SENIOR TRAFFIC COMMISSIONER

Statutory Document No. 7

IMPOUNDING

This document is issued pursuant to section 4C of the Public Passenger Vehicles Act 1981 (as amended). Representative organisations have been consulted in accordance with that provision.

Commencement:

Contents:

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Senior Traffic Commissioner

GUIDANCE

1. The Senior Traffic Commissioner for Great Britain issues the following Guidance under section 4C(1) of the Public Passenger Vehicles Act 1981 (as amended) to provide information as to the way in which the Senior Traffic Commissioner believes that traffic commissioners should interpret the law in relation to the return of seized vehicles under impounding legislation.

2. An operator's licence is required to:

i) carry goods (or burden) connected with any trade or business, if using a motor vehicle on a road with:

- a gross plated weight of more than 3.5 tonnes; or
- if it has no gross plated weight, but an un-laden weight of more than 1525 kg;
- a vehicle and trailer combination exceeding 3500kgs maximum authorised mass, for hire or reward.[1]

or,

ii) to use a vehicle for hire or reward:

- which is adapted to carry more than eight passengers; or
- if not so adapted is used in the course of a business for carrying passengers who are charged separate fares.

3. An operators' licence is necessary even if the vehicle is only used for a short period of time.

4. The licensing of operators ensures the promotion of road safety and fair competition in the transport industry. Unlicensed operators have no obligation to apply any kind of safety standards that are promoted by the operator licensing legislation and enforcement agencies are not able to easily carry out the necessary checks to ensure that those standards are being adhered to. Unlicensed operators do not have to bear the cost of compliance thereby gaining an unfair commercial advantage over their properly licensed competitors.

5. Whilst police officers have limited powers of detention for some offences, such as use of a vehicle without insurance, Driver and Vehicle Standards Agency (DVSA) officers have been given powers to detain vehicles used by illegal operators.

[1] From 4th December 2011, with exemptions under Schedule 3(2) of The Goods Vehicles (Licensing of Operators) Regulations 1995 for 'dual purpose' vehicles such as cars, estates, some pickups, and domestic 4x4 and others below 2040kg un-laden. EU Directives 2009/40 /EU and 2014/45/EU have removed some roadworthiness testing exemptions, see the Goods Vehicles (Plating and Testing) Regulations 1988.

Goods Vehicles Legislation: The Goods Vehicles (Licensing of Operators) Act 1995

6. Section 262 of the Transport Act 2000 introduced Schedule 1A into the 1995 Act, so that any laden heavy goods vehicle operating on a public road for the carriage of goods (either for hire or reward or in connection with any trade or business) without the authority of a goods vehicle operator's licence, can be detained.

7. Section 2(1) of the 1995 Act provides that….no person shall use a goods vehicle on a road for the carriage of goods a) for hire or reward or b) for or in connection with any trade or business carried on by him, except under a licence issued by this Act. Section 58 defines "goods vehicle" as a motor vehicle constructed or adapted for use for the carriage of goods, or a trailer so constructed or adapted; "carriage of goods" includes the haulage of goods and "goods" includes goods or burden of any description. Section 5(6) of the 1995 Act states that unless specifically permitted a vehicle which is not specified after a period of a month beginning with the day on which the vehicle was first in the operator's lawful possession or, if later, the day on which the licence came into force is not authorised to be used under that operator's licence.

8. Regulation 33 of Schedule 3 to the Goods Vehicles (Licensing of Operators) Regulations 1995 sets out the classes of vehicles for which an operator's licence is not required (see Annex 1).[2] There are a number of other exemptions that enable an operator, established in Northern Ireland[3] or in another Member State, to use a goods vehicle for hire or reward, in Great Britain, without contravening section 2.

9. Article 8(2) of Regulation (EC) No 1072/2009 defines the extent to which non-resident carriers from other Member States are permitted to operate national road haulage services (i.e. cabotage). Since 14th May 2010 this has been limited to three such operations within seven days following entry to the relevant Member State. Where a foreign based haulier applies for an operator's licence in Great Britain that haulier will become a 'resident carrier'[4] and subject to the ongoing obligations to comply with domestic law including Vehicle Excise Duty (as per section 1 of the Vehicle Excise and Registration Act 1994). In order to obtain a Vehicle Excise Disc it will usually require the applicant to present a valid MoT test certificate.[5]

10. The Goods Vehicles (Enforcement Powers) Regulations 2001, as amended by the Goods Vehicles (Enforcement Powers) (Amendment) Regulations 2009, allows for the detention and disposal of vehicles, which are not being operated legally. The Regulations also provide the opportunity to apply to a traffic commissioner for the return of the vehicle. Regulation 4, as amended, allows for

[2] The difficulty in determining the exemptions is illustrated in R (on the application of VOSA) v William Kayes [2012] EWHC 1498 (Admin), in relation to a "showman's goods vehicle"
[3] The Goods Vehicles (Licensing of Operators) (Temporary Use in Great Britain) Regulations 1996
[4] 2000/063 Reids Transport Co Ltd
[5] Regulation 3 of the Goods Vehicles (Evidence of Test Certificates) Regulations 2004 and section 53(2) of the Road Traffic Act 1988. The Vehicle and Excise Registration Act applies to both Great Britain and Northern Ireland. In order to obtain Vehicle Excise Duties a valid test certificate must be in force. In Great Britain roadworthiness requirements are provided for in The Road Traffic Act 1988 and the Motor Vehicles (Tests) Regulations 1981. In Northern Ireland the equivalent provisions are to be found in the Road Traffic (Northern Ireland) Order 1995. Vehicles subject to a Northern Ireland annual test are thereby exempt from the GB requirements

the release of a detained vehicle without the need for an application under regulation 10.

11. Regulation 9 requires that where a vehicle has been detained DVSA shall publish a notice in the London Gazette if the vehicle was detained in England or Wales or in the Edinburgh Gazette if the vehicle was detained in Scotland, which gives a brief description of the property detained and the vehicle's registration mark (if any), indicating the time and place at which it was detained and the powers used. It also lists those persons who should be served with a notice of the detention, including the traffic commissioner.

12. The notice must also describe the procedure for making an application for the return of the vehicle (and/or the contents) and must make clear what might happen if no-one claims it within the specified period. The specified period must be a minimum of 21 days, beginning with the date on which the notice is published or, if later, a copy of the notice is served.

Applications to a Traffic Commissioner

13. The owner of a detained vehicle may within that specified period apply to the traffic commissioner for the area in which the vehicle was detained for the return of the vehicle. Any application has to comply with the requirements of Regulation 10(2), namely that the application be in writing and be accompanied by a statement of one or more grounds specified in Regulation 4(3) and a statement indicating whether the applicant wishes the commissioner to hold a hearing.

