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SCOTTISH STATUTORY INSTRUMENTS

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**2021 No. 177**

**The Low Emission Zones (Emission Standards,  
Exemptions and Enforcement) (Scotland) Regulations 2021**

**PART 3**

**Penalty charges and enforcement**

**Penalty charges**

4.—(1) The penalty charge payable in respect of a first contravention is the amount specified in the entry in column 3 of the table in schedule 4 corresponding to the vehicle type specified in column 1 of that table in which the contravention occurred.

(2) The penalty charge payable in respect of a second contravention is—

- (a) the amount specified in the entry in column 3 of the table in schedule 4 corresponding to the vehicle type specified in column 1 of that table in which the contravention occurred, and
- (b) the surcharge specified in column 4 of that table corresponding to the entry in column 1 of that table for that vehicle.

(3) The penalty charge payable in respect of a third contravention is—

- (a) the amount specified in the entry in column 3 of the table in schedule 4 corresponding to the vehicle type specified in column 1 of that table in which the contravention occurred, and
- (b) the second surcharge specified in column 5 of that table corresponding to the entry in column 1 of that table for that vehicle.

(4) The penalty charge payable in respect of a fourth contravention is—

- (a) the amount specified in the entry in column 3 of the table in schedule 4 corresponding to the vehicle type specified in column 1 of that table in which the contravention occurred, and
- (b) the third surcharge specified in column 6 of that table corresponding to the entry in column 1 of that table for that vehicle.

(5) The penalty charge payable in respect of a fifth and any subsequent contravention is—

- (a) the amount specified in the entry in column 3 of the table in schedule 4 corresponding to the vehicle type specified in column 1 of that table in which the contravention occurred, and
- (b) the fourth surcharge specified in column 7 of that table corresponding to the entry in column 1 of that table for that vehicle.

(6) This paragraph applies where—

- (a) a person is found liable to pay a penalty charge under section 6(2) of the 2019 Act by virtue of a contravention occurring in a particular vehicle in relation to a particular low emission zone (“the relevant contravention”), and
- (b) the relevant contravention occurs 90 days or more after that person’s most recent previous contravention for which they were found liable under section 6(2) of the 2019 Act in that particular vehicle in that particular zone.

(7) Where paragraph (6) applies, the relevant contravention is to be treated as if it were a first contravention for the purposes of paragraphs (1) to (5).

(8) If a penalty charge is paid before the end of the period of 14 days beginning with the date of service of a penalty charge notice under regulation 6, the penalty charge is reduced by 50 per cent.

(9) Where a charge certificate is served under regulation 7 the penalty charge is increased by 50 per cent.

(10) In this regulation—

“first contravention” refers to the first occasion in which a person is liable to pay a penalty charge under sections 6(2) and 7(4) (proving contraventions and issue of penalty charge notice) of the 2019 Act by virtue of a contravention occurring in a particular vehicle in relation to a particular low emission zone,

“second contravention” refers to the second occasion in which the same person as in the first contravention is liable to pay a penalty charge under sections 6(2) and 7(4) of the 2019 Act by virtue of a contravention occurring in the same vehicle and in relation to the same low emission zone as the first contravention,

“third contravention” refers to the third occasion in which the same person as in the first contravention is liable to pay a penalty charge under sections 6(2) and 7(4) of the 2019 Act by virtue of a contravention occurring in the same vehicle and in relation to the same low emission zone as the first contravention,

“fourth contravention” refers to the fourth occasion in which the same person as in the first contravention is liable to pay a penalty charge under sections 6(2) and 7(4) of the 2019 Act by virtue of a contravention occurring in the same vehicle and in relation to the same low emission zone as the first contravention,

“fifth and any subsequent contravention” refers to the fifth and any subsequent occasion in which the same person as in the first contravention is liable to pay a penalty charge under sections 6(2) and 7(4) of the 2019 Act<sup>(1)</sup> by virtue of a contravention occurring in the same vehicle and in relation to the same low emission zone as the first contravention.

### **Liability of persons other than the registered keeper for penalty charges**

5.—(1) A penalty charge under section 6(2) of the 2019 Act is payable by a person other than the registered keeper of a vehicle in the circumstances specified in paragraphs (2) to (5).

