

**EXPLANATORY MEMORANDUM TO
THE POLICE (RETENTION AND DISPOSAL OF MOTOR VEHICLES)
(AMENDMENT) REGULATIONS 2005**

2005 No. 2702

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. **Description**

2.1 This instrument will, subject to annulment in pursuance of a resolution of either House, come into force on 1 November 2005. It amends the Police (Retention and Disposal of Motor Vehicles) Regulations 2002 (“the 2002 Regulations”). The 2002 Regulations, made under section 60 of the Police Reform Act 2002, provide for the removal, retention, release and disposal of vehicles seized under the provisions of section 59 of that Act. The section 59 provisions empower the police to seize vehicles being driven:

- inconsiderately or carelessly on a road or other public place (contrary to section 3 of the Road Traffic Act 1988), or
 - without lawful authority off-road or on any road that is a footpath, bridleway or restricted byway (contrary to section 34 of the Road Traffic Act 1988),
- and in such a manner as to cause or be likely to cause alarm, distress or annoyance to members of the public. The amendment regulations simplify procedures and reduce time periods.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 None.

4. **Legislative Background:**

4.1 The instrument is made under section 60 of the Police Reform Act 2002.

5. **Extent**

5.1 This instrument applies to England and Wales.

6. **European Convention on Human Rights**

6.1 No statement is required.

7. **Policy background**

7.1 Section 59 of the Police Reform Act 2002 was introduced to help the police to tackle a perceived growing problem of motor vehicles being used anti-socially. It aims to put an immediate stop to this problem behaviour by giving the police a power to seize the vehicles involved. The power is available when a constable in uniform has

reasonable grounds for believing that a vehicle is being used on any occasion contrary to either section 3 or section 34 of the Road Traffic Act 1988 (careless and inconsiderate driving on road or other public place and driving off-road and on certain roads without lawful authority) and is causing or is likely to cause alarm, distress or annoyance to members of the public. A warning of seizure if the use continues or is repeated must first have been given where practicable. An owner can recover his vehicle subsequently on payment of recovery and storage costs. These costs must be waived if the owner was not the person using the vehicle at the time, had not known of the use of the vehicle in the manner which led to its seizure, had not consented to its use in that manner and could not by taking reasonable steps have prevented its use in that manner.

7.2 The police can exercise these powers only when regulations under section 60 of the 2002 Act are in force. The intention of the regulations is to provide for the removal, retention, release and disposal of vehicles seized under section 59. Those currently in force are The Police (Retention and Disposal of Motor Vehicles) Regulations 2002. The Home Office issued on 2 January 2003 guidance to the police on their understanding of the legislation and its practical implications.

7.3. Work undertaken with the Association of Chief Police Officers has indicated that while a number of forces have been using the section 59 power vigorously and have found it effective others have not fully realised its potential. The Government's intention is therefore to make such amendments to secondary legislation as the police have identified as beneficial and to prepare additional guidance on the legislation, clarifying its terms and the circumstances in which it might be used and offering examples of best practice.

7.4. The changes to the 2002 Regulations represented by these amendment regulations are aimed chiefly at reducing the time periods prescribed for retaining seized vehicles and simplifying the procedures to be followed before a seized vehicle can be disposed of. They:

- define the term “working days”
- reduce the period during which the recipient of a seizure notice must claim back the seized vehicle to 7 working days, from 21 days
- provide that the steps to be taken to give a seizure notice should be such as are “reasonably practicable”, rather than “practicable”
- simplify the process for disposing of a vehicle by
 - removing requirements as to the detailed efforts to be made to find the owner and
 - enabling disposal to take place within shorter time limits (a minimum of 14 days from seizure)

in cases where a seizure notice has not been complied with or where, after taking reasonably practicable steps, it has not been possible to give a seizure notice to the owner.

These Regulations only apply in respect of vehicles that are seized on or after 1 November 2005.

7.5. These changes bring the regulations into line with the Road Traffic Act 1988 (Retention and Disposal of Seized Motor Vehicles) Regulations 2005 which relate to vehicles seized from a driver who does not have the requisite insurance or appropriate driving licence and which came into force on 6 July 2005. (The power to seize such

vehicles was introduced by section 152 of the Serious Organised Crime and Police Act 2005, which inserted a new section 165A and section 165B into the Road Traffic Act 1988. It came into force on 1 July 2005.) The intention is to issue further guidance to the police at the same time as the amended regulations come into force.

7.6 The Regulations were drafted in the light of discussions with the police.

8. **Impact**

The Regulations will enable the police to make more effective use of the seizure power by reducing the period for which seized vehicles have to be retained and simplifying the currently demanding and time consuming process which the police are required to take to find the owner of a seized vehicle. They will remove an illogical distinction between the handling of vehicles seized from someone without licence or insurance and someone driving anti-socially.

9. **Contact**

Geoffrey Biddulph at SC1 (Public Order and Police Co-operation), Home Office (2 Marsham Street London SW1P 4DF); telephone 020 7035 1801, e-mail geoffreycharles.biddulph@homeoffice.gsi.gov.uk can answer any queries regarding this instrument.