



POLICY FRAMEWORK FOR NEW INFRINGEMENT SCHEMES

INTRODUCTION

Introduction

1. This document sets out Cabinet's expectation for the design and operation of new infringement schemes. The guideline on administrative provisions applies to all infringement schemes.
2. The Government seeks to ensure that infringement schemes are fair, equitable, consistent and a proportionate means of encouraging compliance with the law. By imposing a monetary penalty, an infringement offence scheme can be a proportionate response for a relatively minor breach of the law.
3. These guidelines provide a framework for the development of infringement schemes to ensure cross-government consistency and to manage the future growth of the infringement system.

What is an infringement scheme?

4. The purpose of an infringement scheme is to:
 - Achieve compliance with the law and to reduce the harm caused by minor offending;
 - Hold people accountable for their actions and to promote a sense of responsibility; and
 - Educate people about unacceptable conduct and its inherent social harm.
5. An infringement scheme provides an administratively efficient method of encouraging compliance with the law by imposing a set financial penalty following relatively minor breaches of the law.
6. An infringement offence notice is a proportionate response to offending, which avoids the formality of court proceedings and does not impose a full criminal penalty.
7. The system involves both benefits and trade-offs for the prosecuting agency, the defendant and the justice system.
 - a. The prosecuting agency does not have the cost of bringing court proceedings or of proving the elements of the offence. However, by using an infringement notice, it reduces the penalty level imposed and,

through being unable to obtain a criminal conviction, lowers the deterrent effect and other impacts such as moral condemnation.

- b. The defendant has the benefit of a discounted penalty, no possibility of conviction and, despite the diminution of their legal rights, avoids the time and cost involved in a court hearing.
 - c. The justice system does not need to devote judicial and court resources to determining whether each offence has occurred. The Court system does, however, become involved where the unpaid infringement fee is filed for enforcement or the infringement notice is challenged by the defendant.
8. As the imposition and enforcement of a penalty through an infringement offence notice involves a transfer of a traditional judicial function to the executive branch of government, it is important that any individual can request that the Court review or reduce the penalty.

The legal framework

9. The legal framework for an infringement offence scheme is provided in three parts.
- a. Primary legislation specific to the subject matter;
 - b. Regulations, rules and by-laws, made under the provisions of the primary legislation; and
 - c. The Summary Proceedings Act 1957.

These guidelines address the standard features for infringement schemes. Exceptions may be required to meet the specific circumstances of a particular infringement scheme, e.g. a shortened timeframe for payment for certain infringements under the Biosecurity Act 1993, or the Civil Aviation Act 1990; or the limit on the Court's ability to reduce the penalty for an overloading infringement under the Land Transport Act 1998.

Primary legislation

10. Primary legislation is specific to the subject matter (e.g. sections 13-14A of the Litter Act 1979), and provides the authority to establish an infringement offence scheme, sets the maximum penalty level, identifies who can issue infringement notices and who is entitled to the infringement fees collected.

Regulations, rules and bylaws

11. Regulations, rules and by-laws made under the provisions of the primary legislation provide the details of the specific infringement scheme. These include the form of the infringement notice and reminder notice to be issued,

the specific action or omission constituting an infringement offence and the specific penalty levels for each infringement offence.

Summary Proceedings Act 1957 – key points

12. The Summary Proceedings Act 1957 and the Summary Proceedings Regulations 1958 provide a common framework when the District Court is requested to review or enforce an infringement offence notice.

Timeframes

13. The recipient of an infringement notice usually has 28 days from the date of service to:
 - pay the fee in full;
 - apply to pay it over a longer period including by instalments; or
 - request a hearing

before the prosecuting agency may serve a reminder notice in the prescribed form on the defendant.

14. If the defendant does not do any of these things within 28 days of the reminder notice being served, the prosecuting agency may, within 6 months of the date when the infringement offence is alleged to have been committed, electronically file details of the reminder notice with the District Court. This period is extended to 12 months after the date of the offence where a time to pay arrangement has been entered into and has subsequently been breached. This time may also be longer than 6 months if the primary legislation establishing the infringement scheme allows for longer periods between the original offence and the filing of the notice with the District Court.

Commencing a proceeding in a Court

15. Section 21 of the Summary Proceedings Act 1957 contains the requirements for commencing proceedings in respect of an infringement offence. Proceedings can be commenced in two ways:
 - With the leave of a District Court Judge or Registrar by filing a charging document under the Criminal Procedure Act 2011; or
 - Where an infringement notice has been issued by electronically filing the details of the reminder notice.

