



# Criminal Proceedings etc. (Reform) (Scotland) Act 2007

2007 asp 6

## PART 3

### PENALTIES

#### *Enforcement of fines etc.*

#### 55 Fines enforcement officers and their functions

After section 226 of the 1995 Act there is inserted—

*“Enforcement of fines etc.: fines enforcement officers*

#### **226A Fines enforcement officers**

- (1) The Scottish Ministers may authorise persons (including classes of person) to act as fines enforcement officers for any or all of the purposes of this section and sections 226B to 226H of this Act.
- (2) A FEO has the general functions of—
  - (a) providing information and advice to offenders as regards payment of relevant penalties;
  - (b) securing compliance of offenders with enforcement orders (including as varied under section 226C(1) of this Act).
- (3) Where an offender is subject to two or more relevant penalties, a FEO—
  - (a) in exercising the function conferred by subsection (2)(b) above;
  - (b) in considering whether or not to vary an enforcement order under section 226C(1) of this Act,

shall have regard to that fact and to the total amount which the offender is liable to pay in respect of them.

- (4) Where an enforcement order as respects an offender has been made in a sheriff court district other than that in which the offender resides, a FEO for the district in which the offender resides may (whether or not those districts are in the same sheriffdom) take responsibility for exercising functions in relation to the order.
- (5) A FEO taking responsibility for exercising functions by virtue of subsection (4) above is to notify that fact to—
  - (a) the offender; and
  - (b) any FEO for the district in which the enforcement order was made.
- (6) Notification under subsection (5)(b) above has the effect of transferring functions in relation to the enforcement order—
  - (a) from any FEO for the district in which the order was made; and
  - (b) to a FEO for the district in which the offender resides.
- (7) The Scottish Ministers may by regulations make further provision as to FEOs and their functions.
- (8) Regulations under subsection (7) above are not made unless a draft of the statutory instrument containing the regulations has been laid before, and approved by a resolution of, the Scottish Parliament.

#### **226B Enforcement orders**

- (1) When a court grants time to pay (or further time to pay) a relevant penalty (or an instalment of it) under section 214 or 215 of this Act, the court shall make an enforcement order under this subsection in relation to payment of the penalty.
- (2) Despite subsection (1) above, a court need not make an enforcement order where it considers that it would not be appropriate to do so in the circumstances of the case.
- (3) Where, by virtue of subsection (2) above, a court does not make an enforcement order under subsection (1) above, it may subsequently make an enforcement order under that subsection in relation to payment of the penalty.
- (4) Where—
  - (a) a person has accepted (or is deemed to have accepted)—
    - (i) a fixed penalty offer under section 302(1) of this Act; or
    - (ii) a compensation offer under section 302A(1) of this Act; and
  - (b) payment (or payment of an instalment) has not been made as required by the offer,
 the relevant court may make an enforcement order under this subsection in relation to the payment due.
- (5) Where—
  - (a) a person is liable to pay—
    - (i) a fixed penalty notice given under section 54 (giving notices for fixed penalty offences), or section 62 (fixing notices to vehicles) of the Road Traffic Offenders Act 1988 (c. 53), which has been registered under section 71 of that Act; or

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- (ii) by virtue of section 131(5) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8), a fixed penalty notice given under section 129 (fixed penalty notices) of that Act; and
  - (b) payment (or payment of an instalment) has not been made as required by the penalty,

the relevant court may make an enforcement order under this subsection in relation to the payment due.
- (6) Where there is transferred to a court in Scotland a fine—
  - (a) imposed by a court in England and Wales; and
  - (b) in relation to which a collection order (within the meaning of Part 4 of Schedule 5 to the Courts Act 2003 (c. 39)) has been made,

