

Final Business and Regulatory Impact Assessment

Title of Proposal

The Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.) (Scotland) Regulations 2019
The Police (Retention and Disposal of Motor Vehicles) (Scotland) Amendment Regulations 2019

Purpose and intended effect

The proposed instruments are required to amend the statutory charges that can be recovered by Police Scotland and local authorities on occasions they are required to exercise their powers contained in the Road Traffic Regulation Act 1984 (“the 1984 Act”), The Removal and Disposal of Vehicles Regulations 1986 (“the 1986 Regulations”), the Refuse Disposal (Amenity) Act 1978 (“the 1978 Act”) and the Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”).

Under section 99 of the 1984 Act and The Removal and Disposal of Vehicles Regulations 1986, the police and local authorities have the power to remove vehicles in certain situations. Section 99 of the 1984 Act and the 1986 Regulations are concerned with vehicles that are illegally, obstructively or dangerously parked, abandoned or broken down.

Section 101 of the 1984 Act authorises the recovery of sums and section 102 of the 1984 Act authorises the recovery of charges in respect of the removal, storage and disposal of vehicles in pursuance of the 1986 Regulations or any other order to which section 101 applies.¹

Section 3 of the 1978 Act requires a local authority to remove certain abandoned vehicles, section 4 of that Act enables the local authority to dispose of such vehicles, and section 5 of that Act enables the local authority to recover charges in connection with removed vehicles.

The current charges relevant to the powers under the 1978 Act, the 1984 Act and the 1986 Regulations are prescribed in The Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.) Regulations 1989, as amended by The Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.) Amendment (Scotland) Regulations 2005. These charges are: removal £150; storage £20 per day; disposal £150. The charges have not been updated since 2005. It is clear from this flat rate charge that the sums and charges are inadequate. By way of example, a fully laden large goods vehicle which is not upright on the motorway could not conceivably be removed for £150.

The police have separate powers under sections 126 and 127 of the Antisocial Behaviour etc. (Scotland) Act 2004 to remove, store and dispose of vehicles being used in a manner causing alarm, distress or annoyance to the public.

¹ Modifications have been made to sections 101 and 102 of the 1984 Act for designated areas by orders made in exercise of the powers conferred by paragraphs 1(1), 2(1) and 3(3) of Schedule 3 of the Road Traffic Act 1991.

The charges relating to the powers under the 2004 Act are set out in The Police (Retention and Disposal of Motor Vehicles) (Scotland) Regulations 2005. The current charge for removal is £105, and for storage £12 per day; there is no charge prescribed for disposal. The charges have not been updated since 2005.

The physical tasks of removal, storage and subsequent disposal are carried out on behalf of Police Scotland by contracted recovery operators across Scotland, as part of the Vehicle Recovery Scheme. The need for amendments to the sums and charges recoverable by Police Scotland and local authorities has arisen from the passage of time (involving both the effects of inflation and changes to the operational environment) as well as suggestions that the flat rate charges applying in respect of all vehicles, in all situations, in all parts of the country do not adequately reflect the different costs that may be incurred.

Consultation

Within Government there has been consultation with Police Powers Unit, Zero Waste Unit, Transport Scotland and Scottish Government Legal Directorate.

The Scottish Government held a series of pre-consultation meetings with key stakeholders including Police Scotland, Transport Scotland, insurance companies, vehicle recovery operators, members' automobile clubs and haulage companies².

It was clear from the pre-consultation meetings that there was a requirement to update the legislative charging structure to allow the authorities to undertake their statutory duties or utilise their statutory powers to enforce the law or remove obstructions or potential dangers.

The Scottish Government also undertook a public consultation which ran from 14 May until 16 August 2018. There were 34 respondents to the consultation. A list of the organisations that provided consent to publish their responses to the consultation is included at Annex 2 of the analysis of consultation responses, available on the Scottish Government website³.

The public consultation highlighted broad support for the Scottish Government's preferred position in that the regulations should be similar in nature to the matrix system used in England and Wales since 2008. This will allow business owners operating on a UK wide basis some consistency when operating on a cross border basis.

