



Transport (Scotland) Act 2005

2005 asp 12

PART 2

ROAD WORKS

Enforcement of certain offences under the Roads (Scotland) Act 1984

37 Fixed penalty offences under the Roads (Scotland) Act 1984

(1) After section 130 of the Roads (Scotland) Act 1984 (c. 54) there is inserted—

“130A Fixed penalties for certain offences

- (1) Any offence under this Act which is listed in the first column of Schedule 8A to this Act (and described in general terms in the second column) is a fixed penalty offence for the purposes of this Act.
 - (2) Offences listed in that Schedule which are committed by virtue of section 130 of this Act (offences committed by bodies corporate, etc.) are not fixed penalty offences.
 - (3) The Scottish Ministers may, by order, modify that Schedule so as to provide that an offence is to cease to be a fixed penalty offence.
 - (4) Schedule 8B to this Act (which makes provision about fixed penalties for fixed penalty offences) has effect.
 - (5) An order under subsection (3) above may make transitional provision.”
- (2) In section 143 of that Act (which includes provision as to orders under the Act), in subsection (2)(b)(ii), after “section” there is inserted “130A or”.
- (3) After Schedule 8 to that Act there are inserted Schedules 8A and 8B as set out in schedules 6 and 7 to this Act.
- (4) In section 156 of the 1991 Act (service of notices etc.) after subsection (2) there is inserted—

“(3) References in this section to notices authorised to be given or served for the purposes of this Part include reference to notices under Schedule 8B to the Roads (Scotland) Act 1984 (c. 54) (fixed penalties for certain offences under that Act).”.

38 Civil penalties for certain offences under the roads (Scotland) Act 1984

(1) After section 130A of the Roads (Scotland) Act 1984 (as inserted by section 37 above) there is inserted—

“130B Civil penalties for certain offences

- (1) The Scottish Ministers may, by regulations, make provision for or in connection with—
 - (a) the imposition by roads authorities of penalty charges in respect of the offences which, under section 130A of this Act, are fixed penalty offences;
 - (b) the payment of such charges.
 - (2) The regulations shall include provision specifying the person or persons by whom a penalty charge in respect of an offence is to be paid (who may be or, as the case may be, include a person other than the person who committed the offence).
 - (3) The regulations shall include provision—
 - (a) prohibiting criminal proceedings or the giving of a fixed penalty notice in respect of any description of conduct for which a penalty charge may be imposed; or
 - (b) securing that a penalty charge is not payable or is refunded where the conduct is the subject of criminal proceedings or of a fixed penalty notice.
 - (4) The regulations shall include provision about the standard of proof required to establish the commission of an offence in respect of which a penalty charge may be imposed and may include other provision for or in connection with evidence and procedure.
 - (5) The regulations may set different levels of penalty charges in respect of different offences and in respect of the same offences committed in different circumstances.
 - (6) The regulations may include provision for and in connection with—
 - (a) the notification of penalty charges to persons appearing to be liable to pay them;
 - (b) the enabling and effect of the making of representations to roads authorities by persons who are or may be liable to pay those charges;
 - (c) appeals by those persons against the imposition of those charges.”.
- (2) In section 143 of that Act (which includes provision as to regulations under the Act), in subsection (2)(b)(i) after “17” there is inserted “or 130B”.

39 Consultation on regulations and codes of practice

After section 163 of the 1991 Act there is inserted the following section—

“163A Consultation on regulations and codes of practice

(1) Before—

- (a) making, amending or revoking regulations under or for the purposes of any provision of this Part, or
- (b) issuing, amending or revoking a code of practice under or for the purposes of any such provision or approving any such code of practice or its amendment or revocation,

the Scottish Ministers shall consult the persons and authorities set out in subsection (2).

(2) Those persons and authorities are such—

- (a) persons considered by the Scottish Ministers to be representative of the interests of undertakers,
- (b) road works authorities,
- (c) other persons,

as the Scottish Ministers think appropriate.”.