



## 2015 CHAPTER 9

PROSPECTIVE

### PART 3

#### PROSECUTORIAL FINES

##### *Prosecutorial fine*

##### **Prosecutorial fine: notice of offer**

**17.—**(1) Where a Public Prosecutor receives a report that a summary offence has been committed and that the alleged offender was at the time of the offence aged over 18, the Public Prosecutor may issue a notice to that person offering that person the opportunity of receiving a prosecutorial fine notice in respect of that offence.

(2) Where a Public Prosecutor receives a report that—

- (a) a number of summary offences have been committed by an alleged offender,
- (b) the offences all arise out of the same circumstances, and
- (c) the alleged offender was at the time of the offences aged over 18,

the Public Prosecutor may issue a notice to that person offering that person the opportunity of receiving a prosecutorial fine notice in respect of all the offences.

(3) In subsections (1) and (2) “summary offence” means an offence which is punishable on summary conviction, whether or not it is also triable on indictment.

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- (4) A notice under subsection (1) 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) state the amount of the prosecutorial fine for that offence and each of the amounts referred to in paragraphs (a) and (b) of section 19(1) or (in the case of an offence falling within section 19(2)) each of the amounts referred to in paragraphs (a), (b) and (c) of section 19(2);
  - (d) indicate that the alleged offender may accept or decline the offer by giving notice to the Public Prosecutor within 21 days of the date on which the notice was issued;
  - (e) indicate that if the offer is declined, or no notice is served under paragraph (d) within the period mentioned in that paragraph, the alleged offender is liable to be prosecuted for the offence;
  - (f) indicate that if the offer is accepted—
    - (i) the alleged offender will be discharged from liability to be prosecuted for the offence; and
    - (ii) a prosecutorial fine notice will be issued to the offender under section 18; and
  - (g) state the effect of section 20(1) and (2).
- (5) A notice under subsection (2) must—
- (a) state the alleged offences;
  - (b) give such particulars of the circumstances alleged to constitute the offences as are necessary to provide reasonable information about them;
  - (c) state the amount of the prosecutorial fine for all the offences and each of the amounts referred to in paragraphs (a) and (b) of section 19(3) or (in a case where section 19(4) applies) each of the amounts referred to in paragraphs (a), (b) and (c) of section 19(4);
  - (d) indicate that the alleged offender may accept or decline the offer by giving notice to the Public Prosecutor within 21 days of the date on which the notice was issued;
  - (e) indicate that if the offer is declined, or no notice is served under paragraph (d) within the period mentioned in that paragraph, the alleged offender is liable to be prosecuted for the offences;
  - (f) indicate that if the offer is accepted—
    - (i) the alleged offender will be discharged from liability to be prosecuted for the offences; and
    - (ii) a prosecutorial fine notice will be issued to the offender under section 18; and

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(g) state the effect of section 20(3) and (4).

### **Prosecutorial fine notice**

**18.—**(1) Where a person has accepted the offer under section 17(1) or (2), the Public Prosecutor must issue a prosecutorial fine notice to that person.

(2) Where a person has accepted an offer under section 17(1), a “prosecutorial fine notice” is a notice which—

- (a) states the alleged offence;
- (b) gives such particulars of the circumstances alleged to constitute the offence as are necessary to provide reasonable information about it;
- (c) states the amount of the prosecutorial fine for the offence and each of the amounts referred to in paragraphs (a) and (b) of section 19(1) or (in the case of an offence falling within section 19(2)) each of the amounts referred to in paragraphs (a), (b) and (c) of section 19(2);
- (d) requires payment of the prosecutorial fine within the period allowed for payment (see subsection (4)); and
- (e) states the fines clerk to whom, and the address at which, the prosecutorial fine may be paid.

