

*Status: Point in time view as at 26/11/2008.*

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## SCHEDULES

### SCHEDULE 3

#### DETENTION OF CERTAIN PSVs USED WITHOUT PSV OPERATORS' LICENCES

##### Commencement Information

**II** Sch. 3 partly in force; Sch. 3 in force at Royal Assent for specified purposes, see s. 134(1)(c)

The Schedule that is to be inserted as Schedule 2A to the PPVA 1981 is as follows—

#### “SCHEDULE 2A

#### DETENTION OF CERTAIN PSVs USED WITHOUT PSV OPERATORS' LICENCES

##### *Interpretation*

1 (1) In this Schedule—

“authorised person” means—

- (a) an examiner appointed by the Secretary of State under section 66A of the Road Traffic Act 1988, or
- (b) a person acting under the direction of such an examiner;

“contents”, in relation to a vehicle, means any goods carried by that vehicle which are not personal effects;

“immobilisation device” means any device or appliance which is an immobilisation device for the purposes of section 104 of the Road Traffic Regulation Act 1984;

“nominated custodian” is to be construed in accordance with paragraph 6(1) below;

“operator”, in relation to a public service vehicle, means—

- (a) the driver, if he owns the vehicle, or
- (b) in any other case, the person for whom the driver works (whether under a contract of employment or any other description of contract personally to do the work),

but this is subject to any regulations that may be made under subparagraph (2)(a) below;

“personal effects” means—

- (a) any personal effects of any individual, and
- (b) any articles being carried by a vehicle for the purpose of their delivery from one person to another.

(2) Regulations may make provision for any purpose of this Schedule or regulations under it as to—

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- (a) the person who is to be regarded as the “operator” of a public service vehicle in such circumstances as may be specified or described in the regulations;
  - (b) the meaning of “owner” as regards a public service vehicle.
- (3) Regulations made by virtue of sub-paragraph (2)(b) above may, in particular, provide that the owner of a motor vehicle at a particular time is to be taken to be any person in whose name the vehicle is then registered by virtue of the Vehicle Excise and Registration Act 1994.

#### *Detention of property*

- 2 (1) Regulations may provide that where an authorised person has reason to believe that a public service vehicle adapted to carry more than 8 passengers is being, or has been, used on a road in contravention of section 12(1) of this Act, the person may detain the vehicle and its contents.
- (2) Regulations made by virtue of sub-paragraph (1) above may not authorise a person other than a constable in uniform to stop a vehicle on any road.

#### *The vehicle and any other property detained, the passengers, and any personal effects*

- 3 (1) Regulations may, in connection with the detaining of a vehicle by virtue of paragraph 2 above, make provision with respect to any of the following—
- (a) the vehicle;
  - (b) any other property detained or to be detained by virtue of paragraph 2 above;
  - (c) any passengers who have been travelling on the vehicle;
  - (d) any personal effects remaining on the vehicle.
- (2) Regulations under this paragraph must include provision requiring passengers who have been travelling on the vehicle to be transported in safety to their destination or to a suitable place from which to continue their journey.

#### *Immobilisation of vehicle*

- 4 (1) Regulations may provide that, before a vehicle is removed by virtue of paragraph 6 below, an authorised person may—
- (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 also provide—
- (a) that, on any occasion when an immobilisation device is fixed to a vehicle, the person fixing the device must also fix to the vehicle an immobilisation notice (see sub-paragraph (3) below);
  - (b) that a vehicle to which an immobilisation device has been fixed may only be released from the device by or under the direction of an authorised person; and
  - (c) that an immobilisation notice must not be removed or interfered with except by or on the authority of an authorised person.
- (3) In this paragraph “immobilisation notice” means a notice—
- (a) indicating that an immobilisation device has been fixed to the vehicle,

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- (b) warning that no attempt should be made to drive the vehicle or otherwise put it in motion, and
- (c) giving such other information as may be prescribed.

*Offences relating to immobilisation*

- 5 (1) Regulations may provide that a person—
- (a) who removes or attempts to remove an immobilisation device fixed to a vehicle under regulations made by virtue of paragraph 4(1) above, but
  - (b) who is not authorised to do so in accordance with paragraph 4(2)(b) above,
- 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 4(2)(c) above is guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

*Removal and delivery of property into custody of nominated custodian*

- 6 (1) Regulations may make provision for an authorised person to direct that any property—
- (a) detained by virtue of paragraph 2 above, or
  - (b) consisting of personal effects remaining on a vehicle so detained,
- be removed and delivered into the custody of a person (the “nominated custodian”) specified in the direction.
- (2) Regulations may provide that the nominated custodian must be a person who—
- (a) is identified in accordance with prescribed rules,
  - (b) has made arrangements with the Secretary of State, and
  - (c) has agreed to accept delivery of the property in accordance with those arrangements.
- (3) Arrangements falling within sub-paragraph (2) above may include provision for the payment of a sum to a person into whose custody any property is delivered.
- (4) Regulations may also provide that an authorised person who has given a direction by virtue of sub-paragraph (1) above in respect of a vehicle may allow the driver of the vehicle to deliver persons or property falling within sub-paragraph (5) below to their destination or some other suitable place, before delivering the vehicle into the custody of the nominated custodian.
- (5) The persons and property are—
- (a) any passengers who have been travelling on the vehicle,
  - (b) any contents of the vehicle,
  - (c) any personal effects remaining on the vehicle.

*Informing persons that their property has been detained etc*

- 7 (1) This paragraph applies in relation to any property—
- (a) which is detained by virtue of paragraph 2 above, or
  - (b) which consists of personal effects that remained on a vehicle so detained.

