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SECTION 1 VERSION CONTROL

Version no.	Date	Post holder/author	Post	Reason for issue
1	05/2009	Tim Trevor	Vehicle Recovery Manager	Review overdue. Change in working procedures and maintenance of paperwork
2	04/2011	Tim Trevor	Vehicle Recovery Manager	Review overdue. Change in working procedures and maintenance of paperwork
2.1	March 2014	Tim Trevor	Vehicle Recovery Manager	Review of procedure and a few amendments to detail.
2.2	Jan 2015	Wayne Darrington	Vehicle Recovery Admin	Removing West Bridgford from the Release Procedure, as it is no longer a Police Station that has the facility.
3	12/2015	Tim Trevor	Systems Manager	Review overdue. Change in working procedures and maintenance of paperwork

SECTION 2 BACKGROUND

2.1 This procedure explains how Nottinghamshire Police will apply the powers under s.165a of the Road Traffic Act 1988 and Section 152 of the Serious and Organised Crime and Police Act 2005.

2.2 The purpose of exercising the powers contained within this legislation is to reduce the unlawful use of vehicles by unlicensed and uninsured drivers, curb the committing of driving offences and encourage responsible driving. The aim is to improve the quality of life of those living in the communities we serve as well as improving road safety in the force

2.3 The irresponsible use of vehicles by unlicensed and uninsured drivers involves an increased risk of injury or death to drivers, passengers and other road users. Use of the powers described will assist in reducing the potential risks involved.

SECTION 3 AIMS / OBJECTIVES

3.1 Section 165A of the Road Traffic Act 1988 was inserted by Section 152 of the Serious Organised Crime and Police Act 2005. It gives the police a specific power to seize immediately vehicles which are detected being driven by uninsured drivers or drivers who do not have a valid licence, and for the vehicle to be removed, released or disposed of in accordance with regulations made by the Secretary of State. Nottinghamshire Police exercises these powers with a view to removing unlicensed or uninsured vehicles from the roads and thereby promoting road safety.

3.2 Whilst this act and section give authorised officers the power to seize vehicles where drivers are found to be committing offences seizure is not mandatory and officers are expected to exercise discretion when using their powers. What is not discretionary is the prosecution of both owners/registered keeper and drivers of vehicles found to be committing offences and where officers use their powers to seize vehicles they must also prosecute both owner/registered keeper and drivers for any offences committed.

It should be noted that seizure is not an alternative to prosecution.

3.3 This document also lays out the only acceptable procedure for owners/registered keeper or authorised persons to reclaim their vehicles and this reclaim procedure is set out to ensure that any reclaimed vehicles released comply with the spirit of the act in that their continued use will be lawful. Under no circumstances should officers amend the release procedure or it will bring the scheme into disrepute.

SECTION 4 DETAILS

POLICE POWERS

4.1 The powers granted under this section provide a useful tool in removing vehicles that are being used by unlicensed and uninsured drivers on a road but it is a limited power and can only be used in certain circumstances namely;

The first condition is that:-

A constable in uniform requires, under Section 164, a person to produce their licence for examination and the person fails to produce them, and the constable has reasonable grounds for believing that a motor vehicle is or was being driven by the person otherwise than in accordance with a licence

The second condition is that:-

A constable in uniform requires, under Section 165, a person to produce evidence that they are insured to drive the motor vehicle and the person fails to produce such evidence,

and the constable has reasonable grounds for believing that the vehicle is or was being driven without the appropriate insurance cover for its use

The third condition is that:-

A constable in uniform requires, under Section 163, a person driving a motor vehicle to stop the vehicle and the person fails to stop the vehicle, or to stop the vehicle long enough, for the constable to make such lawful enquiries as he considers appropriate, and the constable has reasonable grounds for believing that the vehicle is or was being driven in contravention of Section 87(1) or Section 143.