No conviction or criminal record

16. No conviction or criminal record may result from an infringement offence. This is regardless of whether an infringement offence is proceeded with by filing a charging document or an infringement notice. If a defendant is found guilty of, or pleads guilty to, the offence, the Court cannot convict them, but may order that they pay such fine and costs, or make any such order (such as driver

licence demerit points), as they would if convicting the defendant of the offence (section 375 of the Criminal Procedure Act 2011).

17. If a defendant sends the prosecuting agency a notice requesting a hearing they may either challenge liability or admit liability for the offence and make submissions about the penalty or otherwise that they wish the court to consider. However, a defendant cannot request a hearing if they have entered a time to pay arrangement.

Court consideration of outstanding payment of infringement penalties

18. Enforcement measures that can be employed by the Registrar and Court Bailiff to enforce payment of an infringement notice include:
- A warrant to seize and sell property to pay fines;
 - An attachment order, to deduct payment of the outstanding infringement fine over a set period from the defendant's pay or benefit; and/or
 - A deduction notice, to deduct payment of the outstanding infringement fine from the defendant's bank account in a lump sum, or by regular instalments.
19. If the matter is referred to the Court by a Registrar because enforcement action has been unsuccessful or the fines are unaffordable, a District Court Judge or Community Magistrate may decide to:
- refer the matter to the Registrar with a direction that one or more of the enforcement procedures available to Registrars be invoked;
 - direct that a warrant of commitment be issued;
 - sentence the defendant to home detention;
 - sentence the defendant to community detention;
 - sentence the defendant to community work;
 - direct that one of the following enforcement actions – attachment order, warrant to seize, deduction notice or warrant of commitment – be taken in respect of a lesser amount than the fine due;
 - if the amount that the defendant owes in respect of one unpaid fine, or in total in respect of more than one unpaid fine, is \$5,000 or more, refer the matter to the Registrar with a direction that action be taken under section 96A of the District Courts Act 1947 (to place a charging order on land or other property owned by the defendant) in relation to one or all of the fines making up the total owing by the defendant as if the fine or fines were an order for the payment of money and as if the Registrar had obtained the order;

- direct that a greater time for payment of the fine be allowed subject to such conditions as may be directed by the Judge or Community Magistrate;
 - direct that no further enforcement proceedings be taken in respect of the fine for such period or subject to such conditions as may be directed by the Judge or Community Magistrate; or
 - remit the fine or a part of the fine.
20. This process may involve the defendant being summoned to appear before a Registrar, a Judge or a Community Magistrate. If necessary, a warrant to arrest can be issued to secure the defendant's attendance at the hearing.
21. In addition to the Court processes, the Ministry of Justice can:
- suspend a person's licence for unpaid traffic-related fines;
 - report the person's fines balance to credit providers;
 - seek information from various other government agencies to enable effective enforcement; or
 - stop fines defaulters travelling internationally.

GUIDELINES FOR NEW INFRINGEMENT SCHEMES

22. Infringement guidelines should centre on the following eight elements:
- Appropriate use
 - Legislative authority
 - Penalties
 - Operational guidelines
 - Rights of the recipient of an infringement offence notice
 - Payment options (including offering time-payment)
 - Enforcement
 - Administrative provisions.

Guideline – Appropriate use
<p>An infringement offence scheme should:</p> <ul style="list-style-type: none"> • Address misconduct that is generally regarded as being of comparatively minor concern to the general public, but may address more serious matters provided the following considerations also apply. • Involve actions or omissions that involve straightforward issues of fact. • Only apply to strict or absolute liability offences. • Be an appropriate mechanism or part of an appropriate mechanism to encourage compliance with the law.

Explanation

23. This guideline is designed to ensure that the proposed infringement scheme is the appropriate instrument to meet the policy objectives, or whether alternative or supporting mechanisms are appropriate.
24. Infringement offence schemes are suitable for addressing comparatively minor breaches of the law, which warrant more than a warning, but less than the full sanctions of the criminal law.
25. A central principle of the criminal justice system is that the prosecution must prove the alleged offender committed the offence. This includes both the physical actions and the state of mind (called mens rea) in relation to the offence (i.e. negligence, recklessness or intention to commit the offence).
26. In contrast, infringement offence schemes involve strict and absolute liability offences, and there is no requirement for the prosecution to prove the mens rea. For some infringement offences, e.g. a speed camera ticket, the recipient of the infringement notice is required to inform the prosecuting agency of the actual offender, in order to escape liability.

