

FINES (PAYMENT AND RECOVERY) BILL 2013

REGULATORY IMPACT ANALYSIS

1. Summary RIA

Summary of Regulatory Impact Analysis (RIA)	
Department/Office: Department of Justice and Equality	Title of Legislation: Fines (Payment and Recovery) Bill 2013
Stage: Publication of Bill	Date: July 2013
Related Publications: Fines Act 2010	
Available to view or download at: http://www.oireachtas.ie/viewdoc.asp?fn=/documents/bills28/bills/2009/1809/document1.htm	
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What policy objectives have been pursued? Improving the effectiveness of fines as a non-custodial criminal sanction through providing more options for the collection of fines with a view to improving the payment rate and reducing the number of fine defaulters committed to prison. While the Fines Act 2010 provided for a number of measures aimed at these objectives, the introduction of the measures contained in the Bill (particularly the introduction of attachment of earnings orders and an automatic right to pay by instalments) as well as the streamlining of the provisions in the 2010 Act to take account of these innovations, will greatly improve the achievement of this objective. For ease of reading, Part 3 of the Fines Act 2010 is being repealed and this Bill will contain all the provisions in relation to the payment and recovery of fines.	
What policy options have been considered? Please summarise the costs, benefits and impacts relating to each of the options below and indicate whether a preferred option has been identified. 1. Do nothing. 2. Introduce legislation: <ul style="list-style-type: none"> • to increase the options available to the court other than imprisonment, where fines are not paid, including the introduction of attachment of earnings provisions, • to reform the provisions for instalment payments to make it available to all fine payers, • to provide for data exchange between the courts and the Revenue and Department of Social Protection to ensure the effectiveness of orders made by the courts, • to provide for the electronic exchange of documentation with receivers appointed under recovery orders under the Bill. 	
Preferred Option: Introduce legislation to provide for 2 above.	

OPTIONS			
	COSTS	BENEFITS	IMPACTS
1.	<p>The current level of non-payment of fines imposes costs in a number of ways:</p> <ul style="list-style-type: none"> • The revenue lost due to the non-payment of fines • The cost of processing and imprisoning significant numbers of people for short periods • The cost of Garda time and resources spent enforcing penal warrants in respect of these defaulters. 	<ul style="list-style-type: none"> • No benefits. 	<ul style="list-style-type: none"> • Loss of revenue to the State from non-payment of fines (the potential additional revenue accruing from these measures is estimated at up to €4m) • Loss of confidence in the capacity of the criminal justice system to enforce penalties handed down by the courts • Deterrent effect of fines eroded • Increased incentive to non-payment where there is an expectation that the fine won't be collected.
2.	<p>Direct costs:</p> <ul style="list-style-type: none"> • IT investment by Courts Service to support attachment of earnings • Court costs due to increase in number of hearings to make 	<ul style="list-style-type: none"> • Fine collection rates will be higher (with a potential additional €4m collected when all the measures have been commenced) • The numbers committed to prison 	<ul style="list-style-type: none"> • Higher compliance rate with fines imposed with a consequential increase in confidence in the criminal justice system

	<p>orders</p> <ul style="list-style-type: none"> • Employer costs in administering the collection and payment of fines. • Pace of payment may slow with extended range of payment options though overall collection rate will improve. <p>The incremental cost of the implementation of the Bill is relatively small. The Fines Act 2010 already required an IT investment by the Court Service to allow for the payment and collection of fines by instalments. Further investment will be required in order to support attachment of earnings provisions.</p> <p>The costs to employers are not appreciable and industry already administers attachment in relation to family law cases.</p>	<p>after the measures provided for in the scheme will reduce (only those who refuse to participate in community service or those deemed unsuitable by the Probation Service) potentially removing up to 8,000 committals from the prison system each year.</p> <ul style="list-style-type: none"> • Removing the automatic making of recovery orders (as provided for in the 2010 Act) will reduce costs and avoid the making of orders in respect of people who have no assets. 	<ul style="list-style-type: none"> • Demonstration effect of people having fines deducted from wages, on others who may consider non-payment as an option
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2. Policy Context and Objectives

The overall policy objective is to improve confidence in and the credibility of, the fines system as an effective non-custodial criminal sanction, through providing more options for the collection of fines. This overall objective will be achieved by ensuring to the greatest extent possible that fines imposed by the courts are collected in full and consequently, the number of persons committed to prison for the non-payment of fines is kept to the absolute minimum consistent with maintaining the integrity of the criminal justice system.

