

# Chapter 7 Garda Síochána

## 7.1 Fixed Charge Notices and Penalty Points

### Description of the system

Under the provisions of the Road Traffic Act 2002, An Garda Síochána operates and maintains a system for the issuing of Fixed Charge Notices and the acceptance of payments for two penalty point offences, namely speeding (from 31 October 2002) and the non-wearing of seatbelts (from 25 August 2003). The offences of driving with no insurance (from 1 June 2003) and careless driving (from 4 June 2004) are also penalty point offences but do not come within the scope of the Fixed Charge system as they can only be prosecuted by summoning the driver to Court.

The penalty points system is operated jointly by the Department of Transport and the Department of the Environment, Heritage and Local Government (D/EHLG). Since the introduction of the penalty points system, information relating to the payment of fixed charges in respect of the two offences has been transferred manually from An Garda Síochána to an outsourced data processor for the recording of penalty points as appropriate on the National Driver File (NDF) operated by the D/EHLG on behalf of the Department of Transport. Information on offences which proceed to a court conviction is transmitted to the data processor in manual format or to the D/EHLG directly by the Courts Service where its Criminal Case Tracking System has been rolled out to the relevant Court.

Detection of speeding offences takes place by means of fixed camera installations, mobile GATSO<sup>6</sup> devices installed in unmarked vans and mobile LASTEC<sup>7</sup> devices (non intercept detections) or alternatively by means of laser devices operated by members of An Garda Síochána (intercept detections). Offences other than speeding, such as no insurance, seatbelt offences and careless driving currently may be detected only by means of direct Garda intervention (intercept detections).

Offences carry a monetary penalty and the Gardaí are responsible for issuing notices of offence detections to drivers and the collection of the relevant charge.

The penalty for speeding offences is a fixed charge of €80 (€60 in the case of seatbelt offences), payable within 28 days from the issue of a fixed charge notice by the Gardaí, together with two penalty points on the driver's licence record in the NDF.

The fixed charge is increased to €120 if the driver fails to pay within this 28-day period (€90 in the case of seatbelt offences). The driver is allowed a further 28 days to pay the increased amount. If, after the total time (56 days) has elapsed, the fixed charge remains unpaid, the Gardaí notify the Courts Service so that the driver concerned may be summonsed to Court. On conviction in Court, drivers are subject to a mandatory four penalty points and a maximum fine of €800 in the case of a first offence.

### Operation of the System

The penalty points system provided for in the Road Traffic Act 2002 was designed around a set of complex processes involving An Garda Síochána, the Courts Service and the D/EHLG. Development of the Garda Fixed Charges Processing System IT project, which provides for this inter-operability, commenced prior to the enactment of the 2002 Act. The consultancy contract was put in place in

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<sup>6</sup> Mobile speed detection equipment comprising on-board radar, computer and camera systems

<sup>7</sup> Mobile laser speed detection equipment

September 2002. Intensive work, involving a team headed by the Assistant Garda Commissioner for National Support Services, and comprising the consultants, Gardaí from Garda IT, National Traffic Bureau, Change Management, Garda College together with civil servants from the relevant Departments, has been ongoing since then. A live pilot commenced on 30 June 2004.

A decision was made to introduce the penalty points system on an interim basis in October 2002. The old Fines on the Spot computer processing systems in the Dublin Metropolitan Region and Cork City were antiquated and could not be upgraded to cater for the fixed charge system. Consequently, they were terminated in respect of speeding offences. While the penalty points system was never intended to be operated manually, the absence of a suitable computer system in October 2002 meant that a manual system was the only way of implementing the decision to go ahead. With only limited additional resources (three temporary clerical officers) to support the manual system, processing delays arose at both locations. An Garda Síochána developed a new interim computer system to cope with fixed charge speeding offences during the first quarter of 2003.

### **Audit Review**

In the course of a review of the Fixed Charge Notice/Penalty Points system by my staff it was noted that of 87,004 Fixed Charge Notices issued from 31 October 2002 to 31 December 2003, payments were received in respect of 48,553 notices (€6,147,450).

A total of 7,059 summonses (for non-payment of fixed charges) were applied for in the period 31 October 2002 to 31 December 2003, of which 1,523 were not proceeded with on the instructions of the Director of Public Prosecutions (DPP).

The following sections set out the circumstances in which a detected speeding offence may not be pursued by the authorities.

