
SCOTTISH STATUTORY INSTRUMENTS

2003 No. 212

**The Road Traffic (Vehicle Emissions)
(Fixed Penalty) (Scotland) Regulations 2003**

PART 7

FIXED PENALTY NOTICES

Time for issue of notice

16. A fixed penalty notice under regulation 10 or regulation 13 shall be issued at the time the authorised person referred to in those regulations considers that an emissions offence or a stationary idling offence has been committed.

Contents of notice

17. A fixed penalty notice shall give such particulars of the circumstances alleged to constitute the fixed penalty offence to which the notice relates as are necessary to give reasonable information as to the offence including—

- (a) the name and address of the person to whom the notice is issued;
- (b) the registered number of the vehicle concerned;
- (c) the date of the offence;
- (d) the amount of the fixed penalty which may be paid;
- (e) the person to whom, and the address at which, the fixed penalty may be paid and any correspondence relating to the fixed penalty notice may be sent;
- (f) the person to whom, the address at which, and the period within which—
 - (i) a request for a hearing; and
 - (ii) an application for the waiver of the fixed penalty may be sent;
- (g) the method or methods by which payment of the fixed penalty may be made;
- (h) the period for paying the fixed penalty, which shall be not less than 28 days beginning with the date of issue of the notice; and
- (i) the consequences of the fixed penalty not being paid before the expiration of the period for paying it.

Effect of issue of fixed penalty notice

18.—(1) This regulation applies where a fixed penalty notice is issued under regulation 10 or 13.
(2) References in the following provisions of this regulation to the recipient are references to the person to whom the fixed penalty notice is issued.

(3) No proceedings shall be instituted against the recipient for the offence to which the fixed penalty notice relates before the expiry of the period for paying the penalty unless the recipient has given notice requesting a hearing.

(4) A person shall not be convicted of an offence in connection with which a fixed penalty notice has been issued if the fixed penalty is paid before the expiry of the period for paying it.

(5) Where—

- (a) the recipient has not given a notice requesting a hearing; and
- (b) the fixed penalty has not been paid before the end of the period for paying it,

the fixed penalty shall be increased as mentioned in paragraph (6).

(6) A fixed penalty—

- (a) of £60, in the case of an emissions offence, shall be increased to £90;
- (b) of £20, in the case of a stationary idling offence, shall be increased to £40.

(7) Where a notice under regulation 20(6) includes such a statement as is mentioned in regulation 20(7), references in paragraphs (3) and (4) of this regulation to the period for paying the fixed penalty shall be treated as references to the period ending with the date specified in accordance with regulation 20(7)(b).

Notice requesting a hearing

19.—(1) A person to whom a fixed penalty notice has been issued may, within the period and in the manner specified—

- (a) in that notice, or
- (b) where notice has been given under regulation 20(6), in that notice,

give notice requesting a hearing in respect of the offence to which the fixed penalty notice relates.

(2) Where notice requesting a hearing is given—

- (a) the fixed penalty shall not be payable; and
- (b) an authorised person may notify the Procurator Fiscal.

Waiver of fixed penalty for emissions offence

20.—(1) A person to whom a fixed penalty notice has been issued in respect of an emissions offence may, within the period and in the manner specified in that notice, apply to the appropriate authority to waive the fixed penalty.

(2) An application under paragraph (1) must be in writing and must—

- (a) contain such information, and
- (b) be accompanied by such documentary evidence,

as the applicant considers likely to satisfy the authority in terms of paragraph (3).

(3) The authority may waive the fixed penalty entirely where it is satisfied—

- (a) that the defect by reason of which the vehicle failed the test carried out pursuant to paragraph (2) or, as the case may be, regulation 9(3)(a) (“the regulation 9 test failure”), was rectified not later than 14 days after the date of that failure; and
- (b) as to the matters in one of paragraphs 4(a) or (b).

(4) The matters referred to in paragraph (3)(b) are that—

- (a) in the period of 12 months immediately preceding the regulation 9 test failure—
 - (i) the vehicle passed an examination under section 45 of the Road Traffic Act 1988; or

- (ii) the vehicle failed such an examination, but none of the grounds on which it failed related to a requirement of regulation 61 or 61A of the 1986 Regulations; or
 - (b) all reasonable steps had been taken prior to the regulation 9 test failure to maintain the vehicle in a condition sufficient to comply with the requirements of those regulations 61 and 61A.
- (5) Paragraph (3)(b) as it relates to paragraph (4)(a), will only apply if the date of the examination referred to in paragraphs (4)(a)(i) and (ii) precedes the date on which a person gives the permission referred to in regulation 9(1).
- (6) As soon as practicable after determining an application under paragraph (1), the authority shall, by notice, inform the applicant of its decision.
- (7) Except in a case in which the authority has waived the fixed penalty in its entirety, the authority's notice under paragraph (5) shall include a statement of—
- (a) the amount of the fixed penalty;
 - (b) the date by which the fixed penalty is to be paid, being whichever is the later of—
 - (i) the last day in the period specified, in accordance with regulation 17(h), in the fixed penalty notice, and
 - (ii) the day that falls 14 days after that on which the notice under paragraph (5) is issued; and
 - (c) the person to whom, the address at which, and the period within which a notice requesting a hearing may be sent.

Withdrawal of fixed penalty notice

- 21.—**(1) A fixed penalty notice may be withdrawn in any case in which the appropriate authority determines that it—
- (a) ought not to have been issued; or
 - (b) ought not to have been issued to the person named as the person to whom it was issued.
- (2) Where a fixed penalty notice has been withdrawn in accordance with paragraph (1)—
- (a) notice of the withdrawal shall be given to the person to whom the notice was issued;
 - (b) any amount paid by way of fixed penalty in pursuance of that notice shall be repaid to the person who paid it; and
 - (c) no proceedings shall be continued or instituted against that person for the offence in connection with which the withdrawal notice was issued.