



Northern  
Ireland  
Office

**Fine Default in Northern  
Ireland: A Consultation**

**Summary of Responses  
and Way Forward**

**October 2009**

## Foreword

*Foreword by the Rt.Hon. Paul Goggins MP, Minister of State at the Northern Ireland Office and Bridget Prentice MP, Parliamentary Under-Secretary of State at the Ministry of Justice.*

During the course of last year, I joined the then Minister with responsibility for the courts in Northern Ireland, the Rt. Hon. David Hanson MP, in publishing a consultation document on proposals for new measures to address fine default in Northern Ireland. Our intention was to identify ways of making sure that fines are paid and end the automatic imprisonment of fine defaulters at an annual cost of around £1million.

Many of the 1800-2000 individuals who go to prison for fine default go into custody for relatively small sums and in respect of relatively minor offences. Prison should be reserved for the most serious offenders, so we want to create a more efficient, effective and affordable system.

Our consultation covered four broad areas: setting the fine, including better information at court; collecting the fine, including methods to remind and ensure people pay on time; dealing with default, including new powers to deduct payments from wages or benefits; and strengthening the fine by increasing penalties for non-compliance. We were keen to encourage payment and deal with default in more flexible and innovative ways.

We were particularly pleased at the strength of support for our proposals and the broad consensus on the way forward. The current Courts Minister, Bridget Prentice MP, and I are pleased to present this summary of responses.

The way forward will be in two stages, with immediate progress during the current year (2009/10) and new systems and policies for the coming years. This document provides the detail but broadly the strategy will provide better information to the courts when deciding if a fine is the appropriate disposal; put more effort into successful collection of fines; and provide alternatives to prison in the event of default.

Specific measures will include a fine default register; the rolling-out of a fine collection scheme which has been successfully piloted; and the use of a new community-based alternative to custody for default – the Supervised Activity Order.

Given the strong consensus on this issue and the further work required to improve systems and strengthen legislation we have decided to proceed now in preparation for devolution. It is our intention that full implementation and all final decisions will be determined and taken forward by a local Justice Minister.

Our thanks go to all of those who participated in the consultation.



A handwritten signature in black ink that reads "Paul Goggins".

A handwritten signature in black ink that reads "Bridget Prentice".

**Rt. Hon. Paul Goggins MP**  
**Minister of State**  
**Northern Ireland Office**

**Bridget Prentice MP**  
**Parliamentary Under-Secretary of State**  
**Ministry of Justice**

# Summary of responses to Fine Default in Northern Ireland: A Consultation

## Background

The joint Northern Ireland Office and Northern Ireland Court Service consultation on Fine Default in Northern Ireland was launched on 29 July 2008 and concluded on 31 October 2008.

The consultation document considered the current position around the fine and its use in Northern Ireland. It provided an overview of the main features of fines legislation and analysed a number of weaknesses and gaps in legislative provision before outlining recent developments in other jurisdictions.

The main part of the consultation was based around options for improving the systems for the setting and collection of fines. The paper identified four key areas where the system might be improved: *setting the fine*; *collecting the fine*; *dealing with default*; and *strengthening the fine*.

In each area the consultation made a number of proposals and posed a number of questions on which views were welcomed. Broadly these were around improving information available to the courts; expanding the court's options in the area of default; proposals that would help prevent default in the first instance; and providing strong backstops to encourage payment (the questions posed in each section are replicated in full at Annex A).

The paper also identified and sought views on a number of key principles that underpin the current use of the fine and which it was proposed would be reflected in any decisions taken on the way forward.

The consultation also built on a number of other pieces of work recently completed.

- The *Review of Sentencing Framework* carried out in 2005 identified a need to improve the issue of fine default.
- The *Criminal Justice (NI) Order 2008* created powers for a Supervised Activity Order as an alternative to custodial penalties.
- A policy consultation recently closed on the related topic of *alternatives to court prosecutions*. (The possible expansion of fixed penalty notices, for example, was included as a means of diverting some lower offences that might routinely attract fines into a non-court procedure.)

