

To: INFRASTRUCTURE, LAND AND ENVIRONMENT POLICY BOARD

On: 29 AUGUST 2018

Report by: DIRECTOR OF ENVIRONMENT & INFRASTRUCTURE

Heading: FIXED PENALTY NOTICES ASSOCIATED WITH ROAD WORKS

1. Summary

- 1.1 This report seeks to introduce a policy that enables Fixed Penalty Notices to be issued to utility companies and statutory undertakers who fail to comply with the requirements of the New Roads and Street Works Act 1991.
 - 1.2 The use of Fixed Penalty Notices drives greater compliance with all statutory undertakers operating in Renfrewshire. Renfrewshire has established a good relationship with utility companies and statutory undertakers and through the level of compliance and engagement in past years the Council has not issued Fixed Penalty Notices where contraventions occur.
 - 1.3 To take forward the lessons learned from the construction of the roundabout as part of the residential housing development in Brookfield where there were significant delays in the construction, the Council seeks to use existing powers of enforcement, through the issuing of formal Fixed Penalty Notices where non-compliance under the New Roads and Street Works Act 1991 are identified.
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2. Recommendations

It is recommended that the Infrastructure, Land and Environment Policy Board:

- 2.1 Approves the Fixed Penalty Notices Policy set out at Appendix 1 of this report, to enable the issuing of Fixed Penalty Notices on utility companies and statutory undertakers for breaches of the New Roads and Street Works Act 1991.

3. Background

- 3.1 The Scottish Road Works Commissioner introduced a process in 2007 which gave powers to local authorities to issue Fixed Penalty Notices (FPN) to utility companies and statutory undertakers who fail to comply with the New Roads and Street Works Act 1991. Although these powers have been available since 2007, Renfrewshire Council has not issued FPNs to utility companies as they have generally been compliant.
- 3.2 In 2017, there were significant delays to the construction of a roundabout as part of a residential housing development in Brookfield, as a result breaches of the New Roads and Street Works Act 1991 by utility companies and statutory undertakers. As part of the lessons learned from this roundabout construction it was recognised that the Council requires to have authorised enforcement powers where non-compliance with the Act is encountered.
- 3.3 The Council will invoke FPN's, to ensure that all street works operations on the network are managed effectively and undertaken safely. This includes failure to observe the correct notification procedures, providing inaccurate notifications, insufficient or incorrect signing and guarding while the works are in progress and failure to comply with approved codes of practice.

New Roads and Street Work Act 1991 – Fixed Penalty Notices Policy

- 3.4 The policy at Appendix 1 governs all statutory offences under the New Roads and Street Works Act 1991 as amended by the Transport (Scotland) Act 2005. It covers those offences which the Council will seek to take before a Court and those offences for which FPNs can be issued. In all cases where the fixed penalty remains unpaid prosecution will be progressed.
- 3.5 The FPN is set at £80, however this is increased to £120 if unpaid within 29 days of issue, if a further 36 days pass without the penalty notice being paid the case will be sent to the Sheriff Officers to pursue.
- 3.6 Details of what constitutes a breach are found in the Code of Practice for the Co-ordination of Street Works, Works for Road Purposes, and Related Matters (2008) and the Code of practice for Penalties (2008). The Code of Practice for the Co-ordination of Street Works also forms the basis for the Scottish Road Works Register (SRWR) legislative rules.

Some examples include:

- Undertaking works which require a street works notice, without a street works notice
- Not entering an actual end date within one working day of completing works, including uplift of any signing, guarding and lighting, spoil or heavy plant.
- Not making permanent an interim reinstatement within 6 calendar months

- Entering a works closed notice when works are still ongoing, including having signage, guarding and lighting, spoil or plant still on site.
- Creating a notice which is inappropriate for the works being undertaken, e.g. undertaking planned works under an 'Emergency' S116 notice.

Implications of the Report

1. **Financial** – The issue of Fixed Penalty Notices may generate a very small level of income to the Council.
2. **HR & Organisational Development** – None
3. **Community Planning** – None
4. **Legal** – Implement the Fixed Penalty Notice Powers under the New Roads and Street Works Act 1991
5. **Property/Assets** - None
6. **Information Technology** - None
7. **Equality & Human Rights** - The recommendations contained within this report have been assessed in relation to their impact on equalities and human rights. No negative impacts on equality groups or potential for infringement of individuals' human rights have been identified arising from the recommendations contained in the report. If required following implementation, the actual impact of the recommendations and the mitigating actions will be reviewed and monitored, and the results of the assessment will be published on the Council's website
8. **Health & Safety** – Improve safety of road network for pedestrians, cyclists and vehicle users.
9. **Procurement** – None
10. **Risk** – None
11. **Privacy Impact** – None
12. **Cosla Policy Position** – None

