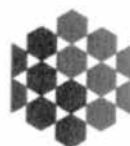


FROM THE OFFICE OF THE JUSTICE MINISTER



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Our ref: SUB/958/2015

From: Tim Logan
Date: 12 August 2015
To: Christine Darrah

JUSTICE (No. 2) BILL: FINANCIAL PENALTIES: DEFAULT, COLLECTION AND ENFORCEMENT LEGISLATION: EQUALITY AND REGULATORY IMPACT CONSULTATIONS

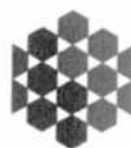
Business Areas: Criminal Justice Policy and Legislation

Issue: To provide the Justice Committee with a report on the Department's Equality and Regulatory Impact Assessment consultations for Financial Penalty Default, Collection and Enforcement Legislation.

Restrictions: Not applicable.

Action Required: Paper for consideration by the Justice Committee at its meeting on 10 September 2015.

Officials Attending: None. This is a written paper.



Introduction

The Minister of Justice is providing the Justice Committee with his report on the Equality and Regulatory Impact Assessment consultations he has undertaken on his legislative proposals in respect of fine default, collection and enforcement. The consultations began on 18 May and ended on 10 July.

Equality assessment

2. In very broad terms the Department's equality assessment conclusions of the legislative proposals were that:
 - a) The package as a whole is fair and equal to all Section 75 Groups. Its purpose is to prevent default; to provide collection and increased community supervision options; and to reduce the potential for imprisonment.
 - b) The package is built around the independence of the Courts; strict legal requirements and Statutory Guidance for Collection Officers; flexibility in appropriate circumstances; and full opportunities for representations and appeals.
 - c) Some of the proposals will have the potential to bite on certain groups – not Section 75 Groups – but, for example, those who may have lower incomes and might, in the past, have found it difficult to make payments.

The package will have extensive mitigating provisions to allow, for example, Collection Officers to agree additional time to pay, to consider opportunities for managed deductions from income, and for Courts to have additional community alternatives available. Where more stringent actions are required these would only be available to Courts.

Regulatory Impact

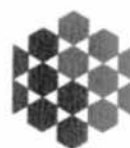
3. For the Regulatory Impact Assessment the Department identified no costs to the voluntary sector and three costs to the private sector – two of which are fully mitigated. Private Sector impacts will be on the legal profession; employers; and banks. The conclusion was that the Bill:

- a) will have some minor cost impacts on the legal profession by reducing our outlay for Fine Default Hearings - though we saw these as savings to the public purse rather than extra charges that the legal profession will have to meet;
- b) will have some direct costs to employers (some of whom may have to implement attachment of earnings orders) and banks (should they be required to freeze accounts) – though we saw these as being used sparingly with the proposals allowing employers and banks to add administration charges to the defaulted amount; and
- c) in overall terms that neither of these groups will therefore face any additional costs.

Responses to the consultations

4. The Department received three responses to the consultations from the Police Service of Northern Ireland; Newry, Mourne and Down District Council; and the Department of Justice and Equality in the Republic of Ireland.

5. PSNI was keen to see the creation of an effective Fine Collection and Enforcement Service which should have sufficient powers and access to information to deliver an accountable service designed to minimise the impact on vulnerable people. PSNI noted the impact of fine default levels on young male offenders and that a large number of prison receptions are for those on low incomes. PSNI also noted the disproportionate percentage of women going into custody for fine default



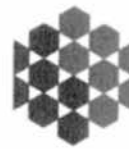
when compared to men and that non-payment of a fine for non-payment of a TV licence was more prevalent amongst women. PSNI concluded that offender income and capacity to pay should be factored in at point of sentence which may in itself merit further exploration.

6. Newry, Mourne and Down District Council welcomed the potential savings that a new collection and enforcement service would bring. The Council noted that the increased opportunities for community-based work may have an additional impact on other bodies and agencies including local Councils. As a body committed to working towards creating safer communities, the Council requested that any savings under the legislation are used for these purposes.

7. The Department of Justice and Equality did not comment on the Department's proposals or assessments, rather they described similar provisions that had been recently enacted in the Republic of Ireland. The Fines (Payment and Recovery) Act 2014 was signed into law on 16 April 2014 introducing payment of fines by instalment, recovery orders, attachment of earnings order, community service for default and ultimately imprisonment. Work is ongoing towards implementation which is expected to be complete later in 2015.

Conclusion

8. In overall terms, the Department's assessments remain that in terms of the equality assessment, with the mitigations provided in the Bill, the provisions meet its Section 75 requirements. Also that the proposals make important savings to the public purse with limited impact on the legal profession; and, based on cost-recovery provisions, no impact on employers, banks or financial institutions. Subject to any amendments that may be brought forward as the Bill progresses through the Assembly, the Justice Minister is content to proceed with the legislation as proposed.



Next steps

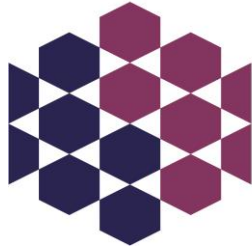
9. Given the limited number of responses to both consultations the Minister has taken the view that a combined report on responses dealing with the equality and regulatory impact assessments would be preferable. The combined report is attached for the Committee's consideration.

10. The Justice Minister trusts that the Committee finds this report helpful as it begins to scrutinise the draft Bill. The Minister will also publish the Report on Responses and make it available to those who responded to the consultation.

11. If the Committee is content, officials will be happy to provide further advice to the Committee as required during the scrutiny stage of the Bill.

TIM LOGAN
DALO

Enc. Proposals for Draft Legislation on The Collection and Enforcement of Financial Penalties: Equality and Regulatory Impact Assessments: Report On Responses August 2015



Department of
Justice

www.dojni.gov.uk

**PROPOSALS FOR DRAFT LEGISLATION ON THE
COLLECTION AND ENFORCEMENT OF FINANCIAL
PENALTIES: EQUALITY AND REGULATORY IMPACT
ASSESSMENTS**

REPORT ON RESPONSES

AUGUST 2015

Criminal Law Branch
Massey House
Stormont Estate
Belfast
BT4 3SX

Contents

- 1. Introduction**
- 2. Outcome of the consultation**
- 3. Departmental response**
- 4. Conclusions and Way Forward**

1. Introduction

Background

1.1 In May of this year, the Department of Justice published two consultation papers on its proposals for draft legislation on the collection and enforcement of financial penalties. The consultations provided the Department's Equality and Regulatory Impact Assessments of the proposals to be included in a prospective Justice Bill to be brought before the Assembly.

1.2 The purposes of the consultations were to describe the Department's legislative proposals ahead of publication of formal legislative proposals and to take views on equality and regulatory impact issues. The Department considered it important to share the detail ahead of formal production of the Bill to ensure that the full package would be available for consultation.

1.3 The creation of the legislation would be by way of a combination of primary and secondary legislation. Not all of the detail of the provisions would in all likelihood appear on the face of the Bill and supporting Regulations would be required. The Department saw it as important to describe the scheme in as much detail as possible for the purposes of consultation.

The consultation

1.4 The consultations began on Monday 18 May and closed on Friday 10 July. Full details are available on the [DOJ website](#). The Department's draft legislation was subsequently published as the Justice (No. 2) Bill and was introduced into the Assembly on 30 June. It is available on the Northern Ireland Assembly's [website](#).

2. Outcome of the consultation

Respondents

2.1 The consultations produced a very limited response – only three responses were received. The respondents who provided observations were, in the order received:

- a) The Department of Justice and Equality from the Republic of Ireland;
- b) The Police Service of Northern Ireland; and
- c) Newry, Mourne and Down District Council.

2.2 Given the limited numbers responding and the overlapping nature of the comments, the Department has therefore decided to produce a single composite report on both consultations.

Responses

2.3 Taking each of the three responses in turn:

2.4 The Department of Justice and Equality did not comment on the Department's proposals or assessments, rather they described similar provisions that had been recently enacted in the Republic of Ireland. The Fines (Payment and Recovery) Act 2014 was signed into law on 16 April 2014 introducing payment of fines by instalment, recovery orders, attachment of earnings order, community service for default and ultimately imprisonment. Work is ongoing towards implementation which is expected to be complete later in 2015.

2.5 The Police Service of Northern Ireland was keen to see the creation of an effective Fine Collection and Enforcement Service which should have sufficient powers and access to information to deliver an accountable service designed to minimise the impact on vulnerable people. PSNI noted the impact of fine default levels on young male offenders and that a large number of prison receptions are for those on low incomes. PSNI also noted the disproportionate percentage of women

going into custody for fine default when compared to men and that non-payment of a fine for non-payment of a TV licence was more prevalent amongst women. PSNI concluded that offender income and capacity to pay should be factored in at point of sentence which may in itself merit further exploration.

2.6 Newry, Mourne and Down District Council welcomed the potential savings that a new collection and enforcement service would bring. The Council noted that the increased opportunities for community-based work may have an additional impact on other bodies and agencies including local Councils. As a body committed to working towards creating safer communities, the Council requested that any savings under the legislation are used for these purposes.

3. Departmental response

3.1 The Police Service of Northern Ireland expressed concerns about the impacts of financial penalties on young males; the differing patterns of default with regard to women; and noted the need to ensure that offender income and capacity to pay should be factored in at point of sentence.

3.2 In terms of the impact on young males, the Department is very aware of offending patterns and that this particular group makes up the majority of those appearing in courts. The Department is keen to ensure that as a group they are not at any particular disadvantage and addresses this in two main ways in terms of strategy and delivery:

- a) Strategic actions and activities exist at an overarching level to prevent offending, divert offenders, and provide for rehabilitation when the justice system is engaged. The existence of a cautioning system to divert young offenders from possible prosecution; existence of the Youth Justice Agency; and the Department's youth justice strategy focuses, inter alia, on early intervention, support, and the prevention of offending or re-offending are examples of those arrangements.
- b) The proposals themselves will deliver additional, positive options for young offenders. The proposals will, for example, remove custody solely for fine default for those under 18 years of age and will increase the availability of Supervised activity Orders and Attendance Centre Orders as community-based alternatives to custody.

3.3 In terms of the issues around women and fine default the Department is aware of the differing patterns between males and females. Again the Department is keen to ensure that, at a strategic level, women offenders are properly provided for and that within the detail of the proposals, both men and women benefit from the package.

- a) At a strategic level, two key Departmental initiatives are important: an offender management strategy and taskforce for reducing and responding to re-offending; and, to reflect what can be the differing needs of women in the justice system, a strategy for the management of women offenders. The 2010-2013 strategy to manage women offenders and those vulnerable to offending behaviour is available at the following [link](#). The refreshed strategy entitled Reducing Offending Among Women 2013- 2016 is available at the following [link](#).

- b) Within the proposals themselves, the Department's legislation will see an expansion in the range of options available to prevent default in the first instance; the ability of both the court and the collection officer to allow, for example, additional time to pay, payment by instalment, and voluntary deduction arrangements in the first instance before a more compulsory approach is considered.

Designed to tackle the problem of relatively minor offences leading to low level fines and potential imprisonment – the types of case that may be perceived as more prevalent amongst women offenders – the Department's proposals are intended to prevent imprisonment where it can be avoided. The increase in the availability of community-based options is another feature of the package that the Department believes will assist in changing any gender-based patterns.

3.4 In terms of ensuring that offender income and capacity to pay should be factored in at point of sentence, the Department is keen to stress that sentencing is a matter for the independent judiciary. Having said that, existing legislation allows for offender means to be considered where it is available. The creation of additional provisions as proposed by the Department will not only broaden the Court's options but will also allow the Collection Officer to adopt the most appropriate collection method.

3.5 The offender's means will, for example, play an important part in deciding if additional time or payment by instalments would be appropriate or if a deductions

order approach would be the best way to collect the penalty. Courts will also be able to consider the offender's situation on conviction and if appropriate allow a community-based option to be applied at point of sentence – an option that has not been previously available.

3.6 Newry, Mourne and Down District Council welcomed the increased opportunities for community-based work and indicated its support and commitment to such work. The Department welcomes the Council's commitment to safer communities and the close working it has with the Department by way of its Policing and Community Safety Partnership.

3.7 The Council commented on one aspect of the financial impacts of the proposals requesting that any savings under the legislation would be used for safer community purposes. The Department wishes to stress that the savings to be gained from the proposed arrangements will not be directly cash-releasing but will largely be realised in terms of the freeing up of valuable justice system resources.

3.8 Both police and prison resources will be freed up to allow services to be focused more appropriately to the benefit of communities. A civilian-based collection and enforcement service will largely replace the role currently played by police officers in relation to fine enforcement and will allow police to better target their efforts at crime prevention and detection. Prisons will also be able to focus on more serious offenders and their rehabilitation again to the ultimate benefit of communities.

3.9 The Department of Justice and Equality did not comment on the Department's proposals or assessments but simply described similar provisions that had been recently enacted in the Republic of Ireland by way of the Fines (Payment and Recovery) Act 2014.

3.10 The Department welcomes the information provided and notes the similarities with its own proposals in terms of payment of fines by instalment, recovery orders, attachment of earnings order, community service for default and ultimately imprisonment if that were to be the final outcome.

4. Conclusions and way forward

4.1 In considering both the Equality and Regulatory Impact Assessments the Department's conclusions are as follows.

Equality assessment

4.2 In very broad terms the Department's equality assessment conclusions are that:

- a) The package as a whole is fair and equal to all Section 75 Groups. Its purpose is to prevent default; to provide collection and increased community supervision options; and to reduce the potential for imprisonment.
- b) The package is built around the independence of the Courts; strict legal requirements and Statutory Guidance for Collection Officers; flexibility in appropriate circumstances; and full opportunities for representations and appeals.
- c) Some of the proposals will have the potential to bite on certain groups – not Section 75 Groups – but, for example, those who may have lower incomes and might, in the past, have found it difficult to make payments.
- d) The package will therefore have extensive mitigating provisions to allow, for example, Collection Officers to agree additional time to pay, to consider opportunities for managed deductions from income, and for Courts to have additional community alternatives available. Where more stringent actions are required these would only be available to Courts.

Regulatory Impact

4.3 For the Regulatory Impact Assessment the Department identified no costs to the voluntary sector and three costs to the private sector – two of which are fully mitigated. Private Sector impacts will be on the legal profession; employers; and

banks. The Department's Regulatory Impact Assessment conclusions are that the proposals:

- a) will have some minor cost impacts on the legal profession by reducing our outlay for Fine Default Hearings - though these will be savings to the public purse rather than extra charges that the legal profession will have to meet;
- b) will have some direct costs to employers (some of whom may have to implement attachment of earnings orders) and banks (should they be required to freeze accounts). The provisions however will be structured to ensure that they are to be used sparingly and will allow employers and banks to add administration charges to the defaulted amount; and
- c) that neither of these identified groups will face any additional costs.

