



2010 CHAPTER 2

Enforcement

Powers of entry

38.—(1) The powers conferred on an authorised person by this section are exercisable for the purpose of ascertaining whether any provisions of, or made under, this Act are being complied with.

(2) An authorised person shall have the power to enter and inspect any vehicle used for the carriage of goods by road; and for that purpose the authorised person may stop and detain the vehicle during such time as is required for the inspection.

(3) Subject to subsection (4), an authorised person shall at any time which is reasonable having regard to the circumstances have the power to enter and inspect any premises—

- (a) in or on which the authorised person has reason to believe that a vehicle used for the carriage of goods by road is kept;
- (b) which the authorised person has reason to believe are used or intended to be used—
 - (i) in connection with the carriage of goods by road; or
 - (ii) in connection with the maintenance of vehicles used for the carriage of goods by road.

(4) An authorised person may not under subsection (3) enter premises which are occupied as a private dwelling unless under the authority of a warrant issued under subsection (5)(c).

(5) Where a lay magistrate is satisfied by complaint on oath—

- (a) that an authorised person has been refused admission to any premises which the authorised person has a right to enter under subsection (3), or

that such a refusal is apprehended, and that notice of the intention to apply for the warrant has been given to the occupier;

- (b) that an application for admission to the premises, or the giving of such a notice, would defeat the object of the entry, or that the premises are unoccupied or that the owner is temporarily absent; or
- (c) that admission to the premises is reasonably required for the purposes specified in the complaint and that an authorised person would, apart from subsection (4), be entitled for that purpose to exercise in respect of the premises a power of entry under subsection (3);

the lay magistrate may issue a warrant authorising the authorised person to enter the premises.

(6) An authorised person entering any premises under this section may be accompanied by such other persons as appear to the authorised person to be necessary.

(7) A warrant issued under subsection (5) shall continue in force until the purpose for which entry is required has been satisfied.

(8) Where an authorised person exercises a power of entry on any premises by virtue of this section, the authorised person shall ensure that the premises are left no less secure by reason of the entry, and the Department shall make good or pay compensation for any damage to property caused by the authorised person in entering the premises, in carrying out any inspection or in making the premises secure.

(9) Any question of disputed compensation shall be referred to and determined by the Lands Tribunal.

(10) Where an authorised person exercises a power of entry under this section, the authorised person may seize and remove anything found on the vehicle or premises which the authorised person has reasonable cause to believe may be required as evidence in any proceedings for an offence under this Act.

(11) For the purposes of subsection (10) the power to seize includes power to detach from a vehicle.

Power to seize documents etc

39.—(1) If an authorised person has reason to believe that—

- (a) a document or article carried on, or by the driver of, a goods vehicle, or
- (b) a document produced in pursuance of this Act,

is a document or article in relation to which an offence has been committed under section 36 or 37, the authorised person may seize that document or article.

(2) Where—

- (a) a document or article is seized under subsection (1),

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(b) no person has, within 6 months of the date on which the document or article was seized, been charged with an offence in relation to it under section 36 or 37, and

(c) the document or article is still detained,

then any of the persons mentioned in subsection (3) may make an application to a court of summary jurisdiction.

(3) The persons who may make an application under subsection (2) are—

(a) an authorised person;

(b) the driver or owner of the vehicle;

(c) the person from whom the document or article was seized.

(4) On an application under subsection (2), the court of summary jurisdiction shall make such order respecting the disposal of the document or article, and award such costs, as the justice of the case may require.

(5) For the purposes of subsection (1), the power to seize includes a power to detach from a vehicle.

Obtaining of information etc by authorised persons

40.—(1) Where an authorised person has reasonable cause to believe that a vehicle is used for the carriage of goods by road—

(a) the owner or driver of the vehicle,

(b) any person who has made, is making or intends to make, use of that vehicle for the carriage of goods by road, or

(c) any servant or agent of any person of the kind referred to in paragraphs (a) or (b),

shall furnish to that authorised person all such information, and produce for inspection all such documents, as the authorised person may reasonably require from that person for the purposes set out in subsection (2).

