
EXPLANATORY NOTE

(This note is not part of the Regulations)

Sections 226A to 226I of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”), inserted by section 55 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007, make provision regarding the enforcement of “relevant penalties”, as defined in section 226I of the 1995 Act.

Under section 226A of the 1995 Act the Scottish Ministers may authorise persons, including classes of persons, to act as fines enforcement officers (“FEOs”). They have the general functions of providing information and advice to offenders regarding the payment of relevant penalties and of securing their compliance with enforcement orders. These orders provide general information to offenders regarding the amount of the penalty, the arrangements for payment and their effect.

Under the terms of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (Commencement No. 3 and Savings) Order 2008 (S.S.I. 2008/42), the FEO may carry out their functions in relation to relevant penalties imposed by and enforcement orders made by a “relevant court”, as defined in section 226I of the 1995 Act.

The FEO has a wide range of powers. These include the seizure of an offender’s vehicle and the power to seek its disposal from the court. These Regulations make provision as to the powers of the FEO to seize a vehicle belonging to an offender who has failed to pay a relevant penalty under an enforcement order and set out in detail how the enforcement scheme in relation to the seizure of such a vehicle operates in practice. The FEO may, for the purposes of obtaining the relevant penalty which has not been paid in accordance with an enforcement order, make a seizure order. This authorises the immobilisation and the impounding of a vehicle subject to such an order.

Regulation 3 provides the requirements, which the FEO must have satisfied themselves of, before a seizure order may be made.

Regulation 4 provides the details which must be included within a seizure order.

Regulation 5 makes provision regarding the duties of the FEO on seizure and the time limits relating to the execution of a seizure order. Failure by the contractor to execute an order within this time period shall render the seizure order inoperative.

Regulation 6 makes provision about the places and the means by which a contractor can seize a vehicle.

Regulation 7 ensures that no offence is committed under the Trespass (Scotland) Act 1865 where there is any irregularity in the execution of a seizure order.

Regulation 8 preserves the right to a claim in damages in certain circumstances.

Regulation 9 makes provision for the removal before immobilisation of an illegally parked vehicle or where there is any other contravention of a statutory restriction. It further provides for the affixing of a prominent notice containing certain information. The repositioning of a vehicle under this regulation does not attract any charges additional to those prescribed within the Schedule to the Regulations.

Regulation 10 makes provision as to the procedure of executing a seizure order. It prescribes the information to be included within a notice affixed by a contractor to a vehicle subject to a seizure order.

Regulation 11 specifies the vehicles which cannot be seized.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Regulation 12 makes provision for the release of a vehicle on the payment in full of the relevant penalty and the charges payable in connection with the seizure. It prescribes the information which shall be included in the receipt issued by a contractor on the payment of certain sums on the release of a vehicle.

Regulation 13 provides that the charges payable in connection with the seizure and disposal of a vehicle are prescribed within the Schedule to the Regulations.

Regulation 14 makes provision for the release of a vehicle owned by a third party which has been made subject to seizure. The regulation sets down the tests for the FEO and the court to consider in such a case and for the payment of charges in certain circumstances.

Regulation 15 provides that a seized vehicle may in certain circumstances be impounded.

Regulation 16 provides that the FEO must give written notice to the offender informing them that a vehicle has been impounded. It further provides that the notice must be sent within 24 hours of the removal and prescribes the information which must be provided within the notice.

Regulation 17 makes provision regarding the release of an impounded vehicle. It provides that the vehicle may be released in certain circumstances.

Regulation 18 provides that an offender who considers that a seized vehicle should not be subject to a seizure order may apply for the release of the vehicle, in the first instance, to the FEO.

Regulation 19 makes provision relating to the making of the FEO's decision on an application for release made under regulation 18. It further provides that where the FEO refuses the application for release that application may then be made to the court.

Regulation 20 makes provision as to the making of an application to the court for the release of a seized vehicle.

Regulation 21 makes provision as to the orders which the court may make on application being made to it for the release of a seized vehicle.

Regulation 22 provides that the FEO may make an application to the court seeking an order for the sale of a seized vehicle.

Regulation 23 provides that the FEO may only make an application to the court for sale in certain circumstances.

Regulation 24 makes provision as to the information which the FEO shall intimate to the offender on an application being made to the court for the sale of a seized vehicle.

Regulation 25 makes provision as to the disposal of an application for sale by the court. It provides criteria which the court must take into account before it may make an order on such an application.

Regulation 26 provides that the court may not make an order under regulation 25 in certain circumstances.

Regulation 27 provides that the method for sale of a seized vehicle shall be by public auction, the charges for which are set out within the Schedule to the Regulations.

Regulation 28 makes provision as to the treatment of the proceeds of sale of a seized vehicle.

Regulation 29 makes provision as to the calculation of the time periods by which certain applications are made to the court under the Regulations.