14. Schedule 1A of the 1995 Act at paragraph 1(2) states that Regulations may, for the purposes of regulations made by virtue of this Schedule, make provision as to the meaning of "owner" as regards a goods vehicle.

15. Regulation 2 of the Public Service Vehicles (Enforcement Powers) Regulations 2009 defines "owner", as:

(a) in the case of a vehicle which, at the time of its detention, was hired from a vehicle-hire firm under a hiring agreement, the vehicle-hire firm; or
(b) in the case of a vehicle to which paragraph (a) does not apply, the person who can show to the satisfaction of the authorised person that, at the time the vehicle was detained, the person lawfully owned the vehicle (whether or not that person was the person in whose name the vehicle was registered under the Vehicle Excise and Registration Act 1994).

Grounds for an Application

16. Regulation 4 of the Goods Vehicles (Enforcement Powers) Regulations 2001, as amended by the Goods Vehicles (Enforcement Powers) (Amendment) Regulations 2009 sets out the grounds for an application for the return of a detained vehicle. 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.

Hearings before a Traffic Commissioner

17. Under Regulation 11 the traffic commissioner must hold a hearing if requested to do so by the applicant or if the traffic commissioner decides that it would be appropriate to hold a hearing before making a determination on the application. The hearing should be held within 28 days of receipt of the application at a time and place specified by the traffic commissioner in the notice of the hearing.

18. It is an adversarial process and the parties are entitled to give evidence, to call witnesses, to cross examine witnesses and to address the traffic commissioner both on the evidence and generally. The hearing will generally be in public but the traffic commissioner may direct that the whole or any part of a hearing be held in private if satisfied that it is in the interests of justice due to:

(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) other exceptional circumstances.

19. The traffic commissioner retains discretion to admit such persons as he or she considers appropriate.

Notification of Determinations

20. Regulation 12 requires the traffic commissioner to notify the applicant in writing of their determination of an application as soon as reasonably practicable and:

(a) where no hearing is held, within 21 days after receiving the application;
(b) where a hearing is held, within 14 days of the conclusion of the hearing.

Extension of Time

21. Regulation 23 allows the traffic commissioner to extend the periods beyond this where that commissioner considers it to be necessary in order for a particular case to be dealt with fairly and justly. Traffic commissioners should record their reasons.

Passenger Carrying Vehicles Legislation: The Public Passenger Vehicles Act 1981

22. Section 47 of the Local Transport Act 2008 introduced Section 12A and Schedule 2A into the 1981 Act so that any passenger carrying vehicle, adapted to carry more than eight passengers, operating on a public road for the carriage of

passengers (either for hire or reward or in connection with any trade or business) without the authority of a PSV Operator Licence, can be detained.

23. Section 12(1) of the 1981 Act provides that a public service vehicle shall not be used on a road for carrying passengers for hire or reward except under a PSV operator's licence granted in accordance with the following provisions of this part of this Act.

24. Section 1(1) of the 1981 Act provides that a "public service vehicle" means a motor vehicle (other than a tram car) which (a) being a vehicle adapted to carry more than eight passengers, is used for carrying passengers for hire or reward; or (b) being a vehicle not so adapted, is used for carrying passengers for hire or reward at separate fares in the course of a business of carrying passengers.

25. The Public Service Vehicles (Enforcement Powers) Regulations 2009 allow for the detention and disposal of vehicles, which are not being operated legally. The Regulations also provide the opportunity to apply to a traffic commissioner for the return of the vehicle and came into force on 1st October 2009.

26. Regulation 9 requires that, where a vehicle has been detained, DVSA shall publish a notice in the London Gazette if the vehicle was detained in England or Wales or in the Edinburgh Gazette if the vehicle was detained in Scotland, which gives a brief description of the property detained and the vehicle's registration mark (if any), indicating the time and place at which it was detained and the powers used. It also lists those persons who should be served with a notice of the detention, including the traffic commissioner.

27. The notice must also describe the procedure for making an application for the return of the vehicle and/or the contents must make clear what might happen if no-one claims it within the specified period. The specified period must be a minimum of 21 days, beginning with the date on which the notice is published or, if later, a copy of the notice is served.

Applications to a Traffic Commissioner

28. The owner of a detained vehicle may within that specified period apply to the traffic commissioner for the area in which the vehicle was detained for the return of the vehicle. Any application has to comply with the requirements of Regulation 11(2), namely that the application be in writing and be accompanied by a statement of one or more grounds specified in Regulation 10(3) and a statement indicating whether the applicant wishes the commissioner to hold a hearing.

29. Regulation 2 defines "owner", as:

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

(b) in the case of a vehicle to which paragraph (a) does not apply, the person who can show to the satisfaction of the authorised person that, at the time the vehicle was detained, the person lawfully owned the vehicle (whether or not that person was the person in whose name the vehicle was registered under the Vehicle Excise and Registration Act 1994).

Grounds for an Application

30. 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 12(1) of the 1981 Act;
(c) that, although at the time the vehicle was detained it was being, or had been, used in contravention of section 12(1) of the 1981 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 12(1) of the 1981 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.

Hearings Before a Traffic Commissioner

31. Regulation 12 provides that the traffic commissioner must hold a hearing if requested to do so by the applicant or if the traffic commissioner decides that it would be appropriate to hold a hearing before making a determination on the application. The hearing should be held within 28 days of receipt of the application at a time and place specified by the traffic commissioner in the notice of the hearing issued in accordance with regulation 3 of the Public Service Vehicles (Traffic Commissioners: Publication and Inquiries) Regulations 1986.

32. It is an adversarial process and the parties are entitled to give evidence, to call witnesses, to cross examine witnesses and to address the traffic commissioner both on the evidence and generally. The hearing will generally be in public but the traffic commissioner may direct that the whole or any part of a hearing be held in private if satisfied that it is in the interests of justice due to:

(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) other exceptional circumstances.[6]

33. The traffic commissioner retains discretion to admit such persons as he or she considers appropriate.

Notification of Determinations

34. Regulation 13 requires the traffic commissioner to notify the applicant in writing of their determination of an application as soon as reasonably practicable and:

(a) where no hearing is held, within 21 days after receiving the application;
(b) where a hearing is held, within 14 days of the conclusion of the hearing.

[6] These might include where there are criminal proceedings for unauthorised use involving the applicant and the traffic commissioner determines that it is appropriate to exclude members of the public or material witnesses for all or part of the proceedings.

