

Status: Point in time view as at 31/10/2014. This version of this part contains provisions that are not valid for this point in time.

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2008 CHAPTER 4

PART 5

ENFORCEMENT

Enforcement notices

37.—(1) Where the Department considers that a licensed operator has failed to comply with any of the duties imposed by or under section 3(3), (4) or (6), the Department may serve on the person an enforcement notice.

(2) An enforcement notice shall—

- (a) state that the Department considers that the person on whom the notice is served has failed to comply with the duty specified in the notice;
- (b) specify why the Department considers that the person has failed to comply with the duty in question; and
- (c) require the person, before the expiry of the period specified in the notice (being a period of at least 21 days), to take the action so specified.

(3) A person who fails to comply with any requirement imposed by an enforcement notice shall be guilty of an offence.

(4) It is a defence in proceedings for an offence under subsection (3) for a person to show that the person exercised all due diligence to avoid committing such an offence.

(5) Where the Department has served an enforcement notice on a person, the Department may—

- (a) before the expiry of the period specified in the notice, by notice in writing to the person withdraw the enforcement notice; o

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(b) if an appeal against the notice is not pending under subsection (6), extend, or further extend, the period specified in the notice.

(6) A person on whom an enforcement notice is served may, within 21 days from the date on which it is served, by notice appeal to the Department.

(7) On an appeal under this section, the Department may either cancel or affirm the notice, and if it affirms it, it may do so either in its original form or with such modifications as the Department may in the circumstances think fit.

(8) The Department shall, on making a decision under subsection (7), give notice of the decision to the appellant including particulars of the grounds of the decision.

(9) A person who is aggrieved by a decision of the Department under subsection (7) may, within 21 days of the notice being served under subsection (8), appeal to a court of summary jurisdiction.

(10) Any such appeal shall be made in accordance with Part 7 of the Magistrates' Courts (Northern Ireland) Order 1981 (NI 26).

(11) On an appeal under this section, the court may either cancel or affirm the notice, and, if it affirms it, may do so either in its original form, in its form as modified by the Department under subsection (7) or with such other modifications as the court may in the circumstances think fit.

(12) Where an appeal is brought under this section against an enforcement notice, the operation of the notice shall be suspended until the appeal is finally disposed of or, if the appeal is withdrawn, until the withdrawal of the appeal.

Commencement Information

II S. 37 in operation at 1.9.2012 by S.R. 2012/313, art. 2(2), Sch. Pt. 2

Powers of entry

38.—(1) Subject to subsection (2), an authorised officer or a constable may enter at all reasonable times any premises specified as an operating centre in an operator's licence and inspect those premises and any equipment and any other item found there, for the purpose of ascertaining—

- (a) whether the conditions of the operator's licence are being complied with; or
- (b) whether any other provisions of or made under this Act are being complied with.

(2) An authorised officer or a constable may not under subsection (1) enter premises which are occupied as a private dwelling unless under the authority of a warrant issued under subsection (5).

(3) Subject to subsection (4), an authorised officer or a constable may enter at all reasonable times any premises and inspect those premises and any equipment

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and any other item found there if the officer or constable has reasonable grounds for suspecting that a person is operating a taxi service at or from those premises without an operator's licence.

(4) An authorised officer or a constable may not enter premises under subsection (3) unless under the authority of a warrant issued under subsection (5).

(5) Where a lay magistrate is satisfied by complaint on oath

(a) that admission to the premises is reasonably required for the purposes specified in the complaint; and

(b) that an authorised officer or a constable would, apart from subsection (2) or (4) be entitled for that purpose to exercise in respect of the premises a power of entry under subsection (1) or (3) as the case may be,

the lay magistrate may issue a warrant under the lay magistrate's hand authorising that person to enter the premises.

(6) A warrant issued under subsection (5) shall continue in force until the purpose for which entry is required has been satisfied.

(7) An authorised officer or a constable exercising a power of entry by virtue of this section shall, if so required, produce evidence of the officer's or constable's authorisation and any warrant under subsection (5)—

(a) before entering the premises; or

(b) at any time before leaving the premises.

(8) Where an authorised officer or a constable exercises a power of entry by virtue of this section, the officer or constable may seize and remove any equipment or other items found on the premises which the officer or constable has reasonable cause to believe may be required as evidence for the purpose of proceedings in respect of an offence under section 1 or 3.

(9) The powers conferred on an authorised officer or a constable by subsection (8) are exercisable only at a time when regulations under section 42 are in operation.

(10) Where an authorised officer or a constable exercises a power of entry by virtue of this section, the officer or constable shall ensure that the premises are left no less secure by reason of the entry, and the Department shall make good or pay compensation for any damage to property caused by the officer or constable in entering the premises, in carrying out any inspection or in making the premises secure.

(11) Any question of disputed compensation shall be referred to and determined by the Lands Tribunal.

(12) For the purposes of a power of entry under subsection (3), “premises” also includes vehicles.

