

## REGULATORY IMPACT ASSESSMENT

### TITLE

**Making provision in the Management of Offenders and Sentencing Bill to introduce a 'Day Fine' scheme for adult offenders.**

### PURPOSE AND INTENDED EFFECT

#### Objective

The Carter Review, *Managing Offenders, Reducing Crime*, recommended the introduction of a day fine system as part of the measures to rebuild fines as a credible punishment. Over 20 per cent of fines are not paid and the number of fines imposed by the courts fell by a quarter between 1991 and 2001. As a result, probation caseloads are being silted up by low level offenders who would otherwise have received a fine. The Government is committed to reducing reoffending. To achieve this requires a reform of the correctional services to enable them to optimise their resources on the management of the more serious and persistent offenders and to provide the courts with a full range of effective sentences. This important programme of reform depends in part upon diverting 42,000 low risk offenders from community sentences to fines.

2. The Government has decided to introduce a new fine scheme based upon the recommendations in the Carter review. The new scheme will help to reinvigorate the sentence of the fine by ensuring that the means of each offender fined is more closely taken into account in passing sentence so that fines will bear more equally on people of differing means. This is a fairer system for imposing financial penalties and should help ensure more fines are paid.

3. The measure will apply to adult individuals who are sentenced to a fine by magistrates. The legislation will extend to England and Wales.

#### Background

4. In his review of the Correctional Services<sup>1</sup>, Lord Carter recommended the introduction of a day fine system as part of the measures to rebuild fines as a credible punishment. In its response<sup>2</sup> to Lord Carter's review, the Government accepted that recommendation as part of a package of reforms to ensure sentences are better targeted and more rigorous, and therefore more effective in reducing reoffending. The Carter review highlighted the 25 per cent decline in the use of fines between 1991 and 2001, against the dramatic

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<sup>1</sup> *Managing Offenders, Reducing Crime* (December 2003) Cabinet Office

<sup>2</sup> *Reducing Crime – Changing Lives* (January 2004) Home Office

increase in the use of imprisonment and community sentences during the same period. These trends occurred when the number of offenders being sentenced by the courts and the seriousness of their offences remained broadly constant. As a result, probation caseloads have increased with over 40,000 offenders receiving a community sentence supervised by the probation service where before they would have been fined. This caseload diverts probation officers' attention from concentrating their efforts on higher risk offenders. The 'day fine' scheme will therefore complement the wider programme of reform which the Government outlined in its response to the Carter review, which has three strands:

- (i) ensuring that the sentences of the courts, particularly non-custodial sentences, are better targeted and more rigorous;
- (ii) providing a new role for the judiciary: building upon the foundations provided by the Sentencing Guidelines Council, the Bill will place greater emphasis on judicial self-governance to ensure compliance with guidelines; and,
- (iii) introducing a new approach to managing offenders: measures to enable the full development of the National Offender Management Service (NOMS).

#### Risk assessment

5. The principal risk that the new fines proposal is designed to manage is the lack of credibility fines have as an effective punishment – over 20 per cent of fines imposed by the courts are not paid. Unless this problem is addressed, the courts will continue to use alternative punishments, which are often less appropriate and more expensive. The resources of the correctional services need to be used to best effect if they are to reduce reoffending. The Government is committed to ensuring that, at the top end, there are sufficient prison places for serious, dangerous and persistent offenders. This also requires that, at the other end, the use of community sentences are not used on the lowest level offenders, who would previously have been diverted from the courts or fined. Otherwise the resources devoted to managing those offenders who require intensive intervention and monitoring are used less effectively. In his analysis of this problem Lord Carter concluded 42,000 low risk offenders should be fined instead of being given community sentences to fines.

6. Although courts are currently required to take into consideration the means of an offender when imposing a fine, there is not a consistent mechanism applied for relating fines to offenders' ability to pay. 'Day fines' will help the courts impose fines which are appropriate to the offence and the offender, in a way that is fairer and more predictable in terms of sentencing outcome.

