

PSV Impounding: Response to Consultation Paper



June 2009

Executive Summary

The Local Transport Act 2008 included provisions to allow for the establishment of a new regime for detaining and impounding certain illegally-operated public service vehicles (PSVs). Such a regime should provide a useful deterrent to non-compliant operators, promoting road safety and reducing unfair competition for the vast majority of compliant operators. A similar regime already exists in the goods vehicle sector, and rates of non-compliance in that sector have fallen substantially since its introduction.

The Vehicle and Operator Services Agency (VOSA) published a consultation document in December 2008, inviting views on proposals to establish such a regime. The consultation included a draft of the implementing Regulations that would be needed, as well as proposing some modest amendments to the existing regime in the goods vehicle sector, so as to ensure consistency between the two regimes. The consultation document was sent to vehicle operators, representatives of local government and the police, trades unions and other interested parties.

This document provides a summary of the 35 written responses to the consultation, as well as setting out the government's response to the key points that were raised. The responses show widespread support for the proposals: every organisation that has forwarded a response has supported the need for new regulations, and the need to align PSV and HGV impounding legislation. We have received detailed comments from the Police Federation regarding the management of impounding, and also vocal support from the Royal Society for the Prevention of Accidents (RoSPA), the Office of the Traffic Commissioners (OTC), the British Vehicle Rental and Leasing Association (BVRLA) and the National Association of Licensing Enforcement Officers (NALEO). The responses suggest there was some confusion and disagreement concerning the recovery of unclaimed personal effects remaining on a PSV that has been impounded, but this was possibly due to a lack of clarity in the draft Regulations and consultation document. The Regulations will be amended to address this, and the position is clarified in this response document.

For each consultation question, this document provides a summary of responses received, together with a brief government response. It concludes with a summary of next steps. In light of the consultation, it remains the Government's intention to bring the proposed Regulations into force (with some amendments following the consultation) on 1 October 2009. It is intended that VOSA would begin to exercise the new powers very shortly thereafter.

New PSV Regulations

Q1). Do you agree that the Regulations as drafted will provide an effective method of implementing the PSV impounding scheme (to deal with those operating PSVs without a PSV operator's licence)?

Summary of responses

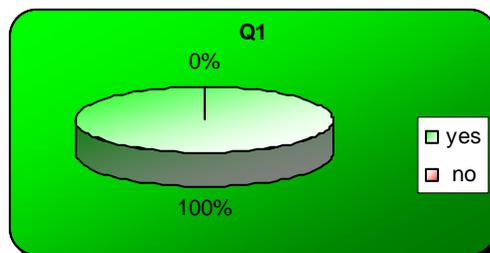
All responses indicate a positive reaction to the proposed new PSV Regulations. For example, both RoSPA and NALEO gave positive comments supporting the PSV impounding scheme. The Police Federation highlighted a number of issues that they would like to see clarified. These included queries regarding who would manage the impounding process, what statutory charges would apply, and clarification that a PSV being used for Police purposes be exempt from the Regulations. The Police Federation also wish to ascertain how they are to be made aware of a PSV impounding, and state that an entry on Police National Computer (PNC) of the incident as a good practice requirement would be hugely beneficial. Colchester Borough Council state that they would have liked to have seen smaller PSVs included in the scheme, as there is a particular problem with unlicensed limousines being used by a hardcore of illegal operators who refuse to licence their vehicles. Fife Council supports the proposal to align the PSV Regulations with the current Goods Vehicles' Enforcement Powers. BVRLA support and recognise the importance of a new PSV impounding regime but ask for the inclusion of a new definition of "hire agreement" as, in their view, the current definition could be construed as limiting a hire agreement to six months, which does not necessarily reflect current business practices.

Positives –

Proposals supported by all respondents.

Negatives –

None (universal support received from current responders, but some points of clarification sought.)



Government response

We are pleased that the proposal has such widespread support. It remains the Government's intention to bring Regulations into force to implement the proposed new PSV scheme with effect from 1 October 2009.

