

2011 No. 1120

ROAD TRAFFIC

**The Motor Vehicles (Insurance Requirements) (Immobilisation,
Removal and Disposal) Regulations 2011**

<i>Made</i> - - - -	<i>12th April 2011</i>
<i>Laid before Parliament</i>	<i>18th April 2011</i>
<i>Coming into force</i> - -	<i>16th May 2011</i>

The Secretary of State for Transport makes the following Regulations in exercise of the powers conferred by sections 144D(1)(a) and 160(1), (2)(b) and (d)(b) of, and Schedule 2A(c) to, the Road Traffic Act 1988(d).

Representative organisations have been consulted in accordance with section 195(2)(e) of that Act.

Citation and commencement

1. These Regulations may be cited as the Motor Vehicles (Insurance Requirements) (Immobilisation, Removal and Disposal) Regulations 2011 and come into force on 16th May 2011.

Interpretation

2.—(1) In these Regulations—

“the 1988 Act” means the Road Traffic Act 1988;

“the 1994 Act” means the Vehicle Excise and Registration Act 1994(f);

“authorised person” has the meaning given by regulation 3;

“custodian” has the meaning given by regulation 9(3);

“GB records” means the records kept under the 1994 Act by the Driver and Vehicle Licensing Agency on behalf of the Secretary of State and “GB registration mark” means a registration mark assigned to a vehicle registered in those records;

“local authority”—

(a) in relation to England and Wales, has the meaning given by section 270 of the Local Government Act 1972(g); and

(a) Section 144D(1) was inserted by the Road Safety Act 2006 (c.49), section 22(1).

(b) Section 160(2) was amended by S.I. 2010/1117.

(c) Schedule 2A was inserted by section 22(3) of and Schedule 5 to the Road Safety Act 2006.

(d) 1988 c.52.

(e) Section 195(2) was amended by the Road Safety Act 2006, Schedule 6, paragraphs 1 and 30 and Schedule 7.

(f) 1994 c.22

(g) 1972 c.70; the definition of “local authority” in section 270 was amended by the Local Government Act 1985 (c.51), Schedule 16, paragraph 8 and Schedule 17 and the Local Government (Wales) Act 1994 (c.19), section 1(4) and (5).

(b) in relation to Scotland, means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(a).

“NI records” means the records kept under the 1994 Act by the Driver and Vehicle Agency on behalf of the Secretary of State and “NI registration mark” means a registration mark assigned to a vehicle registered in those records;

“prescribed evidence” means any of the following—

- (a) a policy of insurance;
- (b) a security in respect of third party risks;
- (c) a certificate of insurance;
- (d) a certificate of security in respect of third party risks;

“public service vehicle” has the meaning given by section 1 of the Public Passenger Vehicles Act 1981(b);

“registered keeper” means the person in whose name a vehicle is registered under the 1994 Act;

“release” in relation to a vehicle means release from an immobilisation device.

(2) References to the “prescribed charge” for any matter are to the charge specified in relation to that matter in Schedule 1.

(3) For the purposes of regulations 10 and 13 and notwithstanding section 192 of the 1988 Act, “owner”, in relation to a vehicle which is the subject of a hiring agreement or hire-purchase agreement, means the person who, being a party to such agreement, has given up possession of the vehicle in return for payment under the agreement(c).

(4) For the purposes of regulations 5, 11 and 12 and notwithstanding section 192 of the 1988 Act, “owner”, in relation to a vehicle which is the subject of a hiring agreement or hire-purchase agreement, means a person who is a party to such an agreement.

(5) Save in relation to a vehicle which is the subject of a hiring agreement or a hire-purchase agreement, references to the “owner” of a vehicle at a particular time are to the person by whom it was then kept and the registered keeper at a particular time is to be taken, unless the contrary is shown, to be the person by whom the vehicle was kept at that time.

Authorised persons

3.—(1) In these Regulations a reference to an authorised person is to a person authorised by the Secretary of State for the purposes of these Regulations.

(2) An authorised person may be a local authority, an employee of a local authority, a member of a police force or any other person.

(3) Different persons may be authorised for different purposes, but a person who is an authorised person for the purposes of regulation 14 must not act as an authorised person for any other purpose.

Disapplication of the Regulations

4.—(1) These Regulations do not apply in relation to a vehicle in any of the circumstances specified in paragraph (2).