Extension of Time

35. Regulation 25 allows the traffic commissioner to extend the periods relating to the decision making process where that commissioner considers it to be necessary in order for a particular case to be dealt with fairly and justly.

Case Law

36. This Guidance may be subject to any decisions of the higher courts and to subsequent legislation. Current case law is mainly concerned with applications for the return of goods vehicles. The Senior Traffic Commissioner has extracted the following principles and examples from existing case law.

37. A tractor unit is a goods vehicle. A tractor unit conveying empty trailers to and from the testing station amounts to the carriage of goods as goods includes burden of any description. The hauling of trailers by a tractor unit for the purposes of testing and repair as part of a trade or business requires an operators' licence. A tractor unit is a separate vehicle from a trailer and can only fall within the exemption if it is proceeding to the testing station for the purpose of a test upon itself.[7]

38. It is unlawful in Great Britain to use as goods vehicle on a road, for the carriage of goods, either for hire or reward or in connection with any trade or business carried out by the user, without holding an operator's licence, unless permitted to do so by a legal exemption. The Vehicle Excise and Registration Act 1994 provides exemptions for recovery vehicles. They are defined as vehicles constructed or adapted for the purpose of "lifting, towing and transporting a disabled vehicle". In these circumstances the Transport Tribunal has held that the correct test is whether the use of the recovery vehicle was for transporting genuinely disabled vehicles.[8]

39. One of the exemptions allowed under section 2(2)(b) is the use of a vehicle for international carriage by a haulier established in another Member State. International carriage is defined by Council Regulation (EEC) No. 881/92 as being "a journey undertaken by a vehicle the point of departure and the point of arrival of which are in two different Member states, with or without transit through one or more Members States or non-members". Under Regulation (EC) No. 1072/2009 any haulier from another Member State who enters GB whilst delivering an incoming international load and who complies with the conditions set out in Article 8 may take advantage of a further exemption known as 'cabotage'. This permits an incoming vehicle, after discharging its international load, to undertake three further collections and deliveries within GB before the vehicle leaves the country, within 7 days. Those operations will only conform to the 2009 regulation if the haulier can produce clear evidence of the incoming international carriage and each of the consecutive cabotage operations. That evidence must be kept in the vehicle and made available for inspection at any roadside check.[9]

[7] 2002/134 WC Commercials, Booth v DPP [1993] R.T.R. 379
[8] 2008/011 Ansvar Holdings
[9] 2011/060 Nolan Transport v VOSA and SoS for Transport, 2016/008 Van Der Gaag Transport De Lier BV v DVSA

40. Section 58 of the 1995 Act and section 81 of the 1981 Act, deem the user of a vehicle to be the driver, if s/he owns it (under hire purchase or loan etc.), or, in any other case, the person who employs/contracts the driver. The Transport Tribunal considered the question of who is operating in *2004/377 E A Scaffolding and Systems Ltd* and *2004/426 E A Contract Services Ltd* and confirmed that it is generally the employer of the driver who will be the operator for the purposes of the legislation. The key in determining whether or not a person is an employee, is often to be found in the terms of employment; or if a service provider, in the contract for supply of services. Terms or a contract of employment have not been comprehensively defined in legislation or case law. The courts have adopted various tests in order to determine whether or not a relationship amounts to a relationship of employment but the general approach is to consider all the factors relevant to the issue of employment and to weigh up those factors that point towards the existence of a contract of employment and those that point away from such a contract.[10]

41. In the E A Scaffolding case the Tribunal also approved of the traffic commissioner's reliance on a Court of Appeal decision in *Interlink Express Parcels Limited v. Night Trunkers Limited & Another [2001] EWCA Civ 360*. In exceptional circumstances it may be necessary to look at wider factors. This case turned on the identity of the operator under sections 2 and 58(2) of the Goods Act. In considering the temporary transfer of employment Arden LJ carried out a detailed review of the law. The Tribunal remarked that this was a factually complex case which could not easily be summarised. It deprecated *"salami slicing"* those parts of the day where one activity was carried out from those parts of the day where another, such as driving, might be undertaken. The Tribunal relied on the principle that "*Interlink had the right to control the way in which the Night Trunker drivers operated their vehicles, and in all the circumstances that such drivers were properly to be regarded as temporary deemed servants of Interlink and accordingly as its servants for the purposes of section 58(2) of the 1995 Act"*.

42. In determining who is operating, the issue is therefore likely to be one of control: for instance is someone entitled to give the orders as to how the work should be done?[11] The greater the amount of control exercised over the details of the work to be done, the more likely the relationship is to be one of employment.[12]

43. In terms of the application, the apparent requirement to lodge that application within 21 days is to be viewed as directory rather than mandatory. *"It follows that a literal interpretation of the Regulations is more likely to shut out those with a strong claim rather than those with a weak claim or no claim at all"*.[13] Where the prescribed time limits are not complied with, in the absence of bad faith, the traffic commissioner will retain jurisdiction to hear the application. However it is good

[10] Carmichael v National Power plc [2000] IRLR 43 approved 3 questions posed by the judge in Readymix Concrete (South East) Ltd v Minister of Pensions and National Insurance [1968] 1 All ER 433: the obligation to provide a personal service; the obligation to be controlled in relation to the manner of the task to such an extent that the worker becomes a servant; and that there is mutuality of obligations. HMRC has advised that to all intents and purposes, lorry drivers cannot be self-employed when they are driving a lorry, unless they are owner/drivers with a licence to operate:
www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm4210,
www.gov.uk/hmrc-internal-manuals/employment-status-manual/esm4211

[11] Mersey Docks and Harbour Board v Coggins and Griffith (Liverpool) Ltd [1947] AC 1

[12] Simmons v Heath Laundry [1910] 1 K.B. 543

[13] 2003/90 and 2003/122 CPT Commercials (Stockport) Ltd and CPT & sons Transport UK Ltd, 2005/471 Excell A Rate

practice to refer an application to the traffic commissioner to consider making case management directions including the extension of time limits where necessary in the interests of justice.[14]

44. In many cases owners of impounded vehicles may not ask for a hearing because they think that this is unnecessary. They might think that the case for return of the vehicle is obvious and consequently not request a hearing. If the question of knowledge is at issue traffic commissioners should be alive to the need to explore this issue. If the issues or facts are other than straightforward the traffic commissioner must give serious consideration to the holding of a hearing to enable the applicant to attend and present all material facts to the presiding commissioner.[15]

