



**ROADS AUTHORITIES & UTILITIES COMMITTEE**  
**(SCOTLAND)**

**ADVICE NOTE 16**

**FIXED PENALTY NOTICE**  
**PAYMENT PROCESS**

**Version 1.3**

**April 2011**

## **FIXED PENALTY NOTICE**

### **PAYMENT PROCESS**

#### **Version History**

| <b>Version</b> | <b>Date</b> | <b>Notes</b>  |
|----------------|-------------|---|
| 1.0            | August 08   | 1 <sup>st</sup> Draft by A H Rae. Approved RAUC(S) 4.6.08                     |
| 1.1            | March 2009  | Minor terminology changes made 11 March 2009 by Ray Elliot                    |
| 1.2            | August 2009 | Changes made to reflect new functionality on SRWR by David Armitage           |
| 1.3            | April 2011  | Changes to reflect the increased period for issuing a FPN from 60 to 91 days. |

# **Roads Authorities & Utilities Committee (Scotland)**

## **Advice Note 16**

### **Fixed Penalty Notice (FPN) Payment process**

#### **1 BACKGROUND**

- 1.1 With the introduction of the Transport (Scotland) Act 2005 (TSA), there was a need to create and update several Codes of Practice. The introduction of the Code of Practice for Penalties did not consider fully the question of multiple payments of fixed penalty notices by undertakers. The TSA steering group agreed that there was a need to produce further information on this subject and sought agreement from RAUC (Scotland) for this Advice Note to be added to the existing Advice Notes issued by RAUC(S).

#### **2 DEFINITION**

- 2.1 A fixed penalty notice (FPN) means a notice offering undertakers the opportunity of discharging any liability to conviction for a designated offence by payment of a penalty. A FPN will only be given to the undertaker promoting the works and not to any of their agents and/or contractors. It is the responsibility of undertakers to comply with their statutory duties and obligations under Part IV of NRSWA.

#### **3 INTRODUCTION**

- 3.1 The current software used by the community identifies breaches using in-built rules and applies charges to the offending notices. These breaches can be viewed by both the undertaker and the roads authority and an audited dialogue can take place on the validity of each potential FPN where there is disagreement. The roads authority can then issue FPNs for those breaches it wants to pursue.
- 3.2 Where an FPN is issued it must be sent within 91 days from the actual offence being committed.
- 3.3 The roads authority may also come across works which are not registered and in these circumstances may consider issuing an FPN for failing to comply with the regulations.

#### **4 PROPOSAL**

- 4.1 The SRWR can be used to inform undertakers that they have breached regulations as follows:

- (i) The system will detect certain breaches using in-built rules and will automatically apply charges to the offending notices. These charges will be on-hold when created.
- (ii) The roads authority may discover works not recorded on the SRWR and register these as unattributable works. Provided they are clear whose works they are, charges may be applied for any breaches associated with the works. These charges should be on-hold when created.
- (iii) The roads authority can use the SRWR to identify which breaches it wants to pursue and which have been cleared. An undertaker can monitor which breaches the roads authority wishes to pursue and discuss any disagreement through the SRWR.
- (iv) The roads authority then converts any remaining charges to FPNs and issues them electronically through the SRWR.

4.2 The monthly cycle for processing potential FPNs is as follows:

- (i) At the start of each month and by the 10<sup>th</sup> of the month, the roads authority reviews the potential FPN charges on hold and releases those which it wishes to pursue. Those which are not to be pursued should be cleared. Only where a decision has not yet been made should a potential FPN be left on hold.
- (ii) After the 10<sup>th</sup> of the month and by the 20<sup>th</sup> of the month, the undertaker can question the validity of any charges with the roads authority using the FPN Comments on the SRWR. During this consultation period, the roads authority may clear any potential FPN charge which it is persuaded is not valid.
- (iii) After the 20<sup>th</sup> of the month and before the end of the month, the roads authority will convert to FPNs any remaining charges which it still wishes to pursue and issue them to undertakers. The undertakers must then decide whether to accept or appeal any FPNs not previously agreed.
- (iv) The roads authority now awaits payment by one of the prescribed methods within the stipulated timescales. If payment is to be made by BACS, it is recommended that roads authorities and undertakers should communicate directly to establish the full details of the account to which payment should be made and the address to which details of the remittance and supporting information should be sent.

4.3 Any breaches which have not been settled and agreed between the undertaker and the roads authority by the date of issuing the FPNs may be subject to the formal hearing process. A request for a hearing must be made in writing within the 36 day payment period. It is recommended that any request should also be recorded in the SRWR using a FPN Comment. The outcome of a hearing should also be recorded by the roads authority.

4.4 Fixed penalties can only be issued within 91 days of the date of the offence. Where a roads authority becomes aware of an offence warranting a penalty more than 30 days after it was committed, they should issue a fixed penalty notice immediately as there may not be time to go through the monthly cycle described in 4.2. It should be noted that the date of an offence is generally the date on which works are undertaken without valid notice, not the date on which a retrospective notice is sent.

## 5 Summary

- 5.1 It is anticipated that all undertakers and roads authorities should adopt this process as best practice.
- 5.2 Any amendments necessary to this process should be passed to the RAUC(S) secretariat for discussion at RAUC Scotland.

**End of Advice Note**