(2) The circumstances are that—

- (a) a current disabled person’s badge is displayed on the vehicle;
- (b) the vehicle appears to an authorised person to have been abandoned;

(a) 1994 c.39; section 2 was amended by the Environment Act 1995 (c.25), Schedule 22, paragraph 232(1).

(b) 1981 c.14; section 1 was amended by the Transport Act 1985 (c.67), Schedule 8.

(c) See paragraph 8 of Schedule 2A to the Road Traffic Act 1988; the regulations may make provision as to the meaning for the purposes of the regulations of “owner” as regards the vehicle.

- (c) the vehicle is a public service vehicle being used for the carriage of passengers;
- (d) the vehicle is being used for the purpose of the removal of any obstruction to traffic, the maintenance, improvement or reconstruction of a public road, or the laying, erection, alteration, repair or cleaning in or near a road of any traffic sign or sewer or of any main, pipe or apparatus for the supply of gas, water or electricity, or of any telegraph or telephone wires, cables, posts or supports; or
- (e) the vehicle is being used by a universal service provider (within the meaning of the Postal Services Act 2000(a)) in relation to the provision of a universal postal service (within the meaning of that Act) and each side of the vehicle is clearly marked with the name of the universal service provider concerned.

Power to immobilise vehicles

5.—(1) This regulation applies where an authorised person has reason to believe that an offence under section 144A of the 1988 Act is being committed as regards a vehicle which is stationary on a road or other public place.

(2) Where this regulation applies, without prejudice to the institution of proceedings for any offence under Part 6 of the 1988 Act, the authorised person or a person acting under the direction of the authorised person may—

- (a) fix an immobilisation device to the vehicle while it remains in the place where it is stationary, or
- (b) move it from that place to another place on the same or another road or public place and fix an immobilisation device to it in that other place.

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

- (a) indicates that the device has been fixed to the vehicle and warns that no attempt should be made to drive it or otherwise put it in motion until it has been released from the device;
- (b) states the reason why the device has been fixed;
- (c) specifies the steps to be taken to secure its release, including the charges payable under these Regulations and the person to whom and the means by which those charges may be paid; and
- (d) states the right of the owner, or person in charge of the vehicle at the time it was immobilised, to appeal pursuant to regulation 14, and specifies the steps to be taken and the address to which representations to an authorised person made as mentioned in that regulation should be sent.

Release of immobilised vehicles

6.—(1) A vehicle to which an immobilisation device has been fixed in accordance with regulation 5—

- (a) may only be released by, or under the direction of, an authorised person; and
- (b) subject to sub-paragraph (a), is to be released—
 - (i) where an authorised person is satisfied that the vehicle was immobilised in any of the circumstances specified in regulation 4(2); or
 - (ii) if the first and second requirements specified in paragraphs (2) and (3) are met.

(2) The first requirement is that the prescribed charge for the release of the vehicle from the immobilisation device is paid in any manner specified in the immobilisation notice.

(3) The second requirement is that, in accordance with any instructions specified in the immobilisation notice, prescribed evidence is produced which establishes that—

(a) 2000 c.26

- (a) any person who proposes to drive the vehicle away will not in doing so be guilty of an offence under section 143 of the 1988 Act; and
- (b) the registered keeper is not, at the point of release, guilty of an offence under section 144A of that Act as regards the vehicle.

Removal of or interference with immobilisation notice or device

7.—(1) An immobilisation notice must not be removed or interfered with except by or under the authority of an authorised person.

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

(3) Any person who, without being authorised to do so in accordance with regulation 6, removes or attempts to remove an immobilisation device fixed to a vehicle in accordance with these Regulations is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Other offences connected with immobilisation

8.—(1) Where these Regulations would apply to a vehicle but for the provisions of regulation 4(1) and (2)(a) and the vehicle was not, at the time it was stationary, being used—

- (a) in accordance with regulations under section 21 of the Chronically Sick and Disabled Persons Act 1970(a), and
- (b) in circumstances falling within section 117(1)(b) of the Road Traffic Regulation Act 1984(b) (use where a disabled person’s concession would be available),

the person in charge of the vehicle at that time is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Removal of vehicles

9.—(1) This regulation applies where an authorised person has reason to believe that an offence under section 144A of the 1988 Act—

- (a) is being committed as regards a vehicle which is stationary on a road or other public place, or
- (b) was being committed as regards a vehicle at the time when an immobilisation device which is fixed to the vehicle was fixed to it in accordance with these Regulations and the conditions prescribed in paragraph (2) are fulfilled.

