SCHEDULE 1

(introduced by section 4)

FURTHER PROVISION ABOUT REGIONAL TRANSPORT PARTNERSHIPS

Staff

1 A Transport Partnership shall appoint such employees as it considers necessary for the carrying out of its functions.

Commencement Information
I1 Sch. 1 para. 1 in force at 10.10.2005 by S.S.I. 2005/454, art. 2, **Sch. 2**

2 If—

(a) proceedings are brought against an employee of a Transport Partnership in respect of—

(i) anything done by the employee in accordance or purportedly in accordance with an enactment; or

(ii) anything not done by the employee which it is alleged should have been done by the employee in accordance with an enactment; and

(b) the Transport Partnership is satisfied that the employee honestly believed—

(i) that the act or omission was within the scope of the employee's employment; and

(ii) that the employee was, under the enactment, required or entitled to do what was done or omit to do what should have been done,

then the Transport Partnership may indemnify all or any part of any damages or expenses which the employee might have been ordered to pay or might have or has incurred.

Commencement Information
I2 Sch. 1 para. 2 in force at 10.10.2005 by S.S.I. 2005/454, art. 2, **Sch. 2**

3 A Transport Partnership—

(a) shall obtain an appropriate guarantee for the accounting for all money and property which is or is likely to be in the custody or under the control of its employees;

(b) may obtain such a guarantee for all money and property which is or is likely to be in the custody or under the control of any person other than one of its employees.

Commencement Information
I3 Sch. 1 para. 3 in force at 10.10.2005 by S.S.I. 2005/454, art. 2, **Sch. 2**

4 If it comes to the knowledge of a person who is an employee of a Transport Partnership that a contract in which the person has a direct or indirect pecuniary interest (not being a contract to which that person is a party) has been or is proposed to be entered into by the Transport Partnership, that person shall, as soon as practicable, give written notice of that fact to the Transport Partnership.

Commencement Information
I4 Sch. 1 para. 4 in force at 10.10.2005 by S.S.I. 2005/454, art. 2, **Sch. 2**

5 (1) An employee of a Transport Partnership who, under colour of the employment, accepts any fee or reward other than remuneration and expenses commits an offence.

(2) A person who commits such an offence is liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

Commencement Information
I5 Sch. 1 para. 5 in force at 10.10.2005 by S.S.I. 2005/454, art. 2, **Sch. 2**

Land

6 (1) For the purposes of its functions, a Transport Partnership may—

(a) acquire by agreement; or

(b) if authorised by the Scottish Ministers, purchase compulsorily,

any land.

(2) Sub-paragraph (1)(b) above—

(a) does not apply in relation to Crown land (within the meaning of section 242 of the Town and Country Planning (Scotland) Act 1997 (c. 8)); and

(b) is subject to any other enactment conferring on the Transport Partnership power to acquire land compulsorily.

(3) The Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 (c. 42) applies in relation to the compulsory purchase of land under sub-paragraph (1)(b) above as if—

(a) that provision were contained in an Act in force immediately before the commencement of that Act; and

(b) the Transport Partnership were a local authority.

(4) The power to acquire or purchase land under sub-paragraph (1) above includes power to acquire a servitude or other right in or over land by the creation of a new right.

(5) A Transport Partnership may develop its land for the purposes of its functions in such manner as it thinks fit.

Commencement Information
I6 Sch. 1 para. 6 in force at 10.10.2005 by S.S.I. 2005/454, art. 2, **Sch. 2**

7 (1) A Transport Partnership may—

(a) develop, for use by other persons, any of its land no longer required for the purposes of its functions; or

(b) develop for use wholly or partly by other persons any of its land the use of which for the purposes of its functions (not including those conferred by this paragraph) can be combined with that other use,

with a view to selling or otherwise disposing of the land (or any right or interest in or over it) after the development is carried out.

(2) A Transport Partnership may acquire land adjacent to its own for the purposes of developing it under sub-paragraph (1) above together with its own.

Commencement Information
I7 Sch. 1 para. 7 in force at 10.10.2005 by S.S.I. 2005/454, art. 2, **Sch. 2**

8 In paragraphs 6 and 7 above, references to the functions of a Transport Partnership do not include those conferred by paragraph 7 above.