the relevant court may make an enforcement order under this subsection in relation to payment of the fine.
- (7) An enforcement order under subsection (4), (5) or (6) above may be made—
  - (a) on the oral or written application of the clerk of court; and
  - (b) without the offender being present.
- (8) An enforcement order shall—
  - (a) state the amount of the relevant penalty;
  - (b) require payment of the relevant penalty in accordance with—
    - (i) such arrangements as to the amount of the instalments by which the relevant penalty should be paid and as to the intervals at which such instalments should be paid;
    - (ii) such other arrangements,as the order may specify;
  - (c) provide contact details for the FEO dealing with the enforcement order;
  - (d) explain the effect of the enforcement order.
- (9) Where a court makes (or is to make) an enforcement order in relation to a fine—
  - (a) a court may not impose imprisonment—
    - (i) under section 214(4) of this Act; or
    - (ii) under section 219(1) of this Act,in respect of the fine;
  - (b) a court may not—
    - (i) allow further time for payment under subsection (9)(a) of section 214 of this Act; or
    - (ii) make an order under subsection (9)(b) of that section,in respect of the fine;
  - (c) the offender may not make an application under section 215(1) of this Act in respect of the fine.
- (10) Paragraphs (a) to (c) of subsection (9) above apply for so long as the enforcement order continues to have effect.
- (11) An enforcement order ceases to have effect if—
  - (a) the relevant penalty is paid (including by application of any proceeds of enforcement action); or
  - (b) it is revoked under section 226G(9)(a) of this Act.

**226C Variation for further time to pay**

- (1) A FEO dealing with an enforcement order may—
  - (a) on the application of the offender; and
  - (b) having regard to the circumstances of the offender,vary the arrangements specified in the order for payment of the relevant penalty.
- (2) That is, by—
  - (a) allowing the offender further time to pay the penalty (or any instalment of it);
  - (b) allowing the offender to pay the penalty by instalments of such lesser amounts, or at such longer intervals, as those specified in the enforcement order.
- (3) An application by an offender for the purpose of subsection (1) above may be made orally or in writing.
- (4) A FEO shall notify the offender concerned of any—
  - (a) variation under subsection (1) above;
  - (b) refusal of an application for variation under that subsection.

**226D Seizure of vehicles**

- (1) A FEO may, for the purpose mentioned in subsection (2) below, direct that a motor vehicle belonging to the offender be—
  - (a) immobilised;
  - (b) impounded.
- (2) The purpose is of obtaining the amount of a relevant penalty which has not been paid in accordance with an enforcement order.
- (3) For the purposes of this section—
  - (a) a vehicle belongs to an offender if it is registered under the Vehicle Excise and Registration Act 1994 (c. 22) in the offender's name;
  - (b) a reference—
    - (i) to a vehicle being immobilised is to its being fitted with an immobilisation device in accordance with regulations made under subsection (12) below;
    - (ii) to a vehicle being impounded is to its being taken to a place of custody in accordance with regulations made under that subsection;
  - (c) a direction under subsection (1) above is referred to as a “seizure order”.
- (4) A FEO shall notify the offender concerned that a seizure order has been carried out.
- (5) Where—
  - (a) a seizure order has been carried out; and
  - (b) at the end of such period as may be specified in regulations made under subsection (12) below, any part of the relevant penalty remains unpaid,

a FEO may apply to the relevant court for an order under subsection (6) below.

- (6) The court may make an order under this subsection—
- (a) for the sale or other disposal of the vehicle in accordance with regulations made under subsection (12) below;
  - (b) for any proceeds of the disposal to be applied in accordance with regulations made under that subsection in payment of or towards the unpaid amount of the relevant penalty;
  - (c) for any remainder of those proceeds to be applied in accordance with regulations made under that subsection in payment of or towards any reasonable expenses incurred by the FEO in relation to the seizure order;
  - (d) subject to paragraphs (b) and (c) above, for any balance to be given to the offender.
- (7) Where, before a vehicle which is the subject of a seizure order is disposed of—
- (a) a third party claims to own the vehicle; and
  - (b) either—
    - (i) a FEO is satisfied that the claim is valid (and that there are no reasonable grounds for believing that the claim is disputed by the offender or any other person from whose possession the vehicle was taken); or
    - (ii) the sheriff, on an application by the third party, makes an order that the sheriff is so satisfied,
- the seizure order ceases to have effect.
- (8) An application for the purposes of subsection (7)(b)(ii) above does not preclude any other proceedings for recovery of the vehicle.
- (9) A person commits an offence if, without lawful authority or reasonable excuse, the person removes or attempts to remove—
- (a) an immobilisation device fitted;
  - (b) a notice fixed,
- to a motor vehicle in pursuance of a seizure order.
- (10) A person guilty of an offence under subsection (9) above is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (11) A seizure order must not be made in respect of a vehicle—
- (a) which displays a valid disabled person's badge; or
  - (b) in relation to which there are reasonable grounds for believing that it is used primarily for the carriage of a disabled person.
- (12) The Scottish Ministers may make regulations for the purposes of and in connection with this section.
- (13) Regulations under subsection (12) above may, in particular, include provision—
- (a) as to circumstances in which a seizure order may (or may not) be made;
  - (b) as regards the value of a vehicle seizable compared to the amount of a relevant penalty which is unpaid;

