

POLICY NOTE

THE POLICE (RETENTION AND DISPOSAL OF MOTOR VEHICLES) (SCOTLAND) AMENDMENT REGULATIONS 2019

SSI 2019/231

The above instrument was made in exercise of the powers conferred by sections 127 and 141 of the Antisocial Behaviour etc. (Scotland) Act 2004 and all other powers enabling them to do so. The instrument is subject to negative procedure.

Purpose of the instrument. These Regulations will amend the charging arrangements for the removal and retention of vehicles as set out in the Police (Retention and Disposal of Motor Vehicles) (Scotland) Regulations 2005 (“the 2005 Regulations”).

Policy Objectives

These Regulations allow 'matrix charging' to be applied when vehicles are removed. Matrix charging moves away from the current single rates that are in place, to a system that allows for different levels of charges that more readily reflect the expenditure outlay faced when uplifting larger vehicles, or where the circumstances require more specialist equipment and longer operator involvement.

These Regulations also bring charging arrangements into line with those proposed for The Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.) Amendment (Scotland) Regulations 2019, those in place in England and Wales¹ and The Road Traffic Act 1988 (Retention and Disposal of Seized Motor Vehicles) (Amendment) Regulations 2008², albeit with the new charges reflecting inflationary and increased costs of this type of work.

The existing charging arrangements have been in place since 2005 and are considered inadequate. The existing charge of £105 for removal of any vehicle in any position on or off a road does not reflect the actual costs of recovery when there are complexities in relation to the size and/or position of vehicles.

The Regulations amend regulation 6 of the 2005 Regulations which previously provided for charges of £105 for removal of a vehicle and £12 a day for retention of a vehicle.

These Regulations provide for the amounts payable in respect of removal and retention of vehicles as set out in Parts 1 and 2 of the Schedule. The amount of the charge payable in respect of those matters is now determined by the type and MAM of a vehicle, and by the circumstances under which it is removed. In terms of removal of a vehicle, the Regulations

¹ 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.

² Which extend to England, Wales and Scotland.

also make provision for additional charges in certain circumstances: a mileage charge of £1.10 per mile is applied where the operator is required to travel in excess of 40 miles to remove and retain a vehicle; and a ferry charge of £125 if applied for every single journey by ferry the operator is required to make to remove and retain a vehicle.

The following interpretations are inserted into regulation 2 of the 2005 Regulations,

“laden” means that the vehicle is carrying a load;

“load” means anything which in the reasonable opinion of a constable 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;
- In relation to a load, it is the intention that if a vehicle is to be considered laden there must be a substantial load which in some way complicates or impedes the recovery. The consultation highlighted occasions that a vehicle has been classed as laden by the presence of a small box or load which in fairness to a vehicle owner should not justify a higher matrix charge.

“MAM” means maximum authorised mass as defined in regulation 3(1) of the Motor Vehicles (Driving Licences) Regulations 1999 and for the purposes of Regulation 6, 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 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;

- The consultation process highlighted that on occasion, although a part of a vehicle may have contact with a road, there could be physical structures or features off of the road that complicate or impede the recovery and may justify a higher charge on the matrix.

“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 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, there is significant damage to the vehicle such that it renders the removal of it complex or there is some other impediment which complicates the removal of the vehicle.;

- It is the intention that to qualify for significantly damaged a vehicle must be so damaged as to require additional specialist equipment other than is routinely carried on a recovery vehicle, such as requiring a hiab crane or additional resources to complete its removal. The additional charge for significant damage will likely be challenged and scrutinised by vehicle owners and insurers, therefore, must in the opinion of a constable be justified.

“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 vehicle is upright to such an extent that its removal is not complicated or impeded;

- For the purposes of the table in Part 1 of the Schedule a vehicle will be considered upright if in the reasonable opinion of a constable the vehicle is upright to such an extent that its removal is not complicated or impeded. The guiding principle will be the difficulty encountered in removing a vehicle.

“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.

Consultation

Several pre consultation meetings were held with stakeholders, which included representatives from the Freight Trade Associations, Vehicle Recovery Operators Associations, Recovery Management Services, individual recovery operators and the Association of British Insurers.

A formal consultation³ was conducted by the Scottish Government which ran from 14 May until 6 August 2018 to establish the most appropriate charges for the retention, storage and disposal of vehicles.

³ Available on the Scottish Government website at <https://www.gov.scot/binaries/content/documents/govscot/publications/research-and-analysis/2019/03/consultation-on-removal-storage-and-disposal-of-vehicles-regulations-analysis-of-consultation-responses/documents/consultation-removal-storage-disposal-vehicles-regulations-analysis-responses/consultation-removal-storage-disposal-vehicles-regulations-analysis-responses/govscot%3Adocument/consultation-removal-storage-disposal-vehicles-regulations-analysis-responses.pdf>

As a result of that consultation, 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 its statutory duties to remove vehicles and enforce the law.

There were a wide variety of opinions received regarding the matrix charges and whilst there was not always consensus within stakeholder groups as to what the charges should be, it was clear that from the respondents who addressed this question that many agreed with the proposed level of charges.

The consultation also highlighted some scenarios where a recovery may require a longer journey by road or a journey by ferry. As a consequence of this refinements were made to the charging structure to reflect these different scenarios.

There is widespread support for the proposals contained in the consultation document and there is an overwhelming consensus that the charging structure for the retention and storage of vehicles requires updating.

Impact Assessments

There are no significant equality impact issues, the Scottish Government also decided that no equality impact assessment was required.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached.

Scottish Government

Environment and Forestry Directorate

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