Commencement Information
I8 Sch. 1 para. 8 in force at 10.10.2005 by S.S.I. 2005/454, art. 2, **Sch. 2**

9 (1) A Transport Partnership may dispose of land; and section 74(2) to (2H) of the Local Government (Scotland) Act 1973 (c. 65) (disposal for best consideration) applies in relation to a Transport Partnership as it applies in relation to a local authority.

(2) The power to dispose of land under sub-paragraph (1) above includes power to dispose of a servitude or other right in or over the land by the creation of a new right.

Commencement Information
I9 Sch. 1 para. 9 in force at 10.10.2005 by S.S.I. 2005/454, art. 2, **Sch. 2**

Private legislation

10 (1) A Transport Partnership may, if it thinks fit, promote or oppose private legislation in the Scottish Parliament.

(2) The power conferred by sub-paragraph (1) above on a Transport Partnership includes power to continue the promotion or opposition of private legislation in the circumstances set out in sub-paragraph (3) below.

(3) Those circumstances are—

(a) where the function in pursuance of which the legislation was first promoted or opposed was transferred to the Transport Partnership under section 10 above after the introduction of the Bill for the legislation;

(b) in a case where that function was transferred to the Scottish Ministers under section 13 above after the introduction of that Bill, where the Scottish Ministers have directed that the Transport Partnership specified in the direction is to continue the promotion or opposition of that legislation; or

(c) a combination of the circumstances set out in sub-sub-paragraphs (a) and (b) above.

Commencement Information
I10 Sch. 1 para. 10 in force at 10.10.2005 by S.S.I. 2005/454, art. 2, **Sch. 2**

Participation in community planning

11 In the Local Government in Scotland Act 2003 (asp 1)—

(a) in section 16 (participation of public bodies in community planning)—

(i) in subsection (1), after paragraph (h) there is inserted—

"(i) a Transport Partnership created under the Transport (Scotland) Act 2005 (asp 12)"; and

(ii) in subsection (2), for "(h)" there is substituted " (i) "; and

(b) in section 17 (reports etc. on implementation of community planning), in subsection (3), for "(h)" there is inserted " (i) ".

Commencement Information

I11 Sch. 1 para. 11 in force at 3.4.2006 by S.S.I. 2005/454, art. 2, **Sch. 3**

Forming companies

12 A Transport Partnership may (whether alone or with others, who need not be Transport Partnerships) form or promote companies **[**[F1]under the Companies Act 2006**]**.

Textual Amendments

F1 Words in Sch. 1 para. 12 substituted (1.10.2009) by virtue of The Companies Act 2006 (Consequential Amendments, Transitional Provisions and Savings) Order 2009 (S.I. 2009/1941), art. 1(2), **Sch. 1 para. 251** (with art. 10)

Commencement Information

I12 Sch. 1 para. 12 in force at 10.10.2005 by S.S.I. 2005/454, art. 2, **Sch. 2**

Legal proceedings, notices etc.

13 (1) Sections 189 to 193, 195 and 197 to 199 (legal proceedings, notices etc.) of the Local Government (Scotland) Act 1973 (c. 65) apply in relation to a Transport Partnership as they apply in relation to a council.

(2) A Transport Partnership shall appoint one of its employees as its proper officer for the purposes of sections 190, 191 and 193 of the Local Government (Scotland) Act 1973.

Commencement Information

I13 Sch. 1 para. 13 in force at 10.10.2005 by S.S.I. 2005/454, art. 2, **Sch. 2**

Reporting and information

14 A Transport Partnership shall—

(a) as soon as practicable after the end of each financial year, give the Scottish Ministers and publish a report on the performance of its functions during that year;

(b) provide the Scottish Ministers with such information about the performance of those functions as they may require.

Commencement Information

I14 Sch. 1 para. 14 in force at 10.10.2005 by S.S.I. 2005/454, art. 2, **Sch. 2**

Finance etc.

15 (1) The Local Government (Scotland) Act 1973 (c. 65) is amended in accordance with sub-paragraphs (2) and (3) below.

(2) In section 106(1) (application of Part VII (finance) to bodies other than local authorities) after paragraph (b) there is inserted—

"(ba) a Transport Partnership created under the Transport (Scotland) Act 2005 (asp 12);".