(2) The conditions are—

- (a) 24 hours have elapsed since the device was fixed to the vehicle, and
- (b) the vehicle has not been released in accordance with these Regulations.

(3) In a case where this regulation applies, the authorised person or a person acting under the authorised person’s direction, may remove the vehicle and deliver it to a person authorised by the Secretary of State to keep vehicles so removed (“the custodian”).

(a) 1970 c.44; section 21 was amended by the Local Government Act 1972 (c.70), section 272(1) and Schedule 30, the Transport Act 1982 (c.49), section 68, the Road Traffic Regulation Act 1984 (c.27), section 146 and Schedule 13, paragraph 11, the Local Government Act 1985 (c.51), section 8 and Schedule 5, paragraph 1, the Road Traffic Act 1991 (c.40), section 35(1) to (5) and Schedule 8, paragraph 1, the Local Government (Wales) Act 1994 (c.19), Schedule 10, paragraph 8 and Schedule 18, the Local Government etc. (Scotland) Act 1994 (c.39), Schedule 13, paragraph 86, the Transport (Scotland) Act 2001 (asp.2), section 73, the Traffic Management Act 2004 (c.18), section 94(1) to (4), the Disability Discrimination Act 2005 (c.13), Schedule 1, Part 2, paragraph 41, the Transport (Scotland) Act 2005 (asp.12), section 49 and the Tribunals, Courts and Enforcement Act 2007 (c.15), Schedule 8, paragraph 2.

(b) 1984 c.27; section 117(1) was amended by the Road Traffic Act 1991 (c.40), section 35(6), the Traffic Management Act 2004 (c.18), section 94(5) and the Disability Discrimination Act 2005 (c.13), Schedule 1, Part 2, paragraphs 42 and 44.

Disposal of removed vehicles

10.—(1) Subject to the provisions of this regulation, the custodian of a vehicle delivered in accordance with regulation 9(3) may dispose of it by selling it or dealing with it as scrap, as the custodian thinks fit.

(2) Where the owner of a vehicle has disclaimed all rights of ownership of that vehicle, it may be disposed of pursuant to this regulation at any time.

(3) In a case not falling within paragraph (2), a vehicle must not be disposed of pursuant to this regulation before—

- (a) the end of a period, beginning with the date on which the vehicle was removed in accordance with regulation 9(3), of either—
 - (i) in the case of a vehicle of no economic value, seven days, or
 - (ii) in any other case, fourteen days;
- (b) the custodian has, for the purpose of ascertaining the owner of the vehicle, taken such of the steps specified in Schedule 2 as are applicable to the vehicle; and
- (c) either—
 - (i) the custodian has failed to ascertain the name and address of the owner; or
 - (ii) the owner has failed to comply with a notice in accordance with paragraph (4) served on the owner by first class post.

(4) A notice under paragraph (3)(c)(ii) must be a notice addressed to the owner which—

- (a) states—
 - (i) the registration mark and make of the vehicle;
 - (ii) the place where the vehicle was found before it was immobilised;
 - (iii) the place to which the vehicle has been removed;
 - (iv) the steps to be taken to obtain possession of the vehicle in accordance with regulation 12; and
 - (v) that unless the vehicle is removed by the owner on or before the date specified under sub-paragraph (b), the custodian intends to dispose of it; and
- (b) requires the owner to remove the vehicle from the custody of the custodian—
 - (i) in the case of a vehicle which is of no economic value, within three days of the date on which the notice is served; or
 - (ii) in any other case, within seven days of that date.

(5) Where it appears to a custodian of a vehicle that more than one person is the owner, such one of them as the custodian thinks fit is to be treated as the owner for the purposes of this regulation.

(6) For the purposes of this regulation, a vehicle is of no economic value if the custodian is satisfied that the total prescribed charges for the removal of the vehicle and its storage for seven days exceed the resale or scrap value of the vehicle.

