

2003 No. 212

ROAD TRAFFIC, SCOTLAND

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

Made 20th March 2003

Coming into force 21st March 2003

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The Scottish Ministers, in exercise of the powers conferred by sections 87(1)(c), (2) and (5) of, and paragraph 5 of Schedule 11 to, the Environment Act 1995^(a) and of all other powers enabling them in that behalf, and after consultation with the Scottish Environment Protection Agency and with such bodies appearing to them to be representative of the interests of local government and of industry and with such other bodies and persons as they consider appropriate in accordance with section 87(7) of that Act, hereby make the following Regulations, a draft of which has, in accordance with section 87(8) of that Act, been laid before and approved by resolution of the Scottish Parliament:

(a) 1995 c.25. See section 91(1) for the definitions of “prescribed” and “regulations”. The functions of the Secretary of State were transferred to the Scottish Ministers by virtue of section 53 of the Scotland Act 1998 (c.46).

PART 1
INTRODUCTORY

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Road Traffic (Vehicle Emissions) (Fixed Penalty) (Scotland) Regulations 2003 and shall come into force on the day after the day on which they are made.

(2) These Regulations extend to Scotland only.

Interpretation

2.—(1) In these Regulations—

“the 1995 Act” means the Environment Act 1995;

“the 1986 Regulations” means the Road Vehicles (Construction and Use) Regulations 1986(a);

“the 1997 Regulations” means the Road Traffic (Vehicle Emissions) (Fixed Penalty) Regulations 1997(b);

“appropriate authority” in relation to—

(a) a fixed penalty notice, means the local authority on whose behalf the notice is issued;

(b) an authorised person, means the local authority by which that person is authorised;

“authorised person” in relation to—

(a) the investigation or prosecution of an emissions offence means a person authorised under regulation 6(1);

(b) the investigation or prosecution of a stationary idling offence means a person authorised under regulation 6(3);

“designated local authority” means a local authority that is for the time being designated under regulation 4(1);

“emissions offence” means using on a road a motor vehicle which does not comply with a requirement of regulation 61 (emission of smoke, vapour, gases, oily substances etc) or 61A (emission of smoke, vapour, gases, oily substances etc – further requirements for certain motor vehicles first used on or after 1st January 2001) of the 1986 Regulations;

“fixed penalty notice” means a notice under regulation 10 or 13;

“notice requesting a hearing” means a notice given under regulation 19(1) by a person to whom a fixed penalty notice has been issued;

“stationary idling offence” means a contravention of, or failure to comply with regulation 98 (stopping of engine when stationary) of the 1986 Regulations as it relates to the prevention of exhaust emissions.

(2) Unless the context otherwise provides, any reference in these Regulations to—

(a) a numbered section is a reference to the section of the 1995 Act bearing that number;

(b) a numbered regulation is a reference to the regulation in these Regulations bearing that number;

(c) a numbered paragraph is a reference to the paragraph in that Regulation bearing that number; and

(d) a reference to a Part is a reference to a Part of these Regulations.

(a) 1986/1078; relevant amending instruments relating to emissions are S.I. 1990/1131, 1992/2137, 1993/2199, 1995/2210, 1997/1544, 1998/1, 1998/1563, 2000/3197, 2001/306, 2001/1825 and 2001/3208.

(b) S.I. 1997/3058.

PART 2
DESIGNATION OF LOCAL AUTHORITIES

Application for designation

- 3.—(1) A local authority may apply to the Scottish Ministers to be a designated local authority.
- (2) An application under paragraph (1) must be in writing.

Designation

4.—(1) If the Scottish Ministers, having received an application from a local authority under regulation 3, are satisfied as to the matters referred to in paragraph (2), they shall, by an instrument in writing, designate that authority.

- (2) The matters referred to in paragraph (1) are that—
- (a) the designation of that authority would assist it to manage the quality of air within its area; and
 - (b) the authority will provide, or secure the provision of, proper and adequate training for persons who may be authorised by it for the purposes of these Regulations.
- (3) A designated local authority shall
- (a) at least four weeks prior to exercising the powers referred to in paragraph (5), and
 - (b) every year thereafter,

publish a notice in one or more newspapers circulating in the area of the local authority, one or more national newspapers and the Edinburgh Gazette.

- (4) A notice published under paragraph (3) must—
- (a) state that the designation has been made;
 - (b) describe the area affected by the designation;
 - (c) describe the effect of the designation; and
 - (d) state the date on which the designated local authority intends to exercise the powers referred to in paragraph (5).

(5) A designated local authority may, in relation to its area, exercise such of the powers conferred by the following provisions of these Regulations as relate to offences.

Revocation of designation

5.—(1) If in respect of a designated authority the Scottish Ministers are not satisfied that regard is being had to any guidance they have issued pursuant to section 88 in relation to the discharge by local authorities of their powers and duties under these regulations, they may, subject to paragraph (2), by notice served on the authority, revoke its designation.