The consultation did not seek to deviate from the use of the fine as a very effective disposal. It is the most appropriate penalty for the vast majority of summary offences; it has a compliance rate of around 95%; and in terms of reconviction, has the lowest rate – and therefore best performance – of any other disposal. Only 16% of those fined were reconvicted within two years of sentence.

The success story of the fine comes, however, at a price – literally, procedurally, and in human terms. Less than half of fines imposed are paid on time; there is often limited information available on offenders' means when enforcing the fine; court and police enforcement procedures are required to raise the initial 45% compliance rate to 95%; and at the end of the process, nearly 2000 people per year are imprisoned for defaulting on a fine.

This document summarises the responses received and sets out how the Government intends to proceed in this regard. As a summary it provides an overview of the issues raised and cannot go into the detail of every aspect. Subject to the permission of the contributor, individual responses can be made available on request.

## **Summary of Responses**

The Northern Ireland Office received a total of 14 responses to the consultation. A full list of the respondents is included at Annex B. Some comments were on the package of proposals as a whole, while some were engaged with specific proposals. A number of issues outside the stated purpose of the consultation exercise were also raised.

### **General responses**

In overall terms, respondents were supportive of the initiative. A number were unspecific in their reasoning with most focusing on the importance of keeping people out of prison and providing alternatives to custody. A view was expressed that the backstop of imprisonment for default should be retained as an effective way of ensuring that fines were paid.

Comments were made that new arrangements should be properly resourced; that the importance of the core principle of judicial independence in sentencing was welcome; and that new powers to tackle the problem of enforcement and default would be welcome. Information acquisition, use and data sharing would need careful consideration.

Three comments were made on the procedural aspects of the consultation. One requested further consultation as the outcome of the current exercise was firmed up; another simply advised on policies relating to access to information for people with a disability; and a third stated that a full equality impact assessment should be completed.

## **Responses on Specific Proposals**

### Setting the fine

#### **Proposals**

A range of areas and proposals were explored around how fines are set in courts. Information on means was seen as important and the consultation sought views on increased statutory powers and penalties requiring means to be provided and the use of other sources such as legal aid applications. The idea of a fine default register was floated along with wider information sharing that would allow better follow-up and improved systems generally

#### **Responses**

Of those who commented, many agreed that it was crucial for the Courts to have meaningful information available at the outset. It was vital to differentiate between those who could not pay and those who chose not to. Some advocated the expansion of compulsory information around means and contact details; another was concerned about an apparent under-use of current systems. A suggestion was made that defendants should have the opportunity to explain their broader circumstances to the court.

Two important themes emerged around data protection and the capacity of many before the courts to comply with increasing information requirements. If information collection was to expand, there would be major issues around the breadth of personal data, how it would be stored, retrieved, shared, used, and by whom. Consent could be an important aspect, particularly if the legal aid form was to be adapted.

Specific proposals around using information collected or available for other purposes attracted comment. We were cautioned against the use of forms completed by defendants for legal aid purposes as a convenient method of means assessment and fine setting thereafter. The use of benefit information would need careful consideration as, like legal aid, the information used to determine benefit status had been gathered for a separate and specific purpose. Any expansion of such use would need either the person's consent or require statutory authority.

Such powers had been created for England and Wales by way of Section 41 of the Criminal Justice and Immigration Act 2008 and these would need to be carefully considered for Northern Ireland. They would also need to be balanced by similar powers for those in employment to avoid selective procedures based on employment/unemployment status. Direct deduction from benefits and attachment of earnings powers are both already available in Great Britain.

A number expressed concerns about difficulties that could be faced with information orders or other compulsory information requirements, primarily amongst those with skill deficits, those whose first language was not English, and those whose employment might make it hard to prepare a statement of means (casual, temporary or self-employed workers). It was suggested that the Government should consider giving some form of assistance in the provision of information.

The role of the legal profession was also seen as important. A recommendation was made that lawyers should ensure that the necessary information is provided in advance to the court. There would, however, need to be a system and means to validate what was provided as accuracy and integrity would be vital.

