



AN BILLE FÍNEÁLACHA (ÍOC AGUS GNÓTHÚ), 2013
FINES (PAYMENT AND RECOVERY) BILL 2013

EXPLANATORY MEMORANDUM

Main Purpose of Bill

The main purpose of the Bill is to provide for the introduction of attachment of earnings as a means of recovering unpaid fines with the intention of reducing substantially the numbers of people committed to prison for the non-payment of fines.

The opportunity presented by the introduction of attachment orders is being taken to amend the instalment payment provisions in the Fines Act 2010 and to streamline its other provisions. A number of mainly administrative changes are also being made.

The main features of the Bill are:

- Part 3 of the Fines Act 2010 is to be repealed. However, sections 14 (new *section 5*) and 20 (new *section 10*) of that Act will be re-enacted with only minor changes;
- The instalment provisions in the 2010 Act are being made available to all fine payers (rather than those who could convince the court that they should be allowed to pay by instalments);
- The appointment of a receiver to recover an unpaid fine from a person including by the sale or disposal of the person's assets is one of the options available to the court rather than being automatic as in the 2010 Act;
- Where a person fails to pay a fine by the due date for payment (including by instalments where the person has chosen to pay by instalments) the court will make either a recovery order or an attachment order. If neither of these is considered appropriate (for example, where the person is not in employment and has no realisable assets), the court will consider imposing a community service order. The court may commit a person to prison if it is not possible to make any of the three orders;
- Community service is also an option, as an alternative to imprisonment, where a recovery order or an attachment order has been imposed, but where the fine or a portion of the fine remains outstanding;
- Provision is made for exchange of data with the Revenue Commissioners and the Department of Social Protection, as well

as for electronic communications between the Courts Service and a receiver appointed under *section 8*.

Provisions of the Bill

Section 1 provides for the short title and commencement.

Section 2 defines terms used in the Bill. Among the terms defined are “due date for payment” which is either the date set by the court or where the person opts to pay the fine by instalments 42 days from the date the fine is imposed. In the case of instalments, this due date refers to the date that each instalment falls due to be paid.

Section 3 is a standard provision dealing with the making of orders and regulations under the Bill and the laying of said orders and regulations before the Houses of the Oireachtas.

Section 4 deals with repeals. The intention is to repeal:

- (a) section 43(2) of the Criminal Justice Administration Act 1924, which dealt with the taking into account of a person’s means when fixing a fine,
- (b) section 195 of the Criminal Justice Act 2006 which deals with the recovery of fines imposed on indictment and fines imposed on companies, and
- (c) Part 3 of the Fines Act 2010 which deals with the payment and recovery of fines.

Section 5 is an almost identical provision to section 14 of the Fines Act 2010. It obliges the court to take into account the defendant’s financial circumstances in determining the amount of the fine, if any, to impose. It also introduces the concept of equality of impact, whether a person is convicted on indictment or summarily. This 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, the court may 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. The only change being made is to make the offences contained in the section summary only.

Section 6 provides that a fined person has the option of either paying the fine in full by the due date for payment (the date set by the court) or by instalments of amounts (percentages of the total fine) and at a frequency which will be contained in regulations to be made by the Minister under *section 3*. The section also sets out the methods by which payment may be made and allows for payment to be made to persons other than the court, where regulations to this effect are made. Where a person chooses to pay by instalments, the first instalment must be made within 42 days and the last instalment within 12 months from that date.

Subsection (3) requires a person who chooses to pay by instalments and who is in employment or in receipt of an occupational pension to provide the court with details regarding their employment that may be used in the event that they fail to pay the fine in full by the due date and the court has to consider whether to make an attachment order.

Subsection (5) provides for the application of an administration fee of up to 10% where a person chooses to pay a fine by instalments.

Subsection (6) provides that the option of instalments is only available where a fine of at least €100 is imposed (although where more than one fine is imposed and the total value of all the fines imposed is €100 or more, the person may pay the fines by instalments).

Subsection (7) defines “relevant date for payment”.

Section 7 sets out what is to happen where a person fails to pay a fine by the due date.

Subsection (1) provides that the court fixes a date for a hearing at which it shall make a recovery order or an attachment order, or if neither is appropriate, a community service order, where the necessary conditions for the making of such an order are met.

Subsection (2) provides that where a person fails to pay an instalment by the due date for payment the court may decline to take action under this section for the time being. Without the flexibility provided by this subsection, the court would be required to set in train the processes under this section, even where a person who had failed to make an instalment payment had subsequently resumed payment and had paid any outstanding instalment.

Subsection (3) provides that the person is required to provide the court with a statement of income and assets in such format as the court may decide.

