

EXPLANATORY MEMORANDUM TO
THE COLLECTION OF FINES ETC. (NORTHERN IRELAND CONSEQUENTIAL
AMENDMENTS) ORDER 2017

2017 No. [XXXX]

1. Introduction

- 1.1 This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

- 2.1 This Order amends Schedule 5 to the Courts Act 2003 (collection of fines) to allow Her Majesty's Revenue and Customs (HMRC) to disclose financial information to a court or a collection officer in Northern Ireland for the purpose of the enforcement of unpaid financial penalties.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 Disregarding minor or consequential changes, the territorial application of this instrument includes Northern Ireland and is not a financial instrument that relates exclusively to England, Wales and Northern Ireland.

4. Legislative Context

- 4.1 The Justice Act (Northern Ireland) 2016 ("the 2016 Act"), which received Royal Assent on 12 May 2016, creates a new regime in respect of the enforcement of unpaid financial penalties in Northern Ireland.
- 4.2 Schedule 5 to the Courts Act 2003 ("the 2003 Act") contains provisions relating to the operation of a fines collection system in England and Wales, including powers for fines officers to secure payment through attachments of earnings orders.
- 4.3 Section 27 of The Crime and Courts Act 2013 amended the data sharing gateway provisions in Schedule 5 of the 2003 Act to enable HMRC to share financial information with Her Majesty's Courts and Tribunal Service in connection with the enforcement of fines and other financial penalties in England and Wales.
- 4.4 Provisions in section 18 of the 2016 Act create broadly similar attachment of earnings order provisions to those that exist in England and Wales and this instrument gives effect to those provisions by further amending Schedule 5 of the 2003 Act to enable HMRC to share similar financial information with a court or a collection officer in Northern Ireland to secure payment of an outstanding fine or other sum imposed on conviction for an offence.

- 4.5 Section 18 of the Commissioner for Revenue and Customs Act 2005 stipulates that conferring such powers on HMRC cannot be carried in Northern Ireland legislation. Section 84(2) of the Northern Ireland Act 1998, however, provides that;

“Her Majesty may by Order in Council make such amendments of the law of any part of the United Kingdom as appear to her Majesty to be necessary or expedient in consequence of any provision made by or under –

(a) Northern Ireland legislation; or

(b) any Act of Parliament passed before this Act in so far as the provision is part of the law of Northern Ireland.”

- 4.6 The amendment of Schedule 5 of the 2003 Act is necessary or expedient because the enforcement power in section 18 of the 2016 Act allowing for an attachment of earnings order to be made cannot be fully operational without the necessary information sharing powers with HMRC, hence the need for this instrument.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is Northern Ireland.
- 5.2 The territorial application of this instrument is Northern Ireland.

6. European Convention on Human Rights

- 6.1 Sir Oliver Heald QC has made the following statement regarding Human Rights:
- “In my view the provisions of The Collection of Fines etc. (Northern Ireland Consequential Amendments) Order 2017 are compatible with the Convention rights.”

7. Policy background

- 7.1 For many years there have been significant numbers of fine defaulters serving short prison sentences for non-payment of their fines and other financial penalties in Northern Ireland.
- 7.2 The 2016 Act contains provisions to fundamentally reform the arrangements for the collection and enforcement of fines in Northern Ireland by creating an entirely new regime that provides additional ways for offenders to pay their financial penalty and avoid default in the first instance and also offers increased opportunities for community based alternatives to imprisonment to be used for those who remain in default after all collection options have been exhausted.
- 7.3 Court imposed collection orders will be enforced by civilian ‘Collection Officers’, designated by the Department of Justice, who will be able to offer offenders extra time to pay or to make payment by instalments in the first instance. If those measures are unsuccessful, payment by direct deductions from the debtor’s earnings or, in appropriate circumstances, from certain welfare benefits could be considered. Where payment continues to be difficult or there is more wilful refusal to pay, collection officers will refer those cases back to the courts, which will then have additional powers to consider securing payment directly from a bank account or to seize a vehicle pending payment.
- 7.4 Where all collection options are exhausted and payment remains outstanding, the 2016 Act offers greater opportunities for a Supervised Activity Order – a community-based

form of activity to be carried out in lieu of payment – to be imposed instead of committal to prison.

