

## SCHEDULES

### SCHEDULE 4

Section 96

#### FIXED PENALTIES

##### *Offences to which this Schedule applies*

- 1 (1) This Schedule applies to an offence under this Act (other than Part 4) which is a summary offence.
- (2) Such an offence is referred to in this Schedule as a “relevant offence”.

##### *Fixed penalties and fixed penalty notices*

- 2 (1) The fixed penalty for a relevant offence is such amount as may be prescribed in relation to that offence by regulations made by the Secretary of State.
- (2) The amount prescribed by regulations under sub-paragraph (1) is not to be more than 25 per cent. of the maximum fine on summary conviction for the offence in question [<sup>F1</sup>or, where there is no maximum fine, 50 per cent. of the amount corresponding to level 4 on the standard scale for summary offences].
- (3) In this Schedule “fixed penalty notice” means a notice offering the opportunity of the discharge of any liability to conviction of the offence to which the notice relates by payment of a fixed penalty in accordance with this Schedule.

#### **Textual Amendments**

- F1** Words in Sch. 4 para. 2(2) inserted (E.W.) (12.3.2015) by [The Legal Aid, Sentencing and Punishment of Offenders Act 2012 \(Fines on Summary Conviction\) Regulations 2015 \(S.I. 2015/664\)](#), reg. 1(1), [Sch. 5 para. 11](#) (with reg. 5(1))

##### *Issuing of fixed penalty notice*

- 3 (1) If OFCOM have reason to believe that a person has committed a relevant offence, they may send a fixed penalty notice to that person.
- (2) If a procurator fiscal receives a report that a person has committed a relevant offence in Scotland, he also has power to send a fixed penalty notice to that person.
- (3) If an authorised person has, on any occasion, reason to believe that a person—
- (a) is committing a relevant offence, or
  - (b) has on that occasion committed a relevant offence,
- he may hand that person a fixed penalty notice.
- (4) “Authorised person” means a person authorised by OFCOM, for the purposes of sub-paragraph (3), to issue fixed penalty notices on OFCOM's behalf.

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- (5) References in this Schedule to the person by whom a fixed penalty notice is issued, in relation to a notice handed to a person in accordance with sub-paragraph (3), are references to OFCOM.

*Content of fixed penalty notice*

- 4 (1) A fixed penalty notice must—
- (a) state the alleged offence;
  - (b) give such particulars of the circumstances alleged to constitute that offence as are necessary for giving reasonable information about it;
  - (c) state the fixed penalty for that offence;
  - (d) specify the relevant officer to whom the fixed penalty may be paid and the address at which it may be paid;
  - (e) state that proceedings against the person to whom it is issued cannot be commenced in respect of the offence until the end of the suspended enforcement period;
  - (f) state that such proceedings cannot be commenced if the penalty is paid within the suspended enforcement period;
  - (g) inform the person to whom it is issued of his right to ask to be tried for the alleged offence; and
  - (h) explain how that right may be exercised and the effect of exercising it.
- (2) The suspended enforcement period for the purposes of this Schedule is—
- (a) the period of [<sup>F2</sup>28 days] beginning with the day after that on which the fixed penalty notice was issued; or
  - (b) such longer period as may be specified in the notice.

**Textual Amendments**

- F2** Words in Sch. 4 para. 4(2)(a) substituted (27.6.2017) by [Digital Economy Act 2017 \(c. 30\)](#), ss. **10(1)**, 118(2) (with s. 10(2))

*Withdrawal of fixed penalty notice*

- 5 If it appears to a person who has issued a fixed penalty notice that it was wrongly issued—
- (a) he may withdraw the notice by a further notice to the person to whom it was issued; and
  - (b) if he does so, the relevant officer must repay any amount paid in respect of the penalty.

*Notification to person to whom payment is to be made*

- 6 A person who issues (or withdraws) a fixed penalty notice must send a copy of the notice (or of the notice of withdrawal) to the relevant officer specified in the notice being issued (or withdrawn).

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*Effect of fixed penalty notice*

- 7 (1) This paragraph applies if a fixed penalty notice is issued to a person (“the alleged offender”).
- (2) Proceedings for the offence to which the notice relates cannot be brought against the alleged offender until the person who issued the notice has been notified by the relevant officer specified in the notice that payment of the fixed penalty has not been made within the suspended enforcement period.
- (3) If the alleged offender asks to be tried for the alleged offence—
- (a) sub-paragraph (2) does not apply; and
  - (b) proceedings may be brought against him.
- (4) Such a request must be made by a notice given by the alleged offender—
- (a) in the manner specified in the fixed penalty notice; and
  - (b) before the end of the suspended enforcement period.
- (5) A request made in accordance with sub-paragraph (3) is referred to in this Schedule as a “request to be tried”.

*Payment of fixed penalty*

- 8 (1) If the alleged offender decides to pay the fixed penalty, he must pay it to the relevant officer specified in the notice.
- (2) Payment of the penalty may be made by properly addressing, pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise).
- (3) Sub-paragraph (4) applies if a person—
- (a) claims to have made payment by that method; and
  - (b) shows that his letter was posted.
- (4) Unless the contrary is proved, payment is to be regarded as made at the time at which the letter would be delivered in the ordinary course of post.
- (5) Sub-paragraph (2) does not prevent the payment of a penalty by other means.
- (6) A letter is properly addressed for the purposes of sub-paragraph (2) if it is addressed in accordance with the requirements specified in the fixed penalty notice.

