



Northern Ireland  
Assembly

## Research and Information Service Briefing Note

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# Fine Collection and Enforcement Mechanisms: Supplementary Information

## 1 Introduction

This briefing note has been prepared in response to a request from the Committee for Justice for additional information to supplement research paper NIAR49-2015, entitled “Fine Collection and Enforcement Mechanisms”.

It includes three sections to address the following three areas where the Committee asked for further elaboration. These are:

- **Any figures available that illustrate how often deductions from benefit payments and unpaid work requirements are used in England and Wales (Section 2);**
- **Whether there are any other jurisdictions – Texas was mentioned – apart from New South Wales, Australia, that provide the opportunity to satisfy a fine by undertaking appropriate treatment or activities such as mental health, drug or alcohol treatment (Section 3);**
- **Whether the Republic of Ireland ever considered providing for deductions from benefits as part of the fine enforcement arrangements (Section 4).**

## 2 The use of deductions from benefit payments and unpaid work requirements in England and Wales

### 2.1 Deduction from benefits orders

In March 2013, Helen Grant MP, then Parliamentary Under-Secretary of State for Justice, answered a parliamentary question relating to fines and the use of deduction from benefits orders by stating that “*Her Majesty’s Courts and Tribunals Service (HMCTS) systems do not identify how many fines have been or are being paid by deduction from benefits orders.*”<sup>1</sup> HMCTS is only able to identify how many applications for deductions from benefits orders are made to the Department of Work and Pensions each year, but this does not indicate how many applications are successful or how many fines this relates to. Not all applications will be successful because fines may only be deducted from certain benefits and only in circumstances where there are not already a lot of third-party deductions being taken from the benefits claim. Furthermore, she explained that in instances where an offender starts and the stops claiming benefits a number of times, the deductions from benefits order will also cease and the offender will need to re-apply when he or she is claiming the relevant benefit again. As a result, some fines accounts have multiple applications for deduction from benefits. This means that the deduction from benefits and the number of applications for deductions orders do not correlate to the number of fines being paid in this way.<sup>2</sup>

## 3 Jurisdictions which provide the opportunity to satisfy a fine by undertaking appropriate treatment or activities

### 3.1 Texas

The Texas Code of Criminal Procedure outlines payment of a fine in Article 43.03.<sup>3</sup> If a defendant is sentenced to pay a fine or costs or both, and the defendant defaults on payment, the court will hold a hearing under subsection (d) to assess the defendant’s ability to pay. Article 43.09(f) specifies that a court may require a defendant who is unable to pay a fine or costs to discharge all or part of the fine or costs by performing community service.<sup>4</sup> The defendant may be directed to work in the county jail industries program, in the workhouse, on the county farm, or in public improvements and maintenance projects.<sup>5</sup> The court may order the defendant to perform community service work under subsection (f) only for a governmental entity or a non-profit organization that provides services to the general public that enhance social welfare and the general well-being of the community. The organization must agree to

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<sup>1</sup> House of Commons Debate. Written answer Offenders: Fines [148437/13]. (25 Mar 2013).

<sup>2</sup> As cited above.

<sup>3</sup> Texas Code of Criminal Procedure [Online] Available at: <http://www.statutes.legis.state.tx.us/Docs/SDocs/CODEOFCRIMINALPROCEDURE.pdf> (Accessed: 14 August 2015).

<sup>4</sup> As cited above.

<sup>5</sup> Article 43.09(a) Texas Code of Criminal Procedure [Online] Available at: <http://www.statutes.legis.state.tx.us/Docs/SDocs/CODEOFCRIMINALPROCEDURE.pdf> (Accessed: 14 August 2015).

supervise the defendant and report on the defendant's work to the district probation department or court-related services office.<sup>6</sup>

Under Article 43.09 (k), the Code considers a defendant to have discharged \$100 of fine or costs for each eight hours of community service performed under this article.