Where any of the above conditions apply then the constable may:-

- (a) seize the vehicle and remove it;
- (b) enter, for the purpose of exercising a power any premises (other than a private dwelling house) on which he has reasonable grounds for believing the vehicle to be;
- (c) use reasonable force, if necessary,

If the constable is unable to seize the vehicle immediately because the person driving the vehicle has failed to stop as requested or has driven off, he may seize it at any time within the period of 24 hours beginning with the time at which the condition in question is first satisfied.

4.2 The power for seizure can only be used on the proviso that the officer has seen the vehicle being driven on a road and has caused it to stop or tried to cause it to stop. This power must not and cannot be used to seize vehicles that are merely parked at the side of road, from scenes of road traffic collisions or like scenarios.

4.3 These powers cannot be used to remove abandoned vehicles or vehicles involved in road traffic collisions. The power to recover vehicles in these circumstances are granted under Section 102(2) of the Road Traffic Regulations Act 1988. The only time it may be deemed to be appropriate would be at the scene of a road traffic collision where the vehicle sustains minor damage and the driver attempts to drive away from the scene and this is witnessed by the constable

4.5 The reason that Section 165A powers should not be used to recover uninsured vehicles from road traffic collisions is that an owner/driver will be unable to obtain insurance cover for a damaged vehicle without committing a further offence, namely making a false declaration to obtain insurance, as insurance companies will not issue new cover to damaged vehicles. The driver will still commit the offence of no insurance and can still be prosecuted for the offence(s).

4.6 MEANINGS

“Driving” has the same meaning as in the Road Traffic Act 1988.

“Motor Vehicle” means any mechanically propelled vehicle, whether or not it is intended or adapted for use on roads. These powers do not extend to invalid carriages as defined in The Construction and Use Regulations 1986.

“Road” means any highway and any other road to which the public have access

4.7 "Ownership" means the owner of the vehicle at the time of the seizure. Possession of the V5 registration document does not mean that the named person is the owner of the

vehicle, it could be on a lease/hire agreement or on hire purchase agreement in which case the relevant finance company actually own title of the vehicle. At the time of seizure the duty garage will carry out a check on the HPI Crushwatch scheme and this will automatically notify the relevant finance company of its seizure and they are entitled to reclaim the car if they so wish but Nottinghamshire Police will not retain the car to establish if they wish to exercise this option.

4.8 Whilst the vehicle is in the care and control of Nottinghamshire police become Bailee for the vehicle and as such the seized vehicle cannot be sold onto a third party. Any 'promise of sale' can only be completed once the vehicle has been released from our care and control

4.9 "Insurance" means insurance cover as required under Section 143 of the Road Traffic Act 1988. When discussing this with insurance companies officers will need to confirm they are asking about cover afforded by Section 143 as insurance companies can and do cite cover under Section 151 of the Road Traffic Act 1988 which covers their legal obligations to pay out a claim, e.g. A vehicle taken by the 15 year old child of the owner which was then involved in a road traffic collision - clearly a 15 year old cannot hold or obtain a driving licence so cannot obtain insurance cover (Section 143) however there would still be a legal obligation for the insurance companies to honour third party claims (Section 151).

4.10 ROLES AND RESPONSIBILITIES

Only officers who have been suitably trained and authorised by their divisional commander may exercise these powers

4.11 Officers will ensure that they use these powers appropriately and particularly not simply as an alternative to seeking prosecution for driving offences and deal with any offences disclosed. There may be occasions when, whilst there is an offence committed, it would be inappropriate to use these powers. As stated above these powers are conditional and an officer must see the vehicle being driven on a road and stop or attempt to stop the vehicle.

4.12 When an officer seizes a vehicle under these powers they must complete a form G991 Roadside Seizure Notice and serve it on the driver/rider of the vehicle. They must also advise the driver and/or owner to remove valuables and personal property.

4.13 Where the driver nominates another person as the owner then the OIC must serve a form G1015 Owners Seizure Notice on that nominated person either by way of personal service or Royal Mail postal services.

