

2009 No. 493

ROAD TRAFFIC

**The Road Safety (Immobilisation, Removal and Disposal of
Vehicles) Regulations 2009**

<i>Made</i>	- - - -	<i>5th March 2009</i>
<i>Laid before Parliament</i>		<i>9th March 2009</i>
<i>Coming into force</i>	- -	<i>31st March 2009</i>

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SCHEDULE — The prescribed charges

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 11(3) of the Road Safety Act 2006(a) and by Schedule 4 to that Act.

PART 1
Preliminary

Citation and commencement

1. These Regulations may be cited as the Road Safety (Immobilisation, Removal and Disposal of Vehicles) Regulations 2009 and shall come into force on 31st March 2009.

Interpretation

2. In these Regulations—

“identified person” has the meaning given in regulation 10(2);

“immobilisation notice” means a notice given in accordance with regulation 4(2);

“owner” means, in relation to a vehicle—

(a) the person in whose name the vehicle is then registered under the Vehicle Excise and Registration Act 1994(b); or

(b) if the vehicle is not so registered, the person appearing to the authorised person to own that vehicle;

“recognised badge” has the meaning given by section 21A(1) of the Chronically Sick and Disabled Persons Act 1970(c); and

“release fee” has the meaning given by regulation 4(7).

Application

3.—(1) These Regulations apply with respect to any case where the driving of a vehicle has been prohibited under—

(a) section 99A(1) of the Transport Act 1968(d) (powers to prohibit driving of vehicles in connection with contravention of provisions about drivers’ hours);

(a) 2006 c.49.

(b) 1994 c.22.

(c) 1970 c.44. Section 21A was inserted by section 9 of the Disability Discrimination Act 2005 (c.13).

(d) 1968 c.73. Section 99A was inserted by section 266 of the Transport Act 2000 (c.38), and subsection (1) was amended by S.I. 2005/1904.

- (b) section 1 of the Road Traffic (Foreign Vehicles) Act 1972(a) (powers to prohibit driving of foreign goods vehicles and foreign public service vehicles);
- (c) section 69 or 70 of the Road Traffic Act 1988(b) (powers to prohibit driving of unfit or overloaded vehicles); or
- (d) section 90D of the Road Traffic Offenders Act 1988(c) (power to prohibit driving of vehicle on failure to make payment in compliance with financial penalty deposit requirement).

(2) These Regulations do not apply in relation to a vehicle if a current disabled person's badge or current recognised badge is displayed on that vehicle.

PART 2

Immobilisation of Vehicles

Power to immobilise vehicles

4.—(1) An authorised person or a person acting under the direction of the authorised person may, in relation to any vehicle in a case where these Regulations apply—

- (a) fix an immobilisation device to the vehicle; and
- (b) move the vehicle, or direct the driver or the person appearing to be in charge of the vehicle to move the vehicle, for the purpose of enabling an immobilisation device to be fitted to it.

(2) On any occasion when an immobilisation device is fixed to a vehicle in accordance with these Regulations, the person fixing the device must also fix to the vehicle a notice (“an immobilisation notice”)—

- (a) indicating that the device has been fixed to the vehicle and warning that no attempt should be made to drive it or otherwise put it in motion until it has been released from the device;
- (b) specifying the steps to be taken to secure its release, including—
 - (i) how payment of any release fee should be made; and
 - (ii) the evidence to be produced to show that the prohibition under which the driving of the vehicle was prohibited has been removed; and
- (c) giving any other relevant information, including the consequences of not securing release of the vehicle.

(3) A vehicle to which an immobilisation device has been fixed in accordance with these Regulations—

- (a) may only be released from the device by or under the direction of an authorised person; but
- (b) subject to sub-paragraph (a), must be released from the device if the first and second requirements specified below are met.

(4) The first requirement is that a charge of £80 in respect of the release is paid in any manner specified in the immobilisation notice.

(5) The second requirement is that, in accordance with instructions specified in the immobilisation notice, there is produced—

(a) 1972. c.27. Section 1 was amended by paragraph 8 of Schedule 3 to the Transport Act 1978 (c.55), paragraph 9 of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c.54), paragraph 6 of Schedule 4 to the Road Traffic Act 1991 (c.40), and by S.I. 1984/748 and 1999/1322.