In response to the Police Federation comments, the management of the impounding process would lie with VOSA. No statutory charge will be levied but costs will be recovered from any proceeds raised from selling impounded vehicles. The statutory powers to make regulations to establish the PSV impounding regime do not extend to making exemptions from the PSV operator licensing regime, and this would not therefore be within the scope of these Regulations. It is not anticipated that police activities would usually fall within the scope of the PSV operator licensing system, but we will continue to discuss with ACPO (Association of Chief Police Officers) the point they have raised.

VOSA, as authorised persons for impounding, do not have direct access to the PNC, however, Police will be present at all impoundings and ACPO and ACPOS (Association of Chief Police Officers Scotland) may wish to introduce the practice that their officers take steps to ensure that impoundings are recorded on PNC.

In response to Colchester Borough Council the statutory powers to make regulations to establish the PSV impounding regime only extend to vehicles adapted to carry more than 8 passengers. This limitation of the new regime to larger vehicles was considered and approved by Parliament as part of the Local Transport Act 2008. The inclusion of vehicles adapted to carry no more than 8 passengers is therefore outside the scope of these Regulations.

In response to BVRLA's comments we are content that the definition of 'hiring agreement' in the Road Traffic Offenders Act 1988, includes hiring agreements which are longer than 6 months in duration. In this proposed legislation, the definition is relevant in defining who is to be regarded as the 'owner' of the vehicle for the purposes of the Regulations, and in determining when VOSA must notify BVRLA that a vehicle has been impounded, or disposed of. The operational procedures will ensure that where there is believed to be a hiring agreement, the BVRLA will be notified.

Q2). Do you agree with how it is proposed to deal with any vehicle passengers – that is by arranging for the transport of passengers to a suitable place to continue their journey, or to their destination? Do you agree that it is appropriate to make specific provision in relation to the needs of under 18's, elderly and disabled persons?

Summary of responses

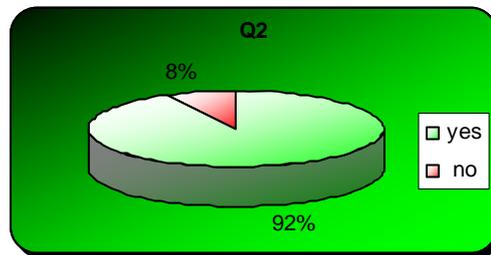
The proposed method of dealing with passengers of impounded PSVs received widespread support amongst respondents. The Police Federation, RoSPA and NALEO all made positive comments about the importance of good passenger care, and paying particular regard to vulnerable groups. There was, however, some uncertainty on the part of RoSPA as to what would constitute a 'suitable place' for passengers to be left at that was not their destination. There was also concern from RoSPA, the CPT and Stroud Omnibus as to where the cost of providing alternative travel would come from, with all suggesting that it could perhaps be reclaimed from the offending operator. Fife Council argue that measures must be put in place to allow passengers to be transferred to their intended destination, therefore standby vehicles should be in place on the assumption that they may be needed. The Highways Agency query how passengers from an impounded PSV will be cost effectively transported to multiple destinations. The Scottish Commission for the Regulation of Care (SCRC) express their concern that the Regulations do not provide sufficient protection for the young, elderly or disabled. They comment that unless a vehicle is a danger in some way, then it should not be impounded when carrying vulnerable passengers. They also call for compulsory alternative transport to be arranged for these vulnerable groups and their escorts if the PSV is not in good working order. The SCRC also call to attention the possibility of passengers not knowing what is going on due to their age or condition and in these cases, the carers or guardians of the passengers must be contacted by VOSA to advise them of the situation.

Positives –

Mostly positive feedback received.
 The Police Federation reiterate the importance of passengers being treated properly and with due consideration.
 RoSPA agree that specific care and attention should be paid to vulnerable passenger groups.
 NALEO also agree that consideration of passengers must be of paramount importance.

Negatives –

CPT suggests that it should be the responsibility of VOSA to make all necessary arrangements for the onward travel of affected passengers.
 Highways Agency raises the question of cost in regard to transporting passengers to multiple destinations.