Recovery of prescribed charges

11.—(1) Where a vehicle has been removed and delivered into the custody of a custodian in accordance with regulation 9(3), the Secretary of State or the custodian may (whether or not any claim is made under regulation 12 or 14) recover from the person who was the owner of the vehicle when the vehicle was removed the prescribed charges for—

- (a) its removal and storage; and
- (b) its disposal, if the vehicle has been disposed of.

(2) Where, by virtue of paragraph (1)(a), any sum is recoverable in respect of a vehicle by a custodian, the custodian is entitled to retain custody of it until that sum is paid.

(3) Where it appears to a custodian of a vehicle that more than one person is the owner, such one of them as the custodian thinks fit is to be treated as the owner for the purposes of this regulation.

Taking possession of a vehicle

12.—(1) A person (“the claimant”) may take possession of a vehicle which has been removed and delivered to a custodian and has not been disposed of under regulation 10, if the conditions specified in paragraph (2) are satisfied.

(2) The conditions are—

- (a) the claimant satisfies the custodian that the claimant is the owner of the vehicle, or a person authorised by the owner to take possession of the vehicle;
- (b) except where the claimant produces evidence that no offence under section 144A of the 1988 Act was committed or the custodian is satisfied that these Regulations did not apply to the vehicle at the time it was immobilised or removed, the claimant pays to the custodian—
 - (i) the prescribed charge in respect of the removal of the vehicle; and
 - (ii) the prescribed charge for the storage of the vehicle during the period it was in the custody of the custodian; and
- (c) prescribed evidence is produced which establishes that—
 - (i) any person who proposes to drive the vehicle away will not in doing so be guilty of an offence under section 143 of the 1988 Act; and
 - (ii) the registered keeper is not, at the point of release, guilty of an offence under section 144A of that Act as regards the vehicle.

(3) On giving the claimant possession of a vehicle pursuant to this regulation, the custodian must give the claimant a statement of the right of the owner, or person in charge of the vehicle at the time it was immobilised or, where it was not immobilised, it was removed, to appeal pursuant to regulation 14, of the steps to be taken in order to appeal and of the address to which representations to an authorised person made as mentioned in that regulation should be sent.

(4) Where it appears to a custodian of a vehicle that more than one person is the owner or person authorised by the owner, such one of them as the custodian thinks fit is to be treated as the owner, or authorised person, for the purposes of this regulation.

Claim by owner of a vehicle after its disposal

13.—(1) If, after a vehicle has been disposed of by a custodian pursuant to regulation 10, a person claims to have been the owner of the vehicle at the time when it was disposed of and the conditions specified in paragraph (2) are fulfilled, the custodian must pay that person a sum calculated in accordance with paragraph (3).

(2) The conditions are that—

- (a) the person making the claim satisfies the custodian that that person was the owner of the vehicle at the time it was disposed of; and
- (b) the claim is made before the end of the period of one year beginning with the date on which the vehicle was disposed of.

(3) The sum payable under paragraph (1) must be calculated by deducting from the proceeds of sale the prescribed charges for the removal, storage and disposal of the vehicle.

(4) Where it appears to a custodian of a vehicle that more than one person is the owner, such one of them as the custodian thinks fit is to be treated as the owner for the purposes of this regulation.

Disputes

14.—(1) This regulation applies to a dispute which has arisen because—

(a) a person (“the claimant”) has paid a charge in accordance with regulation 6 or 12 in order to secure the release or to obtain possession of a vehicle and alleges that the charge (“the disputed charge”) should be refunded to the claimant on the ground that, at the time the vehicle was immobilised or, where it was not immobilised, at the time it was removed—

(i) an offence under section 144A was not being committed; or

(ii) any of the circumstances specified in regulation 4(2) applied to the vehicle; and

(b) the person to whom the disputed charge was paid refuses to refund the charge.

(2) The claimant under a dispute to which this regulation applies may appeal against the refusal of a refund by sending, to the authorised person whose name is given for this purpose in the notice under regulation 5(3) or the statement under regulation 12(3) at the address so given, written representations stating the grounds on which a refund is claimed.

(3) The authorised person to whom the appeal is made must consider any representations duly made and any evidence provided in support of them and must notify the claimant as to whether or not the appeal for a refund is upheld, but the authorised person may disregard representations and evidence received later than 28 days from the date on which the vehicle was released, or as the case may be, on which possession was taken of it.

