

## **EXECUTIVE NOTE**

### **THE ENFORCEMENT OF FINES (DILIGENCE) (SCOTLAND) REGULATIONS 2008 - SSI/2008/104**

1. The above set of Regulations was made in exercise of powers conferred by section 226F(6) of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”), which provides that the Scottish Ministers may make regulations in respect of the powers of Fines Enforcement Officers (FEOs) to execute earnings and bank account arrestments. These Regulations are subject to negative parliamentary procedure under section 226F(8) of the 1995 Act.

2. The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (“the 2007 Act”) received Royal Assent on 22 February 2007. Section 55 of the 2007 Act inserts sections 226A to 226I into the 1995 Act and will be brought into force on 10 March 2008. These Regulations are therefore being made using an anticipatory exercise of power as provided for in terms of paragraph 10 of the schedule to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (SSI 1999/1379).

### **POLICY OBJECTIVES**

3. The fine is the most widely used disposal in the criminal justice system in Scotland, with over 60% of convictions involving the imposition of a fine following sentence. Acceptance of an offer to pay a fixed penalty issued by the police or a procurator fiscal is also increasingly used as a means of dealing with low level offending that can appropriately be dealt outwith the court system.

4. Plans for more effective arrangements for the enforcement of fines were announced in March 2005 in the Smarter Justice, Safer Communities – Summary Justice Reform Next Steps<sup>1</sup> paper published by the Scottish Executive. These proposals built on the work of the McInnes Committee Report<sup>2</sup>, and subsequent consultation on its recommendations.

5. The overarching policy objective of the fines reforms is to maintain the credibility of the fine, and to make clear to those who can pay but refuse or delay payment that they will be actively pursued if they do not pay their fines. Within this overarching aim are a number of drivers that seek to:

- reduce the amount of police and court time engaged in enforcement proceedings;
- ensure consistency of enforcement – crucial if the credibility of the fine as a penalty is to be maintained; and
- make effective use of a range of possible administrative methods of collection – equipping those charged with collecting fines with the tools to do the job.

6. One of the key reforms contained within the provisions of section 55 of the 2007 Act is the creation of the role of FEOs who will have the responsibility to collect and enforce fines more effectively through adopting active management of outstanding fines.

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<sup>1</sup> [Smarter Justice, Safer Communities – Summary Justice Reform Next Steps](#) publication

<sup>2</sup> [The Summary Justice Review Committee – Report to Ministers](#)

7. FEOs will offer advice and assistance to those who need help to pay their fines and use smart enforcement techniques to enforce payment of fines where the offender can pay, but chooses not to do so. These powers include:

- power to make a request to court for a deduction to be made from the offender's benefits;
- power to arrest earnings and funds in bank accounts;
- power to make a seizure order in respect of a vehicle belonging to the offender. The vehicle could ultimately be sold to discharge the outstanding fine (although that would require an order of the court); and
- power to send the case back to court for further consideration if none of these options work.

8. Section 226F(5) of the 1995 Act states that the FEO power to execute arrestment of earnings and arrestment of funds held in a bank account will be executed in the same manner as if authorised by a warrant granted by the sheriff in a summary cause. Section 226F(7)(b) provides a power for Scottish Ministers to bring forward regulations to modify the application of any enactment or rule of law applying in relation to these diligences in so far as they may be executed by FEOs. These regulations make modifications as to how the FEO power to arrest earnings and funds in a bank account will operate in practice.

#### **How Civil Creditors use Diligence and how this will be modified for FEOs**

9. A creditor who wishes to recover monies from a debtor requires a civil Court order which authorise diligence for the recovery of the debt. An FEO will operate under an enforcement order granted under section 226B of the 1995 Act.

10. The creditor obtains a decree from the court which is passed to a sheriff officer for enforcement. FEOs will enforce fines.

11. The decree authorises the sheriff officer to carry out diligence against the debtor for recovery of the debt. The decree does not specify what type of diligence the sheriff officer may use against the debtor for recovery of the debt. The enforcement order will specify the powers available to an FEO making this clear to the debtor.

12. The sheriff officer may proceed as follows:

- The debtor will be served with a charge for payment – a document telling the debtor that he must pay the debt with 14 days failing which further action to recover the debt will be taken. When served with a charge for payment a debtor may ask the court to make an order allowing time to pay. No specification of the action is necessary. As a result of these regulations the FEO will not require to serve a charge for payment. The FEO however has a statutory function to provide information and advice to offenders under section 226A(2)(a) of the 1995 Act. The enforcement order will provide details of the powers available. In practice the FEO will also send a warning letter repeating such information if the offender defaults on payment. The offender has the right to ask the FEO for further time to pay at any time under section 226C. If the FEO refuses the offender can ask the court to review that refusal under section 226H.
- If the debt is not paid the sheriff officer may:

- a. Serve an arrestment of earnings schedule on the employer of the debtor requiring the employer to deduct monies from the debtor and account for these sums to the sheriff officer. The amounts which can be deducted are prescribed by Statute.
- b. Serve an arrestment order on a financial institution where it is believed the debtor has funds this has the effect of freezing that account.
- c. Carry out further diligence against the debtor such as immobilising vehicles belonging to the debtor and thereafter applying to the court for a warrant to sell the vehicle, and any other belongings of the debtor which may be sold by this method.

13. Each action taken by the sheriff officer incurs a fee which increases the amount that the debtor owes. Options (a) and (b) are available to FEOs and the law of diligence is modified accordingly to allow FEOs to use these powers. There are no further charges by FEOs for the FEOs their actions in using these diligences.

14. Option (c) is only available to an FEO in respect of a vehicle, not in respect of other belongings. The powers of an FEO in relation to vehicle seizures are contained in section 226D of the 1995 Act. The Enforcement of Fines (Seizure and Disposal of Vehicles) Regulations 2008 have been laid at the same time as these regulations. Those regulations make further provision in relation to seizure of vehicles by FEOs and the charges which may be recovered.

### **CONSULTATION**

15. The Criminal Proceedings etc. (Reform) (Scotland) Bill was introduced into parliament in early 2006. The Justice 1 Committee undertook a full consultation on the provisions contained in the Bill, including the seizure of vehicle provisions. There were also a number of evidence sessions where fines enforcement issues were discussed, including the operation of the diligence provisions. Stages 2 and 3 offered the opportunity for parliament to amend the provisions. The 2007 Act was passed unanimously.

### **FINANCIAL IMPLICATIONS**

16. There are no new financial implications other than those already detailed in the financial memorandum to the 2007 Act.

**Gerard Bonnar**  
**Criminal Procedure Division**  
**Scottish Government**