Government response

VOSA will aim to detain vehicles at times when passengers are not being carried. This would be the preferred process although this will not always be possible. Where it is necessary to detain a vehicle while passengers are on board (e.g. because it would be unsafe to allow the vehicle to proceed), the most appropriate way to cater for those passengers will depend on the particular circumstances of the case. As a result we cannot be prescriptive in legislation about exactly what is to happen in relation to passengers in every possible scenario; rather we remain of the view that it is best to place VOSA under a general duty as per the draft Regulations. We can assure that, in any given impounding, VOSA will put passenger safety first and foremost, giving particular attention to the protection of vulnerable groups, when deciding on actions to be taken, and procedures to be adopted.

Q3). Do you agree with how it is proposed to deal with any property remaining on the vehicle – that following the impounding an article will be published in at least one local paper to inform passengers of how to retrieve any personal possessions?

Summary of responses

This question appears to have caused some confusion amongst the response group. The easiest way for a passenger to claim their luggage when a PSV is impounded would be to take it with them when they leave the vehicle, and it is anticipated that this is what will normally happen where passengers are on a vehicle which is impounded. However, it is necessary to make provision for any possessions that might be left on the vehicle at the time of impounding (perhaps by accident, or perhaps because the owner is not on the vehicle and cannot be identified at the time of impounding). This proposal was interpreted by some groups as initial policy rather than final contingency and therefore attracted negative comments suggesting that passengers should be allowed to access their luggage immediately.

The suggestion of utilising local press received moderate support but attracted some negative criticism from RoSPA, CPT, and Norfolk Constabulary, all of whom were critical of the use of a local newspaper, citing such problems as the nature of coach travel being a national enterprise therefore negating the use of local means, and the fact that such an article in local press could be easily overlooked. The Highways Agency suggests that passengers could be given a leaflet detailing how to recover their possessions. BVRLA argue that information regarding reclamation of baggage should be left with either the offending operator, VOSA or the Police. The Justices' Clerks Society claims that the owner of the property should be personally notified in writing as well as publishing in at least one local paper. They also question the definition of 'local' for the purposes of the regulation i.e. the locality from where the vehicle was en route or where it was stopped. This was the question that attracted the most negative comment from respondents.

Positives –

Agreement that suitable arrangements are needed to ensure that personal effects can be returned to their rightful owners.

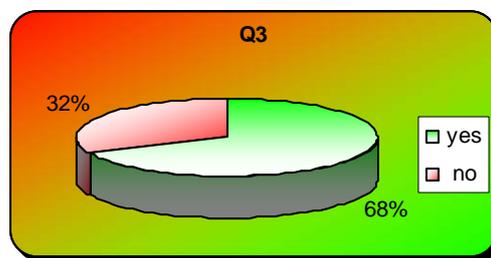
Negatives –

Concern that the proposals might imply that any passengers travelling on a vehicle would not be allowed to take their personal effects with them at the time a vehicle is impounded.

RoSPA state that an article in a local paper could very easily be missed as not everyone will read them.

CPT argues that passengers would not be guaranteed to see an advert in a local paper due to the nationwide locations serviced by coaches and some buses.

Norfolk Constabulary believes that passengers should be informed via a personal letter.



Government response:

The Government acknowledge that its original proposal could have been clearer. It is not intended that passengers should be denied a right to take their possessions with them; indeed, it is expected that they will normally do so. However, the Government remains of the view that it is necessary to make provision for the (probably rare) occasions where an item of property is left on the vehicle and the owner cannot be identified.

In response to the individual comments and suggestions, whilst placing an advert in a local newspaper has limitations due to the national nature of the PSV industry, it is believed that there is some value in it. The Regulations require an advert to be placed in at least one newspaper circulating in such areas as are considered appropriate. So it would be for VOSA officials to determine in which locations it might be most appropriate to advertise, depending on the nature of the vehicle operation, and where most of the passengers were believed to have originated from. VOSA would also take whatever steps it could to identify and make contact with the owner of property left behind.