Subsection (4) provides that where the court decides that none of the three orders mentioned is appropriate, it may commit the person to prison.

Subsection (8) makes it a summary offence to knowingly or recklessly provide an inaccurate, incorrect or incomplete statement of income and assets.

Section 8 deals with the appointment of receivers and the making of recovery orders to recover unpaid fines, including by the seizure and sale of property belonging to the fined person. The section also provides in *subsection (1)* for the recovery of the fees and expenses of the receiver from the fine payer.

Subsection (2) provides for the notification of the receiver by the Courts Service, while *subsection (3)* sets out the powers of the receiver in relation to the seizure, holding and disposal of the property of a person in respect of whom a recovery order is made by the court. The receiver has the power to enter a premises, including a dwelling (alone or accompanied by the Garda Síochána) and to demand, and take possession of the property of the fine payer. The receiver is to issue a receipt in respect of any property seized.

Subsection (5) allows the receiver to delegate such of his or her functions to his or her employees, servants, bailiffs or agents, as he or she thinks appropriate.

Subsection (6) allows the receiver to apply to court for directions in relation to the performance of his or her functions.

Subsection (7) requires a person who is in possession of property

owned by the fine payer to deliver that property to the receiver, if requested to do so.

Subsection (8) provides for the return to the fine payer of any excess of the amount recovered from the sale of the person's property over the amount of the fine (plus fees and expenses).

Subsection (9) makes it an offence to fail to comply with or to obstruct or interfere with the receiver or his or her delegates.

Subsection (10) provides for the making of a Ministerial Order to deal with the fees and expenses of the receiver.

Subsections (11) to (13) deal with the information that is to be recorded by the receiver and the reports that he or she is to make to the Courts Service. *Subsection (13)* makes it an offence to make a false or misleading record of the fees and expenses incurred and deducted from amounts recovered.

Subsection (16) provides for definitions of terms used in the section.

Section 9 provides for the issuing of notices in electronic format.

Section 10 provides for the appointment of receivers by the Government on the nomination of the Minister for Justice and Equality and with the consent of the Minister for Public Expenditure and Reform.

Section 11 deals with the situation where a fine has not been recovered by the receiver. *Subsection (1)* says that where the receiver has been unable to recover the fine (or the outstanding balance of the fine, where the person has opted to pay by instalments), he or she shall inform the court and under *subsection (2)* the court on being so notified will require the person to appear before the court.

Subsections (3) to (5) set out the process by which a person may be brought before the court. *Subsection (6)* provides that at the hearing, the court has the option of making a community service order or committing the person to prison.

Section 12 provides for the cesser of a recovery order. *Subsection (1)* provides that a person may elect to pay the remaining balance of the fine at any time, and if the payment is made other than to the receiver, the recovery order is deemed to have been revoked and Courts Service will advise the receiver accordingly.

Subsection (2) says that the recovery order will cease to have effect on payment into court of the fine and to the receiver of his or her fees and expenses or on the receiver notifying the court that he or she has been unable to recover the full fine under *section 11(1)*.

Subsection (3) provides that where the receiver has notified the court under *section 11(1)*, the recovery order will continue in force in relation to any part of the fine recovered but not paid into court before the notice was given, any property seized but not sold before the notice was given and any proceeds from the sale of property not paid into the court when the notice was given.

Section 13 provides that monies paid into court by a receiver are to be paid to the Minister for Finance. *Subsection (2)* provides that where the fine is properly due to another body (e.g. a local authority) the monies are to be paid to that body.

Section 14 deals with the making of an attachment order. *Subsection (1)* says that where the fined person is in employment or in receipt of an occupational pension, the court may make an order directing the person's employer to deduct the fine from the person's earnings and to pay the sums deducted in the manner specified in the order.

Subsection (2) provides that the amounts deducted must be sufficient to ensure that the fine is paid within 12 months of the date the order was made but gives the court discretion to require a shorter period (for example, where a considerable portion of the fine has already been paid by instalments).

Subsection (3) sets out the information to be included in the attachment order, including the amounts to be deducted and the frequency at which deductions are to be paid over.

Section 15 deals with compliance with an attachment order. It provides in *subsections (1)* and *(2)* for the service of the attachment order on the person's employer or on any person who subsequently becomes the person's employer, at his or her residence or place of business or by sending the order or a copy of it by registered pre-paid post to either.

Subsection (3) requires the employer to comply with the order, but says that he or she is not liable for non-compliance during the first 10 working days. This is to allow for the situation where the employer is not the person's employer, in which case under *subsection (4)* the employer is required to notify the court accordingly.

Subsection (5) requires an employer who ceases to be the person's employer to notify the court within 10 working days of his or her ceasing to be the person's employer. The employer is also required to pay over to the court any monies already deducted from the employee under the attachment order.