(b) 1988 c.52. Section 69 was substituted for section 69 as originally enacted by section 12 of the Road Traffic Act 1991 (c.40). Section 70 was amended by section 13 of the Road Traffic Act 1991.

(c) 1988 c.53. Sections 90A to 90F were inserted by section 11(1) of the Road Safety Act 2006.

- (a) in the case of a prohibition issued under section 99A(1) of the Transport Act 1968 (powers to prohibit driving of vehicles in connection with contravention of provisions about drivers' hours), the notice referred to in section 99B(3)(a) of that Act (notice to driver of the vehicle that the prohibition has been removed), or evidence that that prohibition has expired;
- (b) in the case of a prohibition issued under section 1 of the Road Traffic (Foreign Vehicles) Act 1972 (powers to prohibit driving of foreign goods vehicles and foreign public service vehicles), the notice referred to in section 2(3) of that Act (notice to driver of the vehicle that the prohibition has been removed), or evidence that that prohibition has expired;
- (c) In the case of a prohibition issued under sections 69 or 70 of the Road Traffic Act 1988 (powers to prohibit driving of unfit or overloaded vehicles), the notice referred to in section 72(7)(b) of that Act (notice to owner that the prohibition has been removed); and
- (d) in the case of a prohibition issued under section 90D of the Road Traffic Offenders Act 1988 (power to prohibit driving of vehicle on failure to make payment in compliance with financial penalty deposit requirement), evidence that one of the events referred to in section 90D(4) of that Act has occurred.

(6) An immobilisation notice may not be removed or interfered with except by an authorised person or a person acting on the authority of an authorised person.

(7) In this regulation, the "release fee" means the charge referred to in paragraph (4).

Offence of failing to move vehicle

5. A person who fails to comply within a reasonable time with a direction under regulation 4(1)(b) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Offence of removing or interfering with immobilisation notice

6. A person, other than an authorised person or a person acting on the authority of an authorised person, who removes or interferes with an immobilisation notice is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Offence of removing or interfering with immobilisation device, etc.

7. A person, other than an authorised person or a person acting under the direction of an authorised person, who removes or attempts to remove an immobilisation device fixed to a vehicle in accordance with these Regulations is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

False or misleading statements, etc.

8.—(1) Where—

- (a) a person makes a declaration with a view to securing the release of a vehicle from an immobilisation device purported to have been fixed in accordance with these Regulations;
- (b) the declaration is that the prohibition has been removed; and
- (c) the declaration is to the person's knowledge either false or in any material respect misleading,

that person is guilty of an offence.

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

- (a) on summary conviction, to a fine not exceeding the statutory maximum; or

(a) Section 99B was inserted by section 266 of the Transport Act 2000.

(b) Section 72 was substituted, for section 72 as originally enacted, by section 15 of the Road Traffic Act 1991.

- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine, or both.

PART 3

Removal and Disposal of Vehicles

Power to remove vehicles

9.—(1) Where any of the conditions specified in paragraph (2) are met, an authorised person, or a person acting under the direction of an authorised person, may remove the vehicle or direct the driver or the person appearing to be in charge of the vehicle to remove the vehicle.

- (2) The conditions are that the authorised person considers that the vehicle should be removed—
 - (a) for the safety of traffic, the vehicle, its occupants or its load;
 - (b) because there is insufficient space for the vehicle to remain at the location at which the vehicle was inspected; or
 - (c) because it appears to the authorised person that the vehicle has been abandoned.

Delivery of vehicles

10.—(1) An authorised person, or a person acting under the direction of an authorised person, may deliver a vehicle removed under regulation 9, or direct it to be delivered, 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 authorised person, or the person acting under the direction of an authorised person, 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 Secretary of State for accepting custody of vehicles, including arrangements regarding security and access.
- (3) The arrangements made by virtue of sub-paragraph (2)(b) may include provision as to the payment of a sum to the identified person.

Notice of removal of vehicle

11.—(1) Subject to paragraph (3), where a vehicle has been removed and delivered into the custody of an identified person under regulation 10, the authorised person must provide a notice to the person referred to in paragraph (2) specifying—

- (a) the statutory power under which the vehicle has been removed;
 - (b) the particulars of the place to which the vehicle has been removed;
 - (c) the identity of the person to whom the vehicle has been delivered;
 - (d) the steps to be taken to reclaim the vehicle, including—
 - (i) how payment of any release fee should be made; and
 - (ii) the evidence to be produced to show that the prohibition under which the driving of the vehicle was prohibited has been removed or has expired;
 - (e) the steps to be taken, in accordance with regulation 18, in the event of a dispute; and
 - (f) any other relevant information, including the consequences of not reclaiming the vehicle.
- (2) The notice shall be provided by the authorised person to the person who was the driver of the vehicle when the driving of the vehicle was prohibited.