(2) Where the relevant vehicle is not registered in terms of section 21 (registration of vehicles) of the 1994 Act<sup>(2)</sup>, a penalty charge is payable by the person by whom the relevant vehicle was used or kept at the time of the contravention.

(3) Where the registered keeper has sold or transferred the relevant vehicle before the time of the contravention, a penalty charge is payable by the person by whom the relevant vehicle was used or kept at the time of the contravention.

(4) Where at the time of the contravention—

(a) the registered keeper of the relevant vehicle was a vehicle hire firm, and

(b) the relevant vehicle was hired to a person under a hiring agreement with the vehicle hire firm,

a penalty charge is payable by the person hiring the relevant vehicle.

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(1) 2019 asp 17.

(2) 1994 c.22. Section 21(1) was substituted by paragraph 2 of schedule 3 of the Finance Act 1997 (c.16), and section 21(2) was amended, and section 21(4) substituted, by paragraph 33 of schedule 4 of the Finance Act 1995 (c.4).

(5) Where at the time of the contravention the relevant vehicle was used or kept by a person who was a vehicle trader and that vehicle trader was not the registered keeper, a penalty charge is payable by that person.

(6) In this regulation—

“hiring agreement” means an agreement for the hire of a vehicle—

- (a) under the terms of which the vehicle is let to the hirer for a fixed period of any duration (whether or not that period is capable of extension by agreement between the parties or otherwise),
- (b) which contains such particulars as may for the time being be prescribed for the purpose of section 66 (hired vehicles) of the Road Traffic Offenders Act 1988<sup>(3)</sup>, and
- (c) which is not a hire-purchase agreement within the meaning given to that term by section 189(1) (definitions) of the Consumer Credit Act 1974<sup>(4)</sup>,

“vehicle trader” has the same meaning as in regulation 3(1) (interpretation) of the Road Vehicle (Registration and Licensing) Regulations 2002<sup>(5)</sup>.

### **Penalty charge notices**

**6.—**(1) Where a local authority has reason to believe that a penalty charge is payable under section 6(2) of the 2019 Act, it may serve a notice (“a penalty charge notice”) on—

- (a) the registered keeper, or
- (b) any person by whom the penalty charge is payable under regulation 5.

(2) A penalty charge notice must be served before the end of the period of 28 days beginning with the detection date.

(3) But where—

- (a) within 14 days of the detection date a local authority has made a request to the Secretary of State for the supply of relevant information, and
- (b) that information has not been supplied before the end of the period described in paragraph (2),

the local authority may serve a penalty charge notice within 14 days beginning with the date on which the information is received under sub-paragraph (a).

(4) In paragraph (3) “relevant information” means—

- (a) information relating to the identity and address of the registered keeper of the vehicle,
- (b) the emission standard of the vehicle involved in the alleged contravention.

(5) A penalty charge notice must—

- (a) specify the registration mark of the vehicle involved in the contravention,
- (b) specify the detection date and time at which the alleged contravention occurred,
- (c) specify the reasons why the local authority believes that a contravention has occurred and that a penalty charge is payable by the recipient of the notice,
- (d) specify the amount of the penalty charge,
- (e) describe the manner in which the penalty charge may be paid to the local authority which has served the notice under paragraph (1),

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<sup>(3)</sup> 1988 c.53. Section 66 was relevantly amended by paragraph 1 of schedule 7 of the Road Safety Act 2006 (c.49).

<sup>(4)</sup> 1974 c.39.

<sup>(5)</sup> S.I. 2002/2742. Regulation 3(1) was relevantly amended by S.I. 2015/403.