Finally, on the topic of a fine default register a view was expressed that a central database would be valuable though difficult to maintain. A mobile population and address changing would cause difficulties but it would have benefits if maintained properly. A concern was raised that such a register could be misused to levy heavier fines where there had been previous default – a misplaced concern as the overarching requirements of criminal law, sentencing and penalties being in proportion to the crime would continue to apply. A concern that a default register should not exist for an indefinite period was also voiced – though such a register would simply be a structured means of recording and maintaining non-compliance with a legal order.

## **Key findings**

The key findings arising from consideration of responses received in relation to proposals around setting the fine can be summarised as;

- Good information is vital but important that it is validated.
- Data protection and right to privacy considerations about the use and sharing of information made available to the courts for other purposes would be crucial.
- Breadth of information to be collected for Information Orders a concern; potential difficulties in completion and provision of material; and importance of storage in accordance with data protection requirements stressed.
- Lawyers could be required to provide information ahead of hearing; and
- Fine register would be difficult to keep accurate and would need to comply with data protection requirements.

## **The way forward**

In response the Government will:

- Continue the administrative fine collection scheme across 2009/10 and 2010/11 and work with key agencies on the collection of fines.
- Deliver an “information initiative” in 2009/10 to improve means information to the Courts and remind all concerned of existing options to manage fines
- Subject to data protection considerations, develop a fine default register to assist Courts in considering and imposing fines

## Collecting the fine

### **Proposals**

This section made proposals around the statutory creation of “Fines Enforcement Officers” that might be attached to courts and have their own powers to contact and work with those who need assistance to manage their fine. It also suggested a non-statutory ‘reminder’ system might be an option and sought the identification of other approaches that might assist with fine collection.

### **Responses**

The person to person contact of the Court Service ‘fines officer’ pilot scheme was viewed as a positive development that could succeed in collecting fines in some instances and respondents acknowledged the potential for fine enforcement officers to perform an important role in assisting offenders in managing their fines.

The potential advantages in transferring enforcement powers away from the police were acknowledged but qualified with comments that fines could only be managed effectively if the fines officers had a range of constructive options and powers available to them. Concerns were, however, expressed about the powers that might be available in terms of sanctions and it was stressed that the Government must ensure that the powers and duties of fine enforcement officers, if introduced, are clearly defined and measured against equality and human rights issues, such as non-discrimination clauses and the right to a fair hearing.

There was a general consensus amongst those who commented on these proposals that the findings of the pilot exercise would need to be fully considered, including set up and operating costs being measured against the amount of money likely to be recovered by the scheme before any further thought could be given to the creation of fine enforcement officers on a statutory basis.

Some respondents concluded that a non-statutory reminder system would be a helpful tool and that it may be helpful to start with this system prior to undertaking further analysis of the requirements for a statutory approach over time. Pro-active engagement with those either likely to be or already in default would pay more immediate dividends.

As a consequence, administrative systems and a re-emphasis of existing powers with defendants and lawyers – powers to defer or stage payments; powers to have fines remitted in appropriate circumstances; a re-invigoration of the financial circumstances order – should be considered.

In relation to the request for other means of collecting the fine to be identified, one suggestion was made that in the event of a fine being imposed, offenders should not be permitted to leave the court until they have paid in full or provided a bank instruction to debit the full amount or take payment by agreed instalments. The suggestion continued that in the event of the offender not having a bank account, agreement should be sought to recover the fine from benefit payments and in the event of not being able to do either, the offender should be directed to prison to serve the full term of the default period.

### **Key findings**

The key findings arising from consideration of responses received in relation to proposals around collecting the fine can be summarised as;

- Initiatives to help and assist those in default, including an information campaign to remind those fined of already existing options to manage their fines would be important.
- Findings of the evaluation of the fine collection pilot would be important but general support for non-statutory ‘reminder’ approach to be progressed.
- Creation of fine enforcement officers would release police time for crime detection and prevention.
- Fines officer model, if adapted, would need to be human rights compliant and accountable to court
- Statutory creation of fines enforcement officers approach needs much more research and development before it could be considered for introduction.

### **The way forward**

In response the Government will

- Develop a number of new statutory provisions around deduction of benefits/attachment of earnings “headline” powers.
- Based on Data Protection laws, develop new statutory information sharing powers to allow more effective and appropriate income assessment.

