

## Notice of Intended Prosecution (NIP)

If you have not been stopped by the Police and cautioned, because for example your offence is one where the evidence has been obtained by camera, before any further action can be taken, the prosecution or more often the Process Department, have to give you appropriate warning of the offence by way of a **Notice of Intended Prosecution**, commonly known as a **NIP**. The document has to be in a certain format and comply with certain regulations, as stipulated by Section 1 of the Road Traffic Offenders Act 1988.

It will be assumed, unless evidence is brought to the contrary, that the prosecution has complied with these requirements and any challenge, whether it be in relation to the accuracy of the Notice, correct service or any other failing, is for the Defendant to prove.

### What are the rules relating to a Notice of Intended Prosecution?

For certain offences, the process can be started by serving a Notice of Intended Prosecution Pursuant to Section 1 of the Road Traffic Offenders Act. Typically, these offences are speeding, failing to comply with traffic signals etc. The obligation is upon the prosecution to have issued and despatched the Notice in order that it arrives with the registered keeper of the vehicle within 14 days of the offence.

Service can be by first class post, by hand or in some circumstances, by recorded delivery. The method of delivery is at the discretion of the prosecution who only have to show that they have followed the correct procedure.

The Notice must be signed (although this can be typed) on behalf of the Chief Constable, must be dated and contain sufficient information for the offence to be identified.

### What is the 14 day rule?

The 14 day rule relates only to the period of time in which the Police/Process Unit must serve the original Notice. The Police do not have to prove that the Notice reached its intended recipient within 14 days, merely that in the normal course of events, it should have arrived. In many cases, the registered keeper will be a lease company not the actual driver with the result that even if the driver is unaware of the incident, service of the Notice is good if it was sent to arrive at the registered keeper's last known address within 14 days of the offence.

### The Notice of Intended Prosecution was issued out of time, what do I do now?

If you are the registered keeper of the vehicle and the **ISSUE** date on the Notice of Intended Prosecution is more than 14 days after the offence, then you can reject it. This only applies if it is dated more than 14 days after the alleged offence. It does not apply if it is dated within 14



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days but received more than 14 days after the offence. If the NIP has been issued too late, then you should return it to the Process Office stating that you reject it because it is time barred. Bear in mind that if you are not the registered keeper, the NIP may have originally been issued within time and sent to the keeper.

**The registered keeper was contacted within 14 days, however it has been several months before I, the driver at the time of the alleged offence, was contacted. Do I still have a case to answer?**

The only obligation upon the Police is to issue the original Notice of Intended Prosecution within 14 days. Despite taking so long to contact you, the delay does not provide you with a technical get out. The Police have 6 months in which to prosecute.

**I was driving a company vehicle and got the NIP months after the offence.**

**Can I reject it?**

If you can establish that the original NIP, which would have been sent to the registered keeper, was not issued within 14 days, then it is out of time. However, if it was issued within 14 days, and then the keeper took some time to identify the driver, then the Police have longer in which to proceed. For example, the registered keeper may lease the car to another company who then in turn supply to the Company that you work for. As long as the Police serve on the registered keeper in time, the matter can proceed.

**What are my obligations on receiving the Notice of Intended Prosecution?**

You are required to identify the driver of the vehicle. You must do this within 28 days and if you fail to do so, you have committed a further offence for which your licence can be endorsed with 6 penalty points and a fine up of £1,000 imposed.

**What if I don't sign the Notice of Intended Prosecution?**

You have to sign the response and if you do not do so, then strictly speaking the Police can allege that you have failed to provide the information required by law.

**Do I have to complete the Form when replying?**

Not necessarily. There is an obligation to provide a written response with a signed and dated declaration but there is no strict ruling that it must be in the exact format requested by the Police.



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**I have been told that pursuant to the Human Rights Act, I don't have to give any information. Is this correct?**

There have been several cases over the last couple of years, but the reality is that the Human Rights Act does not provide you with any entitlement to with-hold information. This particular point has now been tested at the highest level and was found in the prosecution's favour.

