Derbyshire Constabulary

TESTING AND EXAMINATION OF VEHICLES PROCEDURE

POLICY REFERENCE 08/206

This procedure is suitable for Public Disclosure

Owner of Doc: Head of Department, Operational Support
Date Approved: Former Standing Order
Review Date: September 2017
## INDEX

<table>
<thead>
<tr>
<th>Heading</th>
<th>Page No</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Procedure Identification Page</td>
<td>3</td>
</tr>
<tr>
<td>2. Legislative Compliance</td>
<td>4</td>
</tr>
<tr>
<td>3. Examination of Vehicles in Connection with the Road Death Investigation Manual</td>
<td>4</td>
</tr>
<tr>
<td>4. Investigation of Construction and Use Associated Offences at the Roadside</td>
<td>4</td>
</tr>
<tr>
<td>5. Weighing of Vehicles</td>
<td>8</td>
</tr>
<tr>
<td>6. Prohibition of Vehicles following Breaches of Driver’s Hours Regulations</td>
<td>9</td>
</tr>
<tr>
<td>7. Monitoring and Review</td>
<td>10</td>
</tr>
<tr>
<td>8. Appeals Process</td>
<td>10</td>
</tr>
</tbody>
</table>
1. Procedure Identification Page

<table>
<thead>
<tr>
<th>Procedure title:</th>
<th>Testing and Examination of Vehicles Procedure</th>
</tr>
</thead>
<tbody>
<tr>
<td>Registry Reference number:</td>
<td>08/206</td>
</tr>
</tbody>
</table>

| Procedure implementation date: | Former Standing Order |
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| Department / Division responsible: | Operational Support |
| Procedure owner: | Head of Department |
| Last reviewed by: | Sgt. Choudhury |
| Date last reviewed: | September 2015 |

Impacts on other policies / guidance / documents (list):
- Road Traffic Collisions Procedure
- Road Death Investigation & Management

Security Classification: NOT PROTECTIVELY MARKED

Disclosable under FOI Act: YES

Policy to be published on Intranet: YES
Policy to be published on Force Website: YES
2. Legislative Compliance

This document has been drafted to comply with the principles of the Human Rights Act. Proportionality has been identified as the key to Human Rights compliance, this means striking a fair balance between the rights of the individual and those of the rest of the community. There must be a reasonable relationship between the aim to be achieved and the means used.

Equality and Diversity issues have also been considered to ensure compliance with the Equality Act 2010 and meet our legal obligation in relation to the equality duty. In addition, Data Protection, Freedom of Information and Health and Safety Issues have been considered. Adherence to this policy or procedure will therefore ensure compliance with all relevant legislation and internal policies.

3. Examination of Vehicles in Connection with the Road Death Investigation Manual

In all cases where a collision is being investigated in accordance with the Road Death Investigation Manual, policy and decisions in respect of Vehicle Examinations will be based upon that document. As a general rule, however, vehicles involved in such incidents will be examined by the Force Vehicle Examiners based within the Collision Investigation Unit. To facilitate this, the vehicle(s) must be recovered in accordance with the Vehicle Recovery Contract and stored under cover at the contractor’s premises. Except in cases where the involvement of a vehicle in a collision is to be established by forensic means and where the terms of the Recovery Contract allows, it is desirable that all the vehicles be taken to the same premises.

At the discretion of the Senior Investigating Officer, the attendance of a Vehicle Examiner may be desirable at the scene.

In cases involving vehicles having a maximum authorised mass exceeding 3,500kg, the assistance of the Vehicle and Operator Services Agency of the Department of Transport (VOSA) should be sought. That organisation’s Vehicle Examiners will carry out the examination, but a member of the police investigating team must be present to ensure continuity of exhibits and to facilitate efficient inter-agency communication.

4. Investigation of Construction and Use and Associated Offences at the Roadside

Authority

The power to test and inspect vehicles is conferred upon authorised Examiners by Section 67(1) of the Road Traffic Act 1988. The Chief Constable so authorises officers who have successfully completed a Traffic Patrol course. Police Staff employees may also be so authorised by the Chief Constable.

Conditional on the co-operation of the driver and/or owner, police officers who are not specifically authorised under the Road Traffic Act may visually inspect a vehicle at the roadside and deal with any offences disclosed as the circumstances dictate. However, they should restrict their actions to a level appropriate to their knowledge of both the legislation
and mechanical aspects involved. Under no circumstances will vehicle components be removed.

Where it is suspected that a vehicle is so defective that it ought not to be allowed to continue, assistance should be sought from an Authorised Examiner and Section 67(7) of the Act empowers any constable to detain the vehicle for that purpose.

Under no circumstances should a police employee drive such a vehicle.

