

# **Consultation on Removal, Storage and Disposal of Vehicles Regulations**

## **Analysis of Responses**

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# EXECUTIVE SUMMARY

This report presents the findings of an analysis of written responses to the Scottish Government's consultation on the removal, storage and disposal of vehicles regulations. The consultation ran from 14<sup>th</sup> May 2018 until 6<sup>th</sup> August 2018.

## Background

The purpose of this consultation was to seek views on proposed changes to the relevant Scottish Government legislation: the Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.) Amendment (Scotland) Regulations 2005; and the Police (Retention and Disposal of Motor Vehicles) (Scotland) Regulations 2005.

At present, there are three separate statutory charges for the removal, storage and disposal of vehicles, two of which are set by the Scottish Government (with the third reserved to the UK Parliament). The charges set out by the Scottish Government date from 2005, and there is seen to be a need for them to be revised to take account of increased costs and inflation. Additionally, the current flat rate system is not seen to cover the range of potential scenarios for the removal, storage and disposal of vehicles.

The proposed changes are intended to put in place revised charges that would apply when the police or local authorities invoke their legislative powers to remove, store or dispose of vehicles.

A total of 34 written submissions were received to the consultation. The largest number was from individuals (32%), with just under a quarter (24%) from Vehicle Recovery Operators (VROs) and just under 1 in 7 (15%) from insurance companies. Responses were also received from local authorities (9%); vehicle recovery professional or trade bodies (9%); road haulage professional or trade bodies (6%); an insurance professional / trade body (3%); and the police (3%). The findings are summarised below.

## The overall approach (Questions 1-3)

**There was a clear balance of views in favour of having a number of different charges for different vehicle categories and / or incident scenarios, rather than one flat rate charge for all removals ordered by the police<sup>1</sup> (Question 1).**

Many respondents made comments on the perceived benefits of having different charges for different categories / incident scenarios (e.g. to allow fees to reflect different circumstances; provide clarity and transparency; and provide a fair system).

A further common theme was the perceived drawbacks of a flat rate (e.g. not reflecting the complexity or costs of different types of recovery). Comments were also made about factors upon which to base charges; and the overall nature of the system.

**Around a fifth of respondents overall provided views on what one flat rate charge should be based on (if there were to be one) and what it should be (Question 2).**

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<sup>1</sup> Where proportions are given in the question summaries, these relate to the proportion of respondents who addressed the question, unless otherwise stated.

A small number of respondents made suggestions about what a flat rate charge should be based on. These included: the matrix (although this was proposed as a replacement for a flat fee); and the cost for the removal and processing of a vehicle.

A small number made suggestions about what a flat rate should be, which included that it should: be larger than at present; include a mileage rate; and have prices for each element of recovery.

**A majority of respondents (61%) expressed the view that there should not be any types of police-ordered removal for which no charge should be prescribed (Question 3).**

A small number of respondents made comments about situations in which they believed no charge should be prescribed. These included: where it was in the public interest; where vehicles were seized or removed as a result of the driver having no licence or the vehicle no insurance; or where criminal activity had taken place. One stated that there should be no extra charge for equipment requirements covered by the matrix.

### **The matrix (Questions 4-5)**

**A majority of respondents (52%) indicated that they agreed with the current categories and scenarios in the Scottish Government's proposals (Question 4).**

Among the additional comments made, many were general comments about the nature of the matrix to be adopted (e.g. general support for the approach; cost and charging issues; definitional issues; the need for simplicity).

Another common theme was the identification of specific factors to be taken into account (e.g. the nature of the incident; involvement of specialists; type of vehicle involved; loads; location; and position). A small number of other comments were also made, mainly about the operation of the scheme.

**A majority of respondents (67%) indicated that they agreed with the approach of allowing for more to be charged for recovery of a vehicle that is not upright, or is "significantly damaged", and with the Scottish Government's definition of "significant damage" (Question 5).**

Many respondents made general comments about the approach and / or definition (e.g. support for this / reasons for agreement; the importance of the definition; difficulties in interpretation of the term or other problems; the nature of the issue of significant damage; and suggestions for the way forward).

Several respondents made specific suggestions about the definition, suggesting amendments or alternatives. A small number of other comments were made, including the perceived need for a clear definition of "off-road".

### **Charging issues (Questions 6-8)**

**Less than half of respondents overall made comments on the level or basis of the charges (whether or not they agreed with those suggested by the Scottish Government), although almost three quarters made some comments on related issues (Question 6).**

Many of the respondents to this question made comments on the overall nature of charges (e.g. general agreement with the system or principle of the matrix; general problems with the matrix; and suggested requirements or improvements) rather than the level or basis of these.

A number did, however, comment on the overall level of the charges (or particular aspects of these, such as storage charges; specific columns within the matrix; or their own suggested charges).

Several respondents also made comments on the basis of the charges (e.g. that these should be based on: all costs; the charges in England and Wales; the type of vehicle; and the complexity of the removal).

A small number of other comments were made about the operation of the scheme and one respondent provided detailed comments about a menu-type pricing example.

**A majority of respondents (64%) stated that there should be a charge for “all other cases” not identified in the scenarios (as opposed to no charge being prescribed) (Question 7).**

Many respondents made comments on the nature of the current list (e.g. the benefits of this; the need for an “all other cases” charge; and some potential problems with this).

Many also made comments on the nature of a charge for “all other cases” (e.g. the types of scenarios that might be covered; the basis of the charge; an approach based on a flat rate; or specific suggested levels of charge).

A further common theme was the identification of suggestions for the way forward (e.g. review of the matrix; consultation; use of digital images; and particular approaches to charging). A small number of other comments were made relating largely to instances in which respondents believed that no charge should be levied (see Question 3).

**Respondents’ views appeared to be mixed (where these could be identified) about whether the prescribed charges should take into account: the fees recovery operators pay to belong to management schemes; or charges that are not paid; or any special requirements made of operators by the police. Just over half believed they should not, while just under half identified factors to take into account (Question 8).**

Most of the respondents who did not believe that the charges should take account of some, or all of these factors made comments on problems with their inclusion (e.g. general opposition to charging for membership or the use of management companies; views of these arrangements as commercial or contractual issues; and opposition to the vehicle owner having to pay for the types of costs mentioned).

Those respondents who considered that some factors should be included in the charges identified the nature of these factors (including those mentioned in the question and a small number of other factors). A few respondents also made general comments on charges (e.g. their overall nature and the receipt of fees) or made other suggestions (e.g. relating to long term storage and clean-up costs).

## **Other issues for consideration (Questions 9-11)**

### **Just over half of respondents overall provided comments on unintended consequences of the Scottish Government's proposals, or other factors not currently taken into account (Question 9).**

Several respondents identified what they considered to be potential unintended consequences (e.g. contractor abuse of the system; a negative impact on service; "laden / "unladen" being open to interpretation; potential continuing judicial challenge; increased costs; and risk of a large number of unclaimed vehicles).

A further common theme was the identification of other factors perceived not to have been taken into account (e.g. management company issues; specific types of incident; types of vehicle; the impact of smart motorways; operator safety; issues relating to storage and disposal; retention of vehicles for civil cases; and poor training for police and Procurators Fiscal).

Several respondents also made general comments (e.g. the need for fast and competent local operators; general support for the proposed system; the importance of the "finer detail" and the perceived need for a joint approach with Traffic Scotland).

### **A majority of respondents (68%) expressed a preference for the regulation to be reviewed at specified times, such as every 3 or 5 years (rather than increased annually based on inflation) (Question 10).**

The largest number of comments related to reviewing the regulation at specified times (e.g. respondents' favoured timescales and reasons [with the most common being three years]; and the general benefits of review at specific times or on a regular basis).

Some comments were also made relating to increasing the prescribed charges annually, based on inflation (e.g. support for, or benefits of this approach; or suggestions about how to implement this).

### **A majority of respondents (52%) stated that there were factors the Scottish Government should take into account to reflect on the experiences of the matrix system that has been operating in England and Wales since 2008 (Question 11.)**

The factors identified included: definitional issues, and issues for clarity; cost issues; the need for review / update; overall benefits of the system in England and Wales; management issues; issues for specific vehicles; differences in Scotland; and a small number of other perceived issues and requirements. A small number of additional comments were made including the importance of learning from experiences in England and Wales and consulting those with relevant experience.

# 1. BACKGROUND AND CONTEXT

1.1. This report presents the findings of an analysis of responses to the Scottish Government's consultation on the Removal, Storage and Disposal of Vehicles Regulations.

1.2. The purpose of the consultation was to seek views on proposed changes to the Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.) Amendment (Scotland) Regulations 2005 and the Police (Retention and Disposal of Motor Vehicles) (Scotland) Regulations 2005. The proposed changes are intended to:

*“put in place revised charges that would apply when the police or local authorities invoke their legislative powers to remove, store or dispose of vehicles”.*

## Background

1.3. Section 99 of the Road Traffic Regulation Act 1984, and the Refuse Disposal (Amenity) Act 1978 give police the power to remove, store and dispose of vehicles in a number of scenarios, including where these are: stolen; causing an obstruction; illegally parked; untaxed or being driven without insurance; abandoned; or otherwise appear to be at the end of their life.

1.4. Removals can also be ordered where, for example, a vehicle is at risk of becoming a focus for crime, or a threat to the environment. Police may also remove vehicles to ensure public safety at large events (e.g. demonstrations, football matches etc.).

1.5. Vehicles may also be seized in relation to ongoing police investigations or for forensic examination, including where they may have been involved in a serious accident, or where the driver has been taken into police custody.

1.6. The police have separate powers under sections 126 and 127 of the Antisocial Behaviour etc. (Scotland) Act 2004 (“the 2004 Act”) to seize vehicles where these are being used as part of a pattern of anti-social behaviour.

1.7. Vehicles can also be forfeited on the basis of a court order granted as a result of Section 21 of the Proceeds of Crime (Scotland) Act 1995.

1.8. Section 165A of the Road Traffic Act (which is reserved) allows police to seize and retain vehicles where a driver has no licence or insurance.

1.9. In 2016, there were 24,327 recoveries carried out in Scotland, as set out below.

**Table 1. Recoveries carried out in Scotland 2016**

<b>Legislation</b>	<b>Number of annual recoveries</b>
The Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.) Amendment (Scotland) Regulations 2005 (1984 Act)	16,004
The Police (Retention and Disposal of Motor Vehicles) (Scotland) Regulations 2005 (2004 Act)	109
The Road Traffic Act 1988 (Retention and Disposal of Seized Motor Vehicles) (Amendment) Regulations 2008 (section 165A of the 1988 Act)	8,214

1.10. At present, there are three separate statutory charges for the removal, storage and disposal of vehicles, two of which are set by the Scottish Government (with the third reserved to the UK Parliament).

1.11. The Removal, Storage and Disposal of Vehicles (Prescribed Sums and Charges etc.) Amendment (Scotland) Regulations 2005 sets the charge for removal at £150; the charge for storage at £20 per day; and the charge for disposal at £150.

1.12. The Police (Retention and Disposal of Motor Vehicles) (Scotland) Regulations 2005 (relating to vehicles being used for anti-social behaviour) sets the fee for removal at £105; and the fee for storage at £12 per day.

1.13. Vehicles seized under the Road Traffic Act 1988 (reserved) are subject to a charging matrix (which applies in such cases in Scotland, as well as in England and Wales).

1.14. Although the power to remove, store and dispose of a vehicle rest with Police Scotland and local authorities, these are generally delivered through a Managing Agent and a network of contractors (vehicle recovery operators, or VROs) on the basis of an agreed Vehicle Recovery Scheme (VRS). There are currently some circumstances in which an owner can arrange for the recovery of their vehicle using their own agent, and the consultation does not seek to change this.

1.15. The Scottish Government charges were set out in 2005, and the Government is now of the view that these need to be revised to take account of increased costs and inflation. It is also considered that the current flat rate system (described above) does not cover the range of potential scenarios for the removal, storage and disposal of vehicles.

