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Assembly

## Research and Information Service Research Paper

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# Fine Collection and Enforcement Mechanisms

**NIAR 49-2015**

This paper provides comparative information on fine collection and enforcement systems in a number of jurisdictions including England and Wales, Scotland, the Republic of Ireland, Australia and New Zealand.

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## Key Points

This paper has been prepared in response to a research request from the Committee for Justice at the Northern Ireland Assembly to assist in informing the Committee's scrutiny of the forthcoming Fines and Enforcement Bill.

The paper examined the systems of fine collection and enforcement in a number of jurisdictions including England and Wales, Scotland, Republic of Ireland, Australia and New Zealand and the research identified a number of common features in the systems as follows:

- **Civilian fine enforcement models**-All of the systems are primarily civilian fine enforcement systems. Some of the systems include fines enforcement officers or equivalent with a range of powers and functions in relation to fine recovery (England and Wales, Scotland, Queensland and South Australia);
- **Deductions from bank accounts/earnings**- A number of the systems allow for deductions from earnings or bank accounts to discharge fine debt (England and Wales, Scotland, Republic of Ireland, New South Wales, Queensland, South Australia, Northern Territory and New Zealand);
- **Deductions from Benefits**- A number of the system have arrangements in place to allow for deductions from benefits in order to pay fines (England and Wales, Scotland and New South Wales);
- **Seizure of property and vehicles**- one of the enforcement methods used by a number of jurisdictions is the seizure of property or vehicles (England and Wales, Scotland, Queensland, South Australia, Northern Territory and New Zealand);
- **Suspension of drivers licence**- some jurisdictions allow for suspension of driver's licence as an enforcement method (New South Wales, Queensland, South Australia, Northern Territory, New Zealand);
- **Payment by Instalments**- a number of the systems examined allow for additional time to pay or to allow fined persons to make payment by instalments (England and Wales, Scotland, Republic of Ireland, New South Wales, Queensland, South Australia, Northern Territory, New Zealand);
- **Community Service Orders**-Most of the systems contain community service orders as alternatives to prison for fine default (England and Wales, Republic of Ireland, New South Wales, Queensland, South Australia, Northern Territory and New Zealand);

Evidence from Scotland suggested that there were strong grounds for arguing that the system had produced a fairer system than the pre reform system. Imprisonment for fine default had reduced due to restrictions on use of custody and mandatory Supervised

Attendance Orders. Evidence from New South Wales in Australia also indicated that the Work Development Order scheme had provided an effective response to offending by disadvantaged people and had reduced reoffending in the fine enforcement system;

Some of the jurisdictions reported improvement in collection rates but that further improvements could be made, for example in Scotland, it was suggested that further improvements could be made by access to information from bodies such as the Department of Work and Pensions;

In Queensland, SPER reported good rates of debt recovery but new volumes of debt were being referred. In order to tackle this, SPER proposed a new delivery model such as outsourcing to a Debt Services Manager to manage a panel of debt collection agencies.





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## 1 Introduction

This paper has been prepared in response to a research request by the Committee for Justice to help inform the Committee's scrutiny of the forthcoming Fines and Enforcement Bill. This paper provides some information on the proposals for fine collection and enforcement in Northern Ireland to be included in the Bill (section 2). This paper also examines the systems in a number of common law jurisdictions, including England and Wales (section 3), Scotland (section 4), Republic of Ireland (section 5), a number of states in Australia (section 6) and New Zealand (section 7).

## 2 Proposals for fines and enforcement in Northern Ireland

According to the Department of Justice (DoJ) report on its consultation on fine collection and enforcement in Northern Ireland, the department is preparing legislation on the way fines are paid and collected in Northern Ireland.<sup>1</sup> The Bill will have a principal aim of reducing the number of people who go to prison as a result of fine default. The Bill will reform the fine enforcement process from a police arrest warrant model to one that is primarily a civilian based Fine Collection and Enforcement Service with the capacity to help fine defaulters manage their payments.

The DoJ carried out a consultation between March and June 2014 on four additional proposals on reform of the fine process. The proposals included:<sup>2</sup>

- A proposal to enhance the community options available to the court, for example by prioritising the Supervised Activity Order as a community-based disposal instead of imprisonment for default;
- An option to allow courts to have access to bank accounts where payment can be made but is being frustrated;
- In light of seizure powers already available to courts, to consider an option to expand powers in fine default cases to include seizure of motor vehicles where payment is not forthcoming;
- A proposal to require those who end up in prison for non-payment to serve the full default period without remission.

A statutory Code of Practice would determine collection officer practice.

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<sup>1</sup> Department of Justice "Fine Collection and Enforcement in Northern Ireland: Report on a Department of Justice Consultation" June 2014, <http://www.dojni.gov.uk/consultation-on-fine-collection-and-enforcement-in-northern-ireland>

<sup>2</sup> Department of Justice "Fine Collection and Enforcement in Northern Ireland: Report on a Department of Justice Consultation" June 2014, <http://www.dojni.gov.uk/consultation-on-fine-collection-and-enforcement-in-northern-ireland>

### 3 England and Wales

Virtually all criminal court cases start in the magistrates' courts. The less serious offences are handled entirely in magistrates' courts, with over 90% of all cases being dealt with in this way. The more serious offences are passed on to the Crown Court, either for sentencing after the defendant has been found guilty in the magistrates' court, or for trial with a judge and jury.

#### Enforcement of fine payments

A court imposing a fine is usually duty bound to give the offender time to pay. The court has the power to search the offender, so that money found on them can be used to pay the fine.<sup>3</sup>

*If the offender does not pay the fine when it is due, then a court may issue a warrant of commitment in certain circumstances. It may do so<sup>4</sup>:*

- a) If the defaulter is already serving a custodial sentence;*
- b) If there has been a means inquiry and the court is satisfied that the default is due to wilful refusal or culpable neglect; or*
- c) If there has been a means inquiry and the court has considered or tried all other methods of enforcing payment and conclude that they are inappropriate or unsuccessful. The alternatives which must be considered are:*
  - i. Imposing a money payment supervision order;*
  - ii. In respect of those under 25, imposing an attendance centre order;*
  - iii. Requesting the Department of Work and Pensions to make payments direct from the offender's benefit;*
  - iv. Making an attachment of earnings order, requiring the offender's employer to pay sums from wages direct to the court;*
  - v. Issuing a distress warrant authorising bailiffs to seize the offender's belongings;*
  - vi. Issuing a warrant of overnight detention.*

The offender may apply for more time to pay if they feel they cannot pay immediately.

Should a person fail to pay, the enforcing court summons them to appear before a means inquiry and orders them, for purposes of that inquiry to provide a statement of means. Following the inquiry, the magistrates may, if context calls for it, remit part or

<sup>3</sup>Sprack, J. (2011) *A Practical Approach to Criminal Procedure* (13<sup>th</sup> Edn.) Oxford: Oxford University Press. Pp.445.

<sup>4</sup> *Ibid.* pp. 445-6.

the entire fine, as stated in S 165(2) of the Criminal Justice Act 2003. If the fine was from the Crown Court they require the magistrates consent for the fines to be changed.

*Where magistrates consider the defaulter is to blame for the failure to pay by reason of 'wilful refusal or culpable neglect' and that other methods of enforcement would not work, they may issue a warrant committing them to prison for, in the case of a Crown Court fine, the term in default fixed by the Crown Court judge or maximum allowed by Sch 4 to the Magistrates' Court Act 1980 for the size of the fine in question. If part-payment has already been made, the term fixed by the Crown Court judge or maximum term allowed by Sch 4 is reduced proportionately. As an alternative to sending the defaulter to prison forthwith, the magistrates may suspend issue of the warrant upon condition that he comply with stated terms as to payment. If he subsequently fails to comply, the warrant may be issued and the defaulter consequently committed to prison without a further court hearing.<sup>5</sup>*

The Crown Court must also fix a term of imprisonment to be served in default of payment. The maximum terms which may be fixed are contained in a table in the Powers of the Criminal Court Sentencing Act 2000 (PCC(S)A 2000), S 139(4). A fine of £200 or less must not exceed seven days, whereas a fine exceeding £1 million must not exceed ten years.