In light of the comments received, the draft Regulations will be amended to ensure that there is no ambiguity of the process to be adopted where passengers, and their belongings, are present when an impounding is taking place.

Q4). Do you agree that a minimum period of 21 days should be allowed for applications to be made to the traffic commissioners for the return of the vehicle?

Summary of responses

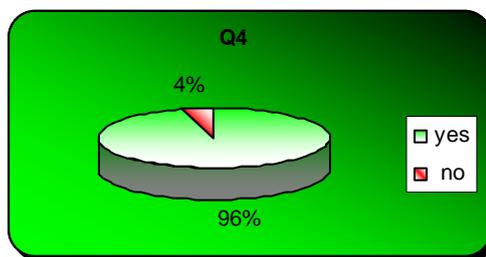
The 21 day time limit received a high level of support, with all but Rays of Cradley Heath agreeing to the length stated in the draft Regulations. Rays of Cradley Heath suggested that 14 days would be adequate. The Police Federation also made a comment suggesting that the qualification needed to include the phrase ‘normal working days’ when calculating a 21 day period.

Positives –

Near universal support.

Negatives –

Rays of Cradley Heath argue that the time limit should be 14 days rather than 21.



Government response:

We note the broad level of support for this proposal, and therefore remain of the view that 21 days is an appropriate period, consistent with the provisions of the existing goods vehicle regime. Although a case could be made for specifying that the 21-day period excludes weekends and bank holidays, experience from the goods vehicle impounding regime suggests that a straightforward 21-day period is workable, and it has the benefit of simplicity.

Q5). Do you agree that VOSA should be empowered to return the vehicle without need to apply to the traffic commissioners in the circumstance detailed in Regulation 10?

Summary of responses

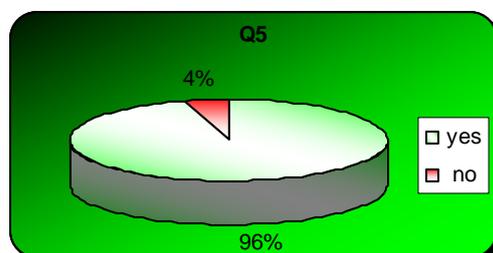
This question also received almost unanimous support from the response group. The Police Federation recommend that a record be kept of the authorising officer’s decision. A&J Coaches argue that the traffic commissioner should in fact always be involved.

Positives –

Near total unanimous support received from response groups.

Negatives –

A&J Coaches suggest that the TC ought always to be involved



Government response:

We note the broad level of support for this proposal. We accept that there has to be protection for legitimate operators in the very unlikely event of a vehicle being wrongfully detained, and we would not wish to further penalise the operator by delaying the process of returning the vehicle. VOSA's operating instructions will include officers keeping a record of decisions made to ensure an "audit trail".

Q6). Are there any additional circumstances that you feel VOSA should consider that are not currently included in regulation 10?

Summary of responses

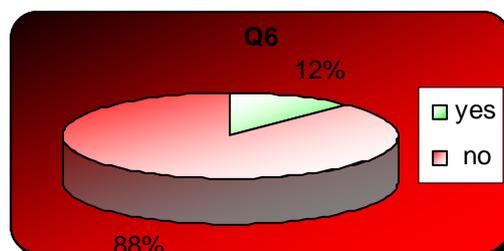
Stroud Omnibus stated that if it can be proven that a vehicle was wrongly impounded then the licensed operator should be able to seek full recompense from VOSA. Transport Yorkshire Preservation group also wished to seek clarification regarding the finer details of hire and reward concerning vintage vehicles as this could lead to individuals being falsely accused of illegal operation.

Positives –

None.

Negatives –

Stroud Omnibus state that if it can be proven that a vehicle was wrongly impounded then the licensed operator should be able to seek full recompense from VOSA. Transport Yorkshire Preservation group wishes to alert VOSA to the possibility of Vintage vehicles being operated and the possible false accusations this could lead to.