Way forward

4.4 In overall terms, the Department's assessment is that in terms of the equality assessment, with the mitigations provided in the Bill, the provisions meet its Section 75 requirements. In terms of Regulatory Impact, the Department's assessment is that the proposals will make important savings to the public purse with limited impact on the legal profession; and, based on cost-recovery provisions, no impact on employers, banks or financial institutions.

4.5 The Department welcomes the comments made in the consultation and will undertake to:

- monitor the operation of the legislation and the new service as it rolls out; and
- continue its commitment to community safety and community based alternatives to imprisonment.

4.6 On that basis and, subject to any amendments that may be brought forward as the Bill progresses through the Assembly, the Justice Minister is content to

proceed with the legislation as proposed. The Minister thanks those who contributed to the consultation.

Further information

4.7 For any further information on the consultation or this report on responses please contact:-

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Department of
Justice

www.dojni.gov.uk

Proposals for draft Legislation on the Collection and Enforcement of Financial Penalties:

Equality Assessment Consultation

Comments are invited and should be made to the following address by
Friday 10 July 2015

**Criminal Law Branch
Criminal Justice Division
Department of Justice
Massey House
Stormont Estate
Belfast
BT4 3SX**

April 2015

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1. Introduction

1.1 For a number of years there has been an increasing number of people going to prison for the non-payment of a fine or financial penalty. Figures show that, at its height over the three period 2010-2012, between six and seven thousand¹ people went to prison for non-payment with more people going to prison for default than for substantive criminal offences in their own right.

1.2 Most of those going to prison for default do so for only a few days for relatively minor offences. Most are for motoring offences – typically driving without a licence or insurance - and most of those (almost 60%) are young males under 30 years of age. Some of those who go into prison find it difficult to pay; others may actively choose not to. For all offenders who end up in custody however there is the impact on a human level that even a short custodial period can have on them as individuals and on their families.

1.3 There are also the operational impacts on the Northern Ireland Prison Service and the Police Service of Northern Ireland in terms of the prison population and fine enforcement procedures.

The need for change

1.4 The Minister of Justice took the view that change was required – change that would help the offender avoid default; improve the collection process; reduce committals to prison; and at the same time ensure that justice and compliance with Court decisions is seen to be done.

1.5 The need for change was further strengthened as a result of the “McLarnon” judgment in the High Court of Justice in Northern Ireland No: [2013] NIQB 40 which determined, amongst other matters, the need for those in default and potentially facing custody, to be given a further opportunity to have their ability to pay reviewed.

¹ The Northern Ireland Prison Population 2013 Department of Justice Research and Statistical Bulletin 15/2014

The “McLarnon” judgment resulted in the issue and execution of fine warrants being suspended pending the introduction of a “Fine Default Hearing” Court procedure which was introduced in June 2014.

Consultation

1.6 The Department conducted two policy consultations to seek public views on what improvements might be made. The aim of those consultations was to develop systems that would improve the people’s ability to pay or clear their fines in the first instance; to increase community-based opportunities for clearance; and to reduce the levels of imprisonment for non-payment.

1.7 Alongside that was an intention to improve the effectiveness of fine collection and enforcement procedures. By and large enforcement falls to police officers who were experiencing significant numbers of fine warrants being issued each year for execution.

1.8 A court notification system had been introduced to remind offenders of impending default - not only to increase payment levels but also to reduce the need for warrants to be issued. The Department wanted to explore the opportunity for a more fully civilianised approach that would free up police officers for more appropriate front-line duties.

1.9 In 2011/12 the Department sought views on how better to target the fine as a disposal; how better to encourage payment; how to deal with default; and what type of service might be established. The full consultation document and report on responses are available on the Department’s web-site at the Public Consultations, Archived Consultations page.

1.10 In 2014 the Department published further proposals which suggested an expanded use of community supervision; considered options for freezing and directly accessing bank accounts in certain circumstances; considered the seizure of personal vehicles in certain cases of default; and proposed the removal of prison remission for those who might nevertheless end up in custody for wilful non-

payment. The full consultation document and report on responses are also available at the Department's web-site consultations page.

Policy outcome

1.11 As a result of those consultations, the Department developed a set of policy proposals to bring forward by way of legislation. Broadly speaking the proposals were for a model in which collection would become a civilian-based system largely removing the police from their current enforcement role. The model would create Collection Officers who will have a number of powers under the authority of courts to recover money. The model would also provide courts with more community based options instead of committal to prison.

1.12 The Department then sought and received approval from the Northern Ireland Executive to create this new legislation. That legislation is currently being drafted with a view to bringing it to the Northern Ireland Assembly for its consideration.

Equality assessment

1.13 The purpose of this consultation is to describe the Department's legislative proposals and to take views on the Department's equality assessment of the package. Having consulted and reported twice on its policy proposals, the consultation now seeks views on the equality aspects of the proposed legislation.

1.14 The Department considers it important to share the detail at this stage to ensure that the full package is available for consultation. That is because it is likely that the creation of the legislation will be by way of a combination of primary and subordinate legislation. Not all of the detail of the provisions might appear on the face of a Bill and it is likely that a series of supporting Regulations will be required. The Department sees it as important to describe the scheme in as much detail as we can at this stage.

1.15 The document opens with a profile of those who are fined by the Courts, their characteristics and offences, and reviews similar details of those who go into default. These are the key groups on whom the proposals may impact. The document then considers each component of the package in turn, reviewing available data and

possible impacts. It closes with the range of provisions and initiatives the criminal justice system has in place more widely to ensure a fair and just system.

1.16 The intention is that the Department will publish in due course the outcome of this consultation and provide it for consideration as part of the upcoming legislative scrutiny process. Subject to the Justice Committee and Executive Committee's considerations the Department would intend to publish and introduce a draft Fines and Enforcement Bill before the Assembly's Summer Recess in July 2015.

1.17 Details on how to respond to the current consultation are provided at Chapter 13 with the closing date for responses being Friday 10 July 2015.

2. Court sentencing, fines and fine default

Court sentencing and fines

2.1 Across the three year period 2011-2013² a total of 112783 people were prosecuted in Northern Ireland Courts with 93543 (83%) being convicted. Using 2013 as the most recent year, 24077 (84%) of convictions were for males and 4744 (16%) females. In terms of ages, 14923 (52%) were under 30 years of age and 10839 (38%) between 30 and 50. The largest single grouping of convictions in Northern Ireland Courts is males under the age of 30.

2.2 In terms of offences committed of the 28831 convictions secured in all Courts in 2013, the largest grouping was for motor offences – 12566 (44%) in total. Offences involving violence were the next largest (3870: 13%) followed by public order offences (3277: 11%); theft (2476: 9%); drugs (1873: 6%) and criminal damage (1557: 5%).

2.3 In terms of sentencing, in 2013 the most used penalty in Northern Ireland courts was the fine. In 2013, of the 28831 convictions secured, 15725 (55%) had a monetary penalty imposed the vast majority of whom – around 80% - were male. Most financial penalties imposed are for amounts of up to £200 - 10665 (68%); with 4855 (31%) from £201-£500. In total, 15520 (99%) are for fines of up to £500.

Fine default

2.4 Figures over a number of years show that over 50% of fines are paid in the first instance and a further 20% are paid as a result of follow up activity, 7% are remitted and 9% are cleared by imprisonment.

2.5 There are two methods of analysing figures relating specifically to fine default and imprisonment: the number of *individuals* who go into custody for default; and the number of *offences* that they have committed. The two differ with the latter always showing higher levels than the former.

² Court prosecutions, Convictions and Out of Court Disposals Statistics for Northern Ireland 2013
Department of Justice Research and Statistical Bulletin 14/2014

2.6 A number of defaulters default on more than one fine at a time therefore the total number of defaulters – 6360 across the three year period 2010 (1926); 2011 (2195) and 2012 (2239) – is considerably lower than the number of offences involved – 14131 across the same period.³

2.7 In terms of gender, 90% of fine defaulters are male and 10% female. In terms of age, 56% are under 30 and 38% between 30 and 50. The largest single grouping of fine default receptions into prison is males under the age of 30. 52% of all fine default receptions fall into that group. No child under 18 years of age served a custody period for default in 2013.

2.8 In terms of religion, across the three year period 4624 (33%) of prisoners received for fine default registered their religious background as Protestant and 7895 (56%) as Roman Catholic. 1615 (11%) stated no religious affiliation. This compares to a non-default reception profile of 29% Protestant; 57% Roman Catholic; and 14 % none. For both of the main religious groups, the majority were males (89% of Protestants; 91% of Roman Catholics) and most were for fines of up to £200 (60% for both groups) and 94% up to £500.

2.9 In terms of the offences for which defaulters go to prison, 53% across the three year period were for motoring offences; 9% were for public order offences; 6% involved violent offences and 4% were for non-payment of a fine imposed for TV licence evasion.

2.10 When analysed according to gender, in terms of prison committal, 54% of males' offences were motoring and for females this was 42%. 3% of males' default offences were for non-payment of a fine imposed for not having a television licence as were 20% of females. Analysing the figures in another way, across 2010-2012, of the 615 committal offences for non-payment of a TV licence fine, 56% were males and 44% females.

³ Source tables used are provided at Annex A to this paper. For convenience and to smooth out any year on year changes, figures are aggregated across 2010-2013. Figures also relate to the period prior to the McLarnon judgment as a result of which the execution of fine warrants was temporarily suspended. See paragraph 1.5 above.

2.11 In terms of the amounts of fines in respect of which default occurs, 60% were for fines of £200 or less – a proportion that occurs both for males and females. 34% were for fines between £201-£500, again the same percentages according to gender.

2.12 Across each of the three years under review, on an average day there were 30 people in prison for default serving and average of four days in custody. Each defaulter had defaulted on an average of 2.2 fines.

Data sources

2.13 A range of data sources are used and referred to throughout this consultation document. Annex A provides key data specifically in terms of fines and fine default. Other statistical publications are drawn on for particular aspects of the proposed package and many are directly referenced. All of the data sources are referenced at Annex B to this consultation.

3. The Proposed Legislative Model

3.1 Having established the scale of the issue, the Department determined that new legislation would be required to improve and assist people in the payment of financial penalties; to help prevent default and to reduce the numbers ending up in prison. A legislative model that embraced both the Court and operational collection processes would be required.

The Court

3.2 The legislative model the Department is proposing is based on the Court focusing on its sentencing role in terms of setting appropriate financial penalties; reflecting its decisions in a “Collection Order” which will contain the collection terms; to be followed up by a “Collection Officer” who then collects the penalty(ies) under the terms of the Collection Order.

3.3 Under the proposal, where a Court imposes a fine or other financial penalty, it sets amount(s) to be paid, the time allowed for payment, and any decisions made in terms of how it should be paid by way of a “Collection Order”. The Collection Officer, as part of a civilian-based collection service, will then follow up on payment and enforcement if required. The intention is to make the Collection Officer the fulcrum of fine collection and enforcement allowing Courts to focus on their core sentencing function.

Collection

3.4 Once a Collection Order is in place the Collection Officer will assume formal responsibility for collection and enforcement. The Collection Officer will therefore have certain statutory powers to give effect to the Court’s decision. The Officer’s first priority, however, will be to collect the fine without recourse to statutory enforcement. The Officer will firstly explore the person’s income status and will be able, for example, to agree and grant extensions of time or payments by instalment.

3.5 If extension or instalments do not prove successful, the Collection Officer will have the ability to select an appropriate collection method. For example, if default on an agreed instalment plan were to occur, a “deductions order” could be explored with the offender. If that were the route to be followed, the Collection Officer would contact either the Department of Social Development to consider securing deductions from benefits or the offender’s employer to secure deductions by way of attachment of earnings.

Default

3.6 If default on either of these deductions orders were to occur, the Collection Officer would then be able to refer the matter back to the Court for review. That could be to consider a Bank Access Order (BAO) or Vehicle Seizure Order (VSO). The BAO and VSO will be “last resort” collection options to be used sparingly; largely in cases of wilful or deliberate non-payment; and only under the specific authority of the Court.

3.7 Only after the Collection Officer has played his/her part in the collection process, would a default sanction be pursued by the Court. If default was to occur the offender will be offered the opportunity to return to court for a Default Hearing to have his/her circumstances reviewed. That could result in a BAO, VSO, a community service option or ultimately committal to prison. Each of these is reserved for the Court to decide upon and are no available to the Collection Officer.

Children

3.8 Separate arrangements will be in place in the case of children who are fined to reflect the fact that the law on imposing fines on children under 18 reflects their different circumstances. Currently a child under 16 years of age cannot be fined in their own right and if a fine were to be appropriate it must be imposed on the parent or legal guardian. For a child aged 16 or 17 the court can, if it is appropriate, fine the child him/herself or it can fine the parent or legal guardian in his/her place.

3.9 The Department's proposals as to how the collection regime will apply to children will reflect those underpinning requirements in law. We will not apply deductions orders to deduct either from benefits or earnings. The provisions will however be available in respect of any parent or legal guardian who has the child's fine applied to them instead.

Balance

3.10 The Department sees it as vital to bring forward a balanced set of proposals and views the package as achieving that aim. A range of balances are built into the proposed regime. Balances:

- a) Between support and the prevention default on the one hand, and deterrence from default on the other;
- b) Between those who can't pay and those who might choose not to pay; and
- c) Across options of straight or managed payment; community based options; and, at the end of the process, the potential for custody; and
- d) Between the requirements placed on offenders and the requirements of Courts; and
- e) Between the needs of the victims of crime; confidence in the justice system; governance and needs of the Northern Ireland Assembly in the recovery of monies for the public purse.

3.11 The Department believes that its proposals provides an appropriately balanced package.

Summary

3.12 The following Chapters explain in more detail on the role of the Collection Officer, the content of the Collection Order, and the various powers we wish to create along with individual equality assessments.

4. The Collection Regime

The Collection Officer

4.1 The Department's proposed legislation will create the position of a Collection Officer whose function it will be to implement the Collection Order as set by the Court. The role of the Officer will be to secure compliance with Collection Orders and as part of that to provide information and advice to offenders as regards the payment of penalties.