A magistrates' court, has no power to fix a term in default (Magistrates' Court Act 1980, s 82(2)). Its only in exceptional cases that time to pay can be refused.

## Additional methods of recovering fines

The Criminal Justice Act 1991 S 24 allows for the recovery of fines from the deductions to benefit payments so long as certain conditions are met and procedures followed. The Criminal Justice Act S 24(1) states that:

*(1) The Secretary of State may by regulations provide that where a fine has been imposed on an offender by a magistrates' court, or a sum is required to be paid by a compensation order [or unlawful profit order] which has been made against an offender by such a court, and (in either case) the offender is entitled to [universal credit,] income support[, a jobseeker's allowance[, state pension credit or an . . . employment and support allowance]]—*

*(a) the court may apply to the Secretary of State asking him to deduct sums from any amounts payable to the offender by way of [that benefit], in order to secure the payment of any sum which is or forms part of the fine[, compensation or unlawful profit]; and*

*(b) the Secretary of State may deduct sums from any such amounts and pay them to the court towards satisfaction of any such sum.*

<sup>5</sup> Sprack, J. (2011) *A Practical Approach to Criminal Procedure* (13<sup>th</sup> Edn.) Oxford: Oxford University Press. Pp.447

The Criminal Justice Act 2003 S 300 (2) gives the Magistrate's Court the power to impose unpaid work requirement on fine defaulters.

*(2) The magistrates' court may, instead of issuing a warrant of commitment or, as the case may be, proceeding under [section 81](#) of the Magistrates' Courts Act 1980 (enforcement of fines imposed on young offender), order the person in default to comply with—*

*(a) an unpaid work requirement (as defined by section 199), or*

*(b) a curfew requirement (as defined by section 204)[, or*

*(c) in a case where the person is aged under 25, an attendance centre requirement (as defined by section 214)].*

Where the default order has been made for default in paying any sum, should the defaulter then pay the whole sum, the order will cease to have effect. 'If a part-payment is made the total number of hours or days will be reduced by a proportion corresponding to that which the part paid bears to the whole sum'.<sup>6</sup>

## Payment of fines

Financial penalties can be imposed by the magistrates' courts or the Crown Court.<sup>7</sup> These are collected and enforced by the HM Courts and Tribunal Service (HMCTS).<sup>8</sup> The collection of fines is administrated by fines officers, who were established by the Courts Act 2003 S 36. Following the introduction of the Crime and Courts Act 2013, S 26(2) these positions can now be contracted out.

Fines officers have full access to the Department of Work and Pension's benefit information, to improve the process of fine collection and enforcement. Under Section 97(1) of the Courts Act 2003, fines officers can authorise the collection of funds using:

- an Earnings Order (AEO/DEO);
- Benefits Deductions application;
- Collection Order, including
- a Clamping Order, where a vehicle may be sold if the fine remains unpaid following the end of the agreed period.

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<sup>6</sup> Criminal Justice Act 2003 S 300 (7)

<sup>7</sup> Courts Act 2003 S 36

<sup>8</sup> HM Courts and Tribunal Service

The HMCTS Business Plan 2014-15 highlighted that HMCTS continue to look at ways to increase the collection of criminal fines and improve compliance and enforcement. The business plan stated:<sup>9</sup>

*In July 2013 we commenced a procurement process to identify an external provider to deliver these services on behalf of HM Courts and Tribunals Service. In the summer of 2014, we anticipate having identified the preferred bidder to deliver this service. This service will include all compliance and enforcement activity with regards to criminal financial penalties. This would bring the necessary investment and technology we need to achieve our aspirations of a more streamlined and efficient service in the future.*

## Fine Collection Statistics

Financial impositions account for a significant amount of the criminal courts' business with both Crown Courts and Magistrates' Courts able to dispose of a case by way of a financial imposition. *In the year to June 2012, around 66 % of all offenders were sentenced by way of a fine.*<sup>10</sup>

In the third quarter of 2014, £76 million of financial penalties was paid. The total value of impositions in this quarter was £114m an increased of 7% when compared with the previous quarter. *This was driven by a £4.2 million increase in the total value of fines imposed compared to the previous quarter.*<sup>11</sup>

*Financial penalties are the most commonly used sentence and form a significant part of HMCTS' collection and enforcement business. The financial imposition statistics presented in the following graphs do not include data for confiscation orders.*<sup>12</sup>

*The graph below compares the overall fine amount owed as the proportion of the total amount owed that has been collected within a year of the court hearing date.*<sup>13</sup>

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<sup>9</sup> HM Courts and Tribunals Service Business Plan 2014-15, pg 18

<sup>10</sup> Government Tenders, Government News and Information (2013) *Compliance and Enforcement Services for Ministry of Justice*. Available at: <http://www.government-online.net/compliance-and-enforcement-services-for-ministry-of-justice/>

<sup>11</sup> Ministry of Justice (2014) *Criminal Court Statistics Quarterly, England and Wales*. Available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/388367/bulletin-july-to-september-2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388367/bulletin-july-to-september-2014.pdf)

<sup>12</sup> Graphs from: Ministry of Justice (2014) *Criminal Court Statistics Quarterly, England and Wales*. Available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/388367/bulletin-july-to-september-2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388367/bulletin-july-to-september-2014.pdf) pp.14-15.

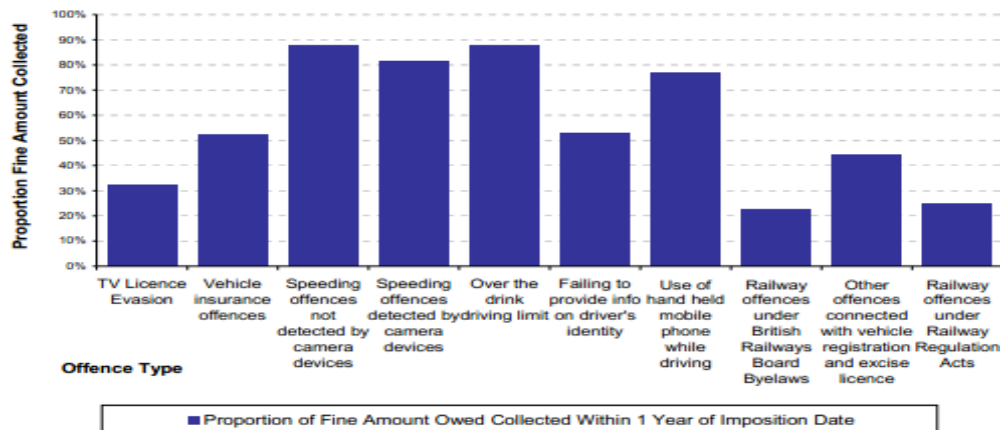
<sup>13</sup> Ministry of Justice (2014) *Criminal Court Statistics Quarterly, England and Wales*. Available at:

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/388367/bulletin-july-to-september-2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388367/bulletin-july-to-september-2014.pdf) pp.14-15.

### For court fines imposed in 2012, what proportion of the total amount owed is recovered for the most common offence types?

Chart B.1 compares the proportion of the overall fine amount owed that has been collected for the top ten most commonly occurring offence types in the matched data. The chart measures fine collection as the proportion of the total amount owed that has been collected within a year of the court hearing date.

