

SCHEDULES

SCHEDULE 2

Section 44

DETENTION OF VEHICLES USED WITHOUT OPERATOR'S LICENCE

Detention of property

1. Regulations may provide that where an authorised person has reason to believe that a goods vehicle is being, or has been, used on a road in contravention of section 1, the authorised person may detain the vehicle and its contents.
2. Regulations may make provision with respect to property detained by virtue of paragraph 1.

Immobilisation and removal

- 3.—(1) Regulations may provide that an authorised person may, before a goods vehicle is moved by virtue of paragraph 5—
 - (a) fix an immobilisation device to the vehicle in the place where the vehicle 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.
- (2) Regulations may provide that on any occasion when an immobilisation device is fixed to a goods vehicle in accordance with the regulations the person fixing the device must also fix to the vehicle a 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, and
 - (c) giving such other information as may be prescribed.
- (3) Regulations may provide that—
 - (a) a goods vehicle to which an immobilisation device has been fixed in accordance with the regulations may only be released from the device by or under the direction of an authorised person;
 - (b) an immobilisation notice shall not be removed or interfered with except by or on the authority of an authorised person.

4.—(1) Regulations may provide that a person who, without being authorised to do so in accordance with paragraph 3(3)(a), removes or attempts to remove an immobilisation device fixed to a goods vehicle under regulations made by virtue of paragraph 3(1) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Regulations may provide that a person who removes or interferes with an immobilisation notice in contravention of regulations made by virtue of paragraph 3(3)(b) is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale

5.—(1) Regulations may make provision for an authorised person to direct that any property detained by virtue of paragraph 1 be removed and delivered into the custody of a person specified in the direction.

(2) Regulations may provide that a direction under sub-paragraph (1) may only specify a person—

- (a) who is identified in accordance with prescribed rules, and
- (b) who has made arrangements with the Department and has agreed to accept delivery of the property in accordance with those arrangements;

and the arrangements may include the payment of a sum to a person into whose custody any property is delivered.

(3) Regulations may also provide that, where an authorised person has given a direction by virtue of sub-paragraph (1) in respect of a goods vehicle, the authorised person 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.

6.—(1) Regulations may make provision for informing persons who may be entitled to the property that it has been detained.

(2) Provision made by virtue of sub-paragraph (1) may, in particular, include provision requiring—

- (a) the publication by an authorised person of such notices as may be prescribed, and
- (b) the giving of notice by an authorised person to such persons as may be prescribed.

Return or disposal of vehicle

7. Regulations may make provision authorising a vehicle detained by virtue of paragraph 1 to be returned to the owner, in prescribed circumstances, without the need for any application under paragraph 8.

8.—(1) Regulations shall make provision enabling the owner of a goods vehicle detained by virtue of paragraph 1 to apply to the Department for the return of the vehicle.

(2) Regulations may, in particular—

- (a) require notice of an application to be given to the Department within such period as may be determined in accordance with the regulations, and
- (b) require notice of an application to be made in such form as may be prescribed.

(3) Regulations shall make provision as to the grounds upon which the owner may apply for the return of the vehicle.

(4) Those grounds may include the following grounds—

- (a) that 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)
- (b) that at the time the vehicle was detained the vehicle was not being, and had not been, used in contravention of section 1, or
- (c) that, although at the time the vehicle was detained it was being, or had been, used in contravention of section 1, the owner did not know that it was being, or had been, so used.

9.—(1) Regulations shall make provision—

- (a) enabling the Department to hold a hearing before determining an application by virtue of paragraph 8,
- (b) requiring the Department to hold a hearing if requested by a person who claims to be the owner,
- (c) as to the time within which the hearing must be held, and
- (d) subject to such provision as may be made by the regulations, for the hearing to be held in public.

(2) Regulations shall also provide that, if no hearing is held, the Department must determine the application within a prescribed time after receiving notice of the application.

(3) Regulations shall provide that—

- (a) if the Department determines that one of the grounds prescribed by virtue of paragraph 8(3) is made out, it must order the person specified in a direction by virtue of paragraph 5(1) to return the goods vehicle to the owner;
- (b) if the Department determines that none of those grounds is made out, the vehicle may be sold or destroyed by the person specified, in such manner as may be prescribed.

