

# **POLICE SEIZURE OF VEHICLES IN SCOTLAND**

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The aim of this paper is to look at the legislation regarding the seizure of vehicles by police in Scotland, with regard to the Road Traffic Offenders Act 1988 and the Antisocial Behaviour (Scotland) Act 2004. It considers the length of time the legislation has been in force; the circumstances in which the legislation can be used; and the effectiveness and use of the legislation.

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## SUMMARY OF KEY POINTS

- Legislation for the seizure of vehicles for drink driving comes under the Road Traffic Offenders Act 1988, which came into force in April 1996.
- The Scottish Court has the power to order the forfeiture of a vehicle.
- Scotland seized vehicles for the first time over Christmas and New Year past. 4 drivers forfeited their car; while a further 24 cars were seized pending consideration by the Court.
- The Royal Society for the Prevention of Accidents (RoSPA) feels that the legislation under the Offenders Act 1988, should be extended to the rest of the UK.
- Legislation for the seizure of vehicles used in a way which causes nuisance falls under the Antisocial Behaviour (Scotland) Act 2004 sections 126 and 127, which came into force in July 2004.
- An officer is given the power to seize a vehicle, if it is being used in a way which contravenes section 3 or 34 of the Road Traffic Act 1988 (c.52) (careless and inconsiderate driving and prohibition of off-road driving); and is causing, or is likely to cause, alarm, distress or annoyance to members of the public.
- According to the Government, section 126 of 'the 2004' Act has been used by forces throughout Scotland, particularly in Tayside for example seizing 100 vehicles between the introduction of the legislation and 31 March 2008.
- In total 4870 vehicle warnings were issued up to 30 September 2007.
- In total 520 vehicles were seized up to 30 September 2007.
- The Scottish Government stated that they proposed to amend the 2004 Act and the accompanying guidance on seizure of vehicles by the end of 2009 to ensure that provisions within the legislation remain an effective tactical option for police forces, and that their concerns about the existing legislation are addressed.

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## **INTRODUCTION**

The aim of this paper is to look at the legislation regarding the seizure of vehicles by police in Scotland. It considers the length of time the legislation has been in force, the circumstances in which the legislation can be used, the effectiveness of the legislation, and the amount of times the police have used the legislation to seize vehicles.

The legislation to be considered is the Road Traffic Offences Act 1988<sup>1</sup>, which is concerned with the seizure of vehicles due to drink driving; and the Anti Social Behaviour (Scotland) Act 2004<sup>2</sup> ('the 2004 Act'), which applies to the seizure of vehicles being used in a way that causes nuisance.

## **THE LEGISLATION**

### **1. ROAD TRAFFIC OFFENDERS ACT (1988)**

This Act came into force in 1988, and section 33A which refers to the 'Forfeiture of vehicles' was added to this Act in April 1996. The 'Forfeiture of vehicles' applies to Scotland only; the rest of the UK does not have such legislation which allows for the seizure of a vehicle due to drink driving.

#### **CIRCUMSTANCES WHEN THE LEGISLATION CAN BE USED**

Since April 1996 the Court can order the forfeiture and disposal of a vehicle where a person 'commits an offence' in relation to the Road Traffic Act 1988<sup>3</sup>. This includes:

- Driving or being in charge when under the influence of drugs (section 4);
- Driving or being in charge of a motor vehicle with alcohol concentration over a prescribed limit (section 5);
- Failing to provide a specimen for analysis/ laboratory test (section 7);
- Failing to stop and give information or report an accident (section 170);
- Committing any offence under the Road Traffic Act 1988 which is punishable with imprisonment; and
- Committing an offence of culpable homicide.

Courts may also grant a warrant to enter and search the premises and seize the vehicle of a person guilty of the above offences<sup>4</sup>.