45. The applicant must first prove ownership of the relevant vehicle before a traffic commissioner is required to consider other issues, although it may be necessary for the traffic commissioner to hear all of the evidence.[16] In the case where there are multiple claims the traffic commissioner may be required to determine who was the legal owner (as opposed to the owner of a beneficial interest) at the time the vehicle was detained.[17] The correct test is whether the appellant had produced sufficient evidence to satisfy the traffic commissioner upon the balance of probabilities, that he is the owner not whether there is credible evidence that the vehicle is owned by anyone other than the applicant. Neither the production of the log book nor the identity of the registered keeper is conclusive evidence that the applicant is the owner.[18] Financial evidence showing that money was used to purchase the detained vehicle is unlikely to be sufficient in the absence of a loan or leasing agreement and/or other evidence as to rights over the vehicle.[19]

46. As a general rule the DVSA witnesses should give evidence first at a hearing and they must establish the case for impounding the vehicle.[20] It is for DVSA to show that its officers had reason to believe that the detained vehicle was being, or had been, used on a road in contravention of the legislation[21], on the balance of probabilities. The applicant will then give evidence, with the burden of proof being on him to establish his ground/s for the return of the vehicle. This sequence assists the applicant since he is able to put his case to DVSA before himself calling evidence. [22]

47. The Upper Tribunal has repeated the general rule that ownership is the sensible starting point in any impounding hearing or decision because it is only the owner who can apply to a traffic commissioner for the return of an impounded vehicle.[23] It advises that where there is any reasonable doubt about DVSA's right to impound then DVSA would be well-advised to be cautious about resisting an application to adjourn. If the true owner of an impounded vehicle can prove (a)

[14] 2012/018 & 19 Steve Barry Smith, Helen Graham v VOSA
[15] 2005/542 J Thorogood, 2009/417 James Innes t/a J C Innes & Sons, 2013/037 UK London Skip Hire Barking Ltd
[16] 2014/003 Sarah Boyes, 2011/029 David Pritchard – considered the exercise of deciding on credibility
[17] 2013/015 Commercial Tradings Ltd
[18] 2005/565 Construction Access UK Ltd, 2005/259 R J Evans
[19] 2005/218 B Menear
[20] 2012/037 F & M Refrigerated Transport Ltd refers to section 48 of DVSA's Operations Manual setting out DVSA's policy on impounding
[21] 2012/058 Alan Knight Transport BV & Alan Michael Knight
[22] 2005/449 W J Furber
[23] 2012/053 Clayton Car Sales Ltd

ownership and (b) that DVSA had no right to impound the vehicle, then DVSA may face other liabilities.[24] The Upper Tribunal has indicated that where an impounding appeal raises a complex point DVSA should consider whether or not it needs to be represented, in its own interests and the interests of justice.[25]

48. Once unlawful use is established the burden of satisfying the traffic commissioner that the vehicle should be returned is on the applicant.[26] Where an applicant fails to make out a statutory ground for return there is no residual discretion under the Regulations to order return of an impounded vehicle.[27] Only the owner may apply for the return of the detained vehicle as per the regulations.[28] If that can be shown then the burden of proof in an application for return of an impounded vehicle based on knowledge again lies with the applicant.[29] On the issue of the owner's knowledge, the applicant must establish that he or she had no knowledge of the contravention at the time when the vehicle had been used, whenever that was and whether such use was at the time of detention or on some earlier occasion.[30] In stating that the *owner has the difficult task of proving a negative* the Upper Tribunal makes clear that the onus of proof regarding knowledge remains on the applicant seeking return of the vehicle.

General Approach to Knowledge

49. Any reason for failing to act, or any other explanation put forward by the owner must be considered and assessed. The Upper Tribunal has indicated that this is most appropriately done in the course of deciding whether or not a case comes within a particular category.

50. A *good* reason for failing to make inquiries is likely to mean that the owner was not guilty of a high degree of fault. The motivation for the owner's conduct, or failure to take certain steps, is likely to be extremely relevant. Circumstances which show that the owner's conduct was inadvertent or accidental would mean that it was not wilful. It will be necessary for the traffic commissioner to consider the circumstances of each vehicle separately and to make separate findings in relation to each.

51. A traffic commissioner might need to consider whether obvious inferences were drawn or whether obvious enquiries were made. If the applicant did not suspect wrongdoing or had his suspicions allayed that is not actual knowledge, but if he did suspect wrongdoing but failed to make enquiries then that is another matter.[31] It may be necessary to determine whether simple questions, such as the applicant satisfying itself of the existence of the operator's licence, were asked.[32] If they did not make those enquiries, the onus is on the applicant to say why not. If the true situation would have become apparent, on the basis of enquiries that any honest and reasonable person would make, then the applicant must justify the decision not to pursue those enquiries. It may be difficult for an intelligent and/or experienced businessman to claim naivety where there are grounds to

[24] For instance under Torts (Interference with Goods) Act 1978, for the civil courts to determine.
[25] 2012/037 F & M Refrigerated Transport Ltd
[26] 2007/062 Thomas McKinney & Son Ltd
[27] 2016/065 & 066 Carrie McKendry & Douglas McKendry
[28] Alan Knight Transport BV (as above)
[29] 2007/30 & 31 Industrial and Corporate Finance
[30] 2002/056 J Tote
[31] 2003/ 003 Close Asset Finance
[32] 2007/30 & 31 Industrial & Corporate Finance

suspect that further enquiries (for instance use of the internet) are required and thereby every opportunity to find out about the licensing regime.[33] "In the absence of some innocent explanation if they failed to do so wilfully (that is to say – deliberately, intentionally and with a high degree of fault) and recklessly (that is to say – with a lack of caution) then actual knowledge can be imputed".[34]

52. In the case of corporate applicants, whilst a company is often likened to a human body, with its directors acting as the controlling mind[35] it is not the knowledge of the directors but that of the company as a whole, which may be under consideration. Where the company has a clear process, for instance for checking whether there was an operator's licence, and that process is ignored by a member of staff, the Transport Tribunal has rejected an argument that this is merely negligent[36], as the company was on notice of the requirement.

53. Traffic commissioners are advised to find such facts as they can on the evidence and then decide whether the owner has discharged the burden of establishing, on balance, that they did not have actual, imputed or constructive knowledge. There is no residual discretion for traffic commissioners to import the concept of proportionality into the tests laid out in the legislation.[37]

54. The purpose of the regulations is to prevent owners knowingly permitting or facilitating the unlawful use of vehicles.[38] Once DVSA has established a right to impound the burden of proof is on the Applicant. Any claimant who fails to attend an impounding hearing runs a significant risk that the application will fail because there is no evidence to prove the ground upon which return is sought and/or because the applicant is unable to answer any point raised during the hearing. A traffic commissioner cannot be expected to know what case the applicant might be able to make and is not required to become involved in helping an applicant to complete the grounds. The hearing is adversarial and the presiding traffic commissioner must remain neutral. The Upper Tribunal has now set out the principles on knowledge in *2013/021 Societe Generale Equipment Finance Ltd v VOSA* which summarises the established law in paragraphs 110 – 121 of *2011/60 Nolan Transport v VOSA*, as per the following guidance.