1.16. Proposals were brought forward in 2011 to make such changes, but these were subsequently withdrawn. The current consultation sought views of new proposals.

## The consultation

1.17. The consultation on these proposals ran from 14<sup>th</sup> May 2018 until 6<sup>th</sup> August 2018.

1.18. A consultation document<sup>2</sup> was issued, setting out that the Scottish Government's preferred option was for a matrix system, similar to that in use in England and Wales since 2008. The matrix system is already in use in Scotland in limited circumstances, as described at paras 1.8 and 1.13 above.

1.19. The consultation document also noted that the adoption of a matrix system in Scotland would harmonise all of the regulations and bring consistency for business owners operating across the UK. It suggested that such an approach would provide a more "case sensitive" approach to charging, and make removal operations viable without being punitive, or becoming an income generator for Police Scotland. It also suggested that the increased charges would help to ensure that recovery work was economic for VROs, thus maintaining a pool of contractors for Police Scotland.

1.20. The basis of the Scottish Government's preferred matrix system was set out at Annex E of the consultation document (and, for reference, is reproduced at Annex 4 of this report). It provides a table of proposed charges, depending on the position and condition of the vehicle, and its weight.

1.21. The consultation document expressly excluded consideration of the operation of powers by Police Scotland in ordering the removal of vehicles. It also expressly excluded consideration of the operation of the VRS and associated contracts. (As will be noted later, a number of respondents made comments about these matters, but these detailed comments have not been included in this report. They are, however, available separately to the Scottish Government.)

1.22. The consultation document explored views of:

- The preferred approach to charging (Qs1-2).
- Whether any circumstances should attract a zero charge for removal (Q3).
- The matrix approach (categories, scenarios and definitions) (Qs 4-5).
- Alternative bases for charging (Q6).
- How to manage scenarios which do not fit a proposed matrix category (Q7).
- Factors for consideration in setting the charges (Q8).
- Whether there may be unintended consequences of the proposed scheme (Q9).
- How to manage inflation and cost increases (Q10).
- Experiences from the operation of a matrix-based scheme in England and Wales (Q11).

1.23. Four of the questions (3, 4, 5 and 11) asked respondents to express their agreement or disagreement with an aspect of the proposals. Three questions (1, 7 and 10) asked respondents to express a preference between two options (although Q1 did not provide a tick box in the online Citizen Space consultation portal). All but one of the questions (Q3) provided an opportunity in Citizen Space for respondents to give detailed qualitative information. A full list of the questions is provided at Annex 1.

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<sup>2</sup> Scottish Government (2018). *Consultation on Removal, Storage and Disposal of Vehicles Regulations*. Edinburgh: Scottish Government, available at [https://consult.gov.scot/police-division/vehicles-charges/user\\_uploads/00535244.pdf](https://consult.gov.scot/police-division/vehicles-charges/user_uploads/00535244.pdf).

1.24. Responses could be submitted using the Citizen Space consultation portal, or via email. A response form was provided, on which respondents could record their answers, and they were also asked to complete a Respondent Information Form (RIF) giving their details.

## Submissions and respondents

1.25. A total of 37 responses were received, although 3 were subsequently withdrawn at the request of the respondents. A total of 34 responses were included in this analysis.

1.26. The types of respondent are set out in Table 2 (below). A full list of respondents is provided at Annex 2.

**Table 2. Respondents by category**

Category	No.	% <sup>3</sup>
Individual	11	32
Vehicle Recovery Operator	8	24
Insurance company	5	15
Local Authority	3	9
Vehicle recovery professional or trade body	3	9
Road haulage professional or trade body	2	6
Insurance professional or trade body	1	3
Police	1	3
	34	

1.27. As is clear from the table, the largest number of responses received was from individuals, with almost a third (32%) from this group. Just under a quarter (24%) were from VROs and just under 1 in 7 (15%) from insurance companies. Responses were also received from local authorities (9%); vehicle recovery professional or trade bodies (9%); road haulage professional or trade bodies (6%); an insurance professional / trade body (3%); and the police (3%).

1.28. Almost all of the respondents addressed the specific questions and followed the format of the response form, although not all addressed every question<sup>4</sup>. Seven respondents requested that their responses should be treated as confidential.

## Analysis of the data and presentation of the information

1.29. The analysis of the data involved a number of stages, which were:

- Design of an Excel spreadsheet to include the data for each question.
- Quantitative analysis (where appropriate).
- Preparation of a series of Word documents for the qualitative material, containing all responses to each question.
- Identification of the key themes and sub-themes for each question.
- Summary of the findings and preparation of this report.

<sup>3</sup> Percentages in tables in the report do not always sum to 100% due to rounding.

<sup>4</sup> The numbers who addressed each question are given in the presentation of findings at each individual question.

1.30. The presentation of the information involves some quantitative material, although most of the detail is qualitative. The quantitative information includes:

- The number of respondents overall, and the number / proportions of different types of respondents (Table 2 above).
- The proportion of respondents who answered each question.
- The views expressed at the “yes/no” or closed questions.

1.31. In the case of Question 1, although a tick box was not provided, most respondents expressed a clear “yes” or “no” view, and this information has also been provided quantitatively, although the way in which it was derived (requiring some judgement) should be borne in mind.

1.32. The additional comments made at each question (e.g. where respondents were asked to give reasons for their answer, or to provide more general views) also provided a large amount of additional qualitative detail. From this, it was possible to identify the balance of views, common themes and patterns.

1.33. The qualitative material is presented using qualitative terms (e.g. “a small number”; “a few”; “several”; “many”; “most” etc.) to describe the overall themes and the range and depth of views provided.

1.34. It would be inappropriate to attempt to quantify this qualitative material further, for a number of reasons, including that:

- Some points were made at more than one question, and these have been included at the most relevant question.
- Some points relating to a particular question were made at another question instead (e.g. some points addressing Question 1 were actually made at Question 2). These have been included with the question to which they most closely relate.
- Some responses represented the views of a number of individuals or organisations.
- The focus of the qualitative analysis was on the range and nature of views, rather than a “weighing” of responses.
- The respondents were self-selecting. As such, it is not possible to generalise from the findings.

1.35. It should also be noted that the report cannot provide a compendium of the consultation material, nor can it present every individual point made, as there was a large volume of detailed information. It does, however, summarise the themes and issues raised, even where these involved small numbers of respondents. The full text of the responses can be viewed on the Scottish Government website<sup>5</sup>.

1.36. The wording used to present the qualitative material sometimes follows the wording of a response closely, in order that the message is represented accurately (although it is not presented as a full “quote”). Direct quotations of detailed individual responses are not used in the report, as this might imply that the views of one respondent carried more weight than another.

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<sup>5</sup> [https://consult.gov.scot/police-division/vehicles-charges/consultation/published\\_select\\_respondent](https://consult.gov.scot/police-division/vehicles-charges/consultation/published_select_respondent)

1.37. The patterns of overall views by type of respondent have also been identified as far as possible, but it should be borne in mind that some of the categories contained very few respondents. This makes it difficult to generalise from these findings, in terms of the views of particular types of respondent. Additionally, for that reason, the report does not list the types of respondent identifying each individual theme.

1.38. The remainder of the report presents the findings of the consultation analysis, as follows.

- Section 2: The overall approach (Qs 1-3).
- Section 3: The matrix (Qs 4-5).
- Section 4: Charging issues (Qs 6-8).
- Section 4: Other factors for consideration (Qs 9-11).

## 2. THE OVERALL APPROACH

2.1. This section presents the findings relating to Questions 1-3, covering the overall approach to charging set out in the consultation document.

### Question 1

2.2. Question 1 asked:

*Do you consider there should, as at present, be one flat rate charge for all removals ordered by the police or that there should be a number of different charges for different vehicle categories/incident scenarios?*

### Responses

2.3. Almost all of the respondents (94%) addressed Question 1. A total of 29 respondents did so at Question 1, while a further 3 respondents gave a clear response to Question 1 in addressing Question 2. Only 2 (6%) did not address Question 1.

2.4. Among those who addressed Question 1, most expressed a preference for one or other of the options (even though a tick box was not provided).

### Overall views

2.5. There was a clear balance of views in favour of having a number of different charges for different vehicle categories and / or incident scenarios.

2.6. Among those who addressed the question<sup>6</sup>:

- 24 (75%) expressed the view that there should be a number of different charges.
- 2 (6%) suggested that there should be a flat rate<sup>7</sup>.
- 6 (19%) did not express a clear preference for one or other option.

2.7. By type of respondent<sup>8</sup>, a majority of respondents in almost all of the categories expressed a clear view that there should be a number of different charges (with the exception of the road haulage professional or trade bodies, where one did not express a clear view and the other did not address this question).

2.8. Among those who expressed the view that there should be a number of different charges, respondents described their preferred system in a number of ways, including that there should be:

- Different charges / rates (the most common terminology).
- A scale.
- A matrix.
- A scenario system.

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<sup>6</sup> Where percentages are given of overall views at each question, these are, throughout the report, the percentages of those respondents who addressed the particular question.

<sup>7</sup> It should be noted, however, that both of the respondents who stated explicitly in Question 1 that they preferred a flat rate, endorsed the Scottish Government's proposed matrix approach later in their responses.

<sup>8</sup> Where percentages are given of types of respondent expressing a particular view, or addressing a particular issue, these are, throughout the report, the percentages of all respondents in that category.

2.9. Of the two respondents who expressed a preference for a flat rate, one made an additional suggestion that this should be supplemented by a mileage rate (a suggestion also made by one respondent who did not express a clear overall preference).

2.10. Among the six respondents who did not express a clear preference for one or other of the options:

- Two mentioned problems with both a flat rate and different charges.
- Two simply stated “no” in response to the question.
- One mentioned problems with a flat rate, but made no comment on different charges.
- One gave a number of different options, including having one flat rate and different charges for different types of vehicles.

2.11. Many respondents made additional qualitative comments, and a number of themes emerged:

- The benefits of having different charges or the drawbacks of having a flat rate (the most common themes).
- The basis of different charges.
- The nature of the system.
- The consultation itself.

2.12. Further details of the comments are provided below.

### **The benefits of having different charges**

2.13. Many respondents commented on perceived benefits of having different charges.

2.14. The most common benefit identified was that this approach would allow for fees to vary to reflect different circumstances (e.g. the size, type, weight and position of the vehicle to be removed). A few suggested that it would also reflect the varying levels of complexity, and one respondent stated that it would allow vehicles to be treated on their own merits.

2.15. Other comments included that such an approach would bring clarity, consistency and transparency, and a few respondents stated that it would be fairer or more effective.

2.16. Other perceived benefits of having different charges, mentioned by a small number of respondents, were that this would:

- Make commercial sense and allow appropriate costs to be recovered.
- Aid the procurement process, where the removal was to be subcontracted out.
- Allow insurers to challenge the decisions of police to deem vehicles “unroadworthy”.

2.17. Only two respondents mentioned perceived drawbacks of having different charges. One stated that the approach was not appropriate in practice, while another suggested that the category and scenario system would not cover all of the different types of recovery encountered.

## **The drawbacks of having a flat rate**

2.18. A further common theme was the identification of drawbacks of a flat rate approach. The problem suggested most frequently was that a flat rate would not reflect the different circumstances, types of recovery, complexity and levels of cost involved.

2.19. A small number of respondents mentioned specific cost issues. It was suggested, for example, that a flat rate charge would not cover all costs, and one respondent questioned how shortfalls would be met. Another suggested that the level of a flat rate charge would have to be “unnaturally” high to cover the potential variations in cost. One respondent also stated that VROs would not be fairly compensated for the more complex recovery operations.

2.20. One respondent stated that the flat rate charged at present can be supplemented by legitimate additional fees, but that these are open to challenge, with the risk of reputational damage to the police. They also noted that different recovery operators charge different rates for equipment, staff and time taken.