(3) In section 118(5) (authorities required to make local financial returns), after "authorities" there is inserted " or any Transport Partnership created under the Transport (Scotland) Act 2005 (asp 12) ".

(4) A Transport Partnership shall appoint one of its employees as its proper officer for the purposes of Part VII of the 1973 Act.

(5) In section 61(c) of the Local Government in Scotland Act 2003 (asp 1) (meaning of "local authority" for purposes of Act), in sub-paragraph (iv), after "board", where secondly occurring, there is inserted " , a Transport Partnership created under the Transport (Scotland) Act 2005 (asp 12) ".

Commencement Information

I15 Sch. 1 para. 15 in force at 10.10.2005 by S.S.I. 2005/454, art. 2, **Sch. 2**

Contracts etc.

16 (1) The following enactments apply in relation to a Transport Partnership as they apply in relation to a council—

(a) the Local Authority (Goods and Services) Act 1970 (c. 39);

(b) the Local Government Contracts Act 1997 (c. 65); and

(c) sections 78 to 81 (building, contracts etc.) of the Local Government (Scotland) Act 1973 (c. 65).

(2) The Local Government Act 1988 (c. 9) is amended in accordance with sub-paragraphs (3) and (4) below.

(3) In section 1(1) (defined bodies) after paragraph (g) there is inserted—

"(ga) a Transport Partnership created under the Transport (Scotland) Act 2005 (asp 12),".

(4) In Schedule 2 (bodies to which Part 2 of the Act applies), after the entry for a National Park Authority in Scotland there is inserted the following entry— " A Transport Partnership created under the Transport (Scotland) Act 2005 (asp 12) ".

(5) In section 61(c) of the Local Government in Scotland Act 2003 (asp 1) (meaning of "local authority" for purposes of Act)—

(a) in sub-paragraph (iii), the words "and sections 51 and 52 above" are repealed; and

(b) after paragraph (iv) there is inserted—

"(iva) in sections 51 and 52 above, a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994 (c. 39), a joint fire board, a joint police board and a Transport Partnership created under the Transport (Scotland) Act 2005 (asp 12);".

Commencement Information

I16 Sch. 1 para. 16 in force at 10.10.2005 by S.S.I. 2005/454, art. 2, **Sch. 2**

Standards of members' conduct

17 In schedule 3 to the Ethical Standards in Public Life etc. (Scotland) Act 2000 (asp 7) (devolved public bodies for the members of which there are to be codes of conduct under the Act), after the entry for the State Hospitals Board for Scotland there is inserted the following entry— " A Transport Partnership created under the Transport (Scotland) Act 2005 (asp 12) ".

Commencement Information

I17 Sch. 1 para. 17 in force at 10.10.2005 by S.S.I. 2005/454, art. 2, **Sch. 2**

Expenses of observers

18 A Transport Partnership may pay to persons appointed, as respects the Partnership, as observers under section 1(2)(i) above such expenses as the Partnership determines.

Commencement Information

I18 Sch. 1 para. 18 in force at 10.10.2005 by S.S.I. 2005/454, art. 2, **Sch. 2**

Investigation

19 In Part 1 of schedule 2 to the Scottish Public Services Ombudsman Act 2002 (asp 11) (authorities liable to investigation and not subject to removal from that liability), after the entry numbered 11 there is inserted the following entry—

"11A Any Transport Partnership created under the Transport (Scotland) Act 2005 (asp 12)".

Commencement Information
I19 Sch. 1 para. 19 in force at 10.10.2005 by S.S.I. 2005/454, art. 2, **Sch. 2**

Freedom of information

20 In schedule 1 to the Freedom of Information (Scotland) Act 2002 (asp 13) (public authorities subject to duty to disclose information), after the entry numbered 24 there is inserted the following entry—

"24A A Transport Partnership created under the Transport (Scotland) Act 2005 (asp 12).".

Commencement Information
I20 Sch. 1 para. 20 in force at 3.4.2006 by S.S.I. 2005/454, art. 2, **Sch. 3**

SCHEDULE 2

(introduced by section 17)

SCOTTISH ROAD WORKS COMMISSIONER: FURTHER PROVISION

Staff

1 (1) The Commissioner may, with the consent of the Scottish Ministers as to numbers and terms and conditions, appoint staff.