**Chart B.1 – Proportion of fine amount owed collected within a year for the top ten most commonly occurring offence types in the matched data<sup>6</sup>**



Fine collection in England and Wales has seen improvements. However, by the third quarter of 2014 there were £557 million outstanding in unpaid fines.<sup>14</sup> This is an increase of £6 million (1%) from the second quarter in 2014.<sup>15</sup> Although this 'figure had fallen since April 2011 and is down by 4% from the first quarter in 2014.<sup>16</sup> During the third quarter of 2014, 11% (£13 million) of all fines were paid within a month.<sup>17</sup>

To help combat the inefficiencies of the government have piloted the use of HM Revenue and Customs (HMRC) data in the collection of fines, although this was restricted to a number of specific target cases. Early indication is that this has

<sup>14</sup> Ministry of Justice (2014) *Criminal Court Statistics Quarterly, England and Wales*. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/388367/bulletin-july-to-september-2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388367/bulletin-july-to-september-2014.pdf) pp.9

<sup>15</sup> Ministry of Justice (2014) *Criminal Court Statistics Quarterly, England and Wales*. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/358230/court-statistics-quarterly-april-to-june-2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/358230/court-statistics-quarterly-april-to-june-2014.pdf)

<sup>16</sup> Ministry of Justice (2014) *Criminal Court Statistics Quarterly, England and Wales*. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/358230/court-statistics-quarterly-april-to-june-2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/358230/court-statistics-quarterly-april-to-june-2014.pdf) pp.35.

<sup>17</sup> Ministry of Justice (2014) *Criminal Court Statistics Quarterly, England and Wales*. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/388367/bulletin-july-to-september-2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388367/bulletin-july-to-september-2014.pdf) pp.9

'increased the number of attachment of earnings orders HMCTS can make. At present, it is not possible to provide a meaningful estimate of the impact on collection rates.'<sup>18</sup>

## 4 Scotland

The system reforming the processes for collecting and enforcing financial penalties in Scotland was introduced under Summary Justice Reform (SJR). The overall aim of SJR was the establishment of a summary justice system which was: fair to the accused; victims and witnesses; effective in deterring and punishing offenders; efficient in the use of time and resources; and quick and simple in delivery.<sup>19</sup> The policy objectives of fines enforcement reforms were:<sup>20</sup>

- To improve the collection and enforcement of fines by increasing methods of payment and extending enforcement actions;
- Reduce police and judicial in fines recovery; and
- Ensure through an effective enforcement system that fines are viewed as credible and suitable disposals.

The legislative basis for the system of fines enforcement in Scotland can be found in the Criminal Proceedings (Reform) (Scotland) Act 2007. The 2007 Act introduced new arrangements for the enforcement of fines and other financial penalties, including provision for the appointment of Fines Enforcement Officers.

Section 55 of the 2007 Act inserted sections 226A-226I of the Criminal Procedure (Scotland) Act 1995 and sets out the position, functions and powers of the Fines Enforcement Officer (FEO). Section 226A (1) provides that Scottish Ministers may authorise persons to act as Fines Enforcement Officers. The FEO is an officer of the Scottish Court Service (SCS) which acts as an agency of the Scottish Executive. The core functions of the FEO are to provide information and advice to offenders as regards payment of relevant penalties and secure compliance of offenders with enforcement orders.<sup>21</sup> The court may make an enforcement order in relation to a fine when considering whether to grant time to pay a relevant penalty. However the court is not

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<sup>18</sup> Ministry of Justice (2014) *Criminal Court Statistics Quarterly, England and Wales*. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/388367/bulletin-july-to-september-2014.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388367/bulletin-july-to-september-2014.pdf) pp.9

<sup>19</sup> P Bradshaw and S Reid et al (2011) "Summary Justice Reform: Evaluation of the Reforms to Fine Enforcement" Final Report. Scottish Government Social Research, pg 2

<sup>20</sup> P Bradshaw and S Reid et al (2011) "Summary Justice Reform: Evaluation of the Reforms to Fine Enforcement" Final Report. Scottish Government Social Research, pg 2

<sup>21</sup> Section 226A(2) of the Criminal Procedure (Scotland) Act 1995 as inserted by section 55 of the Criminal Proceedings (Reform) (Scotland) Act 2007

required to consider an order if it does not consider that an order would be appropriate.<sup>22</sup> An enforcement order has to:<sup>23</sup>

- state the amount of the relevant penalty;
- specify arrangements for payment of the penalty, including amount of instalments and the intervals at which payments are to be made;
- Provide the contact details for the Fines Enforcement Officer dealing with the enforcement order; and
- Explain the effect of the enforcement order.

The FEO may vary the arrangements for payment on the application of the offender and taking into account the circumstances of the offender. The application may be made orally or in writing. The FEO has to notify the offender of any variation of the enforcement order or refusal of an application to vary an order.<sup>24</sup>

The FEO can apply for enforcement sanctions. The FEO has the power to issue a seizure order to immobilise and impound an offender's vehicle<sup>25</sup> and to request the court make an application for a deduction from benefits to be made from an offender for the purpose of obtaining payment of a fine or penalty.<sup>26</sup> Other sanctions include arrestment of earnings or arrestment of funds held in bank accounts for the purpose of obtaining payment of a fine or a penalty.<sup>27</sup> The FEO can refer any outstanding fine back to court where they are of the view that the fine, penalty or unpaid balance is unlikely to be paid. The court may do a number of things:<sup>28</sup>

- Revoke the enforcement order and deal with the offender as if the enforcement order had never been made;
- Vary the enforcement order;
- Confirm the enforcement order as previously made;
- Direct the FEO to take specified steps to secure payment of or towards the penalty in accordance with the enforcement order;
- Make such other order as it thinks fit.

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<sup>22</sup> Section 226B of the Criminal Procedure (Scotland) Act 1995 as inserted by section 55 of the Criminal Proceedings (Reform) (Scotland) Act 2007

<sup>23</sup> Section 226B of the Criminal Procedure (Scotland) Act 1995 as inserted by section 55 of the Criminal Proceedings (Reform) (Scotland) Act 2007

<sup>24</sup> Section 226C of the Criminal Procedure (Scotland) Act 1995 as inserted by section 55 of the Criminal Proceedings (Reform) (Scotland) Act 2007

<sup>25</sup> Section 226D of the Criminal Procedure (Scotland) Act 1995 as inserted by section 55 of the Criminal Proceedings (Reform) (Scotland) Act 2007

<sup>26</sup> Section 226E of the Criminal Procedure (Scotland) Act 1995 as inserted by section 55 of the Criminal Proceedings (Reform) (Scotland) Act 2007

<sup>27</sup> Section 226F of the Criminal Procedure (Scotland) Act 1995 as inserted by section 55 of the Criminal Proceedings (Reform) (Scotland) Act 2007

<sup>28</sup> Section 226F of the Criminal Procedure (Scotland) Act 1995 as inserted by section 55 of the Criminal Proceedings (Reform) (Scotland) Act 2007



According to the Explanatory Memorandum to the legislation, this could mean imposing a period of imprisonment.<sup>29</sup>

In addition, the Criminal Justice and Licensing (Scotland) Act 2010 makes provision for Community Payback Orders in the case of fine defaulters.<sup>30</sup>

An evaluation to the reforms to fine enforcement published in 2011 found that there were indications that the system was beginning to deliver results. Sheriff Court fine collections rates remained stable and despite dealing with more serious offences which attracted larger average fine amounts, payment rates for Sheriff Courts remained high.<sup>31</sup> The evaluation found that the consistency of the system had improved and interviewees and defaulters believed that fines would be pursued in a more systematic and effective manner, which suggested an improvement to credibility.<sup>32</sup>

The 2011 evaluation found that a number of improvements needed to be made to the system. There was widespread consensus that the effectiveness of the enforcement system could be increased by improved access of FEOs to relevant information. FEOs could be given more direct access to information held by government agencies (DWP and DVLA). The evaluation also suggested there was a need to revisit information provided by offenders, either at the point the fine was imposed or at first contact with the Scottish Court Service.<sup>33</sup>

