EXPLANATORY MEMORANDUM TO

The draft Justice Act (Northern Ireland) 2016 (Relevant Benefits) Order (Northern Ireland) 2021

S.R. 2021

ISBN 9780338016522

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Justice ("the Department") to accompany the Statutory Rule (details above) which is laid in draft before the Northern Ireland Assembly.

1.2. The Statutory Rule is to be made under section 14(7) of the Justice Act (Northern Ireland) 2016 ("the Act") and is subject to the draft affirmative resolution procedure in accordance with section 60(5) of the Act.

2. Purpose

2.1. The Statutory Rule will add Universal Credit to the list of benefits from which deductions may be made for the payment of fines and other financial penalties under Part 1 of the Act.

3. Background

3.1. Part 1 of the Act introduced a new, widely supported system of collection and enforcement of unpaid financial penalties, aimed at reducing levels of unpaid debt and prison committals for what is often relatively low level offending.

3.2. To achieve this, the Act made provision for a new administrative system of collection, operated by the Fine Collection Service, located within NI Courts and Tribunal Service; and a range of new methods of collection.

3.3. Where the debtor is in receipt of benefits, the Fine Collection Service may make application to the Department for Communities for payment of an outstanding financial penalty by way of deductions from a specified list of income-based benefits. Legislative safeguards limit the maximum amounts that can be taken from a person's benefits or earnings to minimise hardship to the debtor.

3.4. If the Fine Collection Service cannot recover the outstanding amount, having attempted contact with the debtor and having explored the feasibility of a deduction order, the case may be referred back to court for a default hearing.

3.5. The court may then make application for a deduction order, or it may:

- make a bank account order, ordering payment directly from the debtor's account;
- order the seizure of the defaulter's vehicle, which may then be sold to pay the outstanding amount (this is subject to a number of safeguards);
- make a supervised activity order, which offers the alternative of carrying out unpaid community work instead of paying the outstanding amount;

- order distress in lieu of payment, whereby a debtor's goods can be seized and sold to discharge the penalty (although this is rarely used);
- discharge the penalty if the court considers this appropriate; or
- if all other options are exhausted, ultimately commit the defaulter to prison for failure to pay.

3.6. Universal Credit was under development, but had not been introduced, in 2016 when the Act was passed. Accordingly the power to amend the list of benefits from which payments could be taken was included in the Act to allow Universal Credit to be added at the appropriate time.

3.7. All new income-based benefit claimants now receive Universal Credit. Those who receive other benefits, such as income support and job seekers allowance, will transfer to Universal Credit under its roll-out arrangements.

3.8. The addition of Universal Credit to the list of benefits specified in the Act updates the list so that the arrangements introduced under the Act can continue to be used.

4. Consultation

4.1. The Department completed a public consultation entitled "Fine Collection and Enforcement" in 2014. There was broad support for a new approach to the collection and enforcement of fines and other financial penalties. The provisions of Part 1 of the Act were then consulted upon in the form of the Justice Committee's call for evidence during Committee Stage of the Act's passage through the Assembly.

4.2. The Department has had ongoing liaison with the Department for Communities, responsible for the development and roll-out of Universal Credit. That Department requires to make Regulations corresponding to the Statutory Rule, to allow deductions for the payment of financial penalties to be taken from Universal Credit.

4.3. The Justice Committee has considered the proposal to make the Statutory Rule and the Minister for Justice has written to members of the Northern Ireland Executive advising of her intention. No objections were received.

4.4 No other external consultation on the Statutory Rule was considered necessary as it makes a technical amendment adding to the fine collection and enforcement arrangements the benefit which will eventually replace those already listed in the Act.

5. Position in Great Britain

5.1. Provision for deductions from Universal Credit for the payment of outstanding financial penalties already exists in Great Britain.

6. Equality Impact

6.1. The provisions of the Statutory Rule are technical in their nature and do not give rise to any equality concerns. No new policy is being implemented.

6.2. The underlying policy was screened before the making of the primary legislation and has been reviewed. No adverse impacts for any of the nine categories in section 75 of the Northern

Ireland Act 1998 were identified. A further screening exercise completed in relation to the Statutory Rule revealed no adverse impact.

7. Regulatory Impact

7.1. A Regulatory Impact Assessment is not considered necessary. There will be no impact on businesses, charities or voluntary bodies.

8. Financial Implications

8.1. The Statutory Rule will enable deductions from debtors' Universal Credit for the payment of outstanding financial penalties.

9. Section 24 of the Northern Ireland Act 1998

9.1. The Department has considered its obligations under section 24 of the Northern Ireland Act 1998 and is satisfied that the Statutory Rule is not incompatible with the Convention rights, is not incompatible with European Union law, does not discriminate against a person or class of person on the grounds of religious belief or political opinion; and does not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

10. EU Implications

10.1. None.

11. Parity or Replicatory Measure

11.1. The provisions of Part 1 of the Act and the Statutory Rule are not necessary for parity elsewhere, but were modelled upon similar arrangements which have been in existence across England and Wales and Scotland for a number of years.

12. Additional Information

12.1. The Statutory Rule is subject to debate in the Assembly before being made. It is intended that the Statutory Rule will come into operation 21 days after it is made. This will allow co-ordination of commencement of the Statutory Rule with the corresponding Regulations being made by the Department for Communities.

12.2 The draft Statutory Rule replaces that of the same title which was laid before the Assembly on 13 May 2021 and published on 14 May 2021. This substitution is being made to allow for an amendment to the date of coming into operation of the Statutory Rule, which will now be in accordance with Article 1 which has been duly amended.

12.3 The amended draft Statutory Rule also includes some technical amendments identified by the Office of Legislative Counsel:

- In the italicised text above the Banner, the power to lay the Statutory Rule before the Assembly has been amended from section 14(7) to section 60(5) of the Justice Act (Northern Ireland) 2016. The word "the" has also been inserted before "Assembly"; and
- A typographical amendment has been made in Article 2 so that "sub section" now reads "subsection".

12.4 This explanatory memorandum therefore supersedes the corresponding earlier memorandum.