2.21. Only two respondents identified perceived benefits of a flat rate approach. These were that this would provide clarity, consistency and ease of administration, while being less open to challenge, and reducing the opportunity for abuse.

## **The basis of different charges**

2.22. Several respondents provided examples of what they considered should be the basis on which the different charges for different vehicle categories / incident scenarios could be set, or the factors which the charges should reflect.

2.23. A number of factors were identified (by small numbers of respondents in each case), which included:

- The size / weight of the vehicle.
- The location of the vehicle (e.g. on- or off-road, or the geographic location).
- The nature of the vehicle (e.g. motorcycle, car, small or large commercial vehicle).
- The nature of ownership (e.g. private or commercial).
- The nature of the incident (e.g. whether or not it involved: criminal action; the removal of spilt loads; the presence of dangerous goods etc.).
- The nature of the damage sustained.
- The need for specialist or specific equipment to effect removal.
- Workflow.
- The number of staff needed.

## **The nature of the system**

2.24. Several respondents also made suggestions relating to the overall nature of a system of charges. Comments (by a small number of respondents in each case) included that it should be:

- Cost neutral.
- Well-researched.
- Transparent, and clear.
- Fair and equitable.
- Effectively managed.
- Used by all public sector organisations.

2.25. It was also suggested that it should:

- Supersede all previous legislation and charging frameworks for the removal, storage and disposal of vehicles.
- Have a standardised process for outsourcing.
- Include a standards framework for contractors, with a breach of this leading to their removal from the framework.

## The consultation

2.26. In addition to these themes, a small number of respondents made comments relating to aspects of the actual consultation. One stated, for example, that the consultation document showed a Scottish Government predisposition towards a “category/scenario” type of model. Two others stated that Question 1 was effectively a two-part question.

## Question 2

2.27. Question 2 asked:

*If you believe there should be one flat rate charge, on what do you think that should be based and what do you think it should be?*

## Responses

2.28. Around four fifths of respondents (79%) provided an answer to this question.

2.29. More than three quarters of these, however either: reiterated that they did not agree with a flat rate; identified further problems with a flat rate; or simply stated that this question was “not applicable”. In addition, three respondents provided their answers to Question 1 here (which were included in the analysis of Question 1 - see above).

2.30. Just over a quarter of respondents to Question 2 (26%), and around a fifth of respondents overall made substantive comments on this question. This included the two respondents who stated at Question 1 that they favoured a flat rate, along with three who favoured different charges and two who did not express a clear preference at Question 1.

2.31. By type, those who made comments included: 4 individuals; 2 VROs; and the police respondent.

2.32. Most of these comments related to the two parts of the question and focused on either (or both) of:

- What a flat rate should be based on.
- What they thought it should be.

2.33. Only one respondent made comments on any other issue.

2.34. Further details of the comments are provided below.

## What a flat rate charge should be based on

2.35. A small number of respondents provided views about what a flat rate charge should be based on.

2.36. Two suggested that this should be based on the matrix proposed at Appendix E in the consultation document (although, as described in Question 1, the Scottish Government was proposing the matrix approach as a *replacement* for the flat fee approach)<sup>9</sup>.

2.37. The remaining respondents (while not in favour of a flat fee approach) suggested that it would need to be based on the cost for the removal and processing of a vehicle, with one also stating that it would have to be calculated to cover all recoveries.

## What a flat rate charge should be

2.38. A small number of respondents (with mixed views of whether or not a flat rate was the preferred option) made comments about what a flat rate charge should be.

2.39. While none provided a specific figure, suggestions included that it should:

- Be larger than at present.
- Include a mileage rate.
- Have specific prices for each element of a recovery.

## Other comments

2.40. The only other issue raised at Question 2 was by one respondent who suggested that recovered vehicles should be offered to a local recycling plant or breaker / dismantler for free and should not be allowed back on the road.

## Question 3

2.41. Question 3 asked:

*Vehicles removed on police instructions must be released to their owner on payment of any prescribed charge. If no charge is prescribed, they must be released on demand free of charge. Do you think there are any types of police ordered removal for which no charge should be prescribed?*

## Responses

2.42. Almost all respondents (31, or 91%) addressed this question. Only 3 respondents (9%) did not address the question.

## Overall views

2.43. A majority of those who addressed this question (61%) stated “no”, indicating that they did not believe that there were any types of police ordered removal for which no charge should be prescribed. The remainder (39%) stated “yes”.

2.44. By type of respondent, all of the vehicle recovery professional or trade bodies, and the majority of VROs, individuals and local authorities stated “no”, while views amongst

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<sup>9</sup> For reference, this is reproduced at Annex 5 of this report.

insurance companies were more mixed. The insurance professional / trade body and the police respondent were both among those who stated “yes”.

2.45. Respondents’ overall views are summarised in the table below:

**Table 3. Responses to Q3**

*Do you think there are any types of police ordered removal for which no charge should be prescribed?*

<b>Response</b>	<b>Number</b>	<b>%</b>
Yes	12	39
No	19	61
	31	

2.46. No space was provided for respondents to provide further qualitative details of their views, although a very small number of respondents made specific comments on this at other points in their responses.

2.47. Further details of the comments are provided below.

### **Other comments**

2.48. Among the other comments, one respondent suggested that no charge should be prescribed where: a vehicle was hit by an uninsured driver; the victim was taken to the hospital unconscious; and it was in the public interest to provide the service free of charge. The respondent stated that this should be a public service and expressed the view that the default position should be to charge in all circumstances, unless such a veto of charges would serve the public interest.

2.49. Another respondent stated that no charge should be prescribed where vehicles were seized or removed as a result of the driver having no licence or the vehicle having no insurance, in order to protect other road users. This respondent suggested that the support given to the police by the recovery operator formed part of their general agreement with the police, and a VRO should be able to recover expenses from the disposal proceeds of the vehicle (where crushed); or from fines paid by the owner for driving without a licence.

2.50. A further respondent stated that Police Scotland should wave any removal costs in situations where criminal activity had taken place involving the keeper’s vehicle (e.g. where a vehicle had been reported stolen). They also expressed the view that the need to examine the vehicle for evidence associated to the crime was a police matter, and any unavoidable upfront cost to the vehicle keeper could be recouped via the motorist’s insurer.

2.51. Another suggestion made by one respondent was that, as the potential requirement for additional equipment for recoveries with significant damage was reflected in the higher matrix rate, they would expect current practices of attempting to render extra charges for specialist equipment to cease.

## 3. THE MATRIX

3.1. This section presents the findings relating to Questions 4 and 5, covering issues relating to the matrix as set out in the consultation document.

### Question 4

3.2. Question 4 asked:

*Under the Scottish Government’s proposals, as set out in ANNEX E, the regulations would prescribe different charges for different vehicle categories and incident scenarios. Do you agree with the current categories and scenarios? If not, what factors do you think should be taken into account in deciding those scenarios (e.g., type of vehicle to be removed, vehicle condition, vehicle position including whether or not upright, geographical location, nature and state of any load)?*

### Responses

3.3. Almost all of the respondents addressed this question (33, or 97%), and only one did not. Of these, most (28) answered the closed part of the question (“yes” or “no”), while 5 did not express a clear view<sup>10</sup>.

### Overall views

3.4. Overall, a majority of respondents stated “yes”, indicating that they agreed with the current categories and scenarios. Around a third stated “no”.

3.5. Respondents’ overall views of the “yes/no” element of the question are summarised in the table below:

**Table 4. Responses to Q4**

*Do you agree with the current categories and scenarios?*

<b>Response</b>	<b>Number</b>	<b>%</b>
Yes	17	52
No	11	33
Did not express a clear “yes” or “no” view	5	15
	33	

3.6. Of those who did not express a clear view, four did not address the closed part of the question, while one gave an ambiguous and apparently contradictory response, expressing different views in their “tick box” answer and their detailed comments.

3.7. By type of respondent, a majority of local authority and vehicle recovery professional or trade bodies, as well as the insurance professional or trade body and the police, answered “yes” to this question. Views were mixed among individuals and VROs. Among the insurance companies, just under half stated “yes”, and only one stated “no”, but just under half expressed no clear “yes” or “no” view. One of the road haulage professional or

<sup>10</sup> One respondent stated “yes” at part 1, but wrote “I do not agree with the proposed list of categories and scenarios” at part 2. For the purposes of the analysis, this has been categorised as “no clear view” in terms of part 1 of this question.

trade bodies did not express clear agreement or disagreement (and one did not address this question).

3.8. Most respondents provided additional comments at part 2 of the question, which asked them to identify factors that should be taken into account in deciding the scenarios. Those providing such comments included not only those who expressed disagreement with the current categories and scenarios in the closed part of the question, but also some who expressed agreement, and some who did not express a clear view.

3.9. Two main themes were identified in the detailed comments, and these focused on:

- The general nature of the matrix.
- Specific factors the Scottish Government should take into account in deciding scenarios.

3.10. A few respondents made other comments, relating mainly to the actual operation of the scheme.

3.11. Further details of the comments are provided below.

### **The nature of the matrix**

3.12. Around three quarters of those who provided additional views made additional general comments on the nature of the matrix to be adopted.

3.13. Among these, some reiterated their overall agreement with the proposed scenarios or the matrix approach overall. Comments included, for example, that: the approach in England and Wales had been proven to work; and that the matrix appeared to cover most scenarios.

3.14. Some respondents, however, identified cost issues with the matrix. It was suggested, for example, that the matrix did not reflect the actual costs of recovery and disposal, nor did it reflect all types of recoveries or scenarios. One respondent also suggested that it did not reflect the impact of inflation since 2005.

3.15. One respondent stated that there could be charging anomalies, where vehicles which could be recovered in the same manner may be charged at different rates. The same respondent reported the view that recoveries which were not done through the police and recovery scheme could be as much as 50% of the matrix set prices.

3.16. Suggestions were also made about the need for the matrix to reflect costs relating to, for example: the actual cost and difficulty of the recovery; the number of visits which may be required for abandoned vehicles; the difficulties faced in tracing registered keepers; and exceptional circumstances. A few respondents suggested that, in the case of the latter, it should be possible to negotiate additional charges. A few mentioned that the charges should be subject to periodic review (an issue explored specifically in Question 7).

3.17. A few respondents identified definitional issues in the matrix for clarification, relating particularly to: the nature of “significant” damage (an issue explored specifically in Question 5); and the need to define “on/off-road” (given the variety of different potential scenarios encompassed by this). One respondent suggested that further discussion with insurers and VROs could help to finalise adequate and workable definitions.

3.18. A small number of respondents commented on the overall need for the categories to be simple, and the charges easy to administer. One suggested that the matrix, as presented at Annex E, was too complex.

3.19. A few respondents submitted their own draft matrices for consideration (one also submitted an outline menu-based schedule). Although these will not be described here, they are available to the Scottish Government.

### **Specific factors to be taken into account**

3.20. The other very common theme at Question 4 was the identification of specific factors which respondents believed the Scottish Government should take into account in deciding the scenarios. Comments were made on this by most respondents who provided additional views.

3.21. The most common factors identified related to the nature of the incident, and, within this, the largest number of comments focused on fatalities.

3.22. Respondents expressed mixed views of whether fatalities should be taken into account in developing scenarios. A few (all of which were insurance industry respondents) stated that charges should not differ simply because there had been a fatality, as, in some of these situations, a simple recovery may be required.

3.23. A few respondents, however (including two of those mentioned in para 3.22 above), suggested factors relating to fatalities which they believed *should* be taken into account, or situations in which fatalities could warrant additional consideration. These included where:

- VROs had to spend additional time at the scene.
- Police requested a specialised uplift.
- There was an increased cost for processing evidence.

3.24. A few other types of incident were identified (by a small number of respondents in each case) which it was suggested should be taken into account. These included:

- Vehicles which had caught fire or burned out.
- Multi-vehicle collisions.
- Stolen vehicles (the removal of which, it was suggested, may be complex for various reasons, and may require additional time or labour).