According to FMG, who currently manage vehicle removals on behalf of Police Scotland, insurance companies pay 95% of Police Scotland's vehicle removals. A number of insurance companies responded to the consultation and they agreed that the preferred matrix approach was the fairest solution to accurately reflect the

² The pre consultation meetings included The Scottish Government Police Powers Division, Police Scotland, Transport Scotland, the AA, The Freight Transport Association, Scottish Vehicle Recovery Association, Road Haulage Association, Association of Vehicle Recovery Operators, GRG management Services, the RAC, FMG, several individual Vehicle Recovery Operators, insurers LV and The Association of British Insurers.

³ <https://www.gov.scot/publications/consultation-removal-storage-disposal-vehicles-regulations-analysis-responses/>

recovery of vehicles of different weights in different scenarios.

Revisions to the Regulations to address issues raised in the consultation

A proposed matrix table of charges was included in the consultation document at Annex E⁴. There were changes made to the Regulations to reflect some of the issues raised in the consultation. The following interpretation was added:-

- “laden” means that the vehicle is carrying a load.
- “load” means anything which in the reasonable opinion of a constable/the authority complicates or impedes the removal of the vehicle other than--
 - a) the body and all parts of the vehicle which are necessary to or ordinarily used with the vehicle when working on a road;
 - b) any water, fuel or accumulators used for the purpose of the supply of power for the propulsion of the vehicle;
 - c) the driver, any passengers and their personal effects;
 - d) a crane, works truck as defined in regulation 3(2) of the Road Vehicles (Construction and Use) Regulations 1986, or other special appliance or apparatus which is a permanent or essentially permanent fixture of the vehicle; and
 - e) any containers or other equipment intended or adapted for the purpose of holding or carrying a load by the vehicle.
- “MAM” means maximum authorised mass as defined in regulation 3(1) of the Motor Vehicles (Driving Licences) Regulations 1999 and, for the purpose of Regulation 3 and 6 respectively, includes the MAM of any trailer attached to a vehicle.
- “off road” means that no part of the vehicle is in contact with the road, or that, in the reasonable opinion of a constable/the authority, the vehicle’s location is such that removal of the vehicle is of comparable complexity to a vehicle that is not in contact with the road.
- “on road” means that any part of the vehicle is in contact with the road, and that, in the reasonable opinion of a constable/the authority, the vehicle’s location is not such that removal of the vehicle is of comparable complexity to a vehicle that is not in contact with the road;
- “operator” means any person lawfully removing the vehicle;
- “road” has the same meaning as in section 151 of the Roads (Scotland) Act 1984.
- “significantly damaged” means that, in the reasonable opinion of a constable/the authority, there is significant damage to the vehicle such that it renders the removal of the vehicle complex or there is some other impediment which complicates the removal of the vehicle.
- “two wheeled vehicle” means a mechanically propelled vehicle constructed or adapted to have two wheels or fewer and the MAM of which does not exceed 3.5 tonnes.
- “unladen” means that the vehicle is not carrying a load.
- “upright” means that in the reasonable opinion of a constable/the authority the vehicle is upright to such an extent that its removal is not complicated or

⁴ https://consult.gov.scot/police-division/vehicles-charges/user_uploads/00535244.pdf

impeded.

- “vehicle” means any motor vehicle and includes any chassis or body, with or without wheels, appearing to have formed part of such a vehicle and anything attached to, such a vehicle.

Business Consultation

As stated above, the Scottish Government consulted widely with stakeholders about the introduction of the new Regulations and preferred matrix style charging approach. Government officials actively brought the consultation process to a wide range of stakeholders, encouraging them to participate and a number of organisations who have a particular interest in the regulations provided responses, including Police Scotland, local authorities, the insurance industry, individual vehicle recovery operators, alongside industry representatives from road haulage and the vehicle recovery industries.

Scottish Government officials have worked closely with all stakeholders to develop the regulations and to address issues that have been of concern in relation to the sustainability of the Vehicle Recovery Scheme run on behalf of Police Scotland.

