STATUTORY RULES OF NORTHERN IRELAND

2012 No. 258

ROAD TRAFFIC AND VEHICLES

The Goods Vehicles (Enforcement Powers) Regulations (Northern Ireland) 2012

Made - - - -	*28th June 2012*
Coming into operation	*1st July 2012*

The Department of the Environment makes the following Regulations in exercise of the powers conferred by section 44 of and Schedule 2 to the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010(**1**).

The Department has consulted with such representative organisations as the Department thinks fit in accordance with section 57(11) of that Act.

Citation and commencement

1. These Regulations may be cited as the Goods Vehicles (Enforcement Powers) Regulations (Northern Ireland) 2012 and shall come into operation on 1st July 2012.

Interpretation

2. In these Regulations—

"the 2010 Act" means the Goods Vehicles (Licensing of Operators) Act (Northern Ireland) 2010;

"hiring agreement" means an agreement for the hire of a vehicle being an agreement which contains such particulars as may be prescribed under Article 71 of the Road Traffic Offenders (Northern Ireland) Order 1996(**2**);

"immobilisation notice" has the meaning given in regulation 5(3);

"licence" means an operator's licence (whether standard or restricted) as defined in section 1(1) of the 2010 Act;

"owner" means, in relation to a vehicle or trailer which has been detained in accordance with regulation 3—

(**1**) 2010 c. 2 (N.I.)
(**2**) S.I. 1996/1320 (N.I. 10)

(a) in the case of a vehicle which at the time of its detention was not hired from a vehicle-hire firm under a hiring agreement but was registered under the Vehicle Excise and Registration Act 1994(**3**), the person who can show to the satisfaction of an authorised person that at the time of its detention that person was the lawful owner (whether or not that person was the person in whose name the vehicle was registered);

(b) in the case of a vehicle or trailer which at the time of its detention was hired from a vehicle-hire firm under a hiring agreement, the vehicle-hire firm; or

(c) in the case of any other vehicle or trailer, the person who can show to the satisfaction of an authorised person that at the time of its detention that person was the lawful owner;

"release" in relation to a vehicle means release from an immobilisation device;

"vehicle" has the same meaning as "goods vehicle" in section 58(1) of the 2010 Act but excludes those vehicles specified in section 1(2) of that Act; and

"vehicle-hire firm" has the same meaning as in Article 71 of the Road Traffic Offenders (Northern Ireland) Order 1996.

Detention of property

3. Where an authorised person has reason to believe that a vehicle is being, or has been, used on a road in contravention of section 1 of the 2010 Act, the authorised person may detain the vehicle and its contents.

Release of detained vehicles

4.—(1) In the circumstances described in paragraph (2), a vehicle detained by virtue of regulation 3 shall be returned to the owner, without the need for an application under regulation 9.

(2) The circumstances are that the authorised person is satisfied that one or more of the grounds specified in paragraph (3) is made out.

(3) The grounds are that—

(a) at the time the vehicle was detained, the person using the vehicle held a valid licence (whether or not authorising the use of the vehicle);

(b) at the time the vehicle was detained, the vehicle was not being, and had not been, used in contravention of section 1 of the 2010 Act;

(c) although at the time the vehicle was detained it was being, or had been, used in contravention of section 1 of the 2010 Act, the owner did not know that it was being, or had been, so used; or

(d) although knowing at the time the vehicle was detained that it was being, or had been, used in contravention of section 1 of the 2010 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.

Power to immobilise vehicles

5.—(1) This regulation applies where a vehicle has been detained in accordance with regulation 3.

(2) Where this regulation applies, without prejudice to the institution of proceedings for any offence under the 2010 Act, the authorised person may—

(a) fix an immobilisation device to the vehicle in the place where it has been detained; or

(**3**) 1994 c. 22

(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.

(3) Where an immobilisation device is fixed to a vehicle in accordance with this regulation, the person fixing the immobilisation device shall also fix to the vehicle a notice (an "immobilisation notice") which indicates that—

(a) the immobilisation device has been fixed to the vehicle;

(b) the vehicle may only be released from the immobilisation device by or under the direction of an authorised person (and provides details as to where an authorised person may be contacted);

(c) an application may be made for the release of the vehicle (and provides information about the procedure under which such an application may be made);

(d) the notice shall not be removed or interfered with except by or on the authority of an authorised person; and

(e) no attempt should be made to drive the vehicle or otherwise put it in motion.

Removal of, or interference with, an immobilisation notice or device

6.—(1) An immobilisation notice shall not be removed or interfered with except by or on the authority of an authorised person.

(2) A vehicle to which an immobilisation device has been fixed in accordance with regulation 5(2) may be released from the immobilisation device only by or under the direction of an authorised person.

(3) A person contravening paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(4) A person who removes or attempts to remove, otherwise than in accordance with paragraph (2), an immobilisation device fixed to a vehicle in accordance with regulation 5(2), is guilty of an offence.