The evaluation found that those with multiple financial penalties accounted for a much larger proportion of fines in default and that the evidence indicated that fine payment is lower and enforcement more difficult with this group. FE teams indicated to the researchers that it would be beneficial for sentencers to check outstanding fine status before making decisions. The report found that whilst ability to pay was important, so was offenders' willingness to pay and that this is more likely if there was a continuing and visible culture of enforcement. The evaluation suggested that the simple day to day persistence of fines enforcement teams was equally as important as approaches such as vehicle seizures or intercepting defaulters at the airport.<sup>34</sup>

In terms of how the reforms contributed towards the overall objectives of Summary Justice Reform (SJR), there were strong grounds for arguing that the reforms have produced a system which is fairer than that which existed pre-reform. Default was more effectively identified and acted upon. The evaluation found that there were some issues prolonging the process such as cases where non-payment is accompanied by limited

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<sup>29</sup> <http://www.legislation.gov.uk/asp/2007/6/notes/division/1/3/15>

<sup>30</sup> Section 14 of the Criminal Justice and Licensing (Scotland) Act 2010 inserting section 227M of the Criminal Procedure (Scotland) Act 1995

<sup>31</sup> P Bradshaw and S Reid et al (2011) "Summary Justice Reform: Evaluation of the Reforms to Fine Enforcement" Final Report. Scottish Government Social Research, pg 65

<sup>32</sup> P Bradshaw and S Reid et al (2011) "Summary Justice Reform: Evaluation of the Reforms to Fine Enforcement" Final Report. Scottish Government Social Research, pg 65

<sup>33</sup> P Bradshaw and S Reid et al (2011) "Summary Justice Reform: Evaluation of the Reforms to Fine Enforcement" Final Report. Scottish Government Social Research, pg 65

<sup>34</sup> P Bradshaw and S Reid et al (2011) "Summary Justice Reform: Evaluation of the Reforms to Fine Enforcement" Final Report. Scottish Government Social Research, pg 67

information about defaulters. Improving access to information and the ability of FEOs to pursue defaulters would improve the system, limit the input of the police and courts and improve the speed of fine payment and enforcement.<sup>35</sup> The evaluation also found that imprisonment for fine default had reduced and that this reduction was well underway before the fine enforcement reforms were introduced in 2008, reflecting the earlier restrictions on use of custody for fine default and the introduction of mandatory Supervised Attendance Orders.<sup>36</sup>

#### *Outline of how the system works in Scotland<sup>37</sup>*

Fines Enforcement Officers (FEOs) have a range of actions, powers and tools at their disposal. Most court fines have an Enforcement Order (EO) attached at the point of imposition which avoids FEOs having to apply to have one attached in these cases. The EO states the date by which the fine should be paid, the amount and interval of payments and the date the first instalment is due and the sanctions available to the FEO if the defaulter does not meet the terms of the order by not paying instalments.

Warning letters are the first line of enforcement and they are automatically generated when a fine account enters into arrears. The FEO can suppress the letter to contact the offender directly or leave them more time to pay. FEOs may contact a defaulter by telephone if they have a contact number to find out why they have not paid their fine. Face to face discussions are available in all locations by appointment. A common outcome is variation of the fine payment terms.

A key objective of the FEO is to obtain information on financial means of fine defaulters. The FEO will request that a defaulter completes a declaration of income form. The form collects information on personal details, vehicle ownership and registration number, income details, outgoings, accommodation and living circumstances, bank details and preferred payment rate. There is no legal obligation to complete the form.

FEOs have a duty to refer a case to a Fines Enforcement Court (FEC), if in their view, payment of fines is unlikely to be obtained. If the defaulter fails to appear when cited to an FEC, the court may issue a warrant. Police are mainly involved in the fines enforcement process through the receipt and execution of warrants. Warrants may be issued to bring the defaulter before an FEC or extract a warrant issued to imprison them for the period equivalent to the outstanding amount.

Media coverage from April 2013 suggested that Fine Enforcement Officers in Scotland were to be given access to government information held by the Department of Work

<sup>35</sup> P Bradshaw and S Reid et al (2011) "Summary Justice Reform: Evaluation of the Reforms to Fine Enforcement" Final Report. Scottish Government Social Research, pg 69

<sup>36</sup> P Bradshaw and S Reid et al (2011) "Summary Justice Reform: Evaluation of the Reforms to Fine Enforcement" Final Report. Scottish Government Social Research, pg 32

<sup>37</sup> P Bradshaw and S Reid et al (2011) "Summary Justice Reform: Evaluation of the Reforms to Fine Enforcement" Final Report. Scottish Government Social Research, pg 14-16

and Pensions (DWP) and other Whitehall departments.<sup>38</sup> The Scottish Justice Secretary Mr MacAskill said:<sup>39</sup>

*The collection of fines and penalties is crucial to ensuring fair and effective justice, upholding the law and deterring crime.*

*While collection rates have improved since the Scottish Courts Service (SCS) took on responsibility for this and are now at consistently high levels, these figures could be improved further if we had access to key information held about offenders by the Department for Work and Pensions and other Whitehall Departments.*

*That's why I wrote to Iain Duncan Smith earlier in the year, asking him to ensure that as a matter of urgency, SCS staff are able to access the same kind of information which is available to fine enforcement teams in England and Wales.*

*I welcome the fact that he has agreed with me, that is not acceptable for DWP to provide a lesser service to enforcement officers in Scotland, than elsewhere and has stated his determination to work with other Whitehall Departments and the Scottish government to address this.*

The Scottish Court Service (SCS) issued a press release in January 2015 which stated that it was continuing to improve enforcement activities and was pursuing data sharing arrangements with other government bodies. According to the press release, 85% of sheriff court fines imposed over a three year period from 1 April 2011 to 31 March 2014 have either been paid or are on track to be paid by instalments. In relation to Justice of the Peace Court Imposed Fines, for fines imposed during the financial year 2011-2012, 89% of the fines have been paid or are on track to be paid by instalments. For fines imposed during the 2011-12 financial year, 78% of the value of fiscal fines and 74% of the value of Police Anti-Social fixed penalties have been paid or are on track to be paid by instalments.<sup>40</sup>

## 5 Republic of Ireland

The Fines (Payment and Recovery) Act 2014 was signed into law by the President on 16 April 2014, however has not been implemented as yet. Section 5 of the Act obliges the court to take into account the defendant's financial circumstances in determining the amount of the fine. Section 6 provides for an option for the fined person to make a single payment on or before the relevant due date or to pay by instalments. The payment of instalments will be calculated in a manner as may be prescribed and at

<sup>38</sup> BBC News "Scottish Courts to get new powers to tackle fine dodgers" 29 April 2013, <http://www.bbc.co.uk/news/uk-scotland-22333107>

<sup>39</sup> BBC News "Scottish Courts to get new powers to tackle fine dodgers" 29 April 2013, <http://www.bbc.co.uk/news/uk-scotland-22333107>

<sup>40</sup> Scottish Court "Delivering further improvements in fine collection" 1 January 2015, <https://www.scotcourts.gov.uk/about-the-scottish-court-service/scs-news/2015/01/01/delivering-further-improvements-in-fine-collection>

such frequency that may be prescribed.<sup>41</sup> The option to pay a fine in instalments is only applicable to a fine that exceeds €100.