Options

As already stated, the regulations that prescribe the sums and charges recoverable by Police Scotland and local authorities in their exercise of powers and duties contained in the 1984 Act, The 1986 Regulations, the 1978 Act and the 2004 Act have not been updated since 2005.

The sums and charges are statutory charges and, are contained in The Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.) (Scotland) Regulations 1989 as amended by The Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.) Amendment (Scotland) Regulations 2005 and The Police (Retention and Disposal of Motor Vehicles) (Scotland) Regulations 2005. Amendment of the Police (Retention and Disposal of Motor Vehicles)(Scotland) Regulations 2005 and the new Regulations, The Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.)(Scotland) Regulations 2019, are required to update the sums and charges.

It is widely agreed by all stakeholders that revised charges are necessary to provide a sustainable Vehicle Recovery Scheme to enable Police Scotland to fulfil their duties to remove vehicles to enforce the law or remove obstructions or potential dangers.

To bring about the variation in charging the Government considered four options.

One flat rate for all removals ordered by the police. The Government noted the overwhelming support for moving away from a single flat rate. 94% of respondents to the public consultation answered this question with 75% of them expressing a preference of moving away from a flat rate. The situation with the range of removals that may be required under the 1984 Act is quite different from removals under the 1978 Act and other situations in which a flat rate might apply. The Government therefore ruled out the option of simply uprating the flat rate charges in line with inflation.

Not prescribing any charge on certain types of police removal. Scottish Ministers are empowered to prescribe charges but are not required to do so. It would therefore be possible not to prescribe charges in respect of certain cases, e.g. when a vehicle has been stolen. This would leave the removal of the vehicle, etc. as a matter of negotiation or potentially a burden on the public purse. This option was not favoured in the public consultation. 91% of respondents answered this question with 61% of them against a situation where no charge may be prescribed.

Menu system of charging. Under this option an over-all charge would be built up from different prescribed charges from different elements of an operation, e.g. for each hour worked, for each person employed, for each recovery vehicle or other equipment used. The Scottish Government did not favour this option for a few reasons: First, it is for Scottish Ministers to prescribe in regulations what the sums and charges should be; secondly, it is considered that the system would potentially be overly complex and lead to unnecessary and potentially costly arguments over what was or was not required in any individual case. The Scottish Government was also concerned that building up an overall charge from prescribed charges for different elements could generate very high charges to the detriment of the public. The menu charging system was raised at pre consultation and stakeholder meetings prior to the public consultation, however only one respondent to the public consultation referenced it in the responses received.

Scenario charges. This is the Scottish Government's preferred option. The Government proposed that the new charges should relate to a limited range of scenarios, each being defined by reference to the vehicle type, its condition, its position on or off a road and for larger, generally commercial vehicles, whether or not it is laden.

There were a wide variety of opinions received regarding the matrix charges and indeed there was not always consensus within stakeholder groups as to what the charges should be. For example, for removal of a vehicle on a road under 3.5 tonnes and not damaged, charges suggested ranged from £150 to £290. Each scenario within the matrix system attracted similar differences of opinion on the pricing involved.

The figures the Scottish Ministers decided to consult on were within the minima and maxima put forward. The question of the charges suggested by the Scottish Government were addressed specifically in the public consultation. It was clear from the responses that many who addressed this question did, in fact agree with the proposed charges.

In deciding the level of the charges, the Government concluded that the costs of participation by a vehicle recovery operator (VRO) in a managed scheme should not be taken into account as these are not related to the costs incurred in undertaking a removal. It is for Police Scotland to decide whether to operate a managed scheme or contract directly with individual VROs and for VROs to decide whether to join a scheme. These are contractual matters for negotiation between the Police Scotland, the managing agent and the VRO. The cost to the VRO is not a cost arising unavoidably from the removal, which is what the prescribed charges are intended to cover.

There has been full public consultation on the contents of matrix charging and updated statutory sums and charges recoverable by the police and local authorities. The majority of key stakeholders support the introduction of matrix charging. The matrix not only brings Scotland into line with England and Wales, where a similar matrix system has been used since 2008⁵, it is considered by most stakeholders to be the most fair and transparent method of determining the correct statutory charges.