3.25. A few respondents also suggested that account should be taken of the involvement of other specialists, such as:

- The Health and Safety Executive (HSE).
- Divers.
- Scenes of Crime Officers (SOCOs).

3.26. A further factor which several respondents identified as requiring to be taken into account in deciding the scenarios related to the type of vehicle involved.

3.27. Within this, a few mentioned two-wheeled vehicles specifically, and comments included that:

- Large / heavy two-wheeled vehicles (such as motorcycles) which are off-road require at least two staff and specialist equipment to recover, and there should be two rates in this category.
- Having a two-wheeled vehicle with reduced charges does not allow for two-wheeled caravans and trailers, and the complexity and cost of these.
- Caravans and trailers should be included in some form in the matrix.

3.28. One respondent made comments relating to the 3.5-7.5 tonnes category, including that:

- The proposed rate for 7.5 tonne vehicles was too low to cover the real cost of removal, particularly where the vehicle may be fully laden.
- All of the 7.5 tonne rates were low and should be increased significantly to match the work and equipment used.
- Vehicles over 2.5 tonnes should be included with the 7.5 tonne vehicles, as they require the same recovery equipment.

3.29. One individual respondent stated that there should be an increased cost for commercial vehicles.

3.30. A further factor identified by several respondents was a perceived need to take account of issues relating to loads, including the state and nature of these.

3.31. Among the suggestions were that there was a particular need to consider:

- Hazardous or dangerous loads.
- Livestock.
- Perishable loads, or goods for consumption (with both milk and beef mentioned as examples).

3.32. A number of respondents mentioned the removal and disposal of spilled goods. Two suggested that this should be separate to the statutory charge, and should be carried out at commercial rates, while a few others suggested that this should be reflected in deciding the scenarios.

3.33. One respondent expressed the view that “loaded” did not only mean fully loaded, but also covered part-loads or the presence of containers not normally in a vehicle.

3.34. Several respondents commented on factors to be taken into account relating to location issues, although differing views were expressed about whether geographical location was a relevant consideration. Two respondents, for example, stated that it was not (with, in one case, the exception being removals from off-shore islands). Others, however, expressed the view that it should be taken into account, with specific factors identified including:

- The distance travelled by a VRO.
- Ferry charges.
- Rural and island situations.
- Agricultural / forestry land.

3.35. A few respondents expressed the view that the actual position of the vehicle should be taken into account, with examples being:

- Vehicles submerged in water, where this was above car seat level and divers were required.
- Vehicles off-road by a considerable distance.

3.36. Two insurance industry respondents, however, stated that the use of the term “off-road” could be problematic, as many vehicles were simply at the side of the road to allow traffic to flow<sup>11</sup>. They suggested that, in such cases, there was no impediment to a simple recovery, and the position should not merit additional charging.

## Other comments

3.37. A small number of other comments were made by respondents to Question 4, most of which related to the operation of the scheme.

3.38. It was suggested, by one respondent in each case, that:

- Where the police ordered a removal with no charge, the VRO should be able to recover their expenses from the disposal proceeds (where crushed) or from fines paid by the owner.
- The regulations should extend to vehicles seized under PACE.
- Time limits should be set for release before a vehicle is crushed.
- Where an owner had no license, the vehicle should only be taken by / released to someone with a driving license and valid insurance certificate for the vehicle on hold.
- Where a driver was unknown, warning letters could be sent to the last registered keeper.

3.39. One respondent suggested that rates should be set on advice from the recovery sector, based on evidence for each scenario within the matrix. It was suggested that this would set fair rates for all road users. They also made comments on management fees (discussed at Question 7).

3.40. One respondent made comments on Question 3, which were included in that analysis.

## Question 5

3.41. Question 5 asked:

*The Scottish Government’s proposals, as set out in ANNEX E, include allowing for more to be charged for a recovery of a vehicle that is not upright or is “significantly damaged”. Do you agree with this approach, and with the Scottish Government’s definition of “significant damage”? If not, what alternative approach would you suggest?*

## Responses

3.42. Almost all of the respondents addressed this question (33, or 97%). Only one respondent did not. Of these, most (26) expressed a clear “yes” or “no” view, while 7 did not.

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<sup>11</sup> One submitted two photographs with their response to illustrate this.

## Overall views

3.43. Overall, a majority of respondents (67%) either stated or indicated “yes”, suggesting that they agreed with the approach, and with the Scottish Government’s definition of “significant damage”, while only 4 respondents (12%) either stated or indicated “no”.

3.44. Respondents’ views of the “yes/no” element of the question are summarised in the table below:

**Table 5. Responses to Q5**

*Do you agree with this approach, and with the Scottish Government’s definition of “significant damage”?*

<b>Response</b>	<b>Number</b>	<b>%</b>
Yes	22	67
No	4	12
Did not express a clear “yes” or “no” view	7	21
	33	

3.45. Among those whose overall view was unclear, two respondents did not state either “yes” or “no”. A further five were included in this category, however, because although they ticked “yes”, they either stated “no” in relation specifically to the definition, or they expressed concerns about the definition which suggested they were not fully supportive of this. (It should be noted, however, that, if they were included in the “yes” category, this would rise to 82% of those who addressed the question.)

3.46. By type of respondent, all, or at least around two thirds of the following categories of respondents answered “yes” and expressed agreement with the approach and definition: individuals; VROs; local authorities; vehicle recovery professional or trade bodies; and police. Views were less clear among respondents from the insurance industry, where some (along with a small number of respondents from other categories) either did not tick “yes” or “no” or raised issues with aspects of the definition.

3.47. Most respondents provided additional comments at part 2 of this question, which asked them to identify an alternative if they did not agree with the approach or definition.

3.48. Two main themes were identified on which comments were made, and these were:

- General comments about the approach and definition.
- Specific suggestions about the definition.

3.49. A small number of respondents also made other comments.

3.50. Further details of the comments are provided below.

## General comments about the approach and definition

3.51. Many respondents made general comments about the approach and / or definition. Among these, the most common related to respondents reaffirming their support for these, or providing reasons for their agreement with them. Comments included that:

- The approach was preferable to a “menu” system.

- Vehicles that had suffered significant or substantial damage and / or those that were not upright would be more difficult to recover, and may need specialist equipment, thus warranting a higher charge.
- There may be storage implications, where police needed more time for forensic investigation, using an operator's business facilities.
- The definition was reasonable and fair.

3.52. One respondent also mentioned a need, in expressing their agreement with the proposal in principle, to take account of the factors highlighted at Question 4 above.

3.53. Some respondents, however, made comments relating to general problems or issues with the definition of "significant damage". Two mentioned the importance of an agreed definition in creating a stable and consistent charging regime which would allow recovery operators to be fairly compensated, based on the work they had completed.

3.54. Two highlighted difficulties in the interpretation of "significant damage", particularly where there were differences of view about what constituted this, and whether or not a vehicle was "significantly damaged". Another respondent stated that, in their view, "significant damage" was an issue which constantly brought problems.

3.55. One respondent suggested that the given definition suggested that generally there would be no need for additional time or resources. They expressed the view that this was not the case, as any vehicle with damage would require additional time and resources. They also stated that the pricing system would need to reflect this.

3.56. A few respondents made other comments about the nature of the issue. One, for example, stressed the impact of damage incurred, stating that this determined the deployment of equipment and resources. They stated that, the better the system, the faster the recovery.

3.57. Another suggested that, in their view, there was no reason why a vehicle owner should not be charged the going commercial recovery rate.

3.58. A further respondent stated that while for them, the definition was clear, the contractor (who would normally decide whether to invoke higher charges), would have a financial incentive to do so.

3.59. Several respondents (mostly from the insurance industry, but also including a VRO and a road haulage professional or trade body) also made general suggestions for the way forward, which included a perceived need for:

- Clear guidelines on the description(s).
- A photographic record of the scene.
- An arbitration or dispute resolution process.
- Clarity on how vehicle owners can contest charges based on a vehicle being assessed as having "significant damage".
- Clarity on who would make the determination (with one respondent stating that they would be uncomfortable for this to rest with the operator who rendered the charge).
- Further discussion with insurers and operators to finalise adequate and workable definitions.

3.60. One respondent stated that they disagreed with the inclusion of “significant damage” as a factor, citing instances where a vehicle may have been damaged by actions of others who were not the keeper, but where they would still face an increased charge. The respondent also suggested that the approach was overly complicated.

### **Specific suggestions about the definition**

3.61. Several respondents made specific suggestions about the definition, suggesting amendments or alternatives.

3.62. A few respondents expressed views about the potential to base this on whether or not a vehicle could be driven. Suggestions included:

- If a vehicle could not be legally driven under its own power.
- Whether a vehicle would steer or roll.
- If, in the reasonable opinion of a constable, a vehicle could not be driven safely on the road.

3.63. One respondent stated that the damage categories for insurance purposes could be adapted as a cross-platform standard and applied to the new system, or something similar which could indicate the vehicle’s drivability could be used. They also suggested that this could apply to any trailer.

3.64. One respondent, however, stated specifically that they disagreed with the approach suggested at the third bullet at 3.62 above, and proposed a definition more clearly linked to the vehicle’s actual situation and the work involved in removing it from the scene.

3.65. Two respondents suggested that the current definition referred to vehicles being unable to free wheel, stating that this did not always impede a simple recovery. It was also suggested that the definition should describe scenarios that were clearly connected to the vehicle’s actual condition and would lead to longer, more complex and more costly recovery operations; and that the effect that any damage had on complicating the recovery should be given more prominence in the definition.

### **Other comments**

3.66. Some respondents made a small number of other comments.

3.67. A few, for example, suggested a need to define “off-road” clearly, or identified problems with this. Comments included views that:

- There could be different interpretations of off-road which could lead to charging discrepancies and higher charges.
- Off-road should reflect the actual difficulty and cost of the recovery.

3.68. Two respondents made specific suggestions about when a vehicle should be classed as “off-road”, which were, for example, in cases where:

- Most wheels were off the hard surface.
- An incident vehicle was three quarters or more off the road.

3.69. One respondent made comments relating to Question 3 which were included in the analysis at that point (beginning at Para 2.48).

## 4. CHARGING ISSUES

4.1. This section presents the findings relating to Questions 6-8, covering charging issues as set out in the consultation document.

### Question 6

4.2. Question 6 asked:

*If you do not agree with the charges suggested by the Scottish Government, what charges would you suggest and on what would you base these?*

### Responses

4.3. A total of 24 respondents (71%) addressed this question, with 23 of them using the response form to do so, and one providing comments by letter. A total of 10 respondents (29%) did not address Question 6.

### Overall views

4.4. This question invited those who did not agree with the charges suggested by the Scottish Government to suggest the level and basis of alternative charges. It was clear from the responses, however, that many of those who addressed this question did, in fact agree with the proposed charges, and used Question 6 either to record this, or to provide more general comments.

4.5. Overall, just under two thirds of the respondents to Question 6, and less than half of the respondents overall, made comments on the level or basis of charges (the issues explored in the question).

4.6. By type, this included most, or all of the: road haulage professional or trade bodies; vehicle recovery professional or trade bodies; and insurance companies. Just under half of the individual respondents, along with a small number of others also made comments on these issues.

4.7. From the qualitative information, three main themes were identified on which comments were made:

- The overall nature of the charges.
- The level of charges.
- The basis of charges.

4.8. A small number of respondents also made other comments.

4.9. Further details of the comments are provided below.

### The overall nature of the charges

4.10. Many respondents to Question 6, as noted, commented on the overall nature of the charges, rather than (or in addition to) the level or basis of these.

4.11. Among these, the highest number of respondents expressed their general agreement with the system, or the principle of the matrix (in one case, subject to the proviso of a review every three years). One expressed the view that the proposed charges were an improvement on the matrix used in England and Wales.