55. Every claim for the return of a vehicle based on a lack of knowledge raises a deceptively simple question, which the traffic commissioner must answer. The question is this: *"Has the claimant satisfied me that he, she or it probably did not know that the vehicle was being or had been used in contravention of …. the Act?"*. A traffic commissioner should avoid two temptations: first to take short cuts and second to suggest that an applicant should have done something where no such legal obligation exists. The Upper Tribunal has therefore suggested adopting a structure or route for reaching a final decision, based on the decided cases.

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[33] Asset 2 Asset Ltd (As above)
[34] Asset 2 Asset Ltd (As above)
[35] HL Bolton (Engineering) Co. Ltd v TJ Grahams & Sons Ltd [1957] 1 QB 169. The Supreme Court and its predecessor have since further defined the term 'controlling mind' in cases such as Tesco Supermarkets Ltd v Nattrass [1971] All ER 127 as the directors under the memorandum and articles of association or those in actual control who are able to bind the company.
[36] 2006/406 PCF EL Ltd
[37] 2004/152 Frank Meager, WC Commercials (as above), 2016/028 Bolle Materieel BV v Driver & Vehicle Standards Agency
[38] 2011/025 Asset 2 Asset Ltd

56. The starting point is to ask *"Is there any evidence before me on the basis of which I could be satisfied that the claimant probably did not know that the vehicle was being or had been used in contravention of the Act?"*. If there is no such evidence the traffic commissioner should say so, indicate that the burden of proof is on the applicant and that, in the absence of any evidence capable of showing lack of knowledge of use the ground has not been made out. There is no need for the traffic commissioner to go further or to embark on the process.

57. If there is some evidence then the traffic commissioner must assess it. In requiring an applicant to prove a lack of knowledge the regulations require proof of a negative, which can be difficult. Traffic commissioners need to be careful not to reverse the burden of proof as a traffic commissioner does not have to be satisfied that the claimant did know of the use in contravention. If there is a convincing answer to the starting question then a traffic commissioner is free to rely on it without looking at other 'proof of knowledge'.

58. The Upper Tribunal has provided a useful reminder of the five categories of knowledge:

(i) **Actual knowledge;**
This should present little difficulty, as it will require evidence of actual knowledge of the use in contravention.

(ii) **Knowledge that the person would have acquired if he had not wilfully shut his eyes to the obvious**;

(iii) **Knowledge that the person would have acquired if he had not wilfully and recklessly failed to make such inquiries as an honest and reasonable person would make**;
Categories (ii) and (iii) involve findings which justify imputing actual knowledge. See paragraph 118 in *Nolan Transport* but no separate finding of dishonesty is required in order to impute actual knowledge because the conduct, which must be proved, is in itself inherently dishonest. It is important to note that these categories require proof of a high degree of fault on the part of the claimant. A finding can only be justified once findings of fact have been made which satisfy the traffic commissioner that each of the ingredients of the category in question has been established.

(iv) **Knowledge of circumstances that would indicate the facts to an honest and reasonable person**; and

(v) **Knowledge of circumstances that would put an honest and reasonable person on inquiry**.

Categories (iv) and (v) involve constructive knowledge. Findings required to establish category (iv) or (v) knowledge, on their own, are unlikely to amount to more than mere negligence, which is not sufficient to establish knowledge so that a claim under the regulations will fail. There must be evidence to support an additional finding that the applicant was acting dishonestly or had a dishonest motive in either failing to recognise that the vehicle(s) were being used in contravention of the Act or in failing to make the inquiries which an honest and reasonable person would have made.

Steps to preventing future use

59. The evidential burden is on the applicant to show that, although knowing at the time the vehicle was detained that it was being, or had been, used in contravention of the legislation, 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. The Upper Tribunal has considered the meaning of these provisions and determined that they not only relate to third party owners but also to owner-operators. The Tribunal went on to explore the interpretation of "steps" which means *"all reasonable steps available to the owner"* or *"all those steps that a reasonable owner would take in the circumstances they find themselves in, not only in the context of preventing past unlawful use but future unlawful use."* The Tribunal went further to state *"the hurdle is a high one"* and owners *"should be able to demonstrate robust systems and procedures that they have put in place which would constitute reasonable steps…along with adequate explanations as to why those steps did not work in the instant case."*[39] In making an application under paragraph 4(3)(d) the owner will be accepting that criminal offending has taken place as a pre-condition to the sub-paragraph and may be leaving themselves open to prosecution.

60. In the ordinary course of events, the applicant should be able to produce documentary evidence[40] to show (translated if necessary):

- the necessary systems were in place to ensure that the planning of journeys of vehicles into GB would, in the ordinary course of events, be compliant with the legislation, for instance planning guidance and instructions given to those responsible for scheduling vehicles and their journeys;
- the training provided to those responsible for scheduling journeys;
- the scheduling in the instant case which had resulted in the impounding;
- the investigations undertaken by the management of an owner/operator as to what went wrong in the instant case and insofar as there have been more than one warning letter sent to the owner/operator about unlawful operation in GB, the investigations following each warning letter and the additional steps taken to prevent the commission of criminal offences in GB;
- the disciplining, retraining or dismissal of staff who were responsible for scheduling a vehicle which resulted in the commission of a criminal offence in GB;
- the instructions and procedures which were in place to ensure that the driver of a vehicle undertaking cabotage had with him the necessary documents for inspection during roadside checks so that Article 8(3) of the 2009 Regulation is complied with;
- the disciplining, retraining and dismissal of staff, including drivers who have failed to ensure that Article 8(3) of the 2009 Regulation was complied with.

The above list is not exhaustive.

61. To assist traffic commissioners the Upper Tribunal has suggested the following questions be posed in assessing the evidence, so that nothing is left out, any finding of inherent dishonesty can be properly justified, and to provide a process for taking into account and assessing any innocent explanation:

[39] Van Der Gaag Transport De Lier v DVSA, As Above
40 Van Der Gaag Transport De Lier v DVSA, As Above

a) *What inquiries would an honest and reasonable person have made in the circumstances faced by the person claiming the return of the vehicle?*
If the answer is "None" there can be no question of imputed actual knowledge under category (iii).

