

EXECUTIVE COUNCIL

CONFIDENTIAL

Title of Report: Fixed Penalty Scheme – Response to Public Consultation

Paper No: 277/12

Date: 19 December 2012

Report of: Chief Inspector Len McGill RFIP
Attorney General

1.0 Purpose

The purpose of this paper is to:

- (a) provide Members with the results of the public consultation on the proposed Fixed Penalty Scheme;
- (b) seek approval to increase the time period in which payment of a fixed penalty notice must be made or an appeal started, from the originally proposed 21 days to 28 days.
- (c) request the Attorney general's Chambers to prepare draft legislation to present to Executive Council

2.0 Recommendations

Members are recommended to:

- (a) note the results of the public consultation;
- (b) approve the increase of the time period in which payment of a fixed penalty notice must be made or an appeal started, from the originally proposed 21 days to 28 days.
- (c) request the Attorney general's Chambers to prepare draft legislation to present to Executive Council

3.0 Summary of Financial Implications

	2012/13
	£
Operating Budget	£3,000

4.0 Background

4.1 Members will recall Paper No: 165/12 which was discussed at Executive Council on the 27 June 2012. The paper discussed the introduction of a fixed penalty scheme to deal with minor infractions of road traffic law. The paper recommended that members;

(a) approve the principle that there should be a fixed penalty scheme in place for road traffic offences as set out in the schedule to the report

(b) approve a process of public consultation on the proposals for that scheme.

4.2 Members approved the introduction of a fixed penalty scheme and a process of public consultation.

4.3 A consultation paper was prepared and is at Annex 1 to this paper. The public consultation period was from Friday 14 September to Friday 28 September 2012. Publicity was undertaken using Penguin News, Falkland Islands Radio Service and Falkland Islands Television. Two officers were provided as specified point of contact in relation to the consultation.

4.4 Only three responses were received in writing, all by e-mail. The consultation also appeared as the subject of the editorial in the Penguin News.

4.5 Much anecdotal verbal comment was received by the specified point of contact officers and others, all of which, fully supporting the introduction of the scheme. There was however a further comment stating that the time period for payment of fines should be 28 days to fit in with the general practice of wage payments in the Falkland Islands.

4.6 Two responses require consideration;

(1) The consultation paper made the following proposal; “A driver or owner issued with a FPN must either pay the penalty demanded in the notice or may appeal against the FPN to the court if he/she thinks it was wrongly issued. It is proposed that either the payment must be made, or the appeal started within twenty-one days.”

A written response received suggested that the period should be 28 days for payment and 21 days to start an appeal. A verbal comment to the specified point of contact officers suggested that it should be 28 days for payment of fines to fit in with pay days. When preparing the consultation paper officers considered using 28 days as the period but decided to propose 21 days and see what the consultation produced.

It is considered that the period of 28 days for the payment of the penalty fee should be applied. It is further considered that the same period of 28 days for the start of an appeal should also be applied. By using the same period of 28 days there is less likelihood of confusion.

It is recommended that a period of 28 days for both payment of the penalty fee or the start of an appeal be applied.

(2) The consultation paper made a further proposal: “The aim of issuing three FPNs for the same offence and five FPNs for any motoring offences is to provide opportunity and encouragement for drivers to moderate their behaviour and comply with the relevant road traffic law before being considered for prosecution. The period of three years in relation to the same offence is proposed as it will encourage safer driving. FPNs issued will remain current for a long period and will be considered by police when dealing with a further offence for which a FPN could be issued.”

A written response received suggested that the period of three years should be a lesser one of two years. This was the only response in this issue received from the public. The reasons for the three year period are set out in the consultation paper.

It is considered that the time period of three years remain as proposed.

4.7 Comments received, such as those relating to registration plates, windscreens, parking on pavements and signage in relation to parking and waiting on specific roads, have been noted and will be responded to directly.

5. Financial Implications

The fixed penalty forms will be designed and printed to reflect the legislation and carry the necessary information. It is proposed to use the services of the Devon and Cornwall printing section to achieve this as they already print their own fixed penalty notices and have the materials and equipment to achieve this. Each form is sequentially numbered and accountable and will be formed into pads containing a specified number of forms. A plastic ‘wallet’ will form part of each form to provide weather protection in circumstances where the driver of a vehicle cannot be located and the penalty notice left on the exterior of a vehicle. The estimated costs are as follows:

Printing costs inclusive of design and set up etc (run of 4,000)	1,800.00
Plastic ‘wallets’	1,000.00
Freight	200.00
Total	£3,000.00

This expenditure cannot be met from the existing 2012/2013 budget of the Royal Falkland Islands Police. It is likely that the legislation will not be in place until the start of the next financial year given current drafting priorities. Draft legislation will be needed to inform the design of the notices and related paperwork and this may be ready this financial year dependent on the priority given to this drafting work. If funding is approved for this financial year and draft legislation is not available, then a request will be made to carry the funds into 2013/2014.