The 2014 Act provides that where a person fails to pay a fine by the due date for payment, the court shall fix a date for hearing to make a recovery order, an attachment order or a community service order.<sup>42</sup> The court shall not make a recovery order in respect of the fined person unless the fine or the unpaid part of the fine exceeds €500. Provisions also set what happens if the person does not pay the fine by the due date. The appropriate court official shall by notice served in writing require the person to appear before the court on the date and time specified in the notice and to provide a statement in writing of his or her financial circumstances.<sup>43</sup> The court shall after considering the statement first consider making an attachment order. Attachment orders are orders to the employer or occupational pension payer to deduct an amount from earnings or pensions and pay this amount to the Courts Service. If an attachment order is imposed, the employer or pension payer is obliged to comply with it and obliged to inform the Courts Service if a person changes employer or become unemployed.<sup>44</sup> Where the court is satisfied that it would not be appropriate to make an attachment order, recovery order or community service order in respect of the fined person, it may commit the person to prison.<sup>45</sup>

The 2014 Act empowers the court to make an order appointing a receiver to recover the fine or part of the fine that remains unpaid or the fees and expenses of the receiver. The receiver may also seize and sell property belonging to the fined person and recover from the proceeds of that property, a sum equal to the amount of the fine or the part of the fine that remains unpaid and the fees and expenses of the receiver.<sup>46</sup>

The 2014 Act also contains provisions for data sharing and exchange of information. Revenue Commissioners, the Minister for Social Protection or other persons as may be prescribed must provide the court with information that may be needed in order to make recovery orders or attachment orders.<sup>47</sup>

In response to a parliamentary question on 11 February 2015 on the numbers of people committed to prison for non- payment of fines and when the practice would cease, the Minister for Justice and Equality stated:<sup>48</sup>

*Work is ongoing in preparing for the implementation of the Act. The area most directly affected by the changes is the Courts and the Courts Service is working on a number of developments which will ensure that the implementation of the legislation, and the*

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<sup>41</sup> Section 6 (1) of the Fines (Payment and Recovery) Act 2014

<sup>42</sup> Section 7 (1) of the Fines (Payment and Recovery) Act 2014

<sup>43</sup> Section 7 (4) (d) of the Fines (Payment and Recovery) Act 2014

<sup>44</sup> Citizens Information Board, June 2014, Volume 41, Issue 6.

<sup>45</sup> Section 7 (5) (b) of the Fines (Payment and Recovery) Act 2014

<sup>46</sup> Section 8 of the Fines (Payment and Recovery) Act 2014

<sup>47</sup> Section 23 of the Fines (Payment and Recovery) Act 2014

<sup>48</sup> [PQ 6226/15](#)

<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2015021100070?opendocument#WRD03950>

*new procedures which will operate under it, are as efficient as possible.*

*In relation to the introduction of payment of fines by instalment, a decision was taken to outsource all aspects of the recovery of fines to an external provider. The Courts Service is introducing new arrangements for the payment of fines which will allow payments to be made in a range of outlets across the country, and not just through Courts Service offices. There are significant changes in information technology required to ensure that the instalment payment system operates effectively and that the necessary accounting procedures are in place for the recording of payments. Changes are also required in the way that information is transferred between the Courts Service and An Garda Síochána to ensure that both organisations have fully up to date information on the cases and their current status.*

*It is expected that all the preparations for the new system will be completed by the third quarter of 2015. While it is desirable that the Act be commenced as soon as possible, it is important that these preparations are done correctly to ensure that the significant changes being implemented in the fines system as a result of this legislation are implemented smoothly and effectively from the start.*

A press report suggested that the Courts Service was seeking 480 retailers to participate in a new system of paying for fines. The system has gone out for tender and the Court Service requires that for every court venue in the country, there should be five separate retail outlets to accept payment of fines. Firms tendering for the work are being asked to base their price on set up costs, infrastructure and resources for low call phone line, transactional costs and discounts. The Courts Service was also seeking a firm to carry out the printing and posting of almost 500,000 separate documents per year in a separate tender under the new fine system.<sup>49</sup>

## 6 Australia

### *New South Wales*

The Fines Further Amendment Act 2008 (NSW) made a number of reforms to improve the system for administration and enforcement of court fines and penalty notices, particularly for vulnerable groups. The amendments:<sup>50</sup>

- Allowed people who receive Centrelink benefits to refer a fine to the State Debt Recovery Office (SDRO) early and without enforcement costs so that they can access Time to Pay arrangements including Centrepay as a means by which to

<sup>49</sup> Irish Independent "Court Fines to be paid in local shops" 17/09/2014 <http://www.independent.ie/irish-news/courts/court-fines-to-be-paid-in-local-shops-30592472.html>

<sup>50</sup> New South Wales Government :Attorney General and Justice "A fairer fine system for disadvantaged people: an evaluation of time to pay, cautions, internal review and the work and development order scheme," May 2011, pg 5

pay their fines. Centrepay is a direct debit facility that allows regular deductions from Centrelink benefits.<sup>51</sup>

- Made it clear that law enforcement officers may give a caution instead of a penalty notice in certain circumstances;
- Introduced a statutory system for the administrative review of penalty notices on certain specified grounds; Established a two year pilot scheme called Work and Development Orders (WDOs). WDOs are orders made by the SDRO that allow certain disadvantaged people to clear their fine debt by undertaking unpaid work, courses or treatment with the support of an approved organisation or registered health practitioner.

An evaluation by the Department of Attorney General and Justice assessing the implementation of the reforms was published in 2011. The evaluation found that the reforms to the fine and penalty notice system were meeting their objectives. Allowing people on Centrelink benefits to access Centrepay as soon as they are issued with a court fine, this has led to the recovery of \$1,033,563 (as at 4 April 2011). A further \$3,357,169 in court fine debt was under management through Centrepay arrangements. Allowing people on Centrelink benefits to access Centrepay as soon as they were issued with a penalty notice leading to the recovery of \$1,604,363 (as at 4 April 2011). A further \$5,929,825 in penalty notice debt is under management through Centrepay arrangements.

The evaluation found that the WDO scheme has provided an effective response to offending by disadvantaged people. As at 6 March 2011, 645 people were issued with WDOs and reduced \$205,400 worth of fine debt. A further \$1,826,440 worth of fine debt is under management through WDOs. As at 14 April 2011, there were 143 organisations and 77 health practitioners enrolled in the scheme. The WDO scheme has helped to:<sup>52</sup>

- Reduce reoffending in the fine enforcement system and secondary offending in the broader criminal justice system. Preliminary statistics indicated that 82.5% of WDO clients had not received another fine or penalty notice order since having their WDO approved;
- Engage clients in appropriate treatment or activities that they may not have otherwise engaged in such as mental health, drug or alcohol treatment;
- Reduce client stress, anxiety, feelings of hopelessness or despair;
- Promote client agency, self-esteem and self-efficacy;

<sup>51</sup> Centrelink is part of the Department of Human Resources and delivers a range of payments and services for people at times of major change, see <http://www.australia.gov.au/topics/benefits-payments-and-services>

<sup>52</sup> New South Wales Government :Attorney General and Justice "A fairer fine system for disadvantaged people: an evaluation of time to pay, cautions, internal review and the work and development order scheme, May 2011, pg 7

- Build client skills, provide them with an incentive to work, and may lead to employment or more employment opportunities;
- Reduce costs to government associated with fine enforcement, ongoing offending behaviour, welfare dependency, mental health problems and drug and alcohol addiction.

The evaluation recommended that the WDO pilot scheme should be made permanent.<sup>53</sup> The evaluation recognised that a number of policy issues arising from the WDO pilot needed to be resolved including improvements to the administration of the scheme and the scheme to be better supported. Suggested improvements included streamlining the application and reporting process. Other recommendations included the establishment of four small regional support teams and resource allocation towards educational and promotional materials for both service providers and people with fine debt that may be eligible to participate in the scheme.<sup>54</sup>

*Outline of how the system works in New South Wales<sup>55</sup>*

In New South Wales (NSW), the State Debt Recovery Office (SDRO) receives and processes fines from various government departments, including local councils, Police and NSW roads and maritime services. It also operates the enforcement system to collect unpaid fines.

There are a number of options if a person receives a penalty notice including:

- payment in full;
- make part payments provided it is paid in full by the due date on the penalty reminder notice;
- ask SDRO for a payment plan over a longer period if a person is on Government benefits;
- nominate the person who was driving at the time of the offence;
- ask for a review online or by post by explaining the situation and attaching documentary evidence;
- take the matter to court by submitting a request online or by posting a court election form.