## Preventing and Dealing with default

This section presented proposals under two distinct sections. Taking each of the sections in turn, the first set of proposals related to court set penalties and offered alternatives to the only two options currently available for default - a distress warrant or a warrant for committal to prison (a third option - the Supervised Activity Order (SAO) - had been created in the Criminal Justice (Northern Ireland) Order 2008 but was not available to the courts yet).

### **Proposals around court set penalties**

The consultation sought views on the potential use of Attendance Centres as a default option for adults that could work in parallel with the SAO or in place of the SAO for those who may not be able to undertake work based activity in the community. The use of curfew powers was mooted, as were powers around restricting offender's access to motor vehicles, losing their driving licence or having their vehicle clamped for the duration of the default period.

### **Responses**

While there was a broad welcome to the intention to create a broader range of penalties for those who default on fine payments, the Government was encouraged to ensure that these penalties were not disproportionate to the original penalty placed on the offender.

Of those who commented on the proposals, a number responded positively to the Attendance Centre suggestions as these types of Order could provide for those who cannot work in the community, and could assist in reducing offender behaviour. Care would, however, be required with regards to separating juveniles and vulnerable persons from adults and developing a separate regime would attract significant costs.

The availability of Supervised Activity Orders was identified as a means of alleviating the pressure on the prison system caused by defaulting on fines and rather than running separately or in parallel to Attendance Centre Orders, there was a suggestion there would be savings in combining the two as one operation.

The proposals around curfew powers were not widely supported on the grounds of monitoring costs; human rights issues; the potential lack of a deterrent impact - some offenders might welcome their fine being cleared by a curfew for instance; and the possible negative impact on dependants of the offender.

The vehicle powers were more widely supported with a majority of those who provided comments in this regard identifying that the loss of access to a motor vehicle; loss of driving licence; vehicle clamping; and seizure of a vehicle for a period of time with associated costs attached prior to its return would all be significant deterrents that would result in the prompt payment of fines.

Caution was expressed though that these measures could result in further offences being committed by persistent offenders, such as driving whilst disqualified or driving with no insurance. Concerns were also voiced that the proposals would need to have due regard for the circumstances on the offender in relation to needing access to a vehicle on employment, health or dependant grounds before imposing such a penalty

### **Key findings**

The key findings arising from consideration of responses received in relation to proposals around court set penalties can be summarised as;

- Broader range of powers to deal with default would be welcome.
- Attendance Centre idea supported, albeit with potential cost and separation issues.
- Curfew powers were not supported.
- Support received for the proposed powers around vehicles but the proposals would need further development before they could be introduced.

### **The way forward**

In response the Government will:

- Roll-out of the Supervised Activity Order across Northern Ireland.

## Proposals around methods of payment

This section sought to identify a number of enhanced arrangements for the automatic collection of fines, including proposals for the creation on a “collection order”, a new, unified court disposal that could be imposed alongside the fine with follow up action undertaken by Fines Enforcement Officers (FEOs). The ability of an FEO to secure payment by attachment of earnings procedures or to deduct from benefits was proposed, with further questions posed around a preference for administrative or statutory arrangements and the appropriate time for matters to revert back to the court

## **Responses**

A number of respondents supported the proposals for a generic collection order in principle as it would allow for flexibility and a response suited to a person’s circumstances. It was noted that the arrangement would, however, require the establishment of another statutory layer of activity with associated additional costs.

A preference was recorded for the imposing of a collection order to be pursued in default at the same time as imposing the fine so as to reduce the amount of time between imposing the fine and collecting it, with FEOs identified as the preferred option to assume the collection role.

Some expressed concerns that the creation of a collection order would effectively mean devolving the powers of the court to fines enforcement officers though, giving rise to potential human rights concerns. If the proposals were introduced, the Government was encouraged to ensure there are sufficient safeguards to allow the decision of a fines enforcement officer to be challenged, in court if necessary.

