

Draft Regulations laid before Parliament under section 87(8) of the Environment Act 1995 for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2002 No.

ROAD TRAFFIC, ENGLAND

**The Road Traffic (Vehicle Emissions)
(Fixed Penalty) (England) Regulations 2002**

Made - - - - 2002
Coming into force - - 2002

Whereas a draft of these Regulations has been laid before, and approved by resolution of, each House of Parliament in accordance with section 87(8) of the Environment Act 1995⁽¹⁾:

Now, therefore, the Secretary of State for Transport, in exercise of the powers conferred upon him by sections 87(1), (2) and (5) of, and paragraph 5 of Schedule 11 to, the Environment Act 1995 and of all other powers enabling him in that behalf, and after consultation with the Environment Agency and with such bodies appearing to him to be representative of the interests of local government and of industry and with such other bodies and persons as he 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) (England) Regulations 2002 and shall come into force on the seventh day after the day on which they are made.

(2) These Regulations apply as respects England only⁽²⁾.

(1) 1995 c. 25. See section 91(1) for the definitions of “prescribed” and “regulations”.
(2) The relevant powers of the Secretary of State have been devolved, in relation to Scotland, by virtue of section 53 of the Scotland Act 1998 (c. 46) and, in relation to Wales, by virtue of section 22 of the Government of Wales Act 1998 (c. 38) and the National Assembly of Wales (Transfer of Functions) Order 1999 (S.I.1999/672).

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(3);

“appropriate authority”—

(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 he is authorised;

“authorised person”—

(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” 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 or 61A (emissions of smoke etc) of the 1986 Regulations;

“fixed penalty notice” means a notice under regulation 10 or 13;

“notice requesting a hearing” means a notice of a description referred to in regulation 18(1);

“stationary idling offence” 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 Secretary of State to be a designated local authority.

(2) An application under paragraph (1) shall be in writing and shall 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.

(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.

Designation

4.—(1) If the Secretary of State, having received an application from a local authority under regulation 3, is satisfied as to the matters referred to in paragraph (2), he shall, 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 Secretary of State 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 he has issued pursuant to section 88,

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

(2) The Secretary of State shall not serve a notice under paragraph (1) unless he has by notice informed the authority—

- (a) of his proposal to revoke the authority's designation;
- (b) of his reasons for proposing to revoke the designation; and
- (c) that representations may be made to him 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 Secretary of State'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 shall cease to have the powers conferred under paragraph (3) of regulation 4, and its designation under paragraph (1) of that regulation shall 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 his 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 he has successfully completed a course of training on testing emissions which has been approved by the Secretary of State.
- (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 he 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) 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 he shall specify when imposing that requirement; or

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

- (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⁽⁵⁾.
- (4) When imposing a requirement under paragraph (3)(b), the authorised person shall also—
- (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) 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 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) a paragraph (1) requirement, or
- (b) a requirement of paragraph (3)(a) or 4(a),
- shall be guilty of an offence and be 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⁽⁶⁾ (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,

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

(5) To which there are amendments not relevant to these Regulations.

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

Furnishing of information for the purposes of Part 5

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

- (a) his name and address;
- (b) his date of birth; and
- (c) if he is not the person in whose name the vehicle is registered under the Vehicle Excise and Registration Act 1994(7) at the time that the requirement is imposed, the name of that person.

(2) A person who fails to comply with a requirement to furnish information under paragraph (1) shall be guilty of an offence and be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

PART 6

STOPPING OF ENGINES

Stopping of engine when vehicle stationary

12.—(1) An authorised person who has reasonable cause to believe that the driver of a vehicle that is stationary on a road is committing a stationary idling offence may, upon production of evidence of his authorisation, require him to stop the running of the engine of that vehicle.

(2) A person who fails to comply with a requirement under paragraph (1) shall be guilty of an offence and be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Issue of fixed penalty notice: stationary idling offence

13. An authorised person who considers that a stationary idling offence has been committed may, in accordance with Part 7, issue a fixed penalty notice to the driver of the vehicle.

Furnishing of information for the purposes of Part 6

14.—(1) In connection with the discharge of his functions under this Part, an authorised person may require the driver of a vehicle in respect of which a requirement under regulation 12(1) is imposed to disclose to him—

- (a) his name and address;
- (b) his date of birth; and
- (c) if he is not the person in whose name the vehicle is registered under the Vehicle Excise and Registration Act 1994(8) at the time that the requirement is imposed, the name of that person.

