

SMOKING, HEALTH AND SOCIAL CARE (SCOTLAND) ACT 2005

EXPLANATORY NOTES

SCOTTISH HOSPITAL ENDOWMENTS RESEARCH TRUST

Schedule 1 - Fixed Penalty for Offences under Sections 1, 2 and 3

196. Paragraph 1(1) and (2) provides power for an authorised officer of a council or a constable to issue a fixed penalty notice, whilst paragraph 1(3) provides the definition of a “fixed penalty notice” for the purposes of Schedule 1.
197. Paragraph 2 provides the Scottish Ministers with the power to set via regulations a time limit between an offence being committed and an authorised officer being able to give a fixed penalty notice.
198. Paragraph 3 sets out the contents of the fixed penalty notice. It must identify the offence to which it relates and give reasonable particulars of the circumstances alleged to commit that offence. It must also state: the amount of the penalty and the period within which it may be paid; the discounted amount and the period within which it may be paid; the person to whom and the address at which payment may be made; the method or methods by which payment may be made; the person to whom and the address at which any representations relating to the notice may be made; and the consequences of not making a payment at which any representations relating to the notice may be made.
199. Paragraph 4 provides for the level of the fixed penalty notice to be prescribed and the period within which payment of the notice should be made. The council has a discretionary power to extend the period of payment.
200. Paragraph 5 enables offenders to pay a lesser amount in respect of the fixed penalty notice if they make an earlier payment.
201. Paragraph 6 sets out the effect of a fixed penalty notice, providing that no proceedings may be commenced before the end of the period for payment of the penalty, or if payment of the penalty is made before the end of that period or is accepted by the council after that time. Payment of the discounted amount will only count in that regard if it is made before the end of the period for payment for that discounted amount.
202. Paragraph 7 enables a person in receipt of a fixed penalty notice to request a hearing in respect of the offence for which they have been given notice provided that that request is made within 29 days of receipt of the notice. The request must be made in writing to the designated person at the address shown on the fixed penalty notice. The council will hold the meeting and the procurator fiscal will be notified that a hearing is to be held. The period between a person requesting a hearing and being notified of the hearing’s decision will not count towards the 29 days for the payment of the penalty.
203. Paragraph 8 provides for a power of the council to withdraw notices, in cases where they have been erroneously issued or consider if there are extenuating circumstances. Sub-paragraph 3 provides that a council is bound to consider any representations made

*These notes relate to the Smoking, Health and Social Care (Scotland)
Act 2005 (asp 13) which received Royal Assent on 5 August 2005*

by or on behalf of a person given a notice, and that they must decide in all circumstances whether to withdraw the notice.

204. [Paragraph 9](#) provides for the withdrawal of a fixed penalty notice where proceedings for an offence are commenced.
205. [Paragraph 10](#) provides for the recovery of unpaid fixed penalty fines. After the expiry of 29 days the council is able to enforce the unpaid penalty as if it were an extract registered decree arbitral. In practice this means that the unpaid penalty can be recovered in the same way as a sum of money due under a civil court decree.
206. [Paragraph 11](#) provides a mechanism under which disputes as to whether or not a fixed penalty has been paid or a hearing sought within the period for paying can be resolved by the courts. Subparagraph (1) enables a person who is in dispute with a council to apply to the sheriff by summary application for a declaration that the fixed penalty cannot be enforced under paragraph 10 either because the fixed penalty has been paid or a request for a hearing has been made within the period for paying.
207. [Paragraph 11\(2\)](#) provides that the sheriff may declare that the person has or has not paid the penalty or requested a hearing within the period for paying and that the fixed penalty is or is not enforceable under paragraph 10.
208. [Paragraph 12](#) allows the Scottish Ministers to make regulations about the application by councils of fixed penalties under Schedule 1 and also about the keeping of accounts and the preparation and publication of statements of account, relating to fixed penalties under Schedule 1.
209. [Paragraphs 13\(1\)](#) and [\(2\)](#) provide the Scottish Ministers with powers to make regulations prescribing the circumstances in which a fixed penalty notice may or may not be given and the methods for the payment of penalties.