



Making Northern Ireland Safer For Everyone Through Professional, Progressive Policing

FREEDOM OF INFORMATION REQUEST



Request Number: F-2008-04700

Keyword: Road Policing

Subject: PROCEDURE FOR ISSUING FIXED PENALTY NOTICES

Request:

Question 1 - Provide me with the procedure in place for officers when they have stopped a driver and issued them with a ticket for suspected use of a mobile phone whilst driving.

Question 2 - Please advise what procedures are in place if the accused states that they were not using the phone to the officer at the point of issue of the ticket, please specify what actions the officer is supposed to take.

Answer:

This is to inform you that the Police Service of Northern Ireland has now completed its search for the information you requested and the answers to the questions are as follows -

Answer 1 – Roads Policing Branch have advised us that a Constable obtains the power to issue a fixed penalty notice from the following legislation -

Where on any occasion a **constable in uniform** has reason to believe that a person he finds:

- is committing, or
- has on that occasion committed

a fixed penalty offence, the constable may issue the relevant:

- non-endorsable fixed penalty notice, or
- endorsable fixed penalty notice
(provided criteria is met)

Article 60(1) R.T. Offenders (NI) Order 1996.

The offence of driving whilst using your mobile phone is an endorsable fixed penalty, which carries 3 penalty points and a £60.00 fine. The legislation is contained in the Road Traffic (2007 Order) (Commencement No 1) Order (NI) 2007.

A police officer must satisfy themselves that an "interactive communication function" has taken place, this includes -

sending or receiving oral or written messages
sending or receiving facsimile documents
sending or receiving still or moving images and
providing access to the internet.

When issuing a notice the following should be explained to the driver:

- That acceptance of the Endorsable Fixed Penalty Notice will involve the voluntary surrender of their driving licence. It will result in 3* penalty points being endorsed on the said driving licence as well as a fine of £60.00.
- If the motorist is unable to surrender their driving licence at the time of issue of the Endorsable Fixed Penalty Notice they are given 7 days to produce at a nominated police station of their choice.
- That once the Motorist surrenders their driving licence, payment of the £60.00 fine must be sent to The Clerk of Petty Sessions Office, Fixed Penalty Office, Laganside court, 45 Oxford Street, Belfast, BT1 3LL. Payments must be made within 21 days. It is also the responsibility of the Fixed Penalty Office, Laganside Court to endorse the driving licence and return it to the motorist.

I have also attached for your information an email with regard to the misuse of mobile phones, which was circulated, to the service by the A/Chief Inspector in Roads Policing.

Answer 2 - For your information if a motorist does not agree to accept the endorsable fixed penalty notice, they would normally at this point be informed that they will be reported with a view to prosecution. A prosecution file would then be completed and forwarded to the Public Prosecution Service for direction by them. This may result in a Court appearance. It should be noted that if a motorist agrees to accept the fixed penalty notice at the time, it suggests to the officer they have accepted the evidence and information supplied regarding the offence. However if the motorist on reflection feels unable to accept the fixed penalty, there is a further option if required, informing the motorist in part 3 of the fixed penalty notice, of an opportunity to be dealt with by way of a court hearing if they choose to do so. The motorist has 21 days to opt for this option.

If you have any queries regarding your request or the decision please do not hesitate to contact me on 028 9070 0164. When contacting the Freedom of Information Team, please quote the reference number listed at the beginning of this letter.

If you are dissatisfied in any way with the handling of your request, you have the right to request a review. You should do this as soon as possible, or in any case within two months of the date of issue of this letter. In the event that you require a review to be undertaken, you can do so by writing to the Head of Freedom of Information, PSNI Headquarters, 65 Knock Road, Belfast, BT5 6LE or by emailing foi@psni.pnn.police.uk.

If following an internal review, carried out by an independent decision maker, you were to remain dissatisfied in any way with the handling of the request you may make a complaint, under Section 50 of the Freedom of Information Act, to the Information Commissioner's Office and ask that they investigate whether the PSNI has complied with the terms of the Freedom of Information Act. You can write to the Information Commissioner at Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. In most circumstances the Information Commissioner will not investigate a complaint unless an internal review procedure has been carried out, however the Commissioner has the option to investigate the matter at his discretion.

Please be advised that all PSNI replies under Freedom of Information will be released simultaneously into the public domain via our website @ www.psni.police.uk.

Personal details in respect of your request have, where applicable, been removed to protect confidentiality.

Not relevant to Request

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Subject: FW: Misuse of a Mobile Phone
1736.pdf

From: LEECH Rosemary
Sent: 08 February 2008 09:58
To: zAll Police (Can only be e-mailed by at least Insp. or EO1)
Subject: Misuse of a Mobile Phone

Colleagues,

I have recently become aware of a number of cases where a Fixed Penalty Notice has been issued for "Misuse of a mobile phone" and the member of the public has challenged the circumstances surrounding it's issue.

Please be aware that for all elements of the offence to be complete, you must prove:

- The phone was held at some point during the commission of the offence (this includes cradled at the shoulder).
- The phone was 'used' by the driver. This means making or receiving a call, sending or reading a text, accessing the internet or otherwise performing an "interactive communication function".
- A motorist simply checking that their phone is switched on or for missed calls or signal reception would generally not be deemed to be using. However, if by performing such an action their driving is impaired, you should consider issuing a FPN for E031: Driver does not have Proper Control of Vehicle.

Thank you for your assistance

Rosie Leech
A/Chief Inspector
Road Policing Development