Part 3 of the Fines Act 2010 introduced a number of reforms aimed at improving the collection of fines and reducing the incidence of people being sent to prison for the non-payment of fines. The key reforms were: 1) courts

to take account of a person's financial circumstances before deciding to impose a fine; 2) a person could apply to the court to pay the fine by instalments; 3) at the time a fine was set, the court would also appoint a receiver to recover the fine, including by the sale of a person's property, in the event of default; 4) where the receiver failed to collect the fine, the court could impose a community service order on the person; 5) it was only in the small residual number of cases that a person could be sent to prison for non-payment of a fine.

Of the reforms outlined above, only the first one relating to the person's financial circumstances has been commenced. The others required changes to the IT systems of the Courts Service. In planning for the changes necessitated by the Act, certain practical issues came to light, which, put in the context of the Programme for Government commitment to introduce attachment of earnings, necessitated a review of the architecture of the overall fines payment and recovery system. As a result, it was decided that rather than making piecemeal amendments to a number of sections of the 2010 Act, as well as adding a number of new sections, it would be easier for those using the legislation if all the provisions relating to the payment and collection of fines were in one piece of legislation.

Attachment of earnings will take its place with revised versions of the other reforms contained in the Fines Act 2010. Recovery orders (the appointment of a receiver to recover the fine, including through the disposal of assets) and community service orders will now be available to the court as options where a person fails to pay a fine. This will provide the courts with a number of means of ensuring that the debt is collected, or where this is not possible, that community service is undertaken, with a resultant reduction in the numbers sent to prison for non-payment of fines. Attachment orders are already a feature of the family law regime and are used to recover maintenance payments where a party fails to meet their obligations voluntarily.

In addition to the introduction of attachment of earnings orders, the Scheme provides an automatic right to pay a fine by instalments, and makes a number of other changes to the provisions contained in the Fines Act 2010 aimed at improving its efficiency and effectiveness.

3. Identification and Description of Options

The following options were considered:

1. Do nothing.
2. Introduce legislation to provide for attachment of earnings; to make a number of other changes, including changes consequential to the introduction of attachment of earnings, to the provisions of the Fines Act 2010.

4. Analysis of Costs, Benefits and Impacts for ALL Options

1. Do nothing.

Doing nothing would deprive the fines collection system of attachment of earnings orders which are considered to be an effective element of multi-faceted collection regimes.

Doing nothing would also make it more difficult and costly to implement the Fines Act 2010. For example, the Act as currently framed allows for an individual instalment regime for each person permitted to pay by instalments and where a number of fines are imposed on a person, each fine could have a different payment date. This adds to the administrative burden on the courts and makes the IT systems supporting instalment payments more complex and expensive to develop. The 2010 Act also provides that the court appoint the receiver at the time the fine is imposed. However, by the time the court is advised that the fine is in default, the person may have moved address or the receiver appointed may no longer be doing that work. In that case, a new recovery order would have to be made by the court involving a repeat court appearance with attendant costs.

In conclusion, doing nothing is not an option, as it would result in proceeding with the implementation of the 2010 Act with the attendant difficulties that have emerged since enactment, while depriving the system of the benefits of attachment of earnings.

2. Introduce legislation to provide for attachment of earnings and a number of measures aimed at streamlining the fines payment and recovery system.

The introduction of attachment of earnings orders in a new fines payment and recovery system will assist the courts in ensuring to the maximum extent possible, that fines are collected, and that people are not sent to prison for non-payment of fines, except in the rarest of cases.