4.12. A small number of respondents identified general problems with the matrix charges. One, for example, expressed the view that the proposed matrix failed to take in to consideration variations in the industry. Another stated that the freight industry looked “with some suspicion” at the level of fee proposed for larger goods vehicles as a grossed-up figure. The respondent stated that they would challenge the Government to prove the need for what they termed “highly inflated charges” on commercial vehicles, suggesting that otherwise the industry would consider their statutory recovery fee to be unfair, compared to car drivers in the same position.

4.13. In terms of suggested requirements or improvements to the matrix, one respondent simply stated that there were a number of improvements which could be made, while more specific suggestions (by a small number of respondents) included that a charging approach should be:

- Simple.
- Fair to the vehicle operator as well as the VRO.
- Aligned across the UK.
- Linked to insurance pay-out levels.

4.14. One respondent suggested that there should be more categories and scenarios, with a clear explanation in plain English.

### **The level of the charges**

4.15. A number of respondents did, however, make comments relating to the level of charges.

4.16. Several made general comments on the overall level of the proposed charges. A small number suggested that these were too high (either when compared, for example, to: current or previous Scottish charges; fee arrangements; or the charges in England and Wales [even when taking account of inflation]).

4.17. One suggested that the disposal charge for motor vehicles did not reflect the true market cost, and another that scrap prices were no longer sufficient to cover the actual cost of recovery, and they could leave the VRO out of pocket.

4.18. A small number of respondents made comments on storage charges. One respondent stated, for example, that there did not appear to be storage charges listed in Annex E<sup>12</sup> but that those in Annex D seemed adequate. Another respondent also expressed the view that there was no justification for the increased storage charges proposed, and they stated that these should mirror the figures adopted by England and Wales). A third respondent stated that storage charges were extremely high, and they could lead to debt and the potential for corruption and fraud.

4.19. Two respondents made comments on specific columns in the matrix.

4.20. Two respondents commented on column 2<sup>13</sup>. One expressed agreement with these charges. Another suggested that, if a vehicle was off-road and not significantly damaged, it

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<sup>12</sup> Note: Storage charges were set out on p23 of the consultation document at Annex E.

<sup>13</sup> Column 2 refers to “Vehicle[s] equal to or less than 3.5 tonnes MAM”, and column 3 to “Vehicle[s] exceeding 3.5 tonnes MAM and equal to or less than 7.5 tonnes MAM”.

could still require a specialist to remove it, and a charge of £380 would better reflect this (the same as where a vehicle was significantly damaged and off-road).

4.21. One respondent commented on column 3<sup>14</sup>, to express their agreement with these charges. The same respondent commented on columns 4 and 5<sup>15</sup>, suggesting that, in their view, the costs set out in these columns seemed “light” (although they stated that they were unable to give comparative costs).

4.22. Four respondents either provided detailed charging suggestions, or they indicated that they would provide further information to the Scottish Government. These are available to the Scottish Government, and they will not be described in detail here.

### **The basis of the charges**

4.23. Several respondents to this question also made comments on the basis of the charges.

4.24. Among these suggestions (made by small numbers of respondents in each case) were that the charges should be based on, or reflect:

- All costs.
- The charges in England and Wales (with one respondent stating that they accepted there would have been some inflationary effect; another stating that inflation costs should be demonstrated rather than assumed; and a further respondent suggesting that they could not see any justification for the Scottish Government to propose charges higher than those in England and Wales).
- The type of vehicle (with the respondent suggesting a typology).
- The complexity of the removal in relation to the level of damage to a vehicle and its situation on/off-road (with additional charges for specialist equipment, or additional time or labour).

4.25. Further comments (by one respondent in each case) included that:

- The rate must be linked to the Freight Transport Association (FTA) haulage rate index or Retail Price Index (RPI), with the respondent noting that the agreed annual inflation-linked review had not happened in England and Wales.
- The charges should not be based on a variety of weights as, in the view of the respondent, it may be impossible to find out the correct weight of, for example, a caravan.
- The storage charge should reflect the cost of renting and maintaining the land in terms of the amount of space and the cost per square metre.

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<sup>14</sup> The matrix is reproduced in Annex 4 of this document for reference.

<sup>15</sup> Column 4 refers to “Vehicle[s] exceeding 7.5 tonnes MAM and equal to or less than 18 tonnes MAM, and column 5 to “Vehicle[s] exceeding 18 tonnes MAM”.

## Other comments

4.26. A small number of respondents made other comments.

4.27. Two made comments on the operation of the scheme. One, for example, suggested that the disposal of a vehicle should be part of a separate contract with an authorised waste management company, vehicle breaker or scrap dealer and should not be left to the VRO.

4.28. Another suggested that commercial vehicle operators should be permitted to use their own agents to recover vehicles, as long as they could do it within reasonable time. They also suggested that statutory recovery should only be used as a last resort.

4.29. The same respondent stated that, while VROs should be entitled to a “fair” set of fees, the scheme must also be fairly administered for the vehicle recovery operators.

4.30. A further respondent suggested that any operator who “abused the privilege” of being part of the scheme should be removed if they were found to have grossly overcharged. This respondent suggested that any operator found to have abused the scheme should not be permitted to tender for new contracts.

4.31. Finally, one respondent provided detailed comments and suggestions relating to Annex F (a menu-type pricing example)<sup>16</sup>, covering a number of aspects of this. These are available to the Scottish Government and will not be described in detail here.

## Question 7

4.32. Question 7 asked:

*If you do not think it practical to identify satisfactorily all the broad scenarios that might be encountered, would you prefer that no charge were prescribed or that there should be a charge “for all other cases”? If the latter, what do you think this should be?*

## Responses

4.33. Almost all respondents (33, or 97%) addressed this question. Only one respondent (3%) did not. Of these, most (24) answered the closed part of the question (either “no charge prescribed” or “charge for all other cases”), while 9 did not express a clear view.

## Overall views

4.34. Overall, among those who addressed the question, there was a clear preference for a charge for “all other cases”, as follows:

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<sup>16</sup> This is reproduced at Annex 5 of this report for reference.

## **Table 6. Responses to Q7**

*If you do not think it practical to identify satisfactorily all the broad scenarios that might be encountered, would you prefer that no charge were prescribed or that there should be a charge “for all other cases”?*

<b>Response</b>	<b>Number</b>	<b>%</b>
Charge for all other cases	21	64
No charge prescribed	3	9
Did not express a clear preference for one or other option	9	27
	33	

4.35. By type of respondent, the majority of respondents in most categories expressed a preference for a charge for “all other cases”, with the exception of road haulage professional or trade bodies (who either did not address the question or did not express a clear view) and insurance companies and their professional or trade body, most of which did not express a clear preference for one or other option.

4.36. Most respondents, whatever their overall view, provided additional comments, with three main themes emerging (and many respondents making comments on each). These themes were:

- The nature of the current list.
- The nature of a charge for “all other cases”.
- Suggested requirements and views of the way forward.

4.37. A small number of respondents also made other comments.

4.38. Further details of these comments are provided below.

### **The nature of the current list**

4.39. Many respondents commented on the nature of the current list. Among these, some mentioned positive benefits of this, including, for example, that it covered a majority of scenarios, or that it was workable or fit for purpose. One respondent noted that the scenarios, as set out, had generally worked well for many years (although requiring slight adjustments).

4.40. A few respondents (who favoured having a charge for “all other cases”) gave reasons for the perceived need for this, citing, for example, the potentially broad range of scenarios that may arise, and the difficulty of articulating these in advance.

4.41. A small number of respondents (who did not express a clear view at the closed part of the question) referred to potential problems with having a charge for “all other cases”. One suggested that it could be open to abuse (and may be to the detriment of motorists).

4.42. Another stated that it could leave even more scope for interpretation than was the case at present. This respondent expressed concern that the wording of the question suggested that this would be set at a higher rate, which they felt would be “dangerous” for hauliers.

4.43. A further respondent suggested that charges should be prescribed to cover all situations, as to leave scenarios without charges could leave vehicle owners open to inflated charges.

## The nature of a charge for “all other cases”

4.44. Many respondents commented on aspects of the nature of a charge for “all other cases”.

4.45. Among these, some made comments on the types of scenarios that might be covered by “all other cases”. The examples provided (by a small number, or single respondents in each case) were where:

- A vehicle was in or under water.
- A vehicle was down a mine, in a deep culvert, or down a cliff face and had to be hauled back up to a place to facilitate removal.
- Chemical assistance was required.
- A vehicle was removed using PACE regulations.
- A terrorism alert or act of terrorism had made the vehicle problematic to remove.
- Third party costs were incurred.
- A heavy crane or other specialised services were required.
- There were serious injuries or fatalities.
- The removal was unusual and extremely difficult.

4.46. A few respondents also commented on the basis of the charge, suggesting that it should:

- Be based on the actual cost of removal, including contractors.
- Cover all recovery costs.
- Have an additional fee element to recover administration duties fully.

4.47. Two respondents suggested an approach based on a flat rate. One suggested an approach that would increase the fixed rate, allow for mileage and create a few classifications. Another suggested a flat rate no more than the lowest rate for that type of vehicle.

4.48. Three respondents suggested specific levels of charge. One suggested that this should be between £200 and £300; another suggested that it should be £250; and the third that it should be £500.

## Suggested requirements, and views of the way forward

4.49. A further common theme was the identification of suggested requirements, or respondents’ views of the way forward in relation to these charging issues.

4.50. These suggestions (by small numbers of respondents in each case) included, for example:

- Amendment / updating of the matrix at 3-5 yearly reviews (see also question 10).
- Consultation on further scenarios and charges between the Scottish Government and contractor trade associations.
- Making digital images of the scene available before and after recovery to provide transparency in relation to the charges.

4.51. A few respondents suggested particular approaches to charging for those scenarios not covered by the current list. Two, for example, suggested allowing for additional charges in “exceptional circumstances”. One suggested that the operator should have to justify these to the customer, another that the operator would have to demonstrate that the

removal was not covered by the matrix (with the charge based on the actual cost of removal and storage).

4.52. A further respondent suggested that, should a recovery operation not fit within a prescribed category, charges should be made in line with the category most closely resembling it.

4.53. Two respondents suggested that, where scenarios were “impractical” a “special agreement” with the insurer or customer should be allowed as part of the statute.

4.54. One other respondent suggested that charges in “all other cases” should be based on individual recovery charges agreed through Managing Agents.

4.55. As noted earlier some respondents submitted examples of a matrix, but which will not be described further here.

### Other comments

4.56. A small number of respondents made additional comments at Question 7.

4.57. Most of these related to the apparent assumption that the wording of the question implied that there should be instances in which no charge at all should be levied<sup>17</sup>. Comments included that:

- There should always be a charge for the services rendered by the VRO, as per any payment system.
- There should be a charge in all circumstances, unless a veto would serve the public interest (where the removal, in those cases, would be provided as a “public service”).
- A “no charge” element would be for the police and management company to agree upon, where they would be responsible for the payment of recovery charges.

4.58. The only further comment made at Question 7 was where one respondent drew attention to what they perceived to be anomalies in the price structure in operation in England and Wales.

### Question 8

4.59. Question 8 asked:

*Do you think the prescribed charges should take into account the fees recovery operators pay to belong to management schemes, or charges that are not paid, or any special requirements made of operators by the police? Are there other factors to consider, and if so how do you feel they should be reflected in charges?*

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<sup>17</sup> See Question 3 for specific exploration of this issue.

## Responses

4.60. Almost all of the respondents (31, or 91%) addressed this question. Three respondents (9%) did not address the question.

## Overall views

4.61. It was difficult to determine respondents' overall views of these issues definitively, as Question 8 had no closed element, and made reference to several factors which the charges might potentially take into account.

4.62. In most cases, however, it was possible to discern respondents' general views of whether or not the charges should take account of at least some, or all of these factors (or other factors), based on the responses provided.

4.63. Overall, where respondents' views could be identified, they appeared to be relatively evenly split. Just over half of these respondents suggested that they did not believe the charges should take account of some, or all, of these factors, and just under half identified factors that they believed should be taken into account.

