

# **CRIMINAL PROCEEDINGS ETC. (REFORM) (SCOTLAND) ACT 2007**

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## **EXPLANATORY NOTES**

### **INTRODUCTION**

#### **Part 3 – Penalties**

##### **Enforcement of fines etc.**

##### ***Section 55: Fines enforcement officers and their functions***

322. This section amends the 1995 Act to include new sections 226A to 226I. These introduce new arrangements for the enforcement of fines and other financial penalties, including provision for the appointment of fines enforcement officers, who will provide information and advice to the offender in relation to payment of the fine and will also have new sanctions to use against offenders who default in payment of their fines or penalties.

##### **New Section 226A – Fines enforcement officers**

323. Subsection (1) makes provision for a new post of fines enforcement officer (FEO). FEOs will undertake a number of enforcement related duties previously undertaken by the courts, such as dealing with applications for further time to pay. They will also be responsible for a range of enforcement activity. The FEO will be an officer of the Scottish Court Service (SCS), an agency of the Scottish Executive.

324. Subsection (2) sets out the core functions of FEOs. These are

- to provide information and advice to offenders about payment of fines or penalties, and
- to secure compliance with the terms of an enforcement order made under section 226B.

325. Subsections (3) and (4) provide that where an offender is subject to more than one enforcement order the FEO must have regard to the total amount outstanding and, where there is an enforcement order in another sheriff court district from that in which the offender resides, the FEO for the district in which the offender resides may assume responsibility for the functions of the order. This is to ensure that only one FEO has responsibility for exercising functions under an enforcement order.

326. Subsections (5) and (6) provide that where an FEO takes responsibility for an enforcement order under subsection (4) that fact must be notified both to the offender and to any FEO for the district in which the enforcement order was made.

327. Subsection (7) empowers the Scottish Ministers to make further provision by regulation as to FEOs and their functions. In due course, this could be used to give FEOs additional

functions or to modify the exercise of existing functions. The regulations will be subject to affirmative procedure.

### **New Section 226B – Enforcement orders**

328. Subsections (1) and (2) give the court discretion to make an enforcement order in relation to a fine. The expectation is that the court will make an enforcement order when considering whether to grant time to pay under section 214 or 215 of the 1995 Act. However, the court is not required to make an order if it does not consider that an order would be appropriate.
329. Subsection (7) provides that an enforcement order may be made by the court in the absence of the offender in relation to the payment of certain penalties, on the application of the clerk of court. Those penalties are detailed in subsections (4), (5) and (6). Subsection (7) applies where the offender:
- has accepted or is deemed to have accepted a fixed penalty offer or compensation offer as an alternative to prosecution under section 302(1) or 302A(1) of the 1995 Act (subsection (4));
  - is liable to pay a fixed penalty under section 54 or section 62 of the Road Traffic Offenders Act 1988 which has been registered under section 71 of that Act, or is liable to pay (by virtue of section 131(5) of the Antisocial Behaviour etc. (Scotland) Act 2004) a fixed penalty notice issued under section 129 of that Act (subsection (5));
  - is the subject of a transfer of fine order in respect of a fine imposed in England and Wales in relation to which a collection order has been made (subsection (6)).
330. The enforcement order, a copy of which will be sent to all offenders, imposes a statutory requirement to pay the fine or penalty as specified in the order. The order will also contain certain information, as set out in subsection (8), including:
- details of the fine or penalty;
  - the arrangements for making payment (including the time for payment and, if applicable, the number of instalments permitted by the court);
  - contact details of the fines enforcement officer; and
  - information about the effect of the order in the event that the offender defaults on payment of the fine.
331. The sanctions for non – compliance, as detailed in new sections 226D, 226E and 226F include seizure of an offender’s motor vehicle; a deduction from benefits order; earnings arrestment; and arrestment of an offender’s bank or building society account. The enforcement order empowers the FEO to apply these sanctions, subject to the provisions of sections 226D to 226F.
332. Subsections (9) & (10) prohibit the court (when making or intending to make an enforcement order) from imposing an alternative period of imprisonment or dealing with applications for further time to pay for as long as an enforcement order has effect. The order will cease to have effect if the penalty is fully paid or the court decides to revoke the order.

### **New Section 226C – Variation for further time to pay**

333. One of the core functions of the FEO (section 226A(2)(a)) is to provide information and advice to offenders as regards payment. The FEO will make contact with the offender following the making of an enforcement order and will set out the date or dates by which payment is due.