6. Legal Implications

The priority for drafting this legislation will be considered in the legislative drafting priorities paper to be submitted to Executive Council to determine where this project fits in against other priorities. The legal implications of the policy have already been considered in paper 165/12

7. Human Resources Implications

The issuing of fixed penalty notices and administration of the scheme will be carried out by serving officers and will form part of their daily duties.

Public Consultation
Proposals for the introduction of Fixed Penalty Notices for certain motoring offences

Introduction

This consultation paper sets out the proposals for the introduction of a penalty notice scheme for certain motoring offences. You are invited to read the proposals and give your views on them. Your views will be taken into account in determining whether such a scheme should be introduced and what form it may take.

Summary

Currently if you are caught by the police committing a road traffic offence then it could be dealt with by the police officer giving you a warning. Alternatively the police Officer could decide to pass your case to the Attorney General's Chambers to decide whether you should be prosecuted.

If you are prosecuted in Court and you plead guilty or are found guilty then the Court can impose a fine, take away your licence or sentence you to prison. The penalty imposed will vary according to the seriousness of the offence and whether you have any previous convictions for motoring offences.

It is proposed to introduce a 'Fixed Penalty' scheme for some motoring offences. This would give the police a third option in addition to giving a warning or referring you for prosecution.

The proposed 'Fixed Penalty' scheme

The proposed 'Fixed Penalty' scheme would give police officers the power to issue a fixed penalty notice (FPN) where a motoring offence that falls within the scheme has been committed. The FPN would require the owner or driver (depending on the offence) to pay a set penalty to the Court.

Why have a Fixed Penalty scheme?

It is felt that dealing with some motoring offences by using Fixed Penalty scheme would introduce an additional option for the police in dealing with motoring offences in a proportionate way in addition to the options of giving a warning or referring a case for prosecution.

It would strike a balance between imposing a suitable penalty for an offence that would act as a deterrent and appropriate punishment. It would avoid the person in receipt of a FPN having to appear in court and be subject to the associated publicity, or having the offence on their record. It would still give a person issued with a FPN the option of having their case dealt with by the Court if they wished.

Q: Do you think a fixed penalty scheme would be a good thing in principle?

How the scheme would work

If the police identify that a motoring offence has been committed then in responding to the driver or owner of the vehicle they will have the discretion to either:

- Issue a warning to the driver or owner
- Issue a Fixed Penalty Notice
- Refer the case for consideration for prosecution

In exercising that discretion a police officer will have regard to guidance and standing orders issued to the officer by the Chief Inspector.

A FPN will only be issued where it is proportionate and reasonable. Warnings will still be given where appropriate and cases will still be referred for prosecution where appropriate. A FPN will only be issued where the police officer considers that there is enough evidence to prove to a Court that an offence has been committed.

A driver or owner issued with a FPN must either pay the penalty demanded in the notice or may appeal against the FPN to the court if he/she thinks it was wrongly issued. It is proposed that either the payment must be made, or the appeal started within twenty-one days.

Q: Do you think this is an appropriate period of time?

Payments would be made to the Court.

If after twenty-one days the penalty has not been paid and no appeal has been made then the driver or owner would be summoned to court for non-payment of the FPN.

If an appeal is made then the case will be considered in the Magistrates Court. The case will be dealt with in the same way as a prosecution for the alleged offence and the police will have to prove that an offence was committed by the driver or owner. The driver or owner will have the normal right to be represented and defend the case. If the Court finds that the owner or driver is guilty of the motoring offence for which the FPN was issued, the Court will be able to impose a penalty up to the maximum allowed for that offence. This penalty may be more or less than the penalty set out in the Notice.

It is proposed that if a person has been properly issued with two FPNs for the same offence and is then caught committing the same offence again within an eighteen month period then the person will not be issued with another FPN. The case will be considered for prosecution.

If a person has been properly issued with four FPNs for any motoring offence and is caught committing another motoring offence for which a FPN could be issued then the person will not be issued with a FPN. The case will be considered for prosecution.

Q: Do you agree that after being issued with a number of Fixed Penalty Notices it is right that an offender should no longer be given a Notice but be considered for prosecution?

The police would keep records of FPNs issued, compared to warnings given and offences referred for prosecution, and the reasons for the decision in each case, so that the operation of the scheme can be monitored and audited.

Q: Do you think the scheme would work in practice? How could the scheme be made to work better?

Q: What motoring offences would be covered by the Fixed Penalty Scheme?