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- (2) Regulations may make provision for informing persons who may be entitled to any such property that it has been so detained or, as the case may be, that it remained on a vehicle so detained.
- (3) The provision that may be made by virtue of sub-paragraph (2) above includes 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 of vehicle*

- 8 Regulations may make provision authorising a vehicle detained by virtue of paragraph 2 above to be returned to the owner, in prescribed circumstances, without the need for any application under paragraph 9 below.

*Application to traffic commissioner for return of vehicle*

- 9 (1) Regulations must make provision enabling the owner of a vehicle which has been detained by virtue of paragraph 2 above to apply to the traffic commissioner for the area in which the vehicle was detained for the return of the vehicle.
- (2) Regulations may, in particular,—
  - (a) require notice of an application to be given to the traffic commissioner within such period as may be determined in accordance with the regulations;
  - (b) require notice of an application to be made in such form as may be prescribed.
- (3) Regulations must prescribe the grounds upon which the owner may apply for the return of the vehicle.
- (4) The grounds prescribed under sub-paragraph (3) above must include each of the following—
  - (a) that, at the time the vehicle was detained, the person using the vehicle held a PSV 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 12(1) of this Act;
  - (c) that, although at the time the vehicle was detained it was being, or had been, used in contravention of section 12(1) of this Act, the owner did not know that it was being, or had been, so used;
  - (d) that, although knowing at the time the vehicle was detained that it was being, or had been, used in contravention of section 12(1) of this Act, the owner—
    - (i) had taken steps with a view to preventing that use, and
    - (ii) has taken steps with a view to preventing any further such use.

*Hearings by traffic commissioner*

- 10 (1) Regulations must make provision—
  - (a) enabling the traffic commissioner to hold a hearing before determining an application by virtue of paragraph 9 above;

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- (b) requiring the traffic commissioner 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 must also provide that, if no hearing is held, the traffic commissioner must determine the application within a prescribed time after receiving notice of the application.

*Consequences of the traffic commissioner's determination*

- 11 Regulations must provide that—
- (a) if the traffic commissioner determines that one of the grounds prescribed by virtue of paragraph 9(3) above is made out, the traffic commissioner must order the nominated custodian to return the vehicle to the owner; and
  - (b) if the traffic commissioner determines that none of those grounds is made out, the vehicle may be sold or destroyed by the nominated custodian, in such manner as may be prescribed.

*Appeal to Transport Tribunal from traffic commissioner*

- 12 (1) Regulations must provide for an appeal to the Transport Tribunal against the determination of the traffic commissioner.
- (2) Regulations may—
- (a) prescribe the period within which an appeal must be made;
  - (b) make provision for notice of any appeal to be given to each of the following—  
the Transport Tribunal,  
the traffic commissioner,  
such other persons as may be prescribed.

*Sale or destruction of vehicle where no application made under paragraph 9*

- 13 Regulations may provide that, if no application is made to the traffic commissioner in accordance with regulations made by virtue of paragraph 9 above, any vehicle detained by virtue of paragraph 2 above may be sold or destroyed in such manner as may be prescribed.

*Return or disposal of contents and personal effects*

- 14 (1) Regulations may provide that the nominated custodian may retain custody of any property falling within sub-paragraph (2) below until—
- (a) the property is returned, in accordance with the regulations, to a person who establishes entitlement to it; or
  - (b) the property is sold or destroyed by the nominated custodian in such manner as may be prescribed.
- (2) The property is—
- (a) any property detained by virtue of paragraph 2 above;
  - (b) any personal effects that remained on the vehicle so detained.

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- (3) Regulations may also make provision as to—
- (a) the period within which a person who claims to be entitled to the property may make a claim for its return;
  - (b) the requirements to be satisfied by a person who claims to be entitled to the property (including requirements as to the person's entitlement); and
  - (c) the manner in which entitlement is to be determined where there is more than one claim to the property.
- (4) The nominated custodian may not sell or destroy any property unless—
- (a) such steps as may be required by regulations made by virtue of paragraph 7(2) above have been taken and no person has, before the expiry of the period referred to in sub-paragraph (3)(a) above, established an entitlement to the property; or
  - (b) the condition of the property requires it to be disposed of without delay.

#### *Custody of property*

- 15 (1) Regulations must provide that while any property is in the custody of a nominated custodian, it is the duty of the nominated custodian to take such steps as are necessary for the safe custody of that property.
- (2) Any such provision is subject to the powers of the nominated custodian to sell or destroy property by virtue of this Schedule.

#### *Proceeds of sale*

- 16 (1) Regulations must provide for the proceeds of sale of any property sold under regulations made by virtue of paragraph 11(b), 13 or 14(1)(b) above—
- (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 11(b), 13 or 14(1)(b) above, 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*

- 17 (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 14 or 16 above.
- (2) The provision that may be made by virtue of sub-paragraph (1) above includes provision—
- (a) for an application to be made to a magistrates' court or, in the case of an application made in Scotland, the sheriff;
  - (b) for a court or the sheriff to order a sum to be paid by the Secretary of State.

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- (3) Any application made to the sheriff in accordance with regulations made by virtue of sub-paragraph (2)(a) above must be made by way of summary application.

*Obstruction of authorised person*

- 18 Regulations may provide that a person who intentionally obstructs an authorised person in the exercise of the powers of such a person under regulations made by virtue of this Schedule is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

*Offences as to securing possession of property*

- 19 (1) Regulations may provide that a person is guilty of an offence if—
- (a) the person makes a declaration with a view to securing the return of a vehicle under regulations made by virtue of paragraph 11 above;
  - (b) the declaration is that the vehicle was not being, or had not been, used in contravention of section 12(1) of this Act; and
  - (c) the declaration is, to the person's knowledge, either false or in any material respect misleading.
- (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; and
  - (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both.”.

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