

NEW FINE COLLECTION AND ENFORCEMENT LEGISLATION EFFECTIVE FROM 1 JUNE 2018

Introduction

Part 1 of the Justice Act (NI) 2016 (“the Act”)¹, which provides for the enforcement and collection of fines and other penalties commenced on **1 June 2018**² along with the following secondary legislation:

- The Enforcement of Fines and Other Penalties Regulations (NI) 2018³
- The Collection of Fines etc. (Northern Ireland Consequential Amendments) Order 2017⁴
- The Magistrates’ Courts (Amendment No.2) Rules (NI) 2018⁵
- Social Security (Fines) (Deduction from Benefits) Regulations NI 2018⁶
- The Enforcement of Fines and Other Penalties (Revocations) Order (Northern Ireland)⁷ 2018
- The Magistrates’ Courts (Fees) Amendment Order (Northern Ireland) 2018⁸

Part 1 of the Act and related secondary legislation provides a new approach to the collection and enforcement of financial penalties by allowing the court to make a ‘collection order’ when imposing (or registering) a financial penalty in criminal cases. Collection and enforcement will then be delegated, under the authority of the order, to an administrative and centralised Fine Collection and Enforcement Service (FCS).

The new arrangements aim to tackle the long standing issue of fine default by improving collection rates through new collection options and enforcement powers, also resulting in reduced police involvement in fine enforcement and reduced numbers of debtors going to prison for default.

Statutory guidance has been produced and published in accordance with s.26 of the Act⁹. This guidance explains the collection order and its operation, the role of the collection officer, what penalties are included, the collection and enforcement orders, court powers, offences and appeals.

¹ <http://www.legislation.gov.uk/nia/2016/21/contents>

² The Justice (2016 Act) (Commencement No.2) Order (Northern Ireland) 2018
(<http://www.legislation.gov.uk/nisr/2018/99/contents/made>)

³ <http://www.legislation.gov.uk/nisr/2018/102/contents/made>

⁴ <http://www.legislation.gov.uk/uksi/2017/570/contents/made>

⁵ <http://www.legislation.gov.uk/nisr/2018/103/contents/made>

⁶ <http://www.legislation.gov.uk/nisr/2018/98/contents/made>

⁷ <http://www.legislation.gov.uk/nisr/2018/100/contents/made>

⁸ <http://www.legislation.gov.uk/nisr/2018/101/contents/made>

⁹ www.justice-ni.gov.uk/publications/guidance-collection-and-enforcement-fines-and-other-penalties

Should the court decide not to impose a collection order then collection and enforcement will continue as it did before 1 June 2018.

New Powers

The above legislation, *inter alia*, makes provision for:

- the penalties affected;
- the functions and designation of collection officers;
- courts to make a collection order when imposing (or registering) a financial penalty;
- improved access to benefit, income and vehicle ownership information for the purposes of collection and enforcement;
- collection officers to agree instalment orders or additional time to pay with debtors;
- the deduction of payments from a debtor's income from either earnings or relevant welfare benefits to clear financial penalties;
- access to bank accounts;
- seizure of vehicles;
- the use of supervised activity orders (SAO) in relation to all affected penalties;
- new summons procedures for attending interviews with the collection officer and for referral (default) hearings;
- arrest warrants for non-attendance at referral hearings;
- courts to order referral hearing costs to be paid by the debtor;
- the removal of sentence remission for those who end up in custody for fine default;
- ensuring that distress shall not be ordered at the point of sentence;
- ensuring children are not detained solely for default in payment; and
- the amendment of provisions relating to attendance centre orders, so that these will still be available as a default option for children.

The provisions apply to fines (including jury fines), compensation orders, the offender levy, costs ordered by the court, fixed penalties and penalty notices which have been registered for enforcement and fines transferred in from Great Britain or by an EU Member State. The provisions do not apply to confiscation orders which will continue to be enforced under Part 4 of the Proceeds of Crime Act 2002.

Collection officers

A collection officer is a civil servant designated by the Department of Justice (s.2(1) of the Act). A collection officer's functions are to provide debtors with advice and information about payment, secure compliance with the collection order and such further function as may be specified by regulations (s.2(2) and (3))

The collection officer's powers under the collection order come into effect when the debtor fails to pay the sum due within the time appointed by the court at the point of its making.

If the collection officer, having taken all reasonable steps, is unable to contact the debtor or the debtor refuses to engage, the collection officer can apply to a magistrates' court for the issue of a summons to require the debtor to attend an interview with a collection officer (s.5(4)). The officer can then attempt collection through extending the time for payment, allowing payment by instalments, deduction from earnings powers, or he may refer the matter back to court with or without making an interim bank account order or a request that a vehicle seizure order be made.

