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SCOTTISH STATUTORY INSTRUMENTS

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**2008 No. 244**

**The Road Works (Fixed Penalty) (Scotland) Regulations 2008**

**Citation and commencement**

1. These Regulations may be cited as the Road Works (Fixed Penalty) (Scotland) Regulations 2008 and come into force on 1st October 2008.

**Interpretation**

2. In these Regulations—

“the 1991 Act” means the New Roads and Street Works Act 1991;

“address”, in relation to a particular method for transmitting an electronic communication, means any number or address used for the purposes of such method of transmission;

“electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(1); and

“offence” means a fixed penalty offence.

**Exemptions**

3. Road managers are exempted from the provisions of section 154A(5) of, and Schedule 6B to, the 1991 Act(2).

**Form of fixed penalty notice and prescribed methods of payment**

4. A fixed penalty notice shall be in the form set out in Schedule 1 which also prescribes the methods by which fixed penalties may be paid.

**Manner of service of fixed penalty notice or a notice withdrawing a fixed penalty notice**

5.—(1) Subject to paragraph (5), where a person—

(a) has provided a road works authority with an address for service on that person of any notice under Schedule 6B to the 1991 Act (fixed penalties for certain offences under Part 4) by using a particular method for transmitting an electronic communication; and

(b) has not notified the authority that the address is withdrawn for that purpose,

such notice shall be given by sending it to that person at that address by that method, in accordance with the conditions set out in paragraph (3).

(2) In any other case, a notice under that Schedule shall be given by—

(a) sending it by first class post to the person to whom it is to be given at that person’s proper address;

(b) delivering it to that person;

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(1) 2000 c. 7. Section 15(1) was amended by the Communications Act 2003 (c. 21), section 406(1) and Schedule 17, paragraph 158.

(2) Section 154A was inserted by section 34 of the 2005 Act.

- (c) leaving it at that person's proper address; or
  - (d) any other means agreed with that person.
- (3) The conditions referred to in paragraph (1) are that the notice shall be—
- (a) capable of being accessed by the person to whom it is being sent;
  - (b) legible in all material respects; and
  - (c) in a form which permits the notice to be retained for subsequent reference,

and for this purpose “legible in all material respects” means that the information contained in the notice is available to that person to no lesser extent than it would be if given by means of a notice in printed form.

(4) Subject to section 157(2) of the 1991 Act (reckoning of periods), where an electronic communication is used for the purpose of serving a notice under Schedule 6B to that Act, then, unless the contrary is proved, the notice shall be deemed to be given on the day and at the time recorded by the transmitting apparatus as being the day and time of satisfactory completion of the transmission.

(5) Where, after 3 attempts (duly recorded by the person serving the notice) to effect service by using one particular method for transmitting an electronic communication, service cannot be effected, the notice may be given by serving it upon the person to whom it is to be given by any other such method for which an address is available by virtue of paragraph (1) or by any of the other means referred to in paragraph (2).

(6) For the purposes of this regulation, the proper address of any person to whom a notice under Schedule 6B to the 1991 Act is to be given shall be—

- (a) where such person has provided the road works authority giving the notice with an address for postal service of such notices, that address; and
- (b) otherwise—
  - (i) in the case of a corporation, the registered or principal office of the corporation; and
  - (ii) in any other case, the last known address of such person.

#### **Time limit for giving fixed penalty notice**

**6.** A fixed penalty notice for an offence may not be given more than 60 days after the commission of the offence beginning with the day of its commission.

#### **Amount of penalty**

**7.—(1)** Subject to paragraph (2), where a fixed penalty notice has been given in relation to an offence set out in column 2 of the Table in Schedule 2 and briefly described in column 3 of that Table, the penalty for that offence shall be the amount set out, in relation to it, in column 4 of that Table.

(2) Where, in relation to such an offence, payment is made before the end of the period specified in paragraph 5(1) of Schedule 6B to the 1991 Act, or if the last day of that period does not fall on a working day, before the end of the next working day in accordance with paragraph 5(3) of that Schedule, the penalty shall instead be the discounted amount set out, in relation to it, in column 5 of that Table.

#### **Modification of payment periods**

- 8.** Schedule 6B to the 1991 Act is modified as follows—
- (a) in paragraph 4(2) for “29” substitute “36”; and
  - (b) in paragraph 5(1) for “15” substitute “29”.

### **Form of notice withdrawing a fixed penalty notice**

**9.** Where a notice withdrawing a fixed penalty notice is given in accordance with paragraph 8(1) of Schedule 6B to the 1991 Act, it shall be in the form set out in Schedule 3.

### **Retention of fixed penalties**

**10.** The road works authority may retain as much of the money received by them by way of fixed penalties under Schedule 6B to the 1991 Act as is sufficient to meet the reasonable costs of operating the scheme under which they are paid.

St Andrew's House,  
Edinburgh  
11th June 2008

*STEWART STEVENSON*  
Authorised to sign by the Scottish Ministers