

ANGUS COUNCIL

INFRASTRUCTURE SERVICES COMMITTEE

24 NOVEMBER 2009

FIXED PENALTY NOTICES FOR ROADWORKS

REPORT BY DIRECTOR OF INFRASTRUCTURE SERVICES

ABSTRACT:

This report considers the issues relating to Fixed Penalty Notices under the Transport (Scotland) Act for roadworks and proposes a policy for the Committee's consideration.

1 RECOMMENDATIONS

1.1 It is recommended that the Committee:

- (i) notes the legislation regarding powers available to the council to issue Fixed Penalty Notices for roadworks;
- (ii) notes the resource implications to implement such powers;
- (iii) agrees at this time not to utilise the powers available to the council to issue Fixed Penalty Notices for roadworks.

2 BACKGROUND

- 2.1 Report No 765/07 "Transport (Scotland) Act 2005" presented to ISC on 28 August 2007 detailed the changes introduced by the Act in relation to the management of roadworks within the Council area.
- 2.2 The report noted the powers granted by the Act to impose Fixed Penalty Notices (FPNs) under the New Roads and Street Works Act 1991. The Road Works (Fixed Penalty) (Scotland) Regulations 2008 came into force on 1 October 2008 and enabled roads authorities to issue FPNs for offences as detailed in Appendix 1 to this report. These offences relate to statutory undertakers' (gas, water, electric, telecommunication supplies etc) failure to provide proper notice of their works on the road network.
- 2.3 Furthermore, the Roads (Scotland) Act 1984 (Fixed Penalty) Regulations 2008, which also came into force on 1 October 2008, enables roads authorities to issue FPNs for offences as detailed in Appendix 2 to this report. These relate to offences involving building materials, skips and scaffolds placed on the road network without proper permission of the roads authority or failure to comply with any conditions of that permission.
- 2.4 The council has the powers to issue FPNs but has not established the processes and resources with which to do so. Report No 765/07 noted that it was difficult to predict the possible income from such fines particularly as the undertakers would be likely to improve their noticing procedures.
- 2.5 The Scottish Road Works Commissioner has noted that roads authorities who do not utilise their powers to impose FPNs may be criticised for not doing so. However this needs to be considered in terms of the outcomes of any perceived lack of co-ordination of roadworks has on the public of Angus and be considered in the costs of resources required compared with potential income from issuing FPNs.

- 2.6 The FPN process is relatively resource intensive. The process requires staff to identify potential infringements : issue notices : have financial systems to receive payment : have resources to undertake a formal hearing process for disputed notices, and apply sufficient resources to ensure that the whole process is robust in the face of prospective challenge.
- 2.7 To date only nine of the 33 roads authorities have instigated FPNs and some have reported that they do not cover the councils' costs in recovering FPNs. Transport Scotland, the road authority for the trunk road network have not issued any FPNs. The nine authorities are mainly central belt with the exception of Highland and Argyll and Bute. Only one authority is imposing Roads (Scotland) Act FPNs. None of our neighbouring authorities are yet issuing FPNs.
- 2.8 The Scottish Roads Works Commissioner has produced figures on the number of potential FPNs which councils could have imposed on statutory undertakers, and these are available over the last 9 months for all councils. For those authorities that have issued FPNs, the number issued vary from between 15% and 61% of the potential FPNs identified by the Commissioner.
- 2.9 In Angus the number of potential FPNs is available for the past 12 months and is 279 , and are detailed per quarter year in Appendix 3 compared to the Scottish totals. It is noted that there was an initial high number with a downward trend of such offences across Scotland as utility companies improve their noticing procedures, thus starting to fulfill the aim of the recent legislation to improve co-ordination of roadworks. The number of offences under the Roads (Scotland) Act 1984 likely to lead to FPNs is estimated at 20 per annum.
- 2.10 By comparison across Scotland the number of potential FPNs in Angus is lower than would be expected based on our proportion of the road network nationally (1.76% of Potential FPNs versus 3.28% of the national road network in Angus). The proportion of the undertaker activity in Angus is considered lower than that in the central belt/city areas.
- 2.11 Not all potential FPNs will result in an actual FPN being issued and of those issued a proportion will be disputed and upheld in the undertakers' favour. Thus of the approximate 300 potential offences (including those under the Roads(Scotland) Act) identified it is estimated that at best the council would receive an income of less than £17,000 per annum assuming 70% of potential FPNs result in payment of the relevant fine of £80. This income is forecast to fall in future years.
- 2.12 The Roads division has recently proposed establishment changes to improve its own performance in processing the new noticing requirements of its own roadworks of the Transport (Scotland) Act 2005. These changes would facilitate a number of improvements required before the council can be seen to be too critical of the process failures of others. However to implement FPNs further staff resources would be required.
- 2.13 Overall the problems associated with roadworks and in particular the co-ordination of roadworks are relatively limited compared to other areas of Scotland where roadworks, traffic and congestion is significantly higher. The outcome of improved co-ordination in Angus whilst welcomed will have limited impact on the reliability of journey times or availability of the road network in Angus.
- 2.14 The estimated cost of implementing a robust FPN process has been calculated as circa £35,000 per annum. This is based on additional resources equivalent to 0.5FTE members of staff, along with senior officers contributing to the appeal panel, and separate accountancy procedures required for receiving the income which would also impact on Finance and Law and Administration divisions. This confirms the experience of other authorities that issuing FPNs does not cover the council's costs even when based on 70% recovery of fines compared to those levels being borne out in practice through other authorities.
- 2.15 It should be noted that councils are only able to cover reasonable costs from the income of FPNs and that any additional income above such costs, albeit unlikely from the above estimates, is payable to the Scottish Road Works Commissioner office.