(2) The Commissioner may, with the approval of the Scottish Ministers, make arrangements for the payment of pensions, allowances or gratuities to, or in respect of, any person who has ceased to be a member of the staff of the Commissioner and may, in particular—

(a) make contributions or payments towards provision for such pensions, allowances or gratuities;

(b) establish and administer one or more pension schemes.

(3) Section 16(4) of this Act applies to staff appointed under this paragraph as it applies to the Commissioner.

Commencement Information
I21 Sch. 2 para. 1 in force at 10.10.2005 by S.S.I. 2005/454, art. 2, **Sch. 2**

Accounts

2 The Commissioner shall—

(a) prepare, for each financial year and in accordance with directions given by the Scottish Ministers, an account of the Commissioner's income and expenditure; and

(b) send the account, by such time as the Scottish Ministers may direct, to the Auditor General for Scotland for auditing.

Commencement Information

I22 Sch. 2 para. 2 in force at 10.10.2005 by S.S.I. 2005/454, art. 2, **Sch. 2**

Reports and information

3 **[**[F2](1)**]** The Commissioner shall—

(a) as soon as practicable after the end of each financial year, give the Scottish Ministers and publish a report on the performance of the Commissioner's functions during that year;

(b) provide the Scottish Ministers with such information about the performance of those functions as they may require.

[[F3](2) A report under sub-paragraph (1)—

(a) must include information on the use made during the year of the Commissioner's inspection functions conferred by section 18A or by virtue of section 18F,

(b) may include recommendations—

(i) as to how to improve the carrying out of works in roads,

(ii) in furtherance of the Commissioner's functions under section 17(1)(b) or (c),

(iii) on any other matter relating to the Commissioner's functions.

(3) The Commissioner may at any time give the Scottish Ministers and publish a report on any person who has functions conferred on or permissions granted to them by or under the 1991 Act who has—

(a) failed to comply with the 1991 Act and any obligations imposed on them under it, or

(b) failed to follow good practice within the meaning of section 17(4).**]**

Textual Amendments

F2 Sch. 2 para. 3 renumbered as sch. 3 para. 3(1) (1.4.2024) by Transport (Scotland) Act 2019 (asp 17), **ss. 110(4)(a)**, 130(2) (with s. 126); S.S.I. 2023/250, **sch.**

F3 Sch. 2 para. 3(2)(3) inserted (1.4.2024) by Transport (Scotland) Act 2019 (asp 17), **ss. 110(4)(b)**, 130(2) (with s. 126); S.S.I. 2023/250, sch.

Commencement Information

I23 Sch. 2 para. 3 in force at 10.10.2005 by S.S.I. 2005/454, art. 2, **Sch. 2**

Freedom of information

4 In schedule 1 to the Freedom of Information (Scotland) Act 2002 (asp 13) (public authorities subject to duty to disclose information), after the entry numbered 97 there is inserted the following entry—

"97A The Scottish Road Works Commissioner.".

Commencement Information
I24 Sch. 2 para. 4 in force at 10.10.2005 by S.S.I. 2005/454, art. 2, **Sch. 2**

SCHEDULE 3

(introduced by section 33)

INCREASE IN MAXIMUM FINES FOR CERTAIN SUMMARY OFFENCES UNDER THE 1991 ACT

Commencement Information
I25 Sch. 3 in force at 1.4.2008 by S.S.I. 2008/15, art. 2(2), **Sch. 1**

Provision specifying fine	*Brief description of offence or offences to which the fine relates*	*New maximum fine*
Section 110(2)	Offences under section 110(1) (prohibition of authorised road works)	level 5
Section 113(5)	Failure to comply with duties under section 113 (advance notice of certain works, etc.)	level 4
Section 114(5)	Beginning to execute works in contravention of section 114 (notice of starting date of works)	level 4
Section 115(3)	Execution of works in contravention of direction under section 115 (directions as to timing of road works)	level 5
Section 116(4)	Failure to give notice in accordance with section 116 (notice of emergency works)	level 4
Section 117(6)	Carrying out works in contravention of a restriction imposed under section 117 (restriction on works following substantial road works)	level 5
Section 124(4)	Failure to comply with section 124(1) or (2) (safety measures)	level 5
Section 124(6)	Interference with safety measures taken by undertaker	level 5