(2) A person who fails to comply with a requirement to furnish information under paragraph (1) shall be guilty of an offence and be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) 1994 c. 22.

(8) 1994 c. 22.

PART 7

FIXED PENALTY NOTICES

Time for issue of notice

15.—(1) A fixed penalty notice under regulation 10 shall be issued as soon as reasonably practicable and not later than 24 hours after the completion of the test to which paragraph (a) of that regulation refers.

(2) A fixed penalty notice under regulation 13 shall be issued as soon as reasonably practicable and not later than 24 hours after the commission of the stationary idling offence.

Contents of notice

16. A fixed penalty notice shall give such particulars of the circumstances alleged to constitute the fixed penalty offence to which the notice relates as are necessary to give reasonable information as to the offence and shall state—

- (a) the name and address of the person to whom the notice is issued;
- (b) the registered number of the vehicle concerned;
- (c) the date of the offence;
- (d) the amount of the fixed penalty which may be paid;
- (e) the person to whom, and the address at which, the fixed penalty may be paid and any correspondence relating to the fixed penalty notice may be sent;
- (f) the person to whom, the address at which, and the period within which
 - (i) a request for a hearing;
 - (ii) an application for the reduction or waiver of the fixed penalty, may be sent;
- (g) the method or methods by which payment of the fixed penalty may be made;
- (h) the period for paying the fixed penalty, which shall be not less than 28 days beginning with the date of issue of the notice; and
- (i) the consequences of the fixed penalty not being paid before the expiration of the period for paying it.

Effect of issue of fixed penalty notice

17.—(1) This regulation applies where a fixed penalty notice is issued under regulation 10 or 13.

(2) References in the following provisions of this regulation to the recipient are references to the person to whom the fixed penalty notice is issued.

(3) No proceedings shall be instituted against the recipient for the offence to which the fixed penalty notice relates before the expiry of the period for paying the penalty unless he has given notice requesting a hearing.

(4) A person shall not be convicted for an offence in connection with which a fixed penalty notice has been issued if the fixed penalty is paid before the expiry of the period for paying it.

(5) Where—

- (a) the recipient has not given a notice requesting a hearing; and
- (b) the fixed penalty has not been paid before the end of the period for paying it, the fixed penalty shall be increased as mentioned in paragraph (6).

(6) A fixed penalty—

- (a) reduced under regulation 19(4) to £30, shall be increased to £60;
- (b) of £60 in any other case of an emissions offence, shall be increased to £90;
- (c) of £20, in the case of a stationary idling offence, shall be increased to £40.

(7) Where a notice under regulation 19(6) includes such a statement as is mentioned in regulation 19(7), references in paragraphs (3) and (4) of this regulation to the period for paying the fixed penalty shall be treated as references to the period ending with the date specified in accordance with regulation 19(7)(b).

Notice requesting a hearing

18.—(1) A person to whom a fixed penalty notice has been issued may, within the period and in the manner specified—

- (a) in that notice, or
- (b) where notice has been given under regulation 19(6), in that notice,

give notice requesting a hearing in respect of the offence to which the fixed penalty notice relates.

(2) Where notice requesting a hearing is given—

- (a) the fixed penalty shall not be payable; and
- (b) the fixed penalty notice may be treated as an information for the purposes of a prosecution for the offence in connection with which it was issued.

Reduction or waiver of fixed penalty for emissions offence

19.—(1) A person to whom a fixed penalty notice has been issued in respect of an emissions offence may, within the period and in the manner specified in that notice, apply to the appropriate authority for the reduction or waiver of the fixed penalty.

(2) An application under paragraph (1) must be in writing and must—

- (a) contain such information, and
- (b) be accompanied by such documentary evidence,

as the applicant considers likely to satisfy the authority as to one or more of the matters specified in paragraph (3).

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

- (a) that the defect by reason of which the vehicle failed the test carried out pursuant to paragraph (2) or, as the case may be, paragraph (3)(a) of regulation 9 (“the regulation 9 test failure”), was rectified not later than 14 days after the date of that failure;
- (b) that in the period of 6 months immediately preceding the regulation 9 test failure—
 - (i) the vehicle passed an examination under section 45 of the Road Traffic Act 1988; or
 - (ii) the vehicle failed such an examination, but none of the grounds on which it failed related to a requirement of regulation 61 or 61A of the 1986 Regulations; or
- (c) all reasonable steps had been taken prior to the regulation 9 test failure to maintain the vehicle in a condition sufficient to comply with the requirements of those regulations 61 and 61A.