If the defendant is jailed, Article 43.09(d) states that in its discretion, the court or the sheriff of the county may grant an additional two days credit for each day served to any inmate participating in an approved work program or a rehabilitation, restitution, or education program.<sup>7</sup>

#### 4 Deductions from social welfare payments to pay off fines in the Republic of Ireland

In its Programme for Government 2011-2016,<sup>8</sup> the Irish Government committed to end the practice of imprisoning people who cannot pay fines and debts. It pledged to introduce a system which would take a small amount of money from wages or social welfare by “attachment order” to pay off a fine or debt over time, as an alternative to imprisonment for people who refuse to pay.<sup>9</sup>

The main purpose of the Fines (Payment and Recovery) Act 2014 (the Act)<sup>10</sup> was to substantially reduce the number of people sent to prison for non-payment of fines. Section 14 of the Act introduced the concept of attachment orders. It provides that where a fined person who is employed under a contract of employment or in receipt of an occupational pension fails to pay the fine by the due date for payment, the court may, make an order directing the person's employer to deduct from the fined person's earnings the sums specified in the order, and pay these as contributions toward the payment of the fine.<sup>11</sup>

Alan Shatter, then Minister for Justice and Equality, explained that this was to tackle those individuals who, despite being employed and having sufficient resources to pay a fine, do not do so in the hope there will be no consequence to their non-payment.<sup>12</sup>

<sup>6</sup> Article 43.09 (h) Texas Code of Criminal Procedure [Online] Available at:

<http://www.statutes.legis.state.tx.us/Docs/SDocs/CODEOFCRIMINALPROCEDURE.pdf> (Accessed: 14 August 2015).

<sup>7</sup> Texas Code of Criminal Procedure [Online] Available at:

<http://www.statutes.legis.state.tx.us/Docs/SDocs/CODEOFCRIMINALPROCEDURE.pdf> (Accessed: 14 August 2015).

<sup>8</sup> Department of the Taoiseach (2011). *Programme for Government 2011-2016* [Online] Available at:

[http://www.taoiseach.gov.ie/eng/Work\\_Of\\_The\\_Department/Programme\\_for\\_Government/Programme\\_for\\_Government\\_2011-2016.pdf](http://www.taoiseach.gov.ie/eng/Work_Of_The_Department/Programme_for_Government/Programme_for_Government_2011-2016.pdf) (Accessed: 14 August 2015).

<sup>9</sup> As cited above, p. 47.

<sup>10</sup> Fines (Payment and Recovery) Act 2014 [Online] Available at: <http://www.irishstatutebook.ie/2014/en/act/pub/0007/> (Accessed: 14 August 2015).

<sup>11</sup> Fines (Payment and Recovery) Act 2014 [Online] Available at

<http://www.irishstatutebook.ie/2014/en/act/pub/0007/sec0014.html#sec14> (Accessed: 14 August 2015)

<sup>12</sup> Dáil Éireann Debate Fines (Payment and Recovery) Bill 2013: Second Stage. 25 September 2013. Available at:

<http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/takes/dail2013092500043?opendocument#R00600> (Accessed: 14 August 2015).

At the Second Stage debate of the Act in the Dáil Éireann, concerns were expressed around attachment of earnings orders.<sup>13</sup> Tony McLoughlin TD expressed his disappointment that this could not be extended to social welfare recipients as he suggested “*there is a perception that the working person always gets hit and that some social welfare recipients can escape under the radar or the complications of paper work and administration*”.<sup>14</sup>

Section 13 of the Social Welfare Act, 2012<sup>15</sup> amends the Social Welfare Consolidation Act, 2005 to allow for a deduction of an amount up to 15% of the weekly personal rate payable to a customer for the purposes of the recovery of an overpayment (in both fraud and non-fraud cases) without the customer’s consent.

Minister of State at the Department of Finance, Brian Hayes TD, explained that this legislation meant that three years would be required to pay the average fine by means of social welfare deductions.<sup>16</sup> Furthermore, he reported that the Department of Social Protection had advised that significant work would be required on its information technology system if attachment of social welfare was to be undertaken.<sup>17</sup> He stressed that while an attachment of social welfare would not be introduced at this stage, it may be considered again in the future.

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<sup>13</sup> As cited above.

<sup>14</sup> As cited above.

<sup>15</sup> Social Welfare Act 2012 [Online] Available at: <http://www.irishstatutebook.ie/pdf/2012/en.act.2012.0043.pdf> (Accessed: 14 August 2015).

<sup>16</sup> Seanad Éireann Debate Fines (Payment and Recovery) Bill 2013: Report and Final Stages. 8 April 2014. [Online]. Available at: [http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/\(indexlookupseanad\)/20140408-LL?opendocument](http://oireachtasdebates.oireachtas.ie/debates%20authoring/debateswebpack.nsf/(indexlookupseanad)/20140408-LL?opendocument) (Accessed: 14 August 2015).

<sup>17</sup> As cited above.