#### **EFFECTIVENESS AND USE OF THE LEGISLATION**

According to The Royal Society for the Prevention of Accidents (RoSPA)<sup>5</sup>, Scotland used the legislation for the first time over Christmas and New Year just past. It was used in their Christmas/New Year Drink Drive campaign to seize vehicles from repeat drink driver offenders. The campaign forfeited 4 cars from drivers, with a further 24 cars seized pending consideration by the Court.

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RoSPA has stated that it believes this is a significant additional deterrent and it should be adopted throughout the UK.

## **2. THE ANTISOCIAL BEHAVIOUR (SCOTLAND) ACT (2004)**

The Bill for the Antisocial Behaviour (Scotland) Act 2004 was passed by Parliament on 17<sup>th</sup> June 2004, and received Royal Assent on 26<sup>th</sup> July 2004. Section 126 subsection 3 sets out the new powers. These are:

- to order the driver to stop a vehicle;
- to seize and remove the vehicle;
- to enter premises, other than a private dwelling house, where there are reasonable grounds to believe the vehicle is; and
- to use reasonable force if necessary to exercise the preceding powers.
- Although the power of entry does not extend to a private dwelling house, it does cover a garage or other out-building.

### Issuing of warnings

The person using the vehicle must be warned before the vehicle is seized. A warning can be given verbally and/or in written form, and issued to both the vehicle driver and the owner.

Warnings are recorded on the Police National Computer and are valid for 12 months.

A vehicle can not be seized unless a second similar incident takes place involving the same driver or vehicle, within 12 months of the date of the first warning. Therefore it can be given to the same person using a different vehicle, or to a different person using the same vehicle.

Should a driver fail to stop when asked to do so, they can face a fine of up to £1000.

### Retention and Disposal of a Seized Vehicle

Regulations made under section 127 of the Antisocial Behaviour (Scotland) Act 2004, provide for the retention, safe keeping, release and disposal of vehicles seized under section 126 of the Act. The Scottish Statutory Instrument: 'The Police (Retention and Disposal of Motor Vehicles) (Scotland) Regulations 2005 – SSI 80' came into force in March 2005<sup>6</sup>.

It states the charges an owner faces for the release of their vehicle if they can not demonstrate:

- they were not the person using it;
- they had not consented to its use in that way; and
- they could not by taking reasonable steps have prevented its use in that way.

The Regulations are based as closely as possible on the Removal and Disposal of

Vehicle Regulations 1986 and the Police (Retention and Disposal of Vehicles Regulations 1995)<sup>7</sup> with charges being the same as those set in the Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc) (Amendment) Regulations 1993<sup>8</sup>.

When a vehicle has been seized it remains in the custody of the police or another authorised party (these may include a recovery operators or an agent who acts on behalf of the police in the removal, retention and disposal of vehicles) until the vehicle has been released or disposed of<sup>9</sup>

### Vehicle Seizure Notice<sup>10</sup>

The Retaining Authority must give the owner or apparent owner a notice of seizure as soon as possible. There is no set time limit due to time variance between cases in the identification of owners.

The notice must state:

- where the vehicle was seized and where it is being kept;
- that the vehicle will be disposed of if the owner fails to claim it within 7 days of the date of issue of the notice; and
- that the owner will have to pay prescribed charges to cover costs of removal and retention, before the vehicle is released to them.

The notice can be delivered to the owner's usual or last known address, or sent by registered post. If the vehicle is owned by a body corporate e.g. a fleet or hire car, the notice can be sent to the body's secretary or clerk at its registered/ principle office.

### Payment of Charges

Provided the correct charges are paid the vehicle may be released to the owner if the person claiming the vehicle has satisfied the Retaining Authority that they are the owner.

For efficiency in this area, the relevant police force should issue a vehicle release notice on production of identification documents, which can be brought to the Retaining Authority.