Government response:

The criteria used in establishing hire or reward for a PSV operation are set out in Section 1 of the PSV Operator Licensing Guide¹; these are the criteria used by VOSA examiners to establish the legality of each individual case.

We do not believe that there is a need to introduce the complexities of a statutory right to compensation, which would inevitably entail including a lot of detail of the formulae for establishing the level. VOSA currently operates a complaints procedure, which deals with all allegations of incorrect procedures – which would therefore include PSV impounding. Where VOSA believes claims are justified compensation is paid. In the unlikely event of this route not providing satisfaction then the complainant can use the existing routes for civil dispute (although this has not proved necessary for the existing HGV Impounding scheme).

¹ **Public Service Vehicle Operator Licensing** Guide for Operators (Revised April 2009 PSV 437 – 01) available at <http://www.vosa.gov.uk/vosacorp/publications/manualsandguides/operatorlicensingguides.htm>

Q7). Do you agree with the proposals in Regulations 10 to 15 and 25 and in particular the time limits mentioned above?

Summary of responses

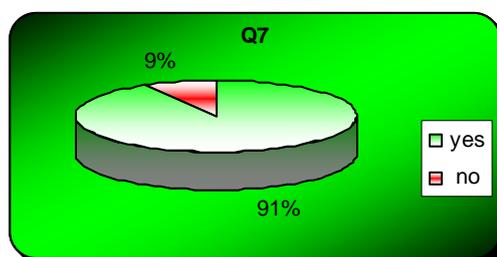
These proposals received nearly complete support from the respondents. However, Stroud Omnibus have queried the use of such time limits, stating that they may be too long if a vehicle has been wrongly impounded, and that this could cause a small business to suffer. They do go on to remark that if a vehicle is found to be unlicensed then the timescales mentioned seem fair. The Office of the Traffic Commissioner state that the application of regulation 25 will be a judicial decision by a traffic commissioner. The OTC indicated that each case would be considered on its merits, as they do not wish to affect the livelihood of a large number of people. This is a matter of balance and proportionality and this is, in the view of the OTC, also a view likely to be supported by the Transport Tribunal. BVRLA are dissatisfied with the inclusion of an additional reason for applying for return of a vehicle on appeal to the Traffic Commissioner in regulation 11. They ask for this provision to be removed. The Magistrates' Association propose that more time should be allowed for passengers to retrieve any property and suggest 12 weeks would be adequate.

Positives –

Near total support

Negatives –

Stroud omnibus believe that the timescales suggested could adversely affect small businesses.
BVRLA took issue with a provision in regulation 11.



Government response:

We note the broad level of support for this proposal. In response to the comments raised, the decision to impound a vehicle will be taken by the authorised person; if the operator wishes to object, the first stage will be to make an application to the Traffic Commissioner who can decide to uphold or reject the decision to impound, based on the evidence presented by the operator and VOSA. The time limit set out in the draft legislation represents the time which may potentially be required for the various relevant bodies to gather the required evidence and to make a considered judgement, or to arrange a hearing. These time limits are the maximum expected and not necessarily the expected norm.

In response to BVRLA's comment, it is a statutory requirement for this additional ground to be prescribed in the Regulations. We proposed the inclusion of this ground in the provisions in the Local Transport Bill (which introduced the powers under which these Regulations are made) because we believe this additional reason for appeal is important in protecting vehicle owners who act responsibly in trying to prevent continued unlawful use of their vehicle once they are aware of such use. Parliament agreed with this and it is not, therefore, possible for us to remove this provision.

Q8). Do you agree with the proposals in Regulations 16 to 18 and in particular that where a vehicle does not meet the GB construction standards (and it is not financially viable to make it do so) that it should be destroyed?