In relation to the proposals to introduce attachment of earnings or deductions from benefits powers, it was acknowledged that a similar scheme operates in England and Wales, where fines can be deducted from a limited range of benefits. It was also established that Social Security law in Northern Ireland already permits deductions from benefits in relation to rent, electricity, etc. and a number of those who provided comment were open in principle to the proposal to allow fines to be deducted from a limited range of benefits here.

Human rights issues were again identified as a concern and a number observed that the rate of repayment must be set at a level that is demonstrably payable by the defendant and that consideration must also be given to the circumstances of offenders' dependants

A strong preference was stated that the rate of repayment must be set by the Court and should not be devolved to fines enforcement officer.

### **Key findings**

The key findings arising from consideration of responses received in relation to proposals around methods of payment can be summarised as;

- General support for a collection order approach
- Fines officer needs to be HR compliant and accountable to court
- Direct deductions (acceptable to DSD) work in GB – but need development

### **The way forward**

In response the Government will

- Develop a number of new statutory provisions around deduction of benefits/attachment of earnings “headline” powers
- Subject to decisions to be made by a devolved Department of Justice, develop underpinning regulations, systems and procedures for direct deduction from incomes.
- Based on Data Protection laws, develop new statutory information sharing powers to allow more effective and appropriate income assessment.
- Carry out a detailed review on the options for a civilian-based fines collection system.

## Strengthening the fine

### **Proposals**

This section contained a number of proposals aimed at ensuring compliance with the fine and reducing the likelihood of default. Questions were asked about the prospect of a fine being increased in the event of default or the cost of enforcement being added to the original fine. Views were also sought on proposals that would increase custody default periods and end the current practice of clearing a range of fines in one concurrent period of custody in default.

### **Responses**

These proposals were not widely supported as respondents surmised that an offender who had intentionally defaulted was unlikely to pay an increased fine or the costs of enforcement. It was also pointed out that strengthening of default periods was counter productive for those that 'can't' pay; went against the thrust of the recent changes in the sentencing framework, where prison was to be reserved for those who need it most; and could place more pressure on the prison service as offenders could be imprisoned for a longer term.

While a view was expressed that it was not desirable that a number of fines may be 'cleared' by virtue of a short stay in custody, and that some offenders may elect to deal with their fines in this way, another comment was made to the effect that the argument for making default periods consecutive rather than concurrent as a way of encouraging people to pay fines was not convincing.

Another respondent advised that most people who *choose* to go to prison rather than pay a fine do so either because they have been in prison before and are less fearful and apprehensive about spending a short time there or have weighed up for themselves the implications for their own lifestyles of going to prison versus paying the fine. This respondent felt that changing the default periods to consecutive rather than concurrent was unlikely to influence those who have made the decision to serve time as the overall time spent in custody was still likely to be relatively short.

Finally, as an alternative to strengthening the fine, it was suggested that there might be merit in offering an incentive to those in receipt of fines that could see them receive a discount if payment was made within a specified timescale - similar to the prompt payment of a fixed penalty notice or the discount applied for the early payment of yearly rates.

## **Key Findings**

The key findings arising from consideration of responses received in relation to proposals around court set penalties can be summarised as;

- Not much support for these proposals as they were viewed as being at odds with the wider approach in the consultation
- Government should consider a discount for early payment

## **The way forward**

In response the Government:

- Accepts that stronger back-up powers should be considered in light of how the fine enforcement strategy unfolds;
- Will re-assess the need for stronger back-up default penalties;
- Will bring forward proposals for alternatives to prosecution that will extend the use of fixed penalty schemes including discounts for early payment;
- And in parallel, will review and, if appropriate, increase the current fee for fine enforcement.

## **The Way Forward**

Having considered all of the responses from the consultation exercise, the Government has decided on a two stage process to progress efforts to increase the number of fines paid on time; reduce instances of default; reduce police time and resources being used in fine enforcement; and reduce the number of defaulters going to prison.

### During 2009/10 the Government will

- Continue the administrative fine collection scheme and extend it into 2010/11.
- Deliver an “information initiative” to improve means information to the Courts and remind all concerned of existing options to manage fines
- Develop a fine default register to assist Courts in considering and imposing fines
- Begin to phase in the Supervised Activity Order.