- (f) state that the penalty charge must be paid before the end of the payment period, unless representations have been made under regulation 8(1),
  - (g) state that if the penalty charge is paid before the end of the period of 14 days beginning with the date of service of the penalty charge notice, the penalty charge will be reduced by 50 per cent,
  - (h) state that representations may be made, on any of the grounds specified in regulation 8(4), to the local authority against the decision to serve the penalty charge notice, but that representations made outside the payment period may be disregarded,
  - (i) state that the penalty charge must not be paid if representations have been made under regulation 8(1) and notice of a decision in respect of those representations has not been served under regulation 9(1)(b),
  - (j) state the grounds specified in regulation 8(4),
  - (k) specify where representations are to be sent,
  - (l) state that unless, before the end of the payment period—
    - (i) the penalty charge is paid, or
    - (ii) representations have been made under regulation 8(1),
 the local authority may issue a charge certificate under regulation 7 (and describe the effect of that regulation were it to do so),
  - (m) state that if the representations are rejected an appeal may be made to the First-tier Tribunal against the decision to serve a penalty charge notice on any of the grounds specified in regulation 8(4),
  - (n) state that the recipient of the penalty charge notice may, by giving notice in writing to the local authority, request that the local authority provide the recipient, free of charge, with a copy of the record of the contravention produced by the approved device pursuant to which the penalty charge notice was served or with such still images from that record as, in the local authority's opinion, establish the contravention.
- (6) Where the recipient makes a request as described in paragraph (5)(n), the local authority must comply with the request within 14 days of receipt of that request.
- (7) In this regulation “registration mark” has the meaning given by section 23 (registration marks) of the 1994 Act.

### **Charge certificates**

- 7.—(1) Where—
- (a) a penalty charge notice is served on a person, and
  - (b) the penalty charge to which it relates is not paid before the end of the relevant period,
- the local authority that served the penalty charge notice may serve on that person a statement (a “charge certificate”) to the effect that the penalty charge is increased by 50 per cent.
- (2) The ‘relevant period’ for the purposes of paragraph (1) means—
- (a) where a notice of rejection is served but no appeal is made under regulation 10, the period of 28 days beginning with the date of service of the notice of rejection,
  - (b) where there has been an unsuccessful appeal against the imposition of the charge to the First-tier Tribunal and no subsequent appeal to the Upper Tribunal, the period of 28 days beginning with the date on which the decision of the First-tier Tribunal is sent to the appellant,

- (c) where there has been an unsuccessful appeal against the imposition of the charge to the Upper Tribunal, the period of 28 days beginning with the date on which the decision of the Upper Tribunal is sent to the appellant,
  - (d) where an appeal to either the First-tier Tribunal or Upper Tribunal is withdrawn, the period of 14 days beginning with the date on which it is withdrawn, and
  - (e) where no representations are made under regulation 8(1) within the payment period, that period.
- (3) If representations are received by a local authority after the payment period and taken account of under regulation 8(3), the local authority must cancel a charge certificate served under paragraph (1).
- (4) Where in relation to a penalty charge notice—
- (a) the relevant period for the purposes of paragraph (1)(b) has expired, and
  - (b) the increased charge for which the charge certificate provides is not paid before the end of the period of 14 days beginning with the date on which the certificate is served,
- the local authority concerned may recover the increased charge as if it were payable under an extract registered decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.
- (5) In paragraph (4), “the increased charge” means the penalty charge payable in respect of a contravention in accordance with a charge certificate served in relation to that contravention under paragraph (1).

### **Representations in respect of penalty charges**

- 8.—(1)** The recipient of a penalty charge notice may make written representations within the payment period to the local authority against the decision to serve a penalty charge notice on any of the grounds specified in paragraph (4).
- (2) Where a representation is made under paragraph (1), the recipient of the penalty charge notice must include evidence relevant to the specified ground relied upon.
- (3) The local authority may consider whether it is reasonable and appropriate to take account of such representations made under paragraph (1) which are received by them after the end of the payment period.
- (4) The specified grounds are—
- (a) that the alleged contravention did not occur,
  - (b) where the penalty charge notice has been served on the recipient on the basis that the recipient was the registered keeper of the relevant vehicle, that the recipient was not the registered keeper on the detection date,
  - (c) where the recipient of the penalty charge notice was the registered keeper of the relevant vehicle on the detection date, that the penalty is payable by another person under regulation 5,
  - (d) where the penalty charge notice has been served on the recipient on the basis that the recipient, though not the registered keeper of the relevant vehicle, was the person by whom the penalty charge was payable under regulation 5, that the penalty charge was not payable by that person,
  - (e) that the penalty charge exceeded the amount applicable in the circumstances of the case, and
  - (f) that the contravention did occur but in light of extenuating circumstances, it would be unreasonable to impose a penalty charge notice.

(5) Where the ground mentioned in paragraph (4)(c) is relied on in any representations made under paragraph (1), those representations must include a statement of the name and address (if known) of the person who is considered by the recipient of the penalty charge notice to be responsible for payment of the penalty charge under regulation 5.