Summary of responses

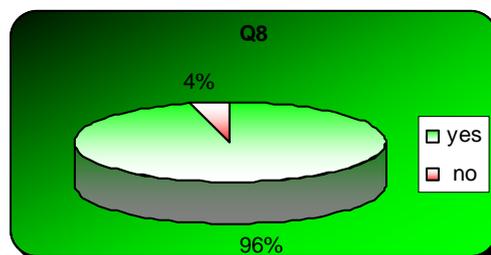
The vast majority of responses to this question were supportive. Stroud Omnibus propose that vehicle destruction be highly publicised, as this would provide the greatest deterrent to unlicensed operators. Worcestershire County Council also strongly supports the decision to destroy vehicles operated by persons who do not comply with the licensing requirements. The Transport Yorkshire Preservation Group, on the other hand, express concern that a vintage vehicle may be destroyed as a result of use by a rogue operator. They suggest that such vehicles be displayed for sale on the VOSA website. BVRLA suggest that before sale or destruction of a vehicle a final check is carried out to see if there is any motor financier’s legal interest in the vehicle.

Positives –

Near universal support.
 Stroud Omnibus state that the sight of expensive limousines being crushed would send out a strong message.
 Worcestershire County Council also vocalise their support of the plan to destroy non-compliant vehicles that can not be successfully adapted.

Negatives –

Transport Yorkshire Preservation Group does not want the destruction of vintage vehicles as some of these are unique.



Government response:

We note the broad level of support for this proposal. The government can not sell a vehicle, of whatever age, back into circulation which is not roadworthy, or cannot be adapted to become roadworthy. The concern over roadworthiness is a reference to the design of the vehicle – i.e. the vehicle is not able through its design to meet conditions for roadworthiness; generally the condition of the vehicle will not prevent it from being restored to a roadworthiness condition.

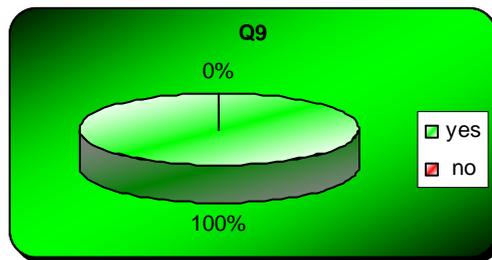
Q9). Do you agree with the methods of giving notice set out in Regulation 24?

Summary of responses

Again, this question received unanimous support from the group. The only comment made was by the Police Federation who suggested that any postage be sent by first class delivery.

Positives – Unanimous support from response group.

Negatives – None.



Government response:

We are pleased that the proposal has such widespread support; the only comment received being to specify that mail should be first class. In response to this, whilst this may be normal operating procedure, we do not believe it is necessary to specify this in regulation.

Amended HGV Regulations

Q10). Do you agree that the draft Regulations will provide effective amendments to the operation of the HGV impounding scheme?

Summary of responses

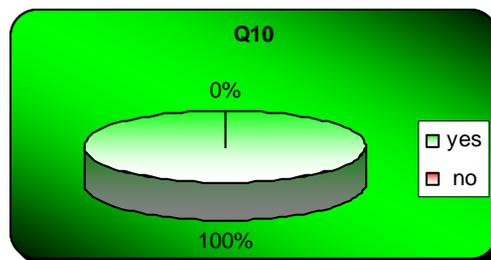
The Road Haulage Association states that the proposed amendments would provide more flexibility for the return of vehicles to the owner. The BVRLA support the majority of the amendments but require further explanation behind the reasons for including the amendment to the grounds for appeal to the Traffic Commissioner as it could add additional complexity and regulatory burden on their members.

Positives –

Near unanimous support from response groups.

Negatives –

BVRLA ask for further explanation regarding the amendment to the grounds for appeal to the TC.



Government response:

We are pleased with the overall positive response. In simple terms the changes to the scheme bring it into line with the new PSV scheme (see our comments on the responses to question 7 above). In respect to the specific point on reasons for return of vehicle from the TC, we believe this additional reason is important in protecting vehicle owners who act responsibly in trying to prevent continued unlawful use of their vehicle once they are aware of such use.

Q11). Do you agree that VOSA should be empowered to return the vehicle without the need to apply to the Traffic Commissioners in the circumstances detailed in Regulation 3?

