

EXECUTIVE COUNCIL

CONFIDENTIAL

Title of Report: Fixed Penalties
Paper No: 165/12
Date: 27th June 2012
Report of: Attorney General
Inspector, Royal Falkland Islands Police

1.0 Purpose

The purposes of this paper are:

- (a) to seek Executive Council's views on the parameters of the policy to be adopted in relation to the introduction of a fixed penalty system for certain road traffic offences
- (b) to seek approval from Executive Council for a period of public consultation on the proposals for fixed penalties once they have been finalised in the light of Executive Council's views.

2.0 Recommendations

Executive Council is recommended to:

- (a) approve the principle that there should be a fixed penalty system in place for road traffic offences as set out in the Schedule to this report
- (b) approve a process of public consultation on the proposals for that system.

3.0 Summary of Financial Implications

None

4.0 Background

4.1 When considering legislative drafting priorities Executive Council has expressed the clear wish to see the proposals for the introduction of fixed penalty notices brought forward as a priority ahead of other aspects of the Road Traffic project

4.2 The purpose of this paper is to outline proposals for a fixed penalty system.

4.3 The suggested system would radically affect the way in which certain road traffic offences were dealt with and this potentially could affect all those who are road users. It is therefore proposed that there should be wide public consultation on these proposals including with the Court and legal practitioners. It is suggested that consultation take the form of a consultation document, press release, presentation at a public meeting and appropriate use of the media.

Legal Framework

4.4 Road Traffic Offences are generally set out in the Road Traffic Ordinance (as amended)

4.5 Currently when a person is caught by the police committing a road traffic offence then the police in exercising their discretion can either give the offender a warning or the case can be referred to the Attorney General's Chambers for a decision to be taken as to prosecution.

Proposed Fixed Penalty System

4.6 It is proposed that the Royal Falkland Island Police (RFIP) be able to issue fixed penalty notices (FPN's) when an offence identified as a fixed penalty offence has been committed. A FPN should only be issued where it is proportionate and reasonable to do so. The FPN could be issued to the driver or owner of the vehicle (as appropriate to the offence) or affixed to the vehicle itself (for example for a parking offence). The officer would still have the discretion to issue a warning or report the case for prosecution if that were appropriate.

4.7 An alleged offender issued with a FPN must either pay the penalty set out in the FPN or may appeal against the FPN to the Court where he/she believes the FPN was wrongly issued. It would be a requirement that payment is made or an appeal started within 21 days of the person being issued with the FPN. If the penalty is not paid or an appeal is not made then the offender will be taken to Court for non-payment.

4.8 The offences that are felt to be appropriate for a FPN system are set out in Schedule to this report. The suggested level of the Fixed Penalty is between £50 and £80 with the offences possibly split into two tiers to reflect the seriousness of the type of offence. The income from FPN's would be treated in the same way as income from other financial penalties imposed by the Courts.

4.9 It is suggested that if a person has been properly issued with 2 FPN's for the same offence and is then caught committing the same offence within an 18 month period then the person will be considered for prosecution for that offence; and likewise if a person has been properly issued with 4 FPN's for any road traffic offence and is caught committing a further road traffic offence within an 18 month period, then that person would be considered for prosecution of that offence.

4.10 It is considered that dealing with offences by the use of a FPN would strike an appropriate balance of imposing a suitable penalty for the offence so as to act

as a deterrent and appropriate punishment. It would allow those that accepted a FPN to avoid the stigma of a criminal record and having their details published in the media and allow those on low incomes the opportunity of paying a fixed penalty and time to find the money to pay the penalty.

Main Issues for Consultation

4.11 The main issues on which views will be sought during the consultation period are as follows:

- The principle of introducing Fixed Penalty Notices for certain motoring offences
- The offences that should be covered by a Fixed Penalty scheme
- The amount of any Fixed Penalty and whether there should be different amounts for different categories of offences
- The way the scheme would work in terms of, time to pay, time to appeal, and methods of payment.
- The basis on which repeat offenders would be referred to court
- How Fixed Penalty Notices would be administered by the police

Other relevant matters

4.12 The RFIP will need to prepare appropriate operating policies and standing orders to support their officers in carrying out their duties in respect of FPN's and their use.

4.13 The payment of the penalty could be made to the Court or the Licensing Section at the police station. However it is suggested that it would be more appropriate for payments to be made to the Court so as to avoid the perception that FPN's were being used to generate income for the police

4.14 To properly record the issue of an FPN it is envisaged that the RFIP officer issuing the FPN would complete a FPN in triplicate in a specially designed and printed book at the time of the offence. The original would be given to the offender, a copy would be available to the Court and the third copy would be retained by the police. The FPN would have to record sufficient detail so that if the offence was contested the FPN could be sufficient evidence in the event of an appeal or prosecution.

4.15 The police would have to put in place appropriate mechanisms to ensure that an audit trail was kept recording decisions and the reasons behind decisions made.

5.0 Financial Implications

None at this stage though clearly there will be costs incurred introducing and implementing Fixed Penalty Notices. It is the intention to absorb these costs within the RFIP budget however further details will be provided when final approval is sought from Executive Council. It is also the intention that the income received from FPN's would be paid into the same cost centre as court fines. It is impossible to predict at this stage what level of income might be received as it depends upon the

offences that FPN's are applied to, the amount of the FPN and the frequency with which they are issued.

6.0 Legal Implications

The legal implications are dealt with in this paper.

7.0 Human Resources Implications

None at this stage. It is not envisaged that the introduction of Fixed Penalty Notices will require additional staffing resources. There will be a need for training and the production of guidance and operating procedures.

Schedule Of Offences to which Fixed Penalties could be applied

Road Traffic Ordinance 1948

Part 1: Offences under other written laws

(1) Provision creating offence	(2) 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 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

Part 2: Offences under Road Traffic Ordinance 1948

(1) Provision creating offence	(2) 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 the 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 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