

**2008 No. 103**

**CRIMINAL LAW**

**The Enforcement of Fines (Seizure and Disposal of Vehicles)  
(Scotland) Regulations 2008**

*Made* - - - - - *6th March 2008*

*Laid before the Scottish Parliament* *7th March 2008*

*Coming into force* - - - *1st April 2008*

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SCHEDULE

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 226D(12) of the Criminal Procedure (Scotland) Act 1995(a) and all other powers enabling them to do so.

### **Citation and commencement**

1. These Regulations may be cited as the Enforcement of Fines (Seizure and Disposal of Vehicles) (Scotland) Regulations 2008 and come into force on 1st April 2008.

### **Interpretation**

2. In these Regulations–

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995;

“contractor” means a person, including any person authorised by that person, who under the terms of a seizure order, carries out, directs or supervises the immobilisation, the removal to or the release from storage, of vehicles and, for the purposes of the storage of vehicles, includes a person to whom this work has been sub-contracted;

“disabled person’s badge” has the meaning given in section 226D(15) of the 1995 Act;

“enforcement order” has the meaning given in section 226I(1) of the 1995 Act;

“FEO” means fines enforcement officer(b);

“immobilisation device” has the meaning given in section 104(9) of the Road Traffic Regulation Act 1984(c);

“medical professional” means a nurse, a midwife and any other medically qualified person;

“offender” means a person who is liable to pay a relevant penalty and who, following the making of an enforcement order by the court, has failed to do so;

“relevant penalty” has the meaning given in section 226I(1) of the 1995 Act;

“seizure order” means a direction given by the FEO in accordance with section 226D(1) of the 1995 Act that a vehicle belonging to an offender be immobilised or, as the case may be, immobilised and impounded;

“storage” means the impounding of a vehicle under the terms of a seizure order;

“vehicle” means a motor vehicle as defined in section 226D(15) of the 1995 Act; and

“vehicle belonging to an offender” has the meaning given in section 226D(3) of the 1995 Act.

### **Requirements with respect to the making of a seizure order**

3. Before a seizure order may be made by the FEO, the FEO must be satisfied–

- (a) that the value of the vehicle to be seized, if sold, would be likely to exceed the sum of the relevant penalty and the likely charges and costs of sale; and
- (b) that the vehicle is not an exempt vehicle under regulation 11.

### **Matters to be included in a seizure order**

4. A seizure order must specify–

- (a) the offender’s full name, address and date of birth;
- (b) the amount of the relevant penalty for which the offender is liable and the date on which the relevant penalty was imposed;

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(a) 1995 c.46, as relevantly amended by the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (asp 6), section 55 inserting sections 226A to 226I.

(b) Fines enforcement officers are authorised under section 226A of the Criminal Procedure (Scotland) Act 1995 for any, or all, of the purposes of that section and of sections 226B to 226H of that Act.

(c) 1984 c.27.

- (c) the amount of the sum due to be paid and a note of the charges payable as prescribed in the Schedule to these Regulations;
- (d) the date on which the enforcement order was made;
- (e) details of the vehicle to be seized, including its registration mark;
- (f) the date on which the seizure order was made;
- (g) the name, address and telephone number of the FEO; and
- (h) how the sum due may be paid.

**Procedure on making a seizure order**

5.—(1) On the making of a seizure order, the FEO must send a copy of the order to the contractor instructed for the purpose of implementing the seizure order who, if the sum due is not paid, must execute the order within the period of 3 months commencing on the date on which the seizure order was made, by the immobilisation of the vehicle or by its immobilisation and removal to storage.

(2) Seizure orders not implemented by the contractor in pursuance of paragraph (1) shall cease to have effect.

**Places where a vehicle may be seized**

6.—(1) A vehicle may be seized at any place (including on any highway or road) to which the public has access and on any private land to which access may be had at the time of seizure, without opening any lockfast gate or removing any door, gate or other barrier.

(2) A contractor may, in pursuance of paragraph (1), enter such private land with equipment and with, or without, a vehicle for the purpose of immobilising a vehicle belonging to the offender on the land, releasing an immobilisation device from it, or removing it to secure storage.

**Defect in execution of a seizure order or irregularity in its execution**

7. A contractor acting in accordance with these Regulations in the execution of a seizure order shall not be guilty of an offence under section 3 of the Trespass (Scotland) Act 1865<sup>(a)</sup> by reason only of any irregularity in the execution of the order.

8. Regulation 7 shall not prejudice the claim of any person for damages in respect of any loss caused following action undertaken in pursuance of a defective seizure order or a seizure order in which there has been an irregularity in its execution.