If no action has been taken by the due date on the penalty reminder notice, the SDRO

<sup>53</sup> New South Wales Government :Attorney General and Justice "A fairer fine system for disadvantaged people: an evaluation of time to pay, cautions, internal review and the work and development order scheme, May 2011, pg 9

<sup>54</sup> New South Wales Government :Attorney General and Justice "A fairer fine system for disadvantaged people: an evaluation of time to pay, cautions, internal review and the work and development order scheme, May 2011, pg 7

<sup>55</sup> All information taken from a leaflet by the Office of State Recovery: State Debt Recovery "A Guide to the Fine Processing and Enforcement System" (2013) [http://www.sdرو.nsw.gov.au/lib/docs/misc/fes\\_guide\\_english.pdf](http://www.sdرو.nsw.gov.au/lib/docs/misc/fes_guide_english.pdf)



will issue an enforcement order which must be paid within 28 days. If the enforcement order is not paid, a person's driver licence may be suspended and car registration may be cancelled. The SDRO can authorise the Sheriff to take goods and possessions. SDRO can also take money from a person's wages and bank accounts.

If a person has trouble paying the enforcement order in full, arrangements can be made with SDRO to make payments by instalment. If a person is on benefits, arrangements can be made for payments to come straight out rather than organising payments themselves. SDRO will hold enforcement action if instalment payments are up to date.

The SDRO can make alternative arrangements for those suffering from mental health, alcohol or drug abuse issues, are homeless or are experiencing acute economic hardship. In such cases, a person may be a suitable candidate to enter into a Work and Development Order (WDO). A WDO enables a person to satisfy their fine through unpaid work, certain courses or treatment. A WDO can only be made if an application is supported by an approved organisation or qualified health practitioner.

If the SDRO refuses to let a person pay by instalments or enter into a WDO, an application can be made to the Fines Hardship Review Board, which is an independent body which can review these decisions. The FHRB is not a court and cannot consider whether a person is liable to pay a fine.

### *Queensland*

The State Penalties Enforcement Registry (SPER) is a division of the Office of State Revenue, which is part of Queensland Treasury. Under the State Penalties Enforcement Act 1999, SPER is responsible for the collection and enforcement of unpaid:

- infringement notice fines;
- court ordered monetary penalties;
- offender debt recovery orders;
- offender levies.



SPER does not issue fines but is responsible for the collection and enforcement of unpaid fines and court orders in Queensland. The legislation provides that the SPER Charter includes the following:<sup>56</sup>

- maximise the collection of restitution or compensation for victims of offences as ordered to be paid under the *Penalties and Sentences Act 1992*;
- maximise the amount of fines and other money penalties paid before enforcement action is taken;
- promote a philosophy that community service work is for the needy in the community and not alternative to payment of a fine for those who can afford to pay the fine;
- reduce the use of imprisonment for fine default by encouraging the use of other enforcement mechanisms;
- promote public education about the obligations of offenders and the consequences of not satisfying the obligations.

If an enforcement order is served, the defaulter must within 28 days after the date of the enforcement order:<sup>57</sup>

- Pay the amount stated in the order in full to SPER; or
- Apply to SPER in the approved form or in another way acceptable to SPER to pay the amount by instalments not less than the minimum instalment; or
- If no fine option order has been made for the amount-apply to SPER for conversion of the amount to hours of unpaid community service under a fine option order; or
- If the order relates to an infringement notice offence-make to SPER an election to have the matter of the offence decided in a Magistrates' Court.

The State Penalties Enforcement Act 1999 Act makes provision for the fine defaulter to apply to SPER for approval to pay the amount in instalments.<sup>58</sup> There are several ways in which fine defaulters can pay their debts: they can pay in full or in part using a number of methods such as paying by phone, internet banking, in person or by post. There is also the option to set up an instalment plan. Payments can be automatically deducted from bank accounts, debit/credit card or centrelink payment. The maximum amount of time SPER allows to pay off a debt is three years.<sup>59</sup>

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<sup>56</sup> Section 9 of the State Penalties Enforcement Act 1999

<sup>57</sup> Section 41 of the State Penalties Enforcement Act 1999

<sup>58</sup> Section 42 of the State Penalties Enforcement Act 1999

<sup>59</sup> <https://www.sper.qld.gov.au/payment-options/paying-by-instalments.php>

If an unpaid debt is referred to SPER, they will issue an enforcement order. If a person receives an enforcement order and does not act on it by the due date, SPER can take one or more of the following enforcement actions:<sup>60</sup>

- Refer debts to a debt collection agent;<sup>61</sup>
- Suspend a driver licence;<sup>62</sup>
- Direct employer or financial institution to deduct funds from pay or bank account;<sup>63</sup>
- Register an interest in the person's property;<sup>64</sup>
- Immobilise a vehicle;<sup>65</sup>
- Seize or sell a person's property;<sup>66</sup>
- Issue a warrant for arrest or imprisonment.<sup>67</sup>

Enforcement officers are engaged by the Registrar of SPER and will help fined persons to finalise outstanding debts. They can offer advice on available payment options and issue receipts for cash or cheque payments.<sup>68</sup> Enforcement officers are defined as:<sup>69</sup>

- An appropriately qualified public service officer;
- The sheriff, deputy sheriff, or bailiff of the court;
- A debt collector;
- Another person authorised to perform the functions and exercise the powers of an enforcement officer.

The State Penalties Enforcement Act 1999 Act provides that enforcement officers are responsible for serving a fine collection notice or enforcing warrants and have authority to ask a person to provide information<sup>70</sup>

The 1999 Act also contains general information gathering powers. The Registrar may in written request obtain information from the commissioner of the police service<sup>71</sup> separate provisions to obtain information from persons other than the police service.<sup>72</sup>

### *SPER Reform Program*

<sup>60</sup> <https://www.sper.qld.gov.au/enforcement-actions/index.php>

<sup>61</sup> Section 10 of the State Penalties Enforcement Act 1999

<sup>62</sup> Section 137 (g) of the State Penalties Enforcement Act 1999

<sup>63</sup> Section 137 (f) (ii) of the State Penalties Enforcement Act 1999

<sup>64</sup> Section 137 (h) (ii) of the State Penalties Enforcement Act 1999

<sup>65</sup> Section 137 (f) (vi) of the State Penalties Enforcement Act 1999

<sup>66</sup> Section 137 (f) of the State Penalties Enforcement Act 1999

<sup>67</sup> Section 137 (f) (v) of the State Penalties Enforcement Act 1999

<sup>68</sup> <https://www.sper.qld.gov.au/enforcement-actions/enforcement-officers.php>

<sup>69</sup> Schedule 2 of the State Penalties Enforcement Act 1999

<sup>70</sup> Section 114 of the State Penalties Enforcement Act 1999

<sup>71</sup> Section 151 of the State Penalties Enforcement Act 1999

<sup>72</sup> Section 152 of the State Penalties Enforcement Act 1999

The SPER Reform Bulletin published in September 2014 highlighted:<sup>73</sup>

*Despite SPER'S good rate of debt recovery achievement, that continues to improve year on year, the volume of new debt being referred to SPER is increasing at an even higher rate.*

*As a result, if action is not taken to transition to a new debt recovery model, the SPER debt pool is likely to approach \$1 billion by 2016-17.*

In order to tackle the increasing volume of new debt, SPER will make a number of changes including a new service delivery model that involved outsourcing debt recovery to a Debt Services Manager that will manage a panel of debt collection agencies. Under this model, SPER will pursue more active enforcement than it has done in the past. In parallel, SPER will be leading a 'whole of government' effort, working with issuing and referring agencies, to improve end to end penalty debt management processes against government.<sup>74</sup>

