

HM Treasury

The Hampton review of regulatory inspection and enforcement

Northgate Information Solutions' response

September 2004

## Summary

- Northgate welcomes the Hampton review of regulatory inspection and enforcement. We believe that there is scope for promoting more efficient approaches to regulatory inspection and enforcement, while continuing to deliver excellent regulatory outcomes.
- We believe that well-targeted enforcement helps to promote compliance and deliver community well-being and recommend that the review should examine the extended use of penalty notices for tackling regulatory infringements.
- Northgate believes that any systemic extension of penalty notices must take place as part of a clear education and enforcement programme, with clear standards for the quality of enforcement.

## Penalty notices and regulatory infringements

1. Northgate welcomes the Hampton review on regulatory inspection and enforcement.
2. Northgate believes that the review should consider the extended use of penalty notices as an additional tool to aid the inspection and enforcement process.
3. There must be a clear national framework governing the principles, policies and practices for the fair and effective use of penalty notices within the regulatory environment.
4. Fixed penalty notices or penalty charge notices are increasingly used in relation to a range of minor criminal and civil matters in English law. Penalty notices can be grouped into four main areas: public disorder offences; minor "environmental" offences such as litter and dog fouling; traffic and parking offences; and those linked with public administration.
5. Traditionally used in the UK for the enforcement of individual wrongdoing in criminal or civil law, they are increasingly being used as a means of encouraging regulatory compliance. Recent proposals such as those contained within the Department of Environment, Food and Rural Affairs's 'Review of the Special Waste Regulations' and 'Clean Neighbourhoods' consultations include the extended use of penalty notices in the regulatory field.
6. Used appropriately, penalty notices can be an effective way of dealing with 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 where no action is currently undertaken. They give authorities with limited resources an additional means of dealing efficiently with minor offences.

7. Penalty notices can have a "ripple" effect. Once imposed for particular offences or targeted in particular areas, word of mouth can quickly lead to others improving their performance to avoid paying of similar fines. By integrating them into the educative process, they may assist in promoting compliance. In this way they can become an additional tool for the regulator, particularly in dealing with high-volume low-level infringements such as the failure to keep adequate records.
8. Arguably, tackling minor infringements in the regulatory process will help to create the conditions for higher levels of compliance throughout the regulatory process.
9. Consideration could be given to extending fixed penalty notices to health and safety, as in Australia and other countries. Currently the Health & Safety Executive and environmental health officers with health and safety duties have no powers to issue penalty notices for low-level offences, yet arguably these could be a powerful tool in preventing escalation, for example if they were issued at the time of a warning to show clear enforcement intent, or after a warning when an infringement has occurred.

### Learning from international experience

10. In other countries such as New Zealand, Canada and Australia, they have been widely used as a tool to strengthen law enforcement, for example in health and safety law and under Australian environmental legislation where breaches of the law are minor; where the facts are apparently indisputable; where there is one-off breach and where a penalty notice could act as a deterrent.
11. In Australia, at a federal level penalty notices are normally known as infringement notices and are used as a significant part of the regulatory system. Some of the laws and regulations which include provision for penalty notices are outlined in the table below. This shows how the extent of their use within the regulatory system.

**Table 1 Australia - laws and regulations which provide for the issuance of infringement notices**

Aboriginal Land (Lake Condah and Framlingham Forest) Act	Air Navigation (Fuel Spillage) Regulations 1999
Air Navigation Regulations 1947	Airports (Building Control) Regulations 1996
Airports (Control of On-Airport Activities) Regulations 1997	Airports (Environment Protection) Regulations 1997
Airports (Surface Traffic) Act 1960	Child Support Act 1988
Civil Aviation Act 1988	Close Corporations Act 1989
Commonwealth Electoral Act 1918	Conservation Act 1999
Corporate law economic reform program (Audit Reform & Corporate Disclosure) Act 2004	Corporations Act 1989
Corporations Regulations 2001	Customs Act 1901
Defence Force Discipline Act 1982	Defence Act 1903
Education Services for Overseas	Environment Protection and

Students Regulations 2001	Biodiversity Conservation Regulations 2000
Environment Protection and Biodiversity Financial Sector (Collection of Data) Act 2001	Excise Act 1901
Great Barrier Reef Marine Park Act 1975	Fisheries Management Regulations 1992
Interstate Road Transport Regulations 1986	Income Tax Assessment Act 1936
Migration Regulations 1994	Interstate Road Transport Act 1985
Quarantine Regulations 2000	National Parks and Wildlife Conservation Act 1975
Radio communications Regulations 1993	Radio communications Act 1983
Road Transport Reform (Dangerous Goods) Act 1995	Referendum (Machinery Provisions) Act 1984
Road Transport Reform (Dangerous Goods) Regulations 1997	Road Transport Reform (Heavy Vehicles Registration) Act 1997
Superannuation (government co-contribution for low income earners) Act 2003	Spam Act 2003
Taxation Administration Act 1953	Sydney Airport Demand Management Act 1997
	Tradex Scheme Act 1999

