



RAUC(S)

ROADS AUTHORITIES & UTILITIES COMMITTEE (SCOTLAND)

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(SCOTLAND)

ADVICE NOTE 18

PROCEDURE FOR THE CONDUCT OF HEARINGS UNDER
THE NEW ROADS AND STREET WORKS ACT 1991 AND
THE ROADS (SCOTLAND) ACT 1984

Version 1.02

March 2009

PROCEDURE FOR THE CONDUCT OF HEARINGS UNDER THE NEW ROADS AND STREET WORKS ACT 1991 AND THE ROADS (SCOTLAND) ACT 1984

Version History

Version	Date	Notes
1.00	Oct 2008	1 st Draft by Raymond Elliot/Richard Guest Approved by RAUC(S) on 3 December 2008.
1.01	February 2009	Minor revisions made following RAUC(S) on 3 December 2008 by Raymond Elliot.
1.02	March 2009	Minor revisions made following RAUC(S) on 4 March 2009 by Raymond Elliot.

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INTRODUCTION

The following procedure is based on the procedure developed by Highland Council and could act as a template for other road authorities developing a procedure for hearings following requests under paragraph 7 of schedule 6B of the New Roads and Street Works Act 1991 ("1991 Act") and paragraph 7 of schedule 8B of the Roads (Scotland) Act 1984 ("1984 Act") as amended by the Transport (Scotland) Act 2005 ("2005 Act").

Interpretation

"Days" are calendar days for the purposes of this Advice Note unless defined otherwise.

Code of Practice for Penalties

The Roads and Utilities Committee (Scotland), the Scottish Road Works Commissioner and Scottish Government have jointly issued a Code of Practice for Penalties. This procedure is compatible and should be read in conjunction with that Code of Practice.

Request for Hearing

1. A person to whom a fixed penalty notice (FPN) has been given (the applicant) may, before the expiry of the period for payment of the penalty, give notice in writing that shall be posted, hand delivered or transmitted electronically requesting a hearing in respect of the offence to which the fixed penalty notice relates.
2. The form of the FPN is prescribed within the Road Works (Fixed Penalty) (Scotland) Regulations 2008 and the Roads (Scotland) Act 1984 (Fixed Penalty) Regulations 2008. This includes the details of the person to whom any representations relating to the notice may be made.
3. Where a roads authority receives written representation, the applicant will be invited to submit such written evidence as he sees fit, and may submit oral evidence in support of the written evidence at the hearing. On receipt of the written evidence, the roads authority may choose to withdraw the FPN without holding a hearing, should it decide that the reasons given in the evidence are valid. It is recommended that such a decision should be delegated to a senior official.

Hearing Process

1. The roads authority shall nominate an individual or set up a group to conduct the hearing. They will be known as the Hearings body. Where the body consists of more than one member it shall include a Chairperson who shall have the casting vote.

It would be for the roads authority to decide on the application of any voting structure should the body consist of more than one member.

2. The Hearings body shall be advised by an official familiar with the technical and legal issues contained within the 1984, 1991 and 2005 Acts but who has not been directly involved in the issue of the FPN.
3. The hearing shall ideally be convened within 8 weeks of the date the written request is received. The applicant shall be notified by the roads authority of the date, time and location in writing using the notification of FPN hearing form that is contained within this Advice Note (Form 2) at least 7 days prior to the date of the hearing.
4. An applicant may request an alternative date for a hearing but shall not be permitted to make more than one such request.
5. For offences under the 1991 Act, hearings should be held at an accessible location. For offences under the 1984 Act, hearing should be convened in a location, where possible, in reasonable proximity to the location of the offence for which the FPN has been issued.
6. The applicant shall have the right to be represented however; hearings shall be kept as informal as possible.
7. When an applicant fails to attend, or be represented at a hearing having made no request for an alternative date, the request for the hearing shall be deemed to have been withdrawn and the FPN shall be deemed valid.
8. Hearings may be held in public due to the general presumption that roads authority business is in the public domain.
9. Any written evidence submitted by the applicant shall be considered by the Hearings body.
10. A roads official shall provide a report to the Hearings body explaining the reason(s) and justification(s) for issuing the FPN. This report shall be copied to the applicant at the same time as the notification of the hearing date.
11. The applicant shall have the opportunity to address the Hearings body and to ask questions of the roads official.
12. The roads official shall advise the Hearings body and may ask questions of the applicant.

13. The Hearings body shall have the opportunity to ask questions of the applicant and of the roads officials.
14. The Hearings body may ask the public and applicant to withdraw whilst matters are discussed in private.
15. After discussion the Hearings body will invite the applicant and any public attendees to return whilst a decision is made.
16. The Hearings body shall announce the decision at the conclusion of the hearing and the decision will thereafter be confirmed to the applicant in writing within 7 days.
17. Where a fixed penalty is withdrawn the form at Appendix B (1991 Act) or Appendix D (1984 Act) of the Code of Practice for Penalties shall be issued. Where a fixed penalty is confirmed, the notice confirming the fixed penalty that is contained within this Advice Note (Form 3) shall be issued.
18. The Hearings body shall state any reason and justification behind the decision on the Decision Notice (Form 3).

FORM 1

NOTICE REQUESTING A HEARING

Section 1 - FPN Information

Please provide information on the specific offences that you wish to have heard by the roads authority.

No.	FPN Number	LA Reference	Street named on notice	Date of issue of FPN
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				

Section 2 – Reason(s) for decline

Please fill out in *brief*, the rationale under which you wish to decline each FPN. You can provide a full explanation in Section 3.

1
2.
3.

4

5

6

7

8

9

10

Section 3 – Additional information

Please enter any further supporting information for your entries in Section 2, and list any photographs or reports that you have enclosed with your form. If you require more space than is provided please do so on a separate piece of paper and list it here as an enclosed report.

A large, empty rectangular box with a thin black border, intended for the user to provide additional supporting information, photographs, or reports as instructed in the text above.

FORM 2

NOTIFICATION OF FIXED PENALTY NOTICE HEARING LOCATION, DATE & TIME UNDER THE NEW ROADS AND STREET WORKS ACT 1991 OR ROADS (SCOTLAND) ACT 1984

1. Details of Fixed Penalty Notice.

Issuing Authority

FPN Reference No:

Date appeal lodged

Applicant:

With reference to the above notice of appeal, this authority has agreed to hold a hearing as allowed by Schedule 6B of the New Roads and Street Works Act 1991 and Schedule 8B of the Roads (Scotland) Act 1984. Please arrange to attend the hearing at the time, date and address given below. It is recommended that applicants arrive 15 minutes prior to the scheduled hearing time.

2. Details of Hearing

Date:

Time:

Address:

3. Request for Alternative Date

If you are unable to attend the hearing at the above time please contact this office immediately to arrange an alternative date. Please note that a hearing can only be postponed once.

Tel:

Email

Address

FORM 3

NOTICE CONFIRMING THE FIXED PENALTY

Notice of appeal against issue of a Fixed Penalty Notice under the New Roads and Street Works Act 1991 or Roads (Scotland) Act 1984

To be issued on conclusion of a hearing

Issuing Authority

Applicant

Fixed Penalty Notice Ref

It is the decision of the Issuing roads authority having conducted a hearing in accordance with Schedule 6B of the New Roads and Street Works Act 1991 and Schedule 8B of the Roads (Scotland) Act 1984, that this Fixed Penalty Notice is **confirmed**.

Signed

Name in Capitals

Position

Date

Reasons for decision