(3) Where a person has accepted an offer under section 17(2), a “prosecutorial fine notice” is a notice which—

- (a) states the alleged offences;
- (b) gives such particulars of the circumstances alleged to constitute the offences as are necessary to provide reasonable information about them;
- (c) states the amount of the prosecutorial fine for all the offences and each of the amounts referred to in paragraphs (a) and (b) of section 19(3) or (in a case where section 19(4) applies) each of the amounts referred to in paragraphs (a), (b) and (c) of section 19(4);
- (d) requires payment of the prosecutorial fine within the period allowed for payment (see subsection (4)); and
- (e) states the fines clerk to whom, and the address at which, the prosecutorial fine may be paid.

(4) The period allowed for payment of a prosecutorial fine is the period of 28 days beginning with the date on which the prosecutorial fine notice relating to that fine was issued.

(5) A Public Prosecutor who issues a prosecutorial fine notice must send a copy of that notice to the fines clerk mentioned in the notice under subsection (2)(e) or (3)(e).

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### **Amount of prosecutorial fine**

**19.—(1)** Except as provided by subsection (2), for the purposes of a notice under section 17(1) or 18(2), the amount of the prosecutorial fine in respect of any offence is the aggregate of—

- (a) such amount as the Public Prosecutor determines appropriate having regard to the circumstances of the offence; and
- (b) an offender levy of £10.

(2) In respect of an offence under Article 3(1) of the Criminal Damage (Northern Ireland) Order 1977, the amount of the prosecutorial fine for those purposes is the aggregate of—

- (a) such amount as the Public Prosecutor determines appropriate having regard to the circumstances of the offence;
- (b) an offender levy of £10; and
- (c) such amount (if any) as the Public Prosecutor determines appropriate to compensate any person in respect of any damage to the property of that person as a result of the offence.

(3) Except as provided by subsection (4), for the purposes of a notice under section 17(2) or 18(3), the amount of the prosecutorial fine in respect of all the offences is the aggregate of—

- (a) such amount as the Public Prosecutor determines appropriate having regard to the circumstances of the offences; and
- (b) an offender levy of £10.

(4) Where one or more of the offences is an offence under Article 3(1) of the Criminal Damage (Northern Ireland) Order 1977, the amount of the prosecutorial fine for those purposes is the aggregate of—

- (a) such amount as the Public Prosecutor determines appropriate having regard to the circumstances of the offences;
- (b) an offender levy of £10; and
- (c) such amount (if any) as the Public Prosecutor determines appropriate to compensate any person or persons in respect of any damage to their property as a result of the offence or offences.

(5) The amount determined under subsection (1)(a), (2)(a), (3)(a) or (4)(a) may not exceed the amount for the time being of level 1 on the standard scale.

(6) The amount determined under subsection (2)(c) or (4)(c) may not exceed the amount for the time being specified in Article 14(11) of the Criminal Justice (Northern Ireland) Order 1994 (maximum compensation under compensation order made by a magistrates' court).

(7) In section 6(3) of the Justice Act (Northern Ireland) 2011 (power to increase amount of offender levy) at the end add “ and the amount specified in

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section 19(1)(b), (2)(b), (3)(b) and (4)(b) of the Justice Act (Northern Ireland) 2015 ”.

### **Restrictions on prosecutions**

**20.**—(1) Proceedings for the offence to which a notice under section 17(1) relates may not be brought before the end of the period of 21 days beginning with the date on which the notice was issued.

(2) If the offer in a notice under section 17(1) is accepted, no proceedings may be brought for the offence to which the notice relates.

(3) Proceedings for any of the offences to which a notice under section 17(2) relates may not be brought before the end of the period of 21 days beginning with the date on which the notice was issued.

(4) If the offer in a notice under section 17(2) is accepted, no proceedings may be brought for any of the offences to which the notice relates.

### *Payment of prosecutorial fine*

### **Payment of prosecutorial fine**

**21.**—(1) Payment of a prosecutorial fine must be made to, or at the office of, the fines clerk specified in the prosecutorial fine notice relating to that fine; and references in this Part, in relation to any prosecutorial fine or prosecutorial fine notice, to the fines clerk are to the fines clerk specified in the prosecutorial fine notice relating to that prosecutorial fine or (as the case may be) in that prosecutorial fine notice.

