

## **EXECUTIVE NOTE TO**

### **THE ENFORCEMENT OF FINES (SEIZURE AND DISPOSAL OF VEHICLES) (SCOTLAND) REGULATIONS 2008 SSI/2008/103**

1. The above set of Regulations was made in exercise of powers conferred by section 226D(12) of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”), which provides that the Scottish Ministers may make regulations for the purposes of and in connection with section 226D. These Regulations are subject to negative parliamentary procedure under section 226D(14) of the 1995 Act.

2. The Criminal Proceedings etc. (Reform) (Scotland) Act 2007 (“the 2007 Act”) received Royal Assent on 22 February 2007. Section 55 of the 2007 Act inserts sections 226A to 226I into the 1995 Act and will be brought into force on 10 March 2008. These Regulations are therefore being made using an anticipatory exercise of power as provided for in terms of paragraph 10 of the schedule to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 (SSI 1999/1379).

### **POLICY OBJECTIVES**

3. The fine is the most widely used disposal in the criminal justice system in Scotland, with over 60% of convictions involving the imposition of a fine following sentence. Acceptance of an offer to pay a fixed penalty issued by the police or a procurator fiscal is also increasingly used as a means of dealing with low level offending that can appropriately be dealt outwith the court system.

4. Plans for more effective arrangements for the enforcement of fines were announced in March 2005 in the Smarter Justice, Safer Communities – Summary Justice Reform Next Steps<sup>1</sup> paper published by the Scottish Executive. These proposals built on the work of the McInnes Committee Report<sup>2</sup>, and subsequent consultation on its recommendations.

5. The overarching policy objective of the fines reforms is to maintain the credibility of fines and penalties, and to make clear to those who delay or refuse to pay that they will be actively pursued. 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 as a penalty is to be maintained; and
- 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 2007 Act is the creation of the role of Fines Enforcement Officer (FEOs) who will have the responsibility to collect and enforce fines more effectively through adopting active management of outstanding fines.

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<sup>1</sup> [Smarter Justice, Safer Communities – Summary Justice Reform Next Steps](#) publication

<sup>2</sup> [The Summary Justice Review Committee – Report to Ministers](#)

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

8. These Regulations provide further details of how the FEO power to seize an offender's vehicle will operate in practice. Provision is made in these regulations for:

- the process for making a seizure order;
- places where a vehicle may be seized;
- notices;
- exempt vehicles;
- charges;
- applications for release by the offender or a third party;
- court orders for sale;
- method of sale; and
- treatment of the proceeds of sale.

## **CONSULTATION**

9. The Criminal Proceedings etc. (Reform) (Scotland) Bill was introduced into 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. At stages 2 and 3 the parliament passed amendments to the original Bill provisions regarding such seizures. The 2007 Act was passed unanimously.

## **FINANCIAL IMPLICATIONS**

10. There are no new financial implications other than those already detailed in the financial memorandum to the 2007 Act.

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