4.2 The Collection Officer will have three general functions: an advisory function whereby he/she may provide information regarding the payment of a penalty; an administrative function whereby he/she will take the necessary steps to put into effect any collection requirements; and in the event of default on payment he/she will have certain collection powers and/or may refer back to the Court.

4.3 The Collection Officer will therefore either implement any collection decisions made by the Court at point of sentence; and in the event of default will consider and, where appropriate, implement in conjunction with the offender any collection decisions that he/she has authority to undertake. The Collection Officer will only be able to exercise such authorities where a Collection Order has been made by a Court.

4.4 Given the nature of their functions and the powers available to them, Collection Officers will be formally designated in law. The intention is that the Department will specifically designate members of its staff to be Collection Officers.

4.5 Where a Collection Order has been made, and default occurs, the Collection Officer will be able to:

- a) In the first instance and in order to ensure that correct decisions are made, to require the offender to provide his/her details and information about finances, bank account and vehicle ownership; and
- b) Agree an extension of time to pay or arrangements for payment by instalment if that would assist the offender.

4.6 If extensions were not to prove appropriate or successful, in certain circumstances the Collection Officer would then be able:

- a) To impose an order deducting payment from earnings or apply for an order deducting payment from benefits;
- b) If further actions were required, the Officer would have the authority to freeze an offender's bank account for the unpaid amount on a temporary basis and refer the matter back to the Court; or
- c) To refer the matter back to the Court to consider a full BAO, VSO or any other enforcement option available to the Court.

4.7 Whereas a deductions application made by the Court at point of sentence would have been with the offender's consent, if a Collection Officer was to consider using a deductions option under his/her own authority at this later stage, the Officer could, if necessary, impose one without offender consent.

4.8 The Collection Officer will have previously done all that he/she can to collect the penalty by allowing extra time or instalments. He/she will also have sought to implement a deductions order with consent but if any of those steps have, for example, been ignored or obstructed then the Officer will need the power to move to a deductions route. The alternative would be to refer back to the Court where, for example, a community based order or, after that, imprisonment could be considered.

Collection Officer Guidance

4.9 Given the importance of the role and functions of the Collection Officer, the Department considers it important that these should be subject to Statutory Guidance as a requirement of the legislation. Such guidelines will be designed to direct Collection Officers' minds to the relevant factors to be taken into account – or to be excluded from consideration – when choosing collection options or making decisions. The guidelines will have an important part to play in the Officer's decision-making process and the proposal to require these in statute is designed to strengthen their importance.

The Collection Order

4.10 The Collection Order will be available to Courts when imposing a financial penalty; it will set out the arrangements for payment; and will give responsibility for collection of the sums to the Collection Officer. The sums which can be included in a Collection Order are:

- a) Fines - including fines imposed elsewhere in the United Kingdom or in EU Member States that are transferred to, and mutually recognised (in EU terms), in Northern Ireland;
- b) Unpaid fixed penalties or penalty notices that have been registered with Courts for enforcement as fines;
- c) Compensation Orders;
- d) Offender Levies; and
- e) Costs and other party costs in criminal cases.

The Court

4.11 Courts will retain their full and independent role in the consideration of cases, sentencing options when using financial penalties, and when assessing and setting the amounts to be paid and the payment requirements. Apart from allowing the Collection Order to be made, the legislation will make no changes to the Court's central judicial functions.

4.12 The Court also will be given additional powers and sentencing options to reduce the potential for default and any subsequent imprisonment for non-payment. At the point of sentence, if the offender consents, the Court will be able to impose an attachment of earnings order or direct that an application be made (by the Collection Officer) for a deductions from benefits order. The offender will then be able to work with the Collection Officer to better manage his/her payments and thereby potentially avoid default.

4.13 The Court will also have the power to impose a community service based Supervised Activity Order (SAO) at point of sentence where it is practical and appropriate. Imposing a SAO at point of sentence will be subject to the Court being

satisfied that the offender has insufficient means to pay the penalty and that any other option - such as additional time to pay or a deductions order - would be inappropriate. The effect will be to increase the opportunity and timeliness of community service in place of a penalty that could not otherwise be paid.

Default Hearings

4.14 After the Collection Officer has exercised his/her authorities under the Collection Order in attempting to collect the fine, if those steps have been unsuccessful and the offender is in default of payment, the Officer will refer the case back to the Court. The Court will then allow the offender to make representations and advise of any changes in circumstance. At that final court hearing, the Court will still be able to allow further time to pay or payment by instalments or make a deductions order with or without consent at this stage.

4.15 The Court will also be able to make a Bank Access Order or Vehicle Seizure Order; make a Supervised Activity Order with or without consent; order a distress warrant to seize offender property; or ultimately commit the offender to prison in default. The Court could also remit the fine or any part of it if it thought it appropriate to do so.

Appeals

4.16 Appeals against Collection Officer decisions will be available and will be considered by a magistrates' court. Appeals against a Court's collection decision will fall to the next highest tier of Court – a magistrates' court's decision will be appealable to the county court; an appeal against a decision of the Crown Court will fall to the Court of Appeal.

Transitional cases⁴

4.17 The new collection regime will apply to all cases from the date on which the powers are commenced. The detail of what can be included in a Collection Order

⁴ "Transitional cases" are those cases that are already within the investigation and prosecution process when any new legislation comes into effect. New legislation needs to ensure that such cases are mapped in in a fair and appropriate way.

being made by the Court will however differ based on the point to which a case may have already progressed. In certain circumstances for example, deductions orders will be available whereas Bank Access Orders and Vehicle Seizure Orders will not. Each of the individual provisions in the following chapters explains the position with regard to transitional cases.

Equality Assessment

4.18 The collection regime as proposed will see a new and revised procedure for the collection and enforcement of financial penalties. It will retain the independence of the Court in the sentencing process and introduce additional options and safeguards in the collection process. As a new procedure – and the following chapters will assess the component parts - the collection regime will be available and applicable to all irrespective of Section 75 category – albeit with some specific arrangements for children.

4.19 The Department's view is that as a process, the new arrangements will be fair and just to all for a range of reasons. The proposed regime:

- a) maintains the independence of the Courts in the sentencing and appeals process;
- b) retains the Court's statutory requirements to assess means, where possible, in the setting of financial penalties and has the potential to increase the financial information available to the Court in making its determination;
- c) retains the statutory priorities that the Court must follow if it is imposing a number of financial penalties; and
- d) in recognition of the importance of victims, compensation orders will continue to take priority in determining financial penalties followed by the offender levy (monies from which fund victim services) followed then by the fine and any other amount to be paid.

4.20 The collection regime will bring increased opportunities for all to avoid or prevent default. The regime will:

- a) Create Collection Officers with both an advisory role and - if required - statutory authority to help offenders manage the payment and clearance of their penalties;
- b) Ensure that Collection Officer authorities are properly founded by ensuring they are designated in law; subject to Statutory Guidance; with Collection Officer decisions subject to appeal; and
- c) Increase not only the options for payment both at Court and Collection Officer level but also the steps that must be taken before an offender can be dealt with by a Court for default.

4.21 In terms of the scope of the proposals, the regime will:

- a) Expand the range of financial penalties to which the arrangements will apply.
- b) Cover not only fines but will offer the same opportunities for payment management to compensation orders, offender levy charges, unpaid fixed penalties and penalty notices that are registered as fines and any cost amounts imposed.
- c) Cover and be available in respect of any incoming penalties from the rest of the United Kingdom, the Republic of Ireland, or indeed the rest of the EU.

4.22 More generally the Collection Order regime will divert offenders away from imprisonment; secure increased payment levels for the benefit of society as a whole; and increase confidence in the justice process.

4.23 The Department's assessment is that, as a new procedure, all Section 75 groups will have equal and beneficial access to the collection regime as proposed.

5. Deductions from Benefits Orders

5.1 On considering a case for the first time, the Court will have available to it, where the offender consents, the option to direct an application to the Department of Social Development (DSD) for a Deduction from Benefits Order. It will also have this power available to it when an offender defaults on payment and the Collection Officer has referred the case back to the Court for further consideration. At that point the Deductions from Benefits Order application can be made by the Court without consent. The legislation will then allow the Collection Officer to take forward the application to DSD for money to be deducted from specified benefits (see below).

5.2 Neither the Court nor the Collection Officer will have specific authority to directly impose a deduction from benefits order. They will only have authority to make application to DSD for deductions to be made and it will be under social security regulations that any deductions application will be considered. Subject to drafting, the legislation proposed by the Department will allow the amendment of relevant regulations to insert the collection of court based financial penalties into the existing deductions regime.

The existing deductions regime

5.3 There is a well-established scheme across the United Kingdom which regulates the deduction of monies from benefits to meet specific debts. This scheme is known as the Third Party Deduction (TPD) Scheme and is administered locally by the Northern Ireland Social Security Agency (SSA) on behalf of DSD. Under the TPD Scheme, deductions can be taken from specified benefits to satisfy debts owed for payment to specific people or organisations. Such payments are known as Third Party Payments (TPPs).

Third Party Payments

5.4 Broadly speaking, in Northern Ireland the *debts* which are payable under the TPD scheme relate to living expenses debts: housing, fuel, rates and so on. The full list of payments which can be made direct to a third party in respect of debts, in priority order if more than one debt is to be deducted, is as follows:

- a. Housing costs, accommodation costs, hostel costs;
- b. Services charges for fuel and rent;
- c. Fuel costs;
- d. Water charges;
- e. Rates;
- f. Payments in place of child support maintenance and
- g. Integration loans.

5.5 The *benefits* from which money debts can be deducted are divided into *income related* benefits – Income Support, Jobseeker’s Allowance, Employment and Support Allowance, and Pension Credit and certain *eligible contributory benefits* – Incapacity Benefit, Severe Disablement Allowance, State Pension, Widow’s Benefit, and Widowed Parent’s Allowance. The full list of deductible benefits for social security purposes is:

- a. Income Support (IS)
- b. Jobseeker’s allowance (JSA)
- c. State Pension Credit (SPC)
- d. Employment and Support Allowance (ESA).
- e. Incapacity Benefit
- f. Retirement Pension⁵
- g. Severe Disablement Allowance
- h. Widow’s Pension
- i. Widowed Mothers’ Allowance

5.6 Under the scheme, SSA deducts a set amount from the debtor’s benefit and pays it directly to the creditor until the debt is cleared. When a deduction is made the actual amount to be deducted is subject to limitations. The maximum amount that can be made to third parties is that they should not, in total, exceed three times 5% of the benefit allowance. If a deduction were potentially to exceed that level it would need the claimant’s consent before it deductions could proceed.

⁵ The Pensions Act 2014 will introduce a new benefit called “state pension” from April 2016.

Financial Penalties

5.7 It is already the case in Great Britain that unpaid financial penalties imposed by Courts are part of the GB Third Party Deduction Schemes. Indeed these are the models on which the Department's legislative proposals are based. The Department's proposals are therefore that unpaid financial penalties will become part of the Northern Ireland TPD scheme with payments being made to the Court in respect of unpaid sums. The Department has consulted with the Department of Social Development who are content for this to be taken forward.

5.8 In terms of the benefits that will be able to attract deductions for payment, only four of those listed above would be available for payment of penalties. Items 5.5 (a)-(d) above – income support, job seeker's allowance, state pension credit and employment and support allowance – will be the benefits that will be accessible for deductions purposes. The Department takes the view that items (e-i) are benefits available to more vulnerable individuals whom we would not wish to bring within the scheme.

5.9 In terms of the priority position of a financial penalty, collecting the fine will not be the first to be deducted. Items 5.4(a)-(e) will be deducted first if needs be allowing housing and fuel debts, for example, to be prioritised. Collecting the fine will only come sixth in the priority order. In other words, in keeping with DSD procedures, allowance will be made for debts around essential living requirements and outgoing.

5.10 The procedure will be that the Collection Officer makes application to DSD for a deduction in relation to an unpaid penalty. It will then be for the DSD regulations and scheme to be applied and for any amount to be deducted to be set under those provisions. The existing limitations on the level of deductions would equally apply in respect of financial penalties and when they might be combined with our deductions to be made.

When a deductions order will not be made

5.11 The Department will not be seeking deduction from benefits orders in respect of a number of key benefits available to particularly vulnerable or supportive groups.

Deductions will not be made from Disability Living Allowance, Severe Disablement Allowance, Carer's Allowance, or Attendance Allowance. Nor will deductions be made in respect of children under 18 years of age who have had a financial penalty imposed. We take the view that the other options available in respect of children who cannot pay personal fines – extra time to pay, instalment orders, or an Attendance Centre Order as a community-based alternative – are sufficient for that age group.

Appeals

5.12 An appeal against the financial penalty itself or a Court direction for a deductions order would fall to the next highest tier of Court. An appeal against a Collection Officer's decision to apply for a deductions order would lie to a magistrates' court. An appeal against a substantive deductions decision in terms of the amount to be deducted would fall to the Social Security Tribunal system.

Transitional cases

5.13 For deductions from benefits, the legislation will allow deductions to be made in respect of all cases already in train at the point of commencement and for future cases. An application for a Deductions from Benefits Order would be available to the Court at point of sentence (with consent); to the Collection Officer (with or without consent) and at a follow-up Default Hearing (with or without consent) if Collection Officer activity had been unsuccessful.

5.14 The Department takes the view that, as part of the full package of reforms, the opportunity to clear a fine by way of planned deductions is to the advantage of all defendants. The deductions opportunity is an improvement on the current arrangements whereby imprisonment for default is effectively the only outcome when an offender defaults on a financial penalty.

Equality Assessment

5.15 The Department is conscious of the potential impact of its proposed Deductions from Benefits power in respect of certain low income groups – and whilst

income is not in itself a Section 75 assessment category, it is often associated with some of the Section 75 groupings. The Department is particularly alert to the limited amounts available to claimants in the four types of benefits that are to be deductible. Without losing sight of the fact that individuals will have broken the law and will be required by the Court to pay the penalty(ies), the Department is therefore keen to ensure that a Deduction from Benefits option is operated fairly and flexibly.

5.16 In carrying out its equality assessment the Department has considered a range of data to allow the Deduction from Benefits power to be assessed as to its potential impacts. Whilst no specific information is routinely collected on prosecutions, convictions, and the receipt of State Benefits, the Department has used certain proxy material, where it can, to assess possible impacts.

5.17 In terms of proxy information, one of the main sources that the Department has used is the Annual Report of the Legal Services Commission⁶ which shows how many people receive criminal legal aid on the basis of their income. Whilst not all will be on State Benefits, the Department feels that it would be a reasonable assumption that a significant number would be and that such data provides a useful proxy.