Although it is an offence to wilfully obstruct an Authorised Examiner in the course of testing or inspecting a vehicle, the driver or owner of the vehicle may lawfully elect to defer the test. Unless a Constable suspects the vehicle is so defective that it ought not to be allowed to continue, the owner may specify a period of seven days within the subsequent 30 days and premises within Great Britain where the vehicle will be made available for the purpose. If the owner requests a deferred test but no period is specified, then seven days notice of the intention to test and inspect the vehicle should be verbally given and a record made in the Examiner’s pocket book.

**Prohibition of Dangerously Un-roadworthy Vehicles**

Under no circumstances will a vehicle be removed to police premises solely for the purpose of testing and inspecting its condition.

The continued use of a dangerously defective vehicle can only be prevented by the issue of a Prohibition Notice – national form PG9. Such notices are issued by VOSA Vehicle Examiners or Authorised Constables empowered by Section 69 of the Road Traffic Act 1988.

Police staff employees cannot be authorised to issue Prohibition Notices. Therefore the tasking of the Force Vehicle Examiners should be limited to the investigation of collisions and the provision of supporting evidence in serious cases.

Prohibitions may be either “Immediate” or “Delayed” and are imposed in strict compliance with criteria specified in the Categorisation of Defects Manual, issued by the Department for Transport. Police officers are only empowered to issue Immediate Prohibitions.

By employing a Prohibition to prevent the use of a dangerously defective vehicle on the road, the aim is to safeguard the public at large and not be imposed as a punitive action. The issue of a Prohibition does not preclude a prosecution if the circumstances so dictate. The prohibition applies to a specific vehicle (or vehicles, in the case of a combination) and not the driver.

In order to prevent danger or obstruction to other road users, vehicles which have been subject to an Immediate Prohibition should be removed from the highway at the owner’s expense forthwith and if need be, consideration may be given to the use of the Removal and Disposal Vehicles Regulations.

The Prohibition system is administered by VOSA and the Head of Department, Operational Support will be responsible for nominating a Prohibition Liaison Officer. In addition to communicating with VOSA, the Liaison Officer will also be responsible for quality control relating to the issue and completion of PG9 forms.
Removal of PG9 Prohibitions

The Act empowers prescribed persons to remove a PG9 Prohibition from motor cars, motorcycles and light vehicles on production of an MOT Test Certificate for that vehicle which post dates the Prohibition Notice. All Constables and Station Enquiry Officers are authorised to act as Prescribed Persons. Prohibitions on other vehicles can generally only be removed by VOSA staff.

Where police employees remove a Prohibition, national form PF10 must be completed. The original of the form issued to the person presenting the MOT Certificate and duplicate copies should be forwarded to the Prohibition Liaison Officer, Operational Support.

On removing a Prohibition, the Police National Computer must be checked and any reports relating to the Prohibition should be promptly deleted.

Examination of Vehicles following Collisions where Defects are Alleged or Suspected

Where the driver of a car, car derived van, or motorcycle which is involved in a collision alleges that a defect in the vehicle was a contributory factor, or an officer considers it necessary for the vehicle to be tested and inspected following a collision, the vehicle will be examined by one of the Force Vehicle Examiners, Operational Support.

Vehicles which are to be so examined should be removed using the Vehicle Recovery Scheme and securely stored under cover at the Recovery Contractor’s premises. This is because the Health and Safety standard of premises can be guaranteed, as well as providing evidential integrity by being independent of the vehicle’s owner. Such removal will be at the expense of the vehicle’s owner or insurer.

The vehicle’s keys must be available with the vehicle in every case so that the steering and all electrical components may be tested.

The owner and/or driver of a vehicle which is to be examined should be given the opportunity to attend the examination. Therefore the Officer in the Case must ask the driver, and where applicable the owner, if they wish to attend. Whilst the Vehicle Examiner will notify them of the time and date of the Examination it is the Officer in Case’s responsibility to ask the question in the first instance.

Notification

All requests for a Vehicle Examination to be carried out must be by means of fully completed template message sent through the Command and Control system to the Collision Investigation Unit before 0700 hrs on the next working day. The Message Switch should be completed in full giving the following information: -

a) Full Vehicle Details, including make, model and registration number.

b) Place vehicle removed to (if anywhere other than a Recovery Scheme Contractor include a telephone number for the premises).

c) Officer in Case, including telephone number and details of shift pattern for the following working week.
d) Means of Identification of the vehicle to the Examiner. It is acceptable for recovery contractor’s staff to be used but this must be a named individual who attended the scene so that statements may be obtained if required. Continuity is the essential element.

e) If the Examination is requested because the driver is alleging a defect, details of that allegation must be included.

f) If the Examination is requested as a result of a Collision then it is helpful to the Examiner if the number of occupants and their positions in the vehicle are noted.

g) Name, address and telephone number for the driver and, if applicable, the owner. It would also be helpful to the examiner to know if the owner was in the vehicle (if not the driver) or if the driver and/or owner were arrested or detained in hospital.

h) Whether the driver and/or owner has been asked if they wish to attend the Examination and their response. Where the identity of such persons is known, it is not acceptable for this information to be missing.

