

# Prosecuting Road Traffic Offences in Scotland - Fixed Penalty Notice Reform

## Feedback on consultation responses

**Moving Britain Ahead**

October 2018

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# Executive summary



1. This paper reports on the feedback received in response to the Department for Transport's (DfT) consultation exercise, at the Scottish Government's request, regarding potential law changes in Scotland that would amend section 54 of the Road Traffic Offenders Act 1988. The consultation was held between 27 March 2018 and 8 May 2018.

2. The consultation paper contained the following proposal:

3. Amend section 54 of the Road Traffic Offenders Act to allow the police, traffic wardens and DVSA vehicle examiners to issue on-the-spot fixed penalty notices to suspected offenders of road traffic offences committed in Scotland.

4. The majority of responses supported the proposal in the consultation document.

5. The Scottish Government will now:

- Carefully consider, through engagement with justice and transport stakeholders, issues (within the scope of the consultation) raised by respondents;
- Produce an Impact Assessment; and
- Engage with the Department for Transport and the Office of the Secretary Of State for Scotland to reach a decision on the way forward and agree a final response to the consultation.

# Introduction



On 27 March 2018, the Department for Transport published a consultation paper 'Prosecuting road traffic offences in Scotland: Fixed Penalty Reform.' The consultation sought views on amending section 54 of the Road Traffic Offenders Act 1988 which enables fixed penalty notices to be issued to suspected offenders on-the-spot. This differs from existing powers in Scotland, whereby fixed penalty notices can be fixed to offending vehicles or issued to suspected offenders by way of conditional offer. A conditional offer must be accepted by the offender and, if not paid, must be reported to the prosecutor, by the relevant authority for any further action to be taken. Fixed penalty notices, however, take effect when imposed (that is, the effect of failing to respond by paying the fixed penalty or requesting a hearing within the specified time limit is that the penalty is enforceable as a fine) so can be enforced without the need to raise summary criminal proceedings in court. The consultation was conducted online at GOV.UK

The closing date for responding was 8 May 2018.

# 1. Responses to the consultation

- 1.1 There were 26 responses to the consultation. Those responding included Police Scotland, Crown Office and Procurator Fiscal Service, Scottish Courts and Tribunals Service, Scottish Justice's Association, Justice of the Peace, Law Society of Scotland, road safety groups, insurers, various motor groups, and also members of the public.



## 2. Summary of views

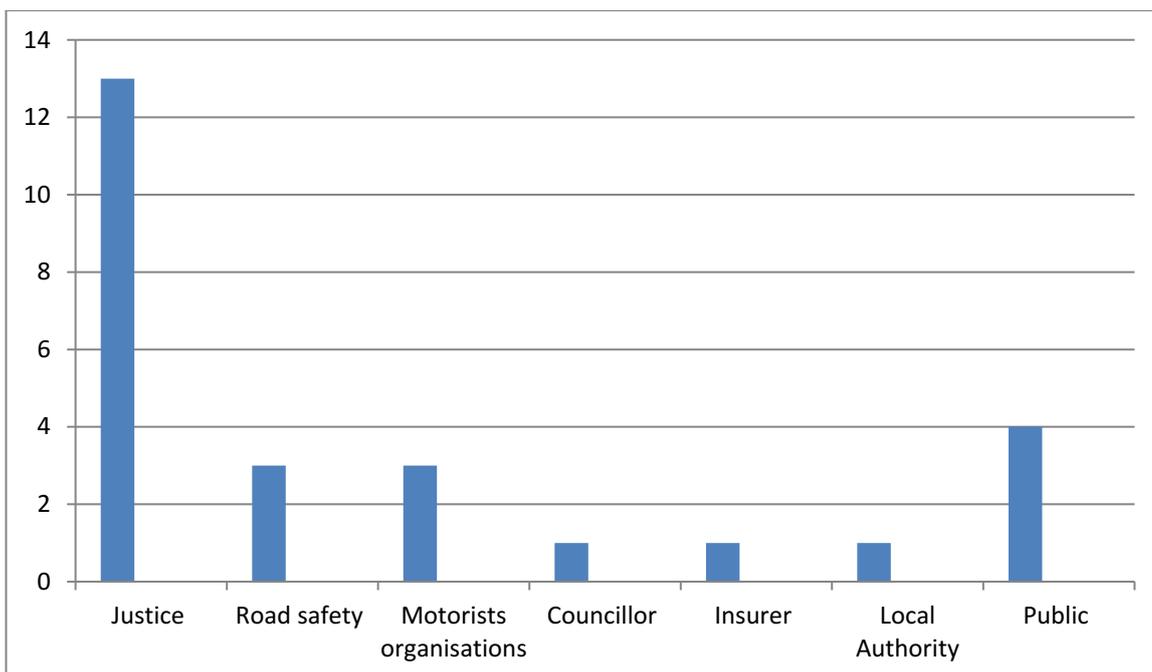
- 2.1 A variety of views were expressed. The majority were in favour of the proposal with some respondents strongly in favour and a minority strongly against the proposal. A number of responses included pertinent and practical suggestions on how the proposal could be strengthened to support implementation in practice.