5.18 The Legal Services Commission Report for 2012/13 shows that 37,000 criminal legal aid acts of legal aid assistance were made that year. This sits alongside a total of 34639 criminal prosecutions brought in all courts in 2013 - the nearest equivalent accounting period. There are undoubtedly differences in counting rules and procedures and it is not the case that everyone appearing in court is in receipt of legal aid. Nor does it mean that all those appearing in Court are in receipt of State Benefits. Nevertheless, as a rough proxy, the indication is that a large number of people being prosecuted in Northern Ireland Courts are on low incomes.

5.19 Moving more specifically to Benefits based information, not all Section 75 groups are directly monitored for benefit uptake. Some are, so the Department then compared the profile of people in receipt of benefits alongside the profile of people

⁶ Annual Report and Financial Statements for Year ended 31 March 2014 www.nilsc.org.uk

being prosecuted in Courts. Again this is not a like for like comparison but is a useful indicator as to the similarities between both groups. Certain comparisons for the four key benefits proposed for Deduction Order powers are therefore possible

5.20 In terms Job Seekers' Allowance (JSA), from data for August 2014, 46,940 people were in receipt of JSA. 52% of recipients were in the age band 18-34 and 70% were male claimants. The profile of JSA uptake is therefore, broadly speaking, young and male. In terms of criminal justice data, 84% of prosecutions were for males. In terms of ages, 47% of prosecutions were in the age band 18-29 and 69% between 18-39⁷. The profile of offenders – young and male – is therefore similar to those receiving Job Seekers Allowance.

5.21 For Employment Support Allowance (ESA), again using August 2014 data, there were 107,190 ESA recipients. 53% were male and 47% female compared to 84%/16% in the justice system. The ESA age profile was for an older group – only 19% being in the 18-34 group compared to over 50% in the justice system. Only 8% of ESA claimants were known to have a partner and 12% had dependents.

5.22 For Pension Credit (PC) – which is available only in respect of those aged 60+ - at August 2014, 108,730 were in receipt of PC and therefore the age and gender comparisons are even further apart from a criminal justice profile. Less than 5% of offenders were in the 60+ age band. Most Pension Credit claimants were female compared to the opposite in the justice system. For ESA and PC therefore there appears to be little cross-over with offender profiles.

5.23 For Income Support (IS), at August 2014 there were IS 40,130 claimants, 37% of whom were in the 18-29 group compared to 47% in the offender data profile. Unlike offender data, IS is predominantly received by females (77%) compared to only 16% of offenders being female. The important component information on IS uptake however is that most recipients (55%) are lone parent claimants with 98% of those being women. A significant number of IS recipients are therefore single mothers with child dependents.

⁷ “ Court Prosecutions, Convictions and Out of Court Disposals Statistics for Northern Ireland 2013”

5.24 In summary, based on the data that it has available to it, the Department has concluded that a Deduction from Benefits power has the potential to have impact on people who have a financial penalty imposed in Court. There are broad similarities between the groups – young males in some instances; single parents in others – and as a consequence the Department is building a series of mitigating requirements and procedures into its proposals. To ensure that a fair and flexible system will operate, the Department’s proposals will:

5.25 For the Court and the Collection Officer

- a) Always allow a voluntary approach in the first instance to payment including extra time to pay or payment by instalment or a deductions based approach;
- b) Repeat those opportunities if default occurs and the case is referred back to the Court;
- c) Require the Collection Officer to operate within the requirements of Statutory Guidance; and
- d) Operate under the independent authority of Courts including appeal procedures in law against Collection Officer and Court decisions.

5.26 In terms of Deductions from Benefit powers:

- a) Provide powers as part of the existing statutory TPP scheme as operated by DSD attracting all of the statutory protections already provided;
- b) Provide that any deductions that are made are as manageable and, if required, as minimal as possible, allowing priority expenses to be met;
- c) Where deductions are to be made in respect of financial penalties, only four specified income related benefits will be used. These will exclude incapacity benefits, severe disablement allowance, retirement or widow’s pensions;

- d) No deductions will be able to be made from Disability Living Allowance, Severe Disablement Allowance, Carer's Allowance, or Attendance Allowance.
- e) The Deduction Order procedure will be limited to adults - no Order would be able to be made in respect of children (those under 18 years of age); and
- f) Provide a statutory process for appeals against deduction decisions where they are made by way of the Social Security Appeals Tribunal.

5.27 The Department's intention that all these statutory requirements and protections will ensure that the Deductions from Benefits Order option is only pursued in specified circumstances and in the most appropriate way.

5.28 The Department sees the Deductions Order as an important preventative option that will allow those who might otherwise fall into default to avoid a potential prison sentence. The Order must be viewed within the broad range of collection options open to the Court and the Collection Officer to prevent default. The Department's view is that even a small amount deducted on a regular basis would be sufficient to avoid imprisonment with the human and family consequences that then arise.

5.29 The Department has concluded that a Deduction from Benefits power, subject to the requirements and limitations as proposed, has the potential to have a beneficial impact on people who have a financial penalty imposed in Court.

6. Attachment of Earnings Orders

6.1 On considering a case for the first time the Court will have available to it the option of imposing an Attachment of Earnings Order (AEO) where the offender is in employment and consents to such an Order being made. It will also have the power available to it when an offender defaults on payment and the Collection Officer has referred the case back to the Court for further consideration. At that point the AEO can be made by the Court without consent - just as it can be by the Collection Officer under his/her own authority after other options may have proved unsuccessful.

6.2 The legislation as proposed will then allow the Collection Officer to set in motion the process of having the financial penalty paid by way of deductions from the offender's earnings. The Collection Officer will have authority to require from the offender details of his/her earnings/income or anticipated earnings/income as well as detail of his/her employer. The Officer will contact the employer with a view to implementing the Order and can require the employer to confirm employment and earnings details. Non-compliance will be an offence.

6.3 The Attachment of Earnings Order as proposed will be modelled on similar provisions that already exist in Northern Ireland legislation with regard to civil debt recovery and child maintenance payments. (The Judgment Enforcement (NI) Order 1981 (Articles 73-79 and 99-105) and the Magistrates' Courts (NI) Order 1981 (Articles 100-108).

Giving effect to an Order

6.4 Once an Order is made, it will direct the employer to make periodic deductions from the offender's earnings and to make payment to the Court. The Collection Officer will advise the employer how much to deduct in percentage terms from the offender's earnings. The amount to be deducted will be based on the offender's net income (that is gross income minus tax, national insurance and pension contributions) and a table of deduction rates to be provided in statutory regulations.

6.5 Where an Attachment Order is made alongside another such Order prioritisation for collection will be provided for. If other debts exist alongside a financial penalty these will be allowed for in terms of the collection of the financial penalty. Allowing flexibility and setting priorities would not necessarily mean that one debt had to be cleared before another could start. If there was sufficient disposable income, a number could operate in parallel.

6.6 The proposed deduction rates for financial penalty Orders will be variable subject to available income with percentage rates increasing where income increases. No deductions from earnings would be made where income is particularly low. In addition to the percentage deduction rate, the employer would also be entitled to deduct from the offender's earnings a small fee for every deduction made.

Appeals

6.7 An appeal against a Court's decision to impose an Attachment of Earnings Order would lie to the next highest tier of Court. An appeal against a Collection Officer's decision, irrespective of the court tier which imposed the original fine, would lie to a magistrates' court. Appeals against a Collection Officer's decision would include both the making of an Attachment Order by the Officer and the amount to be deducted.

Transitional cases

6.8 For attachment of earnings orders, the legislation will allow attachments to be made in respect of all cases including those already in train at the point of commencement. The Department takes the view that, as part of the full package of reforms, the opportunity to clear a fine by way of planned deductions is to the advantage of all offenders and should be available retrospectively. Attachment Orders are an improvement on the current arrangements whereby imprisonment for default is effectively the only outcome when an offender defaults on a financial penalty.

Equality Assessment

6.9 As indicated in the previous Chapter, whilst income is not in itself a Section 75 assessment category, it is often associated with some of the Section 75 groupings – people with disability or single parent families for example. Whilst no specific information is routinely collected on prosecutions and convictions according to income, the Department has again used certain proxy material where it can to assess possible impacts.

6.10 Looking at labour market statistics in general, the November-January 2015 Labour Force Survey⁸ estimated that 815,000 people aged 16-64 were in employment in Northern Ireland. That results in a working age employment rate estimate at 68%. Of that total 53% were males and 47% females. In terms of age, 10% were aged 18-24; 63% were aged 25-49 and 29% were aged 50+. Similar levels were found for both males and females. From the Northern Ireland Census 2011⁹, of the resident population aged 16-74, 36% were full-time employees, 13% part-time, and 9% self-employed.

6.11 Using Fair Employment Monitoring statistics (Report No. 24 2013)¹⁰ the monitored workforce in Northern Ireland showed 53% of the population as Protestant and 47% Roman Catholic. (The monitoring report only takes account of the Protestant and Roman Catholic workforce in Northern Ireland and does not deal with those of no or a different religion. Nor does it include, for example, small scale private sector companies, school teachers or the self-employed.)

6.12 Using data from the Labour Force Survey allows us to obtain some indication of employment rates for households that have dependents. The April-June 2014 survey¹¹ showed that of those households that did have dependents, the head of household was employed in 78% of cases whereas for those with no dependents 69% were employed.

⁸ <http://www.detini.gov.uk/stats-labour-market-employment>

⁹ <http://www.nisra.gov.uk/archive/census/2011/results/key-statistics/summary-report.pdf>

¹⁰ <http://www.equalityni.org/Publications/Delivering-Equality/FETO-monitoring-reports/Fair-employment-monitoring-report-No-24-Overview-o?ID=4182>

¹¹ Labour Force Survey, Household Dataset, April-Jun 2014 supplied by the NI Statistics and Research Agency.

6.13 Whilst there is no direct data collected on the employment status of offenders – and indeed legal aid “proxy” data in the previous Chapter would indicate that a considerable number may not be in employment – the above general data suggest that an Attachment of Earnings Order would apply in a similar fashion to all irrespective of Section 75 group. The Department therefore views the AEO as an important feature of its legislative proposals and in light of its potential applicability and scope is proposing to include a series of requirements when it is to be used.

6.14 For the Court and the Collection Officer, the proposals will:

- a) Allow a voluntary approach in the first instance to payment including extra time to pay or payment by instalment or a deductions based approach;
- b) Repeat those opportunities if default occurs and the case is referred back to the Court;
- c) Require the Collection Officer to operate within the requirements of Statutory Guidance; and
- d) Operate under the independent authority of Courts including appeal procedures in law against Collection Officer and Court decisions.

6.15 In terms of Attachment of Earnings Order powers, the proposals will:

- a) Build the provisions on the basis of existing legislation in the civil debt and maintenance fields;
- b) Use a deductions approach based on a percentage amount of earnings from net income, the percentage amount varying on an upwards sliding scale as earnings increase;
- c) Set a bar on deductions from earnings below which deduction would not be made alongside a variable deduction rate subject to disposable income;

- d) If other debts exist alongside a financial penalty these will be allowed for in terms of the collection of the financial penalty; and
- e) No Attachment Order to be made in respect of children (those under 18 years of age).

6.16 The Department's intention that all these statutory requirements and protections will ensure that the Attachment of Earnings Order option is only pursued in specified circumstances and in the most appropriate way.

6.17 The Department sees the Attachment of Earnings Order as an important preventative option for Courts and Collection Officers in the collection process. For the offender too it can provide a useful opportunity to progressively clear a financial penalty. The Department's view is that even a small amount deducted on a regular basis would be sufficient to avoid imprisonment with the human and family consequences that can arise.

6.18 The Department has concluded that an Attachment of Earnings power, modelled on similar legislation that already exists with regard to civil debt recovery and subject to the requirements and limitations as proposed, has the potential to have a beneficial impact on people who have a financial penalty imposed in Court.

7. Bank Access Orders

7.1 The Department's legislative proposals will include the creation of a power called, at this stage, the Bank Access Order (BAO). The purpose of the BAO will be to obtain the amount of any outstanding, unpaid financial penalty from defaulters who have sufficient funds in a personal bank account to discharge a penalty but have not done so. A bank would include a range of financial institutions in the form of deposit taking businesses including, for example, building society accounts.

7.2 The Bank Access Order as proposed will be modelled on similar provisions that already exist in Northern Ireland legislation with regard to civil debt recovery. Attachment of Debt Orders – also known as Garnishee Orders are provided in The Judgment Enforcement (NI) Order 1981 in 69-72A.

The process for a BAO

7.3 Before considering a BAO the Collection Officer will have pursued the options of extra time to pay and payment by instalments. The Officer will also have pursued the options of a deductions from income order – either from benefits or earnings as appropriate. If none of those have proved successful and the Collection Officer is aware that the offender has sufficient money in his/her bank account sufficient to clear the amount – the Officer will be aware of this from the information the offender is required to provide earlier in the process – the Officer can consider a BAO.

7.4 The Collection Officer will only have authority to impose a BAO on an interim basis, freezing the amount required on a temporary basis, which would then have to go to the Court to be made into a full Order if the Court saw fit. The interim Order would be made without advance notice to the offender – who might otherwise withdraw his/her funds from the account – and the Collection Officer would be required to inform the offender as soon as his/her bank has been instructed to freeze the money. If freezing the amount caused particular difficulty, a hardship procedure would be available whereby the Collection Officer can allow access to funds.

Amounts

7.5 If the account contained more than was required to pay the outstanding amount, only the amount required to pay the penalty would be frozen. During the 14 day interim period, the offender will have the ability to sign a voluntary withdrawal mandate to pay the penalty and unfreeze the account. The application for a full BAO would then be withdrawn.

7.6 If the account had less than the amount required, under the proposed Statutory Guidance the Collection Officer would consider the appropriateness of an interim Order. If he/she thought it worth pursuing, the full amount in the account would be frozen and the Collection Officer would refer the case back to the Court for any outstanding amount.

The Court

7.7 Only the Court can impose a full BAO, the effect of which will be a Court order directing the bank to pay the required sum to the Court. The Court could also decide not to make the interim Order full and use any of its other powers as described in paragraphs 4.11-4.14. It will also be possible for the Court to impose a full BAO of its own motion without a preceding interim order having been made. This is likely to be a rare occurrence limited only to those instances in which the Court itself knows of the existence and funds contained in a bank account.