Note that the content of the Message Switch will be disclosed by the Force Vehicle Examiner as Unused Material.

R v BECKFORD – Disposal of Vehicles Following Examination

It is a target for the Force Vehicle Examiners that all examinations will be carried out within two working days. Following the Examination, the Officer in Case will be notified of the outcome, normally by means of an email message. It is then the Officer in Case’s responsibility to ensure that the “Beckford” Form (force form 409) is completed and sent to the driver and/or owner. This form indicates to the owner what defects, if any, have been found and affords the opportunity for the vehicle to be independently examined. Failure to serve this form may result in any subsequent charges being dismissed for ‘abuse of process’. Further advice on this subject may be obtained from the Sergeant, Collision Investigation Unit.

Except in Road Death Investigations where serious charges may follow, once the tear off slip from the Form 409 is received back by the officer in the case the vehicle may be released to the owner or insurance company.

In Road Death Investigations where serious charges may follow (i.e. Causing Death by Dangerous Driving or Death by Due Care with Excess Alcohol etc.) the vehicle(s) will be retained until such times as all offenders are charged. In such circumstances the vehicle(s) must be transferred to Headquarters compound within 10 days of the incident.

Examination of Heavy Vehicles

In the circumstances described above involving vehicles having a maximum authorised mass exceeding 3,500kg, the assistance of the Vehicle and Operator Services Agency of the Department of Transport (VOSA) may be sought. But the examination itself must involve a Derbyshire Vehicle Examiner or Police Constable to ensure continuity of evidence.

The nature of the testing to be carried out dictates that such examinations should be conducted at a Goods Vehicle Testing Station (i.e. Raynesway in Derby, or Watnall in Nottinghamshire). Recovery to these locations will be at the owner’s expense and should, wherever practical, be undertaken by the Vehicle Recovery Contract. Under no
circumstances where a defect is alleged or suspected to have contributed to a collision will the vehicle be driven and the powers described above should be applied.

Contact with the Goods Vehicle Testing Station must be made before commencing the journey to ensure they are in a position to receive the vehicle. Otherwise the vehicle should be stored at the Recovery Contractor’s premises to ensure evidential integrity prior to the examination.

5. Weighing of Vehicles

Authority

All regular officers of the Derbyshire Constabulary are authorised on behalf of the several highway authorities in the County of Derby to require a vehicle or any trailer drawn thereby to be weighed, either laden or unladen and the weight transmitted to the road by any parts of the vehicle or trailer in contact with the road to be tested and for that purpose to proceed to a weighbridge or other machine for weighing purposes in accordance with Section 78 of the Road Traffic Act 1988.

The Road Traffic (Foreign Vehicles) Act 1972 extends this power in respect of vehicles registered outside the United Kingdom.

Such officers may require the person in charge of a vehicle to drive it to a place for the purpose of determining its weight. On making such a requirement, the officer must be in a position to produce their authority, signed by the Chief Constable, if so required. Though this requirement extends to a reasonable distance, where at the time of the requirement the vehicle is greater than five miles from the weighbridge and it is subsequently found to be within its lawful weight limits, the cost of the journey shall be borne by the highway authority for the area in question. In such cases, a report must be submitted detailing the circumstances for the attention of the relevant Divisional Administration.

A list of calibrated weighbridges which may be used for this purpose is maintained by Operational Support and is available to the Force Control Room. Prior to using such a weighbridge, the officer must satisfy themselves that the calibration remains current and that the device is operating correctly. This evidence may be obtained by way of statement from the owner of the weighbridge or their representative who is familiar with its operation.

The officer must observe the readings displayed by the weighbridge and straightway record them on a Certificate of Weight (Force Form 445). The completed certificate must be served on the driver, even if the vehicle is found to be within its lawful weight limits. Production of such a certificate for the remainder of that journey, whilst the load remains unaltered, exempts if from further enforcement weighing.