**What if the incorrect details eg model of car, road name have been quoted on the NIP?**

If the matter can be identified, regardless of the error, then you still have an obligation to reply. If the error means that you are unable to substantiate the allegation, you should return the Notice asking for clarification. An error would not immediately mean the Notice is null and void.

**What is the Slip Rule?**

Although a Notice cannot be amended, any error can be corrected by sending a replacement Notice within 14 days of the offence. Likewise, if the matter proceeds to Court, errors in the Notice can be corrected in the Court papers. The Slip Rule allows typographical or minor errors to be corrected in this fashion, it does not however allow the prosecution to bring a completely new case or allegation.

**Can I demand the photographic evidence?**

When issuing a NIP, there is no obligation upon the Police to release photographic evidence but many Police forces will supply same on request. Several Police forces allow you to inspect the photographs on the internet.

**What happens next?**

Once the Police have identified the driver, they can either serve a Fixed Penalty Notice or if they feel that it is justified, issue a Summons. Once identification is established, a Fixed Penalty Notice or Summons must be issued within 6 months of the offence.

**The Notice of Intended Prosecution has come in the form of a reminder, however I never received the original NIP. Can I still be prosecuted or is it safe to ignore the NIP on the basis that it is invalid?**

You can still be prosecuted and it would not be safe to ignore the matter. The requirement on the prosecution is only to prove that the original NIP was served within 14 days. It does not have to reach you within that period of time and indeed, if the prosecution can show that it was issued, it does not actually have to reach you at all. Ask to see a copy of the original NIP and if it is apparent that this was issued within 14 days of the offence you will have to deal with the matter via the normal process.



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**I was stopped by the side of the road and was told that I was going to be prosecuted but I never received a NIP, just a Summons, is this right?**

If you are stopped by the Police, there is no obligation to issue a Notice of Intended Prosecution if you have been spoken to and cautioned for the offence. In this regard, if the Police Officer says something as basic as "you are nicked" or "you can argue that in Court", that will be regarded as adequate notice. The Police will be entitled to issue a Summons immediately as they have already established your identity.

**What if I was not the driver of the vehicle?**

You are obliged to tell the prosecution who was driving the vehicle at the time of the alleged offence.

**My friend was driving, can I simply pass the Notice on to them to deal with?**

No. The purpose of the Notice is to establish the identity of the driver, not to prove that any other offence has been committed. It is the addressee's obligation to respond. Passing the document to somebody else does not amount to a satisfactory response and could result in prosecution for failing to supply information.

**What if I don't know who was driving at the time of the offence alleged in the Notice of Intended Prosecution?**

Please refer to our **Failing to Identify Driver Fact Sheet** for further details.

**I know I was driving, but my friend is willing to take the points. Why can't I just identify him?**

If you knowingly make a false declaration, you are committing a far more serious offence. If found guilty of deliberately supplying false information, you may well receive a prison sentence. The Police are becoming more alert to this problem and are particularly keen to prosecute drivers who give false information. Likewise, the Courts will impose custodial sentences without hesitation.

**What happens if the person driving the car at the time of the incident was a visitor to this country and is now abroad?**

Upon receipt of the Notice of Intended Prosecution, your only obligation is to identify the driver at the time of the incident. If that person does not hold a UK licence, or has left the country, that is not your concern as long as when they were driving your vehicle they were properly insured. If you can confirm a name and an address for the driver, you should do so and then it is up to the Process Department to decide whether they want to proceed. They may ask for



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proof that the driver is abroad but they are not actually entitled to that information. As indicated, all you have to do is give the name and address of the person.

Although the UK Courts cannot endorse a non-UK licence with penalty points, they can still convict the driver and impose a fine. The options available to the Court are a) a fine, or b) a fine and disqualification.

**I have been served with a Notice of Intended Prosecution but I do not hold a UK licence. How does this affect matters?**

If you were the driver at the time of the alleged offence, you should reply confirming your details. However, the Process Office will not be able to serve a Fixed Penalty Notice so the matter will be proceed by way of a Court Summons. The fact that you cannot accept a Fixed Penalty Notice (if this would have been offered to the holder of a UK licence) does not affect your obligation to respond to the NIP within 28 days.

