SCOTTISH STATUTORY INSTRUMENTS

2008 No. 244

ROADS AND BRIDGES

The Road Works (Fixed Penalty) (Scotland) Regulations 2008

Made - - - -	*11th June 2008*
Laid before the Scottish Parliament	*12th June 2008*
Coming into force - -	*1st October 2008*

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 108(5) and 156(1) and (2) of, and paragraphs 2, 4(1), 5(2), 12(2) and 13(2) and (3) of Schedule 6B to, the New Roads and Street Works Act 1991(**a**) and all other powers enabling them to do so.

In accordance with section 163A of that Act(**b**) they have consulted with such–

(a) persons considered by them to be representative of the interests of undertakers;

(b) road works authorities; and

(c) other persons,

as they think appropriate.

Citation and commencement

1. These Regulations may be cited as the Road Works (Fixed Penalty) (Scotland) Regulations 2008 and come into force on 1st October 2008.

Interpretation

2. In these Regulations–

"the 1991 Act" means the New Roads and Street Works Act 1991;

"address", in relation to a particular method for transmitting an electronic communication, means any number or address used for the purposes of such method of transmission;

"electronic communication" has the meaning given in section 15(1) of the Electronic Communications Act 2000(**c**); and

"offence" means a fixed penalty offence.

(**a**) 1991 c.22 ("the 1991 Act"). Schedule 6B was inserted by the Transport (Scotland) Act 2005 (asp 12) ("the 2005 Act"), section 34 and schedule 5. See section 163(1) of the 1991 Act for the definition of "prescribed". The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c. 46).

(**b**) Section 163A was inserted by section 39 of the 2005 Act.

(**c**) 2000 c.7. Section 15(1) was amended by the Communications Act 2003 (c.21), section 406(1) and Schedule 17, paragraph 158.

Exemptions

3. Road managers are exempted from the provisions of section 154A(5) of, and Schedule 6B to, the 1991 Act(**a**).

Form of fixed penalty notice and prescribed methods of payment

4. A fixed penalty notice shall be in the form set out in Schedule 1 which also prescribes the methods by which fixed penalties may be paid.

Manner of service of fixed penalty notice or a notice withdrawing a fixed penalty notice

5.—(1) Subject to paragraph (5), where a person–

(a) has provided a road works authority with an address for service on that person of any notice under Schedule 6B to the 1991 Act (fixed penalties for certain offences under Part 4) by using a particular method for transmitting an electronic communication; and

(b) has not notified the authority that the address is withdrawn for that purpose,

such notice shall be given by sending it to that person at that address by that method, in accordance with the conditions set out in paragraph (3).

(2) In any other case, a notice under that Schedule shall be given by–

(a) sending it by first class post to the person to whom it is to be given at that person's proper address;

(b) delivering it to that person;

(c) leaving it at that person's proper address; or

(d) any other means agreed with that person.

(3) The conditions referred to in paragraph (1) are that the notice shall be–

(a) capable of being accessed by the person to whom it is being sent;

(b) legible in all material respects; and

(c) in a form which permits the notice to be retained for subsequent reference,

and for this purpose "legible in all material respects" means that the information contained in the notice is available to that person to no lesser extent than it would be if given by means of a notice in printed form.

(4) Subject to section 157(2) of the 1991 Act (reckoning of periods), where an electronic communication is used for the purpose of serving a notice under Schedule 6B to that Act, then, unless the contrary is proved, the notice shall be deemed to be given on the day and at the time recorded by the transmitting apparatus as being the day and time of satisfactory completion of the transmission.

(5) Where, after 3 attempts (duly recorded by the person serving the notice) to effect service by using one particular method for transmitting an electronic communication, service cannot be effected, the notice may be given by serving it upon the person to whom it is to be given by any other such method for which an address is available by virtue of paragraph (1) or by any of the other means referred to in paragraph (2).

(6) For the purposes of this regulation, the proper address of any person to whom a notice under Schedule 6B to the 1991 Act is to be given shall be–

(a) where such person has provided the road works authority giving the notice with an address for postal service of such notices, that address; and

(b) otherwise–

(i) in the case of a corporation, the registered or principal office of the corporation; and

(ii) in any other case, the last known address of such person.

(**a**) Section 154A was inserted by section 34 of the 2005 Act.

Time limit for giving fixed penalty notice

6. A fixed penalty notice for an offence may not be given more than 60 days after the commission of the offence beginning with the day of its commission.

Amount of penalty

7.—(1) Subject to paragraph (2), where a fixed penalty notice has been given in relation to an offence set out in column 2 of the Table in Schedule 2 and briefly described in column 3 of that Table, the penalty for that offence shall be the amount set out, in relation to it, in column 4 of that Table.