Summary of responses

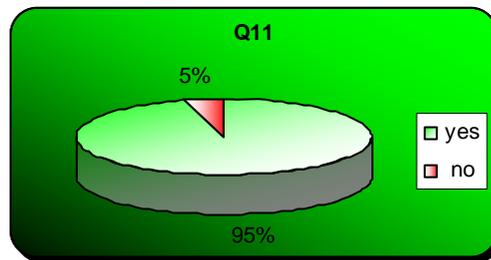
This question also acquired near universal support from respondents. The Police Federation stated that this was not just a VOSA issue and that it must be agreed across all enforcement agencies that use authorised officers. Rays of Cradley Heath commented that if the vehicle is roadworthy and the driver does not charge for the journey then he or she should be able to complete that journey for the sake of the passengers and then report to VOSA for their detention. A&J Coaches repeated the view that the Traffic commissioner should be involved.

Positives –

Near universal support from groups

Negatives –

A&J Coaches argue that an application must be made to the traffic commissioner



Government response:

We note the broad level of support for this proposal. We accept that there has to be a protection for legitimate operators in the very unlikely event of a vehicle being wrongfully detained, we would not wish to further penalise the operator by delaying the process of returning the vehicle.

Q12). Are there any additional circumstances that you feel VOSA should consider that are not currently included in Regulation 3?

Summary of responses

The Road Haulage Association argue that VOSA should consider all circumstances surrounding every incident and if it is believed the legal owner is not responsible for any inappropriate use then VOSA should have the power to return the vehicle without reference to the traffic commissioner.

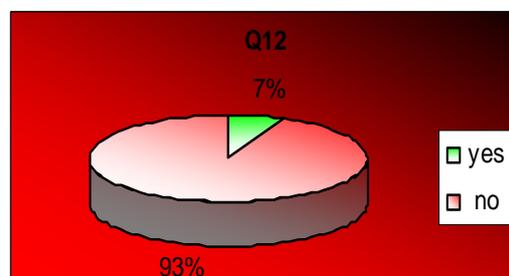
Positives –

Few respondents had any further suggestions.

Negatives –

Road Haulage Association believes VOSA should have power to return vehicles without having to refer to the TC.

Basildon District Council indicated that there were additional circumstances to consider, but did not elucidate on this.



Government response:

Consideration will be given by VOSA to all circumstances involved in each individual case and impounding will be considered appropriate only where there is clear evidence of illegal activity; in the unlikely event of a vehicle being wrongfully impounded the Regulations would give VOSA the authority to return the vehicle without recourse to the Traffic Commissioner.

Q13). Do you agree that a minimum period of 21 days should be allowed for applications to be made to the traffic commissioner?

Summary of responses

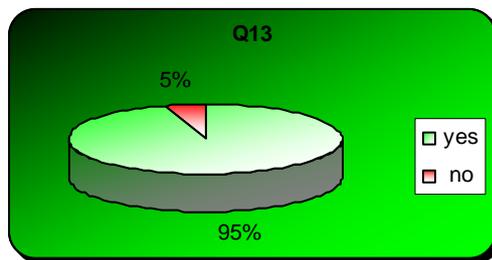
Rays of Cradley Heath again stated that 14 days would be the ideal period. All other responses were positive, with the Road Haulage Association agreeing that a time lapse period would benefit all parties and ensure a correct decision is taken concerning the return of the vehicle.

Positives -

Near total support of policy.

Negatives –

Rays of Cradley Heath state the time period should be 14 days.



Government response:

We note the broad level of support for this proposal, and therefore remain of the view that 21 days is an appropriate period, consistent with the provisions of the existing goods vehicle regime. Although a case could be made for specifying that the 21-day period excludes weekends and bank holidays, experience from the goods vehicle impounding regime suggests that a straightforward 21-day period is workable, and it has the benefit of simplicity.