12. Of particular interest is the use of penalty notices in the financial regulatory system. The Corporate Law Economic Reform Program (Audit Reform & Corporate Disclosure) Act (CLERP) became law in Australia on 1st July 2004. Under the Act, the Australian government has introduced a radical shift in regulatory enforcement and the extended role of infringement notices. The Act grants new powers to the Australian Securities and Investment Commission (ASIC) to issue infringement notices for contraventions relating to breaches of continuous disclosure obligations. This covers contraventions relating to inadequate disclosure of materially price-sensitive information by listed entities. The remedy is intended to be used for less serious breaches of the obligations. According to ASIC the notices are: "designed to provide a fast and effective remedy so that redress is proportionate and proximate to the alleged breach." ASIC provides for ten stages for issuing an infringement notice and says that it would normally expect to complete the first six stages within 3 months. The amount for the penalty notice will be either \$33,000, \$66,000 or \$100,000 (Aus) depending on the circumstances and whether there has been a previous breach. There is no discretion as to the amount of penalty. The amount depends on the market capitalisation of the company. Legislation provides the calculation by which the market capitalisation is calculated. If the organisation complies with an infringement notice it will then publish details of the notice. The Act contains restrictions on what may be reported. Compliance with a penalty notice will protect the listed company from civil penalties of up to \$1 million (Aus) and from criminal proceedings. Compliance is not an admission of guilt or liability. Infringement notices can only be issued within 12 months of an alleged contravention.
13. Table 2 below highlights the use of expiation notices (similar to penalty notices) for environmental offences in South Australia. It demonstrates their widespread use and the fact that a victim levy is imposed on every environmental offence.

14. In the UK a victim's levy is being proposed for speeding and penalty notices for disorder. Imposing a similar levy for corporate infringements of regulatory law could provide a means of extending support to victims and create a more equitable balance between those penalties issued against individuals and those issued against corporate bodies.

**Table 2 Expiation legislation in South Australia**

Legislation	Offences	Penalty amounts	Victim of crime levy
Environment protection act	Numerous covering contravention of policy, failure to maintain records, contravention of ozone, air quality, burning regulations, machine noise regulations, waste management regulations	\$100-\$300	Yes
Fisheries Act	Numerous including: failure to carry licence, selling exotic fish, engaging in a fishing activity of a prescribed class, failure to keep records, lodge statistical returns	\$50-\$300	Yes
Forestry Act	Numerous including: lighting fires, depositing rubbish, failure to comply with instructions of a forest warden, using abusive behaviour against warden	\$105-\$200	Yes
Harbours and navigation regulations	Numerous including: swimming or skiing in restricted area, parking, speeding, failure to carry safety equipment, failure to report accident	\$55-\$400	Yes
National parks and wildlife act	Numerous including: exporting plants and animals without permission, hunting without permit, failure to pay national parks fees, disorderly behaviour in a reserve, failure to abide by wildlife regulations, kangaroo tag regulations	\$30-\$315	Yes
Waterworks Act	Remain on land without being authorized, failure to comply with authorized conditions	\$315	Yes

15. In New Zealand, health and safety at work legislation provides for a system of 'infringement notices'. An infringement is any failure to comply with the requirements of the Health and Safety in Employment Act. An inspector may issue an infringement notice if they have reasonable grounds to conclude that a person has failed to comply with the provisions of the Act and the person has had prior warning of the offence. Notices are issued where the inspector considers that prosecution is not warranted. Fines of between \$100 and \$3000 may be imposed for any breach of the Act, except for a failure to maintain a hazard identification system where the fine range is higher – between \$800 and \$4000. Companies can decide whether to accept and pay the infringement notice or to go through the courts. An infringement notice does not result in a criminal record, but infringement notices may be taken into account in future prosecutions.
16. Similarly, in Australia infringement notices are a recognized part of the enforcement mechanism in most states. In Queensland, the State Penalties Enforcement Act 1999 provides for infringement notices for a wide range of offences, covering nominated laws, local laws and by-laws. These include health and safety offences. In New South Wales, certain offences have attracted penalty notices for over twenty years. Originally basing its health and safety system on the UK nineteenth century system, the Australian system has focused on regional systems of enforcement including both reactive and proactive inspections based on targeted programmes.
17. Penalty notices should be seen as part of the education continuum. If people know what they do is wrong, but continue to do it, enforcement mechanisms should be introduced. In England, the use of penalty notice systems to enforce minor offences against body corporates is slowly developing in relation to the administrative law, but it is arguable that much more could be done in this area. Using penalty notices to target minor offences in the fields of environmental crime and health and safety could, if used as an overall programme of education and enforcement, act as a deterrent to more serious crime breaking.
18. Whilst penalty notices may provide an efficient and cost-effective means of dealing with minor offences, the penalty notice system is only as fair as it is operated. Enforcement systems must be responsive, transparent, accountable, equitable and audited. Enforcement staff must use proportionate methods in issuing penalty notices, so that they issue advice or an informal caution where appropriate. This means that particular attention should be paid to the training and resources of those who will operate the system – from front line staff who issue the tickets to enforcement managers. 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, respectful and consistent fashion.

## 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 intelligent use of people and information technology systems and to share in the economic and social benefits that this brings.

Northgate assists the fire and rescue, local authorities and the police to promote community well-being by helping them provide citizens with accessible and responsive one-stop services based on clear and detailed information.

### **For more information:**

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