- (2) The Scottish Ministers shall not serve a notice under paragraph (1) unless they have by notice informed the authority—
- (a) of their proposal to revoke the authority's designation;
 - (b) of their reasons for proposing to revoke the designation; and
 - (c) that representations may be made to them about the proposed revocation before the end of such period as may be specified in the notice under this paragraph (being not less than 28 days beginning with the date of service of the notice).

(3) A notice under paragraph (1) shall specify the date on which the revocation is to take effect, and shall be accompanied by a statement of the Scottish Ministers' reasons for revoking the designation.

PART 3
AUTHORISATIONS

Authorisations

6.—(1) A designated local authority may, subject to paragraph (2), authorise any officer of the authority, or any other person, on production of evidence of that authorisation—

- (a) to carry out, in accordance with regulation 9, tests on vehicles which are in, or which are about to pass through, or which have passed through, the area of that local authority; and
- (b) to issue fixed penalty notices in respect of emissions offences committed in relation to such vehicles.

(2) A person may not be authorised under paragraph (1) unless the authority is satisfied that that person has successfully completed a course of training on testing emissions which has been approved by the Scottish Ministers.

(3) A local authority (whether or not a designated local authority) may authorise any officer of the authority, or any other person, in any area of that authority—

- (a) in accordance with regulation 12, to stop the commission of stationary idling offences; and
- (b) to issue a fixed penalty notice in respect of such an offence committed in its area.

PART 4
FIXED PENALTY OFFENCES

Fixed penalty offences

7. Emissions offences and stationary idling offences under section 42 of the Road Traffic Act 1988(a) are hereby prescribed as fixed penalty offences for the purposes of these Regulations.

Amount of penalty

8. Subject to regulation 18, a person may discharge any liability to conviction—

- (a) for an emissions offence, subject to regulation 20, on payment of £60;
- (b) for a stationary idling offence, on payment of £20.

PART 5
TESTS

On-the-spot and deferred emissions tests

9.—(1) An authorised person may require a person driving on a road a motor vehicle which is in, or which is about to pass through, or which has passed through, the area of the appropriate authority to permit that motor vehicle to be the subject of a test for the purpose of determining whether an emissions offence is being or has been committed.

(2) Subject to paragraph (3), the test referred to in paragraph (1) shall be carried out immediately by an authorised person.

(3) An authorised person may, instead of proceeding immediately with the test—

- (a) require the test to be carried out by an authorised person at such place and time (being not later than 14 days beginning with the day on which the paragraph (1) requirement is imposed) as that authorised person shall specify when imposing that requirement; or
- (b) require the person on whom the paragraph (1) requirement is imposed to present the vehicle for examination under section 45 (tests of satisfactory condition of vehicles) of the Road Traffic Act 1988.

(a) 1998 c.52. Section 42 was substituted by section 8(2) of the Road Traffic Act 1991 (c.40).

- (4) When imposing a requirement under paragraph (3)(b), the authorised person shall also—
- (a) require the driver of the vehicle concerned to produce, in respect of that vehicle, either a test certificate issued under section 45(2)(b) of the Road Traffic Act 1988 or a notice of failure; and
 - (b) specify the—
 - (i) date on which, and the time at which;
 - (ii) place at which; and
 - (iii) person to whom, the certificate or notice is to be produced.

(5) The date specified under paragraph (4)(b)(i) shall be within 21 days of the day on which the authorised person imposes the requirement under paragraph (3)(b).

(6) A requirement for the production of a certificate or notice under paragraph (4)(a) shall not be treated as satisfied unless the date of issue of the document produced is on or after the date on which the requirement was imposed.

(7) A person who fails to comply with a requirement imposed by virtue of paragraphs (1), (3)(a) or (4)(a), of this regulation shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

- (8) In this regulation—
- “notice of failure” means a notification, under section 45(4) of the Road Traffic Act 1988, of the refusal of a test certificate in which the grounds specified as those on which the vehicle failed the examination under that section do not include item 28 in paragraph 3(b) of Schedule 2 to the Motor Vehicles (Tests) Regulations 1981(a) (including that item as applied as mentioned in paragraphs 3A to 6 of that Schedule).

Issue of fixed penalty notice: emissions offence

10. Where—

- (a) a test on a vehicle has been carried out as mentioned in regulation 9(2) or (3)(a); and
- (b) in consequence of that test an authorised person considers that an emissions offence has been committed by the person using that vehicle,

that authorised person may, in accordance with Part 7, issue a fixed penalty notice to that person.

Furnishing of information for the purposes of Part 5

11.—(1) In connection with the discharge of an authorised person’s functions under this Part, an authorised person may require the driver of a vehicle in respect of which a requirement under regulation 9(1) is imposed to disclose to the authorised person the information set out in regulation 15.

(2) A person who fails to comply with a requirement to furnish information under paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

PART 6

STOPPING OF ENGINES

Stopping of an engine when vehicle stationary

12.—(1) An authorised person who has reasonable cause to believe that the driver of a vehicle that is stationary on a road is committing a stationary idling offence may, upon production of evidence of that authorised person’s authorisation, require the driver to stop the running of the engine of that vehicle.

(2) A person who fails to comply with a requirement under paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Issue of fixed penalty notice: stationary idling offence

13. An authorised person who considers that a stationary idling offence has been committed may, in accordance with Part 7, issue a fixed penalty notice to the driver of the vehicle.

