

Status: Point in time view as at 26/03/2006.

Changes to legislation: There are currently no known outstanding effects for the Smoking, Health and Social Care (Scotland) Act 2005, SCHEDULE 1. (See end of Document for details)

SCHEDULE 1

(introduced by section 6)

FIXED PENALTY FOR OFFENCES UNDER SECTIONS 1, 2, AND 3

Power to give fixed penalty notices

- 1 (1) An authorised officer of a council may, if having reason to believe that a person is committing or has committed an offence under section 1, 2 or 3 in no-smoking premises within the area of the council, give that person a fixed penalty notice in relation to that offence.
- (2) A constable may, if having reason to believe that a person is committing or has committed an offence under section 1, 2 or 3, give that person a fixed penalty notice in relation to that offence.
- (3) In this schedule, “fixed penalty notice” means a notice offering a person the opportunity of discharging any liability to conviction for an offence under section 1, 2 or 3 by payment of a fixed penalty.

Commencement Information

- I1** Sch. 1 para. 1 in force at 26.3.2006 at 0600 hours by [S.S.I. 2005/492, art. 3\(d\)](#)

- 2 A fixed penalty notice for an offence under section 1, 2 or 3 may not be given after such time relating to the offence as may be prescribed.

Modifications etc. (not altering text)

- C1** Sch. 1 paras. 1-3 applied (15.5.2006) by [Smoking, Health and Social Care \(Scotland\) Act 2005 and The Prohibition Of Smoking In Certain Premises \(Scotland\) Regulations 2006 \(Consequential Provisions\) \(Scotland\) Order 2006 \(S.I. 2006/1115\)](#), arts. 1, **3** (with art. 4)

Commencement Information

- I2** Sch. 1 para. 2 in force at 1.11.2005 for specified purposes by [S.S.I. 2005/492, art. 3\(b\), Sch. 2](#)
I3 Sch. 1 para. 2 in force at 26.3.2006 at 0600 hours in so far as not already in force by [S.S.I. 2005/492, art. 3\(d\)](#)

Contents of fixed penalty notice

- 3 (1) A fixed penalty notice must identify the offence to which it relates and give reasonable particulars of the circumstances alleged to constitute that offence.
- (2) A fixed penalty notice must 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.

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- (3) The person specified under sub-paragraph (2)(c) must be the council in the area of which the offence was alleged to have been committed or a person acting on its behalf.

Commencement Information

I4 Sch. 1 para. 3 in force at 26.3.2006 at 0600 hours by [S.S.I. 2005/492, art. 3\(d\)](#)

The amount of the penalty and the period for payment

- 4 (1) The fixed penalty for an offence under section 1, 2 or 3 is (subject to paragraph 5) such amount as may be prescribed.
- (2) The period for payment of the fixed penalty is the period of 29 days beginning with the day on which the notice is given.
- (3) The council may extend the period for paying the fixed penalty in any particular case if it considers it appropriate to do so.

Commencement Information

I5 Sch. 1 para. 4(1) in force at 1.11.2005 for specified purposes by [S.S.I. 2005/492, art. 3\(b\), Sch. 2](#)

I6 Sch. 1 para. 4(1) in force at 26.3.2006 at 0600 hours in so far as not already in force by [S.S.I. 2005/492, art. 3\(d\)](#)

I7 Sch. 1 para. 4(2)(3) in force at 26.3.2006 at 0600 hours by [S.S.I. 2005/492, art. 3\(d\)](#)

The discounted amount

- 5 (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 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.

Commencement Information

I8 Sch. 1 para. 5(1)(3) in force at 26.3.2006 at 0600 hours by [S.S.I. 2005/492, art. 3\(d\)](#)

I9 Sch. 1 para. 5(2) in force at 1.11.2005 for specified purposes by [S.S.I. 2005/492, art. 3\(b\), Sch. 2](#)

I10 Sch. 1 para. 5(2) in force at 26.3.2006 at 0600 hours in so far as not already in force by [S.S.I. 2005/492, art. 3\(d\)](#)

Effect of notice and payment of penalty

- 6 (1) This paragraph applies where a person is served with a fixed penalty notice in respect of a fixed penalty offence.

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- (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 council 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 council; 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.

Commencement Information

III Sch. 1 para. 6 in force at 26.3.2006 at 0600 hours by [S.S.I. 2005/492](#), **art. 3(d)**

Request for hearing

- 7
- (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) must be in writing and must 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 paragraph—
 - (a) the council must hold the hearing;
 - (b) a person authorised for the purpose by the council of the area in which the offence was committed must notify the procurator fiscal of the request; and
 - (c) the period for payment of the fixed penalty must 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.

Commencement Information

II2 Sch. 1 para. 7 in force at 26.3.2006 at 0600 hours by [S.S.I. 2005/492](#), **art. 3(d)**

Power to withdraw notices

- 8
- (1) If the council considers (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, it

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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 council must repay any amount which has been paid by way of penalty in pursuance of the fixed penalty notice; and
 - (b) no proceedings are to be commenced or continued against that person for the offence in question.
- (3) The council must 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.

Commencement Information

I13 Sch. 1 para. 8 in force at 26.3.2006 at 0600 hours by [S.S.I. 2005/492](#), **art. 3(d)**

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.

Commencement Information

I14 Sch. 1 para. 9 in force at 26.3.2006 at 0600 hours by [S.S.I. 2005/492](#), **art. 3(d)**

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 is enforceable in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.

Commencement Information

I15 Sch. 1 para. 10 in force at 26.3.2006 at 0600 hours by [S.S.I. 2005/492](#), **art. 3(d)**

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;

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- (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.

Commencement Information

I16 Sch. 1 para. 11 in force at 26.3.2006 at 0600 hours by [S.S.I. 2005/492](#), [art. 3\(d\)](#)

General and supplementary

- 12 The Scottish Ministers may make regulations about—
- (a) the application by councils of fixed penalties paid under this schedule;
 - (b) the keeping of accounts, and the preparation and publication of statements of account, relating to fixed penalties under this schedule.

Commencement Information

I17 Sch. 1 para. 12 in force at 1.11.2005 for specified purposes by [S.S.I. 2005/492](#), [art. 3\(b\)](#), [Sch. 2](#)

I18 Sch. 1 para. 12 in force at 26.3.2006 at 0600 hours by [S.S.I. 2005/492](#), [art. 3\(d\)](#)

- 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.

Commencement Information

I19 Sch. 1 para. 13 in force at 26.3.2006 at 0600 hours in so far as not already in force by [S.S.I. 2005/492](#), [art. 3\(d\)](#)

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