(4) The authorised person must uphold the appeal if the authorised person accepts—

(a) the ground under paragraph (1)(a) has been established and the authorised officer did not have reason to believe that an offence under section 144A was being committed as regards the vehicle at the time it was immobilised or removed, as the case may be; or

(b) the ground mentioned in paragraph (1)(b) has been established.

(5) Where the authorised person upholds an appeal, that person must inform the claimant of the decision and the Secretary of State must refund the disputed charge.

(6) Where the authorised person rejects the appeal, that person must inform the claimant of the decision and of the right to make a further appeal under paragraph (7).

(7) A claimant who has made an appeal to an authorised person under paragraph (2) may make a further appeal to the appropriate court in accordance with paragraph (9)—

(a) if the claimant’s appeal under paragraph (2) has been rejected under paragraph (6) and the further appeal is made within 28 days of the claimant being served with notification to that effect under paragraph (6); or

(b) if the authorised person has not notified the claimant of the outcome of the appeal in accordance with paragraph (5) or (6) and 56 days have elapsed since the claimant appealed.

(8) If the court finds that—

(a) the ground under paragraph (1)(a) has been established and the authorised officer did not have reason to believe that an offence under section 144A was being committed as regards the vehicle at the time it was immobilised or removed, as the case may be; or

(b) the ground mentioned in paragraph (1)(b) has been established,

it shall order the Secretary of State to refund the disputed charge.

(9) A further appeal in accordance with paragraph (7) lies—

(a) in relation to a vehicle that was stationary on a road or other public place in England or Wales, to a magistrates’ court by way of complaint;

(b) in relation to a vehicle that was stationary on a road or other public place in Scotland, to the Sheriff by way of summary application.

Signed by authority of the Secretary of State

12th April 2011

Mike Penning
Parliamentary Under Secretary of State
Department for Transport

SCHEDULE 1

Regulation 2(2)

THE PRESCRIBED CHARGES

1. The prescribed charge for any matter referred to in column (2) of an item in the table is to be the sum specified in column (3) of that item.

TABLE

(1) <i>Item</i>	(2) <i>Matter for which charge may be made</i>	(3) <i>Amount of charge (£)</i>
1	Release of vehicle from immobilisation device	100
2	Removal of a vehicle where possession is taken within the first 24 hours of such removal	100
3	Removal of vehicle where item 2 does not apply	200
4	Storage of vehicle for each period of 24 hours or part thereof	21
5	Disposal of vehicle	50

SCHEDULE 2

Regulation 10(3)

STEPS TO BE TAKEN TO ASCERTAIN OWNERSHIP OF A REMOVED VEHICLE

1. If the vehicle carries a GB registration mark or an NI registration mark, it is the duty of the custodian to ascertain from the GB records, or as the case may be, the NI records the name and address of the registered keeper.

2. If the vehicle does not carry such a registration mark, the custodian must make such inquiries as appear to be practicable to ascertain the identity of the owner of the vehicle.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Regulations provide for the immobilisation and removal of uninsured vehicles found stationary on roads and other public places.

Regulation 3 provides for the authorisation of persons for the purposes of the Regulations.

Regulation 4 sets out circumstances in which the Regulations do not apply.

Regulation 5 enables a person authorised by the Secretary of State to fix an immobilisation device to an uninsured vehicle.

Regulation 6 states the conditions to be fulfilled (including the payment of prescribed charges specified in Schedule 1) for the release of a vehicle from an immobilisation device.

Offences in connection with immobilisation (including unlawful interference with an immobilisation device and falsely claiming exemption to secure the release of a vehicle) are created by regulations 7 and 8.

Regulations 9 to 13 provide for the removal and disposal of vehicles under the Regulations, for the retention of a removed vehicle until prescribed charges are paid and for the conditions under which a removed vehicle can be recovered. When a vehicle has been disposed of, the owner can claim a sum equal to the proceeds of sale after deduction of prescribed charges.

Provision is made by regulation 14 for disputes about charges paid to secure the release of a vehicle from an immobilisation device, or to secure possession of it after its removal, to be referred to a person authorised by the Secretary of State. An appeal against the determination of the authorised person can be made to a magistrates' court in England and Wales or a Sheriff Court in Scotland.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from Pauline Morgan at the Department for Transport Tel: 0207 944 2461 or e-mail: Pauline.morgan@dft.gsi.gov.uk and is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.

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STATUTORY INSTRUMENTS

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£5.75