(2) Without prejudice to payment by any other method, payment of a prosecutorial fine may be made by properly addressing, pre-paying and posting a letter containing the prosecutorial fine notice and the amount of the fine 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 fines clerk at the address specified in the prosecutorial fine notice as the address at which the fine may be paid.

(4) Except in a case to which subsection (5) or (6) applies, sums paid by way of a prosecutorial fine for an offence shall be treated as if they were fines imposed on summary conviction of that offence.

(5) Where—

- (a) the offence in respect of which a prosecutorial fine notice is issued under section 18(2) is an offence under Article 3(1) of the Criminal Damage (Northern Ireland) Order 1977, and

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- (b) in calculating the prosecutorial fine an amount has been included under paragraph (c) of section 19(2),

the fines clerk must arrange for that amount to be paid to the person mentioned in that paragraph.

- (6) Where—

- (a) the offences in respect of which a prosecutorial fine notice is issued under section 18(3) include one or more offences under Article 3(1) of the Criminal Damage (Northern Ireland) Order 1977; and
- (b) in calculating the prosecutorial fine an amount has been included under paragraph (c) of section 19(4),

the fines clerk must arrange for that amount to be paid to the person mentioned in that paragraph or, if more than one person is so mentioned, to those persons in such proportions as the Public Prosecutor may determine.

#### *Non-payment of prosecutorial fine*

#### **Failure to pay prosecutorial fine**

- 22.—(1) This section applies if—

- (a) a prosecutorial fine notice is issued to a person under section 18; and
- (b) by the end of the period allowed for payment, the fine has not been paid in accordance with this Part.

(2) The enhanced sum may be registered under section 24 for enforcement against that person as a fine.

(3) The fines clerk must notify the Director of Public Prosecutions for Northern Ireland that the prosecutorial fine has not been paid.

(4) Except in a case falling within subsection (5) or (7), the enhanced sum is a sum equal to one and a half times the amount of the prosecutorial fine.

- (5) Where—

- (a) the offence to which the prosecutorial fine notice issued under section 18(2) relates is an offence under Article 3(1) of the Criminal Damage (Northern Ireland) Order 1977; and
- (b) in calculating the prosecutorial fine an amount has been included under section 19(2)(c),

the enhanced sum is the amount specified in subsection (6).

- (6) That amount is the aggregate of—

- (a) one and a half times the amount determined by the Public Prosecutor under section 19(2)(a);
- (b) one and a half times the amount mentioned in section 19(2)(b); and

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(c) the amount determined by the Public Prosecutor under section 19(2)(c).

(7) Where—

- (a) the offences to which a prosecutorial fine notice issued under section 18(3) relates includes one or more offences under Article 3(1) of the Criminal Damage (Northern Ireland) Order 1977; and
- (b) in calculating the prosecutorial fine an amount has been included under section 19(4)(c),

the enhanced sum is the amount specified in subsection (8).

(8) That amount is the aggregate of—

- (a) one and a half times the amount determined by the Public Prosecutor under section 19(4)(a);
- (b) one and a half times the amount mentioned in section 19(4)(b); and
- (c) the amount determined by the Public Prosecutor under section 19(4)(c).

### **Registration certificates**

**23.—**(1) This section and section 24 apply where by virtue of section 22 an enhanced sum may be registered under section 24 for enforcement against any person as a fine.

(2) In this section and section 24—

- (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 Director of Public Prosecutions for Northern Ireland—

- (a) may in respect of any sum payable in default issue a certificate (a “registration certificate”) stating that the sum is registrable under section 24 for enforcement against the defaulter as a fine; and
- (b) must cause any certificate so issued to be sent to the fines clerk.

(4) A registration certificate must—

- (a) give particulars of the offence or offences to which the prosecutorial fine 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 sum payable in default**

**24.—**(1) Where the fines 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.

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(2) On registering any sum under this section for enforcement as a fine, the fines 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 [<sup>F1</sup>28 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 23(4)(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.

[<sup>F2</sup>(3A) The fines clerk must refer the case to a district judge (magistrates' courts) for the judge to consider whether to make a collection order; and the order may be made without a court hearing.