**Repositioning of a vehicle before immobilisation**

9.—(1) If a vehicle to be immobilised is so positioned that while the vehicle is immobilised in that position there would be, at any time, an offence or contravention of a restriction imposed by or under any enactment, the contractor must, before the vehicle is immobilised, have it repositioned to the nearest place where there would be no such offence or contravention while it is immobilised there.

(2) Where a vehicle repositioned under this regulation is not visible from the place where it was originally positioned, the contractor must, when seizing the vehicle, affix a notice at, or near, the place where the vehicle was originally positioned indicating—

- (a) that the vehicle has been made the subject of a seizure order;
- (b) where the vehicle has been repositioned; and
- (c) the telephone number of the contractor.

(3) The repositioning of a vehicle under this regulation does not attract any fees or charges additional to those prescribed in the Schedule to these Regulations.

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<sup>(a)</sup> 1865 (28 and 29 Vict. c.56).

### **Procedure on executing a seizure order**

**10.** The contractor must, when carrying out a seizure order, affix a notice on a prominent position of the vehicle containing details of the vehicle, including its registration mark, informing the offender—

- (a) that the vehicle has been seized;
- (b) of the terms of the seizure order, as provided by regulation 4;
- (c) that it is an offence under section 226D(9) of the 1995 Act to remove or attempt to remove, without lawful authority or reasonable excuse, an immobilisation device fitted or a notice fixed to a vehicle in pursuance of a seizure order, punishable on summary conviction to a fine not exceeding level 3 on the standard scale;
- (d) how to secure the release of the vehicle;
- (e) of the amount of the relevant penalty and the charges payable to secure the release of the vehicle;
- (f) of the name, address and telephone number of the FEO for the purpose of dealing with enquiries regarding the seizure order;
- (g) of the name, address and telephone number of the contractor;
- (h) of the court to which any application may be made in respect of the seizure order;
- (i) of the times during which the contractor, the FEO and the clerk of court may be contacted;
- (j) of the right to apply to the court for a review of the making of a seizure order under section 226H of the 1995 Act and the means by which that may be undertaken; and
- (k) of the right of a third party who claims to own the vehicle to apply—
  - (i) in the first instance, to the FEO that the seizure order shall cease to have effect;
  - (ii) if unsuccessful under sub-paragraph (i), thereafter to the sheriff, in accordance with regulation 14(1)(b), for an order to that effect.

### **Exempt vehicles**

**11.** The following vehicles cannot be made subject to a seizure order—

- (a) a vehicle not registered in the offender's name under the Vehicle Excise and Registration Act 1994(a);
- (b) a vehicle displaying a valid British Medical Association badge indicating that it is being used by a doctor, or other medical professional, for the purposes of attending to work at a place other than their usual place of work, or in relation to which there are reasonable grounds for believing notwithstanding the absence of such a badge that it is used primarily for the carriage of a doctor or other medical professional for the purposes of attending to work at a place other than their usual place of work; and
- (c) a vehicle displaying a valid disabled person's badge, or in relation to which there are reasonable grounds for believing that it is used primarily for the carriage of a disabled person notwithstanding the absence of such a badge.

### **Release of vehicle on payment of the relevant penalty**

**12.—(1)** Payment of the relevant penalty and the charges due in accordance with these Regulations may be made to the contractor at any time during which the contractor's office is open, or in terms of the seizure order.

**(2)** On payment in full of the relevant penalty and the charges due, the vehicle must be released by the contractor without delay and the contractor must, on the release of the vehicle, issue a receipt which shall include the—

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(a) 1994 c.22.

- (a) contractor's name, address and telephone number;
- (b) registration mark of the vehicle;
- (c) date on which the seizure order was made;
- (d) name, address and telephone number of the FEO;
- (e) date and time of the immobilisation and, as the case may be, the removal to storage;
- (f) location of the vehicle when it was immobilised;
- (g) offender's name and, if the payment is made by a person other than the offender, that person's name;
- (h) amount of the payment made, including the charges incurred or imposed in relation to the immobilisation, storage and release of the vehicle;
- (i) date and time the payment was made;
- (j) name of the person issuing the receipt; and
- (k) serial number of the receipt.

(3) Where, following—

- (a) payment of the relevant penalty and charges being made in full by the offender; or
- (b) a request for the release of the vehicle by a third party made under regulation 14 being approved,

the offender or, as the case may be, the third party does not recover the control of the vehicle from custody then they shall, from 12 noon on the day following the satisfaction of (a) or (b) above, be liable to the contractor for charges in relation to any such further storage, which shall be calculated in accordance with the charges prescribed in the Schedule to these Regulations.

