

2001 No. 3981

ROAD TRAFFIC

**The Goods Vehicles (Enforcement Powers) Regulations
2001**

<i>Made</i> - - - - -	<i>11th December 2001</i>
<i>Laid before Parliament</i>	<i>14th December 2001</i>
<i>Coming into force</i> - -	<i>4th January 2002</i>

The Secretary of State for Transport, Local Government and the Regions, in exercise of the powers conferred by Schedule 1A to the Goods Vehicles (Licensing of Operators) Act 1995(a), and of all other powers enabling him in that behalf, having consulted with representative organisations in accordance with section 57(12) of that Act, and the Council on Tribunals so far as is required by section 8 of the Tribunals and Inquiries Act 1992(b) hereby makes the following Regulations:—

Citation and commencement

1. These Regulations may be cited as the Goods Vehicles (Enforcement Powers) Regulations 2001 and shall come into force on 4th January 2002.

Interpretation

2. In these Regulations—

“the 1995 Act” means the Goods Vehicles (Licensing of Operators) Act 1995;

“hiring agreement” has the same meaning as in section 66 of the Road Traffic Offenders Act 1988(c);

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

“licence” means an operator’s licence (whether standard or restricted) as defined in section 2(1) of the 1995 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(d), the person who can show to the satisfaction of an authorised person that he was at the time of its detention the lawful owner (whether or not he was the person in whose name it was so registered);

(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

(a) 1995 c. 23. Section 2A of, and Schedule 1A to, the 1995 Act were inserted by section 262(1) and (2) of the Transport Act 2000 (c. 38).

(b) 1992 c. 53. Section 1 of, and paragraphs 40 (traffic commissioners) and 42 (Transport Tribunal) of Schedule 1 to, the 1992 Act provide for those tribunals to come under the general supervision of the Council on Tribunals.

(c) 1988 c. 53.

(d) 1994 c. 22; to which there are amendments not relevant to these Regulations.

- (c) in the case of any other vehicle or trailer, the person who can show to the satisfaction of an authorised person that he was at the time of its detention 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 1995 Act but excludes a small goods vehicle as described in Schedule 1 to that Act; and
- “vehicle-hire firm” has the same meaning as in section 66 of the Road Traffic Offenders Act 1988.

Detention of property

3.—(1) Where an authorised person has reason to believe that a vehicle is being, or has been, used on a road in contravention of section 2 of the 1995 Act, he may detain the vehicle and its contents.

(2) Paragraph (1) shall not authorise a person other than a constable in uniform to stop a vehicle on any road.

Release of detained vehicles

4. A vehicle detained in accordance with regulation 3 shall be returned to the owner by or under the direction of an authorised person—

- (a) when at the time the vehicle was detained the person using the vehicle held a licence (whether or not authorising the use of the vehicle); or
- (b) when at the time the vehicle was detained the vehicle was not being, and had not been, used in contravention of section 2 of the 1995 Act.

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 1995 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 device shall also fix to the vehicle a notice (an “immobilisation notice”) which indicates that—

- (a) the device has been fixed to the vehicle;
- (b) the vehicle may only be released from the device by or under the direction of an authorised person;
- (c) the notice shall not be removed or interfered with except by or on the authority of an authorised person; and
- (d) 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 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.

(3) Any person who, without being authorised to do so in accordance with regulation 7, removes or attempts to remove an immobilisation device fixed to a vehicle in accordance with these Regulations shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Release of immobilised vehicles

7. A vehicle to which an immobilisation device has been fixed in accordance with regulation 5—

- (a) may be released on the direction of an authorised person; and
- (b) subject to paragraph (a) above, shall be released—
 - (i) when at the time the vehicle was detained the person using the vehicle held a licence (whether or not authorising the use of the vehicle); or
 - (ii) when at the time the vehicle was detained the vehicle was not being, and had not been, used in contravention of section 2 of the 1995 Act.

Removal and delivery of property detained

8.—(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—

- (a) he is a person appointed by an authorised person; and
- (b) he has made arrangements with the Secretary of State and agreed to accept delivery of the property in accordance with those arrangements; and
- (c) he has agreed with the Secretary of State 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, he 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 any property, it shall be the duty of that person while any property is in his custody to take such steps as are necessary for the safe custody of that property.

Notification of detention of a vehicle and its contents

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

- (a) publish a notice in the London Gazette if the vehicle was detained in England or Wales or in the Edinburgh Gazette if the vehicle was detained in Scotland—
 - (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) stating that it 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 that he is entitled to the return of the vehicle, the authorised person intends to dispose of it after the expiry of that period in accordance with regulation 15;
 - (iv) stating that any contents which are not disposed of in accordance with regulation 17(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 that he is entitled to the return of the contents, the authorised person intends to dispose of them after the expiry of that period in accordance with regulation 17(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 traffic commissioner in whose area the vehicle was detained;
 - (iii) the chief officer of the police force in whose area the property was detained;
 - (iv) the Association of British Insurers; and
 - (v) the British Vehicle Rental and Leasing Association.

