



## **Department for Transport**

### **Consultation on the detail of the graduated fixed penalty and deposit schemes**

Northgate Information Solutions' response

August 2007

# Consultation on the detail of the graduated fixed penalty and deposit schemes

## Introduction

1. Northgate Information Solutions welcomes the opportunity to respond to the consultation on the detail of the graduated fixed penalty and deposit schemes.
2. This brief memorandum focuses primarily on the general use by government of fixed penalty notices; the need for consistency in their use to ensure effective and efficient delivery; and our specific comment in relation to the consultation document.
3. Whilst the consultation has raised a number of questions to answer, we believe it is vital in the interests of the fullest consultation to provide information on attitudes and opinions expressed in the document and we do not provide answers to questions where we have no specific view on them or expertise in the particular area.

## Use of penalty notices

4. Northgate believes that the penalty notice system can play an integral role in the administration of justice, but the system is only as effective as it is fairly enforced.
5. Increasingly, across the government the wider use of penalty notices should be used as part of a co-ordinated policy mix of education, the promotion of rights, and law enforcement to optimise the prevention of low-level social and environmental nuisance and criminal offences.
6. We recognise that penalty notices give authorities with limited resources an additional means of dealing efficiently with minor offences. Used appropriately, penalty notices can be an effective way of addressing high-volume, low-level crime, environmental and social nuisance and other forms of minor civil infringements of the law which are currently either processed through the courts or not acted upon. The penalty notice system can divert individuals away from the courts and remove the stigma of having a criminal record.
7. Penalty notices can also have an educative role. Once imposed on individuals for particular offences or infringements, word of mouth may quickly lead to other individuals improving their behaviour in order to avoid paying similar fines. By integrating them into the educative process they may assist changing attitudes and behaviour, at least in the short term.

## New laws required on penalty notices

8. However, Northgate has long called for a strong national framework governing penalty notices and enforcement as a whole if public confidence in the system is not to be undermined. On a national basis, there is an apparent lack of consistency governing penalty notices which are used both under criminal and civil law.

9. Although the Home Office has developed principles in relation to setting the level of the financial penalty, there has been little focus on the fact that the penalty notice system has become one of the major forms of the administration of justice in this country.
10. This lack of consistency arises partly from the fact that responsibilities for different offences and infringements can lie with different government departments. Inconsistencies can arise from issues such as:
  - the amount of time an individual is given to pay;
  - the effect of non-payment of the penalty notice;
  - whether or not public bodies can hypothecate penalty notices;
  - what purposes the receipts can be used for;
  - whether or not the behaviour engaged in falls under criminal or civil law.
11. As the use of penalty notices grows, Northgate has consistently argued that there are strong arguments for a Penalty Notice Act to ensure a 'joined up' approach to policy-making and to help assist in educating the public about their community responsibilities. This new act would lay out the principles and practices for the use of penalty notices in tackling what is, in effect, a new category of infringements related to community wrongdoing.
12. Standardisation of the approach should neither rule out local flexibility nor the need for specific departmental guidelines. However, it should provide a uniform national framework which aids compliance. It can also be used as part of the community education process to ensure that the public fully understands why there is a need to tackle community wrongdoing in this way.

## **Penalty notices – data poor, information poor**

13. There appears to be a paucity of data and management information on the operation of the penalty notice system as a whole. If the public is to perceive the system as fair, it must be accountable.
14. The impact of enforcement systems on individuals and on public confidence generally must be adequately monitored. If penalty notices are used inappropriately, questions can be raised about their power as a deterrent and whether they violate human rights principles, due process and fairness.
15. Any extended use of penalty notices should be accompanied by guidelines providing that public authorities review the use of such systems and put in place practices to measure and prevent adverse impacts. This will help to send out a strong message to the public that systems will be tested to ensure that there is no underlying bias which would lead to disproportionate, unequal or unfair treatment because of factors such as gender, disability, age and religion.

## **Penalty notices – training for staff**

16. Whilst penalty notices may provide an efficient and cost-effective means of dealing with minor offences, particular attention should be paid to the training and resources of staff who operate the system.

17. Staff should be adequately equipped to understand how human rights and diversity issues impact on service delivery, and be able to deal with the public in a courteous, fair, equitable and consistent fashion.

## **Graduated fixed penalties**

18. Whilst the Department has no plans to decriminalise the offences outlined in the consultation document, Northgate believes that there is a strong case for reviewing this in the long-term. We believe that there is evidence for freeing up the civil and criminal courts from administrative enforcement measures concerned with penalty notices, particularly as acceptance of a fixed penalty notice results in no criminal record (para. 2.5).
19. We also consider that any implementation of the new proposed graduated fixed penalty and deposit scheme should be pre-dated by a national, targeted information campaign aimed at informing operators and drivers of the new system rather than simply making information accessible on the VOSA website. This should be seen as an integral part of encouraging compliance with the law and minimising the need to take enforcement measures (para. 3.4).
20. We are concerned that whilst the consultation document emphasises the need for VOSA officers to ensure consistency of approach in deciding to issue a fixed penalty notice, they should be effectively trained in the approach as well as having clear guidelines which are made available to the public so that the system is fully transparent. The consultation document makes no mention of training for VOSA officers and yet poor communications with the public threaten to undermine the penalty notice system. It is, in our view, essential that consideration should be given to effective training in communications and enforcement (para.3.6).
21. Within the context of the decision whether or not to issue a penalty notice it is our view that consideration should be given to the number of penalty notices issued in the past; and it would therefore be desirable if VOSA services were able to provide effective back office information to frontline officers by means of mobile systems.
22. Whilst we understand that fixed penalty notices will be issued to the driver in all cases, in the longer term consideration could be given to issue them to the ultimate person responsible dependent on proof being provided by the driver that they are not the ultimate person responsible (para. 3.9). This could avoid a lot of unnecessary bureaucracy for operators and also provide a mechanism for detecting any bad practices being encouraged by operators thereby contributing to safer roads policy.
23. The document adopts a silo-type approach to the use of penalty notices suggesting that all fixed penalties are dealt with under the same conditions (para.3.15). This is simply not the case. As we have noted earlier, the penalty notice system is ad hoc and inconsistent, the consultation document provides that a fixed penalty must be paid within 28 days and where not paid will be increased by 50% consistent with the system for road traffic offences. However, in other legislation such as the Traffic Management Act 2004 operators have a reduced time in which to pay, can obtain discounts for prompt payment and penalty notices can be sent to head office. The ever increasing use of legislation which is partially enforced by the penalty notice system means that for the individual recipient of penalty notices there is

