

EXECUTIVE NOTE

THE ENFORCEMENT OF FINES ETC. (DILIGENCE) (SCOTLAND) REGULATIONS 2009 - SSI/2009/110

1. The above set of Regulations was made in exercise of powers conferred by section 226F(6) and (7) 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 Regulations are required as a result of changes to procedures for bank account arrestments being made by the Bankruptcy and Diligence etc. (Scotland) Act 2007 (“the BADA”).¹ The Regulations will enter into force on 22 April 2009, when the relevant provisions of Part 10 of the BADA are commenced.

POLICY OBJECTIVES

Wider Policy Objectives – FEOs

3. Sections 226A to 226I of the 1995 Act were inserted by section 55 of the Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (“the CPR Act”). Section 55 entered into force on 10 March 2008. The role of an FEO was created as part of the broader programme of Summary Justice Reform (as legislated for in that Act) to improve the effectiveness of arrangements for the collection and enforcement of criminal fines etc. The penalties which FEOs have a locus in enforcing are “relevant penalties”, as defined in section 226I of the 1995 Act.

4. Plans for more effective arrangements for the enforcement of penalties were announced in March 2005 in the Smarter Justice, Safer Communities – Summary Justice Reform Next Steps paper² published by the then Scottish Executive. Those proposals built on the work of the McInnes Committee Report,³ and subsequent consultation on its recommendations.

5. The overarching policy objective of the reforms to the enforcement of fines etc. is to maintain the credibility of the penalty, and to make clear to those who “play the system” that they will be actively pursued if they do not pay. 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 etc. as a penalty is to be maintained; and

¹ This is the second set of Regulations concerning FEO powers of diligence. [The Enforcement of Fines \(Diligence\) \(Scotland\) Regulations 2008](#), entered into force on 1 April 2008.

² [Smarter Justice, Safer Communities – Summary Justice Reform Next Steps](#) publication

³ [The Summary Justice Review Committee – Report to Ministers](#)

- 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 CPR Act is the creation of the role of FEOs with responsibility to collect and enforce fines etc. more effectively through adopting active management of outstanding penalties.

7. FEOs will offer advice and assistance to those who need help to pay their fines etc. and use smart enforcement techniques to enforce payment 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.

Reforms to Diligence law in BADA and modifications for FEOs in this Order

8. Part 10 of the BADA inserts Part 3A into the Debtors (Scotland) Act 1987 (“the 1987 Act”), concerning arrestments in execution and actions of furthcoming. Currently, arrested funds held in bank accounts cannot be taken into a creditor's possession or sold without an action of furthcoming. Part 10 (except new section 73D) will enter fully into force on 22 April 2009. Reforms being introduced on that date include:-

- The arrestee will have a duty to disclose to an arresting creditor what has been arrested.
- An action of furthcoming will no longer be necessary for the release of funds arrested. Subject to certain circumstances which prevent this, funds are automatically released in bank arrestments after 14 weeks following the service of the schedule of arrestment.
- Objections to the automatic release of funds may be lodged.
- A protected minimum balance in certain bank accounts will be introduced.
- Funds arrested will be limited to the amount due.

A further reform that is expected to come into force on a later date will be that –

- A creditor shall have a duty to provide a “debt advice and information package” to the debtor – this provision will be departed from for FEOs as explained below.

9. Section 226F(5) of the CPR Act provides that the FEO may operate the two forms of diligence (earnings arrestment and bank account arrestment) in the same manner “... as if authorised by a warrant granted by a sheriff in a summary cause”. A power is given in the CPR Act to modify, by regulations, the application of the law applying in relation to these diligences in so far as they may be executed by a FEO. These Regulations make

modifications to ensure that the new provisions of the 1987 Act apply to FEO arrestments, where they would not otherwise apply by virtue of section 226F(5).

9.1 **Regulation 2(a)** provides that once section 73D of the 1987 Act enters into force, FEOs will not be required to provide an offender, who has been made subject to an enforcement order, with a debt advice and information package. FEOs are, by section 226A(2)(a) of the 1995 Act, under a statutory duty to provide information and advice to offenders regarding payment of their fines etc., and assistance provided in this regard will be relevant to criminal fines etc. Advice and information relating to civil debts may not be appropriate for individuals with an outstanding fine etc.

9.2 **Regulation 2(b)** provides that section 73G of the 1987 Act, which imposes a duty on the arrestee to disclose the arrestment to the creditor, obliges an arrestee to send the form of disclosure of the arrestment to an FEO where an FEO executes such diligence. The form is prescribed at Schedule 8 of the Diligence (Scotland) Regulations 2009.

9.3 **Regulation 2(c)** provides that section 73J of the 1987 Act, which provides for the automatic release of funds arrested by bank arrestment 14 weeks following the service of the schedule of the arrestment, applies where an FEO arrests funds and allows the sum to be released by the arrestee to an FEO.

CONSULTATION

10. The Criminal Proceedings etc. (Reform) (Scotland) Bill was introduced into the 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 seizure of vehicle provisions. Stages 2 and 3 offered the opportunity for the Parliament to amend the provisions. The CPR Act was passed unanimously.

FINANCIAL IMPLICATIONS

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

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