SCOTTISH STATUTORY INSTRUMENTS

2008 No. 243

ROADS AND BRIDGES

The Roads (Scotland) Act 1984 (Fixed Penalty) 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 paragraphs 2, 4(1), 5(2), 12(2) and 13(b) and (c) of Schedule 8B to, the Roads (Scotland) Act 1984(**a**) and section 156 of the New Roads and Street Works Act 1991(**b**) and all other powers enabling them to do so.

In accordance with section 163A of the New Roads and Street Works Act 1991(**c**) 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 Roads (Scotland) Act 1984 (Fixed Penalty) Regulations 2008 and come into force on 1st October 2008.

Interpretation

2. In these Regulations–

"the 1984 Act" means the Roads (Scotland) Act 1984;

"address", in relation to a particular method of 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(**d**); and

(**a**) 1984 c.54. Schedule 8B was inserted by the Transport (Scotland) Act 2005 (asp 12) ("the 2005 Act"), section 37 and schedule 7.

(**b**) 1991 c.22 ("the 1991 Act"). Section 156(3) was inserted by section 37(4) of the 2005 Act. 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).

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

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

"offence" means a fixed penalty offence.

Form of fixed penalty notice and prescribed methods of payment

3. 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 a fixed penalty notice or a notice withdrawing a fixed penalty notice

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

(a) has provided a roads authority with an address for service on that person of any notice under Schedule 8B to the 1984 Act (fixed penalties for certain offences) 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) Where an electronic communication is used for the purpose of serving a notice under Schedule 8B to the 1984 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 8B to the 1984 Act is to be given shall be–

(a) where such person has provided the roads 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.

Time limit for giving fixed penalty notice

5. 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

6.—(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 8B to the 1984 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

7. Schedule 8B to the 1984 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

8. Where a notice withdrawing a fixed penalty notice is given in accordance with paragraph 8(1) of Schedule 8B to the 1984 Act, it shall be in the form set out in Schedule 3.

Retention of fixed penalties

9. The roads authority may retain as much of the money received by them by way of fixed penalties under Schedule 8B to the 1984 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 3

FORM OF FIXED PENALTY NOTICE

* *(* Insert Roads Authority name)*	**FIXED PENALTY NOTICE** **ROADS (SCOTLAND) ACT 1984** (Section 130A and Schedules 8A(**a**) and 8B)	**FIXED PENALTY NOTICE** Number: **.....**

PART A

Contact Tel No.	Roads Authority No. (if any) * (**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 130A of, and Schedule 8B to, the Roads (Scotland) Act 1984, 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 roads authority may extend this period in any particular case if they consider it appropriate to do so* (*see paragraph 4(3) of Schedule 8B*)).

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 8B*)).

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**) Section 130A and Schedule 8A were inserted by section 37 of and schedule 6 to the Transport (Scotland) Act 2005.

PART B		
* *(* Insert Roads 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 Roads 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 Roads 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 Roads (Scotland) Act 1984)		
CODE	**OFFENCE**	**BRIEF DESCRIPTION**
01	An offence under section 58(1).	Deposit of building materials in or erection of scaffolding over road without or other than in accordance with permission.
02	An offence under section 85(3) as read with (4).	Deposit of builder's skip on road without permission of roads authority.
03	An offence under section 85(3) as read with (4).	Failure of owner of skip or other person to ensure conditions of permission complied with.

SCHEDULE 2

Regulation 6

AMOUNT OF PENALTY

TABLE

(1) *Item No.*	*(2)* *Offence under the 1984 Act*	*(3)* *Brief description*	*(4)* *Amount of penalty*	*(5)* *Discounted amount*
1.	An offence under section 58(1).	Deposit of building materials in or erection of scaffolding over road without or other than in accordance with permission.	£120	£80
2.	An offence under section 85(3) as read with (4).	Deposit of builder's skip on road without permission of roads authority.	£120	£80
3.	An offence under section 85(3) as read with (4).	Failure of owner of skip or other person to ensure conditions of permission complied with.	£120	£80

SCHEDULE 3

Regulation 8

FORM OF NOTICE WITHDRAWING A FIXED PENALTY NOTICE

* *(* Insert Roads Authority name)*	**NOTICE WITHDRAWING FIXED PENALTY NOTICE** **ROADS (SCOTLAND) ACT 1984** (Section 130A and Schedules 8A and 8B)	**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 37 of, and schedules 6 and 7 to, the Transport (Scotland) Act 2005 insert section 130A and Schedules 8A and 8B into the Roads (Scotland) Act 1984 ("the 1984 Act"). These provide for certain offences under the 1984 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 the 1984 Act.

Regulation 2 defines terms used in these Regulations.

Regulation 3 and Schedule 1 prescribe the form of a fixed penalty notice and the methods by which fixed penalties may be paid.

Regulation 4 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 5 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 6 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 7 modifies Schedule 8B to the 1984 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 8 and Schedule 3 prescribe the form of a notice withdrawing a fixed penalty notice.

Regulation 9 enables a roads authority to retain the reasonable costs of issuing and administering fixed penalty notices from the fixed 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.

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