Guideline – Legislative authority

Primary legislation (i.e. an Act of Parliament) is required to:

- Establish an infringement offence scheme.
- Establish the maximum penalty provisions.
- Establish who can issue infringement notices
- Identify the entitlements to revenue that prosecuting agencies receive from infringement fees. For central government agencies, these receipts should be paid to the Crown bank account, while territorial and local authorities may be entitled to retain all or some of the revenue.
- Enable detailed provisions such as infringement offences, fees and forms to be established in regulations or by-laws.

Explanation

27. The power to specify an offence as an infringement offence needs to be established in primary legislation. In New Zealand, the standard practice is to establish key provisions of any particular infringement scheme in the subject-specific statute (e.g. the Biosecurity Act 1993 or the Civil Aviation Act 1990).

28. Most statutes which establish infringement offence schemes include three or four relevant sections. These sections adapt the common provisions and any special conditions associated with the regulated behaviour.

Guideline – Penalties

Penalties should involve the following features:

- The maximum penalty for any infringement offence, whether the offender is served with an infringement notice or subject to prosecution by court proceedings, should be established in primary legislation.
- The actual penalty for any offence subject to an infringement notice may be established as a fixed fee, in regulations or by-laws.
- As a general rule, every offence which is subject to an infringement notice should not normally exceed a fee of \$1,000, unless in the particular circumstances of the case a high level of deterrence is required. The fee should generally be considerably less than the statutory maximum available to the court following a successful prosecution.
- Where the proposed penalty is intended to exceed \$1,000, it is preferable that this amount be fixed in primary legislation, although in certain circumstances it may be appropriate to specify the fee in regulations, with a maximum fixed in primary legislation.
- In setting infringement fees, consideration must be given to the level of harm involved in the offending, the affordability and appropriateness of the penalty for the target group, and whether the proposed fee is commensurate with the infringement fees for other comparable infringement offences.
- The penalty must not include a criminal conviction, even when liability is contested in court or the person is found guilty in a prosecution, although other appropriate orders such as deemed convictions and driver licence demerit points may be made.
- No term of imprisonment should result from an infringement offence.

Explanation

29. Infringement offence schemes are generally designed to address comparatively minor breaches of the law. For this reason, the penalty should be proportionate and generally less than \$1,000, although higher maximum penalties may be appropriate where high levels of deterrence are necessary.

30. As the imposition of a penalty for a breach involves a transfer of the judicial function to the executive, it is very important that the penalty should not result in:

- a criminal conviction, even when liability is contested in a Court; or
- a term of imprisonment.

Where an offence may warrant a more serious penalty, or different treatment e.g. Court proceedings, then a separate offence provision should be established in the primary legislation.

31. Infringement offence notices impose a monetary fee as a penalty (although the penalty for some transport offences may also include the imposition of a deemed conviction and driver licence demerit points). The monetary penalty should be set at a level considerably lower than the maximum fine which can be imposed for the same offence by the Court following a successful prosecution.

32. Higher maximum infringement fees are often necessary to deter offending where a significant economic benefit can result for the offender. Examples of offending with significant economic benefit include the avoidance or evasion of Road User Charges, the overloading of heavy vehicles and the breaching of marine protection zones.

Guideline – Operational guidelines
<ul style="list-style-type: none"> • Prosecuting agencies need to develop formal operational guidelines about the issuance of infringement notices to ensure that authorised officials act in a consistent manner. • These can advise issuing officers of the circumstances in which they may: <ul style="list-style-type: none"> • give an oral or written warning • give the offender the opportunity to rectify the offending, e.g., by obtaining a Warrant of Fitness certificate for an unwarranted car • record only one offence on one particular occasion rather than multiple related offences on the same infringement notice.

Explanation

33. Operational guidelines can ensure authorised officers act in a consistent manner when issuing infringement notices and considering whether an alternative action such as an oral or written warning is more appropriate.

34. In certain circumstances, it may be appropriate for the agency to cancel an infringement notice when the matter in dispute is rectified, e.g. warrant of fitness certificate obtained within one month of expiry. Similarly, issuing

multiple infringement penalties for related offences on the one particular occasion may be a disproportionate response.

Guideline – Rights of the recipient of an infringement notice

Any recipient of an infringement notice must be advised:

- They have the right to seek the cancellation or transfer of the notice if they consider they are not responsible for the offence. They may be obliged to identify the actual offender, if known, e.g. for certain traffic and vehicle-related offences.
- They may contest liability in the District Court but, if unsuccessful, may face additional Court costs.
- They may face prosecution or enforcement action if the infringement fee is not paid.
- Payment of an infringement fee is not a personal admission of guilt, and no criminal record is established.

