

## **DETENTION OF VEHICLES USED WITHOUT AN OPERATOR'S LICENCE**

### **FACT SHEET**

#### **Goods Vehicles (Licensing Of Operators) Act (Northern Ireland) 2010 (the "2010 Act")**

#### **The Goods Vehicles (Licensing of Operators) Regulations (Northern Ireland) 2012 (S.R 2012 No. 261) (the "Licensing of Operators Regulations")**

#### **The Goods Vehicles (Enforcement Powers) Regulations (Northern Ireland) 2012 (S.R 2012 No. 258) (the "Enforcement Powers Regulations")**

1. Where the Driver & Vehicle Agency 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, an authorised person may detain the vehicle and its contents under Regulation 3 of the Enforcement Powers Regulations.
2. Where a vehicle has been detained in accordance with regulation 3 of the Enforcement Powers Regulations the Driver & Vehicle Agency shall publish a notice in The Gazette and serve a copy of the notice on the owner of the vehicle.
3. As the owner of the vehicle you may make application under regulation 9 of the Enforcement Powers Regulations for the return of the vehicle. Failure to make an application for the return of the vehicle within the statutory timescale will result in the vehicle being sold or otherwise disposed of (under regulation 14 of the Enforcement Powers Regulations). Any such application must be made in writing to the Department at the address given in the enclosed notice. Your application must be received no later than the date given in the notice.
4. The grounds for making an application for the return of the vehicle are contained in regulation 4(3) of the Enforcement Powers Regulations and are:
  - That at the time the vehicle was detained the person using the vehicle held a valid operator's licence (whether or not authorising the use of the vehicle);
  - That 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;
  - That 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
  - That 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.
5. The application must be made in writing and:
  - Include a statement of one or more of the grounds set out in paragraph 3 above for the application, and
  - Include a statement indicating whether you wish the Department to hold a hearing.

6. Should you request a hearing or should the Department consider it appropriate to hold a hearing before making a determination on the application the Department shall endeavour to hold a hearing within 28 days of your application (regulation 10 of the Enforcement Powers Regulations)
7. Unless the Department directs otherwise the hearing will be held in public. The relevant 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.
8. The Department shall endeavour to notify the applicant of it's determination in writing within:-
  - 21 days after receiving an application if no hearing is held
  - 14 days of the conclusion of a hearing where one is held.
9. You may appeal to the Upper Tribunal against the determination of the Department.
10. If the Department (or the Upper Tribunal) determines that one or more of the grounds specified in regulation 4(3) is made out then the Driver & Vehicle Agency shall return the vehicle to the owner.
11. If the Department (or the Upper Tribunal) determines that none of the grounds specified in regulation 4(3) is made out then the Driver & Vehicle Agency may be sell or destroy the vehicle.

\*Note: "owner" is defined in regulation 2 of the Enforcement Powers Regulations as:

in relation to a motor vehicle or trailer which has been detained in accordance with regulation 3 -

- 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, 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 so 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.

Other definitions in regulation 2 of the Enforcement Powers Regulations include -

"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.

"vehicle" has the same meaning as "goods vehicle" in section 58(1) of the 2010 Act but excludes those vehicle 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.

Article 71 of the Road Traffic Offenders (Northern Ireland) Order 1996 reads as follows-

"hiring agreement" refers only to an agreement which contains such particulars as may be prescribed and does not include a hire-purchase agreement within the meaning of the [1974 c. 39.] Consumer Credit Act 1974,

"vehicle-hire firm" means any person engaged in hiring vehicles in the course of a business.