Charges (these are not fines) the owner has to pay are<sup>11</sup>:

- £105 for the removal of the vehicle following its seizure.
- £12 for each period or part period of 24 hours the vehicle is kept. First period begins at noon on the day following seizure (provided the place of storage is open before noon that day). If a vehicle is seized on a Saturday and taken to a pound which is closed on a Sunday, the first 24 hour period will begin at noon on Monday.
- There is no storage charge if the vehicle is claimed before noon on the first day after its seizure.

### Disposal of a vehicle<sup>12</sup>

The Retaining Authority holding a seized vehicle may dispose of it providing it is not claimed and removed from their keeping, but the following conditions must be considered:

1. The vehicle cannot be disposed of during the seven day period specified in the seizure notice. This starts on the day on which the owner notifies the Retaining Authority they are making a claim.
2. The vehicle cannot be disposed of in the three months following seizure. This allows for instances where it has not been possible to give the notice at an earlier date and the end of the seven day period is more than three months after seizure.
3. Before a vehicle can be disposed, the Retaining Authority must have been unable to deliver a seizure notice, or if delivered, the owner must have failed to remove the vehicle.
4. The Retaining Authority must have taken the necessary steps to identify the owner, so that a seizure notice can be delivered. These include checking DVLA records, making enquiries of an agency with records of hire purchase agreements etc.
5. The vehicle can be disposed of in any way decided by the Retaining Authority e.g. by sale or destruction.
6. If a vehicle is sold on, the net proceeds (these are the proceeds of sale minus charges the owner would have had to pay had the vehicle been claimed) have to be paid to the owner of the vehicle at the time of sale, provided they make a claim of ownership within a year.

### **CIRCUMSTANCES WHEN THE LEGISLATION CAN BE USED**

Section 126 subsections 1 and 2 of 'the 2004 Act' enable a police constable, in uniform, under certain circumstances to exercise powers to seize a vehicle. The triggers for seizing a vehicle (under section 126 of the Act) depends on whether the officer has reasonable grounds for believing that a vehicle is being used, or has been used in a way that:

- contravenes section 3 or 34 of the Road Traffic Act 1988 (c.52) (careless and inconsiderate driving and prohibition of off-road driving)<sup>13</sup>; and
- is causing, or is likely to cause, alarm, distress or annoyance to members of the public.

Before authorisation, both conditions have to be satisfied. In order for satisfaction there must be evidence which demonstrates the driving behaviour and contravention of the Road Traffic Act by the vehicle user. This could be found from:

- recorded observations by a police officer or special constable;
- recorded observations by a community warden;
- as captured by public space CCTV; or
- as reported by members of the public identifying individual drivers either by name or by providing a description, or by providing a vehicle description or a vehicle registration number<sup>14</sup>.

#### Location of vehicle use<sup>15</sup>

The powers can be used where vehicles are being used:

- On the public road where the vehicle is being driven without due care and attention or without reasonable consideration for other road users in contravention of section 3 of the Road Traffic Act 1988<sup>16</sup>, or
- Off-road where it is being driven without lawful authority on common land, moorland or any other land that does not form part of the road or on a footpath or bridleway in contravention of section 34 of the Road Traffic Act 1988.<sup>17</sup>

#### **EFFECTIVENESS AND USE OF THE LEGISLATION**

In the paper 'Promoting Positive Outcomes: Working together to prevent Anti Social Behaviour in Scotland (2009)<sup>18</sup>, the Scottish Government states that through consultation and interviews with police forces nationally, section 126 of 'the 2004 Act' was identified as a welcome legislative provision, complementing other legislative recourse in tackling antisocial driving. This included section 165 of the Road Traffic Act 1988<sup>19</sup> (power to seize vehicles driven without licence or insurance) and section 54 and 60 Civic Government (Scotland) Act 1982 (seizure of noise-making equipment)<sup>20</sup>.

According to the Government, section 126 of 'the 2004' Act has been used by forces throughout Scotland, and particularly in Tayside, Grampian, Fife, Lothian and Borders and Dumfries and Galloway. However, the Scottish Government has noted a variance in the extent of its use. These variances are due to a variety of reasons including:

- logistical issues in implementing the legislation; and
- differing views regarding the most appropriate legislation to be used to tackle antisocial driving.