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Commencement Information

I2 S. 38 in operation at 1.9.2012 by S.R. 2012/313, art. 2(2), Sch. Pt. 2

VALID FROM 31/05/2016

Power to stop and examine licensed taxis

39.—(1) An authorised officer or constable in uniform may stop and examine any licensed taxi.

(2) If an authorised officer or constable in uniform is satisfied that the taxi does not comply with regulations under section 20 for ensuring the safety of passengers in taxis, and that danger to the passengers in the taxi is likely to occur, the officer or constable may require—

- (a) the passengers to leave the taxi; and
- (b) suitable arrangements to be made by the driver of the taxi for the immediate conveyance of the passengers to the places to which they are entitled to travel in the taxi.

(3) If the driver of a taxi fails to make suitable arrangements for the immediate conveyance of passengers upon being required to do by an authorised officer or constable under subsection (2)(b) the driver is guilty of an offence

(4) It is a defence in proceedings for an offence under this section for the driver to show that the driver exercised all due diligence to avoid committing such an offence.

Power to stop and examine motor vehicles suspected of illegal taxiing etc.

40.—(1) Where an authorised officer or constable in uniform has reason to believe that any motor vehicle is a taxi being used in standing or plying for hire or reward or to carry passengers for hire or reward in contravention of any provision of or made under this Act or the 1981 Order, the officer or constable may stop and examine the vehicle.

(2) Where an authorised officer or constable has stopped any vehicle under subsection (1), the officer or constable may require—

- (a) the driver of the vehicle; and
- (b) any person who has made, is making or intends to make, use of that vehicle for the carriage of passengers for hire or reward,

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to provide the officer or constable with all such information, and produce for the officer's or constable's inspection all such documents, as the officer or constable may reasonably require for any of the purposes mentioned in subsection (3).

(3) Those purposes are—

- (a) obtaining the name and address of the owner of the vehicle, operator of the vehicle or driver of the vehicle, and
- (b) ascertaining, in relation to any passengers who have been, or are being, or are to be carried on the vehicle for hire or reward, particulars of—
 - (i) the number of passengers;
 - (ii) the places from which and to which the passengers have been, are being, or are to be, carried;
 - (iii) the carriage of the passengers for hire or reward.

VALID FROM 31/05/2016

Power of seizure

41.—(1) Subsection (2) applies if—

- (a) an authorised officer or constable in uniform—
 - (i) exercises a power under section 40(1); or
 - (ii) attempts to exercise a power under section 40(1) and the vehicle does not stop or does not stop long enough for the officer or constable to make such lawful enquiries as the officer or constable considers appropriate; and
- (b) the authorised officer or constable has reasonable grounds for believing that the vehicle is or was being used in contravention of section 12.

(2) Where this subsection applies, the authorised officer or constable may—

- (a) subject to subsection (3), seize and remove the vehicle (together with any equipment or other items found in it);
- (b) enter, for the purpose of exercising a power falling within paragraph (a), any premises (other than premises occupied as a private dwelling) on which the officer or constable has reasonable grounds for believing the vehicle to be
- (c) use reasonable force, if necessary, in the exercise of any power conferred by paragraph (a) or (b).

(3) If the authorised officer or constable is unable to seize the vehicle immediately because it has not stopped or has been driven off, the officer or

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constable may seize it at any time within the period of 24 hours beginning with the time at which subsection (1) is first satisfied.

(4) The powers conferred on an authorised officer or a constable by this section are exercisable only at a time when regulations under section 42 are in operation.

(5) In this section—

- (a) a reference to a vehicle does not include an invalid carriage;
- (b) “equipment or other items found in a vehicle” means equipment or other items which the authorised officer or constable has reasonable grounds to believe may be required as evidence for the purpose of proceedings in respect of an offence under section 12;
- (c) “private dwelling” does not include any garage or other structure occupied with the dwelling, or any land appurtenant to the dwelling house.

VALID FROM 31/05/2016

Regulations concerning vehicles and equipment seized under section 38 or 41

42.—(1) The [^{F1}Department of Justice] may by regulations make provision as to—

- (a) the removal and retention of vehicles, equipment and items seized under section 38 or 41;
 - (b) the release or disposal of such vehicles, equipment and items.
- (2) Regulations under subsection (1) may, in particular, make provision—
- (a) for the giving of notice of seizure of the vehicle, equipment or item to a person who is its owner;
 - (b) for the procedure by which a person who claims to be the owner of the vehicle, equipment or item seized under section 38 or 41 may seek to have it released;
 - (c) for requiring the payment, by the owner or driver of the vehicle or the owner of the equipment or item, of fees, charges or costs in relation to its removal and retention and to any application for its release;
 - (d) as to the circumstances in which a vehicle, equipment or item seized under section 38 or 41 may be disposed of;
 - (e) as to the destination—
 - (i) of any fees, charges or costs payable in accordance with the regulations;

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(ii) of the proceeds (if any) arising from the disposal of any vehicle, equipment or item seized under section 38 or 41.

