



# Transport (Scotland) Act 2005

## 2005 asp 12

### PART 2

#### ROAD WORKS

##### *Enforcement of 1991 Act*

#### **33 Increase in penalties for summary offences under 1991 Act**

- (1) The maximum fine for each offence under a provision of the 1991 Act listed in column 1 of the table in schedule 3 is increased from level 3 on the standard scale to the level specified for that provision in column 3 of the table.
- (2) Accordingly, in each provision so listed, for “level 3” there is substituted “level 4” or “level 5” (as specified in column 3 of the table).

#### **34 Fixed penalty offences**

- (1) After section 154 of the 1991 Act there is inserted—

##### **“154A Fixed penalties for certain offences under this Part**

- (1) Any offence under this Part relating to road works which is listed in the first column of Schedule 6A (and described in general terms in the second column) is a fixed penalty offence for the purposes of this Part.
- (2) Offences listed in that Schedule which are committed by virtue of section 166 (offences by bodies corporate and partnerships) are not fixed penalty offences.
- (3) The Scottish Ministers may by order made by statutory instrument modify that Schedule so as to provide for offences under this Part relating to road works to become (or cease to be) fixed penalty offences.
- (4) No such order shall be made unless a draft of the statutory instrument containing it has been laid before and approved by resolution of the Scottish Parliament.

(5) Schedule 6B (which makes provision about fixed penalties for fixed penalty offences) has effect.”.

(2) In section 165 of that Act (index for Part 4), after the entry for “expenses” there is inserted—

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“fixed penalty offence

section 154A(1)”.

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(3) After Schedule 6 to that Act there are inserted Schedules 6A and 6B as set out in schedules 4 and 5 to this Act.

### **35 Civil penalties for certain offences under 1991 Act**

After section 154A of the 1991 Act (as inserted by section 34 above) there is inserted—

#### **“154B Civil penalties for certain offences**

- (1) The Scottish Ministers may, by regulations, make provision for or in connection with—
  - (a) the imposition by road works authorities of penalty charges in respect of such offences under this Part of this Act as are specified in the regulations,
  - (b) the payment of such charges.
- (2) The regulations shall include provision specifying the person or persons by whom a penalty charge in respect of an offence is to be paid (who may be or, as the case may be, include a person other than the person who committed the offence).
- (3) The regulations shall include provision—
  - (a) prohibiting criminal proceedings or the giving of a fixed penalty notice in respect of any description of conduct for which a penalty charge may be imposed, or
  - (b) securing that a penalty charge is not payable or is refunded where the conduct is the subject of criminal proceedings or of a fixed penalty notice.
- (4) The regulations shall include provision about the standard of proof required to establish the commission of an offence in respect of which a penalty charge may be imposed and may include other provision for or in connection with evidence and procedure.
- (5) The regulations may set different levels of penalty charges in respect of different offences and in respect of the same offences committed in different circumstances.
- (6) The regulations may include provision for and in connection with—
  - (a) the notification of penalty charges to persons appearing to be liable to pay them,
  - (b) the enabling and effect of the making of representations to road works authorities by persons who are or may be liable to pay those charges,
  - (c) appeals by those persons against the imposition of those charges.

(7) Regulations shall not be made unless a draft of them has been laid before and approved by resolution of the Scottish Parliament.”.