WELSH STATUTORY INSTRUMENTS

2008 No. 102 (W.15)

HIGHWAYS, WALES

The Street Works (Fixed Penalty) (Wales) Regulations 2008

Made - - - -	*17 January 2008*
Laid before the National Assembly for Wales - -	*18 January 2008*
Coming into force - -	*12 May 2008*

The Welsh Ministers, in exercise of the powers conferred on the Secretary of State by sections 48(2), 95A(5), 97 and 104(1) of, and paragraphs 2, 4(1), 5(2), 8(a) and 9(b) of Schedule 4B to, the New Roads and Street Works Act 1991(**1**), and now vested in them(**2**), make the following regulations:

Title, commencement and application

1. The title of these Regulations is the Street Works (Fixed Penalty) (Wales) Regulations 2008. They come into force on 12th May 2008 and apply in relation to Wales.

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(**3**); and

"offence" means a fixed penalty offence.

(**1**) 1991 c. 22. Section 95A and Schedule 4A and 4B are inserted by the Traffic Management Act 2004 (c. 18) ("the 2004 Act"), section 41 and Schedules 2 and 3. Section 97 is prospectively amended by section 64(4) of that Act. By virtue of paragraph 26 of Schedule 11 and paragraph 7 of Schedule 3 to the Government of Wales Act 2006 (c. 32), the Welsh Ministers do not require Treasury consent to exercise functions under paragraph 8(a) of Schedule 4B to the 1991 Act.

(**2**) The functions of the Secretary of State (with the exception of functions under s.167(3)) under the New Roads and Street Works Act 1991 were transferred, so far as exercisable in relation to Wales, to the National Assembly for Wales by virtue of the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672). The functions of the National Assembly for Wales under the 1991 Act were transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c. 32).

(**3**) 2000 c. 7. Section 15(1) was amended by the Communications Act 2003 (c. 21), section 406(1) and Schedule 17, paragraph 158.

Exceptions

3. Section 95A(1) of, and Schedule 4A to, the 1991 Act (fixed penalty offences under Part 3) do not apply to a street which is not a maintainable highway.

Form of fixed penalty notice

4. A fixed penalty notice must be in the form set out in Schedule 1.

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

5.—(1) Subject to paragraphs (5) and (7), where a person—

(a) has provided a street authority with an address for service on him or her of any notice under Schedule 4B to the 1991 Act (fixed penalties for certain offences under Part 3) 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 must be given by sending it to him or her at that address by that method, in accordance with the condition set out in paragraph (3).

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

(a) sending it by first class post to the person to whom it is to be given at his or her proper address;

(b) delivering it to him or her;

(c) leaving it at his or her proper address; or

(d) any other means agreed with him or her.

(3) The condition referred to in paragraph (1) is that the notice must 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 98(2) of the 1991 Act (reckoning of periods), where an electronic communication is used for the purpose of serving a notice under Schedule 4B to that Act, then, unless the contrary is proved, the notice will 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 three 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) Subject to paragraph (7), for the purposes of this regulation, the proper address of any person to whom a notice under Schedule 4B to the 1991 Act is to be given, is to be—

(a) where such person has provided the street 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.

(7) A person may provide different addresses for different notices or different classes of notice.

Time limit for giving fixed penalty notice

6. A fixed penalty notice for an offence may not be given more than 91 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 to these Regulations, and briefly described in column 3 of that Table, the penalty for that offence will be the amount set out, in relation to it, in column 4.

(2) Where, in relation to such an offence, payment is made before the end of the period specified in paragraph 5(1) of Schedule 4B 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 for that offence will instead be the amount set out, in relation to it, in column 5.

Modification of Schedule 4B

8.—(1) Schedule 4B to the 1991 Act is modified (in its application as respects Wales) as follows.

(2) In paragraph 4(2) for "29" substitute "36".

(3) In paragraph 5(1) for "15" substitute "29".

Application of penalties

9. A street authority may deduct from fixed penalties received under Schedule 4B to the 1991 Act, the reasonable costs of operating the scheme under which they are paid, and must apply the net proceeds for the purpose of developing or implementing policies for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services to, from and within their area.

Form of notice withdrawing a fixed penalty notice

10. Where a notice withdrawing a fixed penalty notice is given in accordance with paragraph 7(1) of Schedule 4B to the 1991 Act, it must be in the form set out in Schedule 3.

Ieuan Wyn Jones
Minister for the Economy and Transport, one of
the Welsh Ministers

17 January 2008

SCHEDULE 1

Regulation 4

FORM OF FIXED PENALTY NOTICE

* (**Insert Street Authority name*)	**FIXED PENALTY NOTICE** **NEW ROADS AND STREET WORKS ACT 1991** (Section 95A and Schedules 4A and 4B)	**FIXED PENALTY NOTICE** Number: .....

PART A

Contact Tel No.	Works Ref No. *Street Authority No. * (**To be left blank where the offence relates to works in respect of which no notice has been given.*)
TO:	**DATE OF THIS NOTICE:** ..... dd mm yy

ADDRESS:

OFFENCE CODE (*See Part B*) (***NB**: Only one offence code per fixed penalty notice*) : .....

LOCATION:

DATE OF OFFENCE:

DETAILS OF OFFENCE :

1. I am giving you this notice, in accordance with section 95A of, and Schedule 4B to, the New Roads and Street Works Act 1991, to offer you the opportunity of discharging any liability to conviction for this fixed penalty offence by payment of a penalty.

2. This means that no legal proceedings will be commenced for the offence if, subject to paragraph 3, the penalty of **£120** is paid (*See Part B for instructions on methods of payment*) within the period of **36** days beginning with the day on which this notice was given. (***NB**: The street authority may extend this period in any particular case if they consider it appropriate to do so (See paragraph 4(3) of Schedule 4B)*).

3. Instead of paying the amount referred to in paragraph 2, liability to conviction for the offence may also be discharged if the discounted amount of **£80** is paid within the period of **29** days beginning with the day on which this notice was given. (***NB**: If the last day of this period 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 (See paragraph 5(3) of Schedule 4B)*).

4. If the discounted amount is not paid within the period set out in paragraph 3, as extended where relevant, liability to conviction for the offence may only be discharged thereafter by payment of the penalty of **£120** within the period set out in paragraph 2, as extended where considered appropriate. If you then fail to pay the penalty within that period, legal proceedings for the offence may be commenced against you.

5. Any representations that you wish to make in relation to this notice may be addressed to at identifying the fixed penalty notice number stated above.

NAME OF AUTHORISED OFFICER (*in block capitals*): .....

DATE : .....