Section 125(2)	Failure to comply with section 125(1) (duty to carry on and complete certain road works with all reasonably practicable dispatch)	level 5
Section 126(3)	Failure to comply with section 126(1) or (2) (duties relating to the use of qualified supervisors and operatives)	level 5
Section 127(2)	Failure by undertaker to afford roads authority with reasonable facilities for ascertaining whether undertaker is complying with duties under Part 3	level 4
Section 128(2)	Failure to comply with section 128(1) (requirements relating to road works likely to affect another person's apparatus in the street)	level 4
Section 129(6)	Failure by undertaker to comply with duties under section 129(1) to (5) (reinstatement of road and information for road works authority)	level 5
Section 130(5)	Failure to comply with duties under section 130 (prescribed requirements as to materials and workmanship and performance standards for reinstatements)	level 5
Section 138(4)	Failure to comply with duties under section 138(1) to (3) (records of location of apparatus)	level 5
Section 139(4)	Failure to comply with section 139(1) (duty to inform other undertaker of location of certain apparatus) or requirements imposed under section 139(2) (duties applicable where ownership of certain apparatus cannot be ascertained)	level 4
Section 142(3)	Failure by authority to comply with section 142(2) (requirements relating to	level 4

	certain road works likely to affect apparatus in the road)	
Section 147(6)	Failure by undertaker to comply with duties under section 147(4) or (5) (road works affecting structure of a bridge)	level 5
Schedule 6, paragraph 6	Execution of works in road with special engineering difficulties in contravention of paragraph 2 (requirement for agreed plan and section before executing works) or paragraph 3 (requirement to furnish plan and section after emergency works)	level 5
Schedule 6, paragraph 12(5)	Failure to execute works in such a road in accordance with a direction under paragraph 12 (direction as to alteration of works or removal of apparatus)	level 5
Schedule 6, paragraph 13(2)	Failure to comply with paragraph 13(1) (requirement to execute works in such a road in accordance with plan or agreed modification)	level 5

SCHEDULE 4

(introduced by section 34)

SCHEDULE 6A TO THE NEW ROADS AND STREET WORKS ACT 1991

Commencement Information

I26 Sch. 4 in force at 1.10.2008 by S.S.I. 2008/15, art. 2(3), **Sch. 2**

"SCHEDULE 6A
FIXED PENALTY OFFENCES UNDER PART 4

Offence	***Brief description***
An offence under section 113(5)	Failure to comply with duties under section 113 (advance notice of certain works, etc.)

An offence under section 114(5)	Beginning to execute works in contravention of section 114 (notice of starting date)
An offence under section 116(4)	Failure to give notice in accordance with section 116 (notice of emergency works)
An offence under section 129(6) consisting of a failure to comply with subsection (3) or (4)	Failure to comply with requirements to give notice of completion of reinstatement.”

SCHEDULE 5

(introduced by section 34)

SCHEDULE 6B TO THE NEW ROADS AND STREET WORKS ACT 1991

Commencement Information

I27 Sch. 5 in force at 1.10.2008 by S.S.I. 2008/15, art. 2(3), **Sch. 2**

“SCHEDULE 6B
FIXED PENALTIES FOR CERTAIN OFFENCES UNDER PART 4

Power to give fixed penalty notices

1 (1) An authorised officer of a road works authority may, if having reason to believe that a person is committing or has committed a fixed penalty offence, give that person a fixed penalty notice in relation to that offence.

(2) In this Schedule “fixed penalty notice” means a notice offering a person the opportunity of discharging any liability to conviction for a fixed penalty offence by payment of a penalty.

2 A fixed penalty notice for an offence may not be given after such time relating to the offence as may be prescribed.

Contents of fixed penalty notice

3 (1) A fixed penalty notice shall identify the offence to which it relates and give reasonable particulars of the circumstances alleged to constitute that offence.

(2) A fixed penalty notice shall also state—

(a) the amount of the penalty and the period within which it may be paid,

(b) the discounted amount and the period within which it may be paid,

(c) the person to whom and the address at which payment may be made,

(d) the method or methods by which payment may be made,

(e) the person to whom and the address at which any representations relating to the notice may be made,

(f) the consequences of not making a payment within the period for payment.