The main benefits are improved fine collection as those defaulters who are in employment will be subject to attachment of earnings orders. The existence of such orders is considered likely to encourage payment of fines by employees before their employer has to become involved.

Any measure that increases the probability of fines being collected adds to the confidence in the criminal justice system itself. Insofar as this measure shows that the Oireachtas is giving people every opportunity to pay and is serious about collecting fines from people, it increases confidence in the system.

Making recovery orders one of a number of options available to the court rather than an automatic imposition will ensure that such orders are only made where appropriate.

Changing the payment by instalment provisions of the 2010 Act to make it easier for a greater number of people to pay fines should also contribute to a higher collection rate in the medium term, once the new system settles down.

5. Poverty Impact

The impact of the proposals on those experiencing poverty and social exclusion was considered.

It is worth making a number of preliminary points:

- The law applies equally to all and once a penal sanction is imposed by the courts, it is in the interest of justice that it is applied.
- Fines are the most widely used sanction in the Irish penal system, with over 100,000 imposed each year. The average fine imposed is €300 and half of all fines are for €200 or less.
- Under the law as it stands, where a person fails to pay a fine, a warrant is executed and the person is committed to prison. The court has no discretion. In 2012, 8,300 people were sent to prison for the non-payment of fines.

Section 14 of the Fines Act 2010 (section 5 of the Bill) requires the court to take a person's financial circumstances into account when determining the amount of the fine, if any, to impose on the person. This requires the court to impose lesser fines on those who can least afford to pay and higher fines on those who have the greatest means. So provided the person avails of the opportunity to provide the court with details of their financial position, there is no reason why a fine that presents an unreasonable burden on the person should be imposed.

The new instalment provisions contained in section 6 of the Bill allow any person to opt to pay the fine by instalments. So a person who has had a fine set under section 5, taking account of their financial circumstances, can avail of instalment payments to spread the burden of paying the fine over 12 months.

These provisions clearly make it easier for those on low incomes or relying on social welfare benefits to pay fines imposed on them.

Consideration has been given to the impact that the imposition of attachment of earnings may have on those in low paid employment. For the person who engages with the process at all stages, it is difficult to see how the introduction of attachment orders should have any particular impact on those on low incomes. If the person attends court when first summoned, they have the opportunity of having a fine set at a level that they can afford. They then have the option of paying that fine by instalments over 12 months. Assuming that, for whatever reason, they fail to pay the fine in full, an attachment order

will only be imposed by the court where it is the most appropriate order to make. Overall, given that the making of an attachment order only arises after the court has already taken the person's financial circumstances into account in setting the fine, and after the person has had the opportunity to pay the fine by instalments, and where the court decides that it is the most appropriate order to make, it is not considered that the introduction of attachment orders will have an adverse impact on those experiencing poverty or social exclusion, including those on low pay.

All of this is in the context of a criminal justice system that can only work if the sanctions imposed are made to work. A consistent failure to collect fines over time (or to impose alternatives thereto) can only have a corrosive effect on the system that feeds through to a disrespect for the law. The detection of crimes, and the prosecution and conviction of those responsible, must be followed by the enforcement of any sanction imposed by the courts. The system proposed in this Bill mitigates the impact of the sanction of a fine on those whose financial circumstances are such as to make it difficult for them to pay a fine.

6. Consultation

The Courts Service was consulted.

7. Enforcement and compliance

Attachment of earnings orders and the amended forms of recovery order and community service will be imposed by the courts as part of the fines system. They will be administered by the Courts Service. Non-compliance by an employer with an attachment of earnings order is an offence under the Bill and will itself result in a fine of up to €2,500 and/or imprisonment for up to 12 months. The provision of inaccurate, incomplete or incorrect statements of income and assets is also an offence under the Bill.

8. Review

The fines collection system is kept under on-going review and the measures included in the Bill will be continuously monitored.

9. Publication

The Regulatory Impact Analysis will be published on the Department's website.

July 2013