### From April 2010 onwards the Government will

- Continue the roll-out of the Supervised Activity Order across Northern Ireland.
- Develop a number of new statutory provisions around deduction of benefits/attachment of earnings “headline” powers.
- Based on Data Protection laws, develop new statutory information sharing powers to allow more effective and appropriate income assessment.
- Review and, if appropriate, increase the enforcement fee charge
- Re-assess the need for stronger back-up default penalties.
- Carry out a detailed review on the options for a civilian-based fines collection system.
- Subject to decisions to be made by a devolved Department of Justice, develop underpinning regulations, systems and procedures for direct deduction from incomes.

### Setting the fine

- Might NI courts have enhanced statutory powers to require offenders to provide a statement of means? Might the legal aid statement of means be used as a simple alternative to obtain that information?
- Should an “information order” be created in law which requires defendants to provide financial information? And should it be a criminal offence with its own separate penalty to fail to provide information?
- What might be included in such an “information order”? Along with income details, might contact details including phone numbers be required to assist in fine collection follow up?
- Should a form of register be created that would record all outstanding fines and fine defaulters?
- Might information sharing be improved more generally in criminal justice matters to allow both the operational system and the services it provides to offenders, participants, and indeed victims, to be improved?
- Are there any other approaches which would ensure that the court has all the information it needs to set fines?

## Collecting the fine

- Might “Fines Enforcement Officers” (FEO’s) be created on a statutory basis with the capacity to contact and work with those who need help to manage their fine?
- Might FEO’s have their own powers to manage fines?
- Might a non statutory ‘reminder’ system be more deliverable and appropriate? Might it be a prelude to considering a statutory approach?
- Might FEO’s be attached to courts thereby removing the main function from police?
- Are there any other approaches that might assist in the successful collection of fines?

## **Court set penalties for default**

- Attendance Centres (ACs) already exist in Northern Ireland and are already a default fine option for young persons. Might these be a further alternative in parallel to the SAO?
- Might AC Orders provide a better alternative for those who cannot undertake work-based activity in the community but who could attend a centre for a set number of hours?
- Might curfew powers be appropriate?
- Alongside these community disposal ideas, alternatively or additionally, might an offender's access to a motor vehicle be constrained in default of a fine?
- Might they lose their driving licence for default – the period being based on the level of fine or default?
- Might their vehicle be clamped whilst a fine remains unpaid? And the enforcement authority empowered ultimately to sell or dispose of the vehicle?

## **Methods of payment**

- Might attachment of earnings/deduction from benefits be combined into a new, unified court disposal called, perhaps, a “collection order”?
- Could the court impose the fine and at the same time impose a generic “collection order” to be pursued in default?
- Could the Fines Enforcement Officer assume this role?
- Could the FEO have powers to attach earnings or deduct from benefits? Seize and sell goods or land? Impose instalment orders or appoint receivers? Adopt current civil recovery procedures?
- Might the system be that only if subsequent payment problems or default occurred would the FEO revert back to the court?
- Might such an administrative, albeit statutorily regulated approach, ensure a better fit between fines and payment?
- Or might a non-statutory approach be the preferred route at this stage?

## **Strengthening the fine**

- Should there be the option for the fine to be increased in the event of default?
- Instead of failure to pay leading to – say – a vehicle being clamped, could the default order be a heavier fine?
- Additionally, if a default option were to be pursued, could the addition of the full enforcement cost of follow-up be added to the original fine?
- Might there be an argument that increasing the custody default periods (as described in Section 2.3 - 2.5) would have a similar effect? Should default periods be strengthened?
- And for those who do end up in custody, might the current practice of clearing a range of fines in one concurrent period be prevented?

### List of Respondees

Ards Borough Council

Ballymena Council

Committee on Administration of Justice

Department for Employment and Learning

Department of Social Development

Disability Action

Information Commissioner's Office

Lisburn City Council

Northern Ireland Human Rights Commission

Northern Ireland Association for the Care and Resettlement of Offenders

Police Service of Northern Ireland

Public Prosecution Service

Probation Board for Northern Ireland

The Law Society of Northern Ireland