Deductions from benefits (ss.14-17 of the Act)

An application for deduction from benefits is made to the Department for Communities under s.14 of the Act. Such an application may only be made in respect of those aged 18 years or older at the time of the application (s.14(2)), and may only be made in respect of jobseeker's allowance, state pension credit, employment and support allowance and income support (s.14(3)). Universal Credit will be added in due course.

An application may only be made where a collection order has been made, and may be made where:

- the court directs an application at the time of sentencing, where the debtor consents and if this is more appropriate than ordering payment within a specified period or allowing payment by way of instalments (s. 4(2)).
- the debtor has defaulted on payment and extension of time and/or instalments had failed or were inappropriate. The collection officer may make such an application whether the debtor consents or not, although the debtor may apply to the collection officer either orally or in writing for such an application to be made (s.6(3)& (4))
- the court directs the collection officer to make an application at a referral (default) hearing (debtor's consent not required) (s. 9(1)(c)).

Attachment of earnings (ss.18-19 and Schedule 1 to the Act)

An attachment of earnings order (AEO) may be made against a person who is aged 18 or over, and is in employment. The order is directed to the person who appears to employ the debtor, who will ensure that the correct amount is taken from the employee's wages (s.18).

An AEO may only be made where a collection order is made. An order may be made:

- by the court at the time of sentencing, when making a collection order, where the debtor consents and if this is more appropriate than ordering payment within a specified period or allowing payment by way of instalments (s.4(2))
- by the collection officer when the debtor has defaulted on payment and extension of time and/or instalments had failed or were inappropriate. At this stage, the debtor's consent is not required to make such an application, although the debtor may also apply to the collection officer either orally or in writing for such an application to be made (.s 6(3) & (4)).
- by the court at a referral hearing(debtors consent is not required (s. 9(1)(c)).

The collection officer has authority to require from the debtor details of his actual or anticipated earnings or income as well as details of his employer (s. 19).

The amount deducted will be in accordance with the tables set out at Schedule 2 to the Enforcement of Fines and Other Penalties Regulations (NI) 2018, or the debtor may agree to pay higher amounts. Employers will be entitled to deduct a small administrative fee (£1) from the debtor's earnings for every deduction made and paid to the court (*The Enforcement of Fines and Other Penalties Regulations Regulation 13*).

Bank account orders (ss.20-22 of the Act)

Interim bank account orders (IBAO) and bank account orders (BAO) will allow financial penalties to be recovered from debtors who have sufficient funds in a bank account, held in debtors sole name, to make payment but have not done so. It will be available where other enforcement options are inappropriate or have failed.

The collection officer will only have authority to impose an IBAO, freezing the amount required on a temporary basis, before referring the matter back to court for it to consider making a BAO. A debtor may apply to the collection officer for a hardship payment if an IBAO causes particular difficulty.

A BAO requires the financial institution to make payment of the specified amount to the court, but it may not operate to require the making of a payment which would reduce the credit balance of the debtor's account below £5.00 (*The Enforcement of Fines and Other Penalties Regulations 2018 Regulations Regulation 28*).

BAOs apply in the case of a person who was convicted of an offence, but not sentenced, before 1 June 2018 as well as in the case of a person convicted after 1 June 2018 (s. 20(9) of the Act).

Vehicle seizure orders (s.23 of the Act)

A vehicle seizure order (VSO) enables a debtor's vehicle to be seized in order to secure payment of the sum due. The vehicle may be sold, scrapped or otherwise disposed of and any proceeds of sale are to be used to pay the outstanding amount.

The collection officer will only consider this option after all other options have failed or are inappropriate. The collection officer cannot make a VSO but may refer a request to the court at which the debtor can make representations.

The collection officer must be satisfied of the debtor's ability to pay the outstanding amount, that the vehicle is owned by the debtor and has a value sufficient to pay the unpaid amount including any charges incurred. Vehicles that are used to transport disabled or vulnerable persons or that are determined as priority vehicles under the Act or Regulations cannot be made subject to a VSO.

Before making a VSO, the court must be satisfied that the VSO would be justified, reasonable and proportionate in all the circumstances of the case and have particular regard to the likely effect of the VSO on the debtor's ability to earn a living.

Once a VSO has been made and the vehicle has been seized, the debtor has the opportunity to reclaim the vehicle, by paying the outstanding financial penalty, removal and storage charges within 28 days. Should the debtor not pay the vehicle may be sold or otherwise disposed of, and the proceeds will be used to pay the penalty and any charges. Any remaining balance will be issued to the debtor.

Vehicle seizure orders will apply in the case of a person who was convicted of an offence, but not sentenced, before 1 June 2018 as well as in the case of a person convicted after 1 June 2018 (s. 23(9)).