- 2.16 The processes required in paragraph 2.6 will have resource implications in Angus significantly greater than the potential income detailed in paragraph 2.10. In light of the current and on-going financial pressures on the council's budgets as a whole and including the Roads revenue budget, implementing FPN procedures would require the diversion of revenue funds otherwise required for existing priority services and therefore is not considered an appropriate avenue for the council at this time.
- 2.17 It is therefore recommended that the council does not utilise its powers to issue FPNs for roadworks offences at this time. If at some future time the number of potential FPNs increases significantly to justify the cost of implementing a suitable system to enforce FPNs a further report will be submitted to Infrastructure Services Committee.

3 FINANCIAL IMPLICATIONS

- 3.1 There are no direct financial implications from the recommendations of this report.
- 3.2 As detailed in paragraph 2.14, the cost of introducing a system to issue FPN's for roadworks offences is estimated to be circa £35,000 per annum. This exceeds the estimated income achievable of circa £17,000 by some £18,000. On this basis it is not deemed cost effective to introduce a system of FPN's at this time.

4 HUMAN RIGHTS IMPLICATIONS

- 4.1 There are no human rights implications arising from the proposals in this report.

5 EQUALITIES IMPLICATIONS

- 5.1 The issues dealt with in this report have been the subject of consideration from an equalities perspective (as required by legislation). An [equalities impact assessment](#) is not required.

6 CONSULTATION

- 6.1 The Chief Executive, Director of Corporate Services, Head of Finance and Head of Law and Administration have been consulted in the preparation of this report

7 CONCLUSION

- 7.1 The report details the powers available to the roads authority to impose Fixed Penalty Notices for roadworks. However due to the high costs of applying the necessary procedures to do so and the anticipated relatively low numbers of anticipated noticing failures in Angus by the utility companies it is recommended that these powers are not utilised, at least until such time as the quantum of failures in the Angus area has stabilised.

**ERIC S LOWSON
DIRECTOR OF INFRASTRUCTURE SERVICES**

NOTE:

The background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) which were relied on to any material extent in preparing the above report is:

Report No 765/07 Transport (Scotland) Act 2005 – Infrastructure Services Committee 28 August 2007

Roads/JG/IAC

Fixed Penalty Notices for Roadworks

APPENDIX 1

**OFFENCES & AMOUNT OF PENALTY
STATUTORY UNDERTAKERS**

Item No.	Offence under the 1991 Act	Brief description	Amount of penalty <i>(must be paid within 36 days)</i>	Discounted amount <i>(if paid within 29 days)</i>
1.	An offence under section 113(5).	Failure to comply with duties under section 113 (advance notice of certain works, etc.).	£120	£80
2.	An offence under section 114(5).	Beginning to execute works in contravention of section 114 (notice of starting date).	£120	£80
3.	An offence under section 116(4).	Failure to give notice in accordance with section 116 (notice of emergency works).	£120	£80
4.	An offence under section 129(6) consisting of a failure to comply with subsection (3) or (4).	Failure to comply with requirements to give notice of completion of reinstatement.	£120	£80

APPENDIX 2

**OFFENCES & AMOUNT OF PENALTY
ROADS (SCOTLAND) ACT 1984 OFFENCES**

Item No.	Offence under the 1984 Act	Brief description	Amount of penalty (must be paid within 36 days)	Discounted amount (if paid within 29 days)
1.	An offence under section 58(1).	Deposit of building materials in or erection of scaffolding over road without or other than in accordance with permission.	£120	£80
2.	An offence under section 85(3) as read with (4).	Deposit of builder's skip on road without permission of roads authority.	£120	£80
3.	An offence under section 85(3) as read with (4).	Failure of owner of skip or other person to ensure conditions of permission complied with.	£120	£80

APPENDIX 3

	Number of Potential FPNs identified by Scottish Road Works Commissioner			
	Quarter 3 2008/09	Quarter 4 2008/09	Quarter 1 2009/10	Quarter 2 2009/10
Angus Council	105	35	79	60
Across all Scottish Roads Authorities	5207	3475	3783	Not available