



2011 CHAPTER 24

PART 6

ALTERNATIVES TO PROSECUTION

CHAPTER 1

PENALTY NOTICES

Penalty offences and penalties

Penalty offences and penalties

59.—(1) For the purposes of this Chapter—

- (a) “penalty offence” means an offence described in the first column of Schedule 4;
- (b) the penalty payable in respect of a penalty offence is the amount specified in relation to that offence in the second column of that Schedule plus the amount of the offender levy determined under section 6.

(2) The Department may by order amend an entry in either column of Schedule 4 or add or remove an entry.

(3) But an order under subsection (2) may not provide for the penalty payable in respect of a penalty offence to be an amount which is more than a quarter of the amount of the maximum fine for which a person is liable on summary conviction of the offence.

(4) An order under subsection (2) may make such amendment of any provision of this Chapter as the Department considers appropriate in consequence of any change in Schedule 4 made by the order.

(5) No order shall be made under subsection (2) unless a draft of the order has been laid before, and approved by a resolution of, the Assembly.

Penalty notices

Penalty notices

60.—(1) A police officer who has reason to believe that a person over the age of 18 has committed a penalty offence may give that person a penalty notice in respect of the offence.

(2) Unless the notice is given in a police station, the police officer giving it must be in uniform.

(3) In this Chapter “penalty notice” means a notice offering the opportunity, by paying a penalty in accordance with this Chapter, to discharge any liability to be convicted of the offence to which the notice relates.

Form of penalty notice

61. A penalty notice must—

- (a) state the alleged offence;
- (b) give such particulars of the circumstances alleged to constitute the offence as are necessary to provide reasonable information about it;
- (c) specify the suspended enforcement period (as to which see section 63) and explain its effect;
- (d) state the amount of the penalty;
- (e) state the fixed penalty clerk to whom, and the address at which, the penalty may be paid; and
- (f) inform the person to whom it is given of the right to ask to be tried for the alleged offence and explain how that right may be exercised.

Effect of penalty notice

62.—(1) This section applies if a penalty notice is given to a person (“A”) under section 60.

(2) If A asks to be tried for the alleged offence, proceedings may be brought against A.

(3) Such a request must be made by a notice given by A—

- (a) in the manner specified in the penalty notice; and
- (b) before the end of the suspended enforcement period (as to which see section 63).

(4) A request which is made in accordance with subsection (3) is referred to in this Chapter as a “request to be tried”.

(5) If, by the end of the suspended enforcement period—

- (a) the penalty has not been paid in accordance with this Chapter, and
- (b) A has not made a request to be tried,

a sum equal to one and a half times the amount of the penalty may be registered under section 67 for enforcement against A as a fine.

General restriction on prosecution

63.—(1) Proceedings for the offence to which a penalty notice relates may not be brought until the end of the period of 28 days beginning with the date on which the notice was given (“the suspended enforcement period”).

(2) If the penalty is paid before the end of the suspended enforcement period, no proceedings may be brought for the offence.

(3) Subsection (1) does not apply if the person to whom the penalty notice was given has made a request to be tried.

Guidance

64. The Department may issue guidance—

- (a) about the exercise of the discretion given to police officers by this Chapter;
- (b) about the issuing of penalty notices;
- (c) with a view to encouraging good practice in connection with the operation of provisions of this Chapter.

Procedure

Payment of penalty

65.—(1) Payment of a penalty under this Chapter must be made to, or at the office of, the fixed penalty clerk specified in the penalty notice relating to that penalty.

(2) Without prejudice to payment by any other method, payment of a penalty under this Chapter may be made by properly addressing, pre-paying and posting a letter containing the penalty notice and the amount of the penalty and, unless the contrary is proved, shall be regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(3) A letter is properly addressed for the purposes of subsection (2) if it is addressed to the fixed penalty clerk specified in the penalty notice relating to the penalty as the address at which the penalty may be paid.

(4) Sums paid by way of a penalty for an offence shall be treated as if they were fines imposed on summary conviction of that offence.

(5) In this Chapter the “fixed penalty clerk” means—

- (a) the clerk of petty sessions; or
- (b) such other person as the Department may by order direct.

Registration certificates

66.—(1) This section and section 67 apply where by virtue of section 62(5) a sum determined by reference to the penalty for any offence may be registered under section 67 for enforcement against any person as a fine.

(2) In this section and section 67—

- (a) that sum is referred to as a “sum payable in default”, and
- (b) the person against whom that sum may be so registered is referred to as the “defaulter”.

(3) The Chief Constable—

- (a) may in respect of any sum payable in default issue a certificate (a “registration certificate”) stating that the sum is registrable under section 67 for enforcement against the defaulter as a fine; and
- (b) must cause any certificate so issued to be sent to the fixed penalty clerk.

(4) The Chief Constable may authorise a person to carry out the functions of the Chief Constable under subsection (3).

(5) A registration certificate must—

- (a) give particulars of the offence to which the penalty notice relates; and
- (b) state the name and last known address of the defaulter and the amount of the sum payable in default.

Registration of penalty

67.—(1) Where the fixed penalty clerk receives a registration certificate in respect of any sum payable in default, the clerk must register that sum for enforcement as a fine by entering it in the Order Book of a court of summary jurisdiction.

(2) On registering any sum under this section for enforcement as a fine, the fixed penalty clerk must give to the defaulter notice of registration—

- (a) specifying the amount of that sum and requiring payment of it by such date, not less than 21 days from the date of registration, as may be specified in the notice; and
- (b) giving the information with respect to the offence included in the registration certificate by virtue of section 66(5)(a).