(3) The person specified under sub-paragraph (2)(c) must be the road works authority or a person acting on their behalf.

The amount of the penalty and the period for payment

4 (1) The penalty for a fixed penalty offence is (subject to paragraph 5) such amount, not exceeding 30 per cent. of the maximum fine for that offence, as may be prescribed.

(2) The period for payment of the penalty is the period of 29 days beginning with the day on which the notice is given.

(3) The road works authority may extend the period for paying the penalty in any particular case if they consider it appropriate to do so.

The discounted amount

5 (1) A discounted amount is payable instead of the amount prescribed under paragraph 4(1) if payment is made before the end of the period of 15 days beginning with the day on which the notice is given.

(2) The discounted amount for a fixed penalty offence is such amount, not exceeding 25 per cent. of the maximum fine for the offence, as may be prescribed.

(3) If the last day of the period specified in sub-paragraph (1) does not fall on a working day, the period for payment of the discounted amount is extended until the end of the next working day.

Effect of notice and payment of penalty

6 (1) This paragraph applies where a person is served with a fixed penalty notice in respect of a fixed penalty offence.

(2) No proceedings for the offence may be commenced before the end of the period for payment of the penalty.

(3) No such proceedings may be commenced or continued if payment of the penalty is made before the end of that period or is accepted by the road works authority after that time.

(4) Payment of the discounted amount counts for the purposes of sub-paragraph (3) only if it is made before the end of the period for payment of the discounted amount.

(5) 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 road works 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.

Request for hearing

7 (1) A person to whom a fixed penalty notice has been given may, before the expiry of the period for payment of the penalty, give notice requesting a hearing in respect of the offence to which the fixed penalty notice relates.

Changes to legislation: *There are currently no known outstanding effects for the Transport (Scotland) Act 2005. (See end of Document for details)*

(2) A notice requesting a hearing under sub-paragraph (1) shall be in writing and shall be sent by post or delivered to the person specified under paragraph 3(2)(c) in the fixed penalty notice at the address so specified.

(3) For the purposes of this paragraph and unless the contrary is proved, the sending of a notice by post is deemed to have been effected at the time at which the notice would be delivered in the ordinary course of post.

(4) Where a person has requested a hearing in accordance with this section—

(a) the road works authority shall hold the hearing,

(b) a person authorised for the purpose by the road works authority in whose area the offence was committed shall notify the procurator fiscal of the request, and

(c) the period for payment of the fixed penalty shall be calculated so that the period beginning with the giving of the notice under this paragraph and ending with the receipt by the person who gave that notice of the decision reached at the hearing is left out of account.

Power to withdraw notices

8 (1) If the road works authority consider (whether after holding a hearing under paragraph 7 or not) that a fixed penalty notice which has been given ought not to have been given, they may give to the person to whom it was given a notice withdrawing the fixed penalty notice.

(2) Where a notice under sub-paragraph (1) is given—

(a) the road works authority shall repay any amount which has been paid by way of penalty in pursuance of the fixed penalty notice, and

(b) no proceedings shall be commenced or continued against that person for the offence in question.

(3) The road works authority shall consider any representations made by or on behalf of the recipient of a fixed penalty notice and decide in all the circumstances whether to withdraw the notice.

Effect of prosecution on notice

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

Recovery of unpaid fixed penalties

10 Subject to paragraphs 8 and 9, where a fixed penalty remains unpaid after the expiry of the period for payment of the penalty it shall be enforceable in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.

Judicial determination of enforcement of fixed penalty

11 (1) A person against whom a fixed penalty bears to be enforceable under paragraph 10 may apply to the sheriff by summary application for a declaration that the fixed penalty is not enforceable on the ground that—

(a) the fixed penalty was paid before the expiry of the period for paying, or

(b) the person has made a request for a hearing in accordance with paragraph 7 and no hearing has been held within a reasonable time after the request.

(2) On an application under sub-paragraph (1), the sheriff may declare—

(a) that the person has or, as the case may be, has not paid the fixed penalty within the period for payment of the penalty,

(b) that the person has or, as the case may be, has not requested a hearing in accordance with paragraph 7,

(c) that, where such a request has been made, a hearing has or, as the case may be, has not been held within a reasonable time after the request, and

accordingly, that the fixed penalty is or, as the case may be, is not enforceable.