(5) A person guilty of an offence under paragraph (4) is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Removal and delivery of property detained

7.—(1) An authorised person may direct in writing that any property detained in accordance with regulation 3 be removed and delivered into the custody of a person specified in the direction.

(2) A vehicle may be driven, towed or removed by such means as are reasonable in the circumstances and any necessary steps may be taken in relation to the vehicle in order to facilitate its removal.

(3) The contents of a vehicle may be removed separately in cases where—

(a) it is reasonable to do so to facilitate removal of the vehicle;

(b) there is good reason for storing them at a different place from the vehicle; or

(c) their condition requires them to be disposed of without delay.

(4) A person may be specified in a direction only if that person—

(a) is appointed by an authorised person;

(b) has made arrangements with the Department and agreed to accept delivery of the property in accordance with those arrangements; and

(c) has agreed with the Department to take such steps as are necessary for the safe custody of such property.

(5) The arrangements made by virtue of paragraph (4) may include the payment of a sum to a person into whose custody any property is delivered.

(6) Where an authorised person has given a direction by virtue of paragraph (1) in respect of a 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.

(7) Subject to the powers of a person specified in a direction by virtue of paragraph (1) to sell or destroy property, 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.

Notification of detention of a vehicle and its contents

8.—(1) Where a vehicle has been detained in accordance with regulation 3, an authorised person shall—

(a) publish a notice in the Belfast Gazette—

(i) giving a brief description of the property detained and the vehicle's registration mark (if any);

(ii) indicating the time and place at which, and the powers under which, it was detained by the authorised person;

(iii) describing the procedure under which, and the period within which, an application may be made to the Department for the return of any property so detained;

(iv) stating that, if no-one establishes within the period specified in the notice their entitlement to the return of the vehicle, the authorised person intends to dispose of it after the expiry of that period in accordance with regulation 14;

(v) stating that any contents which are not disposed of in accordance with regulation 16(1) may be claimed at the place and at the times specified in the notice and that, if no-one establishes within the period specified in the notice their entitlement to the return of the contents, the authorised person intends to dispose of them after the expiry of that period in accordance with regulation 16(2); and

(b) not less than 21 days before the expiry of the period given in the notice serve a copy of the notice on—

(i) the owner of the vehicle;

(ii) the Chief Constable;

(iii) the Association of British Insurers; and

(iv) the British Vehicle Rental and Leasing Association where the vehicle was hired from a vehicle-hire firm under a hiring agreement.

(2) The period specified in a notice under paragraph (1)(a)(iii), (iv) and (v) shall be a minimum of 21 days, beginning with the date on which the notice is published under paragraph (1)(a) or, if later, a copy of the notice is served under paragraph (1)(b).

Applications to the Department

9.—(1) The owner of a vehicle detained in accordance with regulation 3 may, before the expiry of the period specified in regulation 8(2), apply to the Department for the return of the vehicle.

(2) An application under paragraph (1) shall be made in writing and shall be accompanied by—

(a) a statement of one or more of the grounds specified in regulation 4(3) on which the application is declared to be based; and

(b) a statement indicating whether the applicant wishes the Department to hold a hearing.

(3) The period referred to in paragraph (1) is subject to regulation 21.

Hearings

10.—(1) If—

(a) an application under regulation 9(1) is accompanied by a statement to the effect that the applicant wishes the Department to hold a hearing; or

(b) having received an application under regulation 9(1) the Department decides that it would be appropriate to hold a hearing before making a determination on the application,

the Department shall hold a hearing within 28 days of receipt of the application (subject to the power of the Department to extend the period in accordance with regulation 21).

(2) A hearing shall take place at the time and place specified by the Department in its notice of hearing.

(3) At a hearing the parties shall be entitled to give evidence, to call witnesses, to cross examine witnesses and to address the Department both on the evidence and generally on the subject matter of the proceedings.

(4) Subject to paragraph (5), a hearing shall be held in public.

(5) The Department may direct that the whole or any part of a hearing be held in private if it is satisfied that by reason of—

(a) the likelihood of disclosure of intimate personal or financial circumstances;

(b) the likelihood of disclosure of commercially sensitive information or information obtained in confidence; or

(c) exceptional circumstances not falling within sub-paragraph (a) or (b),

it is just and reasonable for it to do so.

(6) Where the hearing is held in private the Department may admit such persons as it considers appropriate.

Notification of determination

11. The Department shall notify the applicant in writing of its determination of an application as soon as reasonably practicable and, subject to regulation 21—

(a) where no hearing is held, within 21 days after receiving the application; and

(b) where a hearing is held within 14 days of the conclusion of the hearing.

Appeals from a determination of the Department to the Upper Tribunal

12. An appeal may be made to the Upper Tribunal against a determination of the Department.

Return of a vehicle detained

13. If—

(a) an application is made to the Department in accordance with regulation 9; or

(b) an appeal is made to the Upper Tribunal in accordance with regulation 12,

and the Department or the Upper Tribunal, as the case may be, determines that one or more grounds specified in regulation 4(3) is made out, the authorised person shall return the vehicle to the owner.