

FINES (PAYMENT AND RECOVERY) BILL 2013

SECOND STAGE SPEECH

MINISTER FOR JUSTICE, EQUALITY AND DEFENCE, ALAN SHATTER TD

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A Cheann Comhairle, Deputies,

The Fines (Payment and Recovery) Bill 2013 is a very important piece of legislation with three main objectives: restoring confidence in the administration of justice where fines have been imposed by our courts ; ensuring that the fines imposed by the courts are collected; and reducing, to the minimum possible the number of people committed to prison each year for the non-payment of a fine.

Fines are the most widely used sanction in our legal system and for them to work, there are three key ingredients. The first is that the fine must be set at an amount that the fined person can reasonably afford to pay. The second is that, with the busy lives people lead and with people's expectations as to how business is done in the 21st century, the methods of payment of a fine should be as simple and convenient as possible. We must not put hurdles in the way of people paying monies due to the State and, where staged payments or instalments would help a person to meet their obligations, we must facilitate these. And finally, there must be an expectation on the part of the person on whom it is imposed that the fine will be collected whether in cash or in kind. Fines imposed must be enforced if the system is not to fall into disrepute.

Our current system, which has largely been in place since the foundation of the State, fails on two of those three grounds. The requirement to take a person's financial circumstances into account in setting a fine was provided for in section 14 of the Fines Act 2010. The same provision is contained in section 5 of the Bill before the House today.

In relation to the other elements, neither is in place in any meaningful way. In explaining this I want to go back to the 2010 Act and its provisions in relation to the payment and recovery of fines, most of which have not been commenced.

Let me start with the payment of fines.

Presently, when the court imposes a fine on a person, the judge decides that the fine must be paid by some specified date in the future. At the same time, he or she signs a warrant for the person's arrest and imprisonment in the event that they do not pay the fine. That warrant is automatically executed without further recourse to the courts.

Section 15 of the 2010 Act, which has not been commenced, was intended to improve the situation by providing for the payment of fines by instalments. But the provision is very limited,

indeed it could be described as begrudging. To qualify to be allowed to pay by instalments, a person on whom a fine has been imposed must apply to the court and convince the court that the payment of the fine in full by the due date would cause them undue hardship. If the court is so convinced, it then decides on the period over which the fine must be paid. There is also provision in the Act for a person to return to court to seek an extension of the payment period of up to 2 years.

In framing this Bill, I took into account the approach that the Oireachtas has taken in legislating for the Local Property Tax and its predecessor, the Household Charge. In both those cases, it is left to the liable person to decide whether to pay the charge in full by the due date or to pay by instalments. There are people who can pay bills when they fall due and others who cannot. There are some who, even if they can afford it, prefer to discharge bills over a period of time. This Bill provides for some flexibility in the method of discharging a fine whilst seeking to ensure that fines imposed are paid. Where a fine remains unpaid, a meaningful sanction applies without imposing an unnecessary administrative burden on an already overloaded legal system and unnecessary expense on the taxpayer.

In this Bill we are providing for a much more accessible and less administratively burdensome instalment payment option. Anyone who wishes to pay a fine in instalments can do so and those instalments will be paid over 12 months. The making available of payment by instalments to all, has been counterbalanced by the removal of the extension provisions in the 2010 Act and the imposition of an administrative charge of up to a maximum of 10% where a person chooses to pay by instalments. The Bill also contains provisions to deal with the issue of a person failing to pay the fine in full by instalments over the 12 months. In all of this, we must remember that half of all fines imposed are for less than €200 and the average fine is just over €300.

It should also be recalled that the fine imposed in the first instance will have been set having regard to the person's financial circumstances. No-one should have a fine fixed at an amount that is clearly unaffordable. So we will have fines that are set at levels that are reflective of the person's means and these fines can be paid over 12 months. I am certain that this is a major advance on both the current situation and that intended by the 2010 Act.

The next element is the follow-up for non-payment of a fine. As it stands, if a person fails to pay a fine by the due date, the warrant is executed and the person is arrested and committed to prison for the requisite period. That period is currently up to 90 days. Of course the reality is nothing like this. Leaving aside the question of unexecuted warrants, even where warrants are executed, the person is processed through the prison, with little or no expectation on the part of either the individual or the officers concerned that the full prison sentence will be served.

Indeed, the Prison Service has stated that, of the 242 people imprisoned in 2012 in connection with the non-payment of a Television Licence Fee, 236 were released within hours of their detention. It is common knowledge that imprisonment, in any real sense, for the non-payment of fines is now a rarity and only the unlucky spend even a night in prison.