(2) The period specified in a notice under paragraph (1)(a)(iii) and (iv) shall be 21 days, beginning with the date on which the notice is published under regulation 9(1)(a) or, if later, a copy of the notice is served under regulation 9(1)(b).

Applications to a traffic commissioner

10.—(1) The owner of a vehicle detained in accordance with regulation 3 may, within the period specified in regulation 9(2), apply to the traffic commissioner for the area in which the vehicle was detained for the return of the vehicle.

(2) An application under paragraph (1) shall be given in writing and shall be accompanied by—

- (a) a statement of one or more of the grounds specified in paragraph (4) on which the application is declared to be based; and
- (b) a statement indicating whether the applicant wishes the traffic commissioner to hold a hearing.

(3) An application under paragraph (1) shall be served before the expiry of the period specified in regulation 9(2).

(4) An application under paragraph (1) may be made on any of the following grounds -

- (a) that at the time the vehicle was detained the person using the vehicle held a licence (whether or not authorising the use of the vehicle);
- (b) that at the time the vehicle was detained the vehicle was not being, and had not been, used in contravention of section 2 of the 1995 Act; or
- (c) that, although at the time the vehicle was detained it was being, or had been, used in contravention of section 2 of the 1995 Act, the owner did not know that it was being, or had been, so used.

Hearings

11.—(1) If—

- (a) an application under regulation 10(1) is accompanied by a statement to the effect that the applicant wishes the traffic commissioner to hold a hearing; or
 - (b) the traffic commissioner so decides,
- the traffic commissioner shall hold a hearing.

(2) A hearing shall take place at the time and place specified by the traffic commissioner in his notice of the hearing.

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

(4) Subject to the following provisions of this regulation, a hearing shall be held in public.

(5) The traffic commissioner may direct that the whole or any part of a hearing be held in private if he 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-paragraphs (a) or (b),
- it is just and reasonable for him so to do.

(6) Subject to paragraph (7), where the hearing is held in private the traffic commissioner may admit such persons as he considers appropriate.

(7) A member of the Council on Tribunals or the Scottish Committee of that Council may be present in his capacity as such notwithstanding that the hearing, or part of a hearing is not in public.

Notification of determinations

12. The traffic commissioner shall notify the applicant in writing of his determination of an application—

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

Appeals from a determination of a traffic commissioner to the Transport Tribunal

13.—(1) An appeal may be made to the Transport Tribunal against a determination of the traffic commissioner.

(2) Notice of appeal in respect of an appeal to the Transport Tribunal shall be given before the expiry of 28 days beginning with the date of the determination of the traffic commissioner and a copy of the notice of appeal shall be sent to the authorised person and the traffic commissioner.

Return of a vehicle detained

14. If—

- (a) an application is made to a traffic commissioner in accordance with regulation 10; or
 - (b) an appeal is made to the Transport Tribunal in accordance with regulation 13,
- and the traffic commissioner or the Transport Tribunal, as the case may be, determines that one or more of the grounds specified in regulation 10(4) is made out, the traffic commissioner or the Transport Tribunal shall order an authorised person to return the vehicle to the owner.

Disposal of vehicles

15.—(1) If—

- (a) no application for the return of a vehicle is made in accordance with regulation 10; or
- (b) such an application is made but the traffic commissioner, or the Transport Tribunal in the event of an appeal under regulation 13, determines that none of the grounds specified in regulation 10(4) is made out,

the authorised person may sell or destroy the vehicle as he thinks fit.

(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 traffic commissioner in whose area the vehicle was detained;
- (c) the chief officer of the police force in whose area it was detained;
- (d) the Association of British Insurers; and
- (e) the British Vehicle Rental and Leasing Association.

Return of contents

16.—(1) The person specified in a direction by virtue of regulation 8 may retain custody of the contents of a vehicle until they are disposed of in accordance with regulation 17, or returned to a person who establishes that he is entitled to them in accordance with the provisions of this regulation.

(2) Unless the contents of a vehicle have already been disposed of in accordance with regulation 17, an authorised person shall return any contents detained under regulation 3 to a person who has given notice in writing of his claim to an authorised person within the period specified in the notice given under regulation 9(1)(a)(iv) and who—

- (a) produces satisfactory evidence of his entitlement to them and of his identity and address; or

(b) where he seeks to recover the contents as the agent of another person, produces satisfactory evidence of his status as agent and of his principal's identity, address and entitlement to the contents.

(3) Where the person claiming to be entitled to a vehicle establishes his entitlement, he 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 to him.

Disposal of contents

17.—(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 9.

(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 16(2) but no person establishes his entitlement to them in accordance with regulation 16; or

(b) no notice of a claim has been given in respect of them in accordance with regulation 16(2),

the authorised person may sell or destroy those contents as he thinks fit.