334. However, section 226C empowers the FEO to vary the arrangements for payment. Subsection (3) provides that an application to vary arrangements may be made orally or in writing. The FEO will, as provided in subsection (4), notify the offender of the decision to grant or refuse the application. Section 226H allows an offender to apply to a court for a review of a decision of a FEO regarding the variation of an enforcement order.

#### **New Section 226D – Seizure of vehicles**

335. This section empowers a FEO to issue a ‘seizure order’ to immobilise and impound an offender’s motor vehicle. Subsection (4) requires the FEO to notify the offender when a seizure order has been carried out. Subsection (11) prohibits the seizure of a vehicle used by or primarily for carrying disabled persons.
336. Subsections (5) and (6) set out the process to be followed where the fine or penalty remains unpaid following seizure of a motor vehicle, and the powers available to the court. These include making an order for the sale of the vehicle, and applying the proceeds towards the unpaid fine or penalty.
337. Subsection (7) provides that where a third party claims to own a vehicle which has been seized and not yet disposed of, that third party may have the seizure order set aside if it can satisfy the FEO (or subsequently the sheriff) that their claim of ownership is valid. Subsection (8) makes clear that the provision in subsection (7) does not preclude any other proceedings for the recovery of the vehicle.
338. Regulations may be made under subsection (12) in order to provide greater detail about seizure orders, including the circumstances in which they may and may not be made. Subsection (13) provides examples of what the regulations may cover.

#### **New Section 226E - Deduction from Benefits**

339. Section 226E enables the FEO to request the court to make an application for a deduction from benefits to be made from an offender, for the purpose of obtaining payment of a fine or penalty.

#### **New Section 226F – Powers of Diligence**

340. Section 226F provides that, when making an enforcement order, the court must also grant warrant for civil diligence. This warrant will authorise the FEO to execute arrestment of earnings and funds in bank accounts. The purpose is to obtain the amount of the penalty which has not been paid. The diligence powers of the FEO are subject to regulations which the Scottish Ministers may make about the circumstances in which diligence powers may be exercised and the application of other law relating to diligence. The intention is that any existing and new legislation relating to diligence (such as the Debtors (Scotland) Act 1987 and relevant provisions of the Bankruptcy and Diligence (Scotland) Act 2007) will apply to FEOs when they exercise diligence powers, subject to such modifications as may be necessary.

#### **New Section 226G – Reference of case to court**

341. Subsections (1) and (2) make provision for any outstanding fine to be referred back to the court. Referral can take place where the FEO has formed the view that the fine or penalty, or the unpaid balance, is unlikely to be paid or where, for any other reason, the FEO considers it appropriate (for example, where the offender has failed to co-operate with the FEO). In these circumstances the FEO will, as outlined in subsections (3) and (4), provide a report to the court on the circumstances of the case.
342. Subsections (5) to (9) provide details of the procedure to be followed by the court on receipt of a report and reference from the FEO. This will involve an enquiry, in the offender’s presence, into the reasons for failure to pay the fine and penalty. The court

*These notes relate to the Criminal Proceedings etc. (Reform) (Scotland)  
Act 2007 (asp 6) which received Royal Assent on 22 February 2007*

is given a range of disposal options following such an enquiry. These include revoking the enforcement order and dealing with the offender as if the order had not been made. This could mean imposing a period of imprisonment.

### **New Section 226H – Review of actions of FEO**

343. This section provides that an offender may apply to the court for a review of a decision of a FEO in relation to an application for variation for further time to pay, or an order to immobilise and impound the offender's motor vehicle. The application must be made within 7 days of being notified of the decision relating to further time to pay or the making of a seizure order. When determining the application, the court can confirm, alter or quash the decision of the FEO or make any other order that it considers appropriate.

### **New Section 226I - Enforcement of fines etc.: Interpretation**

344. This section sets out certain definitions for terms used in sections 226A to 226H, and describes the penalties to which these provisions apply. There is an order making power to allow additional penalties to be added to the definition of "relevant penalty". This would have the effect of increasing the range of penalties for which the FEO could have responsibility.

### ***Section 56: Recognition of EU financial penalties***

345. **Section 56** entitles Scottish Ministers to make provision, by means of an order subject to the affirmative procedure, implementing any obligation created by or arising under the council Framework decision on the application of the principle of mutual recognition to financial penalties in so far as they have effect in or as regards Scotland. The purpose of the Decision (2005/214/JHA of 24 February 2005) is to allow financial penalties imposed in criminal proceedings to be transferred to other member states for enforcement – improving enforceability of fines across the EU.