General and supplementary

12 (1) The road works authority shall, subject to sub-paragraph (2), remit the money received by them by way of fixed penalties under this Schedule to the Scottish Ministers.

(2) The Scottish Ministers may, by regulations, provide that the road works authority may retain as much of that money as is sufficient to meet such of their expenditure as is described in the regulations.

(3) The Scottish Ministers may make regulations about the keeping of accounts, and the preparation and publication of statements of account, relating to fixed penalties under this Schedule.

13 (1) Fixed penalty notices may not be given in such circumstances as may be prescribed.

(2) The method or methods by which fixed penalties may be paid may be prescribed.

(3) The Scottish Ministers may by regulations modify paragraph 4(2) or 5(1) so as to substitute a different period for the period for the time being specified there.

14 The Scottish Ministers may issue or approve for the purposes of this Schedule a code of practice giving guidance to road works authorities and their authorised officers as to the performance of their functions under this Schedule; and in performing those functions those authorities and officers shall have regard to that code of practice.”

SCHEDULE 6

(introduced by section 37)

SCHEDULE 8A TO THE ROADS (SCOTLAND) ACT 1984

Commencement Information

I28 Sch. 6 in force at 1.10.2008 by S.S.I. 2008/15, art. 2(3), **Sch. 2**

“SCHEDULE 8A
FIXED PENALTY OFFENCES

Offence	***Brief description***

An offence under section 58(1)	Deposit of building materials in in or erection of scaffolding over road without or other than in accordance with permission.
An offence under section 85(3) as read with (4)	Deposit of builder's skip on road without permission of roads authority. Failure of owner of skip or other person to ensure conditions of permission complied with.”

SCHEDULE 7

(introduced by section 37)

SCHEDULE 8B TO THE ROADS (SCOTLAND) ACT 1984

Commencement Information

I29 Sch. 7 in force at 1.10.2008 by S.S.I. 2008/15, art. 2(3), **Sch. 2**

“SCHEDULE 8B
FIXED PENALTIES FOR CERTAIN OFFENCES

Power to give fixed penalty notices

1 (1) An authorised officer of a roads authority may, if having reason to believe that a person is committing or has committed a fixed penalty offence, give that person a fixed penalty notice in relation to that offence.

(2) In this Schedule “fixed penalty notice” means a notice offering a person the opportunity of discharging any liability to conviction for a fixed penalty offence by payment of a penalty.

2 A fixed penalty notice for an offence may not be given after such time relating to the offence as the Scottish Ministers may by regulations prescribe.

Contents of fixed penalty notice

3 (1) A fixed penalty notice shall identify the offence to which it relates and give reasonable particulars of the circumstances alleged to constitute that offence.

(2) A fixed penalty notice shall also state—

(a) the amount of the penalty and the period within which it may be paid;

(b) the discounted amount and the period within which it may be paid;

(c) the person to whom and the address at which payment may be made;

(d) the method or methods by which payment may be made;

(e) the person to whom and the address at which any representations relating to the notice may be made;

(f) the consequences of not making a payment within the period for payment.

(3) The person specified under sub-paragraph (2)(c) must be the roads authority or a person acting on their behalf.

The amount of the penalty and the period for payment

4 (1) The penalty for a fixed penalty offence is (subject to paragraph 5) such amount, not exceeding 30 per cent. of the maximum fine for that offence, as the Scottish Ministers may by regulations prescribe.

(2) The period for payment of the penalty is the period of 29 days beginning with the day on which the notice is given.

(3) The roads authority may extend the period for paying the penalty in any particular case if they consider it appropriate to do so.

The discounted amount

5 (1) A discounted amount is payable instead of the amount prescribed under paragraph 4(1) if payment is made before the end of the period of 15 days beginning with the day on which the notice is given.

(2) The discounted amount for a fixed penalty offence is such amount, not exceeding 25 per cent. of the maximum fine for the offence, as the Scottish Ministers may by regulations prescribe.

(3) If the last day of the period specified in sub-paragraph (1) does not fall on a working day, the period for payment of the discounted amount is extended until the end of the next working day.

Effect of notice and payment of penalty

6 (1) This paragraph applies where a person is served with a fixed penalty notice in respect of a fixed penalty offence.