### **Static and Video Camera Detections**

The Garda Fixed Penalty Office Status Report for the week ending 12 December 2003 shows that it had received 107,636 films or videos from static cameras or video recordings since the system commenced. Of these, 50,567 (some 47%) were described in the report as 'spoiled'.

I asked what factors give rise to these spoiled recordings, whether and to what extent these would represent genuine infringements of the Road Traffic Acts (Penalty Point provisions) and what measures can be, or have been, taken to reduce the level of such spoiled images.

The Accounting Officer informed me that spoils occur for the following reasons, mainly relating to difficulties with number plates

- Dirty, obscure or damaged number plates
- Tampered number plates
- Non-conforming number plates
- Foreign registered vehicles
- Motor cycles

In addition, the following technical problems were encountered with cameras and films

- Dirty lens
- Poor weather conditions
- Obstruction of lens
- Problems with chemical developing solution
- Computer related problems.

Other reasons for spoils include

- Emergency vehicles (which are exempt)
- Temporary lack of access to National Vehicle File.

He added that the spoilt rate is a matter of concern to the Garda authorities and to his Department but pointed out that making an accusation of the commission of an offence under the Road Traffic Acts is a serious matter with potentially serious consequences for an offender. Therefore, the Gardaí can only issue a Fixed Charge Notice where they are in a position to stand over the accusation.

The issues relating to camera and film deficiencies have since been addressed with the company supplying the cameras and the Garda Technical Bureau has addressed the chemical solution problems. This has led to a reduction in the number of spoils recorded in the first five months of 2004

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|----------------------------------|--------|
| • 31 October to 31 December 2002 | 3,903  |
| • Full year 2003                 | 51,944 |
| • 1 January to 31 May 2004       | 13,535 |

Issues relating to number plates are fed back through the Garda National Traffic Bureau to operational Gardaí attached to Traffic Units with a view to enhancing the enforcement of the law in relation to number plates. It is understood that the issue of foreign registered vehicles is being addressed by the Department of Transport at EU level and in discussions with their Northern Ireland colleagues.

## **Detections involving company cars**

The Gardaí reported that there had been 235 cases where vehicles intercepted were in company ownership and where the penalty points accruing to the drivers of these vehicles could not be allocated to specific driver files as nomination forms had not been received from companies in respect of the detected offences.

I enquired as to how this situation has arisen with regard to drivers of company cars.

The Accounting Officer stated that under the penalty point system as set out in the Road Traffic Act 2002, payments can only be accepted where the payment is accompanied by the original Fixed Charge Notice (the format of which is prescribed in Regulations) duly completed, including the driver's licence number. This is to ensure that penalty points are recorded on the driver licence record. The issue of company vehicles was referred to the Office of the DPP by the Gardaí and his Office directed that companies could not be prosecuted for a speeding offence, as it was a driver offence. Therefore, in circumstances where a company, as the registered owner of a vehicle, ignores a nomination notice, a summons is not issued by the Garda Fixed Penalty Office.

He went on to inform me that the question of dealing with vehicles registered to companies has been discussed on many occasions and has long been identified as a deficiency in the law. One possible solution is that a suitable amendment would be brought forward in a Finance Bill, in the context of treatment of company vehicles and benefit in kind. It has been brought to the attention of the Department of Transport, which is the sponsoring Department for road traffic legislation, by Garda management.

### **Foreign registered vehicles**

In the course of audit, the audit team was informed that film footage viewed by the Gardaí included recording of foreign registered vehicles travelling in excess of the speed limit. The team was informed that the Gardaí do not process offences by the drivers of such vehicles and no attempt is made to establish the identity of the drivers concerned. There is no record maintained of the number of such offences.

In response to my enquiries the Accounting Officer confirmed that the Gardaí have no means of identifying the registered owners of foreign registered vehicles which are detected speeding by means of a non intercept device, i.e. cameras or GATSO devices. In order to identify registered owners, An Garda Síochána has access only to the D/EHLG's National Vehicle File (NVF). This does not include a facility to identify registered owners of vehicles registered outside the jurisdiction. Section 11(2) (b) of the Road Traffic Act 2002 provides that a notice shall be issued to a registered owner of a vehicle. In the event of non-payment, part of the proofs required for court is a certificate of ownership issued by an Authorised Officer of the relevant local authority. Therefore, the Gardaí have no means of identifying foreign vehicles committing speeding offences detected by means of tape or films and they are recorded under the category of spoils. However, the Gardaí do have the facility to detect foreign registered vehicles by means of direct interception devices, i.e. laser guns. In these cases, the drivers are required to identify themselves to the detecting Garda and are issued with Fixed Charge Notices on the spot.