4.64. By type of respondent there was a balance among VROs and local authorities, along with the police respondent, in favour of identifying factors to take into account in the charges.

4.65. Most of the individual respondents and the insurance industry respondents did not agree that some, or all of the specified factors should be taken into account, or identified problems with this (a view shared by the insurance professional or trade body). One of the road haulage professional or trade bodies also expressed their opposition to this.

4.66. Some respondents stated specifically that they were opposed to the charging of fees for management schemes, and most of the VRO professional and trade bodies stated specifically that the recovery operator should not be required to pay for the management of schemes.

4.67. In a small number of cases, respondents' overall views could not be determined in this manner.

4.68. In terms of the detailed comments, there were three main themes:

- Problems with the inclusion of these factors in the charges.
- Factors for inclusion in the charges.
- General comments on charges.

4.69. A small number of respondents also made other comments.

4.70. Further details of the comments are provided below.

## Problems with the inclusion of these factors in the charges

4.71. Most of the respondents who did not believe that charges should take account of some, or all of these factors provided comments on problems with their inclusion, or reasons why, in their view, it would not be appropriate to include them. Most, but not all of these comments focused specifically on the fees recovery operators pay to belong to a management scheme.

4.72. Several respondents stated their opposition to such schemes, or they noted that their organisation was opposed to charging fees for membership of management schemes or to the use of management companies. One, for example, stated that the current approach was not, in their view, what was intended by the government, and suggested that, if a police force wanted to outsource its management, it should be at their cost. A few stated that no part of the statutory charges should be taken by management agents, with one expressing the view that these charges were agreed and set by all to ensure that police recovery was viable. A small number of respondents also stated that administrative charges should be capped.

4.73. Some respondents made reference to commercial or contractual matters as reasons not to include such factors in the charges, including the views that:

- The arrangements between a Managing Agent and VRO are commercial agreements; have no impact on the work involved; and should not impact on the charges.
- The tariffs should not be influenced by any particular management company and associated fees, which are taken on as part of the operator's business model.
- Recovery operators are aware of the factors and requirements made of them, and they should consider this before entering a contract.
- Unrecovered charges should be regarded as any other bad debt (and hence a business risk), and should be pursued appropriately, then, if not recovered, absorbed by the contractor.

4.74. A few respondents expressed the view that the vehicle owner should not have to have to pay for the types of costs mentioned. Comments included, for example, that:

- Recovery operators join schemes by choice, and this should not be subsidised by the motorist.
- Management fees should be borne by the contractor.
- If Police Scotland choose to outsource the management of the scheme, the cost of this should not be met by road users or business.
- Only the work involved in the statutory removal should be charged to the vehicle owner.
- Charges which are not payable or cannot be recouped should not drive an increase in general matrix rates.

4.75. One respondent also expressed the specific view that other factors, such as waiting time, should also be disallowed.

### **Factors for inclusion in the charges**

4.76. Those respondents who considered that some factors should be included in the charges identified the nature of these.

4.77. Some suggested, for example, that all of the contractor's costs should be included, while one stated that the set charge should allow the VRO to provide a rapid and competent service.

4.78. Several respondents made specific comments on the inclusion of fees for management schemes. A few provided general support for this, or specific reasons for their view that these should be included. Comments included that this would:

- Be fair and reasonable.
- Allow a sustainable level of service.

4.79. Other comments on these fees included that they should be in addition to direct costs and that the level of fees must be viable for all parties, including the administrator, VRO and vehicle owner or insurer. One respondent stated that there should be a fixed fee for each job, to prevent area variations.

4.80. It was also suggested that the charging of a management fee should be considered in the structure for regular future price reviewing. One respondent suggested a need for more transparency in the management of operators, to ensure that they did not make excessive profits from charges.

4.81. A further respondent suggested that the management scheme was not the issue, rather that, regardless of the way it was operated, the key issue for them was the percentage of the charge which was returned to the VRO.

4.82. While most comments focused on management scheme fees, one respondent expressed specific support for the inclusion of charges not paid, suggesting that this was fair and reasonable in order to sustain a viable industry.

4.83. A small number of respondents expressed support for the inclusion of special requirements by the police. Two, including the police, suggested that this would be appropriate, while particular examples were also given of services which could be covered by this, including:

- Providing forensic facilities.
- Scene investigation and reconstruction.

4.84. A small number of respondents suggested other factors for inclusion, including the following:

- Making provision to safeguard the VRO should the salvage value fall, and not allow the VRO to cover outstanding costs.
- Provision to allow contractors to viably meet the standards framework.
- Setting charges at a level to discourage abandonments.

4.85. One respondent suggested that the insurance industry should support the police and recovery industry financially, recognising that the risks posed by vehicles being driven without insurance or a license are removed<sup>18</sup>.

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<sup>18</sup> The respondent noted that this was not an issue for this legislation.

## General comments on charges

4.86. A few respondents made general comments on charges, with some identifying, for example, their views of the overall nature of the charges, including that these should be:

- Transparent.
- Proportionate.
- Fair.
- Reasonable.
- Consistent.

4.87. One respondent suggested that the scheme should be strongly controlled, with any additional fees (for exceptional incidents) being authorised by the police.

4.88. Two respondents commented on the receipt of fees. One suggested, for example, that it would be inappropriate for any organisation with the right to invoke a statutory power to benefit from a fee. Another suggested that the set charge should not be discounted to pay management fees, and that the whole amount should go to the VRO.

4.89. One respondent identified the variety of costs they had to meet from the fee they received. Another suggested that insurance companies should meet the management fees.

## Other comments

4.90. A small number of respondents made additional comments.

4.91. Two made further suggestions, which were that:

- Police could pay a “trade rate” for long term storage of vehicles which could not be released, incorporating a period of free storage.
- Costs associated with cleaning up should be redeemable from the local authority with responsibility for this. The respondent also expressed the view that, when a VRO cleared the roadway, it was done at the time, and was cheaper.

4.92. One respondent stated that Question 8 was ambiguous, as the term “taking into account” with reference to the fees did not specify inclusion or exclusion from the listed charges.

## 5. OTHER ISSUES FOR CONSIDERATION

5.1. This section presents the findings relating to Questions 9-11, covering respondents' views of: potential unintended consequences of the scheme; the frequency of review; and experiences of the system in place in England and Wales.

### Question 9

5.2. Question 9 asked:

*Do you think there any unintended consequences of the Scottish Government's proposals or other factors not currently taken into account?*

### Responses

5.3. Almost all of the respondents (31, or 91%) addressed this question. Three respondents (9%) did not address the question.

### Overall views

5.4. Of those who addressed the question, although there was no "tick box" almost half stated "no" or "don't know", suggesting that they were not aware of any unintended consequences of the Scottish Government's proposals, or other factors not currently taken into account.

5.5. Just over half of those who responded to this question provided comments.

5.6. By type, this included: all, or the majority of: the vehicle recovery professional or trade bodies; individual respondents; insurance companies and their professional or trade body. It also included over a third of the VROs and one of the road haulage professional or trade bodies.

5.7. Within these comments, there were three main themes, as follows:

- Unintended consequences.
- Other factors not taken into account.
- General comments.

### Unintended consequences

5.8. Several respondents identified what they considered to be unintended consequences of the Scottish Government's proposals.

5.9. Among these, a few identified issues relating to potential abuse of the system by contractors. Two, for example, stated that there could be very high charges should a "menu" model be adopted (as described at Annex F of the consultation document and set out for reference in this report at Annex 5). These respondents suggested that the charges should be fair and reasonable, and the same for whoever initiates the uplift (the customer or police). One stated that the only possible difference should be the inclusion of the VAT element.

5.10. One other respondent stated that the contractor framework should be carefully addressed to avoid contractor abuse, and suggested that a combination of the suggested base rates with framework standards and auditing might control this.

5.11. A few other unintended consequences were identified, each by a small number of respondents. Two, for example, suggested a possible negative impact on the service. One of these respondents stated that the police recovery scheme could collapse, with an uneconomical pricing structure making it unviable for qualified professional recovery operators to function. The other stated that, without the correct rewards to allow contractors to provide updated staff training and modern equipment, a fast, local service would not be provided.

5.12. One respondent expressed the view that a further unintended consequence may be that the concept of what constitutes a vehicle being “laden” or “unladen” may be open to interpretation. They suggested that photographic evidence should be captured at the scene, in order to justify any additional costs.

5.13. Another respondent identified the potential for continuing judicial challenge to the statutory fee system. The same respondent expressed the view that the proposed matrix system would, in their view, increase the costs to the general public and industry, and would attract even greater scrutiny.

5.14. A further issue, identified by one respondent, was a perceived risk that VROs could be left with a large number of unclaimed vehicles if the level of the charge were to outweigh the value of the vehicle.

### **Other factors not taken into account**

5.15. Several respondents identified other factors which they suggested had not been taken into account.

5.16. The most common (mentioned by a few respondents) related to management company issues. These included views that:

- A scheme managed directly by the police would allow a better and faster response, allowing direct communication between the VRO and the police, rather than involving a third party.
- A scheme managed “in-house” would allow more customer service consistency, with hauliers receiving a better service, and recovery operations running more smoothly.
- VROs had the burden of balancing two contracts (with the police and management company), each with different obligations.
- The recovery operator had to work alongside the management company, which required other services to be included (which would then have to be reflected in the costs in the fee the public had to pay).

5.17. A small number of respondents mentioned specific types of incident which, in their view, had not been taken into account, including:

- Burned-out vehicles.
- Chemical spills.

5.18. One respondent stated that this raised the issue of who cleaned up the mess. The same respondent noted that there could not be an exhaustive list of incident types, as each recovery was different.

5.19. A further respondent stated that some recoveries required extra staff or equipment after risk assessment (e.g. where there was hazardous waste), and they expressed the view that there should be some provisions for this built into the system.

5.20. One respondent commented on types of vehicle which had not been included, stating that caravans and trailers were not covered in the scheme (an issue mentioned earlier in this report), but that these cost local authorities a lot of money for disposal.

5.21. The same respondent mentioned issues relating to abandoned vehicles, including:

- A perceived lack of focus on the role of local authorities in dealing with abandoned vehicles.
- Issues with vehicles left on private land.
- The time and costs associated with disposing of abandoned vehicles (usually requiring three separate visits).

5.22. They suggested that:

- The DVLA should prosecute keepers for failing to notify a change of ownership or address.
- The work required should be recoverable, with a mileage rate plus disposal cost.
- Landowners should be allowed to recover costs (with the respondent stating that this would help housing associations where a tenant moved, leaving a vehicle behind.)

5.23. Two respondents raised issues related to the introduction of smart motorways, and the need to consider this, and their impact on costs and safety. One stated that the police and Highways Agency would not currently allow breakdown recovery vehicles onto a motorway to attend a breakdown without implementing the smart motorway system, and in some cases would only allow the recovery vehicle to attend if the police or Highways Agency were present. They stated that safety was paramount to the recovery of vehicles, and operators had the skills to manage the situation, so should be able to attend and assist at a breakdown to move vehicles safely rather than have to wait for outside agencies (which could add significant delays).

5.24. Another respondent suggested that the safety of operators had not been taken into account, citing recent fatalities.

5.25. A further respondent identified issues relating to the storage and disposal of vehicles, suggesting that the length of time, and the number of vehicles which had to be stored free had not been taken into account. The respondent also suggested a need to consider waste management issues for some vehicles which were burned-out, or contaminated.

5.26. Other factors identified as not having been taken into account (mentioned by single respondents in each case) were:

- The retention of vehicles for civil cases.
- Poor training for police and Procurators Fiscal.

## General comments

5.27. Several respondents made more general comments at Question 9.

5.28. One, for example, highlighted the need for the police to be able to call on rapid and competent local recovery operators, and the potential difficulties if such a service was not available. This respondent also expressed the view that many operators were declining work on the basis that the Managing Agent was taking a large proportion of the fee.

