WELSH STATUTORY INSTRUMENTS

2003 No. 300 (W.42)

ENVIRONMENTAL PROTECTION, WALES

The Road Traffic (Vehicle Emissions) (Fixed Penalty) (Wales) Regulations 2003

Made - - - - 13th February 2003

Coming into force - - 1st May 2003

The National Assembly for Wales ("the National Assembly"), in exercise of the powers conferred upon the Secretary of State by sections 87(1), (2) and (5) of, and paragraph 5 of Schedule 11 to, the Environment Act 1995(**1**), and now exercisable, in relation to Wales, by the National Assembly(**2**), and after consultation with the Environment Agency and with such bodies appearing to the National Assembly to be representative of the interests of local government and of industry and with such other bodies and persons as the National Assembly considers appropriate in accordance with section 87(7) of that Act, hereby makes the following Regulations:

PART 1

INTRODUCTORY

Citation, commencement and application

1.—(1) These Regulations may be cited as the Road Traffic (Vehicle Emissions) (Fixed Penalty) (Wales) Regulations 2003 and come into force on the 1st May 2003.

(2) These Regulations apply in relation to Wales.

Interpretation

2.—(1) In these Regulations —

"the 1995 Act" ("*Deddf 1995*") means the Environment Act 1995;

"the 1986 Regulations" ("*Rheoliadau 1986*") means the Road Vehicles (Construction and Use) Regulations 1986(**3**);

(**1**) 1995 c. 25. *See* section 91(1) for the definitions of "prescribed" and "regulations".

(**2**) The powers of the Secretary of State have, so far as exercisable in relation to Wales, been transferred to the National Assembly by Article 2 of and Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672).

(**3**) S.I. 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.

"appropriate authority" ("*awdurdod priodol*") —

(a) in relation to a fixed penalty notice, means the local authority on whose behalf the notice is issued;

(b) in relation to an authorised person, means the local authority by which that person is authorised;

"authorised person" ("*person awdurdodedig*") —

(a) in relation to the investigation or prosecution of an emissions offence means a person authorised under regulation 6(1);

(b) in relation to the investigation or prosecution of a stationary idling offence means a person authorised under regulation 6(3);

"designated local authority" ("*awdurdod lleol dynodedig*") means a local authority that is designated for the time being under regulation 4(1);

"emissions offence" ("*tramgwydd allyriad*") means using on a road a motor vehicle which does not comply with a requirement of regulation 61 or 61A (emissions of smoke etc) of the 1986 Regulations;

"fixed penalty notice" ("*hysbysiad cosb benodedig*") means a notice under regulation 10 or 13;

"notice requesting a hearing" ("*hysbysiad yn gofyn am wrandawiad*") means a notice of a description referred to in regulation 18(1);

"stationary idling offence" ("*tramgwydd segura llonydd*") means a contravention of, or failure to comply with so much of regulation 98 (stopping of engine when stationary) of the 1986 Regulations as relates to the prevention of exhaust emissions.

(2) Unless the context otherwise provides, any reference in these Regulations —

(a) to a numbered section is a reference to the section of the 1995 Act bearing that number; and

(b) to a numbered regulation is a reference to the regulation in these Regulations bearing that number.

PART 2

DESIGNATION OF LOCAL AUTHORITIES

Application for designation

3.—(1) Where any part of the area of a local authority is for the time being designated as an air quality management area in accordance with section 83, that authority may apply to the National Assembly to be a designated local authority.

(2) An application under paragraph (1) must be in writing and must be accompanied by a copy of each of the following documents —

(a) the latest review it has conducted, and the latest assessment it has made, pursuant to section 82; and

(b) the order designating its air quality management area pursuant to section 83.

Designation

4.—(1) If the National Assembly, having received an application from a local authority under regulation 3, is satisfied as to the matters referred to in paragraph (2), it must, by an instrument in writing, designate that authority.

(2) The matters referred to in paragraph (1) are —

(a) that the emission of smoke and other vapours and substances from vehicles is such that it is, or is likely to become, significant in determining whether or not the air quality standards or objectives will be achieved within that authority's area or, where part only of its area is for the time being designated as an air quality management area in accordance with section 83, that part; and

(b) that 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 may, in relation to its area or, where part only of its area is for the time being designated as an air quality management area in accordance with section 83, in relation to that part, exercise such of the powers conferred by the following provisions of these Regulations as relate to emissions offences.

Cessation of designation

5.—(1) If in respect of a designated authority the National Assembly is not satisfied —

(a) in relation to the matters referred to in regulation 4(2); or

(b) that regard is being had to any guidance it has issued pursuant to section 88,

it may, subject to paragraph (2), by notice served on the authority, revoke its designation.

(2) The National Assembly must not serve a notice under paragraph (1) unless it has by notice informed the authority—

(a) of its proposal to revoke the authority's designation;

(b) of its reasons for proposing to revoke the designation; and

(c) that representations may be made to it 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) must specify the date on which the revocation is to take effect, and must be accompanied by a statement of the National Assembly's reasons for revoking the designation.

(4) Where, in consequence of the revocation by a designated local authority of the order by virtue of which its area or part of it (as the case may be), is an air quality management area, no part of the authority's area is an air quality management area, the authority will thereby cease to have the powers conferred under paragraph (3) of regulation 4, and its designation under paragraph (1) of that regulation is to be treated as revoked.

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 person's 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, an area designated by the authority as an air quality management area; 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 the person to be authorised has successfully completed a course of training on testing emissions which has been approved by the National Assembly.

(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. Emission 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 17, a person may discharge any liability to conviction —

(a) for an emissions offence, subject to regulation 19, 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, an air quality management area of the appropriate authority to permit the vehicle that person is driving 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) must 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 the authorised person specifies 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 must also —

(**4**) 1988 c. 52. There are amendments not relevant to these Regulations.

(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 —

(i) the date on which, and the time at which;

(ii) the place at which; and

(iii) the person to whom,

the certificate or notice is to be produced.

(5) The date specified under paragraph (4)(b) must 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 is not to 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) a paragraph (1) requirement, or

(b) a requirement of paragraph (3)(a) or 4(a),

is guilty of an offence and is 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); and

"paragraph (1) requirement" means a requirement imposed by virtue of paragraph (1) of this regulation.

Issue of fixed penalty notice: emissions offence

10. Where —

(a) a test on a vehicle has been carried out as mentioned in paragraph (2) or (3)(a) of regulation 9; and

(b) in consequence of that test an authorised person considers that an emissions offence has been committed by the person using that vehicle,

the authorised person may, in accordance with Part 7, issue a fixed penalty notice to that person.

Furnishing information for the purposes of Part 5

11.—(1) In connection with the discharge of 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 —

(a) the driver's name and address;

(b) the driver's date of birth; and

(**5**) S.I. 1981/1078; Schedule 2 was substituted by S.I. 1991/2229 and amended by S.I. 1992/3160 and 1998/1672.