neither consistency nor coherence, arguably undermining the system by its very fragmentation.

24. The document indicates that the primary means of payment will be via VOSA's single fixed penalty office which will include a call centre. There are strong arguments consistent with the government's e-modernisation agenda to ensure that VOSA operates a virtual office available for 24 hour payments and receipts as is common amongst local authorities and other public agencies (para. 3.14). We also believe that to ensure consistency with the approach to deposits it would make sense to have a preferred payment method of credit or debit card to avoid any difficulties associated with cash. We also think it is essential given that official receipts are automatically generated and not simply sent out on request to ensure probity and transparency within the system.
25. We note that drivers will be advised to tell the operator that a fixed penalty notice has been issued but that they will not be required to tell their operators, yet operators will be required to notify the Traffic Commissioners (para. 3.17). We are concerned that the fullest information about penalty notices should be known by the traffic commissioners and that this could be improved by ensuring that information held by VOSA could be transferred automatically to Traffic Commissioners. There is an inconsistency with the guidance note which says that operators will be informed of any fixed penalty notice issued to a driver (page 33).
26. The current consultation gives no indication of how drivers will be advised or of how this advice will be monitored for its effectiveness. Whilst it is the case that drivers are bound by their vocational driving licence convictions to the Traffic Commissioner, another solution would be to require drivers to provide information on fixed penalty notices to the Traffic Commissioner.
27. If Traffic Commissioners are to have full authority, they need the most comprehensive information available and it is possible that without safeguards in place disreputable operators may encourage and endorse illegal practices considering that the financial implications of paying the penalty notice are less than the costs of ensuring responsible practice. We, therefore, urge the Department to think carefully and reconsider the current notification requirements.

## Deposits

28. We do not see the need for the different payment systems between deposits and penalty notice schemes (para.4.4). If other payment centres are to be set up by the police for deposits then it makes sense that the same should be the case for graduated penalties.
29. However, there may be cost savings in having one fully comprehensive national payment and enforcement system in the longer term embracing a wider range of penalty notice offences and we urge the Department to consider the case for this by carrying out initial research on the current effects of the penalty notice regime on the transport sector.
30. We note that the Department admits that allowing the police to collect deposits will be more complex and will require new systems to be established by the Courts Service and that

arrangements could be piloted in one or more criminal justice areas ahead of national roll-out.

31. Given the level of deposit (£900 maximum), we are concerned that some drivers may be caught by a lack of cash to cover the maximum and if the system is to operate effectively then overseas drivers must be effectively informed prior to any implementation (4.4).
32. We recommend in line with our recommendation for graduated fixed penalties that receipts should be given for all transactions in relation to deposits (para 4.5).
33. Whilst the consultation document suggests that all deposit payments made to the police will immediately be transferred to the Court Service, in the case of payments made to VOSA these will be held in a holding account. We see the development of a two tier service as unnecessarily complicated as the Court Service would also presumably (although it is not mentioned in the consultation document) be required to establish a similar holding account (para.4.7).
34. We note that in para. 4.10 no payments will be kept by VOSA and that any monies will go to the consolidated fund. Given that there is no consistency across the penalty notice regime, with some penalty notice systems allowing hypothecation for specific or general funding purposes, we do not think that it guarantees the public will not see this as a tax raising exercise. We believe that there are strong grounds for ring-fencing the funds for the wider objectives of promoting environmental improvement, climate change, community safety and employee well-being.

## **Draft guidance**

35. We have broad concerns about the draft guidance which is a cursory description of the scheme and is neither detailed nor comprehensive enough to ensure that the system can be fully understood by drivers and operators or transparent enough to demonstrate accountability. At the very least:
  - all offences which attract the penalty notice system should be listed;
  - further information should be supplied about what to do if a driver changes their mind against accepting the penalty notice;
  - information should be supplied as to when and how the operators will be informed of the issuing of any fixed penalty notice;
  - information should be provided about the impact of repeated issuing of fixed penalty notices on the decision as to whether to issue a penalty notice;
  - information should be given about the level of fixed penalty notices and the graduated system of offences;
  - information should be given about what happens if drivers do not have any cash or credit cards to cover the 'on the spot fine'.

## About Northgate

Northgate is a technology services company with a difference. It is committed to high quality public services and understands the public sector. That knowledge is core to its business. Northgate's task is to enhance public sector value through the intelligent use of people and information technology systems and to share in the economic and social benefits that this brings.

Northgate assists the public sector to promote community well-being by helping them provide citizens with accessible and responsive one-stop services based on clear and detailed information; by engaging with public sector employees to transfer and enhance skills; and by working with public sector management to enhance performance management.

### For more information

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