## OPTIONS

7. There are essentially two options to address the problem identified as a result of the Carter review's analysis of the lack of confidence in the current system of fines. Option 1 is to do nothing more than rely upon the measures contained in the Courts Act, which will make the enforcement of fines more rigorous. Option 2 is to reform the basis upon which the courts calculate financial penalties.

### Option 1

8. Do nothing. This would maintain the status quo on calculating fines and rely on the enforcement measures contained in the Courts Act 2003 to rebuild confidence in the use of fines. This option will deliver some improvement in the current situation but better enforcement does not address the issue of providing for a fine that the offender could reasonably be expected to pay in the first place.

### Option 2

9. Option 2 is to introduce a new fines scheme that would provide for a statutory calculation for fines on adult individuals. The new scheme will be based on the courts reflecting the seriousness of the offence committed by an offender in the number of "income units" imposed; and then assessing the value of the "income unit" on the basis of the offender's daily disposable income. These two figures will be multiplied together to give the amount of the fine in each case. This represents a fundamental move away from the current system in which the seriousness of the offence is largely reflected in the size of the financial penalty.

10. The court will assess the offender's disposable income in each case and the proposed legislation will enable rules to govern this assessment to ensure consistency by the courts in making such a calculation. The total amount of the fine imposed will be low where the offender has low means, but high where the offender has a higher means. The effect is that fines should bear more equally on offenders of different means.

11. A unit fine scheme was introduced in the Criminal Justice Act 1991 but was short lived as it came into disrepute because of problems on implementation that led to disproportionate fines imposed for trivial offences in a few cases. The lessons from the previous experience have been learnt. One problem with 1991 Act scheme was the fact that a relatively few number of units were available, and these were multiplied by weekly income. The new scheme's much higher number of units, which will provide greater flexibility, with daily disposable income rather than weekly income as the basis of the multiplier, will avoid repeating this problem. Additionally, the

reforms under the Courts Act 2003 are designed to increase the level of means information available to the court.

12. Another problem encountered in the unit fine scheme of the 1991 Act, was that courts imposed the maximum fine available in the absence of any other information about means. The new Sentencing Guidelines Council is now in place and will provide guidance to the courts on the operation of the new fine scheme, so that similar problems should not arise. The new fine scheme will be piloted or phased in geographically prior to full national roll out.

## **COSTS AND BENEFITS**

### Business sectors affected

13. This measure has no impact on either the business or voluntary sectors.

### Costs

14. There are no costs arising from Option 1. The costs relating to improved enforcement measures are detailed in the RIA prepared for the Courts Act 2003.

15. The total cost of implementing Option 2 is estimated at between £2m and £2.8. These are one off-costs that arise from the changes required to the Courts' IT systems and the cost of training magistrates and their advisers, which are broken down as follows. The IT changes will allow the sentence to be logged as a day fine, which means recording the number of "income units" as well as the pecuniary amount, and for progress with the payment of the 'day fine' to be tracked and monitored. As with 'ordinary' fines, where part of the 'day fine' has been paid, the systems will need to be able to indicate the amount of the 'day fine' which remains outstanding for enforcement action. These IT costs are estimated at up to £1 million.

16. The magistrates' training costs are broken down as follows.

	<b>Item</b>	<b>Cost</b>
<b>Magistrates' Courts</b>	Magistrates' training (based on one day's training for 30,000 magistrates at £50 per day) (based on half a day's training)	£1,500,000  or £750,000
	Development and production of training packs, including consultancy and publication costs	£50,000
	Training of 250 trainers	£80,000
	Training for District Judges (MCs) and Deputy DJ (MC)s: one day	£75,810

non-residential course	
half day course	or £38,000
Revision of Adult Court Bench Book and Youth Court Bench Book	£100,000
Update of workbook for new magistrates and core training material	£20,000
Magisterial Working Group meetings	£3,600
<b>TOTAL TRAINING COSTS</b>	<b>£1,829,410</b>
Based on training magistrates only for half a day	<b>or £1,041,410</b>

The figures are based on the assumption that either one day or half a day's face-to-face training will be required for magistrates and their legal advisers. We have provided a range because until a training package has been prepared it is not possible to say how long it would take to deliver. In addition, the Judicial Studies Board would need to update a number of in house publications for the criminal courts.