(2) Where, in relation to such an offence, payment is made before the end of the period specified in paragraph 5(1) of Schedule 6B to the 1991 Act, or if the last day of that period does not fall on a working day, before the end of the next working day in accordance with paragraph 5(3) of that Schedule, the penalty shall instead be the discounted amount set out, in relation to it, in column 5 of that Table.

Modification of payment periods

8. Schedule 6B to the 1991 Act is modified as follows–

(a) in paragraph 4(2) for "29" substitute "36"; and

(b) in paragraph 5(1) for "15" substitute "29".

Form of notice withdrawing a fixed penalty notice

9. Where a notice withdrawing a fixed penalty notice is given in accordance with paragraph 8(1) of Schedule 6B to the 1991 Act, it shall be in the form set out in Schedule 3.

Retention of fixed penalties

10. The road works authority may retain as much of the money received by them by way of fixed penalties under Schedule 6B to the 1991 Act as is sufficient to meet the reasonable costs of operating the scheme under which they are paid.

STEWART STEVENSON
Authorised to sign by the Scottish Ministers

St Andrew's House,
Edinburgh
11th June 2008

SCHEDULE 1

Regulation 4

FORM OF FIXED PENALTY NOTICE

* *(* Insert Road Works Authority name)*	**FIXED PENALTY NOTICE** **NEW ROADS AND STREET WORKS ACT 1991** (Section 154A and Schedules 6A(**a**) and 6B)	**FIXED PENALTY NOTICE** Number: **.....**
PART A		
Contact Tel No.	Works Ref No. * Road Works Authority No. * (**To be left blank where the offence relates to works in respect of which no notice has been given.*)	
TO:	**DATE OF THIS NOTICE:** **.....** dd mm yy	
ADDRESS:		
OFFENCE CODE: (*See Part B)* (***NB:** Only one offence code per fixed penalty notice*) **.....**		
LOCATION:		
DATE OF OFFENCE:		
DETAILS OF OFFENCE:		

1. I am giving you this notice, in accordance with section 154A of, and Schedule 6B to, the New Roads and Street Works Act 1991, to offer you the opportunity of discharging any liability to conviction for this fixed penalty offence by payment of a penalty.

2. This means that no legal proceedings will be commenced for the offence if, subject to paragraph 3, the penalty of **£120** is paid *(see Part B for instructions on methods of payment)* within the period of **36** days beginning with the day on which this notice was given. (***NB:** The road works authority may extend this period in any particular case if they consider it appropriate to do so* (*see paragraph 4(3) of Schedule 6B*)).

3. Instead of paying the amount referred to in paragraph 2, liability to conviction for the offence may also be discharged if the discounted amount of **£80** is paid within the period of **29** days beginning with the day on which this notice was given. (***NB:** If the last day of this period does not fall on a working day, the period for payment of the discounted amount is extended until the end of the next working day (see paragraph 5(3) of Schedule 6B*)).

4. If the discounted amount is not paid within the period set out in paragraph 3, as extended where relevant, liability to conviction for the offence may only be discharged thereafter by payment of the penalty of **£120** within the period set out in paragraph 2, as extended where considered appropriate. If you then fail to pay the penalty within that period, legal proceedings for the offence may be commenced against you.

5. Any representations that you wish to make in relation to this notice may be addressed to at identifying the fixed penalty notice number stated above.

NAME OF AUTHORISED OFFICER (*in block capitals*)**:**

.....

DATE:

.....

(**a**) Schedule 6A was inserted by section 34 of and schedule 4 to the Transport (Scotland) Act 2005.

PART B		
* *(* Insert Road Works Authority name)*	**INSTRUCTIONS ON METHODS OF PAYMENT**	**FIXED PENALTY NOTICE** Number: **.....**
ELECTRONICALLY– by the Bankers Automated Clearing Services (BACS). Payment should be made to , Sort Code , Account Number . Payment must be supported by the timely submission of a list of the fixed penalty notice numbers covered by the payment and the amount being paid in relation to each number.		
"ON LINE"- please visit our web site at .		
BY POST- by making your cheque payable to and sending it to . Payment must be accompanied by a list of the fixed penalty notice numbers covered by the payment and the amount being paid in relation to each number. A receipt will be sent on request.		
IN PERSON – to at between 9.00am and 4.30pm on any day on which the office is open for business. Any cheque should be made payable to . Payment may be made by debit or credit card if the card is one that is accepted by the Road Works Authority in accordance with its standard procedures. Payment must be accompanied by a list of the fixed penalty notice numbers covered by the payment and the amount being paid in relation to each number. A receipt will be provided on request.		
BY TELEPHONE – by contacting at on between 9.00am and 4.30pm on any day on which the office is open for business. Payment may only be made by using a debit or credit card that is accepted by the Road Works Authority in accordance with its standard procedures. You must state the fixed penalty notice number of each notice in respect of which payment is being made and the amount being paid in relation to each number. A receipt will be sent on request.		