**When should I seek legal advice?**

If you need advice when replying to the Notice of Intended Prosecution, obtain assistance as soon as the Notice is received. Do not wait as you only have 28 days in which to reply. If you have already returned the Notice of Intended Prosecution, but need assistance to prepare either mitigation for an anticipated Summons, or a defence to a proposed Fixed Penalty Notice, seek advice immediately. Do not wait for further action to be taken by the prosecution as it maybe some months before they proceed and valuable investigation time will have been lost.

**The Notice of Intended Prosecution identifies my vehicle but I know it was not on the road at the time of the alleged offence. What can I do?**

There are an increasing number of cases where registration numbers have been read incorrectly or vehicles have been "cloned" by using duplicate number plates. If you feel you fall into this category, you should reply to the NIP by stating that you believe the information is incorrect and that you can establish where the vehicle was at the time of the alleged offence.

**What if I had sold the vehicle prior to the incident?**

If you were not driving the vehicle and it was no longer your property, there is an appropriate section on the NIP for you to complete.

**What if my vehicle was stolen prior to the incident?**

If you can prove that the vehicle was not in your possession, return the NIP with the appropriate section completed to include the crime reference number issued to you at the time the theft was reported. The Notice of Intended Prosecution should then be withdrawn.

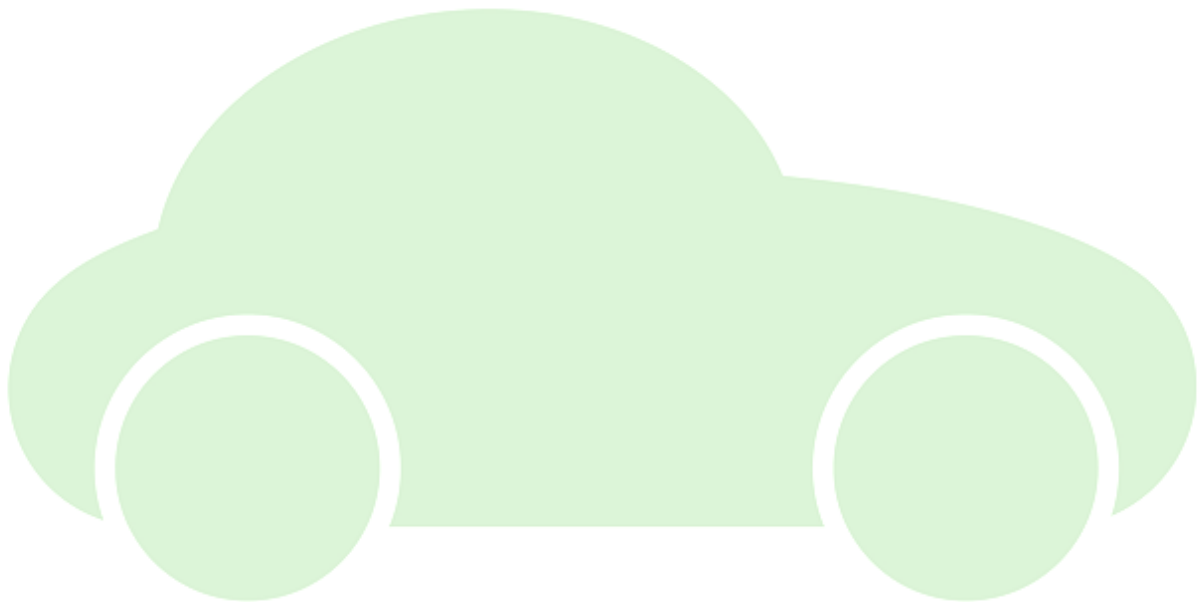


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**I am still unsure about the procedure, can I get further assistance?**

If your query has not been answered above, you can email us for free advice or alternatively if the matter is more complicated, we can go through it with you in detail and assist you more fully initially under our **Summary Telephone Advice Service**.



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