EXPLANATORY MEMORANDUM TO THE

ROAD TRAFFIC ACT 1988 (RETENTION AND DISPOSAL OF SEIZED MOTOR VEHICLES) REGULATIONS 2005

2005 No. 1606

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 6 July 2005. It sets out the procedures which the police must follow in the seizure, retention and release of vehicles reasonably believed by a constable to be or have been driven by a person without third party insurance or a valid driving licence. The police can only exercise this power of seizure when these regulations are in place. The seizure power is conferred by section 165A of the Road Traffic Act 1988, as inserted by section 152 of the Serious Organised Crime and Police Act 2005.

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 165B of the Road Traffic Act 1988, as inserted by section 152 of the Serious Organised Crime and Police Act 2005.

5. Extent

5.1 This instrument applies to Great Britain.

6. European Convention on Human Rights

Not applicable.

7. Policy background

7.1 According to an insurance industry estimate there are around 1.2 million persons - one in twenty motorists - driving regularly whilst uninsured. Uninsured drivers impose a financial burden on honest motorists. The damage they inflict in road traffic accidents results in claims against the industry-maintained Motor Insurers' Bureau or against the policies of insured drivers. In addition, uninsured driving imposes other costs on society. These drivers are more likely to be involved in road traffic accidents, to be non-compliant with other road traffic requirements and obligations and potentially to be involved in other criminal activity. The involvement of uninsured drivers in fatal road traffic accidents has been the subject of considerable public and media pressure for action.

7.2 Driving without insurance against third party risk is an offence contrary to section 143 of the Road Traffic Act 1988. Detection of the offence and therefore the possibility for enforcement is being increased significantly by the expanded use of Automatic Number Plate Recognition technology which enables the police to make immediate checks against relevant databases, including the Motor Insurers' Database. At present, however, the only action police can take after detecting a person driving without insurance is to issue a fixed penalty notice or summons. The person is therefore able, albeit illegally, to continue driving whilst uninsured. The new power introduced into the Road Traffic Act 1988 by the Serious Organised Crime and Police Act 2005 will enable them to put an immediate stop to the uninsured driving by seizing the vehicle being driven.

7.3 Driving without a valid licence is a similarly serious problem and has attracted similar demands for action. (A person may not have a valid licence for various reasons, including never having had a licence, having an inappropriate licence for the vehicle being driven or having been disqualified.) There are an estimated 1.5 million drivers without a valid licence; they commit nearly 10% of recorded traffic offences and are up to 9 times more likely than other drivers to be involved in accidents. They are likely to be uninsured as well, but may not be. The new seizure power enables an immediate stop to be put to their driving also.

7.4 The regulations to which this memorandum refers set out the procedures to be followed by the police in exercising the new seizure power. They provide that:

- when a vehicle has been seized the police or authorised agent must take such steps as are reasonably necessary for its safe keeping until it is released or disposed of
- upon seizure, the constable must give the driver a seizure notice unless it is impracticable to do so
- where the driver is not the owner or registered keeper of the vehicle, reasonably practicable steps must be taken to give a seizure notice to the keeper and to the owner, if that is someone different
- the seizure notice must give specified relevant details about the seizure and retention of the vehicle and require the owner or keeper to claim it within a specified period of time not being less than 7 working days
- the seizure notice must indicate that unless the vehicle is claimed on or before that date the vehicle may be disposed of
- the seizure notice must indicate that in order to claim a vehicle a person must pay any charges prescribed by the regulations and must produce at a specified police station a valid licence and proof of insurance in respect of his use of the vehicle or nominate a third person who can produce those documents in respect of that person's use of the vehicle to whom the vehicle can be released
- where a vehicle is not released, the police can dispose of it in accordance with the regulations. The vehicle cannot be disposed of until at least fourteen days after the date on which the vehicle was seized. If it is sold, the net proceeds are payable to the owner if claimed within a year

The regulations provide in particular that the prescribed charges are not payable if the person claiming the vehicle was not driving it at the time of seizure, did not know it was being driven, had not consented to its being driven and could not reasonably have prevented its being driven. They aim to ensure that no-one is unfairly penalised or deprived of a vehicle he owns, but no-one is able himself to continue driving without insurance or valid licence using that vehicle.

7.5 The seizure provision was the subject of consultation prior to the 2005 Act. These regulations have been drawn up by the Home Office in consultation with the Department for Transport and the police.

8. Impact

8.1 The regulations will enable the police to use their new power to deal more effectively with motorists who break the law by driving without appropriate licence or insurance, who thereby impose financial and other burdens on other motorists and the public at large and who may be involved in other criminal vehicle activity which will be disrupted by loss of their vehicles.

9. Contact

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