



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