### **Drivers holding Foreign Driving Licences**

I asked the Accounting Officer for details of the number of offences noted by the Gardaí as committed by drivers holding foreign driving licences or where holders of foreign driving licences have been nominated by the person to whom the notice was first sent.

The Accounting Officer stated that the IT system at the Garda Fixed Penalty Office does not currently distinguish between foreign drivers, Irish drivers, foreign addresses or Irish addresses. Consequently no data is available on the number of drivers holding foreign drivers licences who have paid their fixed charge.

However, after the payment of a fixed charge when the driver information is passed on to the data processor for recording of penalty points on the National Driver File (NDF), records with an invalid (including non-Irish) driver number are noted. In addition, drivers with foreign addresses who choose not to pay the fixed charge are identified during the process of summons application. Again, the matter of issuing summonses to these drivers was referred to the DPP by the Garda Fixed Penalty Office. The DPP advised that the prosecution of such offenders should not proceed as service of summons was unlikely.

The Accounting Officer informed me that it was difficult to estimate the potential loss of revenue to the State as the prosecution for penalty points offences would be dealt with in the District Courts where the potential fine is at the discretion of the Judge but may be up to a maximum of €800. There were 1,093 summonses for such drivers which had not been activated since the inception of the penalty point system to 31 December 2003.

## Other Driver Nominations

The Garda computer file indicates that some 22,881 registered owners initially contacted in relation to a driving offence have indicated to the Gardaí that he/she was not the driver of the vehicle at the time of the alleged offence. The nominal fixed charges in respect of these cases was €1,830,480.

I asked the Accounting Officer what steps the Garda Síochána take generally to ensure that the appropriate drivers are located and served with the fixed charge notices where nominations have occurred. I also asked what steps have been taken to deal with the large number of such cases.

In his reply, the Accounting Officer informed me that the procedure in operation was that when a registered owner receives a nomination notice for speeding and the registered owner indicates that they were not driving at the time, the registered owner must then complete the notice nominating a driver. A fixed charge notice is then issued to the nominated driver and the life cycle runs its course (28/56 days) resulting in either payment or prosecution.

The payments system in the Garda Fixed Penalty Office cannot differentiate between payments received from nominated drivers and normal payments. The Gardaí are not in a position to state what the monetary value of these nominations might be as the nominated drivers have the option of paying a Fixed Charge of €80 within 28 days, or €120 within 56 days or allowing the allegation proceed to summons to court where the maximum fine is up to €800.

## Cancelled Notices

Drivers sometimes write to the Garda Fixed Penalty Office in response to receipt of a Fixed Charge Notice, for example to offer reasons why he/she was speeding on the occasion, or to explain the reason for the delay in paying the monetary penalty. The decision as to whether to proceed with the process of applying penalty points to the driver's record is apparently a matter for the Garda management at the Fixed Penalty Office.

The examination of the computer records show over 2,600 cancellations in the period examined. Of these, 1,500 are classified as "Error on ticket". A further 780 were classified "Details Unavailable".

I asked the Accounting Officer for information regarding the cancellation policy employed by the Gardaí in respect of fixed charge notices and, in respect of the cancellations on the Garda file, why there appears to be a relatively high rate of error on tickets. I also sought his observations in relation to the cancellations for which no apparent details were available.

The Accounting Officer informed me that notices could only be cancelled at the discretion of the District Officer and generally cancellations only result from errors by the issuing Garda such as

- Incorrect particulars on notice
- Incomplete notices
- Defectively issued notices, e.g. where the National Vehicle File has not been updated
- Legal exemptions both with regard to speeding and the non-wearing of seat belts
- Poor picture on screen resulting in wrong owner getting notice

- Incorrect information on National Vehicle File
- Incorrect reading by Garda members viewing film/video and incorrect data entry.

