SCOTTISH STATUTORY INSTRUMENTS

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*

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(**1**) 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:

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(**2**);

(**1**) 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).

(**2**) 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.

"the 1997 Regulations" means the Road Traffic (Vehicle Emissions) (Fixed Penalty) Regulations 1997(**3**);

"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.

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.

(**3**) S.I. 1997/3058.

(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(**4**) 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.

(4) When imposing a requirement under paragraph (3)(b), the authorised person shall also–

(**4**) 1998 c. 52. Section 42 was substituted by section 8(2) of the Road Traffic Act 1991 (c. 40).

(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(**5**) (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.

(**5**) S.I. 1981/1694. Schedule 2 was substituted by S.I. 1991/2229 as amended by S.I. 1992/3160 and 1998/1672.