(3) If it is not reasonably practicable to give the notice to the person referred to in paragraph (2), then the authorised person shall take reasonable steps to locate the owner of the vehicle and to give the notice to the owner in writing by post.

Taking possession of a vehicle

12. A person (“the claimant”) may take possession of the vehicle if the claimant—
- (a) claims it before it is disposed of;
 - (b) claims it not more than three months from the date on which the vehicle was removed or the direction to remove it was given;
 - (c) produces evidence to the satisfaction of the authorised person that the claimant—
 - (i) is either the owner of the vehicle; or
 - (ii) was the person in charge of the vehicle at the time it was removed or was directed to be removed;
 - (d) pays the charges specified in the Schedule for the release, removal and custody of the vehicle, as applicable; and
 - (e) produces such evidence as is required by regulation 4(5).

Compensation

- 13.—(1) An amount calculated in accordance with paragraph (2) may be paid to a person if—
- (a) he claims after the vehicle’s disposal to be or to have been its owner or to have been the person in charge of the vehicle when it was removed; and
 - (b) the claim is made within three months of the date on which the vehicle was removed or the direction to remove the vehicle was given.

(2) The amount payable under paragraph (1) shall be calculated by deducting from any proceeds of sale the charges specified in the Schedule in respect of the release, removal, custody and disposal of the vehicle, as applicable.

Power to dispose, etc., of vehicles

14. The person into whose custody the vehicle is delivered pursuant to regulation 10 may dispose, sell or destroy the vehicle as that person sees fit if the vehicle has not been claimed in accordance with regulation 12 within three months from the date on which the vehicle was removed or the direction to remove the vehicle was given.

Recovery of prescribed charges

15. Whether or not a claim is made under regulation 12 or 13—
- (a) the Secretary of State; or
 - (b) a person into whose custody the vehicle is delivered in accordance with regulation 10

may recover from the vehicle’s owner or the person in charge of the vehicle the charges specified in the Schedule in respect of the release, removal, custody and disposal of the vehicle, as applicable.

Offences of failing to remove or deliver vehicles

16. A person who fails to comply within a reasonable time with a direction under regulation 9(1) or 10(1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the standard scale.

False or misleading statements, etc.

17.—(1) Where—

- (a) a person makes a declaration with a view to securing possession of a vehicle purported to have been delivered into the custody of an identified person;
- (b) the declaration is that the prohibition has been removed; and
- (c) the declaration is to the person's knowledge either false or in any material respect misleading,

that person is guilty of an offence.

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

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

PART 4

General

Disputes

18.—(1) A person may apply to the appropriate court on the grounds that the authorised person, or person acting under his direction, did not comply with any of the requirements of any of regulations 4(1), 9, 10(1), 11, 12, or 13 (“the specified requirements”).

(2) If the appropriate court finds that an authorised person, or person acting under his direction, did not comply with any of the specified requirements, it may order the Secretary of State to pay a sum to the person applying to the court to reflect any financial loss directly attributable to that failure to comply.

(3) In this regulation, “appropriate court” means—

- (a) in England and Wales, a magistrates' court; or
- (b) 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.

Application of Road Traffic Offenders Act 1988

19. The following provisions of the Road Traffic Offenders Act 1988 shall apply to the offences created by these Regulations—

- (a) section 1 (requirement of warning etc. of prosecutions for certain offences)(a);
- (b) section 6 (time within which summary proceedings for certain offences must be commenced)(b);
- (c) section 11 (evidence by certificate as to driver, user or owner)(c); and

(a) Section 1 was amended by paragraph 80 of Schedule 4 to the Road Traffic Act 1991 and by paragraph 6(3) of Schedule 9 to the Criminal Justice and Public Order Act 1994 (c.33).

(b) Section 6 was amended by paragraph 71(2) of Schedule 4 to the Criminal Procedure (Consequential Provisions) (Scotland) Act 1995 (c.40).