OFFENCE CODES AND DESCRIPTION (By reference to the New Roads and Street Works Act 1991)		
CODE	**OFFENCE**	**BRIEF DESCRIPTION**
01	An offence under section 113(5)(**a**).	Failure to comply with duties under section 113 (advance notice of certain works, etc.).
02	An offence under section 114(5)(**b**).	Beginning to execute works in contravention of section 114 (notice of starting date).
03	An offence under section 116(4)(**c**).	Failure to give notice in accordance with section 116 (notice of emergency works).
04	An offence under section 129(6) consisting of a failure to comply with subsection (3) or (4)(**d**).	Failure to comply with requirements to give notice of completion of reinstatement.

(**a**) Section 113(5) was amended by the 2005 Act, section 33 and schedule 3.
(**b**) Section 114(5) was amended by the 2005 Act, section 33 and schedule 3.
(**c**) Section 116(4) was amended by the 2005 Act, section 33 and schedule 3.
(**d**) Section 129(3) and (4) was amended by the 2005 Act, section 28(a) and (b).

SCHEDULE 2

Regulation 7

AMOUNT OF PENALTY

TABLE

(1) *Item No.*	*(2)* *Offence under the 1991 Act*	*(3)* *Brief description*	*(4)* *Amount of penalty*	*(5)* *Discounted amount*
1.	An offence under section 113(5).	Failure to comply with duties under section 113 (advance notice of certain works, etc.).	£120	£80
2.	An offence under section 114(5).	Beginning to execute works in contravention of section 114 (notice of starting date).	£120	£80
3.	An offence under section 116(4).	Failure to give notice in accordance with section 116 (notice of emergency works).	£120	£80
4.	An offence under section 129(6) consisting of a failure to comply with subsection (3) or (4).	Failure to comply with requirements to give notice of completion of reinstatement.	£120	£80

SCHEDULE 3

Regulation 9

FORM OF NOTICE WITHDRAWING A FIXED PENALTY NOTICE

* *(* Insert Road Works Authority name)*	**NOTICE WITHDRAWING FIXED PENALTY NOTICE** **NEW ROADS AND STREET WORKS ACT 1991** (Section 154A and Schedules 6A and 6B)	**FIXED PENALTY NOTICE** Number: **.....**

TAKE NOTICE that the fixed penalty notice numbered as above is hereby **WITHDRAWN**.
NAME OF AUTHORISED OFFICER (*in block capitals*)**:** **.....**
DATE: **.....**

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 34 of, and schedules 4 and 5 to, the Transport (Scotland) Act 2005 insert section 154A and Schedules 6A and 6B into the New Roads and Street Works Act 1991 ("the 1991 Act"). These provide for certain offences under Part 4 of the 1991 Act to become fixed penalty offences and enable regulations to be made in relation to them.

These Regulations make general provision in relation to fixed penalties for certain offences under Part 4 of the 1991 Act.

Regulation 2 defines terms used in these Regulations.

Regulation 3 prevents road managers (the road works authority for a road which is not a public road) from giving fixed penalty notices in relation to such a road.

Regulation 4 and Schedule 1 prescribe the form of a fixed penalty notice and the methods by which fixed penalties may be paid.

Regulation 5 sets out the manner of service of a fixed penalty notice and a notice withdrawing a fixed penalty notice and includes provision for service by electronic communication.

Regulation 6 specifies that a fixed penalty notice may not be given more than 60 days after the commission of the offence beginning with the day of its commission.

Regulation 7 and Schedule 2 set out details of the fixed penalty offences and prescribe that in relation to each offence the penalty shall be £120 unless the sum of £80 is paid before the end of the period for payment of the discounted amount.

Regulation 8 modifies Schedule 6B to the 1991 Act by substituting the period of 36 days for the period of 29 days, being the period for payment of a fixed penalty, and by substituting the period of 29 days for the period of 15 days, being the period for payment of a discounted amount instead of the full penalty.

Regulation 9 and Schedule 3 prescribe the form of a notice withdrawing a fixed penalty notice.

Regulation 10 enables a road works authority to retain the reasonable costs of issuing and administering fixed penalty notices from the penalties received.

A regulatory impact assessment has been prepared in respect of these Regulations. A copy can be obtained from the Scottish Government Transport Directorate, Victoria Quay, Edinburgh, EH6 6QQ.

£3.00

© Crown Copyright 2008

Printed in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, the Queen's Printer for Scotland
50 06/08 19593