



AN BILLE FÍNEÁLACHA 2009
FINES BILL 2009

EXPLANATORY MEMORANDUM

Purpose of Bill

1. The main purposes of the Bill are to—
 - index all existing District Court maximum fines so that their monetary values are brought up to date (*sections 3 to 7*),
 - increase certain fines imposed by the higher courts (*section 8*),
 - give the courts power to inquire into the capacity of persons to pay fines in order to implement a policy of equality of impact (*section 13*),
 - provide for the payment of fines by instalments (*section 14*), and
 - provide the courts with alternatives to imprisonment for default on payment of fines (*sections 15 to 17*).

Provisions of Bill

2. *Section 1* provides the short title of the Act and sets out the commencement provisions.

3. *Section 2* provides the definitions. The maximum fines that can be imposed by the District Court will in future be placed in one of five classes, A to E. The maximum fines in each class, ranging from a class E fine not exceeding €500 to a class A fine not exceeding €5,000 are provided for in this section.

4. *Sections 3 to 7* update the value of all existing fines that can be imposed on summary conviction to their value at the time of enactment or, where appropriate, when last updated in legislation. The base year of 100 is 1914 (there was little change in the value of money in the preceding century) and all fines that could be imposed on summary conviction since then are being updated in line with increases in the Consumer Price Index. Instead of attempting to individually update each fine separately, which would not be practicable, eight time periods and five classes of fine maxima have been created and placed in Tables. Finding the current value of an existing fine is best illustrated by an example. Section 6 of the Prohibition of Incitement to Hatred Act 1989 provides maximum penalties for certain offences under that Act. The maximum financial penalty is a fine of £1,000 or €1,265. By examining the Tables in sections 3 to 7 it will be seen that in Table C any maximum fine not greater than €1,455 but greater than €582 provided for in legislation between 1 January

1980 and 31 December 1989 will be a class C fine. Its updated maximum will, therefore, be €2,500. This will not represent a real increase in the amount of the fine, it will simply maintain its value and ensure that the intentions of the Oireachtas when passing the legislation are respected.

5. Any enactment passed by the Oireachtas following the coming into operation of the indexing provisions of this Act that provides a penalty of a fine for an offence tried summarily will not be expressed in monetary terms but as belonging to either class A, B, C, D or E, as appropriate, depending on the maximum fine provided.

6. *Section 8* provides for an increase in certain fines that can be imposed on conviction on indictment. Because of the wide range of fines, including unlimited fines, that can be imposed on conviction on indictment it was not practicable to provide a system of indexation similar to that for fines imposed on summary conviction. However, failure to update some such fines would have resulted in updated maximum fines that could be imposed on summary conviction being equal to or greater than the maximum fines that could be imposed on conviction on indictment for the same or similar offences. This could have meant that a court of limited jurisdiction such as the District Court might not have been regarded as the appropriate court for dealing with such offences.

7. *Section 9* increases the fine maxima for indictable offences tried summarily. When those fines were first provided or last updated, they were equivalent to the maximum fine that could be imposed on conviction for summary offences tried summarily. Therefore, they will now attract the new maximum fine that can be imposed on summary conviction, a class A fine.

8. *Section 10* amends the scale at section 2 of the Courts (No. 2) Act 1986. That scale set out the maximum period of imprisonment in default of due payment of a fine imposed on summary conviction. The scale ranged from a maximum term of imprisonment of 5 days for default on less than £50 to a maximum of 90 days on default of an amount exceeding £500. The new scale equivalents range from up to 5 days imprisonment for an amount up to €500 to 30 days for an amount exceeding €3,000.

9. *Section 11* gives the Minister for Justice, Equality and Law Reform power to make Regulations to remove any difficulties that might arise in bringing Part 2 of the Act successfully into operation. While no particular problem is envisaged, this Part of the Act will be referred to by the courts daily as they come to terms with calculating the correct class into which to place existing fines. Should any difficulty with that aspect in particular arise, it would be possible to address that difficulty in Regulations.

10. *Section 12* provides the definitions for Part 3 of the Act. The definition of “financial circumstances” is mainly relevant to section 13 when the court is deciding on the level of fine a person would have the capacity to pay. It is also relevant in section 14, when a court has to decide whether to grant an extension for the payment of a fine by instalments; section 15, where the court has power to

appoint a receiver where a person is in default of payment of a fine; and section 16, where the court can make a recovery order.

11. *Section 13* introduces the concept of equality of impact into the imposition of fines by the courts, whether a person was convicted on indictment or summarily. The introduction of equality of impact will ensure that when a person is convicted of an offence the effect of any fine imposed on the person or his or her dependants will not be significantly abated or made more severe by reason of his or her financial circumstances. Accordingly, in determining the amount of the fine, the court will be obliged, so far as practicable, to inquire into those circumstances. In practice, the court may then impose a fine that is greater than, less than or equal to the otherwise appropriate fine but in no case can the fine be more than the maximum fine or less than the minimum fine where specified in an enactment, for the offence.

12. *Section 14* provides a scheme whereby fines can be paid by instalments. Where a fine is imposed on a person, whether the person was convicted on indictment or summarily, that person may apply to the court to pay the fine by instalments. If the court is satisfied that to pay in full by the due date would cause undue financial hardship, it can direct that the fine be paid by instalments over a period not exceeding 1 year. An extension of not more than a further year may be given by the court where it is satisfied that the financial circumstances of the person have changed and that the change is not due to his or her culpable neglect. While it is a function of the court to direct that a fine be paid by instalment, it can direct that the amounts of the instalments and the intervals at which they can be paid will be determined by the Courts Service. The instalments provisions apply to fines of more than €100.

13. *Section 15* gives the courts power to appoint a receiver where a fine has not been paid by the due date for payment. It will only apply to fines imposed by the courts on conviction on indictment and is most likely to be relevant where larger fines have been imposed. Before appointing a receiver, the court must conduct an inquiry into the financial circumstances of the person in default so as to ensure that appointing a receiver would not cause undue hardship to that person or to his or her dependants.

14. *Section 16* gives the courts power to order that a fine be recovered in like manner as a civil debt. Before making a recovery order under section 16, the court must conduct an inquiry into the financial circumstances of the person in default so as to ensure that making the order would not cause undue hardship to that person or to his or her dependants. A recovery order will have the same force and effect as an execution order under the Enforcement of Court Orders Act 1926.

15. *Section 17* will allow the courts to impose a community service order on a person who has not paid a fine by the due date for payment. At present, community service orders can only be imposed as an alternative to imprisonment on conviction of an offence.

16. *Section 18* provides that on default of payment of a fine imposed on conviction on indictment, the person in default can be imprisoned for up to 12 months. Placing this provision in this Act will entail repealing section 195 of the Criminal Justice Act 2006. The repeal is provided for in section 19.

17. *Section 19* also provides for the repeal of section 43(2) of the Criminal Justice Administration Act 1914. It provided that a court of summary jurisdiction had to take an offender's means into account when fixing the amount of a fine.

*An Roinn Dlí agus Cirt, Comhionannais agus Athchóirithe Dlí,
Aibreán, 2009.*