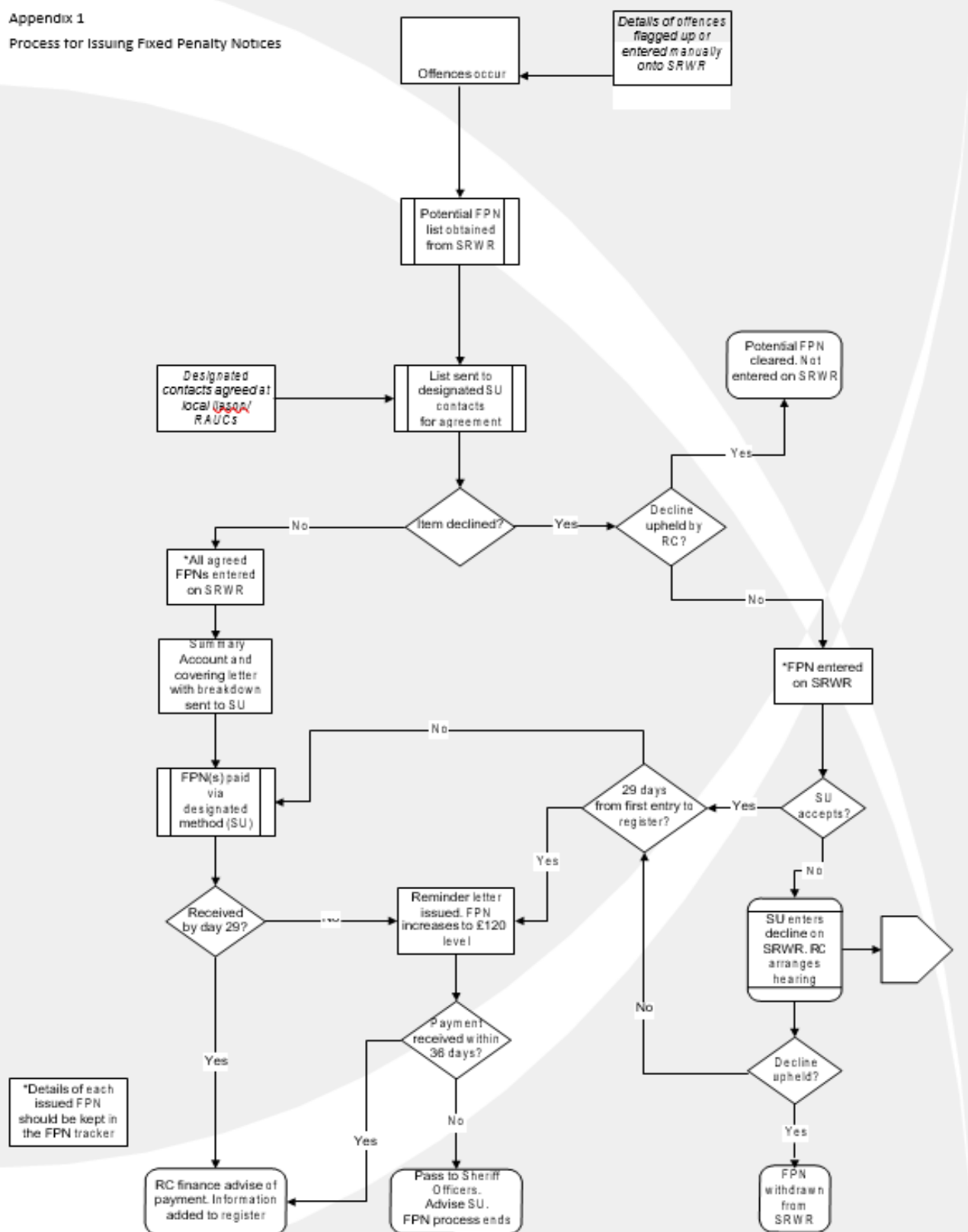
List of Background Papers - none

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Appendix 1

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Process for Issuing Fixed Penalty Notices



Renfrewshire Council

New Roads and Street Works Act (1991) Fixed Penalty Notice Process

FPNs are identified through the following methods:

- 1) System identified breaches
- 2) Breaches discovered following site visit.

In the case of system breaches, the information entered by the Statutory Undertaker (SU) breaks one or more of the legislation 'rules' built into the Scottish Road Works Register (SRWR). The SRWR will automatically register this as a potential breach.

In the case of breaches discovered by site visit, the works found on site are in conflict with the information on the system, for instance where a notice is closed down on the SRWR, but a site visit confirms works still in progress.

In all cases, an FPN can only be applied where works take place. Raising a notice incorrectly may trigger a system identified breach, but only when the work notified by that notice is physically carried out does an FPN apply. In most cases therefore, a system identified breach also requires a follow up site visit to confirm that work was actually done on that street. Where there is no street works notice or the notice is updated to show works taking place within the permitted timescales, while in reality is being done out with the permitted timescales, only a site visit can confirm if an FPN applies.

Each Inspector will photograph any potential breach they discover, and email that photograph (time and date stamped) along with details of time and date of discovery, location and responsible utility, to the Streetworks Controller responsible for FPNS. This is done as soon as is reasonably possible after the site visit. The Streetworks Controller will also create lists of sites to visit, based on the information, trends and performance of each utility from the SRWR. These lists are sent to each Inspector to investigate as soon as is reasonably practicable.

The Streetworks Controller will then review the evidence supplied by the Inspector and determine if an FPN applies in line with the Code of Practice for Penalties. A similar review is undertaken of system identified breaches, including whether to request a site visit for confirmation. In some cases a site visit may not be required, for example, if an inspection has been carried out during the progress of the works by the Inspector. This review will normally take place within 1st – 9th of each month, for the breaches identified in the previous month (there may be some adjustment to dates in line with public holiday, weekends etc). During this time potential FPNS are added to the SRWR and placed 'On Hold' and managed through the 'invoice production due' report on the SRWR.

On or near to the 10th of the month, lists are finalised per utility by the Streetworks Controller, detailing the FPNS Renfrewshire Council wish to pursue for the previous period (e.g. up to the 9th of the current month). This list will contain every FPN deemed to be valid within the rules of the various codes of practice. This list will then be split down further into FPNS which will be applied, and FPNS which are technically and legally valid, but will not be issued in the interests of fairness and co-operation with the road works community. An example of this would be where the utility retrospectively issues a notice for its own works, without prompt from Renfrewshire Council - in that instance, only one of the potential three FPNS that would apply.

This approach is part of the Code of Practice for Penalties and has the support of the Scottish Road Works Commissioner as best practice.