

2009 No. 1965

ROAD TRAFFIC

**The Goods Vehicles (Enforcement Powers) (Amendment)
Regulations 2009**

<i>Made</i> - - - -	<i>16th July 2009</i>
<i>Laid before Parliament</i>	<i>22nd July 2009</i>
<i>Coming into force</i> - -	<i>1st October 2009</i>

The Secretary of State makes the following Regulations in exercise of the powers conferred by Schedule 1A to the Goods Vehicles (Licensing of Operators) Act 1995(a).

The Secretary of State has consulted representative organisations in accordance with section 57(12) of the Goods Vehicles (Licensing of Operators) Act 1995, and the Administrative Justice and Tribunals Council in accordance with paragraph 24(1) of Schedule 7 to the Tribunals, Courts and Enforcement Act 2007(b).

Citation and commencement

1. These Regulations may be cited as the Goods Vehicles (Enforcement Powers) (Amendment) Regulations 2009 and come into force on 1st October 2009.

Amendment of the Goods Vehicles (Enforcement Powers) Regulations 2001

2. The Goods Vehicles (Enforcement Powers) Regulations 2001(c) are amended as follows.

Release of detained vehicles

3. For regulation 4 (release of detained vehicles) substitute—

“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 10.

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

(a) 1995 c. 23. Schedule 1A was inserted into the Goods Vehicles (Licensing of Operators) Act 1995 by section 262(2) of and Schedule 30 to the Transport Act 2000 (2000 c. 38). Paragraph 8 of Schedule 1A is amended by section 126 of the Local Transport Act 2008 (2008 c. 26), and paragraph 11 is amended by the Transfer of Functions (Transport Tribunal and Appeal Panel) Order 2009 (S.I. 2009/1885) article 4(1) and Schedule 1, paragraph 23.

(b) 2007 c. 15. The effect of paragraph 24(1) of Schedule 7 to this Act is that the power of the Secretary of State to make procedural rules for any listed tribunal can be exercised only after consultation with the Administrative Justice and Tribunals Council. The traffic commissioners for England and Wales are a listed tribunal for the purposes of paragraph 24(1) by virtue of the Administrative Justice and Tribunals Council (Listed Tribunals) Order 2007 (S.I. 2007/2951).

(c) S.I. 2001/3981. These Regulations are amended by S.I. 2005/617, article 2 and the Schedule, paragraph 197; S.I. 2008/2683, article 6(1) and Schedule 1, paragraph 177; and S.I. 2009/1885, article 4(2) and Schedule 2, paragraphs 7 to 10.

- (3) The grounds are—
- (a) that, 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) that, at the time the vehicle was detained, the vehicle was not being, and had not been, used in contravention of section 2 of the 1995 Act;
 - (c) that, although at the time the vehicle was detained it was being, or had been, used in contravention of section 2 of the 1995 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 2 of the 1995 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

4.—(1) Regulation 5 (power to immobilise vehicles) is amended as follows.

(2) In paragraph (3)(b), after the words “by or under the direction of an authorised person” insert “(and provides details as to where an authorised person may be contacted)”.

(3) After paragraph (3)(b) insert—

“(ba) 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);”.

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

5.—(1) Regulation 6 (removal of, or interference with, an immobilisation notice or device) is amended as follows.

(2) After paragraph (1) (immobilisation notice) insert—

“(1A) A vehicle to which an immobilisation device has been fixed in accordance with regulation 5(2) may be released from the device only by or under the direction of an authorised person.”.

(3) For paragraph (3) substitute—

“(3) A person who removes or attempts to remove, otherwise than in accordance with paragraph (1A), an immobilisation device fixed to a vehicle in accordance with regulation 5(2), is guilty of an offence.

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

Release of immobilised vehicles

6. Omit regulation 7 (release of immobilised vehicles).

Notification of detention of a vehicle and its contents

7.—(1) Regulation 9 (notification of detention of a vehicle and its contents) is amended as follows.

(2) After paragraph (1)(a)(ii) insert—

“(iia) describing the procedure under which, and the period within which, an application may be made to the traffic commissioner for the return of any property so detained;”.

(3) In paragraph (1)(a)(iii), omit the words “that it may be claimed at the place and at the times specified in the notice and”.

(4) In paragraph (1)(b)(v), after the words “Rental and Leasing Association” insert “, where the vehicle was hired from a vehicle-hire firm under a hiring agreement”.

(5) in paragraph (2)—

(a) before “(iii)”, insert “(ia), ”; and

(b) before the words “21 days”, insert “a minimum of”.

Applications to a traffic commissioner

8.—(1) Regulation 10 (applications to a traffic commissioner) is amended as follows.

(2) In paragraph (2)(a), for the words “paragraph (4)” substitute “regulation 4(3)”.

(3) Omit paragraph (4).

(4) At the end insert—

“(5) The period referred to in paragraphs (1) and (3) is subject to regulation 23.”.

Hearings

9.—(1) Regulation 11 (hearings) is amended as follows.

(2) For paragraph (1)(b) substitute—

“(b) having received an application under regulation 10(1) the traffic commissioner decides that it would be appropriate to hold a hearing before making a determination on the application,”.

(3) In paragraph (1), after the words “the traffic commissioner shall hold a hearing”, insert “within 28 days of receipt of the application (subject to the power of the traffic commissioner to extend the period in accordance with regulation 23)”.

(4) In paragraph (6) for the words “Subject to paragraph (7), where” substitute “Where”.