- 7.5 In order to give effect to the attachment of earnings order provisions in the 2016 Act, the courts or a collection officer must be able to obtain or verify certain information, including the name and address of any employer the individual may have and details of any earnings or other income that the individual may be in receipt of. Such information would then allow the court or a collection officer to make an informed decision about whether or not to make an attachment of earnings order and to make such an order, if appropriate.
- 7.6 Schedule 5 to the 2003 Act, as amended by The Crime and Courts Act 2013, enables HMRC to disclose this type of financial information to a Fines Collection Officer in England and Wales for the purpose of enforcing an unpaid financial penalty.
- 7.7 This instrument further amends Schedule 5 to the 2003 Act so as to enable HMRC to make similar financial disclosures to a court or a collection officer in Northern Ireland so that an attachment of earnings order may be made under section 18 of the 2016 Act in appropriate circumstances to secure payment of an outstanding fine or other sum imposed on conviction for an offence.
- 7.8 It was not possible to create equivalent information sharing powers for HMRC in the 2016 Act as section 18(3) and (4)(e)(ii) of the Commissioners for Revenue and Customs Act 2005 provides that provision for such disclosure may not be made by or under an Act of the Northern Ireland Assembly. Section 84(2) of the Northern Ireland Act 1998 does, however, allow for such an amendment to be made by an Order in Council if an amendment is necessary or expedient as a consequence of a provision made in Northern Ireland legislation.

Consolidation

- 7.9 This Order does not consolidate any existing pieces of Northern Ireland statute, nor, given the consequential nature of the amendments in the instrument, is any consolidation considered necessary. [The changes to the 2003 Act will, however, be published on the Legislation.Gov.uk website].

8. Consultation outcome

- 8.1 Although this Order has not been subject to any formal consultation, two public consultation exercises on proposals to reform fine collection and enforcement arrangements in Northern Ireland was carried out in 2011 and 2014. In overall terms respondents were strongly supportive of the initiative to reduce fine default and most respondents supported the Department's proposals either fully, or, subject to certain requirements to ensure that the measures were deployed appropriately and fairly.
- 8.2 A consolidated package of proposals from the two policy consultation exercises was developed into a suite of legislative powers that made up the primary content of the Justice (No. 2) Bill, which was introduced to the Northern Ireland Assembly on 30 June 2015. The Bill was referred to the Committee for Justice ("the Committee") for consideration upon completion of the Second Stage debate on 8 September 2015 with their scrutiny including a Call for Evidence that involved the taking of written and oral evidence on the Bill's provisions.

8.3 Those giving evidence were supportive of the fines content of the Bill with only one call for an amendment arising from the Committee's scrutiny in respect of additional safeguards for the operation of the vehicle seizure provisions.

8.4 The Minister of Justice was happy to bring forward an amendment to augment the safeguards already built in to the vehicle seizure provisions, together with a small number of supplementary amendments to further enhance the operation of the new fine collection and enforcement arrangements and with these changes incorporated, the Assembly voted to support the full package of fines provisions without further revision.

9. Guidance

9.1 Operational guidance for collection officers is currently being prepared alongside supporting secondary legislation to facilitate the implementation of the new fine collection and enforcement arrangements contained in the 2016 Act with a view to the new regime going live in early 2017.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 The impact on the public sector is minimal.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The full range of new collection and enforcement powers and arrangements, including the information sharing powers with HMRC afforded by this instrument, will be subject to post-implementation review with a view to identifying areas for potential future improvement and / or the development of further legislative solutions, as appropriate.

13. Contact

13.1 Graham Walker at the Department of Justice at 02890 169510 or Graham.Walker@doj-ni.x.gsi.gov.uk can answer any queries regarding the instrument.