(3B) Where a collection order is made in that case, the date specified in the order as the date by which the sum due must be paid must, unless the court directs otherwise, be the same as the date specified in the notice of registration under subsection (2)(a).]

(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 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.

#### Textual Amendments

- F1** Words in s. 24(2)(a) substituted (1.6.2018) by [Justice Act \(Northern Ireland\) 2016 \(c. 21\), s. 61\(2\), Sch. 2 para. 8\(1\)](#); [S.R. 2018/99, art. 2\(c\)](#) (but this amendment cannot take effect until the commencement of 2015 c. 9 (NI), s. 24)



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**F2** S. 24(3A)(3B) inserted (1.6.2018) by [Justice Act \(Northern Ireland\) 2016 \(c. 21\), s. 61\(2\), Sch. 2 para. 8\(2\)](#); [S.R. 2018/99, art. 2\(c\)](#) (but this amendment cannot take effect until the commencement of 2015 c. 9 (NI), s. 24)

### **Challenge to notice of registration**

**25.**—(1) This section applies where—

- (a) a person who has received notice of the registration of a sum under section 24 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 fines clerk.

(2) The statutory declaration must state that the person making the declaration was not the person to whom the relevant prosecutorial fine notice was issued.

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

(4) References in this section to the relevant prosecutorial fine notice are to the prosecutorial fine notice relating to the prosecutorial fine concerned.

(5) Subsection (6) applies where, on the application of a person who has received notice of the registration of a sum under section 24 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).

(6) 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).

(7) 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 [<sup>F3</sup>(including the making of a collection order)] .

(8) For the purposes of this section, a person shall be taken to receive notice of the registration of a sum under section 24 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.

(9) 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 Part which is not in fact authorised by this Part in the circumstances of the case.

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

#### Textual Amendments

**F3** Words in s. 25(7) inserted (1.6.2018) by [Justice Act \(Northern Ireland\) 2016 \(c. 21\)](#), s. 61(2), [Sch. 2 para. 8\(3\)](#); S.R. 2018/99, art. 2(c) (but this amendment cannot take effect until the commencement of 2015 c. 9 (NI), s. 25)

### Setting aside of sum enforceable under section 24

**26.—**(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 24.

(2) Where a court sets aside such a sum—

- (a) the notice under section 17(1) or (2), the prosecutorial fine notice concerned, the registration and any proceedings taken for enforcing payment of the fine shall be void; but
- (b) no further action is to be taken in respect of the alleged offence or offences that gave rise to the notice under section 17(1) or (2) and the prosecutorial fine notice concerned.

(3) 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 [<sup>F4</sup>(including the making of a collection order)] .

#### Textual Amendments

**F4** Words in s. 26(3) inserted (1.6.2018) by [Justice Act \(Northern Ireland\) 2016 \(c. 21\)](#), s. 61(2), [Sch. 2 para. 8\(4\)](#); S.R. 2018/99, art. 2(c) (but this amendment cannot take effect until the commencement of s. 26)

### *Interpretation*

#### Interpretation of this Part

**27** In this Part—

[<sup>F5</sup>“collection order” means an order under section 3 of the Justice Act (Northern Ireland) 2016;]

“the fines clerk” means the clerk of petty sessions or such other person as the Department may by order appoint (and see also section 21(1));

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“the period allowed for payment” has the meaning given in section 18(4);  
“prosecutorial fine notice” has the meaning given in section 18(2) and (3);  
“Public Prosecutor” has the meaning given in section 29(5) of the Justice (Northern Ireland) Act 2002;  
“registration certificate” has the meaning given in section 23(3).

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#### **Textual Amendments**

- F5** Words in s. 27 inserted (1.6.2018) by [Justice Act \(Northern Ireland\) 2016 \(c. 21\), s. 61\(2\), Sch. 2 para. 8\(5\)](#); S.R. 2018/99, art. 2(c) (but this amendment cannot take effect until the commencement of 2015 c. 9 (NI), s. 27)

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