### *South Australia*

The Fines Enforcement and Recovery Unit was established in February 2014. The unit took on the functions previously managed by the Fines Payment Unit of the Courts Administration Authority (Magistrates' Court).<sup>75</sup> The unit does not issue fines or set fine rates but is responsible for the recovery and enforcement of court fines.<sup>76</sup>

The Statutes (Fines Enforcement and Recovery) Act 2013 amended the Criminal Law (Sentencing) Act 1988 by establishing the Fines Enforcement and Recovery Officer. The Fines Enforcement and Recovery Officer is a person employed in the public service of the state.<sup>77</sup>

Enforcement action can be taken if a fine is not paid on time. Enforcement actions include:<sup>78</sup>

- Restriction in transacting business with the Registrar of motor vehicles;<sup>79</sup>
- Suspension of a driver's licence;<sup>80</sup>
- Clamping or impounding of a vehicle;<sup>81</sup>

<sup>73</sup> SPER Reform Bulletin "About the SPER Reform Program" Issue 1, September 2014

<sup>74</sup> SPER Reform Bulletin "About the SPER Reform Program" Issue 1, September 2014

<sup>75</sup> <http://www.fines.sa.gov.au/about-us?AspxAutoDetectCookieSupport=1>

<sup>76</sup> <http://www.fines.sa.gov.au/about-us?AspxAutoDetectCookieSupport=1>

<sup>77</sup> Section 11 of the Statutes Amendment (Fines Enforcement and Recovery) Act 2013 inserting Section 64 of the Criminal Law (Sentencing) Act 1988

<sup>78</sup> <http://www.fines.sa.gov.au/understanding-your-fine/enforcement-actions>

<sup>79</sup> Section 11 of Statutes Amendment (Fines Enforcement and Recovery) Act 2013 inserting Section 70N of the Criminal Law (Sentencing) Act 1988

<sup>80</sup> Section 11 of the Statutes Amendment (Fines Enforcement and Recovery) Act 2013 inserting Section 70M of the Criminal Law (Sentencing) Act 1988

- Garnishment of income or bank accounts;<sup>82</sup>
- Seizure and sale of property;<sup>83</sup>
- Charge on land;<sup>84</sup>
- Publication of names.<sup>85</sup>

The Fines Enforcement and Recovery Officer may at any time investigate a debtor's means of satisfying a pecuniary sum and may give a written notice to a person requiring them to produce documents or other material relevant to the investigation.<sup>86</sup> The court may, on an application of the Fines and Recovery Officer, make a community service order in relation to a debtor if the court is satisfied that the debtor does not have and is not likely within a reasonable time to have the means to pay the fine. The Fines Enforcement and Recovery Officer must give the debtor a notice specifying the number of community service hours to be performed.<sup>87</sup> Community service orders may be enforced by imprisonment.<sup>88</sup>

It is possible to make a payment arrangement with the Fines Recovery and Enforcement Unit. Minimum payments will depend on the amount owing and the frequency of payments.<sup>89</sup>

### *Northern Territory*

The Fines Recovery Unit (FRU) was created as a result of an enquiry by the Northern Territory Government into the fines process and recovery of debt. The scheme is based on Australian Best Practice and its main objective is to provide a cost effective recovery service and ensure compliance with court imposed fines and infringement notices.<sup>90</sup>

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<sup>81</sup> Section 11 of the Statutes Amendment (Fines Enforcement and Recovery) Act 2013 inserting Section 70O of the Criminal Law (Sentencing) Act 1988

<sup>82</sup> Section 11 of the Statutes Amendment (Fines Enforcement and Recovery) Act 2013 inserting Section 70L of the Criminal Law (Sentencing) Act 1988

<sup>83</sup> Section 11 of the Statutes Amendment (Fines Enforcement and Recovery) Act 2013 inserting Section 70K of the Criminal Law (Sentencing) Act 1988

<sup>84</sup> Section 11 of the Statutes Amendment (Fines Enforcement and Recovery) Act 2013 inserting Section 70G of the Criminal Law (Sentencing) Act 1988

<sup>85</sup> Section 11 of the Statutes Amendment (Fines Enforcement and Recovery) Act 2013 inserting Section 70Q of the Criminal Law (Sentencing) Act 1988

<sup>86</sup> Section 11 of the Statutes Amendment (Fines Enforcement and Recovery) Act 2013 inserting 70B of the Criminal Law (Sentencing) Act 1988

<sup>87</sup> Section 11 of Statutes Amendment (Fines Enforcement and Recovery) Act 2013 inserting Section 70U of the Criminal Law (Sentencing) Act 1988

<sup>88</sup> Section 12 of the Statutes Amendment (Fines Enforcement and Recovery) Act 2013 amending section 71 of the Criminal Law (Sentencing) Act 1988

<sup>89</sup> <http://www.fines.sa.gov.au/ways-to-pay/payment-arrangements>

<sup>90</sup> <http://www.fru.nt.gov.au/>

The FRU was established under the Fines and Penalties (Recovery) Act 2001 and commenced operations in January 2002. It was established as a registry of the local court.<sup>91</sup> The FRU has a number of functions including:<sup>92</sup>

- the receipt and collection of fines and penalties;
- the making of orders for additional time to pay or to allow payment by instalments;
- the making of enforcement orders;
- the taking of enforcement action under this Act against fine defaulters;
- the administration of the write off policy for outstanding fines and penalties.

The 2001 Act makes provision with regards to the exchange of information. The FRU may also request information from an Agency relating to the address and assets of a fine defaulter and the Agency is authorised to provide information to the Unit. The information must be provided to the Unit without charge.<sup>93</sup>

Enforcement orders range from licence and registration suspension through to civil enforcement and community work orders.<sup>94</sup> Civil enforcement action that may be taken under the 2001 Act includes: issuing a property seizure order, issuing a garnishee order or registering a statutory charge on land.<sup>95</sup>

The FRU can issue a property seizure order for the seizure of personal property of the fine defaulter for the purpose of levying the amount payable by the fine defaulter against that property. This type of order can be made in the absence and without notice to the fine defaulter. A property seizure order is to be directed to a bailiff and provided to a bailiff for execution. If the property seizure order has not been executed within 12 months after it was made, the bailiff must return the order to the FRU to have it cancelled, but nothing prevents the issue of another order.<sup>96</sup>

The FRU can also make an order to garnishee debts, wages or salary of the fine defaulter. A garnishee order is an order made by the FRU for the attachment of a debt due or accruing to a fine defaulter or the continuous attachment of the wage or salary of the fine defaulter for the purpose of enforcing payment of the amount payable by the fine defaulter under an enforcement order.<sup>97</sup>

The FRU may make a Community Work Order requiring the fine defaulter to participate in an approved project in order to work off the amount of the fine that remains unpaid if the fine defaulter has not paid the fine or penalty required by the notice of the enforcement order and the Director believes that enforcement action will not be

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<sup>91</sup> Section 27 of the Fines and Penalties (Recovery) Act 2001

<sup>92</sup> Section 28 of the Fines and Penalties (Recovery) Act 2001

<sup>93</sup> Section 32 of the Fines and Penalties (Recovery) Act 2001

<sup>94</sup> <http://www.fru.nt.gov.au/>

<sup>95</sup> Section 67 (2) of the Fines and Penalties (Recovery) Act 2001

<sup>96</sup> Section 70 of the Fines and Penalties (Recovery) Act 2001

<sup>97</sup> Section 72 of the Fines and Penalties (Recovery) Act 2001

effective in satisfying the enforcement order.<sup>98</sup> The Community Work Order is to be served on the fine defaulter by a bailiff. The bailiff who served the order must provide to the fine defaulter information relating to the fine defaulter's obligations under the order and the consequences for failure to comply with the order.<sup>99</sup> The number of hours to be worked is to be calculated at the prescribed rate for the amount of the fine, including enforcement costs that remain unpaid. The number of hours of community work must not exceed 480 hours.<sup>100</sup> The FRU may revoke a Community Work Order if it is satisfied that the fine defaulter is not capable of performing work under the order or is not suitable to be engaged in such work. The FRU must revoke a Community Work Order if it received a report by the Commissioner of Correctional Services that the fine defaulter has failed, without reasonable excuse, to comply with the requirements imposed by the order.<sup>101</sup> If a Community Work Order is revoked following breach, the FRU may by warrant commit the fine defaulter into the custody of the Commissioner for Correctional Services for a period of imprisonment calculated in accordance with the 2001 Act.<sup>102</sup> The period of imprisonment is calculated as follows:<sup>103</sup>

- one day of imprisonment for each prescribed amount of the relevant outstanding amount;
- the period is not to be less than one day;
- the period is not to exceed three months.