5.29. One respondent expressed general support for the proposed matrix system and another mentioned the benefits of having set fees (rather than various rates for different items). It was suggested that this was fair, would allow everyone to know what the bill should be, and would prevent bills being padded out for extra costs. A further respondent stated that they were opposed to a “menu” model.

5.30. Two respondents suggested that it would be important that the “finer detail” of the statute was applied properly in relation to the handling of VAT and other payment issues.

5.31. Two other respondents suggested that there should be a joint approach with Traffic Scotland, where the management of any incident on the road would be treated in the same way. The respondents suggested that any breakdown that is not an emergency or related to criminal activity should be dealt with by Traffic Scotland.

5.32. Lastly, one respondent suggested that once the consultation was complete, the Scottish Government should re-tender the contract with Police Scotland, taking into account points made in the consultation, and taking steps to prevent overcharging and to make it fair for all parties.

## Question 10

5.33. Question 10 asked:

*Should any prescribed charges be increased annually based on inflation (bearing in mind that this will require a Scottish statutory instrument to be prepared each year), or should the regulation be reviewed at specified times such as every 3 or 5 years?*

## Responses

5.34. All of respondents addressed this question. Most (33) did so at the question, while the remaining respondent made relevant comments in a letter.

## Overall views

5.35. There was a clear preference for the regulation be reviewed at specified times, with over two thirds of respondents expressing this view, as summarised below. Just over a quarter stated that the prescribed charges should be increased annually based on inflation, while two respondents did not address the closed part of the question.

## **Table 7. Responses to Q10**

*Should any prescribed charges be increased annually based on inflation or should the regulation be reviewed at specified times such as every 3 or 5 years?*

<b>Response</b>	<b>Number</b>	<b>%</b>
Review at specified times	23	68
Increase annually based on inflation	9	26
Did not express a clear “yes” or “no” view	2	6
	34	

5.36. By type, all, or a majority of respondents in nearly all of the categories favoured reviewing the regulation at specified times, such as every three or five years.

5.37. In the two cases where the respondents did not express a clear “yes” or “no” view to this question, one did not tick a preferred option and the other provided their comments in a letter. Both, however, stated that they considered regular reviews of statutory charges to be appropriate, in order to prevent large or guaranteed increases.

5.38. Most respondents provided additional comments at this question, and there were two main themes, which mirrored the strands of the question, with comments on:

- Reviewing the regulation at specified times.
- Increasing the prescribed charges annually based on inflation.

5.39. Further details of the comments are provided below.

### **Reviewing the regulation at specified times**

5.40. The most common theme, and the largest number of comments, related to reviewing the regulation at specified times, or regularly.

5.41. Most of these comments related to the respondent’s favoured timescale, while some related to the benefits of, or reasons for, reviewing the regulation at specified times or on a regular basis. A range of suggestions were made.

5.42. The most common time period identified was three years (identified by just under half of those who suggested a timescale). Where reasons for this view were provided, these included that:

- This period would balance the need to reflect increased costs in the charges and the need to keep the cost of change within acceptable limits.
- An annual review would be administratively complex.
- Five years would be too long.

5.43. One respondent suggested that reviews should be undertaken every three years “without fail”, referring also to the fact that the matrix in use in England and Wales had not, at the time of the publication of this consultation, been reviewed for 10 years.

5.44. Just over a quarter of respondents who suggested a time period stated that this should be every 3-5 years. Where reasons for this view were provided, these included that this:

- Provided an appropriate review schedule.
- Would be proportionate.
- Would be ample, otherwise the process would become too onerous.

5.45. Other time periods mentioned (by small numbers or single respondents in each case) were:

- 5 years (e.g. to avoid: uncertainty; the administrative burden on the Scottish Government and stakeholders; and costs).
- 2–3 years.
- 2 years.
- Every few years.

5.46. A small number of respondents mentioned general perceived benefits of reviewing the regulation at specific times or on a regular basis. These included to:

- Prevent large or guaranteed increases (as noted above).
- Reflect the varied and fluctuating costs involved in the recovery industry.
- Avoid problems relating to an annual review based on inflation, which could be time-consuming and lead to unnecessary administrative burdens.

### **Increasing the prescribed charges annually based on inflation**

5.47. Some respondents made comments about increasing the prescribed charges annually, based on inflation.

5.48. Among these, one respondent reiterated their general support for this approach, and another set out specific perceived benefits, namely that:

- Fee levels would be “up to date”.
- This would allow for longer and more sustainable workloads and contracts.

5.49. One respondent suggested that, as well as annual increases, there should be a periodic review of fee levels (which they suggested should be every 3 years) to ensure that VROs’ businesses remained viable.

5.50. A small number of respondents who favoured increasing the prescribed charges annually made additional suggestions, including that:

- Regional variations should be allowed as a way of dealing with different cost levels across the country.
- Payment arrangements would have to be considered carefully to ensure that the “finer details” of the statute were being applied properly.
- Wording changes should be built into the Scottish Statutory Instrument (SSI).

## **Question 11**

5.51. Question 11 asked:

*Are there any factors the Scottish Government should take into account to reflect on the experiences of the matrix system that has been operating in England and Wales since 2008?*

## Responses

5.52. Almost all of the respondents addressed this question (33, or 97%). One respondent (3%) did not address the question.

## Overall views

5.53. The majority of respondents (52%) stated “yes”, indicating that they believed there were factors the Scottish Government should take into account to reflect on the experiences of the matrix system that has been operating in England and Wales since 2008. Less than a third stated “no”, while just under a fifth did not express a clear “yes” or “no” view.

### **Table 8. Responses to Q11**

*Are there any factors the Scottish Government should take into account to reflect on the experiences of the matrix system that has been operating in England and Wales since 2008?*

<b>Response</b>	<b>Number</b>	<b>%</b>
Yes	17	52
No	10	30
Did not express a clear “yes” or “no” view	6	18
	33	

5.54. By type, those who stated “yes” included all or the majority of: insurance companies (and their professional or trade body); individuals; vehicle recovery professional or trade bodies; and the police respondent. Views of VROs were mixed.

5.55. Among those who did not express a clear “yes” or “no” view (who did not address the “closed” part of the question), one stated that they were “not sure” and two stated that they had “no comment”. Three, however, made further comments, which are reflected in the qualitative material below.

5.56. Most of the respondents to this question made additional comments about factors the Scottish Government should take into account to reflect on the experiences of the matrix system in England and Wales.

5.57. A range of themes were identified, which included:

- Definitional issues, and issues for clarity.
- Cost issues.
- The need for review / update.
- Overall benefits of the system in England and Wales.
- Management issues.
- Issues for specific vehicles.
- Differences in Scotland.
- Other issues and requirements.

5.58. Some respondents made other comments.

5.59. Further details of the comments are provided below.

### **Definitional issues, and issues for clarity**

5.60. The most common theme, in identifying factors the Scottish Government should take into account to reflect on the experiences of the matrix system in England and Wales, related to definitional issues and issues for clarity (mentioned by almost two thirds of those who made comments).

5.61. A few respondents suggested, for example, that factors relating to the coverage of the matrix needed to be taken into account. Two specific issues were mentioned:

- What would / would not be included in the matrix charge.
- When an incident was deemed to start and stop (e.g. to remove the opportunity to apply additional costs for specific services).

5.62. A small number of respondents mentioned issues for clarification or consideration relating to specific incidents and scenarios, including:

- Whether a vehicle was uplifted on the instructions of the police, or at an owner's request.
- Where a load had become detached from a vehicle, and instances where it should be transferred to ensure it was salvaged, or to protect the integrity of the vehicle.

5.63. One respondent suggested that there should be a notification process when a recovery operator had a vehicle incurring daily storage charges. They stated that the regulation should have a specific clause to state that no storage charges could be made whilst a vehicle was on police hold, and the recovery agent should not be able to enforce any storage charges once the vehicle was taken off police hold if they hadn't informed the owner (or insurer if the vehicle damage was likely to form part of insurance claim) that storage charges were being applied. It was suggested that this would avoid time-consuming disputes.

5.64. Some respondents (small numbers or single respondents in each case) suggested a need for clearer definitions of aspects of:

- Significant / substantial / extensive damage.
- On/off-road.
- Loaded / not fully loaded.
- Spilt load.

5.65. Two respondents suggested a need for clarity about the circumstances in which a police officer should invoke a statutory power of removal, and where a removal should be regarded as an owner's request. They stated that it was often the case in England and Wales, and in Scotland, that the owner could make their own arrangements and the recovery vehicle arrive only for the Police to turn them away and instead use their powers of removal.

5.66. These respondents expressed the view that vehicle removal should only be classed as a statutory removal when the vehicle was of interest to the police, or causing an obstruction, possibly in a dangerous place. Outside of this, they stated that the removal should be classed as an owner's request with the owner at liberty to find their own recovery operator to carry out the recovery.

5.67. A small number of respondents suggested that there should be clarity and transparency or guidelines on the charges, with two citing the need for their consistent application, and the need for charges to reflect the work required fairly.

### **Cost issues**

5.68. A further common theme in identifying factors the Scottish Government should take into account to reflect on the experiences of the matrix system in England and Wales related to costs and charges. Several respondents identified such factors.

5.69. Among these, the issue raised most frequently was the need to prevent perceived abuses, with those mentioned being:

- Potential profiteering from storage costings.
- Misinterpretation of the fees (seen to have led to apparent breaches of the original legislation in England and Wales).
- The application of additional charges (e.g. yard release fees).
- Prevention of other accredited providers entering a yard for removal.

5.70. As noted above in relation to definitional issues and issues for clarity, issues were also raised relating to the need for clear and transparent charges.

5.71. A small number of respondents also mentioned factors relating to the level or nature of charges, including suggestions that there should be:

- An increase of 32.5% to all categories.
- Charges which would be fair to all stakeholders.
- Charges which would reflect the work required by the VRO.
- The ability to reflect regional variations in costs (e.g. urban / rural).

5.72. One respondent raised an issue relating to who was responsible when a fee was challenged, suggesting that this should be resolved. Two raised issues about the management fee and its impact on VROs.

### **The need for review / update**

5.73. Several respondents noted that the system in England and Wales had not been reviewed, even though this had been planned at the outset. Two stated that the scenario rates were, as a result, ten years out of date, creating a large hurdle to overcome in bringing them back into line.

5.74. One respondent stated that a lack of adjustment for inflation had impacted on the viability of such work to VROs. Two stated specifically that the matrix should be reviewed more frequently.

### **Overall benefits of the system in England and Wales**

5.75. A few respondents made specific comments about what they saw as the benefits of the system in England and Wales.

5.76. Those identified included views that:

- The system was working well.
- The number of complaints had decreased significantly.
- There were fewer instances of inappropriate charging.

- The system had allowed operators to invest in modern equipment and training for staff, giving police the best chance of retaining security and evidence.

## Management issues

5.77. A small number of respondents made comments about management issues relating the operation of the scheme in identifying factors the Scottish Government should take into account to reflect on the experiences of the matrix system in England and Wales.

5.78. A few, for example, suggested that the approach of the management companies in restricting the commissioning of removals to a small number of operators was inefficient and created problems (e.g. when the commissioned operator had to travel a long distance or became stuck in traffic queues resulting from the original incident).

5.79. Another stated that, where a vehicle was removed by the police to a distant location to facilitate evidence gathering, this may require those involved to travel long distances (e.g. for viewing).

5.80. One respondent suggested that the scheme should be designed to allow hauliers to recover their own vehicles, where the Police deemed it safe and reasonable for them to do so (e.g. with the introduction of a timescale of 60 or 90 minutes whereby if they could not guarantee recovery it would then be arranged through the scheme). Another stated that there was a need for operators to give local cover to retain the speed of clearances.

5.81. A further respondent suggested that, where all of a local operator's resources had been used, and additional assistance was required from a neighbouring operator (e.g. in complex incidents such as multiple HGV scenarios) there should be a mechanism to enable an operator to attend in a neighbouring area in a limited number of cases to perform a support function, and cover costs should be considered.