For example, Strathclyde Police has indicated a preference for using the Road Traffic Act 1988 as a direct alternative, citing the fact that a large proportion of offences suitable for section 126 of 'the 2004 Act' are committed by drivers without valid insurance or driving licence.

Successful use of 'the 2004 Act' has been evident in many areas including Central Scotland Police, where the organisers of the 'Falkirk Cruisers' event worked with the Police to address antisocial driving<sup>21</sup>, and in Fife, where the use of off road quad bikes in Levenmouth was addressed effectively<sup>22</sup>.



Use of legislation example: Tayside Police<sup>23 24</sup>

Tayside Police embraced section 126 of 'the 2004 Act', seizing 100 vehicles between the introduction of the legislation and 31 March 2008. In response to increased reports of antisocial driving in the Angus area, Tayside Police undertook an initiative to display and identify seized vehicles in prominent places to reassure the public that action was being taken to address antisocial driving and to deter others from engaging in such behaviour.

Legislation Review

The Scottish Government stated in their consultation paper 'Promoting Positive Outcomes: Working Together to Prevent Antisocial Behaviour in Scotland' that they proposed to amend the 2004 Act and the accompanying guidance on seizure of vehicles by the end of 2009. This is to ensure that provisions within the legislation remain an effective tactical option for police forces, and that their concerns about the existing legislation are addressed.

A summary of the concerns raised include<sup>25</sup>:

1. **Anti Social Behaviour vehicle seizures do not apply to stationary vehicles:**  
Removal of the need for a contravention of section 3 or 34 of the Road Traffic Act as these do not apply to stationary vehicles.
2. **The cost of storage of seized vehicles:**  
Revise the terms of the retention of seized vehicles or issue guidance on such which provides increased flexibility.
3. **When the driver of the vehicle is not the owner:**  
Develop and issue guidance clarifying the position where a driver is not the owner of the vehicle and when a vehicle is sold on.
4. **Lack of clarity around the status of the warning after the vehicle has been seized:**  
Develop and issue guidance on the status of a warning after a vehicle has been seized; and
5. **The practice of corroboration:**  
Develop and issue guidance on standard of proof for using section 126.

**NUMBER OF VEHICLES SEIZED IN AREAS THROUGHOUT SCOTLAND FROM 2005 TO 2008.**

Measure	Grand total to 30 Sept 2007	Number used in Year 1 <sup>1</sup>	Police Breakdown for Year 1	Number used in Year 2 <sup>2</sup>	Police breakdown for Year 2	Number used in Year 3 <sup>3</sup>	Police breakdown for Year 3	Number used in Year 4 <sup>4</sup>	Police breakdown for Year 4 (6 months only)
<b>Seizure of vehicle warnings</b> <sup>5</sup>	4870	366	Fife 198, Grampian 135, Northern 1, Tayside 32	1551	Central 60, Dumfries & Galloway 185, Fife 161, Grampian 404, Lothian & Borders 435, Northern 5, Strathclyde 17, Tayside 284	2095	Central 99, Dumfries & Galloway 305, Fife 185, Grampian 538, Lothian & Borders 737, Northern 3, Strathclyde 50, Tayside 178	858	Central 10, Dumfries & Galloway 39, Fife 87, Grampian 176, Lothian & Borders 366, Northern 1, Strathclyde 28, Tayside 151
<b>Vehicles<sup>6</sup> seized</b>	520	16	Fife 9, Grampian 7	154	Central 3, Dumfries & Galloway 21, Fife 28, Grampian 27, Lothian & Borders 42, Tayside 33	222	Central Scotland 6, Dumfries & Galloway 18, Fife 27, Grampian 82, Lothian & Borders 46, Strathclyde 6, Tayside 37	128	Central 1, Dumfries & Galoway 4, Fife 18, Grampia 28, Lothian & Borders 43, Strathclyde 4, Tayside 30

Source: Table: Use of the Anti Social Behaviour (ASB) Measures from 1 Oct 2004 to 31 March 2008: Annual Breakdown<sup>26</sup>

The above table considers the number of vehicles seized in relation to Anti Social Behaviour.