Scottish Ministers consider that the charges on which they have decided are the most reasonable outcome that is currently possible, based on available information and taking account of views expressed during the consultation process. They recognise however that there is limited available information and that it will be important to review how the new system works in practice. Interested parties have therefore been invited to gather information once the new charges have been implemented, to identify any issues that might arise in relation to the available scenarios and their interpretation and to maintain comprehensive records of costs to assess effectiveness and inform any future changes. Scottish Ministers have committed to ensure the new system is kept under regular review.

Sectors and groups affected

The Scottish Police Authority and the Police Service of Scotland will be affected by these instruments. The instruments will allow them to recover increased sums and charges for the removal, storage and disposal of vehicles which will enable them to provide a fair and sustainable Vehicle Recovery Service to enforce the law or remove obstructions or potential dangers.

Local Authorities will be affected by these instruments. The instruments will allow them to recover increased sums and charges from vehicle owners where they have the power to or are required to remove vehicles that have been illegally parked or abandoned without lawful authority.⁶

The vehicle recovery industry deployed by Police Scotland to facilitate the removal of vehicles will benefit from the increased statutory charges, as the new charges will better reflect the actual costs incurred and will allow them to continue servicing Police Scotland's Vehicle Recovery Service which was potentially becoming unsustainable under the previous legislation.

The insurance industry will be affected by the Regulations as they will be required to pay additional fees for the removal or recovery of insured vehicles. However, as previously noted, all respondents to public consultation from the insurance industry, including the Association of British Insurers agreed with the introduction of what is

⁵ The Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges) Regulations 2008 as amended by the Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges)(Amendment)(England) Regulations 2008 and the Police (Retention and Disposal of Motor Vehicles) Regulations 2002 as amended by the Police (Retention and Disposal of Motor Vehicles)(Amendment) Regulations 2008

⁶ In some circumstances local authorities are authorised to set the charges for the removal, storage and disposal of vehicles by virtue of modifications made to sections 101 and 102 of the 1984 Act and section 74 of the Road Traffic Act 1991 by orders made in exercise of the powers conferred by paragraphs 1(1), 2(1) and 3(3) of Schedule 3 of the Road Traffic Act 1991.

deemed, a fair and transparent pricing structure which varies charges for varied clearly defined scenarios.

Benefits

The proposed Regulations will allow Police Scotland and local authorities to recover more realistic costs incurred in keeping Scotland's roads free from vehicles that have been illegally parked, unlawfully abandoned or are causing obstruction, danger, alarm, distress or annoyance.

The Vehicle Recovery Service run by Police Scotland was in danger of becoming unsustainable as the sums and charges last updated in 2005 were insufficient in the vast majority of vehicle removals.

The proposed regulations also provide a matrix system which is fairer and more transparent to cover different vehicle weights and vehicle recovery scenarios. Previously statutory sums and charges recoverable are set out above.

The matrix allows a range of sums and charges recoverable from vehicle owners, starting at £190 for a motorcycle to £7570 for a vehicle exceeding 18 tonnes MAM which is laden and is either off road, is not upright or is significantly damaged. The vast majority of respondents to the consultation considered that this matrix system is a fair and transparent method of determining the correct statutory charge for a vehicle, specific to its MAM and removal scenario.

Costs

There are no increased costs to either Police Scotland or local authorities as a result of these instruments. The increased charges do not affect the actual costs of a vehicle removal. They increase the charges that are legally enforceable by Police Scotland and local authorities.

There will be an increase in costs to vehicle owners or insurers with the cost of a basic light vehicle removal increasing under the 1986 Regulations by £40 and an increased daily storage of £5 per day, up from £20 to £25. Under the 2004 Act the cost of a light vehicle removal rises by £85 from £105 to £190 with the cost of daily storage increasing by £13 from £12 to £25. At the other end of the scale, the legally enforceable charge for the removal of a large goods vehicle with a maximum authorised mass of over 18 tonnes will increase from £150 to £7570 for cases involving significantly damaged, laden vehicles.