Appeals

7.8 An appeal against a Collection Officer's decision to impose an interim BAO would lie to the magistrates' court. A Court's decision to impose a full BAO would lie to the next highest tier of Court.

Transitional cases

7.9 For Bank Access Orders the legislation will only allow such Orders to be made in respect of cases in which the offence being prosecuted was committed after the BAO provisions came into effect. The Department takes the view that, unlike for

example deductions orders, the BAO is more punitive in nature and its creation would need to be publicly known before it could be used. Those who may have already committed a crime or who are already be in the prosecution process might have been more likely to pay their sum(s) if they had known that an order freezing money in their bank account could be made.

Equality Assessment

7.10 There is no specific data available to the Department with regard to the ownership of bank accounts according to Section 75 categories. In the absence of such data however the Department has no reason to believe that a Bank Access Order (BAO) provision, used in limited and controlled circumstances, would have any particular impact on any Section 75 group. The Department is therefore proposing to construct a BAO provision in a limited and controlled way to ensure its appropriate use.

7.11 The use of the Bank Access Order will be subject to the following criteria:

- a) The BAO will only be available after voluntary approaches to payment in the first instance including extra time to pay, payment by instalment, or a deductions from income based approach.
- b) Whilst a Collection Officer will be able to freeze an amount on an interim basis, it will only be a Court that can make a full and final BAO.
- c) It will only be used when the Court or Collection Officer is aware that a bank account exists and has sufficient funds to clear all or part of the penalty.
- d) Only the amount required for clearance will be frozen.
- e) Where an amount has been frozen on an interim basis, the offender will be given the opportunity to clear the penalty and for the account to be freed.

- f) While the amount is frozen, the offender will be able to make hardship application for access to funds should particular difficulties arise.
- g) The offender and the bank will have the opportunity to make representations to the Collection Officer and the Court at the interim and full Order stages.
- h) Appeal procedures will be available against Collection Officer and Court decisions.

7.12 Modelled on similar legislation that already exists with regard to civil debt recovery, the Department views the BAO as a provision to be deployed after other options have been tried without success. It will be targeted at cases where the Collection Officer and the Court are aware of funds in an account that could be used towards clearing a penalty but which are not being offered up. It is a power that the Department envisages being used infrequently, often more as a threat of further action if payment is not forthcoming.

7.13 Even if used sparingly it will therefore have important declaratory value for the Collection Officer as he/she pursues payment. The ability to freeze an account on an interim basis yet allow the offender to make payment and unblock his/her account will be an important part of the process. To ensure fairness and propriety the BAO will only be available in respect of crimes committed after the provisions have been commenced.

8. Vehicle Seizure Order

8.1 The Department's legislative proposals will include the creation of a power called, at this stage, the Vehicle Seizure Order (VSO). The VSO will allow the Court, in appropriate circumstances, to direct the seizure and impounding of a vehicle owned by an offender who remains in default of financial payment. The purpose will be to secure payment of the penalty or use any monies raised by the sale of the vehicle to clear the amount owed.

8.2 A VSO would only be available to the Court after previous Court and Collection Officer steps to secure payment. Whilst a VSO could be recommended to the Court by the Collection Officer, only a Court can impose an Order. The Department sees the VSO as a power to be used sparingly. And on those occasions when it is used, the Department would see it has having an important deterrent effect for others who might otherwise leave a penalty unpaid.

8.3 With additional protections, the Department's proposed vehicle seizure powers are closely modelled on similar powers that already allow seizure of, for example, uninsured vehicles (under the Road Traffic (NI) Order 1981); and vehicles causing alarm, distress or annoyance (under the Criminal Justice (NI) Order 2008).

The process for a VSO

8.4 Before considering applying for a VSO the Collection Officer will have pursued the options of extra time to pay and payment by instalments. The Officer will also have pursued the option of a deductions from income order – either from benefits or earnings as appropriate. The Officer will also have considered a BAO where he/she is aware there are funds available to clear at least some of the outstanding amount.

8.5 If none of those has proved successful and the Collection Officer is aware that the offender has a privately owned vehicle registered in his/her name – the Officer will be aware of this from the information the offender is required to provide – the Officer can consider a VSO. In addition to the statutory requirements being applied

to a VSO, the Collection Officer's consideration of an Order will be subject to the Statutory Guidance for Collection Officers being provided in the legislation.

Limitations on the use of the VSO

8.6 The Collection Officer will only be permitted to make application for a VSO in specific circumstances. The Officer must be satisfied in the first instance of the offender's ability to pay the outstanding amount. Only those who could otherwise pay the financial penalty but do not will be eligible for a VSO. The Collection Officer must also be satisfied that the vehicle owned by the offender has a value sufficient to pay the unpaid amount including any charges incurred.

8.7 The Collection Officer must also consider the likely financial and other effects on the offender if a VSO was to be made. Not all vehicles will be eligible for a VSO. Vehicles that are used to transport disabled or vulnerable persons or that are determined as priority vehicles cannot be made subject to a VSO. Priority vehicles include vehicles used by doctors used for on-call duties, police, fire or ambulance vehicles.

8.8 If the Collection Officer is considering a VSO he must advise the offender in advance of his intention to make application to the Court. The offender will be able to make representations to the Collection Officer and to the Court if application is made. If an application for a VSO is made to the Court it will be an offence for the offender to seek to dispose of the vehicle ahead of the Court's consideration.

When a vehicle is seized

8.9 If a VSO is imposed by the Court, the VSO will authorise the police or a contractor approved by the Department to seize and impound the vehicle. Once a vehicle has been seized the offender will have the opportunity to reclaim the vehicle. To do so he/she must pay the outstanding financial penalty to the Court and then pay the reclamation charges to release the vehicle. If neither payments are made

the vehicle can be sold; the financial penalty paid to the Court; and any net proceeds returned to the offender.

8.10 Where insufficient funds are recovered or the vehicle is disposed of as unclaimed and the penalty and charges unpaid, the Collection Officer will refer the case back to the Court for consideration. The Court will then have available to it its full range of powers to deal with unpaid penalties.

Appeals

8.11 An appeal against a Collection Officer's decision to make application for a VSO, irrespective of the court tier which imposed the original fine, will lie to a magistrates' court. A Court's decision to impose a VSO would lie to the next highest tier of Court. If in the course of executing a VSO or when a vehicle has been impounded and held pending payment it transpires that the vehicle should not have been seized – for example it is owned by a third party or should have been subject to other limitations – application can be made to the Court by the relevant party to have the VSO discharged.

Transitional cases

8.12 For VSOs the legislation will only allow such Orders to be made in respect of cases in which the offence being prosecuted was committed after the VSO provisions came into effect. The Department takes the view that, unlike for example deductions orders and like the BAO, the VSO is more punitive in nature and its creation would need to be publicly known before it could be used. Those who may have already committed a crime or who are already be in the prosecution process might have more likely to pay their sum(s) if they had known that an order seizing a vehicle could be made.

Equality Assessment

8.13 There is no specific data available to the Department with regard to the ownership of vehicles across all Section 75 categories. Vehicle ownership is

however known to be widespread across Northern Ireland with the 2011 Census showing 77% of all households owning or having access to at least one vehicle. Certain information is available however with regard to vehicles used for disability purposes. 33,629 vehicles in Northern Ireland are currently registered under the motability scheme¹² and, as at 31 October 2014, there was a total of 110,574¹³ “Blue Badges” as issued under the Department of Regional Development scheme.

8.14 There is also a significant amount of information around vehicle ownership and court business that indicates the availability and connection of vehicles with the justice system. For example, the largest number of prosecutions and convictions across all courts involve motoring offences and the largest number of fines imposed in courts are for vehicle related offences. Additionally, as indicated earlier in this paper, the largest group of offenders serving periods in custody for default – albeit it very short periods - are for unpaid fines for vehicle offences.

8.15 Looking at the figures in 2013, 13606 prosecutions were brought in Northern Ireland’s Courts for motoring offences. Of that total, 12566 (92%) convictions were secured¹⁴ with 90% of those motoring convictions then resulting in monetary penalties. In terms of receptions into prison for non-payment of fines, 53% are in relation to unpaid motoring penalties and 52% in respect of young males more generally who are aged under 30.

8.16 The Department is also conscious of the potential impact of a proposed Vehicle Seizure power in respect of particular groups or categories and is alert to the importance of transport to people in cases of disability, family needs and employment requirements. Again, without losing sight of the fact that individuals will have broken the law and will be required to pay a financial penalty(ies) - many of whom appear to have access to a vehicle - the Department is keen to ensure that a vehicle seizure option is operated fairly and flexibly.

8.17 The use of the Vehicle Seizure Order will be subject to the following criteria:

¹² Data provided by Motability UK.

¹³ Assembly Question AQW 38636/11-15 12 November 2014

¹⁴ Court Prosecutions, Convictions and Out of Court Disposals Statistics for Northern Ireland 2013 Department of Justice Research and Statistical Bulletin 14/2014

- a) The VSO will only be available after voluntary approaches to payment in the first instance including extra time to pay, payment by instalment, or a deductions from income based approach.
- b) Not all vehicles will be eligible for a VSO. Vehicles that are used to transport disabled or vulnerable persons or that are determined as priority vehicles cannot be made subject to a VSO.
- c) A Collection Officer will not be able to order the seizure of a vehicle and must advise the offender if he/she is considering applying to the Court for a VSO.
- d) It will only be a Court that can make such a decision.
- e) Before making application to the Court for a VSO, the Collection Officer must be satisfied of the offender's ability to pay the outstanding amount - only those who could otherwise pay the financial penalty but do not will be eligible for a VSO.
- f) The Collection Officer must consider the likely financial and other effects on the offender if application for a VSO was to be made.
- g) The offender will have the opportunity to make representations both to the Collection Officer and the Court before a VSO is made.
- h) Appeal procedures will be available against Collection Officer and Court decisions.
- i) When a VSO has been effected, the offender has the ability to re-claim the vehicle by paying the required amounts.

8.18 The Department views the VSO as a provision to be deployed after other options have been tried without success. It will be targeted at cases where the Collection Officer and the Court are aware that payment could be made towards

clearing a penalty but payment is not being made - particularly in a context where a motoring offence results in an unpaid penalty.

8.19 When used in a targeted fashion, the VSO will have an important declaratory value for the Collection Officer as he/she pursues payment on behalf of the Court. The ability of the Collection Officer to use the Order as a lever to secure payment will be a useful deterrent as will the ability to actually seize a vehicle on occasion. To ensure fairness and propriety the VSO will only be available in respect of crimes committed after the provisions have been commenced.

9. Community Supervision

9.1 The Department's legislative proposals will contain adjustments to two existing community based disposals to increase the Court's options in place of imprisonment for default. The Department is proposing changes to the Supervised Activity Order (SAO) to provide better and clearer opportunities for community-based orders for default. Both the SAO and Attendance Centre Order (ACO) for young people will be available only to the Court - neither disposal could be used by a Collection Officer.

The Supervised Activity Order

9.2 The Supervised Activity Order is a disposal that can be imposed with regard to any fine of £500 or less that is defaulted upon. It is available for adults (aged 18+) and can be used by Courts in place of custody for default. Supervision periods cannot be less than 10 hours or more than 100 hours and breach of supervision can itself result in a custodial period. Custody periods can be up to 20 days from a magistrates' court or 30 days from a Crown Court and prison remission applies to those periods. Supervised Activity Orders however are not currently available to Courts and a number of improvements are being made to allow the provisions to be commenced.

9.3 In keeping with the expansion of the reform package to include opportunities across a range of penalties – the package will incorporate compensation orders, the offender levy, unpaid fixed penalties and criminal costs within the regime – the Department is also broadening the scope of the SAO to make it available across this wider group of financial penalties. Currently the SAO is only available in respect of a fine.

9.4 In broadening the scope of the SAO, the Department is also increasing the financial limit within which it can be made. Currently set at a maximum of £500, the increased limit will be a total of up to £1000 across the wider category of penalties.

9.5 As a consequence the Department is increasing the maximum number community service hours that can be required from 100 to 150 hours. Similarly the maximum number of days in custody that can be imposed for breach of the SAO will be increased from 30 to 35 days.

9.6 Under existing legislation, a SAO can only be imposed when an offender defaults on a fine. In other words an offender must have been fined; fail to make payment within the set period; and then have an SAO brought into effect. The process would therefore operate blindly with regard to those individuals who simply cannot pay from the outset and who might wish to have a community option in the first instance.

9.7 The Department's proposals will therefore allow the Court to consider an offender for a SAO at the point of sentence, or indeed at any time before default occurs, where the offender consents. The SAO will also be available at any Default Hearing either with or without consent. An SAO should only be imposed after the court has considered all non-custodial options and that none are appropriate.

9.8 Finally the legislation on SAOs will allow an offender undergoing supervision to clear his/her fine by payment during the course of the Order should he/she so wish. Currently the SAO must either be seen through to completion or, if not complied with, can result in custody. There is no opportunity to clear a fine during the Order. The Department feels that that would be an appropriate option for offenders, allowing an SAO to complete early and/or reduce the potential for reach and custody.

The Attendance Centre Order

9.9 The Attendance Centre Order (ACO) is a community based supervision order that can require a child under 18 years of age to attend an Attendance Centre in certain circumstances. Attendance can be for not less than twelve hours (unless the child is under 14 and the Court feels 12 hours is excessive) and not more than 24 hours. As indicated above, whilst the Supervised Activity Order is only available with

regard to adults aged 18+ in respect of fine default, the ACO is available to under 18s.

9.10 To ensure consistency and equality across ages in terms of the ACO and the SAO, the Department's legislative proposals will ensure that an ACO may continue to be imposed in appropriate circumstances and with consent at point of sentence or at any time before default occurs. The ACO will also be available at any Default Hearing either with or without consent. The ACO will also remain available for the broader range of penalties where they can be applied to under 18s.

Appeals

9.11 As indicated, neither SAOs nor ACOs will be available to a Collection Officer – these are Orders that will only be able to be made by a Court. An appeal against a SAO or ACO will lie to the next highest tier of Court.

Transitional cases

9.12 For both the SAO and the ACO, the legislation will allow these Orders to be made in respect of all cases already in train at the point of commencement and for future cases. The Department takes the view that, as part of the full package of reforms, the wider availability of community sentences in place of custody for default is to the advantage of all defendants. The SAO and ACO will therefore be available to the Court at point of sentence with consent and at a Court default hearing with or without consent.