Explanation

35. Recipients of an infringement offence notice should be properly informed of their rights at the beginning of the process, to ensure consistency within prosecuting agencies and to increase the likelihood of compliance with the penalty.
36. Given the fact that this is a penalty administered by the Executive branch of Government, it is important for the credibility of the infringement system that notice recipients understand the process, their liability, potential consequences of not complying, and any review mechanisms available to them.

Guideline – Payment options

To encourage voluntary payment, each prosecuting agency:

- Should offer a number of payment options such as payment by cash, cheque, EFTPOS or credit card and payment in person, by phone or over the internet.
- Should offer a time to pay option for cases where the recipient of the infringement notice does not have the means to pay in full and where the amount payable under the infringement notice exceeds \$100.
- Should require time to pay arrangements to be completed within 10 months of the alleged offending.

- Should promptly issue another reminder notice where there is a failure to comply with any time to pay agreement.
- Should promptly file the infringement reminder notice with the District Court for enforcement where:
 - The unpaid portion of the infringement fee is not paid, or
 - Another time to pay arrangement has not been entered into following a breach

Within 28 days after service of the reminder notice.

Explanation

37. The purpose of an infringement penalty is to encourage compliance and to hold people accountable. These purposes are not achieved if the infringement fee is not paid. Offering time to pay arrangements and a wide range of payment options makes it easier for people to comply and thus, increases the likelihood of the penalty achieving its goals.
38. Set monetary penalties do not discriminate between the financial situations of infringement offenders. Allowing the option of instalment payments helps resolve the difficulty that some people may have in paying the penalty in full within a short period. This encourages compliance at an earlier stage and avoids the additional costs involved with Court enforcement.

Guideline – Enforcement

- The principal enforcement procedure for infringement offences is provided by the Summary Proceedings Act 1957.
- Any notice filed at the District Court for enforcement must be filed electronically within six months of the date of the offence or where a time to pay payment was entered into by the offender and the prosecuting agency, and the offender has breached the payment arrangement, within 12 months of the date of the offence. (The specific primary legislation may provide for longer filing times.)
- Unpaid infringement reminder notices should be filed with the Court as soon as possible after the expiry of the 28-day reminder notice period.
- All identifying and contact information held about the defendant should be provided to the Court at the time of filing or as soon as possible after being later received.

Explanation

39. Prosecuting authorities should promptly electronically file details of unpaid infringement reminder notices (including those for breached time to pay arrangements), as this maximises the deterrent effect of infringement offences. To be effective, penalties need to be swift, certain and proportionate. Prompt filing also increases the likelihood of swift and effective enforcement because the defendant's contact details are more likely to still be accurate.
40. It is also very important that prosecuting authorities file all identifying and contact information held about the defendant. This increases the likelihood that the court will be able to accurately identify and quickly locate the defendant. The full name and date of birth of individual defendants is essential for enforcement action. The provision of the defendant's gender, occupation, employer, phone numbers and alternative or updated addresses at the time of filing or subsequently greatly assists the fine enforcement process.

Guideline – Administrative provisions

Each prosecuting agency should:

- Maintain a set of key statistics on the infringement notices issued each year.
- File an annual set of statistics on their use of infringement notices, as required by the Secretary for Justice.

Explanation

41. The administrative provisions requirements should help to ensure regular and comprehensive accountability for the operation of an infringement offence scheme. The Secretary for Justice will specify the information requirements. The collation of this information is similar to the practice of the Police for reported offences, and the Ministry of Justice for annual conviction and sentencing statistics.
42. Having access to this information is important for monitoring the growth of the infringement system and additional pressure that is put on the community, prosecuting agencies and the Court system. This data is important for the Courts who may be trying to enforce infringement fines.
43. It also helps to inform changes in the rate of compliance by specific and general infringement offenders.

Guideline – Consultation requirement

Any agency, seeking to establish a new infringement scheme or to review an existing one in primary legislation or regulations must consult the Ministry of Justice on the provisions and penalties for the proposed infringement offences.

Explanation

44. The Ministry has a strong interest in the use of infringement offences, from both a criminal law perspective, (given the trade-offs that are at stake for a recipient of an infringement notice), and the pressure that is put on Court resources in enforcing the payment of infringement fines.
45. Consultation with the Ministry of Justice helps to ensure consistency in the development of infringement schemes, and effective oversight of the infringement system.
46. The Ministry should be consulted on all Cabinet papers, draft Bills and draft Regulations relating to infringement schemes.

Contact

47. For further information or to initiate consultation with the Ministry of Justice about infringement schemes, please email offenceandpenaltyvet@justice.govt.nz or contact the Manager, Criminal Law Team, Policy Group, Ministry of Justice. Telephone (04) 918 8800