Subsection (6) requires the employer to give the person a statement of the total amount of every deduction made in compliance with the order.

Subsection (7) makes it an offence for an employer, without reasonable cause, to fail to comply with an attachment order.

Section 16 deals with notification of changes in employment and employment status. Where a person ceases to be in the employment of the employer to whom an attachment order is directed, he or she must, under *subsection (1)(a)*, notify the court within 10 working days. The person must advise the court whether he or she is in new employment or is no longer in employment. Where the person has changed employer, a new attachment order is to be issued to the new employer.

Subsection (1)(b) provides that where the court has been advised that the person has a new employer, the court shall issue the attachment order to the new employer. To take account of time lost in the process of issuing the order to the new employer, the court is given discretion to increase the period over which the remainder of the fine is to be recovered.

Subsection (2) provides that where the court is advised by either the person or their employer that they are no longer in employment, and the person does not pay off the balance of the fine, the court shall fix a date for a hearing, unless the court decides otherwise.

Subsection (3) provides for the issuing of a notice requiring the person to attend court in order to determine if a community service order should be made.

Subsection (4) provides that the notice is to set out the options open to the court at the hearing (imposition of a community service order or imprisonment). The summons will also state that the person may be arrested if he or she fails to appear before the court.

Subsection (7) provides that at the hearing, the court will either make a community service order or commit the person to prison.

Section 17 states that an attachment order will cease to have effect on payment in full of the fine. *Subsection (2)* provides that where a person ceases to be in the employment of an employer, the order shall be revoked. The employer remains bound by the order insofar as any deductions are made after the order is revoked, and any deductions made at any time by the employer.

Section 18 provides that monies paid into court on foot of an attachment order are to be paid to the Minister for Finance. *Subsection (2)* provides that where the fine is properly due to another body (e.g. a local authority) the monies should be paid to that body.

Section 19 amends the Criminal Justice (Community Service) Act 1983 in *subsection (1)(c)(i)* to provide that the court may make a community service order where the provisions of *section 4* of the Act have been complied with (i.e. the person is willing to comply with the order and is considered suitable by the Probation Service). A community service order may be made under *section 7*, where the court does not consider that it would be appropriate to make either a recovery order or an attachment order in the event of default. Alternatively, a community service order may be made where the fine has not been recovered in full following the making of an attachment order or a recovery order.

Subsection (1)(c)(ii) amends subsection (2) of section 3 of the Community Service Act to provide that where the fine is in respect of a conviction on indictment, the order may provide for between 40 and 240 hours of work, whereas in the case of a summary conviction, between 30 and 100 hours may be prescribed.

Subsection (1)(d) amends the Community Service Act to provide that the hours of work specified in relation to the non-payment of a fine are additional to any other hours which the court has already imposed on the person. In determining the number of hours to be worked, the court is to take into account any sums already paid by the person (e.g. where the person has availed of the option to pay by instalments and has paid one or more instalments) or any amounts recovered on foot of a recovery order or an attachment order.

Subsection (1)(e) amends the Community Service Act to provide that whereas in the normal course it is an offence to fail to comply with a community service order, this is not the case where the order is made in respect of the failure to pay a fine.

Section 20 amends the Courts (No. 2) Act 1986 to provide that the court may commit a person to prison where he or she has failed to pay a fine in full or where the fine or part thereof remains outstanding following the appointment of a receiver or the making of an attachment order. The court may also commit a person to prison where it is not possible to make a community service order

because either the person does not consent or the Probation Service does not consider the person suitable for community service.

The Act is also amended to provide that the court shall commit a person to prison where the person has failed to comply with the terms of a community service order.

The Bill makes different provisions depending on whether the fine was imposed summarily or on indictment. A table is inserted into the 1986 Act setting out different numbers of days to be served depending on the amount of the fine outstanding (ranging from 5 to 30 days). Where the fine is imposed on indictment, a prison sentence of up to 12 months may be imposed.

Section 21 deals with the method by which notices referred to elsewhere in the Bill are to be served.

Section 22 amends the Courts (No. 2) Act 1991 to provide that insofar as section 1 of that Act or section 23 of the Petty Sessions (Ireland) Act 1851 are concerned, penal sums are to be dealt with in accordance with the Bill once *section 7* has been commenced.

Section 23 provides for data sharing and exchange for the purposes of assisting the courts in the collection of fines. The Revenue Commissioners and the Minister for Social Protection (and any other person prescribed by the Minister under *section 3*) shall provide the courts with any information in their possession or control which the court may require in order to fulfil its functions in relation to the payment and recovery of fines.

*An Roinn Dlí agus Cirt agus Comhionannais,
Iúil, 2013.*