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**AN BILLE UM FHORFHEIDHMIÚ ORDUITHE CÚIRTE 2007**  
**ENFORCEMENT OF COURT ORDERS BILL 2007**

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**EXPLANATORY MEMORANDUM**

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*Background*

Every year around 2,000 persons are committed to prison for the non-payment of fines (about 1,800) or non-payment of debt (about 200).

On any given day there are somewhere between 40 and 50 people in prison for failing to pay a fine or a debt.

The cost to the taxpayer of keeping somebody in prison is, on average, about €2,000 per week. Very often the fines involved may be a little more than €100/€200.

It is widely recognised that most of those committals concern people from a particular socio-economic group with demonstrably limited knowledge of the court process or their level of debt and no capacity to pay because fines have to be paid in one lump sum. Very often they are in impermanent or irregular employment or are Social Welfare recipients.

Furthermore, there is considerable evidence that many Court imposed fines are not collected at all. This was highlighted in the Report of the Comptroller and Auditor General into the collection of fines (December 2000) which revealed that only 55% of the fines imposed in Dublin were recovered and that lost revenue in the year surveyed (1998) due to uncollected fines amounted to over 6 million.

There are clearly enormous benefits to be gained from establishing a system which would be more effective from the point of view of the collection of fines and monies due under Committal Orders, while at the same time freeing up prison space for those directly sentenced to prison rather than those going there by default.

*Purpose of the Bill*

This Bill serves a number of purposes and principally will ensure that those who have difficulty paying fines will have an opportunity to pay by instalments and that those who refuse to pay fines or debts due on Committal Orders will over a period of time have the amounts deducted directly from their wages or Social Welfare Payments. The Bill provides for the setting of a protected welfare rate limit beyond which a person's Social Welfare Payment cannot be reduced.

The proposals in the Bill will introduce Instalment Orders, Attachment of Earnings Orders and Attachment of Welfare Orders. There will be three principal benefits. The first will be to ensure that those who have difficulty paying fines or debts will not be sent to prison automatically in default of payment. From both a human rights and cost to the state perspective this is highly desirable. Secondly it will provide a much needed degree of flexibility in ensuring that fines and debts are paid. Thirdly it will ensure that the level of uncollected fines will be dramatically reduced.

Overall there should be a much more efficient system for the collection of fines and debts due on Committal Orders, a major saving to the taxpayer and a freeing up of Prison resources for serious criminals.

#### *Provisions of the Bill*

*Section 1* sets out the short title and commencement details.

*Section 2* defines the terms used in the Bill.

*Section 3* states the general application of the Act as being to a person who has defaulted on the payment of money which arises from a court order.

*Section 4* is one of the principal sections. It is this section which allows the court to grant an attachment of earnings order directing the debtor's employer to periodically deduct specified amounts from the employee's wage or salary at source. In deciding the amount to be deducted from the employee's wages, the Court will ensure that his or her wages will not be reduced below an amount that is required for his or her personal support and maintenance of that of his or her family. This section also provides that the employer shall know the total sum to be repaid so that he or she can cease deductions once it has been repaid, thereby removing an administrative burden from the court.

*Section 5* requires that an official of the Court must serve the Attachment of Earnings Order on the employer concerned. The employer must then comply with the Order within 10 days. Where deductions are made from the employee's wage, the employer must provide him or her with a statement of the deduction made and the total amount due.

*Section 6* provides that when determining an application for an attachment of earnings order, the Court may ask the debtor to provide a statement of his or her earnings.

*Section 7* requires that where an attachment of earnings order has been made, and the debtor moves on to another job, he or she must notify the Court of that fact. Also, where an employer becomes aware that an attachment of earnings order has been made, he or she must notify the Court that it is the present employer of the debtor.

*Section 8* enables an application to be made to the Court where there is doubt as to whether payments being received by the debtor actually constitute earnings for the purpose of the order. The debtor or the creditor or the employer may make such an application to the court.

*Section 9* clarifies the employment status of persons who are a civil or public servant, for the purpose of identifying an employer in the event that an order is to be made.

*Section 10* empowers the Court to discharge or vary an attachment of earnings order, and requires that the employer notify the court and the debtor when the debt is about to be repaid and to cease making deductions from the debtor's salary or wages.

*Section 11* provides that an attachment of earnings order will become ineffective if it is discharged by the court. Once an order ceases to be effective, the Court must notify the employer. Crucially, *section 11* imposes a duty on an employer to cease payments once the full amount has been repaid. It allows the debtor to make an application to the court to stop payments when the amount has been fully paid if the employer fails to do so, and to recover any excess monies deducted. There is also a provision that allows the court to consider the failure of the employer to act in awarding costs for the application, and to allow the Minister to establish a free legal aid scheme for such applications.

*Section 12* states that where an attachment of earnings order has been made, proceedings to imprison a defaulter for failure to pay family law maintenance (see section 8 of the Enforcement of Court Orders Act 1940) will lapse and any warrant issued or order issued under that section will no longer have effect. On the other hand, where an attachment of earnings order has been made and an order to imprison a defaulter for failure to pay family law maintenance is made, the attachment of earnings order will no longer have effect.

*Section 13* sets out the penalties for a breach of some aspects of the Bill. Where a person fails to comply with the terms of an attachment of earnings order, or fails to comply with the requirement to notify a change of employment or a change of earnings, or fails to provide a statement of earnings, or fails to vary an attachment of earnings order where directed to do so by a court, or otherwise provides false information, then that person is guilty of an offence and may be liable to a fine of €1,000.

*Section 14* gives the Minister for Social and Family Affairs the power to make regulations to put in place a system under which a court could make an attachment of welfare order to allow the Minister to deduct money owed by a person who is in receipt of social welfare payments.

*Section 14* specifically provides that the Minister will set a limit beyond which the person's social welfare payments must not be reduced. That limit is referred to as the protected welfare rate and will be subject to annual review to ensure that it keeps apace with inflationary and other influences. The implementation of both *section 14*, and *section 4* will ensure that we see an end to people being sent to prison for failing to pay a fine or a debt.

*Section 15* amends the Criminal Justice (Community Service Orders) Act 1983 by replacing section 2 so as to ensure that the 1983 Act also applies to persons who have defaulted on the payment of a penalty or a debt.

*Section 16* allows a court to extend time within which a debt must be paid. It also requires that the court may not extend time where the failure to pay has been wilful.

*Section 17* allows the court to direct a debtor to pay a fine by way of instalments. In contrast with an attachment of earnings order, responsibility for the payment by instalments rests with the debtor. If he or she fails to voluntarily comply with an instalments order, an

attachment of earnings or attachment of welfare order may be sought.

*Section 18* provides that where a person has been given time to pay a debt and they have failed to do so, the court may order that the person be placed under the supervision of a probation and welfare officer, with a view to advising the person as to how best to manage the payment of the fine.

*An Teachta Séamus Ó Caoimh,  
Eanáir 2007.*