4.14 If having stopped the vehicle and the driver makes off and the owner of the vehicle is not present then the officer must serve a form G1015 Owners Seizure Notice on the last known keeper either by way of personal service or Royal Mail postal services.

4.15 An officer who seizes a vehicle will remain with it until recovered by a Nottinghamshire Police authorised vehicle recovery operator (contacted via the control room). High value property within the vehicle should be retained by the owner, or seized by a police officer if the owner is not present. Property, drugs, weapons or prohibited articles will also be seized from the vehicle by a police officer if it is, or appears to be evidence in a case. Any recovered items will be recorded and treated as seized

4.16 When a vehicle has been seized using these powers then a prosecution by way of a Traffic Offence Report (TOR) must be submitted. As stated above seizure is not an alternative to prosecution.

4.17 First line managers are responsible for ensuring that officers comply with all parts of this procedure including the prosecution of offenders where a vehicle has been seized using these powers.

4.18 RELEASE PROCEDURE

Section 165A of the Road Traffic Act 1988 allows seizing officers to nominate both a time and day as well as the police station for the owner or authorised person to attend in order to produce their documents for validation as part of the reclaim procedure.

In Nottinghamshire this will be Monday to Friday between 9.00am and 4.30pm at Newark, Worksop, Mansfield, Carlton or Central police stations. This is to allow the counter staff to make the relevant checks with DVLA Swansea, the Motor Insurers Bureau and if required the relevant insurance company.

4.19 Only trained front counter staff can deal with these productions

4.20 Unless the vehicle has been subject to the full release procedure and the documentation has been validated and indicate that the vehicle can be lawfully driven/ridden away from the police duty garage premises it will not be released from our care and custody

4.21 Due to rules governing the use of the Police National Computer and records held by DVLA Swansea front counter staff cannot carry out speculative searches to establish if the person reclaiming holds appropriate documentation. It is for the person reclaiming the vehicle to produce the required documentation at which point the front counter staff may access the Police National Computer and records held by DVLA Swansea to check their validity.

4.22 The release procedure can only completed by the owner or registered keeper of the vehicle or their authorised person. If the owner or registered keeper elects to have a third party reclaim the seized vehicle then they can do so by supplying a verifiable letter of authority which must be produced at the time of the release procedure. The only owner or registered keeper we will recognise is the owner or registered keeper at the time of seizure as outlined above in 4.7.

4.23 In determining whether a person claiming to be the owner or registered keeper is in fact the owner or registered keeper the front counter staff will consult with the register, namely the records held by DVLA Swansea.

4.24 Any persons reclaiming a vehicle will be required to provide documentary proof of ownership, this either being an V5C registration document or an unaltered new keeper slip together with verifiable paperwork, i.e. A printed bill of sale from a reputable car dealership. A hand written note is not acceptable unless it is supported by other documentary evidence such as proof of payment (PayPal etc) or a banking record. Any person, claiming to be the new owner, who only can only produce a V5C registration document in the previous owners name or the new keeper slip part of the V5C will be

required to complete a form V62 as part of the release procedure. This will not apply to a bona fide motor traders who are producing a traders insurance policy as outlined below.

4.25 A motor trader must notify DVLA Swansea that they are the new keeper of the vehicle by way of the new keeper slip on the V5C Registration document. This **MUST** be done on whichever date is the earliest of

- a) The day on which the motor trader first uses, or permits to be used, the vehicle on a public road otherwise than under a trade licence
- b) The day on which he first keeps the vehicle on a public road
- c) The three months after the date on which the vehicle was last kept by a person who was not a motor trader

This is as required by the provisions of the Road Vehicles (Registration and Licensing) Regulations 2002

4.26 Any insurance certificate produced must comply with the requirements of Section 143 of The Road Traffic Act 1988 and must relate to the seized vehicle and the person reclaiming the vehicle named on that policy