Our criminal justice system requires that, as far as possible, crime is prevented; that where it occurs it is detected; that, where it is detected, prosecution and conviction follow; and, finally,

that whatever sanction the court imposes is enforced. We must ensure that decisions made in our courts are respected and fully complied with. It is to the credit of the vast majority of the Irish people that the payment rate for fines is as high as it is given the problems with the current system.

So what's different about this Bill? The landmark innovation being introduced in this Bill is the attachment of earnings for unpaid fines. Attachment orders will only be made where it is appropriate to do so, but, where they are made, the fined person's employer will be required to deduct the amount of the fine from the fined person's earnings and pay it to the Courts Service.

This provision will address those "strategic defaulters" if I might borrow a phrase from another arena, who despite being employed and having sufficient resources to pay a fine, don't do so in the hope that there will be no consequence to their non-payment. Underpinning the approach in the Bill is the principle that if you have the income, cash or other assets to pay the fine, then the courts will recover the fine.

The second major change is in relation to recovery orders. These were provided for in the 2010 Act, but in an almost completely unworkable form. Recovery orders allow for the recovery of the fine, including by the seizure of assets that can be converted into cash. Rather than making recovery orders automatically when a fine is imposed as provided for by the 2010 Act, which would undoubtedly have led to their being made in wholly inappropriate cases, the making of a recovery order will now be one of the options open to court when a person defaults. A recovery order will only be made after a court has determined that the fined person has the means to pay the fine, or has assets that can be seized by the receiver and disposed of to discharge both the fine and the expenses of the receiver. If this is not the case, the court will not impose a recovery order.

Finally, under the 2010 Act, community service was only considered after a person had failed to pay a fine and a receiver had failed to recover it. In this Bill, community service is available to the court in all cases of default, where the court determines that it would not be appropriate to make either an attachment or recovery order.

I would now like to take the House through the various steps that will be involved with the payment and collection of fines if this Bill is enacted.

As I said already, the first step will be the setting of a fine by the court that takes into account the financial circumstances of the fined person.

Then he or she will have the option to pay that fine in one payment by the due date or in equal instalments over 12 months. As I mentioned earlier, where the person chooses to pay the fine by instalments, an administration charge of up to 10% may be applied.

If the fine is not paid in full, irrespective of the payment option chosen, the recovery provisions in the Bill will then apply

The fined person will be required to again appear before the court and to provide a statement of their financial circumstances. The court will then decide, in the first instance, whether to impose

an attachment order or a recovery order. It is to be expected that where the person is in employment and has earnings sufficient to pay the fine, an attachment order will be made. On the other hand, if the person is either self-employed or unemployed, the court may make an attachment order if the person has funds or assets that can be used to pay the fine.

Where the court determines that it would be inappropriate to make either an attachment order or a recovery order, it may impose a community service order.

The rules for the making of such orders are the same as for community service generally. It is only where a fined person is not prepared to do community service or is deemed unsuitable for such service by the Probation Service that the court must consider sending the him or her to prison.

In my view, this is a more streamlined approach that is tailored to the specific circumstances of each case of default.

Turning now to the contents 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 a 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 1914, 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. Section 14 has already been commenced and will remain the law up until the commencement of this Section. The only change being introduced in this Section is to make the offences 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).

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 main difference between this section and section 16 of the 2010 Act is in relation to the making of recovery orders. In the 2010 Act this is done automatically whereas this is not the case in the Bill.

Otherwise the sections are almost identical. One change is in *subsection (5)* which 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. This is to clarify that the receiver does not have to personally carry out all of the functions.

Section 9 provides for the issuing of notices in electronic format. This is a new provision that is not contained in the 2010 Act.

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 20 of the 2010 Act contains a similar provision.

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) – (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 the 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 (for example, 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 to the Courts Service.

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 (for example, 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 (that is, 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.

And finally, **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.

To conclude, fine defaulters could traditionally have been divided into two categories: those who can't pay and those who won't pay. For the most part, the provisions requiring a judge to take a person's financial circumstances into account should ensure that fines are not imposed that are too big to be paid by the offender. For those who won't pay, the provisions in this Bill will ensure that the courts have the power to recover the fine in cash or in kind, including by the performance of community service. That is as it should be. We owe it to society in general to ensure that the sanctions imposed by the courts are enforced. We also owe it to those people who pay the fines imposed on them to ensure that others who can afford to pay but who choose not to do so, do not get away with their disrespect for the law, the State and their fellow citizens.

Respect for the law is a cornerstone of the democratic state. That respect extends to compliance with the sanctions imposed by that State where its laws are broken. Failure by the State to ensure such compliance leads progressively to an erosion in respect for the laws of the State and ultimately for the State itself. This Bill will go some way towards ensuring that the disrespect shown by some to the law is neither ignored nor rewarded but is instead challenged and defeated. Our citizens deserve no less.

I commend the Bill to the House.

Thank you.