Equality assessment

9.13 The Department views the expansion of community based options for non-payment as an important feature of the reform package and collection regime. Previously the only substantive option for the Court when considering default had been committal to custody. (The Distress Warrant is available in law but is rarely used.) An increased opportunity to avoid custody is a key feature of the Department's commitment to reduce custody for default.

9.14 The Department's approach to equality assessment is therefore to consider the data that is available in respect of those who have heretofore been going into prison for default. Chapter 2 of this document reviewed the profile of the committal group and the Department's view is that an additional option for community service will have a positive impact on all potential defaulters irrespective of Section 75 group.

9.15 The profile of defaulters is in itself somewhat limited as not all Section 75 information is collected. Whilst a number of Section 75 characteristics are routinely collected and needed – gender, religion, disability for example – the collection of other information around matters such as political opinion and sexual orientation for example could easily be misinterpreted.

9.16 The data that is available nevertheless does give an indication of the potential impact on the committal group. Those who have previously been committed to prison for fine default are known to be:

- a) 90% male and 10% female;
- b) 56% in the under 30 age group and 38% in the 30-50 age group and
- c) 33% Protestant and 56% Roman Catholic.

9.17 The Department views the range of changes being made in respect of community based options as a key feature of the package. The package will:

- a) Expand the range of financial penalties and amounts which can potentially attract a community based option instead of custody;
- b) Allow the offender to consent to a community order at point of sentence; and
- c) Allow the offender to clear the SAO by paying off the penalty even if the community work is underway – this is already possible for ACOs.

9.18 When accompanied by the full range of collection options that are also being created in the Department's proposals – additional opportunities for extra time to

pay, deductions orders, and making these community options available to cases already being prosecuted – the Department is satisfied that this will be available on an equal and similar basis to all.

10. Custody and detention for default

10.1 The Department's legislative proposals will contain adjustments to two aspects of detention in custody for non-payment of a financial penalty. One adjustment relates to adults and one to children, that is those under 18 years of age.

Children

10.2 Following the Youth Justice Review, and more importantly the subsequent review of custody arrangements for children, the Minister of Justice committed to preventing any child from going into custody for fine default. The Department's legislative proposals will fulfil that commitment and will remove custody solely for default in respect of children under 18 years of age. If a child has a financial penalty imposed on him/her personally, under the Department's proposals the only option available to the Collection Officer will be to allow extra time to pay or payment by instalments. For the Court, extra time or instalments will also be available along with, for example, the Attendance Centre Order.

10.3 There will however be a particular set of circumstances in which a child will be able to serve a period of custody for non-payment of a financial penalty. If a child was to be sentenced to custody, or was already serving a custodial period, and then have a financial penalty imposed at or across the same time, provision should still exist for that penalty to be cleared alongside the custody period.

10.4 Depending on timing, any child who is in those particular circumstances could potentially finish their substantive custody period before the parallel or subsequent default period expires. Such a situation – which would be extremely rare – could then result in a child spending a period in custody solely for default. We do not wish this to occur and will include in the legislation provision to allow discharge on completion of the substantive custody period.

10.5 The Department's view is that the ability to clear a financial penalty alongside a custodial sentence will continue to be the case for adults and to deny that opportunity to children would create unequal treatment. Requiring a child to serve a

custodial period and then pay a fine could also run the risk of creating double default and double penalties.

10.6 The Minister is committed to ensuring that no child should serve custody solely for default of a financial penalty and the Department's legislative proposals will be such as to ensure that does not happen.

Adults

10.7 As part of its legislative proposals the Department will be removing remission in respect of any prison sentence or young offenders centre detention that is required to be served after the Collection Officer and Collection Order process has completed its full course. If a financial penalty remains in default after a Collection Officer has attempted to have the sum(s) paid and the case is referred to and dealt with by the Court at a Default Hearing, that Court will have committal to prison or a YOC for default as one of its options.

10.8 Ahead of committal, the court will also have its full range of options including allowing extra time and payment by instalment; deductions orders; bank access or vehicle seizure orders; Supervised Activity or Attendance Centre Orders. It will also be able to reduce or remit the financial penalty in appropriate circumstances. Once it has considered its range of powers however it will still be able to commit the offender to prison in default of payment.

10.9 Currently any offender going to prison or YOC for default benefits from the law on remission which permits any sentence or period of under one year to receive a 50% reduction in the period to be served. The vast majority of fines (99%) are for £500 or less – indeed most of those (68%) are for £200 or less – with the result that anyone who currently defaults on payment serves on average 4 days in custody.

10.10 The Department takes the view that, alongside the significant new opportunities being created to increase payment options and prevent default, it would also be appropriate to strengthen the deterrent effects of committal for default.

As part of the legislative proposals the Department will therefore be removing remission for custody imposed in default of a financial penalty. The removal of remission will also extend to anyone who, having had the community based option made available to them, breaches their Supervised Activity Order.

Appeals

10.11 Imposing a custodial period for non-payment of a financial penalty will lie to the next highest Court. The removal of remission will be provided in law and will not in itself be appealable.

Transitional cases

10.12 In relation to the removal of remission, the legislation will only allow this to apply to cases in which the offence being prosecuted was committed after the removal of remission comes into effect. The Department takes the view that, unlike for example deductions orders, the loss of remission is more punitive in nature and its creation would need to be publicly known before it could be used. Those who may have already committed a crime or who are already be in the prosecution process might have been more likely to pay their sum to be paid if they had known that remission was no longer available.

Equality Assessment

10.13 The Department takes the view that the removal of the requirement whereby a child can be required to serve custody solely for the non-payment of a financial penalty is central to the delivery of the review of custody arrangements for children. Committal to custody solely for default will therefore be removed. The retention of an ability to clear a penalty in certain circumstances – namely when it is concurrent with a sentence of detention - is nevertheless important in ensuring equal arrangement with adults. The Department sees this as an important feature of its equality assessment.

10.14 The Department takes the view that the removal of remission for adults is justified as part of its overall and reformed fine collection and enforcement package. The package as a whole introduces many additional opportunities and options to pay a financial penalty before custody can even be considered. Extra time to pay or payment by instalment can be agreed with the Court and/or the Collection Officer; deduction orders pursued; community supervision undertaken; followed by a final Court hearing at which further representations can be made.

10.15 The effect of this revised regime is designed to significantly reduce the levels of custody for default leaving very few in the position in which they would lose remission. The Department views the removal of remission for those small numbers that it might affect as an important and final deterrent for the active or wilful defaulter.

11. Mitigation

11.1 Throughout this document the Department has been keen to emphasise all of the procedural and statutory requirements that must be complied with at all stages of the proposed collection regime. From the independence of the Courts, the designation in law of Collection Officers and their Statutory Guidance and the appeal procedures across each of these levels, to the priorities given to voluntary agreements before statutory requirements can be required, to the expansion of collection methods and community based options before perhaps in the end, custody needs to be considered. All of these will apply to everyone, irrespective of Section 75 groupings or otherwise, who appear before a court and receive a financial penalty.

11.2 The Department is aware however that one particular group makes up the majority of those appearing in courts – young males – and as such the Department is keen to ensure that they are not to any particular disadvantage. The Department does and will do this in three ways:

- a) those strategic actions and activities that exist at an overarching level to prevent offending, divert offenders, and provide for rehabilitation when the justice system is engaged;
- b) those proposals within the Bill which in themselves enhance and improve offender options and
- c) those delivery and monitoring arrangements which seek to ensure that the proposals are correctly delivered.

Strategic mitigation

11.3 The justice system as a whole recognises that the criminal law impacts on young males and in mitigation undertakes considerable work and expends significant resources around education, crime prevention and diversion and in many respects, age is an important aspect of those arrangements.

11.4 From first contact with the justice system, a cautioning system operates to allow any offender to stay out of the formal criminal process. In terms of young offenders, the Youth Justice Agency has been created and a youth justice strategy put in place focusing on early intervention to reduce or prevent offending; to provide right level of support at the time it is needed; where offending does occur, to reduce the risk of further offending and for young people who do offend, to help them reconnect with families and communities, especially following a period in custody.

11.5 For those who are convicted and given a community or a custodial disposal, rehabilitation legislation exists to allow many offenders to put the past behind them when it comes to seeking employment and starting afresh. The length of time during which an offender must declare his/her conviction is based on the seriousness of the offence. But in recognition of the fact that their offending may have been due to their inexperience and lack of maturity, for young offenders in particular rehabilitation periods are shorter than those for adults.

11.6 Along with other bodies and agencies, the Department spends considerable resources on crime prevention and education to ensure that young people (in particular) are diverted from crime and communities are safe. A number of statutory and voluntary bodies also operate early intervention programmes to try and prevent young people at risk of offending from doing so. The Probation Service provides a range of programmes and specialist service and financial assistance to the offender focused groups in the voluntary sector is also provided.

11.7 For those in custody, programmes and services are provided to assist with successful return to the community. The Prison Service provides a range of prisoner programmes; trains its staff to deliver such programmes and employs a range of professionals including psychologists to help offenders prepare for successful return to the community. The Probation Service works with and in prisons to deliver pre and post release programmes and services. On return to the community, a number of voluntary sector bodies, with financial assistance from Government, provide services for the care and resettlement of offenders.

11.8 At an overarching level, two key Departmental initiatives will provide the wider context: an offender management strategy and taskforce for reducing and responding to re-offending and, to reflect what can be the differing needs of women in the justice system, a strategy for the management of women offenders. In support of victims, a five year strategy is also in place with the aim of making the system more responsive, providing better access and communication and a generally better level of service. Victim Support Northern Ireland is funded to work with victims and witnesses.

Enhancements

11.9 In a number of key areas, the Bill itself will deliver additional and positive options for young offenders. The Bill will:

- a) remove custody solely for default on the payment of a financial penalty; and
- b) increase the availability of Attendance Centre Orders - and indeed Supervised Activity Orders - as community-based alternative to custody.

11.10 It will also:

- a) Limit the availability of financial deductions orders from benefits and earnings to adults only; and
- b) Ensure that the only collection options available to the Collection Officer in respect of young offenders are those that allow extra time to pay, payment by instalment, or an Attendance Centre Order in default.

Delivery and monitoring

11.11 A proper delivery and monitoring strategy will be important to take the proposals forward. To ensure that everyone who may be impacted upon by the proposals is aware of what they contain, the Department of Justice will

commence the provisions with full advanced publicity so that all are aware of the new powers and consequences.

11.12 For a number of the proposals in the legislation, enabling powers are being taken - provisions to introduce change but at the same time to allow further consultation and development. Examples include the proposed regulations for deductions powers and vehicle seizure orders and Statutory Guidance for Collection Officers. As each is developed, further screening, engagement and consideration of an EQIA if evidence emerges will be undertaken.

11.13 As the provisions are implemented, subject to Assembly consideration and approval, the Department of Justice will continue to monitor the impact and equality considerations.

12. Equality Considerations

12.1 As a public authority under Section 75 of the Northern Ireland Act 1998, the Department is required to have due regard to the need to promote equality of opportunity. This legislation also requires public authorities to identify whether a policy has a differential impact upon relevant groups; the nature and extent of that impact and whether such impact is justifiable. These obligations are designed to ensure that equality and good relations considerations are made central to government policy development.

12.2 The Department has screened its proposed legislative package and concluded that it would be appropriate to undertake a full equality assessment of the package as a whole. The Department's screening form is available on the [DOJ website](#). This document provides the Department's assessments and conclusions across each of the key features of the proposals.



12.3 As a document the Department's aim is to provide and consult upon its equality assessment before the draft legislation is introduced into the Assembly. The legislation is currently being drafted on the basis of the policies described in this document. The Department's intention is that before the legislation is offered for introduction into the Assembly this consultation will be complete, reported upon and available to the Justice Committee as it scrutinises the draft Bill. Consultees at that stage will also be able to comment on the Department's equality consultation and outcome.

12.4 Comments on the Department's screening and equality assessments are therefore welcome.

13. Responding to the consultation

13.1 The Department would welcome views on its assessments and issues raised in this consultation paper. The consultation will run from Monday 18 May 2015 and all responses should be submitted by 5pm on Friday 10 July 2015. Comments are welcomed by post, e-mail or text phone and responses will be acknowledged on receipt.

13.2 For queries and responses to the consultation please contact:-

Department of Justice
Criminal Law Branch
Massey House
Stoney Road
Belfast
BT4 3SX
E-mail: access.public@dojni.x.gsi.gov.uk
 Telephone: 028 9016 9604
 Text phone: 028 9052 7668

13.3 If you have any queries or concerns about the way in which the consultation has been handled please contact the DOJ Consultation Co-ordinator at the following address:

Peter Grant
Department of Justice
Central Co-ordination Branch
Central Management Unit
Knockview Buildings
Stormont Estate
Belfast
E-mail: peter.grant@dojni.x.gsi.gov.uk

 Telephone 028 9076 5138
 Text phone: 028 9052 7668

Alternative Formats

13.4 An electronic version of this document is available in the current consultation section of the [DOJ website](#). Hard copies will be posted on request. The text phone contact details are provided above.

13.5 Copies in other formats, including Braille or large print, etc. may be made available on request. Please let us know if you need copies in an alternative language or format.

Confidentiality of Responses

13.6 The DOJ will publish a summary of responses following the completion of the consultation process. Unless individual respondents specifically indicate that they wish their response to be treated in confidence, their name and the nature of their response may be included in any published summary of responses. Respondents should also be aware that the DOJ's obligations under the Freedom of Information Act may require that any responses, not subject to specific exemptions in the Act, may be disclosed to other parties on request.

Fine Default Receptions 2010 to 2012

Data is taken from PRISM which is an administrative data source and as such caution should be used when looking at the data as there may be a small number of duplicates due to details being entered twice or inaccuracies due to input error.

Table 1: Fine Default Committals by Age Group and Gender 2010-2012 (persons committed)

Age Group	2010			2011			2012		
	Males	Females	Total	Males	Females	Total	Males	Females	Total
14-16	1	0	1	0	0	0	0	0	0
17-20	228	14	242	262	16	278	241	15	256
21-29	799	41	840	902	65	967	862	92	954
30-39	390	55	445	450	78	528	445	73	518
40-49	245	45	290	245	49	294	294	54	348
50-59	89	4	93	106	5	111	129	14	143
60+	14	1	15	16	1	17	18	2	20
Total	1,766	160	1,926	1,981	214	2,195	1,989	250	2,239

Table 2: Fine Default Committals by Religion and Gender 2010-2012

Religious Group	2010			2011			2012		
	Males	Females	Total	Males	Females	Total	Males	Females	Total
Protestant	616	50	666	606	83	689	627	87	714
Roman Catholic	975	87	1,062	1,157	98	1,255	1,124	119	1,243
Other ¹	175	23	198	218	33	251	238	44	282
Total	1,766	160	1,926	1,981	214	2,195	1,989	250	2,239

¹ includes: 22 with no religion stated in 2010, 23 in 2011 and 26 in 2012.