<sup>1</sup> Year 1 = 1 Oct 2004 – 30 Sept 2005

<sup>2</sup> Year 2 = 1 Oct 2005 – 30 Sept 2006

<sup>3</sup> Year 3 = 1 Oct 2006 – 30 Sept 2007

<sup>4</sup> Year 4 = **(6 months only)** 1 Oct – 31 March 2008

<sup>5</sup> Two warnings (on separate occasions) must be issued to the same driver or vehicle before a vehicle can be seized.

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## References

- <sup>1</sup> [Road Traffic Offenders Act 1988 \(c.53\)](#)
- <sup>2</sup> [Antisocial Behaviour \(Scotland\) Act 2004](#)
- <sup>3</sup> [Road Traffic Act 1988](#)
- <sup>4</sup> [Road Traffic Offenders Act 1988](#)
- <sup>5</sup> [RoSPA The North Review of Drink and Drug Driving Law February 2010](#)
- <sup>6</sup> [The Police \(Retention and Disposal of Motor Vehicles\) \(Scotland\) Regulations 2005 – SSI 80](#)
- <sup>7</sup> [Police \(Retention and Disposal of Vehicles Regulations 1995](#)
- <sup>8</sup> [Removal, Storage and Disposal of Vehicles \(Prescribed Sums and Charges etc\) \(Amendment\) Regulations 1993.](#)
- <sup>9</sup> [Scottish Executive, Guidance on Seizure of vehicles 2006](#)
- <sup>10</sup> [Police \(Retention and Disposal of Motor Vehicles\) \(Scotland\) Regulations 2005 Regulation 4](#)
- <sup>11</sup> [Police \(Retention and Disposal of Motor Vehicles\) \(Scotland\) Regulations 2005 \(Regulation 6\)](#)
- <sup>12</sup> [Police \(Retention and Disposal of Motor Vehicles\) \(Scotland\) Regulations 2005 \(Regulation 7\)](#)
- <sup>13</sup> [Road Traffic Act 1988 \(c.52\)](#)
- <sup>14</sup> [Scottish Executive, Guidance on Seizure of vehicles 2006](#)
- <sup>15</sup> [Scottish Executive, Guidance on Seizure of vehicles 2006](#)
- <sup>16</sup> [Road Traffic Act 1988 \(c.52\) section 3](#)
- <sup>17</sup> [Road Traffic Act 1988 \(c.53\) section 34](#)
- <sup>18</sup> [The Scottish Government 'Promoting Positive Outcomes: Working Together to Prevent Antisocial Behaviour in Scotland' \(March 2009\) Annex K](#)
- <sup>19</sup> [Road Traffic Act 1988 section 165](#)
- <sup>20</sup> [Civic Government \(Scotland\) Act 1982](#)
- <sup>21</sup> [Central Scotland Police News Article: Car seized at Falkirk cruiser event December 2009](#)
- <sup>22</sup> [Levenmouth Newsletter 2005](#)
- <sup>23</sup> [The Scottish Government 'Promoting Positive Outcomes: Working Together to Prevent Antisocial Behaviour in Scotland' \(March 2009\) Annex K](#)
- <sup>24</sup> [Tayside Police, Festive Road Safety drink/drug driving Campaign 1 week- December 7 to December 14 2009](#)
- <sup>25</sup> [The Scottish Government 'Promoting Positive Outcomes: Working Together to Prevent Antisocial Behaviour in Scotland' \(March 2009\) Annex K](#)
- <sup>26</sup> [Paper by Scottish Executive, 2008 – Anti Social Behaviour Use of the Measures Statistics to End-March 2008](#)