If the answer is that an inquiry or some inquiries would have been made the questions that follow must be answered separately in relation to each inquiry that the honest and reasonable person would have made.

The inquiries, which an honest and reasonable person will make, inevitably depend on the circumstances of each case, and will therefore involve a question of fact and degree based on the evidence in each individual case. A finding against a particular Finance Company cannot amount to a legal precedent but may have persuasive value if there is no material difference in the circumstances of another case. A traffic commissioner is entitled to take into account the extent to which the applicant has been put on notice that there may not be an operator's licence. The Upper Tribunal referred to circumstances where Finance Companies rely on checks before lending money. There is no legal requirement that a Finance Company must inquire, at regular intervals, to ensure that an operator continues to hold an operator's licence but if in the circumstances of, for instance, a hire purchase agreement, inquiries would have been made at regular intervals and then there may be evidence to justify an alternative finding in that case. Evidence would need to deal with frequency, cost, effectiveness and proportionality. It is therefore a question of fact in each individual case. The applicant may be in difficulty if it can be shown that the applicant was told, for example, that the operator's licence had been revoked or was warned that the operator had been called to a Public Inquiry at which revocation is a possibility as an honest and reasonable person would undoubtedly make inquiries.

By reference to 2003/ 003 Close Asset Finance there is no legal requirement to make any inquiry as to the existence of an operator's licence but whilst a relevant factor it is not a decisive factor. It does not exempt a finance company from the obligation to make any inquiry that an honest and reasonable person might. A traffic commissioner is entitled to have regard to the well-known principle that everyone is taken to know the law, so an applicant is taken to know that it is unlawful, under the Act, to operate without an operator's licence, that operating a vehicle in contravention of the Act renders the vehicle liable to be impounded and that the grounds on which an impounded vehicle can be returned to its owner are limited to those set out in the Regulations. It is open to a traffic commissioner to conclude that knowledge of these matters would influence the decision of the honest and reasonable person as to whether or not to make inquiries. If there is evidence that the applicant belongs to a recognised trade body which has issued guidance on operator licence checks, whilst not decisive, a traffic commissioner ought to take that into account in deciding what the honest and reasonable person would have done.

(b) *Did the claimant make such inquiries?*
If the answer is "Yes" there can be no question of imputed actual knowledge under category (iii).

If the answer is "No" the next question must be answered.

(c) *Did the claimant wilfully refrain from making such inquiries?* For the purposes of this question 'wilfully' means 'deliberately and intentionally' as opposed to 'accidentally or inadvertently'.

If the answer is "No" there can be no question of imputed actual knowledge under category (iii).

If the answer is "Yes" the next question must be answered.

(d) *Did the claimant recklessly refrain from making such inquiries?* For these purposes 'recklessly' means 'not caring about the consequences of failing to make such inquiries'.

If the answer is "No" there can be no question of imputed actual knowledge under category (iii).

If the answer is "Yes" the next question must be answered.

(e) *Was a high degree of fault involved in wilfully failing to make such inquiries?*

If the answer is "No" there can be no question of imputed actual knowledge under category (iii).

If the answer is "Yes" a finding that the vehicle owner had imputed actual knowledge under category (iii) is justified.

DIRECTIONS

62. The Senior Traffic Commissioner for Great Britain issues the following Directions to traffic commissioners under section 4C(1) of the Public Passenger Vehicles Act 1981 (as amended). These Directions are addressed to the traffic commissioners in respect of the approach to be taken by staff acting on behalf of individual traffic commissioners and dictate the operation of delegated functions in relation to the return of seized vehicles under impounding legislation.

Basis of Directions

63. Illegally operated vehicles can be impounded by the DVSA officers. There will usually have been an opportunity given to obtain a licence. Vehicles are detained where DVSA have reasonable cause to suspect that the vehicle is still being used illegally. As indicated above the operator has the right to apply to a traffic commissioner for its return subject to proof that the operator is the lawful owner of the vehicle.

64. Impounding might happen in one of the following circumstances (but will not always be limited to these circumstances):

- the operator has had its licence revoked by a traffic commissioner;
- the operator has been warned or prosecuted by the enforcement agencies for operating without a licence;
- there have been repeat applications for a licence but no authority to operate has given by the traffic commissioner;
- the operator is using a foreign registered vehicle, not authorised on a GB licence, and is engaged in an operation outside the scope of the Cabotage rules;
- the operator has used an operators' licence identity disc issued to another operator;
- the operator has displayed a document which purports to be an operator's licence identity disc with intent to deceive.

65. Staff members are reminded that impounding hearings, unlike public inquiries, always involve two parties, one of which is DVSA. DVSA should therefore be treated as with any other party to proceedings with all relevant contacts recorded.

Notification of Impounding

66. DVSA will normally contact the relevant Office of the Traffic Commissioner (OTC) by telephone to check:

- whether the vehicle is exempt from operator licensing;
- whether or not the 'user' of the vehicle holds an operator's licence;
- whether the vehicle is specified on any operator's licence.

67. Once the impounding has taken place and DVSA has notified the traffic commissioner of this, staff at the Office of the Traffic Commissioner shall maintain a file regarding the matter and all contacts with DVSA and all parties should be recorded and kept on that file.

68. DVSA should already have considered and prepared a brief compliance history, information as to previous applications, previous enforcement and roadworthiness history with evidence to support its conclusion that the user does not hold an operators' licence. DVSA might also need to present evidence of an up-to-date list of vehicles also used by the applicant (including weight, type etc); test, roadworthiness and vehicle excise duty status for those vehicles; the registered keepers; whether there is outstanding finance on any of the vehicles (via the HPI database); the type of business carried out by the operator; routes used, destinations and times of journeys and the like.

69. DVSA is expected to supply the relevant traffic commissioner with a summary which explains its reasons for the impounding to include the following:

- the full name and address of the user of the vehicle;
- if the licence was revoked, the date and reasons for revocation;
- evidence that the operator has continued in business, including any enforcement action taken;
- confirmation that a HPI check has been made, including the date and outcome;
- any other relevant facts that the traffic commissioner might require.

70. Any witness statements prepared by the authorised person and any accompanying vehicle examiners or traffic examiners should also be made available to the traffic commissioner at the earliest opportunity.

71. DVSA must inform any parties with an interest in the vehicle that the alleged breach has occurred and will arrange for the necessary legal notice to be published in either the London or Edinburgh Gazette (as appropriate). Where a PSV has been detained Regulation 9 provides that DVSA must also advertise in at least one newspaper circulating in such areas as the authorised person considers appropriate in the circumstances of the case. This will usually be a local publication depending on the type of journey. The advert should refer to any load, luggage and/or personal belongings etc that have been temporarily stored.