(2) The purposes referred to in subsection (1) are—

(a) obtaining the name and address of the owner of the vehicle or of the person whose servant or agent the driver is, and

(b) ascertaining, in relation to any goods which have been, or are being, or are to be, carried on the vehicle particulars of—

(i) the description of the goods and the name and address of the owner of the goods;

(ii) the places from which and to which the goods have been, are being, or are to be, carried.

(3) The owner or occupier of any premises entered by an authorised person under section 38, or any servant or agent of any such person, or any person found

on any such premises, shall give to the authorised person such information as it is in the person's power to give as to—

- (a) the name and address of the owner of any vehicle used for the carriage of goods by road which is kept in or on those premises or of the person whose servant or agent the driver of any such vehicle is;
 - (b) the matters referred to in subsection (2)(b)(i), and (ii), in relation to any goods which have been, are being, or are to be, carried on any such vehicle kept in or on those premises;
 - (c) any use of those premises in connection with the carriage of goods by road or the maintenance of vehicles used for the carriage of goods by road.
- (4) An authorised person may take copies of any documents—
- (a) produced under this section; or
 - (b) relating to the carriage of goods by road or the maintenance of vehicles used for the carriage of goods by road, being documents which are found by the authorised person or constable on any vehicle or premises entered under section 38;

and for that purpose the authorised person may detain any document or vehicle for such time as is required for such copying.

Obstruction of authorised persons

41. Any person who—

- (a) wilfully obstructs an authorised person acting in the exercise of functions under this Act,
- (b) without reasonable cause fails to give an authorised person any information, or to produce any documents, or to allow that authorised person to copy any documents, being information or documents which that authorised person may reasonably require of that person for the purpose of the exercise of those functions,
- (c) prevents, or attempts to prevent, any other person from giving any such information to any authorised person, or
- (d) in giving any such information to any authorised person makes any statement which that person knows to be false in a material particular,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding 6 months, or to both.

Exercise of enforcement powers: authorised persons and constables

42.—(1) The powers conferred on an authorised person by this Act are exercisable on production by that person, if so required, of that person's authority.

(2) A constable may exercise the functions of an authorised person under this Act, but it shall not be necessary for a constable in uniform to produce any authority pursuant to subsection (1).

(3) Section 41 applies in relation to a constable as it applies in relation to an authorised person.

Evidence by certificate

43.—(1) In any proceedings for an offence under this Act a certificate such as is mentioned in subsection (2) shall be evidence of the facts stated in it.

(2) The certificate referred to in subsection (1) is a certificate issued by the Department which states—

- (a) that, on any date, a person was or was not the holder of an operator's licence;
- (b) that, by virtue of a direction given by the Department under regulations made under section 48(2)(b) or (3), a person is to be treated as having been the holder of an operator's licence on any date;
- (c) the date of the coming into force of any operator's licence;
- (d) the date on which any operator's licence ceased to be in force;
- (e) the terms and conditions of any operator's licence;
- (f) that a person is by virtue of an order of the Department disqualified from holding or obtaining an operator's licence, either indefinitely or for a specified period;
- (g) that a direction, having effect indefinitely or for a specified period, has been given by the Department under section 25(3) in relation to any person;
- (h) that an operator's licence was on any date or during any specified period suspended by virtue of a direction given by the Department under section 23(1); or
- (i) that, by virtue of a direction given by the Department under regulations made under section 48(2)(a), an operator's licence is to be treated as having been suspended on any date or during any specified period.

(3) Any such certificate which purports to be issued by the Department shall be taken to be so issued unless the contrary is proved.

Detention of vehicle used without operator's licence

44. Schedule 2 (which relates to the detention, removal and disposal of goods vehicles in respect of which it appears that section 1 is contravened) shall have effect.

Prosecutions

45.—(1) Proceedings for an offence under any of the provisions of this Act shall not be instituted except by the Department or a constable.

(2) Article 10 of the [Road Traffic Offenders \(Northern Ireland\) Order 1996 \(NI 10\)](#) (time for bringing summary proceedings for certain offences) shall apply to an offence under section 8(2) or 37.