# 3. Breakdown of responses

3.1 Overall, there were 26 individual responses to the consultation.

3.2 The breakdown of those responding, by capacity in which they responded, was as follows:

- Justice 13
- Road Safety organisations/groups 3
- Motorists organisation/groups 3
- Councillor 1
- Insurer 1
- Local Authority 1
- Members of the public 4



# 4. Proposal

4.1 The summary of the proposal contained in the consultation document is to:

- Amend section 54 of the Road Traffic Offenders Act 1988 to allow the police, traffic wardens, and DVSA vehicle examiners to issue on-the-spot fixed penalty notices to suspected offenders of road traffic offences committed in Scotland.

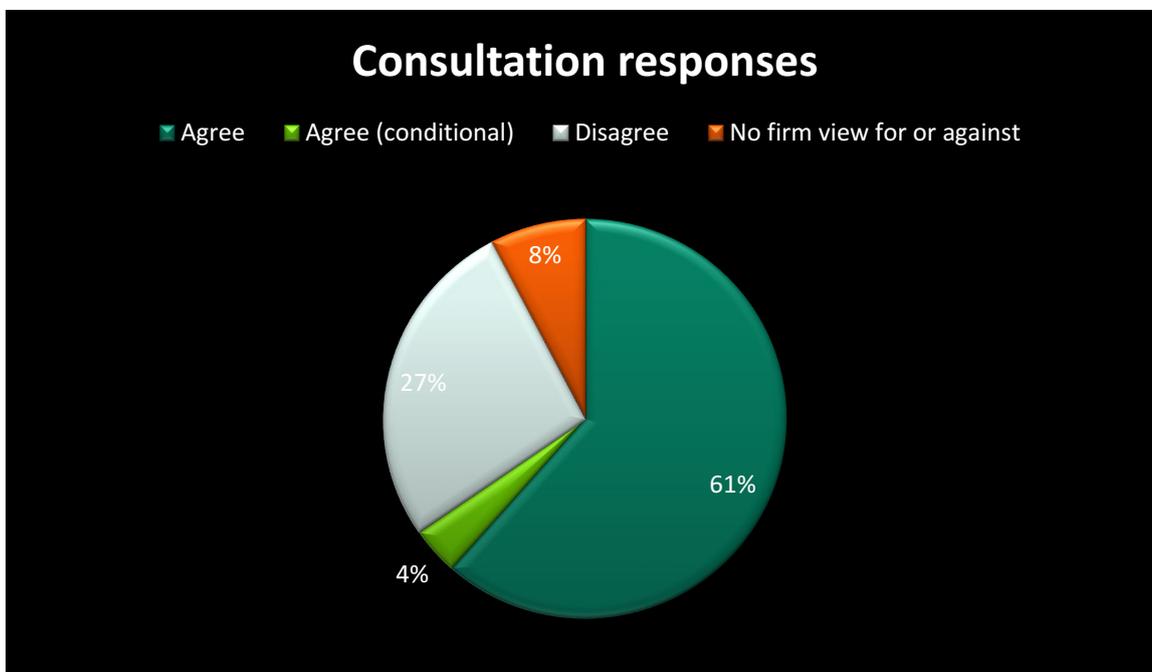
## Background to consultation and present provisions under the Road Traffic Offenders Act 1988

- 4.2 In Scotland, where the police believe that a person has committed certain minor road traffic offences, sections 75 to 77 of the 1988 Act give the police the power to issue a conditional offer notice containing a fixed penalty (“conditional offer”). This scheme was introduced in Scotland in 1989 as an alternative to prosecution. Once a conditional offer is issued, an individual has 28 days to accept the offer and make payment. If the offer is not accepted or if the recipient fails to take any action in respect of the offer, the police will consider submitting a report to the procurator fiscal for consideration to be given for a prosecution to take place.
- 4.3 The issue which prompted the Scottish Government to consult on changing the law is that additional powers are available in England and Wales. As well as the conditional offer scheme, the police, traffic wardens and DVSA vehicle examiners can take action in respect of certain low level road traffic offences by issuing fixed penalty notices (FPNs) to suspected offenders on-the-spot under section 54 of the 1988 Act. The offender has 21 days to request a hearing in respect of the FPN, but if no such request is made and the FPN remains unpaid, a sum equal to one and a half times the FPN amount becomes a registered fine and is collected and enforced in line with the normal procedures in place for collecting and enforcing court fines.
- 4.4 Section 54 does not currently apply to Scotland. This led to the Scottish Government wanting to consult on the policy that would see the provision, if approved by Parliament, enabling fixed penalty notices to be issued to suspected offenders on-the-spot.

## Feedback

**Question posed: Do you agree with the proposal to amend section 54 of the Road Traffic Offenders Act 1988?**

- Agree 16
- Agree (conditional on the proviso of additional amendment to the FPN regime) 1
- Disagree 7
- No firm views expressed for or against the proposal 2



61 %

Agreed with the proposal to amend section 54 of the Road Traffic Offenders Act.