72. Irrespective of whether or not contact was made at the roadside DVSA must notify the following in writing prior to the notice appearing in the Gazette:

- the owner of the vehicle (as defined in the Regulations);
- the hirer (if the load has been stored);
- the relevant traffic commissioner;
- the relevant Chief Officer of Police;
- the Association of British Insurers;
- the British Vehicle Rental and Leasing Association (BVRLA).

73. DVSA will send an application form and fact sheet (GV or PSV 500 and GV or PSV 501) for the return of the vehicle to the apparent owner of the vehicle. The last date for appeal is 21 days from the date of publication.

74. Once DVSA has sent the traffic commissioner notification that a vehicle has been impounded in their area, including a copy of the notice issued to the vehicle's owner (without enclosures) the Office of the Traffic Commissioner must inform that traffic commissioner as soon as reasonably practicable of the impounding

and place a copy of the e-mail on file. The Office of the Traffic Commissioner staff will need to start preparing for the possibility of listing a hearing in the event of an application for the return of the vehicle.

75. Once the 21 day application deadline has passed without an application for the return of the vehicle being received the matter must be referred to the Traffic Commissioner for a determination on the papers. In the event of there being no written application it is in order for the traffic commissioner to determine the matter without a hearing. As a matter of good practice the Office of the Traffic Commissioner should wait a further 7 days before sending notification to DVSA that the vehicle should be disposed of.

Applications to the Traffic Commissioner and Accompanying Time Limits

76. The owner of the vehicle may make an application in writing to the traffic commissioner within 21 days of the notice, on the grounds set out above at paragraphs 17 for goods vehicles and paragraph 31 for public service vehicles.

77. Once the applicant has submitted a written application form (known as written representations) to the traffic commissioner for the return of the vehicle(s) the onus is on the applicant to satisfy the traffic commissioner that one of the grounds is met. Staff must inform the traffic commissioner as soon as an application is received and put a submission to the traffic commissioner for any case management directions (see below).

78. Any written representations must then be brought to the attention of the traffic commissioner as soon as possible and the commissioner will then consider the application on the papers and determine whether it can be dealt with on the papers or whether the application should be listed for a hearing.

79. If the applicant requests a hearing then the traffic commissioner dealing with the matter is obliged to convene one. If not the traffic commissioner must decide whether a decision can be reached by considering the written representations or whether fairness requires that a hearing be held.[41] The Senior Traffic Commissioner expects that where an application is being made for the return of the vehicle that the traffic commissioner seized of the matter will convene a hearing, even where one has not been requested by the applicant. This will enable the applicant (if they choose to attend) to present all relevant evidence that might not have been included in the written application.

80. As stated above once an application is received by the traffic commissioner they will consider it either by written representations or at a hearing. In any event all actions should be carried out as quickly as possible and within the timescales specified by legislation set out below, unless the traffic commissioner has directed that the timetable be extended :

[41] See Statutory Guidance and Statutory Directions on Case Management.

Type of vehicle	Application	Hearing	Determination
Goods Subject to traffic commissioner's power to extend the periods under regulation 23	minimum 21 days beginning with the date on which the notice is published or, if later, a copy of the notice is served. (regulation 10)	within 28 days of receipt of the application (regulation 11)	No hearing – 21 days from receipt of the application. Hearing – 14 days after the hearing (regulation 12)
PSV Subject to traffic commissioner's power to extend the periods under regulation 25	minimum 21 days beginning with the date on which the notice is published or, if later, a copy of the notice is served. (regulation 11)	within 28 days of receipt of the application (regulation 12)	No hearing – 21 days from receipt of the application. Hearing – 14 days after the hearing (regulation 13)

81. If an application is received after the 21 day time limit the traffic commissioner must be notified as soon as possible. Staff at the Office of the Traffic Commissioner must ascertain if the vehicle has been disposed of by DVSA and notify the traffic commissioner and the applicant accordingly. If the vehicle has been disposed of there will be no redress against the traffic commissioner provided that the time limits and accompanying procedures have been adhered to. If the vehicle has not been disposed of DVSA will be requested to delay disposal until the traffic commissioner has determined whether to consider the application out of time. Traffic commissioners and their staff should remind themselves of the helpful guidance from the Transport Tribunal at paragraph 40 above.

82. In the event that the traffic commissioner decides to hear the appeal out of time DVSA must be notified forthwith and they must be requested to delay disposal of the vehicle until the conclusion of the application. Traffic commissioners cannot be held responsible for a vehicle's disposal if they decide to hear an application outside the 21 day time period if the vehicle was not already disposed of at the time that DVSA were notified of the late application

83. In view of the prescribed timetable it may, in certain circumstances, be appropriate for the traffic commissioner to make initial directions for the supply of evidence. This minimises the risk of a hearing having to be adjourned part heard and will help to ensure that all parties know the basis of the other party's case. Initial directions may include a requirement on the applicant to provide evidence of ownership such as a V5C (but see above), proof of purchase and payment, insurance, any contracts and/or other documents relating to the use of the vehicle such as bank statements and lease agreements/ contract. In the event that DVSA has not already supplied all evidence to be relied upon it will be appropriate for the traffic commissioner to make a direction for DVSA to supply copies of all relevant documents including any documents obtained at the point of seizure, the results of any inquiry in relation to ownership, any reports from police or other agency.

Proceedings

84. If the matter is to proceed by way of an oral hearing it is to be listed as quickly as possible and in any event to ensure compliance with the time frame set out at paragraph 79 above. This will often mean that the application will be given priority over licence applications and other public inquiries and driver conduct hearings. As a general rule the hearing will be held in public but commissioners and their staff are reminded of the provision for some evidence to be heard in closed session as set out at paragraph 32 above.

85. Information about the time and place at which the TC proposes to hold a PSV impounding hearing must be published in the Notices and Proceedings issued in accordance with Regulation 3 of the Public Service Vehicles (Traffic Commissioners: Publication and Inquiries) Regulations 1986. There is no equivalent requirement in the goods legislation.

The Traffic Commissioner's Decision

86. Having considered all the evidence the traffic commissioner will decide on the application and notify the applicant in writing within 21 days of receipt of the application (if there is no hearing), or within 14 days of the conclusion of the hearing. In either case the decision of the traffic commissioner must specify the ground/s upon which the application either succeeds or fails. If there has been a hearing full written reasons should also accompany the decision of the traffic commissioner. The traffic commissioner may extend these times where an individual case requires more time to be dealt with fairly and justly.

