



AN BILLE FÍNEÁLACHA 2004
FINES BILL 2004

EXPLANATORY MEMORANDUM

Why is this Bill Needed?

There are many fines in our legislation which have not been amended or updated and as such they do not serve as an adequate deterrent or as an adequate penalty. When they are imposed and highlighted by the Courts, such low penalties bring the law into disrepute and cause the law to become the subject of amusement. For example, in September 2002, a mother was convicted on a charge of being drunk and in charge of a three-year-old child and as a result was fined €2. Also, in October 2003, a 14 year old boy was fined €5 and banned from driving for one year.

Given the important role which legislation plays in any democracy, the Government should be acting to ensure that penalties are such that they are proportionate to the offence and that they reflect an appropriate penalty in today's monetary terms.

This Bill also allows for the establishment of a scheme for the payment of fines by instalments. On any given day there are somewhere between 40 and 50 people in prison for failing to pay a fine or a debt. Annually, more than 1,000 people are sent to prison for failing to pay fines or to pay debts. At a cost of €225 per day to house a prisoner, approximately €3.7 million a year is spent on keeping defaulters in prison. The practice of sending debtors to jail serves no useful purpose. When the debtor is freed from jail, the debt invariably remains unpaid.

In addition, this Bill allows the Minister to put in place procedures which would require courts to assess the means of the offender before imposing a fine. The establishment of procedures such as this will ensure that the offender's ability to pay is taken into a consideration. It should result in the imposition of a fine which does not represent an undue or unrealistic burden on the offender.

Government Promises

In October 1991, the Law Reform Commission published its Report on the Indexation of Fines. No proposals were ever brought forward to implement this in a comprehensive way.

In 1998, the Taoiseach, informed the House that an Indexation of Fines Bill was "at an early stage of preparation" and that it would be published in 1999.

In July 2002, the Law Reform Commission published a Report entitled *The Indexation of Fines: A Review of Developments*.

In response to a Dáil question in 2002, the Minister stated that a Bill to deal with the indexation of fines would be published in 2003.

The commitment to publish a Bill on the indexation of fines during 2004 is contained in the Government's legislative programme and it also forms part of the Government's White Paper on Regulating Better which was published earlier this year.

A full two years have elapsed and still no concrete proposals have emerged from the Government. There is a clear and consistent record of inaction on this issue on the part of the Government.

Purpose of the Bill

There are five principal elements to this Bill:

1. To update fines and monetary amounts in past legislation in line with inflation;
2. To allow for fines and monetary amounts in all future legislation to be updated;
3. To allow for the continuous and repeated updating of fines and monetary amounts in respect of all enactments to ensure that they reflect today's monetary value;
4. To allow for the payment of fines by instalments;
5. To ensure that before imposing a fine, the courts take the offenders ability to pay into consideration.

Basis for Calculations

The basis for all figures contained in this Bill is the Consumer Price Index as published by the Central Statistics Office, specifically the Annual Average Index.

The formula adopted for converting old monetary amounts into today's term was that advocated by the Central Statistics Office for that purpose. The resulting amount was then converted into a Euro amount, and where necessary, rounded down to the nearest €5 unit.

The Table — Explained

The Bill achieves its intention by way of a Table. The Table is comprised of four columns. *Column I* of the Table sets out a series of five year periods, commencing with the period 1922 to 1926 and ends with the period 1997 to 2001. The next period — 2002 to 2006 will only appear on 31 January 2007 when the Minister makes regulations to provide updated figures for that period.

Column II of the Table sets out the Unit Value of £1 in today's terms in respect of each period in *Column I*. The Unit Value was arrived at by taking the Annual Average Index figure in respect of the middle year of each period and using it as the basis for a calculation. For example, in respect of the period 1922 to 1926, the Average Annual Index figure for 1924 was used.

Column III of the Bill aims to reflect the level of monetary amounts which occur most frequently in legislation of that period. Directly opposite that figure, *column IV* displays the updated amount which presently applies.

Where *column III* does not contain a figure which appears in legislation, it is possible to calculate the updated monetary amount by

reference to the Unit Value in *column I* and then round it down, if necessary to the nearest €5 unit.

Provisions of the Bill

Section 1 sets out the Short title of the Bill, which is the *Fines Bill 2004*.

Section 2 defines two terms which are used repeatedly in the Bill. Those terms are “enactment”; “Minister” and also “the Table”.

Section 3 provides that from 1 January 2005, the Irish pound amounts shown in legislation and shown in *column III* of the Table will be updated and amended to reflect the amount shown in *column IV* of the Table. This will apply to all Acts from 1922 to 2001. However, where *column III* does not contain an amount identical to that in an Act, the updated amount may be calculated by reference to the Unit Value as shown in *column II* of the Table. Once the amount is calculated, it should, if necessary be rounded down to the nearest €5 unit. That legislation is deemed to have been amended to show the new, updated amount.

Section 4 requires that the Table shall be updated reproduced every 5 years by Ministerial regulation. This will ensure that the figures presently contained in the Table will themselves be updated in line with inflation. This section also requires that the Table will be expanded so as to update and amend the figures in all future legislation. Again, the new figures will be rounded down to the nearest €5 unit for convenience.

Section 5 is similar in effect to *section 3*. *Section 5* provides for the updating of figures in future legislation from 2007 onwards.

Section 6 states that the updated figures contained in the Table and as subsequently reproduced have the effect of textually amending all legislation to which they relate. This will ensure that when an Act is subsequently being amended, consolidated or restated, the new figures will appear. An amendment to the Statute Law (Restatement) Act 2002 is proposed for this purpose.

Section 7 is a precautionary measure and is there to ensure that when a fine from some years ago in respect of a summary offence is indexed up to today’s value, that value cannot exceed €3,000. In keeping with the spirit of the Bill, this €3,000 amount can itself be increased as required in the future.

Section 8 is inserted for the avoidance of doubt. It provides that the updated monetary amounts will not apply in respect of actions which were committed prior to the Act coming into force.

Section 9 allows the Minister to establish procedures which allow an offender to pay a fine by instalments.

Section 10 enables the Minister to make regulations which will require a court to have regard to an offender’s ability to pay a fine, before deciding what level of fine to impose.

Section 11 allows the Minister to make regulations. It is from this section that the Minister derives the power to update and reproduce the Table. Any regulations which are to be made under this section

must first be laid before both the Dáil and the Seanad in draft form. The regulations will not take effect until they are approved by a resolution of each House.

*An Teachta Séamus Ó Caoimh,
Samhain, 2004.*