5.82. One respondent suggested a need to prevent the involvement of operators with insufficient experience or training, which they stated could lead to roads being closed for longer periods of time, and damage being caused on attempted recovery. They suggested the introduction of a means of proving competence through the completion of training before operators were permitted to join the Scottish scheme. The respondent suggested that this could be done using existing driver Certificate of Professional Competence (CPC) requirements.

## Issues for specific vehicles

5.83. A small number of respondents, in identifying factors to take into account in the light of experiences in England and Wales, made comments about specific types of vehicles.

5.84. Those mentioned were the perceived need to:

- Take account of different types of two-wheeled vehicle.
- Have a distinction between different sizes of motorcycle.
- Consider the level of charges levied for 7.5t vehicles, to reflect the work required.

## Differences in Scotland

5.85. A small number of respondents highlighted perceived differences between the recovery industry in Scotland compared England and Wales, which they believed should be recognised in any new legislation.

5.86. These respondents identified differences in:

- Geography and response times.
- Access to specialist equipment.
- Access to police personnel.
- Volumes of work (with lower volumes but the same requirements).

5.87. One respondent suggested that VROs in Scotland tended to work together better.

## Other issues and requirements

5.88. A few respondents made comments on other perceived issues and requirements to be taken into account, including views that:

- Photographic evidence should be obtained at each incident.
- There should be consistency across all police forces.
- A clear and transparent complaints procedure should be developed, with dedicated points of contact for Service Level Agreements.
- Each managing operator should be clearly identified via an appropriate central website, and this information should be communicated to the recovery industry, breakdown providers and insurers at renewal.

## Other comments

5.89. A small number of additional comments were made.

5.90. A few respondents made comments about learning from experiences in England and Wales and consulting with those with relevant experience. One suggested, for example, that it would be good for the Scottish Police Authority (SPA) to learn lessons from England and Wales, in order to avoid repeating the same problems. Another suggested that the scheme in England and Wales should be reviewed to decide whether it was working or not. A further respondent suggested that, if a new Scottish scheme was calculated to be fair and balanced, then it could, in turn be adopted in England and Wales as a leading market standard.

5.91. Another respondent suggested that the Scottish Government should consult with trade associations which had members in England and Wales, who, they stated, may be best placed to comment on lessons which could be taken into account in designing a Scottish system.

5.92. Two additional comments were made on other issues. One respondent made comments relating to Question 3, which were included in the relevant section. Another made reference to a separate draft document which they had submitted to the Scottish Government.

# Annex 1: The consultation questions

Q.1 Do you consider there should, as at present, be one flat rate charge for all removals ordered by the police or that there should be a number of different charges for different vehicle categories/incident scenarios Yes/No?

Comments

Q.2 If you believe there should be one flat rate charge, on what do you think that should be based and what do you think it should be?

Comments

Q.3 Vehicles removed on police instructions must be released to their owner on payment of any prescribed charge. If no charge is prescribed, they must be released on demand free of charge. Do you think there are any types of police ordered removal for which no charge should be prescribed?

Comments

Q.4 Under the Scottish Government's proposals, as set out in **ANNEX E**, the regulations would prescribe different charges for different vehicle categories and incident scenarios. Do you agree with the current categories and scenarios? If not, what factors do you think should be taken into account in deciding those scenarios (e.g., type of vehicle to be removed, vehicle condition, vehicle position including whether or not upright, geographical location, nature and state of any load)?

Comments

Q.5 The Scottish Government's proposals, as set out in **ANNEX E**, include allowing for more to be charged for a recovery of a vehicle that is not upright or is "significantly damaged". Do you agree with this approach, and with the Scottish Government's definition of "significant damage"? If not, what alternative approach would you suggest?

Comments

Q.6. If you do not agree with the charges suggested by the Scottish Government, what charges would you suggest and on what would you base these?

Comments

Q.7 If you do not think it practical to identify satisfactorily all the broad scenarios that might be encountered, would you prefer that no charge were prescribed or that there should be a charge “for all other cases”? If the latter, what do you think this should be?

Comments

Q.8 Do you think the prescribed charges should take into account the fees recovery operators pay to belong to management schemes, or charges that are not paid, or any special requirements made of operators by the police? Are there other factors to consider, and if so how do you feel they should be reflected in charges?

Comments

Q.9 Do you think there any unintended consequences of the Scottish Government's proposals or other factors not currently taken into account?

Comments

Q.10 Should any prescribed charges be increased annually based on inflation (bearing in mind that this will require a Scottish statutory instrument to be prepared each year), or should the regulation be reviewed at specified times such as every 3 or 5 years?

Comments

Q.11 Are there any factors the Scottish Government should take into account to reflect on the experiences of the matrix system that has been operating in England and Wales since 2008?

Comments

## Annex 2: The respondents

There were 34 respondents to the consultation. The following provided consent to publish their responses and name.

Association of British Insurers  
Aviva  
AVRO Ltd  
Direct Line Group  
Freight Transport Association  
Liverpool Victoria Friendly Society  
MTS Recovery & Repairs Ltd  
Police Scotland  
RAC Motoring Services  
Road Haulage Association  
Ross's Garage Ltd  
The London Association of Recovery Operators  
Vehicle Rescue Connections Ltd

In addition, 4 respondents provided consent to publish their responses and name but did not provide their name to facilitate this.

A total of 10 respondents provided consent to publish their response, but not their name.

A total of 7 respondents withheld consent to publish their response or name.

## Annex 3: Current charges

The table below (extracted from Annex D of the Consultation document, describes the current charges for removal, retention and disposal of motor vehicles.

### Annex D - The Road Traffic Act 1988 (Retention and Disposal of Seized Motor Vehicles) (Amendment) Regulations 2008

#### Charges in relation to the removal of vehicles

<i>Vehicle position and condition</i>	<i>Vehicle equal to or less than 3.5 tonnes MAM</i>	<i>Vehicle exceeding 3.5 tonnes MAM but equal to or less than 7.5</i>	<i>Vehicle exceeding 7.5 tonnes MAM but equal to or less than 18</i>	<i>Vehicle exceeding 18 tonnes MAM</i>
Vehicle on road, upright and not substantially damaged or any two wheeled vehicle whatever its condition or position on or off the road	£150	£200	£350	£350
Vehicle, excluding a two wheeled vehicle, on road but either not upright or substantially damaged or both	£250	£650	Unladen—£2000	Unladen—£3000
			Laden—£3000	Laden—£4500
Vehicle, excluding a two wheeled vehicle, off road, upright and not substantially damaged	£200	£400	Unladen—£1000	Unladen—£1500
			Laden—£1500	Laden—£2000
Vehicle, excluding a two wheeled vehicle, off road but either not upright or substantially damaged or both	£300	£850	Unladen—£3000	Unladen—£4500
			Laden—£4500	Laden—£6000

## Charges in relation to the storage of vehicles

	<i>Two wheeled vehicle</i>	<i>Vehicle, not including a two wheeled vehicle, equal to or less than 3.5 tonnes</i>	<i>Vehicle exceeding 3.5 tonnes MAM but equal to or less than 7.5 tonnes MAM</i>	<i>Vehicle exceeding 7.5 tonnes MAM but equal to or less than 18 tonnes MAM</i>	<i>Vehicle exceeding 18 tonnes MAM</i>
2	£10	£20	£25	£30	£35

## Annex 4: Proposed charging matrix

The table below (extracted from Annex E of the Consultation document, describes the proposed matrix of charges for removal, retention and disposal of motor vehicles

### Annex E – Specified amount for the removal, storage and disposal of a motor vehicle (Matrix system)

#### Removal of a motor vehicle

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>	<b>Column 5</b>
<i>Vehicle type, position and condition</i>	<i>Vehicle equal to or less than 3.5 tonnes MAM</i>	<i>Vehicle exceeding 3.5 tonnes MAM and equal to or less than 7.5 tonnes MAM</i>	<i>Vehicle exceeding 7.5 tonnes MAM and equal to or less than 18 tonnes MAM</i>	<i>Vehicle exceeding 18 tonnes MAM</i>
Any two-wheeled vehicle whatever its condition or position on or off road	£190	-	-	-
Any other vehicle on road, which is upright and is not significantly damaged	£190	£250	£440	£440
Any other unladen vehicle on road which is not upright or is significantly damaged	£315	£820	£2525	£3790
Any other laden vehicle on road which is not upright or is significantly damaged	£315	£820	£3790	£5680
Any other unladen vehicle off road, which is upright and is not significantly damaged	£250	£505	£1260	£1890
Any other laden vehicle off road, which is upright and is not significantly damaged	£250	£505	£1890	£2525
Any other unladen vehicle off road which is not upright or is significantly damaged	£380	£1075	£3790	£5680

Any other laden vehicle off road which is not upright or is significantly damaged	£380	£1075	£5680	£7570
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### Retention of a motor vehicle

Column 1	Column 2
<i>Type and weight of vehicle</i>	<i>Sum payable</i>
Any two wheeled vehicle	£13
Any other vehicle equal to or less than 3.5 tonnes MAM	£25
Any other vehicle exceeding 3.5 tonnes MAM and equal to or less than 7.5 tonnes MAM	£32
Any other vehicle exceeding 7.5 tonnes MAM and equal to or less than 18 tonnes MAM	£38
Any other vehicle exceeding 18 tonnes MAM	£44

### Disposal of a motor vehicle

Column 1	Column 2
<i>Type and weight of vehicle</i>	<i>Sum payable</i>
Any two wheeled vehicle	£63
Any other vehicle equal to or less than 3.5 tonnes MAM	£95
Any other vehicle exceeding 3.5 tonnes MAM and equal to or less than 7.5 tonnes MAM	£126
Any other vehicle exceeding 7.5 tonnes MAM and equal to or less than 18 tonnes MAM	£158
Any other vehicle exceeding 18 tonnes MAM	£189

### EXPLANATORY NOTES

Matrix prices revised from proposed 2011 regulations to take account of inflationary increases since these figures were originally calculated in 2008.

Significant damage is deemed to mean the vehicle being recovered cannot free wheel, or there is some problem with the gearing system, braking system or some other impediment to complicate the recovery of the vehicle. Significant damage does not include any other damage to the vehicle that does not impede the vehicle being recovered in the same way as a vehicle with no damage.

## Annex 5: Menu pricing example

The table below (extracted from Annex F of the Consultation document, describes an example of menu pricing for the removal, retention and disposal of motor vehicles

### Customer Requested Uplifts

Call out charge		£115.00
Labour per hour		£115.00
Mileage charge per mile		£1.65
Storage per day		£23.50
ALL ABOVE RATES ARE <u>PLUS VAT</u>		
<b>Specialist Charges</b>		
Prestige covered recovery	(per hour)	£255.00
Damage free crane recovery		£315.00
Crane recovery up to 2490 kgs		£275.00
Crane from 2490 - 3500 kgs		£295.00
Crane rate per hour		£195.00
Winching car to hard standing	(per 1/2 hr)	£105.00
Second person required	(for 1st hr)	£52.50
Labour for second person	(after 1st hr)	£52.50
Use of go jacks or skates	(inc 1/2 hr lab)	£65.00
Use of donor wheels	(per wheel req)	£65.00
Towing of trailers /caravans	(per mile)	£0.92
Hitching up trailers/caravans		£65.00
ALL ABOVE RATES ARE <u>PLUS VAT</u>		

### Heavy Recovery Rates

Call out	£145.00
Labour per hour	£145.00
Mileage per mile	£2.61
Callout of crane mac4	£425.00
Hourly rate	£395.00
Callout of crane	£395.00
Hourly rate	£395.00
Second person for crane operation (per hr)	£72.50
Trailers over 18 ft req lift	£295.00
HGV air bag use	£350.00

ALL ABOVE RATES ARE PLUS VAT



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