The reference to “errors on ticket” refers to mismatch on National Vehicle File or human error on intercept Fixed Charge Notices and is an IT recognition code to flag that the notice should be cancelled on the interim IT system. The references to ‘details unavailable’ relate to older manually processed cases where the details of the cancellations are recorded in summary form only; and, other instances where the request for cancellation is made and acceded to before the details are processed by the Garda Fixed Penalty Office. An examination of the number of cancellations shows that the number has reduced substantially to a total of 771 in the first six months of 2004.

## **Statute barred offences**

If the Fixed Charge payable on foot of a penalty point offence is not paid and an application for summons to Court is not made within six months of the date of the offence, the prosecution of the driver in question is statute barred.

My examination of the computer file recording penalty point information noted that there were over 5,500 such cases flagged as being statute barred. Table 29 sets out an analysis of these cases and shows the potential revenue loss which results from the inability to recover the amounts involved.

**Table 29 Statute Barred Offences**

	<i>Cases</i>	<i>€</i>
Foreign Vehicle	12	1,000
Exempt Vehicle*	130	-
Notified Owner	231	15,960
Owner Untraced	641	40,760
No reason stated in computer file	4,561	304,400
<b>Total</b>	<b>5,575</b>	<b>362,120</b>

\* 130 Exempt Vehicle cases are recorded as being statute barred, even though no penalty or prosecution is contemplated

I asked why these cases could not be processed in time to allow the application of the Fixed Charges and Penalty Points.

The Accounting Officer stated that the introduction, in October 2002, of the interim penalty points system meant that the Gardaí were required to move from a fully automated computerised Fines-on-the-Spot system to a paper-based system based around manual receipts, registers, issuing of notices, issuing of nomination forms, postal enquiries and preparation of court cases. These manual processes were quite cumbersome and resulted in the accumulation of a four-month backlog of films and tapes relating to non-intercept offences. As a result substantial delays arose in the issuing of fixed charge notices which resulted in a large number of cases, referred to in Table 29 as ‘No reason stated’ becoming statute barred. However, since the introduction of the interim IT system in May 2003, the backlog has been cleared and this situation should not arise again.

## **No driver number**

The Garda Fixed Penalty Office produced statistics showing the distribution of penalty points issued by County to 31 December 2003. However, the statistics show a considerable number (12,900) of the total issued (99,000) to be classified without reference to a specific County, being titled ‘No Driver Number’.

Information was requested as to how this category of driver arises, what efforts have been made to ascertain driver numbers in the cases concerned, and what procedures are envisaged to ensure that the drivers concerned will eventually be allotted the appropriate number of penalty points.

The Accounting Officer informed me that the data referred to is compiled and released by the Department of Transport periodically on the basis of material on the National Driver File (NDF). Neither his Department nor An Garda Síochána is in a position to supply statistical information on penalty points.

He noted that in relation to the heading of 'no driver number', the current position is that an Garda Síochána does not have access to the NDF in order to authenticate driver licence numbers at the time of payment. If an incorrect number is included on the notice for payment, under the current system it will not be detected until the data is being entered on the NDF. This problem was anticipated in the design of the interim system and is addressed in the Fixed Charges Penalty Office computer system where the Gardaí's outsourced payment provider (currently under negotiation) will have a link to the NDF in order to authenticate the number at the time of payment. An additional problem is that where the Gardaí are made aware that the number stated is incorrect, they do not have power to retrospectively demand production of the driver's licence for verification purposes. This has been brought to the attention of the Department of Transport in the context of the Road Traffic Bill 2004.

## Conclusions

While the fixed charge and penalty points measures have been in place for a relatively short period, my examination reveals operational, administrative and legal impediments to its smooth and effective use.

These impediments include

- Low payment rate of fixed charges – 56% of notices issued in the first 14 months of operation
- Low summons rate for unpaid notices – 18%
- High rate of spoiled images/recordings – 47%
- Enforcement difficulties for foreign registered vehicles
- Inability to take appropriate action against drivers of company cars
- Inability to take appropriate action against certain drivers with foreign issued driving licences or foreign addresses
- Difficulties in assigning penalty points when inaccurate details are provided on returned fixed charge notices
- Level of inaccuracy in completing fixed charge notices giving rise to cancellations.

Some progress is being made in tackling the impediments by

- Remedying camera and film defects
- Addressing the problems relating to the drivers of company cars, number plate issues and foreign registered vehicles with the appropriate authorities
- Clearing the backlog of films and tapes to be viewed
- Moving to verification of driver licence numbers when fixed charges are paid.