*Effect of payment*

- 9 If the fixed penalty specified in a fixed penalty notice is paid within the period specified in that notice, no proceedings for the offence to which that notice relates may be brought against the alleged offender.

*Service of statement and proof of service*

- 10 (1) This paragraph applies to proceedings for a relevant offence.
- (2) A certificate by OFCOM—
- (a) that a copy of a statement by a person authorised by OFCOM was included in, or given with, a fixed penalty notice,
  - (b) that the notice was a notice with respect to the relevant offence, and

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(c) that that notice was issued to the accused on a date specified in the certificate, is evidence that a copy of the statement was served on the alleged offender by delivery to him on that date.

[<sup>F3</sup>(2A) The statement is to be treated as properly served for the purposes of section 9 of the Criminal Justice Act 1967 (proof by written statement), even though the manner of service is not authorised by Criminal Procedure Rules.]

(3) The statement is to be treated as properly served for the purposes of—

<sup>F4</sup>(a) .....

(b) section 1 of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 (c. 28 (N.I.)) (corresponding provision for Northern Ireland), even though the manner of service is not authorised by subsection (8) of [<sup>F5</sup>that section].

(4) Sub-paragraphs (5) and (6) apply to any proceedings in which service of a statement is proved by a certificate under this paragraph.

(5) For the purposes of—

(a) section 9(2)(c) of the Criminal Justice Act 1967 (copy of statement to be tendered in evidence to be served before hearing on other parties to the proceedings by or on behalf of the party proposing to tender it), and

(b) section 1(2)(c) of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 (corresponding provision for Northern Ireland),

service of the statement is to be taken to have been effected by or on behalf of the prosecutor.

[<sup>F6</sup>(5A) If the alleged offender makes a request to be tried, section 9(2A) of the Criminal Justice Act 1967 (time for objection) is to apply—

(a) with the substitution for the reference in paragraph (a) to such number of days, which may not be less than seven, from the service of the copy of the statement of a reference to such number of days, which may not be less than seven, beginning with the day after the one on which the request to be tried was made, and

(b) with the substitution for the reference in paragraph (b) to seven days from the service of the copy of the statement of a reference to seven days beginning with the day after the one on which the request to be tried was made.]

(6) If the alleged offender makes a request to be tried—

<sup>F7</sup>(a) .....

(b) section 1(2)(d) of the Criminal Justice (Miscellaneous Provisions) Act (Northern Ireland) 1968 (corresponding provision for Northern Ireland),

[<sup>F8</sup>is to apply] with the substitution, for the reference to seven days from the service of the copy of the statement, of a reference to seven days beginning with the day after the one on which the request to be tried was made.

(7) This paragraph does not extend to Scotland.

#### Textual Amendments

**F3** Sch. 4 para. 10(2A) inserted (26.5.2015) by [Deregulation Act 2015 \(c. 20\)](#), [ss. 80\(5\)\(a\)](#), 115(7); [S.I. 2015/994](#), [art. 6\(m\)](#)

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- F4** Sch. 4 para. 10(3)(a) and the "and" following it omitted (26.5.2015) by virtue of [Deregulation Act 2015 \(c. 20\), ss. 80\(5\)\(b\)\(i\)](#), 115(7); S.I. 2015/994, art. 6(m)
- F5** Words in Sch. 4 para. 10(3) substituted (26.5.2015) by [Deregulation Act 2015 \(c. 20\), ss. 80\(5\)\(b\)\(ii\)](#), 115(7); S.I. 2015/994, art. 6(m)
- F6** Sch. 4 para. 10(5A) inserted (26.5.2015) by [Deregulation Act 2015 \(c. 20\), ss. 80\(5\)\(c\)](#), 115(7); S.I. 2015/994, art. 6(m)
- F7** Sch. 4 para. 10(6)(a) and the "and" following it omitted (26.5.2015) by virtue of [Deregulation Act 2015 \(c. 20\), ss. 80\(5\)\(d\)\(i\)](#), 115(7); S.I. 2015/994, art. 6(m)
- F8** Words in Sch. 4 para. 10(6) substituted (26.5.2015) by [Deregulation Act 2015 \(c. 20\), ss. 80\(5\)\(d\)\(ii\)](#), 115(7); S.I. 2015/994, art. 6(m)

#### *Certificate about payment*

- 11 In any proceedings, a certificate—
- (a) that payment of a fixed penalty was, or was not, received by the relevant officer specified in the fixed penalty notice by a date specified in the certificate, or
  - (b) that a letter containing an amount sent by post in payment of a fixed penalty was marked as posted on a date specified in the certificate,
- is evidence (and in Scotland sufficient evidence) of the facts stated, if the certificate purports to be signed by that officer.

#### *Regulations*

- 12 The Secretary of State may by regulations make provision as to any matter incidental to the operation of this Schedule, and in particular—
- (a) for prescribing any information or further information to be provided in a notice, notification, certificate or receipt;
  - (b) for prescribing the duties of relevant officers and the information to be supplied to and by them.

#### *Interpretation*

- 13 In this Schedule “relevant officer” means—
- (a) in relation to England and Wales, the designated officer for the magistrates' court;
  - (b) in relation to Scotland, the clerk of court; and
  - (c) in relation to Northern Ireland, the clerk of petty sessions.

**Changes to legislation:**

There are currently no known outstanding effects for the Wireless Telegraphy Act 2006, SCHEDULE 4.