained under regulation 4, where an application is made to the Department by the owner of the equipment or items for the release of the equipment or items and -

- (a) the Department is satisfied that the requirements of regulation 6(2)(f) have been met, and
- (b) the fee for an application for the release of equipment or items provided for in paragraph (2) has been paid.

the Department shall release the equipment or items to the owner or their agent.

(2) The fee payable by the owner of the equipment or items for an application to release under paragraph (1) shall be £30.

(3) Where there is more than one application, the Department shall determine which person is entitled to the equipment or items on the basis of the evidence provided to it.

(4) A person who would otherwise be liable to pay a fee for an application to release under paragraph (1) shall not be liable to pay if they did not know that the equipment or items were being used to provide a taxi service, had not consented to their being so used and could not, by the taking of reasonable steps, have prevented them from being so used.

Payment of proceeds of sale to owner of a relevant motor vehicle, equipment or items

12.—(1) Where the Department or identified person disposes of a relevant motor vehicle, equipment or items in pursuance of these Regulations by means of sale, the net proceeds of sale shall be paid to any person who, before the end of the period of one year beginning with the date

on which they were sold, satisfies the Department or identified person that at the time of the sale that person was the owner of the vehicle, equipment or items.

(2) If it appears to the Department or identified person that more than one person is the owner of a particular vehicle, equipment or items such one of them as the Department or identified person thinks fit shall be treated as its owner for the purposes of paragraph (1).

(3) In this regulation “the net proceeds of sale” means any sum by which the proceeds of sale exceed the aggregate of such sums as may be payable under these Regulations in respect of the removal and retention of the vehicle, equipment or items.

Sealed with the Official seal of the Department of Justice on 1st March 2016



David Ford
Minister of Justice

SCHEDULE 1

Regulation 8

Table of charges in relation to the removal, retention and the fee for any application for the release of a relevant motor vehicle

	<i>Vehicle equal to or less than 3.5 tonnes MAM</i>	<i>Vehicle exceeding 3.5 tonnes MAM but equal or less than 7.5 tonnes MAM</i>	<i>Vehicle exceeding 7.5 tonnes MAM but equal or less than 18 tonnes MAM</i>	<i>Vehicle exceeding 18 tonnes MAM</i>
Application for release of vehicle	£30	£30	£30	£30
Removal of vehicle	£150	£200	£350	£350
Retention of vehicle (per 24 hours or part thereof)	£20	£25	£30	£35

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations provide for the retention, safe keeping, release and disposal, by the Department, police or authorised officers, of vehicles, equipment and items seized under sections 38 and 41 of the Taxis Act (Northern Ireland) 2008 (“the 2008 Act”).

Regulation 3 provides for the transfer of vehicles seized under section 41 of the 2008 Act to identified persons safe keeping of vehicles seized. An identified person is a person who has agreed arrangements with the Department for the custody and safekeeping of vehicles.

Regulation 4 provides for the retention of equipment and items seized for as long as is necessary for use in investigation in connection with an offence or for use at a trial for an offence.

Under regulation 5 a constable or authorised officer seizing a vehicle is required to give a seizure notice to the driver of that vehicle unless the circumstances make it impracticable to do so. Once the vehicle has been so seized the Department is obliged to take such steps as are reasonably practicable to give a copy of a seizure notice to the owner of the vehicle, requiring it to be claimed within a specified period being not less than 7 working days.

Regulation 5(3) and (4) specifies the information that must be contained in a seizure notice in respect of the seizure of a relevant vehicle, including the action required to be taken by an owner of a vehicle in order to have the vehicle released.

Where the owner of the vehicle fails to comply with any requirement in a seizure notice given to them under regulation 5(2) or where the Department was not able, having taken such steps as were reasonably practicable, to give a seizure notice to the owner under regulation 5(2), the constable or authorised officer may dispose of the vehicle in accordance with regulation 9.

Regulation 6 makes similar provision for the giving of a seizure notice in respect of equipment and items seized under section 38 or 41 of the 2008 Act.

Regulation 7 provides for the circumstances in which a vehicle can be released to the owner. The owner or their agent must produce proof of ownership of the vehicle, a valid certificate of insurance and a valid driving licence and pay the required charge(s) and fee in relation to the removal, retention and application for the release of the vehicle.

Regulation 8 and the Schedule detail the charges payable for the removal, retention and application for the release of the vehicle as well as the fee for an application to release a relevant vehicle.

Regulation 9 provides for the disposal of the vehicle where the Department was unable to give a seizure notice to the owner or where the owner has failed to comply with the requirements of a seizure notice.

Regulation 10 makes provision for the disposal of equipment and items.

Regulation 11 provides for the return of equipment and items that are not required to be retained under regulation 4, upon application to the Department including payment of the prescribed fee. The owner must provide satisfactory evidence of ownership of the equipment or items seized. Where there is more than one claimant the Department must determine entitlement on the basis of evidence provided to it.

Regulation 12 provides that where a vehicle, equipment or items are sold, the net proceeds of sale are payable to the owner, if that person makes a claim within a year of the sale.

An Explanatory Memorandum and Regulatory Impact Assessment have been produced for these Regulations and are available from Road Safety and Vehicle Regulation Division, Department of the Environment, Clarence Court, 10-18 Adelaide Street Belfast BT2 8GB or viewed online at <http://www.legislation.gov.uk/nisr> .

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£6.00

NI201603022 03/2016 19585

<http://www.legislation.gov.uk/id/nisr/2016/90>

ISBN 978-0-33-800429-1



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