

## SCHEDULE 5

*(introduced by section 34)*

### SCHEDULE 6B TO THE NEW ROADS AND STREET WORKS ACT 1991

#### “SCHEDULE 6B FIXED PENALTIES FOR CERTAIN OFFENCES UNDER PART 4

##### **Power to give fixed penalty notices**

- 1 (1) An authorised officer of a road works authority may, if having reason to believe that a person is committing or has committed a fixed penalty offence, give that person a fixed penalty notice in relation to that offence.
- (2) In this Schedule “fixed penalty notice” means a notice offering a person the opportunity of discharging any liability to conviction for a fixed penalty offence by payment of a penalty.
- 2 A fixed penalty notice for an offence may not be given after such time relating to the offence as may be prescribed.

##### **Contents of fixed penalty notice**

- 3 (1) A fixed penalty notice shall identify the offence to which it relates and give reasonable particulars of the circumstances alleged to constitute that offence.
- (2) A fixed penalty notice shall also state—
  - (a) the amount of the penalty and the period within which it may be paid,
  - (b) the discounted amount and the period within which it may be paid,
  - (c) the person to whom and the address at which payment may be made,
  - (d) the method or methods by which payment may be made,
  - (e) the person to whom and the address at which any representations relating to the notice may be made,
  - (f) the consequences of not making a payment within the period for payment.
- (3) The person specified under sub-paragraph (2)(c) must be the road works authority or a person acting on their behalf.

##### **The amount of the penalty and the period for payment**

- 4 (1) The penalty for a fixed penalty offence is (subject to paragraph 5) such amount, not exceeding 30 per cent. of the maximum fine for that offence, as may be prescribed.
- (2) The period for payment of the penalty is the period of 29 days beginning with the day on which the notice is given.
- (3) The road works authority may extend the period for paying the penalty in any particular case if they consider it appropriate to do so.

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*Status: This is the original version (as it was originally enacted).*

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### **The discounted amount**

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- (1) A discounted amount is payable instead of the amount prescribed under paragraph 4(1) if payment is made before the end of the period of 15 days beginning with the day on which the notice is given.
  - (2) The discounted amount for a fixed penalty offence is such amount, not exceeding 25 per cent. of the maximum fine for the offence, as may be prescribed.
  - (3) If the last day of the period specified in sub-paragraph (1) 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.

### **Effect of notice and payment of penalty**

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- (1) This paragraph applies where a person is served with a fixed penalty notice in respect of a fixed penalty offence.
  - (2) No proceedings for the offence may be commenced before the end of the period for payment of the penalty.
  - (3) No such proceedings may be commenced or continued if payment of the penalty is made before the end of that period or is accepted by the road works authority after that time.
  - (4) Payment of the discounted amount counts for the purposes of sub-paragraph (3) only if it is made before the end of the period for payment of the discounted amount.
  - (5) In proceedings for the offence a certificate which—
    - (a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of the road works authority, and
    - (b) states that payment of an amount specified in the certificate was or was not received by a date so specified,is sufficient evidence of the facts stated.

### **Request for hearing**

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- (1) A person to whom a fixed penalty notice has been given may, before the expiry of the period for payment of the penalty, give notice requesting a hearing in respect of the offence to which the fixed penalty notice relates.
  - (2) A notice requesting a hearing under sub-paragraph (1) shall be in writing and shall be sent by post or delivered to the person specified under paragraph 3(2)(c) in the fixed penalty notice at the address so specified.
  - (3) For the purposes of this paragraph and unless the contrary is proved, the sending of a notice by post is deemed to have been effected at the time at which the notice would be delivered in the ordinary course of post.
  - (4) Where a person has requested a hearing in accordance with this section—
    - (a) the road works authority shall hold the hearing,
    - (b) a person authorised for the purpose by the road works authority in whose area the offence was committed shall notify the procurator fiscal of the request, and

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- (c) the period for payment of the fixed penalty shall be calculated so that the period beginning with the giving of the notice under this paragraph and ending with the receipt by the person who gave that notice of the decision reached at the hearing is left out of account.

#### **Power to withdraw notices**

- 8 (1) If the road works authority consider (whether after holding a hearing under paragraph 7 or not) that a fixed penalty notice which has been given ought not to have been given, they may give to the person to whom it was given a notice withdrawing the fixed penalty notice.
- (2) Where a notice under sub-paragraph (1) is given—
- (a) the road works authority shall repay any amount which has been paid by way of penalty in pursuance of the fixed penalty notice, and
  - (b) no proceedings shall be commenced or continued against that person for the offence in question.
- (3) The road works authority shall consider any representations made by or on behalf of the recipient of a fixed penalty notice and decide in all the circumstances whether to withdraw the notice.

#### **Effect of prosecution on notice**

- 9 Where proceedings for an offence in respect of which a fixed penalty notice has been given are commenced, the notice is to be treated as withdrawn.

#### **Recovery of unpaid fixed penalties**

- 10 Subject to paragraphs 8 and 9, where a fixed penalty remains unpaid after the expiry of the period for payment of the penalty it shall be enforceable in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.

#### **Judicial determination of enforcement of fixed penalty**

- 11 (1) A person against whom a fixed penalty bears to be enforceable under paragraph 10 may apply to the sheriff by summary application for a declaration that the fixed penalty is not enforceable on the ground that—
- (a) the fixed penalty was paid before the expiry of the period for paying, or
  - (b) the person has made a request for a hearing in accordance with paragraph 7 and no hearing has been held within a reasonable time after the request.
- (2) On an application under sub-paragraph (1), the sheriff may declare—
- (a) that the person has or, as the case may be, has not paid the fixed penalty within the period for payment of the penalty,
  - (b) that the person has or, as the case may be, has not requested a hearing in accordance with paragraph 7,
  - (c) that, where such a request has been made, a hearing has or, as the case may be, has not been held within a reasonable time after the request, and accordingly, that the fixed penalty is or, as the case may be, is not enforceable.

### **General and supplementary**

- 12 (1) The road works authority shall, subject to sub-paragraph (2), remit the money received by them by way of fixed penalties under this Schedule to the Scottish Ministers.
- (2) The Scottish Ministers may, by regulations, provide that the road works authority may retain as much of that money as is sufficient to meet such of their expenditure as is described in the regulations.
- (3) The Scottish Ministers may make regulations about the keeping of accounts, and the preparation and publication of statements of account, relating to fixed penalties under this Schedule.
- 13 (1) Fixed penalty notices may not be given in such circumstances as may be prescribed.
- (2) The method or methods by which fixed penalties may be paid may be prescribed.
- (3) The Scottish Ministers may by regulations modify paragraph 4(2) or 5(1) so as to substitute a different period for the period for the time being specified there.
- 14 The Scottish Ministers may issue or approve for the purposes of this Schedule a code of practice giving guidance to road works authorities and their authorised officers as to the performance of their functions under this Schedule; and in performing those functions those authorities and officers shall have regard to that code of practice.”