87. The Office of the Traffic Commissioner should inform the applicant of the traffic commissioner's decision:

- based on written representations, within 21 days of receipt of the application; or,
- following a hearing, within 14 days of the conclusion of the proceedings.

88. If the applicant is successful the vehicle can be returned to them and if not, the vehicle will be retained by DVSA. However both parties have a right of appeal and so the Office of the Traffic Commissioner must ensure that both parties are made aware of these appeal rights and so should not direct the return of the vehicle to DVSA until the expiry of that appeal period. Similarly if DVSA appeal they may choose to retain the vehicle pending the expiry of the appeal period. If there is no appeal against a decision not to return a vehicle or the appeal is unsuccessful the vehicle can be sold or crushed with the proceeds of any sale returned to the rightful owner, less any costs.

Appeals

89. If the relevant traffic commissioner decides that the impounding was proper the applicant may choose to appeal to the Administrative Appeals Chamber of the Upper Tribunal but must lodge that appeal within 28 days of the traffic commissioner's decision. The Upper Tribunal Secretariat will send notification of the appeal to the relevant Office of the Traffic Commissioner. If no appeal has been lodged after this time, the vehicle may be sold or disposed of. If an appeal is made the Office of the Traffic Commissioner should inform the DVSA Area

Office, so that any disposal is prevented. DVSA should always notify the relevant traffic commissioner when property has been disposed of and their staff should check that the notification had been received.

90. In the event of an appeal the Office of the Traffic Commissioner should supply the Upper Tribunal with copies of all associated documentation, including a transcription of any hearing in the usual way[42]. The file should be retained by Office of the Traffic Commissioner for at least 12 months from the date of detention or the completion of outstanding appeals and/or expiry of a relevant appeal period.

91. Decisions of the Upper Tribunal can be appealed to the Court of Appeal for English and Welsh cases or the Court of Session for Scottish cases, and from there to the Supreme Court (previously the House of Lords). There is also the possibility of an appeal to the European Court of Human Rights.

[42] See Statutory Guidance and Statutory Directions on Appeals.

ANNEX 1: CLASSES OF VEHICLES FOR WHICH A LICENCE IS NOT REQUIRED

Goods Vehicles (Licensing of Operators) Regulations 1995

1. Any tractor as defined in paragraph 4(3) of Part IV of Schedule 1 to the Vehicle Excise and Registration Act 1994 (as originally enacted) while being used for one or more of the purposes specified in Part II of this Schedule.

2. A dual-purpose vehicle and any trailer drawn by it.

3. A vehicle used on a road only in passing from private premises to other private premises in the immediate neighbourhood belonging (except in the case of a vehicle so used only in connection with excavation or demolition) to the same person, provided that the distance travelled on a road by any such vehicle does not exceed in the aggregate 9.654 kilometres, (6 miles), in any one week.

4. A motor vehicle constructed or adapted primarily for the carriage of passengers and their effects, and any trailer drawn by it, while being so used.

5. A vehicle which is being used for funerals.

6. A vehicle which is being used for police, fire brigade or ambulance purposes.

7. A vehicle which is being used for fire-fighting or rescue operations at mines.

8. A vehicle on which no permanent body has been constructed, which is being used only for carrying burden which either is carried solely for the purpose of test or trial, or consists of articles and equipment which will form part of the completed vehicle when the body is constructed.

9. A vehicle which is being used under a trade licence.

10. A vehicle in the service of a visiting force or of a headquarters.

11. A vehicle used by or under the control of Her Majesty's United Kingdom forces.

12. A trailer not constructed primarily for the carriage of goods but which is being used incidentally for that purpose in connection with the construction, maintenance or repair of roads.

13. A road roller and any trailer drawn by it.

14. A vehicle while being used under the direction of HM Coastguard or of the Royal National Lifeboat Institution for the carriage of life-boats, life-saving appliances or crew.

15. A vehicle fitted with a machine, appliance, apparatus or other contrivance which is a permanent or essentially permanent fixture, provided that the only goods carried on the vehicle are—

a) required for use in connection with the machine, appliance, apparatus or contrivance or the running of the vehicle;

b) to be mixed by the machine, appliance, apparatus or contrivance with other goods not carried on the vehicle on a road in order to thrash, grade, clean or chemically treat grain;
c) to be mixed by the machine, appliance, apparatus or contrivance with other goods not carried on the vehicle in order to make fodder for animals; or
d) mud or other matter swept up from the surface of a road by the use of the machine, appliance, apparatus or other contrivance.

16. A vehicle while being used by a local authority for the purposes of the enactments relating to weights and measures or the sale of food and drugs.

17. A vehicle while being used by a local authority in the discharge of any function conferred on or exercisable by that authority under Regulations made under the Civil Defence Act 1948.

18. A steam-propelled vehicle.

19. A tower wagon or trailer drawn thereby, provided that the only goods carried on the trailer are goods required for use in connection with the work on which the tower wagon is ordinarily used as such.

20. A vehicle while being used for the carriage of goods within an aerodrome within the meaning of section 105(1) of the Civil Aviation Act 1982.

21. An electrically propelled vehicle.

22. A showman's goods vehicle and any trailer drawn thereby.

23. A vehicle permitted to carry out cabotage in the United Kingdom under Community Council Regulation (EEC) No. 3118/93 dated 25 October 1993 [17] laying down conditions under which non-resident carriers may operate national road haulage services within a Member State.

24. A goods vehicle first used before 1 January 1977 which has an unladen weight not exceeding 1525 kilograms and for which the maximum gross weight, as shown on a plate affixed to the vehicle by virtue of regulation 66 of the Motor Vehicles (Construction and Use) Regulations 1986 or any provision which that regulation replaced, exceeds 3500 kilograms but does not exceed 3556.21 kilograms (3Æ tons).

25. A vehicle while being used by a highway authority for the purposes of section 196 the Road Traffic Act 1988.

26. A vehicle being held ready for use in an emergency by an undertaking for the supply of water, electricity, gas or telephone services.

27. A recovery vehicle.

28. A vehicle which is being used for snow clearing, or for the distribution of grit, salt or other materials on frosted, icebound or snow-covered roads or for going to or from the place where it is to be used for the said purposes or for any other purpose directly connected with those purposes.

29. A vehicle proceeding to or from a station provided by the Secretary of State under section 45 of the Road Traffic Act 1988 for the purposes of an examination of that vehicle under that section provided that—

(a) the only load being carried is a load required for the purposes of the examination; and
(b) it is being carried at the request of the Secretary of State.