(4) If the authority is satisfied as to a matter specified in any of sub-paragraphs (a) to (c) of paragraph (3), it may reduce the fixed penalty to £30.

(5) If the authority is satisfied as to the matters specified—

- (a) in sub-paragraph (a) of that paragraph; and

(b) in either sub-paragraph (b) or sub-paragraph (c) of that paragraph, it may waive the fixed penalty in its entirety.

(6) As soon as practicable after determining an application under paragraph (1), the authority shall, by notice, inform the applicant of its decision.

(7) Except in a case in which the authority has waived the fixed penalty in its entirety, the authority's notice under paragraph (6) shall include a statement—

- (a) of the amount of the fixed penalty (whether in the original amount or as reduced under paragraph (4));
- (b) of the date by which the fixed penalty is to be paid, being whichever is the later of—
 - (i) the last day in the period specified, in accordance with regulation 16(h), in the fixed penalty notice, and
 - (ii) the day that falls 14 days after that on which the notice under paragraph (6) is issued; and
- (c) of the person to whom, the address at which, and the period within which a notice requesting a hearing may be sent.

Withdrawal of fixed penalty notice

20.—(1) A fixed penalty notice may be withdrawn in any case in which the appropriate authority determines that it—

- (a) ought not to have been issued, or
 - (b) ought not to have been issued to the person named as the person to whom it was issued.
- (2) Where a fixed penalty notice has been withdrawn in accordance with paragraph (1)—
- (a) notice of the withdrawal shall be given to the person to whom the notice was issued;
 - (b) any amount paid by way of fixed penalty in pursuance of that notice shall be repaid to the person who paid it; and
 - (c) no proceedings shall be continued or instituted against that person for the offence in connection with which the withdrawn notice was issued.

PART 8

MISCELLANEOUS

Recovery of unpaid fixed penalties

21. Where a fixed penalty which has not been paid by the date specified for its payment in accordance with regulation 16(h) or, as the case may be, regulation 19(7)(b), is increased as mentioned in regulation 17(6), it shall, if a county court so orders, be recoverable by execution issued from the county court or otherwise as if it were payable under an order of that court.

Enforcement by execution

22.—(1) An unpaid fixed penalty which is recoverable in accordance with regulation 21 as if it were payable under a county court order shall, subject to paragraph (2), be treated for purposes of enforcement by execution as if it were a specified debt mentioned in article 2(1) of the Enforcement of Road Traffic Debts Order 1993 (“the 1993 Order”)(9).

(9) S.I. 1993/2073; See the definition of “specified debts” in article 1(2), and article 2(1), amended by S.I. 2001/1386.

- (2) For the purposes of the enforcement of payment of an unpaid fixed penalty—
- (a) any reference in the 1993 Order to “the authority” shall be a reference to the appropriate authority; and
 - (b) the reference in article 3(1) of the 1993 Order to the time for serving a statutory declaration shall be a reference to (as the case may be)—
 - (i) the period of 21 days allowed by regulation 23(1)(c); or
 - (ii) where a longer period has been allowed pursuant to regulation 23(3), that period.

Notices rendered void

- 23.**—(1) This regulation applies where—
- (a) a county court makes an order under regulation 21;
 - (b) the person against whom it is made makes a statutory declaration complying with paragraph (2); and
 - (c) the declaration is, before the end of the period of 21 days beginning with the date on which notice of the county court’s order is served on him, served on the county court that made the order.
- (2) The statutory declaration must state (as the case may be) that the person making it—
- (a) did not receive the fixed penalty notice in question; or
 - (b) made an application under regulation 19(1) but did not receive notification that the amount of the fixed penalty had been reduced or (as the case may be) that his request had been refused nor of the amount that was payable.
- (3) Where it appears to a county court, on the application of a person on whom a fixed penalty notice has been served, that it would be unreasonable in the circumstances of his case to insist on him serving his statutory declaration within the period mentioned in paragraph (1)(c), the county court may allow such longer period for service of the statutory declaration as it considers appropriate.
- (4) Where a statutory declaration is served under paragraph (1)(c)—
- (a) the fixed penalty notice shall be rendered void;
 - (b) the order of the court shall be treated as revoked;
 - (c) the fixed penalty to which the fixed penalty notice relates shall be treated as cancelled;
 - (d) the county court shall serve written notice of the effect of service of the declaration on the person making it and on the appropriate authority; and
 - (e) notwithstanding regulation 15, the appropriate authority may serve a fresh fixed penalty notice on the person making the declaration or any other person.