(c) Section 11 was amended by paragraph 84 of Schedule 4 to the Road Traffic Act 1991 and by paragraph 35 of Schedule 1 to the Criminal Procedure and Investigations Act 1996 (c.25).

(d) section 12(1) (proof, in summary proceedings, of identity of driver of vehicle)(a).

Signed by authority of the Secretary of State for Transport

5th March 2009

Jim Fitzpatrick
Parliamentary Under Secretary of State
Department for Transport

(a) Subsection (1) of section 12 was amended by S.I. 2004/2035.

SCHEDULE

Regulations 12, 13 and 15

The prescribed charges

The prescribed charges for any matter referred to in column (1) of the Table shall be the sum specified in column (2) of the Table.

Table

<i>(1) Matter for which charge may be made</i>	<i>(2) Amount of charge (£)</i>
Release of vehicle from immobilisation device	80
Removal of vehicle	160
Custody of vehicle – for each period of 24 hours or part thereof	35
Disposal of vehicle	50

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision for the immobilisation, removal and disposal of certain vehicles which have been prohibited from being driven.

Regulation 3 provides for the application of the Regulations. They apply where a vehicle has been prohibited from being driven in connection with a contravention of drivers' hours rules; under powers to prohibit the driving of foreign goods vehicles and foreign public service vehicles; under powers to prohibit the driving of unfit or overloaded vehicles or under powers to prohibit the driving of vehicles on failure to make payment in compliance with a financial penalty deposit requirement. The Regulations do not apply if the vehicle is displaying a current disabled person's badge or recognised badge (as referred to in section 21A of the Chronically Sick and Disabled Persons Act 1970).

Regulation 4 provides that an authorised person or person acting under the direction of an authorised person may fix an immobilisation device to a vehicle to which the Regulations apply, and move the vehicle, or direct it to be moved for the purposes of fitting the device. Authorised persons are defined in paragraph 10 of Schedule 4 to the Road Safety Act 2006. Where an immobilisation device has been fixed, a notice must be fixed to the vehicle specifying certain matters, including the steps required to secure the release of the vehicle (*regulation 4(2)*). *Paragraphs (3) to (5) of regulation 4* specify the steps required to secure release of an immobilisation device. These include payment of an £80 release fee.

Regulations 5 - 8 provide for certain offences in connection with immobilisation, namely failing to comply within a reasonable time with a direction to remove the vehicle (*regulation 5*); removing or interfering with an immobilisation notice (*regulation 6*); removing or attempting to remove an immobilisation device (*regulation 7*); or making false or misleading statements with a view to securing the release of a vehicle from an immobilisation device (*regulation 8*).

Regulations 9 - 11 provide for the removal of a vehicle and the notice which must be provided in respect of such a removal which must include, among other things, details of the steps a person must take to reclaim the vehicle. *Regulation 12* sets out those steps. *Regulation 13*, together with the *Schedule*, sets out the manner of calculating the amount of compensation payable to the owner of the vehicle if it is claimed after being disposed of. In accordance with *regulation 14*, the vehicle may be disposed of, sold or destroyed if it is not claimed within three months from the date on which the vehicle was removed or the direction to remove the vehicle was given. The Secretary of State or the person into whose custody the vehicle is delivered may recover charges in accordance with *regulation 15* and the *Schedule* whether or not the vehicle is reclaimed or a claim is made under *regulation 14* following its disposal. These include charges for the release, removal, custody and disposal of the vehicle.

Regulations 16 and 17 specify offences in respect of failing to comply with a direction to remove or deliver a vehicle and in respect of false or misleading statements. Disputes are dealt with in accordance with *regulation 18*. *Regulation 19* applies certain provisions of the Road Traffic Offenders Act 1988 in respect of the offences created by the Regulations.

A full Impact Assessment of the effect this instrument will have on costs for the business and voluntary sectors has been produced and is available from the Licensing Roadworthiness and Insurance Division, Department for Transport, Zone 2/09 Great Minister House, 76 Marsham Street, London SW1P 4DR and may be accessed on the Department's website at www.dft.gov.uk. A copy has been placed in the library of each House of Parliament.

STATUTORY INSTRUMENTS

2009 No. 493

ROAD TRAFFIC

The Road Safety (Immobilisation, Removal and Disposal of
Vehicles) Regulations 2009

£5.00