### **Response to representations**

9.—(1) Where representations are made to a local authority under regulation 8(1) within the payment period, or taken account of by the local authority under regulation 8(3), it must—

- (a) consider those representations and any supporting evidence provided,
- (b) serve on the person by whom the representations were made a notice under paragraph (2) or, as the case may be, paragraph (3).

(2) Where a local authority accepts that at least one of the grounds specified in regulation 8(4) is established, it must—

- (a) cancel the penalty charge notice,
- (b) serve a notice on the person by whom representations were made—
  - (i) stating that the penalty charge notice has been cancelled,
  - (ii) explaining the local authority's decision, and its reasons for that decision, on each of the grounds on which representations were made
- (c) refund any penalty charge paid in relation to the cancelled penalty charge notice.

(3) Where a local authority is satisfied that none of the grounds on which representations are made is established, it must serve on the person by whom those representations were made a notice to that effect (“a notice of rejection”).

(4) A notice of rejection must—

- (a) state the reasons for the local authority's decision on each ground on which representations were made,
- (b) state that an appeal against the imposition of the penalty charge may be made to the First-tier Tribunal within the appeal period, or such longer period as the First-tier Tribunal may allow,
- (c) state the grounds upon which an appeal may be made (being the same grounds as are specified in regulation 8(4)),
- (d) describe in general terms the manner and form for making an appeal,
- (e) state that the First-tier Tribunal has power to make an award of expenses,
- (f) state that if the penalty charge is paid before the end of the period of 14 days beginning with the date of service of the notice of rejection, the penalty charge will be reduced by 50 per cent, and
- (g) state that unless, before the end of the appeal period—
  - (i) the penalty charge is paid, or
  - (ii) an appeal is made to the First-tier Tribunal against the imposition of the charge,

the local authority may issue a charge certificate under regulation 7 (and describe the effect of that regulation were it to do so).

(5) Where a penalty charge notice is cancelled under paragraph (2), the local authority may serve another penalty charge notice in relation to the alleged contravention that was the subject of the cancelled penalty charge notice on any person (other than the person on whom the original penalty charge notice was served) appearing to it to be liable to pay the charge in respect of that contravention.

(6) Regulation 6(2) to (6) applies in relation to a notice served under paragraph (5) as if—

- (a) for paragraph (2) there were substituted—
  - “(2) A penalty charge notice must be served before the end of the period of 28 days beginning with the date on which notification of cancellation is made under regulation 9(2)”,
- (b) for sub-paragraph (a) of paragraph (3) there were substituted—
  - “(a) within 14 days of the date on which the penalty charge notice is cancelled a local authority has made a request to the Secretary of State for the supply of relevant particulars”, and
- (c) in paragraph (3)(b), the reference to paragraph (2) were a reference to that paragraph as modified by sub-paragraph (b) of this paragraph.

### **Appeal to the First-tier Tribunal**

- 10.**—(1) A person on whom a penalty charge notice has been served may, on any of the grounds set out in regulation 8(4) and before the end of the appeal period or such longer period as the First-tier Tribunal may allow, appeal to the First-tier Tribunal against the imposition of the penalty charge if—
- (a) that person has made representations to the local authority under regulation 8(1), and
  - (b) that person has received from the local authority a notice of rejection under regulation 9(3).
- (2) An appeal is to be made by a notice of appeal sent in writing to the First-tier Tribunal.

### **Enforcement arrangements**

**11.** A local authority may enter into arrangements with any person for the exercise by that person of any function conferred by or under section 7 of the 2019 Act(6) and these Regulations.

### **Interference with operation of low emission zone scheme**

- 12.**—(1) A person commits an offence if, with intent to avoid payment of, or with intent to avoid being identified as having failed to pay, a penalty charge payable under section 6(2) of the 2019 Act, the person—
- (a) interferes with any approved device used for or in connection with a low emission zone scheme,
  - (b) interferes with any traffic sign or direction used for or in connection with a low emission zone scheme,
  - (c) causes or permits the registration plate of a motor vehicle to be obscured,
  - (d) makes or uses any false document, or
  - (e) makes a false representation in response to a penalty charge notice served in accordance with regulation 6.
- (2) A person guilty of an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

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(6) 2019 asp 17.