Issue of notices

- 24.** A notice issued for any purpose of these Regulations by a local authority or an authorised person may be issued—
- (a) by giving it to the person to whom it is issued; or
 - (b) by properly addressing, pre-paying and posting a letter containing the notice to that person,
- and such a notice shall be taken to have been issued at the time when it is so given or the letter containing it is posted.

Revocation

25. The Road Traffic (Vehicle Emissions) (Fixed Penalty) Regulations 1997(10) shall be revoked.

Signed by authority of the Secretary of State for Transport

2002

Minister of State,
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Road Traffic (Vehicle Emissions) (Fixed Penalty) Regulations 1997 (“the 1997 Regulations”) empower certain local authorities in England, Scotland and Wales (“participating authorities”) to issue fixed penalty notices to users of vehicles within their areas who contravene or fail to comply with regulation 61, 61A or 98 of the Road Vehicles (Construction and Use) Regulations 1986 (“the 1986 Regulations”). Those regulations are concerned with emissions of smoke, vapour, gases, oily substances, etc.

These Regulations replace the 1997 Regulations, for England only. The 1997 Regulations continue to have effect in Scotland and Wales.

Under these Regulations a local authority in England may apply to the Secretary of State for designation. A local authority so designated may use fixed penalty notices to enforce offences under regulations 61 and 61A of the 1986 Regulations in its area.

These Regulations also provide for the enforcement by fixed penalty notice of offences under so much of regulation 98 of the 1986 Regulations as relates to the prevention of exhaust emissions. That power is exercisable by district councils, London borough councils, some county councils, the Common Council of the City of London and, as respects the Temples, by the Sub-Treasurer of the Inner Temple and the Under-Treasurer of the Middle Temple.

In Part 1, *regulation 2* defines terms used in the Regulations.

In Part 2, *regulation 3* specifies the circumstances in which an application for designation can be made, and the documents that must accompany the application. *Regulation 4* sets out the criteria for designation and *regulation 5* provides for the revocation of designations.

In Part 3, *regulation 6* contains provisions relating to the authorisation of persons to carry out emission tests on vehicles, to ensure compliance with the stopping of engines of stationary vehicles and to issue fixed penalty notices.

In Part 4, *regulation 7* prescribes two offences under the 1986 Regulations as fixed penalty offences for the purposes of the Regulations. The first is referable to regulations 61 and 61A of the 1986 Regulations, and attracts a fixed penalty of £60 under *regulation 8*. The second is referable to so much of regulation 98 of the 1986 Regulations as deals with the prevention of exhaust emissions, and attracts a fixed penalty of £20 under *regulation 8*. (The amounts may be increased in accordance with regulation 17, or reduced or waived in accordance with regulation 19.)

Part 5 contains provisions (*regulations 9 to 11*) which confer power to conduct emission tests and deal with other matters relevant to the first of the fixed penalty offences.

Part 6 contains provisions (*regulations 12 to 14*) which confer power to stop the running of the engine of a stationary vehicle and deal with other matters relevant to the second of the fixed penalty offences.

In Part 7, *regulations 15 and 16* provide for the timing of the issue of fixed penalty notices and their content. *Regulation 17* deals with the effect of fixed penalty notices, and provides for the increase of the penalty where payment is not made in accordance with the notice. *Regulation 18* enables a person who has been issued with a fixed penalty notice to ask for a hearing in respect of the offence to which the notice relates. *Regulation 19* provides for the making of an application to reduce the amount of the fixed penalty or to waive it altogether. *Regulation 20* deals with the withdrawal of fixed penalty notices.

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Draft Legislation: *This is a draft item of legislation. This draft has since been made as a UK Statutory Instrument: The Road Traffic (Vehicle Emissions) (Fixed Penalty) (England) Regulations 2002 No. 1808*

In Part 8, *regulations 21 and 22* deal with the recovery of unpaid fixed penalties and *regulation 23* makes provision in connection with the issue of notices under the Regulations. *Regulation 25* revokes the 1997 Regulations with respect to England.