Textual Amendments

F1 Words in s. 42(1) substituted (12.4.2010) by Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010 (S.I. 2010/976), arts. 1(2), 12, **Sch. 14 para. 92(2)** (with arts. 28-31); S.I. 2010/977, **art. 1(2)** (but this amendment cannot take effect until the commencement of 2008 (c.4) (N.I.), s. 42)

VALID FROM 31/05/2016

Taxi touts

43.—(1) Subject to subsections (2) and (3), a person who solicits any person to be carried for hire or reward in a taxi is guilty of an offence.

(2) Subsection (1) does not imply that the soliciting must refer to any particular taxi nor is the mere display of a plate, disc, sign or distinguishing mark on a taxi that it is for hire soliciting within that subsection.

(3) No offence is committed under this section where soliciting persons to be carried for hire or reward in licensed taxis is permitted by any provision of or made under Chapter 2 of Part 1 (whether or not supplemented by provision made under section 5(3)) or by virtue of regulations made under section 20.

False statements, forgery and power of seizure in connection with certain documents

44.—(1) A person who knowingly or recklessly makes, or causes to be made, a statement or furnishes information which is false or misleading in any material particular for the purpose of procuring the grant of a licence under this Act, or the variation of a licence under section 28, is guilty of an offence.

(2) A person who, with intent to deceive—

- (a) forges, alters or uses a document or other thing listed in subsection (3);
- (b) lends to, or allows to be used by, any other person a document or other thing listed in subsection (3); or
- (c) makes or has in the person's possession any document or other thing so closely resembling a document or other thing listed in subsection (3) as to be calculated to deceive,

is guilty of an offence.

(3) The documents or other things referred to in subsection (2) are—

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- (a) any licence under this Act;
 - (b) any records required to be kept under, or by virtue of regulations made under, section 3;
 - (c) any plate, disc, sign or distinguishing mark issued under section 15;
 - (d) any document which, in pursuance of section 23(3), is issued as evidence of the result of a test of competence to drive;
 - (e) any badge or other evidence of identification issued under section 24; or
 - (f) such other documents or things as are prescribed.
- (4) If a constable or authorised officer has reasonable cause to believe—
- (a) that a document or other thing produced to the constable or officer under this Act by the driver of a motor vehicle;
 - (b) a document or other thing carried on or by the driver of a motor vehicle; or
 - (c) that any plate, disc, sign or distinguishing mark containing particulars required to be on a plate, disc, sign or distinguishing mark issued under section 15,

is a document or other thing in relation to which an offence has been committed under this section, the constable or officer may seize the document or other thing.

(5) For the purposes of subsection (4), the power to seize includes a power to detach from a vehicle

(6) When a document or other thing has been seized under subsection (4), the person from whom it was seized shall, unless the document or other thing has been previously returned to the person or the person has been previously charged with an offence under this section, be summoned before a court of summary jurisdiction to account for the person's possession of the document or other thing and the court shall make such order respecting the disposal of the document or other thing and award such costs as the justice of the case may require.

Commencement Information

I3 S. 44 in operation at 1.9.2012 by S.R. 2012/313, art. 2(2), Sch. Pt. 2

Obstruction of authorised officers etc.

45.—(1) A person who wilfully obstructs an authorised officer or constable acting in pursuance of this Act is guilty of an offence.

- (2) A person who, without reasonable excuse—
- (a) fails to comply with any requirement properly made to such person by an authorised officer or constable acting in pursuance of this Act; or
 - (b) fails to give an authorised officer or constable acting in pursuance of this Act any other assistance or information which the officer or constable

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may reasonably require of such person for the purpose of performing the officer's or constable's functions under this Act,

is guilty of an offence.

(3) A person who makes any statement which the person knows to be false in giving any information to an authorised officer or constable acting in pursuance of this Act is guilty of an offence.

Commencement Information

I4 S. 45 in operation at 1.9.2012 by S.R. 2012/313, art. 2(2), Sch. Pt. 2

Offences due to fault of other person

46 Where an offence by any person under this Act is due to the act or default of another person, then (whether proceedings are taken against the first mentioned person or not) that other person is guilty of the offence and is liable to be proceeded against and punished accordingly.

Commencement Information

I5 S. 46 in operation at 1.9.2012 by S.R. 2012/313, art. 2(2), Sch. Pt. 2

Offences by corporations

47 Section 20(2) and (3) of the Interpretation Act (Northern Ireland) 1954 (c. 33) (offences by corporations) shall apply to this Act as if the requirement for consent in subsection (3) were omitted.

Commencement Information

I6 S. 47 in operation at 1.9.2012 by S.R. 2012/313, art. 2(2), Sch. Pt. 2

Offences

48 The entries set out in Schedule 1 relating to offences under this Act shall be added at the end of Part 1 of Schedule 1 to the Road Traffic Offenders (Northern Ireland) Order 1996 (NI 10).

Commencement Information

I7 S. 48 in operation at 1.9.2012 for specified purposes by S.R. 2012/313, art. 2(2), Sch. Pt. 2

I8 S. 48 in operation at 31.10.2014 for specified purposes by S.R. 2014/238, art. 2(2), Sch. Pt. 2

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