17. The courts already take account of the offender's ability to pay in setting the amount of the fine and offenders are required to produce means information. The new fine scheme provides for greater consistency by introducing a statutory methodology for the calculation, which will be based on the means information currently requested by a standard form. The RIA for the Courts Act 2003 identified various measures being taken to increase the availability of means information, including the introduction of a new offence of failing to provide such information.

### Benefits

18. The benefits of the new enforcement measures referred to in Option 1 are detailed in the RIA prepared for the Courts Act 2003.

19. The introduction of a new fine scheme (Option 2) is intended to help ensure that more fines are paid. The RIA for the Courts Act 2003 identified that the benefit to society from having a financial penalty paid in full is represented by the level of that fine. Using 2001-02 as a base year, each one per cent improvement in the payment rate yields a benefit to society of £3.87 million per annum. Whilst it is difficult to quantify the increase in fine revenue, £3.87 million pa represents a minimum figure.

20. The policy aim is to increase sentencer confidence in the use of fines as a disposal and to reduce the number of low risk offenders being given a community sentence. This, in turn, will allow NOMS to focus their resources and expertise on higher risk offenders to reduce reoffending and protect the public.

## Sustainable Development

21. There are no environmental impacts arising from the proposed measure. The economic and social benefits are referred to above.

## **EQUITY AND FAIRNESS**

22. A separate Race Equality Impact Assessment has been prepared on this measure. A day fine scheme would impact on adult individuals who receive a fine as a sentence. The scheme is designed to ensure that fines bear more equally on people of differing means, which would have a positive impact on all groups.

## **SMALL FIRMS IMPACT TEST**

23. This measure has no impact on small businesses.

## **COMPETITION ASSESSMENT**

24. The 'competition filter' has identified that this measure has no regulatory impact on the competitive process.

## **ENFORCEMENT AND SANCTIONS**

25. 'Day fines' will be introduced through primary legislation, which will require the courts to apply the measure. Secondary legislation will provide the court with rules on calculating the value of "income units", based on the offender's disposable income. Existing enforcement measures for fines, for which the Department for Constitutional Affairs has responsibility, will apply to 'day fines'.

## **CONSULTATION**

26. The Government published its response to the Carter Report, *Managing Offenders, Reducing Crime*, and sought responses to, amongst other things, how fines could be reinvigorated. We have consulted with the Department for Constitutional Affairs on the formulation of the proposals. Day fines have also been considered by the National Sentencer and National Offender Management Service Consultative Group, which includes representatives from the Magistrates Association and the Council of Circuit Judges. The Magistrates Association subsequently provided a paper giving more detailed comments on the proposals.

## MONITORING AND REVIEW

27. The use of fines is monitored by the Courts Service, Department for Constitutional Affairs and the Home Office and statistics are published. The day fines scheme will be subject to an evaluation on introduction.

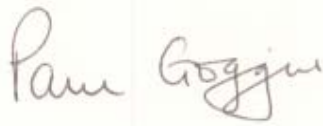
## SUMMARY AND RECOMMENDATION

28. The Government favours Option 2 for the arguments provided. It is essential that the fine is reformed to make it a more credible and effective sentence of the courts. The proposed scheme should ensure that fines bear more equally on people of different means, which, in turn, should mean fewer fine defaulters and an increase in the revenue collected. In addition, greater confidence in the use of the fine should result in fewer low risk offenders receiving community sentences, thereby allowing NOMS resources to be targeted on the higher risk cases where their expertise will have most impact.

## MINISTERIAL DECLARATION

29. I have read the Regulatory Impact Assessment and am satisfied that the benefits justify the costs.

Signed

A handwritten signature in black ink that reads "Paul Goggins". The signature is written in a cursive style and is positioned above a light yellow rectangular background.

Date: 6 January 2005

Paul Goggins  
Parliamentary Under-Secretary  
Home Office

## Contact Point

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