Supervised Activity Orders (SAO) (s.29 of the Act)

A SAO allows a debtor to undertake community based activities to clear a financial penalty. Section 29 of the Act substitutes a new Article 45 into the Criminal Justice (NI) Order 2008 in relation to the imposition of SAOs, and makes consequential amendments to Schedule 3 to the Order.

A SAO may now be made in respect of any of the penalties affected for an individual aged 18 and above who has an outstanding amount of up to £1,000.

As well as providing for the imposition of a SAO when a person is in default of payment, the new Article also now allows for a SAO to be made when the person makes an application for a SAO, default not yet having occurred.

SAOs now range from 10-150 hours depending on the value of the outstanding amount, and the default period for failing to comply with a SAO is increased to 35 days maximum to take account of the higher values.

A debtor can complete a SAO early by paying the outstanding amount to the court reduced proportionally by the hours completed.

SAOs will be managed by Probation Board for NI (PBNI).

Court's powers at referral hearings (s.9 of the Act)

Where the debtor is in default of a collection order, the collection officer may refer the matter back to court under s.6 of the Act. The court may then give additional time to pay, allow payment by way of instalments, impose an attachment of earnings order or direct an application for deduction from benefits, make a bank account order (even if the collection officer has not previously made an interim bank account order), make a vehicle seizure order, issue a warrant of distress, make a supervised activity order or in the case of a child an attendance centre order, commit an adult debtor to prison in default of payment or where he is in default of distress, or remit the whole or part of the sum due (s. 9(1)).

Where no collection order has been made, and default occurs, the responsible officer may refer the matter back to court under s.8 of the Act. The court can then decide to impose a collection order at this point. If it does, then all of the options under s.9 will be open to it. If the court decides not to impose a collection order, then all of the options bar the deductions from benefits and attachment of earnings orders will be open to it. (s. 9(2)).

Section 9 of the Act sets out the sequence of using the above options and provides for when they may or may not be used.

Power to issue arrest warrant where debtor fails to attend referral hearing (ss. 10-12 of the Act)

Under s. 10 of the Act if a debtor fails to attend a referral (default) hearing on foot of a summons, the court may issue an arrest warrant, endorsed for own bail. The warrant can only be issued where the court is not satisfied that the summons was served on the debtor despite a reasonable attempt having been made to serve it; or believes that the debtor is evading service. The court must also be satisfied that the debtor is aware of the liability to pay the sum due and of the possible consequences of defaulting on the payment; considering issuing a warrant to commit the debtor to

prison under s. 9(1)(i); and satisfied that issuing a warrant for the debtor's arrest (instead of re-issuing the summons) is proportionate to the objective of securing the debtor's appearance before the court. The warrant must be endorsed for bail so that the person will be released upon entering into the recognizance.

Whether a debtor enters into the recognizance or not he can pay to the police or the court the full outstanding amount up to the court date. If payment is made in full then the warrant ceases to have effect, the case will be removed from the court list and the debtor is not required to appear before the court (s. 11).

Appeals (s.25 of the Act)

Appeal procedures are available across all of the decisions made in the collection process in terms of both court and collection officer decisions. For courts, normal appeal routes are available whereby any decision is appealable to the next highest court tier. Collection officer decisions are appealable to the court which made the collection order and decisions on any deductions from benefits are appealable to the Department for Communities.

Where an appeal is brought, the collection order is suspended until that appeal is resolved and the collection officer will not take any further enforcement actions until after the appeal is completed.

Offences

The fine collection and enforcement arrangements have a number of offences built in, in order to ensure compliance their effectiveness. These include offences of non-compliance with the court's or collection officer's request for information, either by failing to provide the information, or by providing false information knowingly or recklessly, or failing to disclose a material fact, non-compliance with enforcement orders and an offence of concealment in relation to vehicle seizure orders.

Removal of Remission (s.32 of the Act)

Section 32 of the Act amends section 13 of the Prison Act (NI) 1953 (prison rules) so that remission shall no longer be available in respect of committals to prison or detention in respect of default.

The removal of remission does not apply in relation to offences committed before 1 June 2018.

Legacy cases

Where a court has already dealt with the default before 1 June no collection order may be made.

Cases where a debtor has been sentenced and default has occurred prior to 1 June 2018, will be referred to the court for a collection order to be considered, however, for these cases and any others where the sentence was imposed before 1 June, interim bank account orders, bank account orders and vehicle seizure orders may not be made .

New Fine Collection and Enforcement Service

The new Fine Collection and Enforcement Service (FCS) is based within NI Courts and Tribunals Service, located on the ground floor in Laganside House.

FCS contact details are as follows:

Fine Collection and Enforcement Service

NICTS

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Belfast

BT1 3LA

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