Notification of determinations

10.—(1) Regulation 12 (notification of determinations) is amended as follows.

(2) After the words “determination of an application” insert “as soon as reasonably practicable and, subject to regulation 23”.

(3) In subparagraph (b), for the words “following the hearing” substitute “within 14 days of the conclusion of the hearing”.

Return of a vehicle detained

11. In regulation 14, in the full out words at the end, for “regulation 10(4)” substitute “regulation 4(3)”.

Disposal of vehicles

12.—(1) Regulation 15 (disposal of vehicles) is amended as follows.

(2) In paragraph (1)(b) for “regulation 10(4)” substitute “regulation 4(3)”.

(3) After paragraph (2)(c) insert—

“(ca) the Driver and Vehicle Licensing Agency;”.

(4) In paragraph (2)(e), after the words “Rental and Leasing Association”, insert “, where the vehicle was hired from a vehicle-hire firm under a hiring agreement”.

Application of proceeds of sale

13.—(1) Regulation 18 (application of proceeds of sale) is amended as follows.

(2) For paragraphs (1) and (2) substitute—

“(1) Subject to paragraph (1A), the proceeds of sale of any property sold under regulation 15 or 17 shall—

- (a) be applied towards meeting expenses incurred by any authorised person exercising functions by virtue of these Regulations in relation to the property in question; and
- (b) in so far as they are not so applied, be applied in meeting any claim to the proceeds of sale which is made and established in accordance with paragraph (2).

(1A) Where the proceeds of sale of any property sold under regulation 15 or 17 exceed the expenses referred to in paragraph (1)(a) and—

- (a) no person has established entitlement to the proceeds of sale of the property; or
- (b) a person has established entitlement to the proceeds of sale of the property, but excess proceeds remain once the claim has been satisfied,

the excess proceeds may be applied towards meeting expenses incurred by any authorised person exercising functions in relation to any other property detained by virtue of regulation 3.

(2) For the purposes of paragraph (1), a claim to the proceeds of sale of any property is established if—

- (a) the claim is made not later than one year after the date on which the property was sold; and
- (b) the authorised person is satisfied that—
 - (i) if the property consists of a vehicle, the person making the claim was the owner of the vehicle immediately before it was sold by virtue of regulation 15; or
 - (ii) if the property consists of contents, the person making the claim would, had the person made an appropriate application at the prescribed time, have been entitled to the return of the property by virtue of regulation 16.”.

(3) In paragraph (3), for the words “paragraph (4)” substitute “paragraph (2)”.

(4) Omit paragraph (4).

Extension of time

14. After regulation 22 (giving of notice) insert—

“Extension of time

23.—(1) Where a traffic commissioner considers it to be necessary in order for a particular case to be dealt with fairly and justly, the traffic commissioner may extend any of the periods described in paragraph (3).

(2) A period described in paragraph (3) may only be extended for such period as the traffic commissioner considers appropriate in the circumstances of the case.

(3) The periods are those referred to in—

- (a) regulation 10;
- (b) regulation 11(1); and
- (c) regulation 12.”.

Signed by authority of the Secretary of State for Transport

16th July 2009

Paul Clark
Parliamentary Under Secretary of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Goods Vehicles (Enforcement Powers) Regulations 2001 (“the 2001 Regulations”) (S.I. 2001/3981). Those Regulations, made under Schedule 1A to the Goods Vehicles (Licensing of Operators) Act 1995 (“the 1995 Act”), introduced a statutory regime whereby a goods vehicle which is being, or has been, used on a road in contravention of the licensing requirements in section 2 of that Act may be detained.

The Local Transport Act 2008 inserted a new Schedule 2A into the Public Passenger Vehicles Act 1981 to enable a similar regime to be established in respect of public service vehicles (“PSVs”) adapted to carry more than eight passengers. Regulations made under that Schedule come into force on the same day as these Regulations.

These Regulations amend the 2001 Regulations so as provide consistency with the regime established in respect of PSVs. In particular, section 126 of the Local Transport Act 2008 substitutes paragraph 8 in Schedule 1A to the 1995 Act to provide that Regulations may prescribe circumstances in which a detained vehicle may be returned to the owner without the need for the owner to make an application to the traffic commissioner.

Regulation 3 substitutes regulation 4 of the 2001 Regulations under the power in new paragraph 8 of Schedule 1A to the 1995 Act, and other regulations are amended as a consequence.

Regulation 4 amends regulation 5 of the 2001 Regulations to make it a requirement for an immobilisation notice to include information about how and where the owner may apply for the release of the vehicle.

Regulation 7 amends regulation 9 of the 2001 Regulations, which prescribes the procedures for notifying people that a vehicle and its contents have been detained.

Regulations 8 to 10 amend regulations 10 to 12 of the 2001 Regulations to insert certain time limits into the process, and in consequence of the insertion of a new regulation 23.

Regulation 12 inserts a new requirement into regulation 15 of the 2001 Regulations for the Driver and Vehicle Licensing Agency to be notified when a detained vehicle is disposed of.

Regulation 13 amends regulation 18 of the 2001 Regulations to make provision for any proceeds from the sale of property which exceed expenses incurred by the detention of a vehicle and contents, and which are not claimed by any person, to be used to offset costs incurred in the detention of other property under the 2001 Regulations.

Regulation 14 inserts a new regulation 23 into the 2001 Regulations to enable the traffic commissioners to extend specified periods prescribed in the 2001 Regulations where they consider it necessary in order to ensure that a case is dealt with fairly and justly.

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STATUTORY INSTRUMENTS

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