The following tables show the proposed offences to be covered by the Fixed Penalty Scheme;

Offences contrary to the Road Traffic Ordinance 1948

Provision creating offence	General nature of offence
Section 3	Breach of regulations on registration of motor vehicle
Section 4	Breach of regulations on motor and trailer licence
Section 5	Breach of regulations on PSV public vehicle

	licence
Section 18(2)	Driving without consideration for other road users
Section 29	Breach of regulations on speed limits – to a maximum of 20mph over each prescribed limit
Section 31	Breach of regulations on driving on footway or pavement
Section 33	Breach of regulations on carrying of passengers on a motor cycle
Section 37 and Section 38	Breach of regulations on pedal cycles
Section 39(2)	Riding without consideration for other road users
Section 45	Breach of regulations of failing to stop for a police officer when requested to do so
Section 50	Breach of regulations on drivers to comply with traffic directions and signs
Section 51	Breach of regulations of complying with directions from a police officer when requested to do so
Section 52	Breach of regulations on leaving vehicles in a dangerous position
Section 53	Breach of regulations on failing to give precedence to a pedestrian at a crossing

Offences contrary to Road Traffic Regulations and Orders

Provision creating offence	General nature of offence
Road Traffic Regulations section 2	Breach of regulations on registration of motor vehicle
Road Traffic Regulations section 3	Breach of regulations on vehicle identification
Road Traffic Regulations section 4	Breach of regulations on motor and trailer licence
Road Traffic Regulations section 7	Breach of regulations on PSV marks
Road Traffic Regulations section 8	Breach of regulations on warning instruments
Road Traffic Regulations section 9	Breach of regulations on lights
Road Traffic Regulations section 10	Breach of regulations on mirrors
Road Traffic Regulations section 11	Breach of regulations on safety glass
Road Traffic Regulations section 12	Breach of regulations on window wipers
Road Traffic Regulations section 13	Breach of regulations on silencers
Road Traffic Regulations section 14	Breach of regulations on tyres
Road Traffic Regulations section 17	Breach of regulations on vehicle obstruction
Road Traffic (Protective Headgear) Regulations	Breach of regulations on wearing protective headgear
John Street and Villiers Street Waiting Regulations	Breach of regulations on waiting in no waiting areas

Philomel Street Waiting Regulations Order	Breach of regulations on waiting in no waiting areas
Construction and Use (seat belt) Regulations Order	Breach of regulations on the fitting and standard of seatbelts
Wearing of Seat Belts Regulations	Breach of regulations on the wearing of seatbelts
Stanley Street Parking (Prohibited Vehicles) Regulations	Breach of regulations of parking HGV (etc) type vehicles in designated areas
Pedestrian Crossings Regulations	Breach of regulations on vehicles within pedestrian crossing controlled areas
Vehicle Licence Label Regulations	Breach of regulations on the displaying of a vehicle licence discs
No Waiting (General) Regulations Order	Breach of Regulations on the parking on yellow lines
Crozier Place, John Street and Reservoir Road No Waiting Regulations Order	Breach of regulations on waiting in no waiting areas
Car Parks Regulations Order	Breach of regulations governing waiting times within designated parking spaces
Ross Road (Clearway) Regulations Order	Breach of regulations governing parking within designated no stopping areas
Stanley One Way Traffic Order	Breach of regulations on driving the wrong way within a one way system
St Marys Walk (Parking Control) Order	Breach of regulations governing waiting times within designated parking spaces
Highways (Weight Limit) (Amend) Ordinance 2044	Breach of regulations governing the fixing of maximum weight plates on rear of HGV's
Mobile Phone Ordinance 2011	Breach of regulations governing the using of hand held devices whilst driving

All the above offences may be considered minor traffic offences in normal circumstances. If the police identify that any of the above motoring offences have been committed then in responding to the driver or owner of the vehicle they will have the discretion to either:

- Issue a warning to the driver or owner
- Issue a Fixed Penalty Notice
- Refer the case for consideration for prosecution

Officer's discretion will be informed by the circumstances of the offence; tending to show the degree of seriousness, its location, prevailing weather, traffic and pedestrian conditions, time of day, the reaction of the driver or owner of the vehicle and whether they have been issued with previous FPN's.

**Q: Do you agree with the offences that are suggested to be included in the scheme? If not, which ones would you take out or add?
How much would the Fixed Penalty be?**

It is proposed that the amount of the fixed penalty be fixed at between £50 and £80. This is considered to be a sufficiently high amount to act as a deterrent for committing the motoring

offences included in the scheme, but also be an amount that is affordable and can be paid within the proposed 21 day period.

Q: Do you agree with the amount suggested for the fixed penalty? If not, how much do you think it should be?

How to respond to this public consultation

If you want to respond to this consultation paper you should send your comments either in writing to Sgt Thomas Whistler, Royal Falkland Islands Police, Ross Road, Stanley or by email to twhistler@police.gov.fk

The public consultation starts on **Friday 14 September** and finishes on **Friday 28 September 2012**. Please make sure that you send your comments before the end of the consultation period to ensure they are taken into account.

If you have any questions about the consultation process or about the proposals you should email or call **Sgt Thomas Whistler on 28100** or e-mail him at twhistler@police.gov.fk