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- (c) by reference to subsection (3)(a) and (7) above or otherwise, for protecting the interests of owners of vehicles apart from offenders;
- (d) relating to subsections (3)(b), (5)(b) and (6) above;
- (e) as to the fixing of notices to vehicles to which an immobilisation device has been fitted;
- (f) as to the keeping and release of vehicles immobilised or impounded (including as to conditions of release);
- (g) as to the payment of reasonable fees, charges or other costs in relation to—
  - (i) the immobilisation or impounding of vehicles;
  - (ii) the keeping, release or disposal of vehicles immobilised or impounded.

(14) Regulations under subsection (12) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.

(15) In this section—

“disabled person’s badge” means a badge issued, or having effect as if issued, under regulations made under section 21 of the Chronically Sick and Disabled Persons Act 1970 (c. 44);

“immobilisation device” has the same meaning as in section 104(9) of the Road Traffic Regulation Act 1984 (c. 27);

“motor vehicle” means a mechanically propelled vehicle intended or adapted for use on roads (except that section 189 of the Road Traffic Act 1988 (c. 52) applies for the purposes of this section as it applies for the purposes of that Act).

#### **226E Deduction from benefits**

- (1) A FEO may, for the purpose mentioned in subsection (2) below, request the relevant court to make an application under regulations made under section 24(1)(a) of the Criminal Justice Act 1991 (c. 53) for deductions as described in that section.
- (2) The purpose is of obtaining the amount of a relevant penalty which has not been paid in accordance with an enforcement order.

#### **226F Powers of diligence**

- (1) When a court makes an enforcement order, it shall grant a warrant for civil diligence in the form prescribed by Act of Adjournal.
- (2) A warrant granted under subsection (1) above authorises a FEO to execute the types of diligence mentioned in subsection (3) below for the purpose mentioned in subsection (4) below.
- (3) The types of diligence are—
  - (a) arrestment of earnings; and
  - (b) arrestment of funds standing in accounts held at any bank or other financial institution.

- (4) The purpose is of obtaining the amount of a relevant penalty which has not been paid in accordance with an enforcement order.
- (5) The types of diligence mentioned in subsection (3) above may (whatever the amount of the relevant penalty concerned) be executed by an FEO in the same manner as if authorised by a warrant granted by the sheriff in a summary cause.
- (6) However, the power of FEOs to execute the types of diligence mentioned in subsection (3) above is subject to such provision as the Scottish Ministers may by regulations make.
- (7) Provision in regulations under subsection (6) above may, in particular—
  - (a) specify circumstances in which the types of diligence mentioned in subsection (3) above are (or are not) to be executed by a FEO;
  - (b) modify the application of any enactment (including subsection (5) above) or rule of law applying in relation to those types of diligence in so far as they may be executed by a FEO.
- (8) Regulations under subsection (6) above shall be made by statutory instrument subject to annulment in pursuance of a resolution of the Scottish Parliament.