4.27 PLEASE NOTE – as part of the release procedure we **will** ring the Motor Insurers Bureau and/or the Insurance Company and ask the following questions:

- a) Is the document being produced a currently paid up and valid certificate of insurance
- b) Has the policyholder declared to them who is the owner of the vehicle
- c) Has the policyholder declared to them that the vehicle has been seized under Section 165a Road Traffic Act 1988 and is currently held in a police pound
- d) Has the policyholder declared to them there is an impending prosecution relating to the use of that vehicle that lead to the seizure, namely driving otherwise than in accordance with a driving licence and/or being used without insurance

It is vitally important that the policyholder makes full disclosure to the insurance company as failure to do so is an offence under the Road Traffic Act 1988 and could lead to a prosecution for this offence. It could also lead to the Insurance Company immediately cancelling the certificate of insurance and create potential problems for the policyholder when trying to apply for further motor insurance cover.

4.28 Where a motor trader is trying to reclaim the car using an open trader insurance policy then the following will need to be complied with before it is accepted;

- A) Produce stock books or work books as required under Regulation 6 of the Motor Vehicles (Compulsory Insurance) (Information Centre and Compensation) Body Regulations 2003 to show the vehicle was in their care and control at the time of **seizure**
- B) the vehicle and/or the driver is listed on the policy at the time of **production**.

C) where the driver is an alleged employee and is driving a customer's vehicle then the motor trader will need to produce audited accounts and PAYE returns to substantiate the fact that the driver was employed by the motor trader at the time of seizure. NB open trader insurance policies will not normally cover employees to drive their own vehicles.

D) where a motor trader produces stock books or work books and evidence of their activity within the motor trade but is not VAT registered then all the documentation will be copied and forwarded to HMRC for their information and further action.

4.29 A valid driving licence is one that complies with Section 98 of the Road Traffic Act 1988.

4.30 An international driving permit is not a driving licence and must be produced alongside the driving licence that it relates to as well as the holders passport to support evidence as to date of entry into the UK and their entitlement to drive on their national driving licence.

4.31 Once the authorised staff member has confirmed all the required documentation is in order they will copy all documentation and fax the release notice to the relevant duty garage.

4.32 If it transpires that the documents were legal and afforded cover at the time of seizure and the vehicle should not have been seized the authorised staff member shall instruct the duty garage to release the vehicle free of charge.

4.33 If it transpires that the vehicle was seized as the insurance company had entered the details incorrectly on the motor insurer's database then they have not complied with their contractual obligations nor the requirements of the data protection act and the owner is liable to pay the charges and reclaim from their insurance company

4.34 As there is a financial implication in the seizure of vehicles that could be subject of civil litigation then all relevant documentation shall be retained for seven years.

SECTION 5 – ARTICLE 38 OF THE SCHENGEN AGREEMENT

5.1 RECOVERY

Where a foreign registered vehicle is being dealt with in relation to breaches of this legislation there is nothing in the agreement that precludes the recovery of that vehicle and it will be dealt with as if it were a UK registered vehicle.

5.2 RELEASE PROCEDURE

The same release procedure shall apply to foreign registered vehicles as currently applies to UK registered vehicles seized under this legislation.

5.3 CHARGES

Where a foreign registered vehicle has been dealt with in relation to breaches of this legislation then statutory charges as per '**The Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges) Regulations 2008**', '**The Police (Retention and Disposal of Motor Vehicles)(Amendment)**

Regulations 2008' and 'The Road Traffic Act (Retention and Disposal of Seized Motor Vehicles) (Amendment) Regulations 2008 will apply.

SECTION 6 LEGISLATIVE COMPLIANCE

This document has been drafted to comply with the general and specific duties in the Equality Act 2010; Data Protection Act; Freedom Of Information Act; European Convention On Human Rights; Employment Act 2002; Employment Relations Act 1999, And Other Legislation Relevant To Policing