Application of proceeds of sale

18.—(1) The proceeds of sale of any property sold by an authorised person under regulation 15 or 17 shall be applied towards meeting expenses incurred by the authorised person in exercising his functions under these Regulations and, in so far as they are not so applied, in meeting any claim to the proceeds of sale made and established in accordance with paragraph (2).

(2) A claim to the proceeds of sale of any property shall be established if the claimant provides the authorised person with satisfactory evidence that he would have been entitled to the return of the property under regulation 14 or 16 if the property had not been sold.

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

(4) The conditions are that—

(a) the person claiming satisfies the authorised person that he was the owner of the property at the time it was disposed of; and

(b) the claim is made before the end of the period of one year beginning with the date on which the property was disposed of.

(5) The sum payable under paragraph (2) shall be calculated by deducting from the proceeds of sale the expenses incurred by the authorised person in exercising his functions under these Regulations, including the detention, removal, storage and disposal of the property.

Disputes

19.—(1) This regulation applies to a dispute which 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 under a dispute to which this regulation applies may apply in writing to the Secretary of State on the grounds that the authorised person did not comply with the requirements of regulation 9, 16, 17 or 18.

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

(a) if the Secretary of State notifies the claimant that the grounds have been established, the authorised person shall pay the claimant any amount due to him;

(b) if the Secretary of State rejects the application he shall so inform the claimant in writing and at the same time notify him of his right to make an appeal under paragraph (4).

(4) An appeal may be made from the Secretary of State's determination to the appropriate court 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 that effect under paragraph (3)(b); or

(b) the Secretary of State 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 the appropriate court finds that the grounds of the appeal have been established, the authorised person shall be ordered to pay the claimant the amount due to him.

(5) In paragraph (4), "appropriate court" means—

(a) the magistrates' court for the petty sessions area, or in Scotland, the sheriff court in the sheriffdom—

(i) in which the claimant resides (in the case of an individual);

(ii) where the principal or last known place of business of the claimant is situated (in the case of a partnership); or

(iii) where the registered or principal office of the claimant is situated (in the case of an incorporated or unincorporated body).

Offences as to obstruction of an authorised person

20. Where a person intentionally obstructs an authorised person in the exercise of his powers under regulation 3 or 8, he is guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Offences as to securing possession of property

21.—(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 2 of the 1995 Act, and the declaration is to the person's knowledge either false or in any material respect misleading, he 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 two years or to a fine or to both.

Giving of notice

22.—(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 him;

(b) left at his proper address;

(c) sent by post to him at that address; or

(d) transmitted to him by FAX or other means of electronic data transmission in accordance with paragraph (3).

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

(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 7 of the Interpretation Act 1978^(a) shall be—

- (a) in the case of an individual, his 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 his proper address for service for the purposes of these Regulations and of section 7 of the Interpretation Act 1978.

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

Signed by authority of the Secretary of State for
Transport, Local Government and the Regions

John Spellar
Minister of State,
Department for Transport, Local Government
and the Regions

11th December 2001

(a) 1978 c. 30.

EXPLANATORY NOTE

(This note is not part of the Regulations)

Schedule 1A to the Goods Vehicles (Licensing of Operators) Act 1995 (“the 1995 Act”) (which was inserted by section 262 of the Transport Act 2000) enables regulations to be made permitting an authorised person to detain a heavy goods vehicle (“vehicle”) 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 that Schedule.

Regulation 2 contains definitions.

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

Regulation 4 provides for the release of a detained vehicle to an owner 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 2 of the 1995 Act.

Regulations 5 to 7 provide for the immobilisation of vehicles, criminal offences arising from the unlawful removal of, or interference with, immobilisation notices or devices, and the release of immobilised vehicles.

Regulations 8 and 9 provide for the removal and delivery of vehicles and contents detained and the giving of notice of detention.

Regulations 10 to 12 provide for the owner of a vehicle to make an application to a traffic commissioner 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 traffic commissioner so decides.

Regulation 13 provides for appeals from a traffic commissioner to the Transport Tribunal (such appeals are governed by procedures under the Transport Tribunal Rules 2000).

Regulation 14 provides for the return of a vehicle detained where the traffic commissioner determines that one or more of the grounds specified in regulation 10(4) is made out.

Regulation 15 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.

Regulations 16 and 17 provide for the return of contents of detained vehicles and the disposal of such contents.

Regulation 18 provides for the application of proceeds of sale of any property sold by an authorised person under regulation 15 or 17.

Regulation 19 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 Secretary of State. There is provision for an appeal to be made from the Secretary of State’s determination to a magistrates’ court (in England and Wales) or to a sheriff court (in Scotland).

Regulation 20 makes it a criminal offence to obstruct an authorised person in the exercise of his powers under regulation 3 or 8.

Under regulation 21 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 22 regulates the service of notices under the Regulations.

A Regulatory Impact Assessment has been prepared and copies can be obtained from the Department for Transport, Local Government and the Regions, Zone 2/23, Great Minster House, 76 Marsham Street, London SW1P 4DR (telephone: 020-7944 2123). Copies are being placed in the Libraries of each House of Parliament.

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