There are approximately 16,000 vehicles removed under the 1984 regulations by Police Scotland yearly with the largest proportion being vehicles under 3.5 tonnes on a road. The removal of large goods vehicles that will fall into the higher charging categories in the matrix table account for less than 2% of all statutory vehicle removals. There are approximately 110 vehicles removed yearly by Police Scotland under the 2004 Act, with the vast majority of these vehicles under 3.5 tonnes.

It should be noted that the increase in charges for the more difficult vehicle removals that will fall into the higher categories reflect the actual costs incurred by VROs in effecting this type of removal.

There will be financial benefit to vehicle recovery operators who are responsible for servicing Police Scotland's Vehicle Recovery Scheme. The vehicle recovery operators will be remunerated for work undertaken with the public assured that the charges levied are transparent and fair to all parties involved.

Scottish Firms Impact Test

Scottish Government officials carried out face-to-face discussions with a number of interested bodies about these instruments. As previously mentioned, pre-consultation meetings were held with key stakeholders⁴. It is widely agreed that the instruments provide a long overdue increase to statutory charges that will only benefit all key stakeholders and will be fair and transparent to all parties.

Competition Assessment

This instrument will not have any impact on competition. It will not limit the number or range of suppliers, limit the ability of suppliers to compete, limit suppliers' incentives to compete vigorously or limit the choices and information available to consumers.

Test run of business forms

These instruments do not bring in any new forms for business etc. to complete.

Legal Aid Impact Test

The provisions in these instruments have been discussed with the Access to Justice team in Scottish Government. They have confirmed that, as the Government is not creating any new offences or penalties, there is nothing to indicate that there will be an increase on individuals seeking legal advice as a result of the legislation. There is, therefore, no requirement to carry out a legal aid impact test.

Enforcement, sanctions and monitoring

Failure to pay the increased sums for the removal and storage of a vehicle by the vehicle owner may result in the ultimate disposal of the vehicle in the statutory timescale. Under the terms of The Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.) (Scotland) Regulations 2019 the costs of the disposal of a vehicle are also recoverable.

There exists no such facility to recover the costs of disposal of a vehicle under the terms of The Police (Retention and Disposal of Motor Vehicles) (Scotland) Amendment Regulations 2019.

There exists within the Vehicle Recovery Scheme, run by Police Scotland, a dispute and complaints procedure where vehicle owners, or the person responsible for a vehicle, can seek review of statutory sums or charges.

There is also provision within section 127(3) of the Antisocial Behaviour etc. (Scotland) Act 2004 which states that a person who would otherwise be responsible to pay for the removal and storage of a vehicle shall not be liable to pay under

⁴ The pre consultation meetings includes The Scottish Government Police Powers Division, Police Scotland, Transport Scotland, the AA, The Freight Transport Association, Scottish Vehicle Recovery Association, Road Haulage Association, Association of Vehicle Recovery Operators, GRG management Services, the RAC, FMG and several individual Vehicle Recovery Operators and insurers LV and The Association of British Insurers.

certain circumstances. The monitoring and application of this provision is carried out by Police Scotland and ultimately the court if required.

Implementation and delivery plan

It is proposed that the instruments will introduce the matrix style charging structure on 10 October 2019.

Nothing in these instruments will have affect in relation to vehicles removed prior to 10 October 2019.

The Scottish Government will, subject to other business, consider three to five yearly reviews of the sums and charges contained within the instruments to accommodate inflationary increases alongside operational running costs and to take account of available evidence on the operation of the new charges.

Summary and recommendation

The proposed instruments amend the statutory sums and charges that may be recovered by Police Scotland or local authorities from vehicle owners or the person responsible for a vehicle which has been removed using statutory powers contained in the 1984 Act, the 1986 Regulations, the 1978 Act and the 2004 Act.

This will have the effect of making the costs recoverable fair, transparent and in line with the matrix style statutory charges that have existed in England and Wales since 2008.

The proposed instruments have no impact on other business sectors not already mentioned or on competition.

Declaration and publication

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:

Date: 25 June 2019

**Name Humza Yousaf
Cabinet Secretary for Justice**

Scottish Government Contact point: Gary Gray, Zero Waste Unit.