Furnishing of information for the purposes of Part 6

14.—(1) In connection with the discharge of an authorised person's functions under this Part, an authorised person may require the driver of a vehicle in respect of which a requirement under regulation 12(1) is imposed to disclose to that authorised person the information set out in regulation 15.

(2) A person who fails to comply with a requirement to furnish information under paragraph (1) shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Information for the purposes of regulations 11 and 14

15. The information which may be required under regulations 11 and 14 is—

- (a) the driver's name and address;
- (b) the driver's date of birth; and
- (c) if the driver is not the person in whose name the vehicle is registered under the Vehicle Excise and Registration Act 1994^(a) at the time that the requirement is imposed, the name of that person.

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.

(a) 1994 c.22.

(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.

PART 8

MISCELLANEOUS

Recovery of unpaid fixed penalties

22. Where a fixed penalty which has not been paid by the date specified for its payment in accordance with regulation 17(h) or, as the case may be, regulation 20(7)(b), is increased as mentioned in regulation 18(6), it shall be enforceable in a like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff court of any sheriffdom in Scotland.

Issue of notices

23.—(1) A notice issued for any purpose of these Regulations by a local authority or an authorised person may be issued by giving it to the person to whom it is issued and such a notice shall be taken to have been issued at the time when it is so given.

(2) A notice issued for the purposes of these Regulations by a local authority may be issued by properly addressing, pre-paying and posting a letter containing the notice to that person and such a notice shall be taken to have been issued at the time when the letter containing it is posted.

Revocation and savings

24.—(1) Subject to paragraph (2), the 1997 Regulations shall be revoked.

(2) Regulations 6 to 12 of the 1997 Regulations shall continue to have effect in respect of any fixed penalty notice issued under regulation 5 of the 1997 Regulations on any day before the day on which these Regulations come into force.

St Andrew's House,
Edinburgh
20th March 2003

ALLAN WILSON
Authorised to sign by the Scottish Ministers

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Road Traffic (Vehicle Emissions) (Fixed Penalty) Regulations 1997 (“the 1997 Regulations”) empower certain local authorities in England, Scotland and Wales (“participating authorities”) to issue fixed penalty notices to users of vehicles within their areas who contravene or fail to comply with regulation 61, 61A or 98 of the Road Vehicles (Construction and Use) Regulations 1986 (“the 1986 Regulations”). Those regulations are concerned with emissions of smoke, vapour, gases, oily substances, etc.

These Regulations replace the 1997 Regulations, for Scotland only.

Under these Regulations a local authority in Scotland may apply to the Scottish Ministers for designation. A local authority so designated may use fixed penalty notices to enforce offences under regulations 61 and 61A of the 1986 Regulations in its area.

These Regulations also provide for the enforcement by fixed penalty notice of offences under so much of regulation 98 of the 1986 Regulations as relates to the prevention of exhaust emissions.

In Part 1, *regulation 2* defines terms used in the Regulations.

In Part 2, *regulation 3* sets out how an application for designation can be made. *Regulation 4* sets out the criteria for designation and requires a local authority to publish notice of a designation. *Regulation 5* provides for the revocation of designations.

In Part 3, *regulation 6* contains provisions relating to the authorisation of persons to carry out emission tests on vehicles, to ensure compliance with the stopping of engines of stationary vehicles and to issue fixed penalty notices.

In Part 4, *regulation 7* prescribes two offences under the 1986 Regulations as fixed penalty offences for the purposes of these Regulations. The first is referable to regulations 61 and 61A of the 1986 Regulations, and attracts a fixed penalty of £60 under *regulation 8(a)*. The second is referable to so much of regulation 98 of the 1986 Regulations as deals with the prevention of exhaust emissions, and attracts a fixed penalty of £20 under regulation 8(b). (The amounts may be increased in accordance with regulation 18.)

Part 5 contains provisions (*regulations 9 to 11*) which confer power to conduct emission tests and deal with other matters relevant to the first of the fixed penalty offences.

Part 6 contains provisions (*regulations 12 to 15*) which confer power to stop the running of the engine of a stationary vehicle and deal with other matters relevant to the second of the fixed penalty offences.

In Part 7, *regulations 16 and 17* provide for the timing of the issue of fixed penalty notices and their content. *Regulation 18* deals with the effect of fixed penalty notices, and provides for the increase of the penalty where payment is not made in accordance with the notice. *Regulation 19* enables a person who has been issued with a fixed penalty notice to ask for a hearing in respect of the offence to which the notice relates. *Regulation 20* provides for the making of an application to waive fixed penalties issued in respect of emissions offences altogether. *Regulation 21* deals with the withdrawal of fixed penalty notices.

In Part 8, *regulation 22* deals with the recovery of unpaid fixed penalties. *Regulation 23* sets out the way in which notices shall be issued. *Regulation 24* revokes the 1997 Regulations with respect to Scotland and saves the relevant provisions in the 1997 Regulations in respect of offences which have been committed prior to these Regulations coming into force.

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