

*Status: Point in time view as at 21/01/2016. This version of this schedule contains provisions that are not valid for this point in time.*

*Changes to legislation: There are currently no known outstanding effects for the Smoking Prohibition (Children in Motor Vehicles) (Scotland) Act 2016, SCHEDULE. (See end of Document for details)*

## SCHEDULE

*(introduced by section 2)*

### FIXED PENALTY FOR OFFENCE UNDER SECTION 1

VALID FROM 05/12/2016

#### *Power to give fixed penalty notices*

- 1 (1) An authorised officer of a local authority may, if having reason to believe that a person is committing or has committed an offence under section 1 within the area of the local authority, give that person a fixed penalty notice.
- (2) A constable may, if having reason to believe that a person is committing or has committed an offence under section 1, give that person a fixed penalty notice.
- (3) In this schedule, “fixed penalty notice” means a notice offering a person the opportunity of discharging any liability to conviction for an offence under section 1 by payment of a fixed penalty.
- 2 A fixed penalty notice for an offence under section 1 may not be given after such time relating to the offence as may be prescribed by regulations made by the Scottish Ministers.

VALID FROM 05/12/2016

#### *Contents of fixed penalty notice*

- 3 (1) A fixed penalty notice must identify the offence under section 1 and give reasonable particulars of the circumstances alleged to constitute that offence.
- (2) A fixed penalty notice must also state—
- (a) the amount of the penalty and the period within which it may be paid,
  - (b) the person to whom and the address at which payment may be made,
  - (c) the method or methods by which payment may be made,
  - (d) the person to whom and the address at which any representations relating to the notice may be made,
  - (e) the consequences of not making a payment within the period for payment.
- (3) The person specified under sub-paragraph (2)(b) must be the local authority in the area of which the offence was alleged to have been committed or a person acting on its behalf.

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#### *The amount of the penalty and the period for payment*

- 4 (1) The fixed penalty for an offence under section 1 is £100.

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- (2) The period for payment of the fixed penalty is the period of 29 days beginning with the day on which the notice is given.
- (3) The local authority may extend the period for paying the fixed penalty in any particular case if it considers it appropriate to do so.

VALID FROM 05/12/2016

*Effect of notice and payment of penalty*

- 5 (1) This paragraph applies where a person is served with a fixed penalty notice in respect of an offence under section 1.
- (2) No proceedings for the offence may be commenced before the end of the period for payment of the penalty.
- (3) No such proceedings may be commenced or continued if payment of the penalty is made before the end of that period or is accepted by the local authority after that time.
- (4) In proceedings for the offence, a certificate which—
  - (a) purports to be signed by or on behalf of a person having responsibility for the financial affairs of the local authority, and
  - (b) states that payment of an amount specified in the certificate was or was not received by a date so specified,
 is sufficient evidence of the facts stated.

VALID FROM 05/12/2016

*Request for hearing*

- 6 (1) A person to whom a fixed penalty notice has been given may, before the expiry of the period for payment of the penalty, give notice requesting a hearing in respect of the offence under section 1.
- (2) A notice requesting a hearing under sub-paragraph (1) must be in writing and must be sent by post or delivered to the person specified under paragraph 3(2)(b) in the fixed penalty notice at the address so specified.
- (3) For the purposes of this paragraph and unless the contrary is proved, the sending of a notice by post is deemed to have been effected at the time at which the notice would be delivered in the ordinary course of post.
- (4) Where a person has requested a hearing in accordance with this paragraph—
  - (a) the local authority must hold the hearing,
  - (b) the person authorised for the purpose by the local authority of the area in which the offence was committed must notify the procurator fiscal of the request, and
  - (c) the period for payment of the fixed penalty must be calculated so that the period beginning with the giving of the notice under this paragraph and

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ending with the receipt by the person who gave that notice of the decision reached at the hearing is left out of account.

VALID FROM 05/12/2016

*Power to withdraw notices*

- 7
- (1) If the local authority considers (whether after holding a hearing under paragraph 6 or not) that a fixed penalty notice which has been given ought not to have been given, it may give to the person to whom it was given a notice withdrawing the fixed penalty notice.
  - (2) Where a notice under sub-paragraph (1) is given—
    - (a) the local authority must repay any amount which has been paid by way of penalty in pursuance of the fixed penalty notice, and
    - (b) no proceedings are to be commenced or continued against that person for the offence in question.
  - (3) The local authority must consider any representations made by or on behalf of the recipient of the fixed penalty notice and decide in all the circumstances whether to withdraw the notice.

VALID FROM 05/12/2016

*Effect of prosecution on notice*

- 8
- Where proceedings for an offence under section 1 in respect of which a fixed penalty notice has been given are commenced, the notice is to be treated as withdrawn.

VALID FROM 05/12/2016

*Recovery of unpaid fixed penalties*

- 9
- Subject to paragraphs 7 and 8, where a fixed penalty remains unpaid after the expiry of the period for payment of the penalty it is enforceable in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.

VALID FROM 05/12/2016

*Judicial determination of enforcement of fixed penalty*

- 10
- (1) A person against whom a fixed penalty bears to be enforceable under paragraph 9 may apply to the sheriff for a declaration that the fixed penalty is not enforceable on the ground that—

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- (a) the fixed penalty was paid before the expiry of the period for paying, or
  - (b) the person has made a request for a hearing in accordance with paragraph 6 and no hearing has been held within a reasonable time after the request.
- (2) On an application under sub-paragraph (1), the sheriff may declare—
- (a) that the person has or, as the case may be, has not paid the fixed penalty within the period for payment of the penalty,
  - (b) that the person has or, as the case may be, has not requested a hearing in accordance with paragraph 6,
  - (c) that, where such a request has been made, a hearing has or, as the case may be, has not been held within a reasonable time after the request, and accordingly, that the fixed penalty is or, as the case may be, is not enforceable.

*General and supplementary*

- 11 The Scottish Ministers may make regulations about—
- (a) the application by local authorities of fixed penalties paid under this schedule,
  - (b) the keeping of accounts, and the preparation and publication of statements of account, relating to fixed penalties under this schedule.
- 12 (1) Fixed penalty notices may not be given in such circumstances as may be prescribed by regulations made by the Scottish Ministers.
- (2) The method or methods by which fixed penalties may be paid may be prescribed by regulations made by the Scottish Ministers.
- (3) The Scottish Ministers may by regulations—
- (a) modify paragraph 4(1) so as to substitute a different fixed penalty,
  - (b) modify paragraph 4(2) so as to substitute a different period for the period for the time being specified there.

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