### **Charges**

13. The charges payable in connection with the seizure and disposal of vehicles are as prescribed in the Schedule to these Regulations.

### **Application by a third party who claims to own a seized vehicle**

14.—(1) A third party who claims to own a vehicle which is subject to a seizure order may, before the vehicle is sold or disposed of under these Regulations—

- (a) make a request for the release of the vehicle to the FEO who, on being satisfied that the claim is valid, must order the release of the vehicle and the termination of the seizure order without delay;
- (b) in cases where the vehicle is not released under sub-paragraph (a), make an application to the sheriff court indicated within the notice under regulation 10(k) which—
  - (i) may, or may not, fix a diet for hearing the application, and
  - (ii) on being satisfied that the claim is valid, must order the immediate release of the vehicle and the termination of the seizure order; or
  - (iii) on not being so satisfied may dismiss the application with, or without, making an order as to expenses.

(2) A vehicle released under—

- (a) paragraph (1)(a) shall be released without charge;
- (b) paragraph (1)(b) shall be released without charge except where the court has determined that the third party shall be liable for the charges prescribed in the Schedule to these Regulations.

### **Removal of immobilised vehicle to storage**

**15.**—(1) A vehicle which has been immobilised must, unless released under regulation 12(2), remain so immobilised where it is positioned, or repositioned under regulation 9, for the period of not less than 24 hours from the time of immobilisation.

(2) Subject to paragraph (3), when the period referred to in paragraph (1) has expired and the relevant penalty and the charges due in accordance with these Regulations have not been paid in full, the vehicle must be removed by the contractor to secure premises for storage.

(3) Where an application has been made to the court by either—

- (a) a third party claiming to own the vehicle; or
- (b) an offender seeking a review of the making of a seizure order,

no action may be taken under this regulation until that application has been determined.

### **Written notice of removal to storage**

**16.** Where a vehicle has been removed to storage under regulation 15, the contractor must, within 24 hours of its removal, send written notice to the FEO and the offender, which shall provide—

- (a) the contractor's name, address and telephone number;
- (b) the registration mark of the vehicle;
- (c) the date on which the seizure order was made;
- (d) the date, time and place of the immobilisation and removal to storage, together with confirmation that it had been carried out under the provisions of the 1995 Act;
- (e) the name, address and telephone number of the FEO and of the court to which any application may be made in respect of the seizure order;
- (f) the amount of the relevant penalty and the charges payable to secure the release of the vehicle;
- (g) the address, telephone number and hours of opening of the storage premises;
- (h) the daily storage charge and any other charges payable;
- (i) confirmation that the vehicle shall be released on payment in full of the relevant penalty and the charges due;
- (j) the methods available for payment of the relevant penalty and the charges due;
- (k) information as to how to apply for the review of the FEO's decision to make a seizure order under section 226H of the 1995 Act; and
- (l) the serial number of the notice.

### **Circumstances where a seized vehicle may be released from storage**

**17.** A vehicle, once removed by the contractor to storage, must remain so until either—

- (a) payment of the relevant penalty and the charges due is made in full;
- (b) the seizure order ceases to have effect where either—
  - (i) the FEO or, as the case may be, the sheriff is satisfied as to the validity of a third party claim made under regulation 14; or
  - (ii) following application being made by the offender seeking a review of the making of a seizure order under section 226H of the 1995 Act the court orders that it shall cease;
- (c) it is released by the FEO or, as the case may be, the court; or
- (d) it is sold by order of the court under regulation 25.

### **Release of seized vehicle on application by offender**

**18.** An offender who considers that a seized vehicle should not be subject to a seizure order may make an application for the release of the vehicle, in the first instance, to the FEO.

**19.—(1)** Where the FEO—

- (a) approves the application for the release of the vehicle, the vehicle shall be released without delay and with no charge payable;
- (b) refuses the application for the release of the vehicle then the offender may thereafter make an application to the court for its release; or
- (c) fails to intimate any decision in accordance with paragraph (2) then the offender may thereafter make an application to the court for the release of the vehicle in which case regulation 20(2) and (3) shall apply.

(2) Decisions made under paragraph (1) must be made and intimated to the offender within 7 days of the date of the receipt by the FEO of that application.

**20.—(1)** Applications made under regulation 19(1)(b) must, subject to regulation 29, be made to the court within 7 days, or such other period as the court may allow on cause shown, of the date the offender received the notification of the FEO's decision under regulation 19.