(3) On the registration of any sum in the Order Book of a court of summary jurisdiction by virtue of this section, any statutory provision referring (in whatever terms) to a fine imposed or a sum adjudged to be paid by a conviction of such a court shall, subject to regulations made under subsection (4), have effect in the case in question as if the sum so registered were a fine imposed by that court on the conviction of the defaulter on the date of the registration.

(4) The Department may make such regulations with respect to the enforcement of payment of sums registered under this section as it considers appropriate.

(5) Regulations under subsection (4) may in particular—

- (a) modify the provisions of the [Magistrates' Courts \(Northern Ireland\) Order 1981 \(NI 26\)](#) relating to the satisfaction and enforcement of sums adjudged to be paid by a conviction, as they have effect by virtue of subsection (3) in relation to sums registered under this section; and
- (b) make such incidental, supplemental or consequential provision (including provision to modify a statutory provision) as appears to the Department to be expedient.

(6) In subsection (5) “modify” includes the making of additions, omissions, exceptions and amendments.

Challenge to notice

68.—(1) This section applies where—

- (a) a person who has received notice of the registration of a sum under section 67 for enforcement against that person as a fine makes a statutory declaration to the effect mentioned in subsection (2), and
- (b) that declaration is, within 21 days of the date on which the person making it received notice of the registration, served on the fixed penalty clerk.

(2) The statutory declaration must state—

- (a) that the person making the declaration was not the person to whom the relevant penalty notice was given, or
- (b) that the person gave notice requesting to be tried in respect of the alleged offence as permitted by the penalty notice before the end of the suspended enforcement period.

(3) In any case within subsection (2)(a), the relevant penalty notice, the registration and any proceedings taken before the declaration was served for enforcing payment of the sum registered shall be void.

(4) In any case within subsection (2)(b)—

- (a) the registration and any proceedings taken before the declaration was served for enforcing payment of the sum registered shall be void, and

(b) the case shall be treated after the declaration is served as if the person making the declaration had given notice requesting to be tried in respect of the alleged offence as stated in the declaration.

(5) References in this section to the relevant penalty notice are to the penalty notice relating to the penalty concerned.

(6) In any case within subsection (2)(b), Article 19(1)(a) of the [Magistrates' Courts \(Northern Ireland\) Order 1981 \(NI 26\)](#) (limitation of time) shall have effect as if for the reference to the time when the offence was committed there were substituted a reference to the date of the statutory declaration made for the purposes of subsection (1).

(7) Subsection (8) applies where, on the application of a person who has received notice of the registration of a sum under section 67 for enforcement against that person as a fine, it appears to a court of summary jurisdiction that it was not reasonable to expect that person to serve, within 21 days of the date on which that person received the notice, a statutory declaration to the effect mentioned in subsection (2).

(8) The court may accept service of such a declaration by that person after that period has expired; and a statutory declaration so accepted shall be taken to have been served as required by subsection (1).

(9) In this section references to proceedings for enforcing payment of the sum registered are references to any process issued or other proceedings taken for or in connection with enforcing payment of that sum.

(10) For the purposes of this section, a person shall be taken to receive notice of the registration of a sum under section 67 for enforcement against that person as a fine when that person receives notice either of the registration as such or of any proceedings for enforcing payment of the sum registered.

(11) Nothing in this section is to be read as prejudicing any rights a person may otherwise have by virtue of the invalidity of any action purportedly taken under this Chapter which is not in fact authorised by this Chapter in the circumstances of the case.

(12) Accordingly, references in this section to the registration of any sum or to any other action taken under this Chapter are not to be read as implying that the registration or action was validly made or taken in accordance with that provision.

Setting aside of sum enforceable under section 67

69.—(1) A court of summary jurisdiction may, in the interests of justice, set aside a sum enforceable as a fine as a result of section 67.

(2) Where a court sets aside such a sum, it must give a direction that either—

- (a) no further action is to be taken in respect of the alleged offence that gave rise to the penalty notice concerned; or
 - (b) that the case is to be treated as if the person concerned had given notice requesting to be tried in respect of the offence.
- (3) Where a court gives a direction under subsection (2)(a), the penalty notice concerned, the registration and any proceedings taken for enforcing payment of the sum registered shall be void.
- (4) Where a court gives a direction under subsection (2)(b)—
- (a) the registration and any proceedings taken for enforcing payment of the sum registered shall be void; and
 - (b) Article 19(1)(a) of the [Magistrates' Courts \(Northern Ireland\) Order 1981 \(NI 26\)](#) (limitation of time) shall have effect as if for the reference to the time when the offence was committed there were substituted a reference to the date of the setting aside.
- (5) In this section references to proceedings for enforcing payment of the sum registered are references to any process issued or other proceedings taken for or in connection with enforcing payment of that sum.

Interpretation

Interpretation of this Chapter

70. In this Chapter—

- “defaulter” has the meaning given in section 66(2);
- “fixed penalty clerk” has the meaning given by section 65(5);
- “penalty notice” has the meaning given in section 60(3);
- “penalty offence” has the meaning given in section 59(1);
- “registration certificate” has the meaning given in section 66(3);
- “request to be tried” has the meaning given by section 62(4);
- “sum payable in default” has the meaning given by section 66(2);
- “suspended enforcement period” has the meaning given by section 63(1).