**Table 3: Number of Fine Default Committals by Offence Groupings 2010 – 2012
(all offences included for each period of Fine Default custody)**

Offence Grouping	2010			2011			2012		
	Males	Females	Total	Males	Females	Total	Males	Females	Total
Violence Against the Person	238	22	260	244	38	282	282	46	328
Sexual	1	0	1	1	0	1	2	0	2
Robbery	2	0	2	1	0	1	0	0	0
Theft	183	28	211	255	34	289	258	47	305
Burglary	28	1	29	29	0	29	28	0	28
Criminal Damage	204	5	209	218	10	228	228	15	243
Drugs	144	1	145	204	4	208	241	6	247
Possession of Weapons Offences	19	3	22	21	1	22	14	1	15
Public Order	325	18	343	397	35	432	442	49	491
Motoring	2,329	157	2,486	2,287	215	2,502	2,252	193	2,445
Fraud	21	4	25	58	3	61	68	32	100
No TV Licence	112	69	181	116	90	206	114	114	228
Other/Misc	399	45	444	514	40	554	490	39	529
Total	4,005	353	4,358	4,345	470	4,815	4,419	542	4,961

Table 3a:2010 Number of Fine Offences for each Fine Default Committal, by Age Group and Balance Due

Age Grouping	Up to £200	£201 to £500	£501 to £1,000	£1,001 to £2,500	£2,501+	Total
14-16	1	0	0	0	0	1
17-20	354	134	21	3	0	512
21-29	1,168	648	95	7	2	1,920
30-39	638	394	56	4	1	1,093
40-49	362	195	43	5	2	607
50-59	129	57	6	3	1	196
60+	16	9	4	0	0	29
Total	2,668	1,437	225	22	6	4,358

Table 3b:2011 Number of Fine Offences for each Fine Default Committal, by Age Group and Balance Due

Age Grouping	Up to £200	£201 to £500	£501 to £1,000	£1,001 to £2,500	£2,501+	Total
17-20	400	168	16	2	0	586
21-29	1,265	763	111	7	1	2,147
30-39	688	435	73	5	3	1,204
40-49	358	206	40	3	5	612
50-59	125	88	12	2	1	228
60+	22	13	2	1	0	38
Total	2,858	1,673	254	20	10	4,815

Table 3c: 2012 Number of Fine Offences for each Fine Default Committal, by Age Group and Balance Due

Age Grouping	Up to £200	£201 to £500	£501 to £1,000	£1,001 to £2,500	£2,501+	Total
17-20	324	171	19	1	0	515
21-29	1,270	707	136	11	1	2,125
30-39	644	432	96	5	1	1,178
40-49	464	258	55	3	1	781
50-59	187	99	19	4	2	311
60+	24	22	3	1	1	51
Total	2,913	1,689	328	25	6	4,961

Table 4a: 2010 Number of Fine Offences for each Fine Default Committal, by Gender and Balance Due

Amount Due	Males	Females	Total
Up to £200	2,443	225	2,668
£201 to £500	1,327	110	1,437
£501 to £1,000	210	15	225
£1,001 to £2,500	21	1	22
£2,501+	4	2	6
Total	4,005	353	4,358

Table 4b: 2011 Number of Fine Offences for each Fine Default Committal, by Gender and Balance Due

Amount Due	Males	Females	Total
Up to £200	2,562	296	2,858
£201 to £500	1,519	154	1,673
£501 to £1,000	235	19	254
£1,001 to £2,500	20	0	20
£2,501+	9	1	10
Total	4,345	470	4,815

Table 4c: 2012 Number of Fine Offences for each Fine Default Committal, by Gender and Balance Due

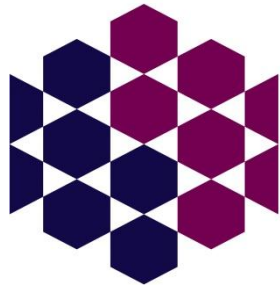
Amount Due	Males	Females	Total
Up to £200	2,610	303	2,913
£201 to £500	1,481	208	1,689
£501 to £1,000	298	30	328
£1,001 to £2,500	24	1	25
£2,501+	6	0	6
Total	4,419	542	4,961

Table 5: Average Daily Number of Fine Defaulters in Prison and Average Number of Days Served

Year	Average Daily Number	Average Number of Days Served
2010	30	4
2011	33	4
2012	35	4

Data Sources

Data	Source
The Northern Ireland Prison Population 2013	http://www.dojni.gov.uk/index/statistics-research/stats-research-publications/prison-population/northern-ireland-prison-population-2013.pdf
Court Prosecutions, Convictions and Out of Court Disposals Statistics for Northern Ireland 2013	http://www.dojni.gov.uk/index/statistics-research/stats-research-publications/prosecutions-and-convictions/rs-bulletin-14-2014-court-prosecutions-conviction-and-out-of-court-disposals-statistics-for-ni-2013.pdf
Judicial Statistics 2013	https://www.courtsni.gov.uk/en-GB/Publications/Targets_and_Performance/Documents/Judicial-Statistics-2013/p_tp_Judicial-Statistics-2013.pdf
Annual Report of the Legal Services Commission Year ended 31 March 2014	www.nilsc.org.uk
Northern Ireland Benefits Statistics Summary August 2014	http://www.dsdni.gov.uk/index/stats_and_research/benefit_publications.htm
Jobseekers Allowance Statistics 2014	http://www.dsdni.gov.uk/index/stats_and_research/benefit_publications.htm
Employment and Support Allowance Statistics 2014	http://www.dsdni.gov.uk/index/stats_and_research/benefit_publications.htm
Pension Credit Statistics 2014	http://www.dsdni.gov.uk/index/stats_and_research/benefit_publications.htm
Income Support Statistics 2014	http://www.dsdni.gov.uk/index/stats_and_research/benefit_publications.htm
Disability Living Allowance Statistics 2014	http://www.dsdni.gov.uk/index/stats_and_research/benefit_publications.htm
Carer's Allowance Statistics 2014	http://www.dsdni.gov.uk/index/stats_and_research/benefit_publications.htm
Labour Force Survey	http://www.detini.gov.uk/stats-labour-market-employment
Census 2011 statistics	http://www.nisra.gov.uk/archive/census/2011/results/key-statistics/summary-report.pdf
Fair Employment Monitoring Report No. 24 2013	http://www.equalityni.org/Publications/Delivering-Equality/FETO-monitoring-reports/Fair-employment-monitoring-report-No-24-Overview-o?ID=4182



Department of
Justice

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Proposals for draft Legislation on Financial Penalties, Collection and Enforcement:

Regulatory Impact Assessment

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1. TITLE OF PROPOSAL

1.1 Proposals for draft legislation on Financial Penalties, Collection and Enforcement to improve the payment of financial penalties and to reduce fine default in Northern Ireland.

2. PURPOSE AND INTENDED EFFECT OF MEASURE

(i) The Objective

2.1 This Regulatory Impact Assessment (RIA) has been undertaken to assess the impact of the proposed fine reform legislative changes contained in a proposed Financial Penalties, Collection and Enforcement Bill. Subject to the Justice Committee and Executive Committee's considerations, the Department would intend to publish and introduce draft legislation for introduction into the Northern Ireland Assembly before the Assembly's Summer Recess in July 2015.

(ii) The Background

2.2 The Department of Justice has faced difficulties for a number of years around the collection and enforcement of financial penalties; the levels of default and numbers imprisoned; and the burdens that the fine enforcement activities has had on both the Police Service of Northern Ireland and the Northern Ireland Prison Service.

2.3 Following a public consultation in 2011 on tackling fine default the Justice Minister announced his strategy in February 2012 to tackle the problem of fine default and imprisonment, built around four key themes of targeting the fine, encouraging payment, dealing with default and delivering the service. The Justice Minister then carried out a further consultation in 2014 with further proposals to enhance that strategy. Those proposals were for the expansion of community-based alternatives to imprisonment and alongside additional measures to improve deterrence.

2.4 The Justice Minister made it clear that alternative fine collection and enforcement arrangements are needed, establishing a system which is appropriate and proportionate; that encourages payment; that has an extended range of

collection and enforcement actions; and that deals with default in a more flexible and innovative way.

2.5 In operational terms, the purpose of the proposed legislation is to introduce new arrangements for the collection and enforcement of fines and other financial penalties; to minimise court time spent dealing with defaulters; to reduce the number of warrants issued to police for enforcement as a consequence of non-payment; and to reduce prison committals. In policy terms, the Bill will include a number of changes to help people avoid getting into arrears or default in the first instance and where they do get into default it will provide ways in which debts can be paid and alternatives to imprisonment provided.

2.6 Procedurally it will provide a new approach by reforming the collection and enforcement process. The current police led model will be replaced by one that is primarily a civilian based collection and enforcement service, that will have the capacity to help defaulters manage their payments under court authority. The Bill will therefore provide a completely new approach to the collection and enforcement of financial penalties and when delivered will bring Northern Ireland to a comparable standard to those already operated within other jurisdictions.

2.7 Dedicated Collection Officers within a newly established Fine Collection and Enforcement Service will look after the collection of financial penalties where a Collection Order has been made by a court. Collection Officers will have responsibility for collecting a range of financial penalties including fines; compensation orders; offender levies; costs in criminal cases; and unpaid fixed penalties and penalty notices which are registered as court fines.

2.8 Collection Officers will perform a number of functions including:

- a) an advisory function, whereby information regarding payment of the fine or other sum may be given;
- b) a statutory collection function, whereby they will take the necessary steps to put into effect any application for benefit deductions ordered by a court; or attachment of earnings order made by a court; and

- c) in the event of default on payment under the collection order, on behalf of the Court, the Collection Officer will have certain collection powers such as, agreeing extensions of time to pay, agreeing or amending Instalment Orders; making Attachment of Earnings Orders; applying to the Department of Social Development for Deduction from Benefits Orders; making Interim Bank Access Order; or recommending Vehicle Seizure Orders to the Court.

(iii) Risk Assessment

2.9 Public confidence in the criminal justice system depends on whether or not people believe that justice is being done and that it is fair and effective. There is therefore a need to have robust and effective enforcement processes in place when someone defaults on the terms of a court order, to ensure that financial penalties are seen as credible and suitable disposals.

2.10 In total, around 50,000 fines and other penalties are imposed each year relating to approximately 30,000¹ defendants, equating to a value of £12 million.

2.11 Although approximately 50% of all financial penalties are paid without the need for enforcement activity, dealing effectively with those who default on payment, remains a considerable challenge and cost for the justice system in Northern Ireland. There is also significant loss to the NI Consolidated Fund in relation to unpaid fines; loss to the Victim of Crime fund for unpaid Offender Levies; and loss to victims entitled to compensation awards.

2.12 The Northern Ireland Courts and Tribunals Service Trust Statement for 2013/14 identified that as at 31 March 2014, the total amount of debt outstanding from non-payment of financial penalties was around £22 million. Approximately £6.1 million relates to amounts outstanding for less than one year, with £12.2 million outstanding between one and five years and with £4.4 million outstanding for more than five years.

¹ It should be noted that these figures include all fines imposed including non-police convictions and differ from Department of Justice convictions which only include Police/PPS prosecutions.

2.13 The NI Courts and Tribunals Service Trust Statement has been qualified for the last three years and was subject to a Public Accounts Committee (PAC) hearing in October 2014. An assurance was given at this hearing that the Department was in the process of bringing forward legislation that would establish a better system to be put in place in relation to financial penalty collection and enforcement.

2.14 The focus of the entire collection and enforcement scheme that is proposed will be on recovery of money before custody is imposed or the financial penalty is remitted and also by the introduction of Supervised Activity Orders (SAOs) as an alternative to imprisonment. SAO arrangements are intended to give courts the power to impose a community based alternative for the non-payment of a financial penalty, rather than a prison term in default of payment.

2.15 The key risks contained in the current collection and enforcement system are:

- a) A loss of significant revenue to the public purse;
- b) The ineffective use of public services, particularly PSNI by way of its role in the execution of fine warrants, and by the NI Prison Service in the inappropriate use of prison places;
- c) Criticisms by the Northern Ireland Assembly for the inefficient use of public services and financial management; and
- d) A potential loss of public confidence in the administration of justice.

3. OPTIONS

3.1 To address the weaknesses in the current system and to address the inherent risks, the Department considered two options for reform: do nothing and leave the system as it currently operates; or change the legislation on financial penalty collection and enforcement and as a result reform the operational procedures.

Option 1: Do nothing – continue with current arrangements in relation to financial penalty collection and enforcement.

3.2 In this option collection and enforcement arrangements would continue unchanged and all offenders who have not paid their financial penalty by the due date would be given notice to attend a default hearing. From default hearings warrants would continue to be issued to police for enforcement and defendants would still be imprisoned for fine default.

3.3 The potential risks for this option include:

- a) PSNI would be required to enforce a substantial number of warrants, estimated at approximately 6,000 per annum, which would significantly impact on other policing priorities and cost PSNI approximately £1.5m per annum;
- b) A considerable number of fine defaulters, approximately 2,000 per year, would continue to be committed to prison for non-payment of a fine, many for relatively minor offences; continuing to place a significant burden on prison resources;
- c) There will continue to be a high number of default hearings, approximately 16,000 per year, costing judicial time, administrative time, high service costs and legal aid costs.
- d) The amount of outstanding fines would continue to increase impacting on the amount of monies owing to the NI Consolidated Fund and the Victims of Crime fund;
- e) The NICTS Trust Statement is likely to remain qualified until new arrangements are put in place;
- f) Reduced confidence in the criminal justice system due to poor collection and enforcement systems.

Option 2: Introduce new collection and enforcement powers in a Financial Penalties, Collection and Enforcement Bill.

3.4 The introduction of a Financial Penalties, Collection and Enforcement Bill would allow for the establishment of a Fine Collection and Enforcement Service and for the use of Supervised Activity Orders (SAOs) as the main default mechanism for the non-payment of a financial penalty.