#### **226G Reference of case to court**

- (1) A FEO may refer an enforcement order to the relevant court where—
  - (a) the FEO believes that payment of a relevant penalty, or any remaining part of a relevant penalty, to which an enforcement order relates is unlikely to be obtained;
  - (b) for any other reason (including failure of the offender to co-operate with the FEO) the FEO considers it expedient to do so.
- (2) A FEO may make a reference under subsection (1) above at any time from the day after the enforcement order is made.
- (3) When making a reference under subsection (1) above, the FEO shall provide the court with a report on the circumstances of the case.
- (4) A report under subsection (3) above shall include, in particular—
  - (a) a copy of any report from a supervising officer received by the FEO under section 217(9) of this Act; and
  - (b) information about—
    - (i) the steps taken by the enforcement officer to obtain payment of or towards the relevant penalty; and
    - (ii) any effort (or lack of effort) made by the offender to make payment of or towards the penalty.
- (5) Where a reference is made under subsection (1) above, the relevant court shall enquire of the offender as to the reason why the relevant penalty (or an instalment of it) has not been paid.
- (6) Subsection (5) above does not apply where the offender is in prison.
- (7) Subsections (3) to (7) of section 216 of this Act apply in relation to subsection (5) above as they apply in relation to subsection (1) of that section.

- (8) After the court has considered—
- (a) the report provided by the FEO under subsection (3) above; and
  - (b) any information obtained by enquiry under subsection (5) above,
- the court may dispose of the case as mentioned in subsection (9) below.
- (9) That is, the court may—
- (a) revoke the enforcement order and deal with the offender as if the enforcement order had never been made;
  - (b) vary the enforcement order;
  - (c) confirm the enforcement order as previously made;
  - (d) direct the FEO to take specified steps to secure payment of or towards the relevant penalty in accordance with the enforcement order (including as varied under paragraph (b) above);
  - (e) make such other order as it thinks fit.

### **226H Review of actions of FEO**

- (1) The offender may apply to the relevant court for review—
- (a) in relation to an enforcement order—
    - (i) of any variation under section 226C(1) of this Act;
    - (ii) of any refusal of an application for variation under that section;
  - (b) of the making of a seizure order under section 226D(1) of this Act.
- (2) An application under subsection (1) above requires to be made within 7 days of notification under section 226C(4) of this Act or (as the case may be) section 226D(4) of this Act.
- (3) On an application under subsection (1) above, the relevant court may—
- (a) confirm, vary or quash the decision of the FEO;
  - (b) make such other order as it thinks fit.

### **226I Enforcement of fines etc.: interpretation**

- (1) In this section and sections 226A to 226H of this Act—
- “enforcement order” is to be construed in accordance with section 226B(1) and (4) to (6) of this Act;
- “FEO” means a fines enforcement officer;
- “offender” means the person who is liable to pay a relevant penalty;
- “relevant court”—
- (a) in the case of a fine or compensation order, means—
    - (i) the court which imposed the penalty; or
    - (ii) where the penalty is transferred to another court, that other court;
  - (b) in the case of another relevant penalty (apart from a penalty specified by order for the purposes of this section), means—
    - (i) the court whose clerk is specified in the notice to the offender; or
    - (ii) where the penalty is transferred to another court, that other court;



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(c) in the case of a penalty specified by order for the purposes of this section, means—

- (i) the court whose clerk is specified in the notice to the offender;
- (ii) where the penalty is transferred to another court, that other court; or
- (iii) such other court as the order may specify for those purposes;

“relevant penalty” means—

- (a) a fine;
- (b) a compensation order imposed under section 249 of this Act;
- (c) a fixed penalty offer made under section 302(1) of this Act;
- (d) a compensation offer made under section 302A(1) of this Act;
- (e) a fixed penalty notice given under section 54 (giving notices for fixed penalty offences) or section 62 (fixing notices to vehicles) of the Road Traffic Offenders Act 1988 (c. 53);
- (f) a fixed penalty notice given under section 129 (fixed penalty notices) of the Antisocial Behaviour etc. (Scotland) Act 2004 (asp 8);
- (g) such other penalty as the Scottish Ministers may by order specify for the purposes of this section.

(2) An order specifying a penalty or a court for the purpose of this section shall be made by statutory instrument which shall be subject to annulment in pursuance of a resolution of the Scottish Parliament.”