(2) No proceedings for the offence may be commenced before the end of the period for payment of the penalty.

(3) No such proceedings may be commenced or continued if payment of the penalty is made before the end of that period or is accepted by the roads authority after that time.

(4) Payment of the discounted amount counts for the purposes of sub-paragraph (3) only if it is made before the end of the period for payment of the discounted amount.

(5) 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 roads 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.

Changes to legislation: *There are currently no known outstanding effects for the Transport (Scotland) Act 2005. (See end of Document for details)*

Request for hearing

7 (1) A person to whom a fixed penalty notice has been given may, before the expiry of the period for payment of the penalty, give notice requesting a hearing in respect of the offence to which the fixed penalty notice relates.

(2) A notice requesting a hearing under sub-paragraph (1) shall be in writing and shall be sent by post or delivered to the person specified under paragraph 3(2)(c) in the fixed penalty notice at the address so specified.

(3) For the purposes of this paragraph and unless the contrary is proved, the sending of a notice by post is deemed to have been effected at the time at which the notice would be delivered in the ordinary course of post.

(4) Where a person has requested a hearing in accordance with this section—

(a) the roads authority shall hold the hearing;

(b) a person authorised for the purpose by the roads authority in whose area the offence was committed shall notify the procurator fiscal of the request; and

(c) the period for payment of the fixed penalty shall be calculated so that the period beginning with the giving of the notice under this paragraph and ending with the receipt by the person who gave that notice of the decision reached at the hearing is left out of account.

Power to withdraw notices

8 (1) If the roads authority consider (whether after holding a hearing under paragraph 7 or not) that a fixed penalty notice which has been given ought not to have been given, they may give to the person to whom it was given a notice withdrawing the fixed penalty notice.

(2) Where a notice under sub-paragraph (1) is given—

(a) the roads authority shall repay any amount which has been paid by way of penalty in pursuance of the fixed penalty notice; and

(b) no proceedings shall be commenced or continued against that person for the offence in question.

(3) The roads authority shall consider any representations made by or on behalf of the recipient of a fixed penalty notice and decide in all the circumstances whether to withdraw the notice.

Effect of prosecution on notice

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

Recovery of unpaid fixed penalties

10 Subject to paragraphs 8 and 9, where a fixed penalty remains unpaid after the expiry of the period for payment of the penalty it shall be enforceable in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.

Judicial determination of enforcement of fixed penalty

11 (1) A person against whom a fixed penalty bears to be enforceable under paragraph 10 may apply to the sheriff by summary application for a declaration that the fixed penalty is not enforceable on the ground that—

(a) the fixed penalty was paid before the expiry of the period for paying; or

(b) the person has made a request for a hearing in accordance with paragraph 7 and no hearing has been held within a reasonable time after the request.

(2) On an application under sub-paragraph (1), the sheriff may declare—

(a) that the person has or, as the case may be, has not paid the fixed penalty within the period for payment of the penalty;

(b) that the person has or, as the case may be, has not requested a hearing in accordance with paragraph 7;

(c) that, where such a request has been made, a hearing has or, as the case may be, has not been held within a reasonable time after the request, and

accordingly, that the fixed penalty is or, as the case may be, is not enforceable.

General and supplementary

12 (1) The roads authority shall, subject to sub-paragraph (2), remit the money received by them by way of fixed penalties under this Schedule to the Scottish Ministers.

(2) The Scottish Ministers may, by regulations, provide that the roads authority may retain as much of that money as is sufficient to meet such of their expenditure as is described in the regulations.

(3) The Scottish Ministers may make regulations about the keeping of accounts, and the preparation and publication of statements of account, relating to fixed penalties under this Schedule.

13 The Scottish Ministers may by regulations—

(a) prescribe circumstances in which fixed penalty notices may not be given;

(b) modify paragraph 4(2) or 5(1) so as to substitute a different period for the period for the time being specified there;

(c) prescribe the method or methods by which penalties may be paid.

14 The Scottish Ministers may issue or approve for the purposes of this Schedule a code of practice giving guidance to roads authorities and their authorised officers as to the performance of their functions under this Schedule; and in performing those functions those authorities and officers shall have regard to that code of practice.”

Changes to legislation:
There are currently no known outstanding effects for the Transport (Scotland) Act 2005.