3.5 The key provisions of the proposed Bill will to provide for:

- a) a civilian-based collection scheme administered by dedicated Collection Officers by way of court-set Collection Orders;
- b) new powers for the deduction of payments from a defendant's income from either earnings or State benefits to clear financial penalties;
- c) powers for the seizure of vehicles in cases of non-payment;
- d) powers to access bank accounts in cases of non-payment;
- e) increased options relating to community service by way of a SAO; and
- f) the removal of remission for sentences of imprisonment for fine default.

3.6 The potential risks for this option include:

- a) Collection Officers are not as effective as envisaged and the revised system does not recover any increased amounts;
- b) The collection of penalties is delayed or spread out over an elongated period;
- c) The resources deployed for the new system outweigh the financial receipts;
- d) Significant change management could result in short term difficulties; and
- e) Public confidence remains an issue if the system does not show early results.

4. BENEFITS

4.1 The Department then considered the benefits of the two options under consideration: do nothing; or change the current legislation.

Option 1: Do nothing. – continue with current arrangements in relation to financial penalty collection and enforcement.

4.2 There are very few, if any, benefits in continuing with the current arrangements in relation to collection and enforcement. The do nothing option would avoid the need for change and any change management or training programmes that might be required. It would also mean that legislation would not need to be drafted and taken through the Assembly process.

Option 2: Introduce new collection and enforcement powers in the Financial Penalties, Collection and Enforcement Bill.

4.3 In this option, the implementation of a Fine Collection and Enforcement Service with dedicated Collection Officers with designated powers under court authority and the use of SAOs as the main default mechanism for the non-payment of financial penalties would be introduced by the Fines and Enforcement Bill.

4.4 The introduction of these new arrangements is intended to provide a cost saving of approximately £1 million per annum. As part of that saving, they will reduce legal aid costs; reduce police and prison costs; and will in due course increase penalty receipts. A funding model has been agreed to fund the running of the new Service and SAOs.

4.5 The Collection Officer's role in the Fine Collection and Enforcement Service, under the authority of the court, will be to collect fines and help people manage the repayment of financial penalties. As part of their role, the Collection Officers will explore an offender's means and ability to pay and they will have a range of powers, including the ability to agree instalment plans, extend time to pay, arrange deductions from earnings or benefits with or without consent and make an Interim Bank Access Order. Additional powers will be included in the legislation allowing a

court to make a Bank Access Order or Vehicle Seizure Order in appropriate cases where payment is not forthcoming.

4.6 As a package the provisions will therefore provide a more sophisticated and improved approach to the collection of financial penalties; and increase compliance. The introduction of a modernised collection and enforcement regime will improve confidence in the use of fines as a credible deterrent to crime by improving collection and enforcement arrangements for unpaid financial penalties and will result in increased payments to the NI Consolidated Fund and Victims of Crime Fund.

4.7 By changing the powers of the Court, the new legislation will provide the following benefits for both the Court and the defendant:

- a) Better options for preventing and, if necessary, dealing with default;
- b) Increased opportunity for early identification of most effective collection method;
- c) Increased opportunity for alternative disposals and avoidance of imprisonment for default.

4.8 By introducing dedicated Collection Officers to manage the collection of financial penalties the changes will provide the following benefits:

- a) create a more cost effective and proportionate system for the management of financial penalty collection and enforcement;
- b) release front line police officers to undertake other duties rather than pursuing outstanding fines;
- c) reduce the number of offenders being imprisoned for fine default; and
- d) release judicial time taken to deal with fine default as certain tasks will be able to be undertaken administratively by the Collection Officer with default hearings estimated to reduce from 16,200 to 4,300 cases per year.

4.9 For the Department of Justice and government more generally the benefits are:

- a) Reduced costs in the court process;
- b) Increased revenue by better collection of penalties; and
- c) For the Department in particular, delivery on the commitment to the Public Accounts Committee to improve fine collection and enforcement with the aim of removing the qualification of the NICTS Trust Statement.

5. ANALYSIS OF IMPACT ON BUSINESS COMMUNITY OR VOLUNTARY SECTOR OF PROPOSED CHANGES

5.1 Three areas of impact have been identified in terms of the business sector: the legal profession; employers; and banks. No impacts have been identified for the Voluntary Sector.

5.2 The business sectors potentially affected by the proposed changes are:

- a) Legal profession in respect of the reduction in the number of cases where legal aid is payable for default hearing;
- b) Employers in relation to the administration of Attachment of Earnings Orders; with provision being made in respect of business outgoings; and
- c) Financial institutions in relation to the administration of Bank Access Orders with provision being made in respect of business outgoings.

5.3 The following table (overleaf) provides an estimated breakdown of the potential impact on each of these aspects of the business sector.

Business Sector	Level of Impact	Summary of Impact and Mitigation
Legal Profession	<p>Minimal in terms of:</p> <p>(a) the amounts involved;</p> <p>(b) that the business area affected is a very recent and therefore not long-standing work area; and</p> <p>(c) that the reduction is not a new charge or outlay to the profession.</p>	<p>Expenditure on criminal legal aid in 2013/14, excluding Legal Advice and Assistance and Assistance by way of Representation was £50.4m. A very small part of that, only £53,000 for the financial year 2014/15, was in respect of Fine Default hearings as introduced in June 2014 to deal with fine default cases.</p> <p>The introduction of the proposed system will see a reduction on such hearings. Cases proceeding to default hearing are expected to reduce from approximately 16,200 cases to 4,300 cases per annum. There will therefore be a decrease in the amount of legal aid payments due to a reduction in such default hearings.</p> <p>It is anticipated that the projected bill for legal aid for default hearings will be reduced from £591,931 to £157,117 per annum (reduction of £434,814). General legal aid entitlement for criminal cases proceeding in the magistrates' and Crown court will not be impacted by the Fines and Enforcement Bill changes and this is where the majority of legal aid is allocated.</p>

Employers	Minimal and recoverable.	<p>The proposed legislation will impact on employers who are required to make Attachment of Earnings Orders and pay fine monies recovered from the employees' wages/salary to the court. It is worth noting that AEOs are not a completely new process for employers as similar arrangements are already operational for the collection of civil debt by the Enforcement of Judgments Office and child maintenance orders made by courts. In terms of fine default, it is estimated that there will be 2,000 Attachment of Earnings Orders per annum. Employers will however be able to recoup an administrative fee from the employee for each deduction to cover their business costs.</p> <p>In summary there will be no cost to employers for administering an AEO the costs of which will be recoverable from the employee as part of the recovery process.</p>
Financial Institutions	Minimal and recoverable.	<p>The proposed legislation will impact on Financial institutions which will be required to action interim and full Bank Access Orders and pay recovered monies to the court. Again this will not be a completely new process for financial institutions as similar arrangements are already operational for the collection of civil debt by the Enforcement of Judgments Office with financial institutions. In terms of default, it is anticipated that there will be approximately 1,000 Bank Access Orders per annum however financial institutions can recoup their</p>

		<p>business costs from the account holder for each Bank Access Order imposed. In summary there will be no cost to banks or financial institutions for freezing a bank account the costs of which will be recoverable from the account holder as part of the recovery process.</p>
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6. COSTS

(i) Compliance Costs

Option 1: Do nothing. – continue with current arrangements in relation to financial penalty collection and enforcement.

6.1 Nil costs to businesses as there would be no change to the current practice – no reduction in legal aid for default hearings, no introduction of Attachment of Earnings and no introduction of Bank Access Orders.

Option 2: Introduce new collection and enforcement powers in a Financial Penalties, Collection and Enforcement Bill.

6.2 Compliance costs for businesses would include costs for employers to comply with Attachment of Earnings Court Orders and to make regular payments to the courts on behalf of employees who owe outstanding fines. Employers can recoup costs from employees and there will be legislative provision to do this. As AEOs are already operated by employers for deductions from salaries and wages for civil debt and for child maintenance payments there should be no requirement for employers to purchase additional equipment.

6.3 Financial institutions will also have a compliance cost for freezing individual bank accounts on foot of a court order and for paying to the court the amount of the outstanding fine if a full bank access order is made by the court. Financial institutions will recover these costs from the account holder and there will be legislative provision to do this.

(ii) Other Costs

6.4 The package as proposed will see an expansion of the use of Supervised Activity Orders for community based work schemes. SAO placements are arranged by the Probation Board for Northern Ireland under a PBNI placement agreement with host organisations. There would be no costs to charities or the voluntary sector for the introduction of SAOs which will be delivered under the PBNI placement agreements.

7. OTHER IMPACT ASSESSMENTS

7.1 An Equality Impact Assessment (EQIA) has also been completed for the proposed draft legislation.

8. ENFORCEMENT AND SANCTIONS

8.1 The Department of Justice will be responsible for the fines and enforcement process. Subject to the approval of the NI Assembly for the proposed legislation, the Fine Collection and Enforcement Service will be based in NI Courts and Tribunals Service.

8.2 PBNI will be responsible for managing the Supervised Activity Orders made by the court. PSNI will retain a responsibility for executing warrants issued for fine default and NIPS will retain responsibility for detaining defaulters.

8.3 The Department for Social Development will have responsibility for deductions from benefits operated under the Third Party Deductions Scheme.

8.4 Each of the Departments and agencies will have enforcement and sanctions available to them to secure compliance.

8.5 The legislation will contain a series of offences and penalties for non-compliance with Court, Collection Officer and deduction decisions. Police will retain a power to execute default warrants. PBNI will have breach powers available for non-compliance with Supervised Activity Orders. NI Prison Service will have prison

remission removed in respect of those who end up in prison for default. Appeal procedures will be available to defaulters.

9. MONITORING AND REVIEW

9.1 The Department of Justice will be responsible for monitoring and evaluating the new arrangements introduced by the provisions contained in the Fines and Enforcement process which will commence – subject to the approval of the NI Assembly - upon the establishment of the new Fine Collection and Enforcement Service. The effectiveness of the legislative changes introduced in the legislation will be measured against the performance targets set for the new Service. Success factors for the new Fine Collection and Enforcement Service will include:

- a) reduction in number of default hearings required;
- b) reduction in the number of committal warrants issued to police for execution;
- c) reduction in number of committals to prison solely for fine default; and
- d) an increase in monies paid to the Northern Ireland Consolidated Fund and Victims of Crime Fund.

10. CONSULTATION

(i) Within Government

10.1 The Department consulted extensively with Executive Departments, with relevant agencies, and with the Justice Committee.

10.2 In terms of Executive Departments the Department has consulted on specific proposals with the Department for Social Development, the Department for Regional Development and the Department of the Environment. The Department also brought its proposals to the Executive as a whole.

10.3 In terms of relevant agencies, the Department has consulted with the NI Courts and Tribunals Service; the Police Service of Northern Ireland; the NI Prison Service; and the Probation Service for Northern Ireland.

10.4 The Department undertook two public consultations on its proposals (see below) in 2011/12 and 2014 both of which were shared with the Justice Committee.

(ii) Public Consultation

10.5 The Department of Justice launched a public consultation exercise on proposals to address fine default and enforcement in Northern Ireland in July 2011. The consultation document provided a background to the use of the fine in Northern Ireland. It described the increasing problem of fine default over a number of years; provided an overview of developments following a previous public consultation by the Northern Ireland Office in 2008; and sought to bring forward fresh ideas and proposals in the context of the devolution of justice. The main part of the 2011/12 consultation was based around options for preventing default; increasing compliance; and identifying the optimum methods of cost-effective enforcement. Twenty three responses were received to the consultation exercise.

10.11 A further consultation was also held in 2014 requesting views on four additional issues:

- a) prioritising the Supervised Activity Order to provide that prison would not be routinely available for fines;
- b) providing powers to seize vehicles from defaulters in certain circumstances;
- c) allowing collection methods to include access to bank accounts; and
- d) removing prison remission for those who nevertheless end up in custody in default – custody will always remain the ultimate backstop.

10.12 This consultation exercise received 10 substantive and 2 acknowledgement responses.

10.13 Having considered all the responses from both the consultation exercises, the Minister decided to progress efforts to increase the number of fines paid on time; reduce instances of default; and to reduce police time and resources being used in fine enforcement. The Minister also decided to increase the availability of

community-based alternatives to imprisonment for default and at the same time to strengthen the deterrent measures available. The various proposals were reported to the Justice Committee in 2012 and 2014 and as a result have been proposed for legislation by way of a Fines and Enforcement Bill.

11. SUMMARY AND RECOMMENDATION

11.1 The rationale for reforming, improving and modernising financial penalty collection and enforcement processes in Northern Ireland remains unchanged since the Department commenced the policy development process. The policy intentions embodied in the Fines and Enforcement Bill will not be fully realised until the relevant legislation is made and is operational. The policy has been subject to a rigorous consultation process over an extensive period of time and there remains widespread support for the creation and introduction of a new Fine Collection and Enforcement Service with collection officers empowered to collect and enforce financial penalties under the authority of the court. In addition, with SAOs being introduced as the main default mechanism for non-payment of a financial penalty, fewer defaulters will be imprisoned and fewer committal warrants will be issued to PSNI for execution.

11.2 The introduction of a Fines and Enforcement Bill would allow for a more appropriate and proportionate system, encouraging payment with an extended range of collection and enforcement options, dealing with default in a more flexible and innovative way.

11.3 The Fines and Enforcement Bill addresses all the Ministerial and Departmental reform priorities, ensuring that people do not routinely go to prison for defaulting on a financial penalty. In addition, the new powers contained in the Fines and Enforcement Bill will release front line police officers to undertake other duties rather than pursuing outstanding financial penalties.

11.4 A summary of the Financial Penalty Collection and Enforcement costs and Businesses impacted are:

In overall terms

Option	Total Cost per annum
1 Do nothing	£2.8 million per annum
2 Introduce new collection and enforcement powers in the Fines and Enforcement Bill.	£1.8 million per annum

In terms of business sectors

Business Sector	Potential Total Impact on Businesses
Legal Profession – reduction in legal aid for default hearings per annum due to fall in number of default hearings required.	£434,814 per annum across all solicitor firms
Employers – Attachment of Earnings Orders (AEO).	£ Nil – costs for administering an AEO can be recovered from the employee (approximately 2,000 AEOs per annum)
Financial Institutions – Bank Access Orders (BAO).	£ Nil - costs for freezing a bank account can be recovered from the account holder (approximately 1,000 BAOs per annum)

12. DECLARATION

[The following would remain blank until the legislation is sent to the Assembly at which point it becomes a final RIA. This Section 12 Declaration would not be included in the published RIA at this stage.]

“I have read the Regulatory Impact Assessment and I am satisfied that the benefits justify the costs.”

Signed

Date

David Ford MLA
Minister of Justice