Where the vehicle is found to exceed a permitted weight by no more than 5%, no further action will be taken. In cases where the excess is between 5% and 10% or greater than 1,000kg (whichever is the less – although a statutory defence may apply where the 5% threshold is not exceeded) and the driver is not the owner, a non-endorsable fixed penalty ticket should be issued to the driver. In all cases where the excess is greater than 5% or 1,000kg, the owner should be reported for summons.
Prohibition of Overweight Vehicles

The Certificate of Weight (Force Form 445) incorporates the facility to Prohibit a vehicle which exceeds any permitted weight until such time as the load is reduced to allow it to be lawfully used on a road. This power may be exercised by any officer authorised to require the vehicle to be weighed.

The use of a Prohibition in these circumstances is a means of securing compliance with the relevant legislation; thereby removing the danger posed to the public at large by overweight vehicles and may not be applied as punitive action. The Prohibition relates to a specific vehicle (or vehicles in the case of a combination) and not the driver.

It should be considered that more proportionate means of securing compliance may be available. At the discretion of the officer concerned, it may be appropriate to apply a Direction. For example, Directing the vehicle immediately to a safe place of unloading and may include any reasonable condition for the journey, such as specifying a speed not to be exceeded or the route to be taken.

Once steps have been taken to reduce the weight of the vehicle, it is incumbent upon the police to re-weigh the vehicle in a timely manner. Provided the re-weighing confirms its continued use on a road would be lawful, the Prohibition should be removed. This may be done by any Constable.

On removing a Prohibition, the Police National Computer must be checked and any reports relating to that Prohibition should be promptly deleted.

6. Prohibition of Vehicles Following Breaches of Driver’s Hours Regulations

Authority

Section 99A of the Transport Act 1968 empowers a Constable, specifically authorised by the Chief Constable, to issue a Prohibition Notice on a vehicle registered in the United Kingdom where the driver is in breach of Community legislation concerning driver’s hours. The Road Traffic (Foreign Vehicles) Act 1972 extends this power to vehicles registered outside the United Kingdom. Officers who have successfully completed a Driver’s Hours and Tachograph Chart Analysis course will be duly authorised in writing.

The powers of Prohibition conferred by these Acts are used as a means of securing compliance with the relevant legislation; thereby removing the danger posed to the public at large by tired and fatigued drivers and are not applied as punitive action. The issue of a Prohibition does not preclude any prosecution action if the circumstances so dictate. The Prohibition applies to a specific vehicle (or vehicles, in the case of a combination) and not to the driver.

Administration

Prohibitions under these powers will be imposed using national form PG170. The duration of the Prohibition and any Directions or Exemptions imposed will be in accordance with a national matrix of sanctions, issued to all authorised officers. This document is intended to ensure a nationally consistent and proportional response by all police officers and VOSA staff.
The original of the PG170 will be served on the driver concerned. A copy will be retained by the issuing officer and submitted with any resulting process. A further copy of all prohibitions issued must be forwarded to the Prohibition Liaison Officer, Operational Support who will quality check the form – and if need be address any deficiency with the issuing officer. The copy form will then be passed on to VOSA, who administer the Prohibition system.

Compliance with a Prohibition Notice will be monitored by the use of an information report on the Police National Computer and consideration should be given to directing the vehicle to a position where it may be monitored remotely (e.g. by closed circuit television).

**Removal of Prohibition Imposed following a Breach of Driver’s Hours**

A prohibition may expire automatically after a period of time dictated by the matrix of sanctions. Otherwise an authorised officer (not necessarily the same officer that issued the Prohibition) must remove the Prohibition.

Where an authorised officer is not readily available to attend and remove the Prohibition in person, provided such an officer is satisfied that compliance with the relevant legislation has been attained, the prohibition may be removed by any officer on the authorised officer’s behalf and the PG170 endorsed accordingly.

On removing a Prohibition, the Police National Computer must be checked and any reports relating to that Prohibition should be promptly deleted.

As it is the use of the vehicle which is Prohibited rather than a specific driver, it is incumbent upon the police to remove the Prohibition in a timely manner should the circumstances pertaining to the vehicle change – for example, upon the arrival of a replacement driver who is able to lawfully continue the journey of the vehicle (or its trailer).

Where the vehicle is taken away by another driver, should the person whose driving activity resulted in the Prohibition being imposed choose to depart in that or any other vehicle owned by their employer (even as passenger), they should be reminded that the time spent on such a journey cannot be counted as a rest period and a record of the ‘other work’ therefore performed during that time must be made. The intent of such a reminder is to warn the driver to take the rest required by law before recommencing driving.

7. Monitoring and Review

It is the responsibility of Operational Support to monitor and evaluate the impact and operation of this guidance.

The guidance will be reviewed every 3 years.

8. Appeals Process

If any member of staff feels that they have been adversely affected by the application of this guidance they should inform their Line Manager in the first instance.

Members of the public affected by the guidance may write to the Chief Constable. Should the matter not be resolved then they may resort to the Police Complaints Procedure.