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Fine Collection and Enforcement Mechanisms

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

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Key Points

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

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

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

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

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

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

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

Contents

Key Points 1

Contents..... 5

1 Introduction 7

2 Proposals for fines and enforcement in Northern Ireland 7

3 England and Wales 8

4 Scotland 12

5 Republic of Ireland 17

6 Australia 19

7 New Zealand 28

1 Introduction

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

2 Proposals for fines and enforcement in Northern Ireland

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

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

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

A statutory Code of Practice would determine collection officer practice.

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

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

3 England and Wales

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

Enforcement of fine payments

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

If the offender does not pay the fine when it is due, then a court may issue a warrant of commitment in certain circumstances. It may do so⁴:

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

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

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

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

⁴ *Ibid.* pp. 445-6.

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

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

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

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

Additional methods of recovering fines

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

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

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

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

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

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

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

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

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

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

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

Payment of fines

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

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

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

⁶ Criminal Justice Act 2003 S 300 (7)

⁷ Courts Act 2003 S 36

⁸ HM Courts and Tribunal Service

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

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

Fine Collection Statistics

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

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

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

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

⁹ HM Courts and Tribunals Service Business Plan 2014-15, pg 18

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

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

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388367/bulletin-july-to-september-2014.pdf

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

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388367/bulletin-july-to-september-2014.pdf pp.14-15.

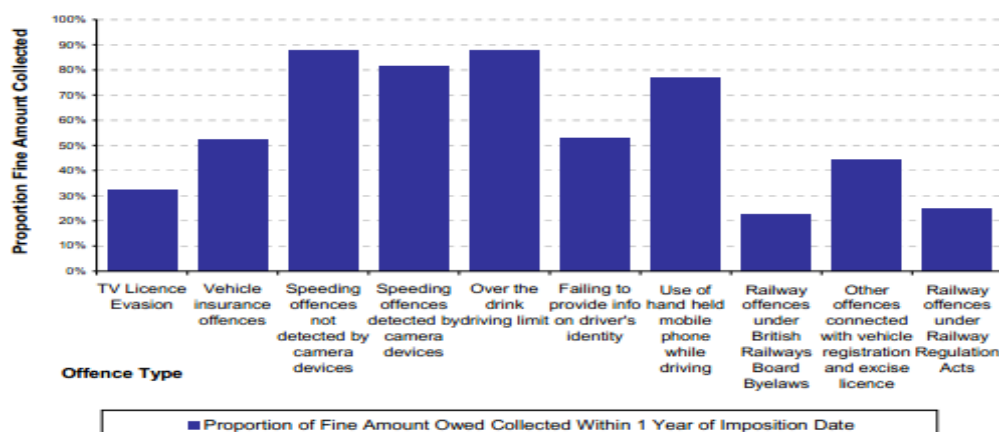
¹³ Ministry of Justice (2014) *Criminal Court Statistics Quarterly, England and Wales*. Available at:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/388367/bulletin-july-to-september-2014.pdf pp.14-15.

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

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

Chart B.1 – Proportion of fine amount owed collected within a year for the top ten most commonly occurring offence types in the matched data⁶



Fine collection in England and Wales has seen improvements. However, by the third quarter of 2014 there were £557 million outstanding in unpaid fines.¹⁴ This is an increase of £6 million (1%) from the second quarter in 2014.¹⁵ Although this 'figure had fallen since April 2011 and is down by 4% from the first quarter in 2014.¹⁶ During the third quarter of 2014, 11% (£13 million) of all fines were paid within a month.¹⁷

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

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

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

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

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

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

4 Scotland

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

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

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

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

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

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

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

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

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

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

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

The FEO can apply for enforcement sanctions. The FEO has the power to issue a seizure order to immobilise and impound an offender's vehicle²⁵ and to request the court make an application for a deduction from benefits to be made from an offender for the purpose of obtaining payment of a fine or penalty.²⁶ Other sanctions include arrestment of earnings or arrestment of funds held in bank accounts for the purpose of obtaining payment of a fine or a penalty.²⁷ The FEO can refer any outstanding fine back to court where they are of the view that the fine, penalty or unpaid balance is unlikely to be paid. The court may do a number of things:²⁸

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