(2) The court shall fix a hearing to consider an application made under regulation 19(1)(b) or (c). The clerk of court shall intimate—

- (a) to the applicant and the FEO, the date, place and time of the hearing;
- (b) to the applicant that they may personally attend, be represented or submit written representations; and
- (c) to the FEO, a copy of the application.

(3) The FEO must attend any hearing fixed under paragraph (2).

**21.** The court, at the conclusion of the hearing on the application made under regulation 19(1)(b) or (c), may—

- (a) order the release of the vehicle with, or without, payment of the charges due;
- (b) in making an order under paragraph (a) make an order against the Scottish Ministers for payment of the charges incurred in respect of the seizure order; or
- (c) dismiss the application with, or without, making an order as to expenses.

### **Application to the court for the sale of a seized vehicle**

**22.** The FEO may make an application to the court seeking an order for the sale of the seized vehicle.

**23.** The FEO may only make an application under regulation 22 where—

- (a) a period of 14 days has expired following notification to the offender that a seizure order has been carried out; and
- (b) payment of the relevant penalty and the charges has not been made in full.

**24.** The FEO shall intimate to the offender—

- (a) the earliest date on which the application will be considered by the court;
- (b) the total sum due, inclusive of the charges payable, to secure the release of the vehicle calculated up to and including the date specified in paragraph (a);
- (c) that the offender may make representations to the court as to an order for sale, including how such representations may be made, and that in the event that the offender does not make any representations that the court may determine the application with, or without, a hearing taking place; and

- (d) that the court may fix a hearing and, where one is fixed, that the offender shall be notified of the date, time and place of the hearing in writing.

**Court order for sale or other disposal of a seized vehicle**

- 25.—(1) The court when considering an application made under regulation 22 may—
- (a) fix a hearing;
  - (b) make an order for the sale or such other disposal of the vehicle; or
  - (c) dismiss the application with, or without, making an order as to expenses.
- (2) The court, when making a decision on an application made under regulation 22, must—
- (a) take into account all of the circumstances of the case, including the actions of the FEO and the contractor; and
  - (b) consider whether an order for sale is justified, reasonable and proportionate.
26. The court shall not make an order under regulation 25(1) where any application is made—
- (a) to the court under section 226H of the 1995 Act; or
  - (b) to the FEO or to the court for the release of a vehicle under regulation 18 or 19,
- until that application has been determined.

**Method for sale of a seized vehicle**

27. The sale of the vehicle shall be by public auction, charges for which are prescribed in the Schedule to these Regulations.

**Treatment of proceeds of sale of a seized vehicle**

28. The proceeds of sale shall be applied, in the following manner—
- (a) *firstly*, as payment of or towards the unpaid amount of the relevant penalty;
  - (b) *secondly*, for any remainder of those proceeds as payment of or towards the reasonable expenses incurred by the FEO in relation to the seizure order as prescribed in the Schedule;
  - (c) *thirdly*, for any remainder of those proceeds as payment of or towards an order of expenses awarded against the offender under regulation 21(c) or 25(1)(c);
  - (d) *fourthly*, for any balance to be given to the offender.

**Calculation of time periods relating to an application made to the court under these Regulations**

29. In the event that the last day of the periods referred to in regulations 20 and 23 falls on a Saturday, Sunday or court holiday, such period shall extend to and include the next day which is not a Saturday, Sunday or court holiday.

*KENNY MACASKILL*  
A member of the Scottish Executive

St Andrew's House,  
Edinburgh  
6th March 2008

## SCHEDULE

1. The charges payable under these Regulations shall be as follows in respect of the vehicle's—

(a) release from immobilisation;	£68.00;
(b) removal;	£135.00;
(c) storage, for each period of 24 hours or a part thereof during which the vehicle is in the custody of the contractor;	£15.00;
(d) sale by auction; and	£40.00 and 7.5% of sale price;
(e) disposal by order of the court, other than (i) sale by auction under (d); or (ii) the release of the vehicle to the offender or third party following application made under the Regulations.	£50.00

2. The charges prescribed in paragraph 1(a) shall only be payable where the vehicle released from immobilisation has not been removed to storage.

3. For the purpose of paragraph 1(c), each period of 24 hours shall be reckoned from noon on the first day after removal during which the place at which the vehicle is stored is open for the claiming of such vehicles.

4. Where a vehicle put up for sale under these Regulations fails to sell, the charge of £40.00 prescribed in paragraph 1(d) shall be payable notwithstanding the fact that the vehicle did not sell.

## 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.

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.

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**CRIMINAL LAW**

**The Enforcement of Fines (Seizure and Disposal of Vehicles)  
(Scotland) Regulations 2008**

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