

Changes to legislation: There are currently no known outstanding effects for the Climate Change (Scotland) Act 2009, SCHEDULE 1A. (See end of Document for details)

[^{F1}SCHEDULE 1A S
(introduced by section 88A(5))

FIXED PENALTIES

Textual Amendments

- F1** Sch. 1A inserted (30.6.2014) by Regulatory Reform (Scotland) Act 2014 (asp 3), ss. 43(3), 61(2); S.S.I. 2014/160, art. 2(1)(2), Sch.

Preliminary

- 1 In this schedule, unless the context otherwise requires—
- “enforcement authority” means the enforcement authority provided for in the regulations;
 - “notice” means a fixed penalty notice given under section 88A(1);
 - “the offence” means the offence to which the notice relates;
 - “prescribed” means prescribed by the regulations;
 - “the regulations” means regulations under section 88A(3).

Content of fixed penalty notice

- 2 (1) A notice must give reasonable particulars of the circumstances alleged to constitute the offence.
- (2) A notice must also contain the following information—
- (a) the amount of the fixed penalty;
 - (b) the payment deadline;
 - (c) the discounted amount and the discounted payment deadline;
 - (d) the name of—
 - (i) the enforcement authority to which payment should be made; or
 - (ii) a person acting on behalf of the enforcement authority to whom payment should be made;
 - (e) the address at which payment should be made; and
 - (f) the method by which payment should be made.
- (3) A notice given to a person must state that—
- (a) any liability to conviction of the offence is discharged if the person makes payment of—
 - (i) the fixed penalty before the payment deadline; or
 - (ii) the discounted amount before the discounted payment deadline;
 - (b) the payment of a fixed penalty is not a conviction nor may it be recorded as such;
 - (c) no proceedings may be commenced against the person in respect of the offence unless the payment deadline has passed and the discounted amount or fixed penalty has not been paid;
 - (d) the person has the right to make representations as mentioned in paragraph 8.

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Period in which notice can be given

- 3 A notice may not be given after such time relating to the offence as may be prescribed.

Amount of penalty

- 4 (1) The amount of the fixed penalty, and the discounted amount, are such amounts as may be prescribed.
- (2) The maximum amount of the fixed penalty that may be prescribed is an amount equal to level 2 on the standard scale (within the meaning of section 225(1) of the Criminal Procedure (Scotland) Act 1995).
- (3) The discounted amount prescribed must be less than the maximum amount of the fixed penalty.

Deadlines for payment

- 5 (1) The payment deadline is the first working day occurring at least 28 days after the day on which the notice is given.
- (2) But the enforcement authority may extend the payment deadline in any particular case after the notice is given if it considers it appropriate to do so.
- (3) The discounted payment deadline is the first working day occurring at least 14 days after the day on which notice is given.
- (4) But the enforcement authority may extend the discounted payment deadline in any particular case after the notice is given if it considers it appropriate to do so.
- (5) On extending the payment deadline under sub-paragraph (2), or the discounted payment deadline under sub-paragraph (4), the enforcement authority must notify the recipient of the notice.
- (6) In this paragraph, “working day” means any day other than a Saturday, a Sunday, Christmas Day or a day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in Scotland.

Method of payment

- 6 The fixed penalty (and the discounted payment amount) is payable—
- (a) to the enforcement authority or the person acting on its behalf specified in the notice;
 - (b) at the address specified in the notice; and
 - (c) by the method specified in the notice.

Restriction on proceedings and effect of payment

- 7 (1) The earliest date that proceedings for the offence may be commenced is the day after the payment deadline.
- (2) But no such proceedings may be commenced against a person if—

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- (a) the person makes payment of the discounted amount on or before the discounted payment deadline (or that deadline as extended under paragraph 5(4)); or
 - (b) the person makes payment of the fixed penalty on or before the payment deadline (or that deadline as extended under paragraph 5(2)).
- (3) 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 enforcement 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.
- (4) Where the enforcement authority is a local authority, the reference to a person having responsibility for the financial affairs of the enforcement authority in sub-paragraph (3)(a) is to be read as a reference to the person who has, as respects the local authority, the responsibility mentioned in section 95 of the Local Government (Scotland) Act 1973 (financial administration).

Withdrawal of fixed penalty notice

- 8 (1) A recipient of a notice may make representations to the enforcement authority as to why the notice ought not to have been given.
- (2) If, having considered any representations under sub-paragraph (1), the enforcement authority considers that the notice ought not to have been given, it may give to the person a notice withdrawing the notice.
- (3) Where a notice under sub-paragraph (2) is given—
- (a) the enforcement authority must repay any amount which has been paid in pursuance of the fixed penalty notice; and
 - (b) no proceedings may be commenced against the person for the offence.

Effect of prosecution on fixed penalty notice

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

General and supplemental

- 10 The regulations may make provision about—
- (a) the application by enforcement authorities of payments received under this schedule;
 - (b) the keeping of accounts, and the preparation and publication of statements of account, in relation to such payments.
- 11 (1) The regulations may prescribe—
- (a) the form of notices including notices under paragraph 8(2);
 - (b) the circumstances in which notices may not be given; and
 - (c) the method by which fixed penalties may be paid.
- (2) The regulations may modify sub-paragraphs (1) and (3) of paragraph 5 so as to substitute a different deadline for the deadline for the time being specified there.

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- 12 The enforcement authority must have regard to any guidance given by the Scottish Ministers to it in relation to the functions conferred on it by the regulations.]

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