The warrant for imprisonment may be executed by the Commissioner for Correctional Services or a person authorised by the Commissioner by serving a copy of the warrant on the fine defaulter. A member of the police force executing a warrant may delay the execution of the warrant to enable the fine defaulter to pay the relevant outstanding amount or seek the cancellation of the warrant.<sup>104</sup>

## 7 New Zealand

The Collections Unit of the Ministry of Justice is responsible for the collection and enforcement of fines, including court imposed fines, lodged infringements and reparation. They also provide enforcement services for unpaid civil judgements or orders at a creditor's request.<sup>105</sup>

### *The infringement fine process*

<sup>98</sup> Section 77 of the Fines and Penalties (Recovery) Act 2001

<sup>99</sup> Section 78 of the Fines and Penalties (Recovery) Act 2001

<sup>100</sup> Section 80 of the Fines and Penalties (Recovery) Act 2001

<sup>101</sup> Section 84 of the Fines and Penalties (Recovery) Act 2001

<sup>102</sup> Section 86 of the Fines and Penalties (Recovery) Act 2001

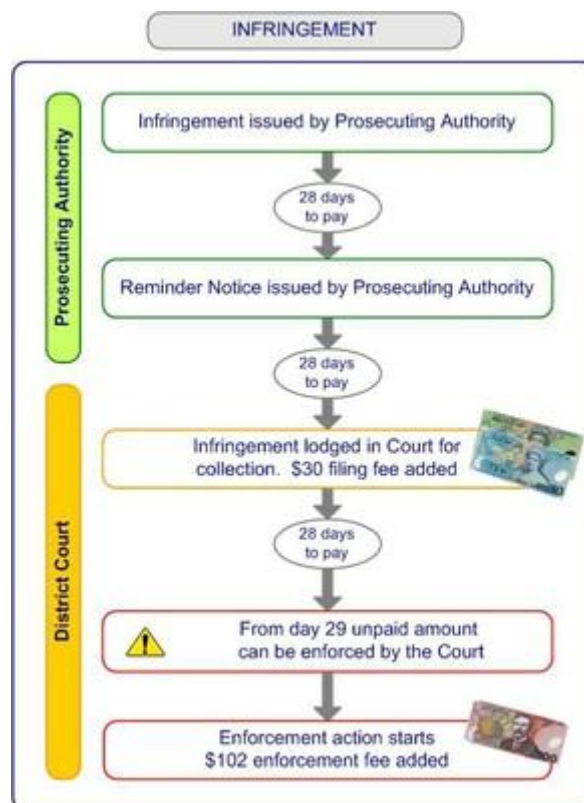
<sup>103</sup> Section 88 of the Fines and Penalties (Recovery) Act 2001

<sup>104</sup> Section 92 of the Fines and Penalties (Recovery) Act 2001

<sup>105</sup> For example, this may be when a claim is made at a tribunal hearing or civil court case and an order for payment is made for one person (the debtor) to pay the other person (the creditor).

Local councils, the police, and other authorities can issue an infringement fee for offences such as speeding, illegal parking or not registering a dog. They send an Infringement Reminder Notice in the post telling the person how to pay and how to dispute the infringement if the fined person disagrees with it and the due date for payment.

If the person does not pay the fine by the due date, it gets lodged at court for collection and becomes a fine. A court cost of \$30 is added to the original amount. The person will get a Notice of Fine telling them that the fine has gone to court and they have 28 days to pay the new fine amount to the court.<sup>106</sup>

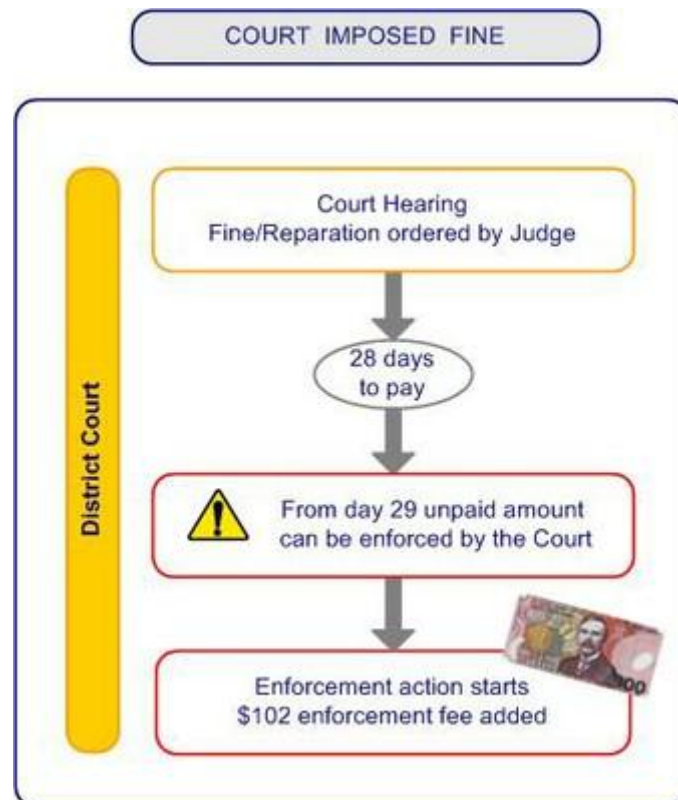


### *Court Imposed Fine*

A judge can fine a person in court for offences such as drink driving, disorderly behaviour or theft. The judge can also make an order as to how the fine is to be paid. The fined person will get a Notice of Fine confirming the details of the fine, additional costs and payment requirements. The person has 28 days from the day the fine was ordered to make the payment or make a payment arrangement with the court.<sup>107</sup>

<sup>106</sup> <http://www.justice.govt.nz/fines/fines>

<sup>107</sup> <http://www.justice.govt.nz/fines/fines>



If a person does not pay or make a payment arrangement by the due date, the court can take enforcement action to collect the outstanding amount. The court can:<sup>108</sup>

- Make compulsory deductions from wages, benefit or bank account;
- Seize and sell property;
- Stop the fined person travelling overseas;
- Arrest the fined person.

If the above enforcement actions are started, the Court adds an enforcement fee of \$102 to each fine being enforced. Unpaid fines can also affect credit, as the Ministry of Justice passes details of unpaid fines to credit reporting agencies. The Ministry of Justice can also suspend a driver licence for unpaid traffic fines and reparation. The suspension will remain in place until fines are paid or a payment plan is put in place.<sup>109</sup>

An alternative sentence such as a community order is an enforcement option and is normally only taken when other forms of enforcement have been unsuccessful. The court will normally undertake a property inspection to see if a person can resolve their fines through a warrant to seize property, before a summons is served for that person to appear for an alternative sentence. A fined person may make a voluntary

<sup>108</sup> <http://www.justice.govt.nz/fines/fines/what-happens-if-i-dont-pay>

<sup>109</sup> <http://www.justice.govt.nz/fines/fines/what-happens-if-i-dont-pay>



appearance at the local district courts' collections unit with evidence of financial circumstances to show why they are unable to make payment for their fines.<sup>110</sup>

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<sup>110</sup> <http://www.justice.govt.nz/fines/fines/common-questions/paying-a-fine>