10.—(1) Regulations shall provide for an appeal to the Upper Tribunal against the determination of the Department.

(2) Regulations—

- (a) may prescribe the period within which an appeal must be made, and
- (b) may make provision for notice of the appeal to be given to the Upper Tribunal, the Department and such other persons as may be prescribed.

11. Regulations may provide that, if no application is made to the Department in accordance with regulations made by virtue of paragraph 8, any goods vehicle detained by virtue of paragraph 1 may be sold or destroyed in such manner as may be prescribed.

Return or disposal of contents of vehicle

12.—(1) Regulations may provide that the person specified in a direction by virtue of paragraph 5(1) may retain custody of the contents of a goods vehicle until—

- (a) the contents are returned, in accordance with the regulations, to a person who establishes that that person is entitled to them, or
- (b) the contents are sold or destroyed by the person specified in such manner as may be prescribed

(2) Regulations may also make provision as to—

- (a) the period within which a person who claims to be entitled to the contents may make a claim for their return,
- (b) the requirements to be satisfied by a person who claims to be entitled to the contents (including requirements as to the person's entitlement), and
- (c) the manner in which entitlement to such contents is to be determined where there is more than one claim to them.

(3) The person specified in a direction by virtue of paragraph 5(1) may not sell or destroy the contents unless—

- (a) such steps as may be required by regulations made by virtue of paragraph 6(1) have been taken and no person has, before the expiry of the period referred to in sub-paragraph (2)(a), established an entitlement to the contents, or
- (b) the condition of the contents requires them to be disposed of without delay.

Custody of property

13. Regulations shall provide that, subject to the powers of a person specified in a direction by virtue of paragraph 5(1) to sell or destroy any property by virtue of

this Schedule, it shall be the duty of that person while any property is in that person's custody to take such steps as are necessary for the safe custody of that property.

Proceeds of sale

14.—(1) Regulations shall provide for the proceeds of sale of any property sold under regulations made by virtue of paragraph 9(3)(b), 11 or 12(1)(b)—

- (a) to be applied towards meeting expenses incurred by any authorised person in exercising functions by virtue of this Schedule, and
- (b) in so far as they are not so applied, to be applied in such other manner as may be prescribed.

(2) Regulations may in particular provide for a sum determined in accordance with the regulations to be paid to a person if—

- (a) the person claims after the sale of property under regulations made by virtue of paragraph 9(3)(b), 11 or 12(1)(b) to be or to have been its owner,
- (b) the claim is made within a prescribed time of the sale, and
- (c) any other prescribed conditions are fulfilled.

Disputes

15.—(1) Regulations may make provision about the proceedings to be followed where a dispute occurs as a result of regulations made by virtue of paragraph 12 or 14.

(2) Provision made by virtue of sub-paragraph (1) may in particular provide—

- (a) for an application to be made to a court of summary jurisdiction;
- (b) for a court to order a sum to be paid by the Department

Offences as to securing possession of property

16.—(1) Regulations may provide that where—

- (a) a person makes a declaration with a view to securing the return of a goods vehicle under regulations made by virtue of paragraph 9,
- (b) the declaration is that the vehicle was not being, or had not been, used in contravention of section 1, and
- (c) the declaration is to the person's knowledge either false or in any material respect misleading,

the person is guilty of an offence.

(2) Regulations may provide that a person guilty of such an offence is liable—

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

- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years, or to a fine, or both.

Interpretation

17.—(1) In this Schedule—

“contents”, in relation to a goods vehicle, means any goods carried by that vehicle;

“immobilisation device” means any device or appliance which is an immobilisation device for the purposes of paragraph 11 of Schedule 1 to the [Road Traffic \(Northern Ireland\) Order 2007 \(NI 10\)](#).

(2) Regulations may, for the purposes of regulations made by virtue of this Schedule, make provision as to the meaning of “owner” as regards a goods vehicle.

(3) Regulations made by virtue of sub-paragraph (2) may, in particular, provide that the owner of a goods vehicle at a particular time shall be taken to be—

- (a) any person in whose name the goods vehicle is then registered by virtue of the Vehicle Excise and Registration Act [1994 \(c. 22\)](#), or
- (b) any person in whose operator’s licence the goods vehicle is then specified.