Comments included:

- “The present procedure in Scotland is an inefficient use of resources, and unnecessarily increases the burden on the Scottish criminal justice system.”
- “Reducing the burden on Scotland’s police, prosecutors and courts would appear to make sense and be more efficient. Proposals seem to be a reasonable extension of non-court alternatives to prosecution already in place.”
- “We agree that S54 should be amended to allow the issuing of FPNs to suspected offenders of road traffic offences committed in Scotland. We believe this should

be done to free up the court system to deal with more serious offences which require court action. We would, however, like to see appropriate safeguards and guidance to those with the power to issue the FPNs.”

- “Current practice is wasting valuable resources”
- “Wholly support proposed changes, especially for vehicles left in dangerous places or parked on pavements”
- “The section 54 proposal provides a proportionate way to deal with road traffic offences that reduces the potential need for court proceedings.” “This proposal should result in more efficient use of resources across the justice system.”
- “Existing procedure in England and Wales provides greater flexibility and efficiency in dealing with road traffic offences.”
- “The proposal will allow offences to be dealt with more quickly, with offenders being required to consider their responsibility for an offence much sooner, while avoiding a criminal conviction for a minor offence.”
- “It will also free up court time to deal with those cases that genuinely require a judicial decision as well as making the system more resilient to deal with fluctuations in demand as a result of seasonal or targeted enforcement campaigns.”
- “By allowing police officers to issue fixed penalty notices (FPNs) in the same way that they currently do in England and Wales, it will take pressure off the courts and the Procurator Fiscal.”
- “Yes, we agree that section 54 of the Road Traffic Offenders Act should be amended. This change would help eliminate the confusion caused by two separate legal frameworks and significantly improve the experience for the motorist.”
- “This change would also benefit local councils in Scotland, Police Scotland, and DVSA officials by simplifying their work and reducing the time taken up by court procedures and administration, allowing for the redistribution of resources into more effective means.”
- “The disparity between Scotland and the rest of GB creates a situation where those likely to be affected by the issuing of a FPN are unsure on how to proceed. Having a clear transparent approach to enforcing low level road traffic offences across GB is important.”
- “The savings in court and police time made in implementing this change should allow more efficient use of resource and greater access to justice for all.”

27 %

Disagreed with the proposal to amend section 54 of the Road Traffic Offenders Act

Comments included:

- “There will be a large increase in the workloads on the Fines Courts and Fines Enforcement staff leading to many more arrest warrants which will significantly erode savings and draw further on police resources, at a time when it is clear that the police are struggling to enforce the existing number of warrants.”
- “It is clear that the proposal takes a simplistic and short term view of cost saving”.
- “Before any final decision is taken regarding the Fixed Penalty reform, other options to improve the effectiveness and efficiency of Summary Justice must be considered.”
- “It transfers and increases costs from Police Scotland to the Scottish Courts and Tribunal System and fails to recognise the impact on both Fines Courts and Fines Enforcement staff.”
- “In the interest of public safety we cannot have a broad brush approach to the disposal of road traffic offences.”
- “Before any final decision is taken regarding the Fixed Penalty reform, other options to improve the effectiveness and efficiency of Summary Justice must be considered.”
- “Any change would without doubt put considerably more strain on an already over-stretched Fines Enforcement Department.”
- “The bottom line is that we will see far more cases in our Fines Courts with a bigger number of non-appearances leading to a greater number of Fail to Appear Warrants being granted thereby taking up a greater proportion of valuable police time and resources.”
- “By adopting the system in place in England and Wales there is a clear danger that the drive for efficiency and reduction in expenditure in the system may come at the expense of the protections currently in place for the accused person.”
- “One of the serious drawbacks to the existing fixed penalty process is very apparent to anyone who attends the Fines Courts where court imposed fines can be escalated to Community Payback Orders with the ultimate deterrent of a prison sentence if there are serious breaches while those failing to pay their fixed penalties are merely afforded more time to pay.”

## 5. Next Steps

- 5.1 The outcome of the consultation shows majority support to amend section 54 of the Road Traffic Offenders Act 1988.
- 5.2 The wide range of perspectives offered in response to the consultation have been instructive in the Scottish Government's consideration of the proposal.
- 5.3 Comments on issues outside the scope of this consultation were considered and noted.
- 5.4 The Scottish Government recognises that a number of important points on the operational, financial, and practical impact of the proposed policy need to be carefully considered to inform the final decision. Looking forward, the Scottish Government will consider each of the issues (within the scope of the consultation) raised.
- 5.5 The Scottish Government will carry out an assessment of the benefits and impacts of taking forward the proposal as set out in the consultation document with a view to publishing a response and Impact Assessment.
- 5.6 The Scottish Government, Department for Transport, and the Office for the Secretary of State for Scotland will continue to work together on the policy formulation process with a view to publishing a formal response to the consultation.
- 5.7 It should be noted that if the proposal set out in the consultation document were to be taken forward, it would involve amending primary legislation. In terms of the Scotland Act 1998, the Road Traffic Offenders Act 1988 is a reserved matter. This means that, in general, the Scottish Parliament cannot legislate on it or amend it, and if it were agreed that the proposal should be adopted, the necessary amendments would, unless powers are transferred to the Scottish Parliament, have to be enacted by the United Kingdom Parliament.