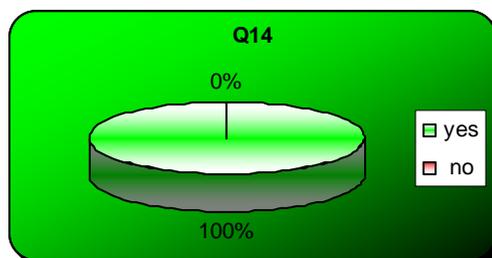
Q14). Do you agree with the addition of the extra ground described in Regulation 6?

Positives –

Complete support.

Negatives –

None.



Government response:

We are pleased that the proposal has such widespread support; we do not intend to make any substantive changes to this aspect of the draft Regulations.

Q15). Do you agree with the proposals in Regulations 7, 8 and 13, and in particular the time limits mentioned above?

Summary of responses

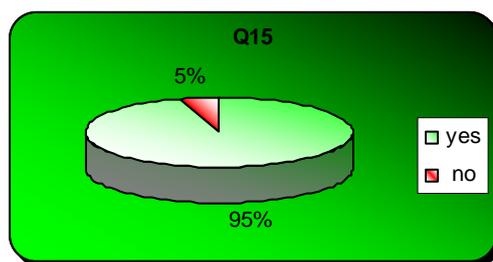
BVRLA expressed the same concern to this question as they did to question seven.

Positives –

Near complete support.

Negatives –

BVRLA are dissatisfied with the inclusion of an additional reason for applying for return of a vehicle on appeal to the Traffic Commissioner in regulation 11



Government response:

We note the broad level of support for this proposal. In response to the comments raised, the decision to impound a vehicle will be taken by the authorised person; if the operator wishes to object to the impounding the first stage will be to make an application to the Traffic Commissioner who can decide to uphold or reject the decision to impound based on the evidence presented by the operator and VOSA. The time limits set out in the draft legislation represent the time which may potentially be required for the relevant bodies to gather the required evidence and for the traffic commissioners to make a considered judgement, or to arrange a hearing. These time limits are the maximum expected and not necessarily the expected norm. We believe this additional reason for appeal is important in protecting vehicle owners who act responsibly in trying to prevent continued unlawful use of their vehicle once they are aware of such use, and will provide consistency with the PSV regime (see our comments in respect of responses to question 7 above).

Next Steps

The Government intends to proceed with the proposals essentially in the form in which they were consulted on. We will therefore be working to finalise the Regulations, with a view to bringing the Regulations into force on 1 October 2009. We will take the opportunity to refine the drafting in a few places in response to comments made by consultees - including, in particular, to clarify the way in which passengers' personal effects will be dealt with.

VOSA will, in conjunction with the finalisation of these Regulations, be developing educational and advisory material to ensure that the public in general, and the PSV industry in particular, are fully aware of the legal requirements and the implications of using, or operating an illegal PSV. We will continue working with the main trade associations who have an interest in this scheme to ensure that they are content with the detail of operational procedures.

VOSA will also be making preparations to enable enforcement action to be taken, as appropriate, once the Regulations are in force (proposed date 1 October 2009).

Annex A – list of respondents

- ACPO Scotland
- A&J Coaches
- Association of Transport Co-ordinating Officers (ATCO)
- Basildon District Council
- Basingstoke & Deane Borough Council
- Bedfordshire County Council
- Birmingham City Council
- British Vehicle Rental & Leasing Association
- Colchester Borough Council
- Confederation of Passenger Transport UK (CPT)
- Devon County Council
- Federation of British Historic Vehicle Clubs
- Fife Council
- Freight Transport Association
- Highways Agency
- Justices Clerks Society
- Kettering Borough Council
- Lincolnshire County Council
- Local Government Ombudsman
- Magistrates' Association
- Metrobus
- National Association of Licensing Enforcement Officers
- Norfolk Constabulary
- Pembrokeshire District Council
- Perth and Kinross Council
- Police Federation of England & Wales
- Rays of Cradley Heath
- Road Haulage Association
- ROSPA
- Scottish Commission for the Regulation of Care
- South Somerset District Council
- Stroud District Council (Stroud Omnibus)
- Traffic Commissioners
- Transport Yorkshire Preservation Group
- Worcestershire County Council