

2012 No. 188

PROCEDURE

**The Penalty Notices (Justice Act (Northern Ireland) 2011)
(Enforcement of Fines) Regulations (Northern Ireland) 2012**

Made - - - -

14th May 2012

Coming into operation in accordance with Rule 1

The Department of Justice, in exercise of the powers conferred by section 67(4) of the Justice Act (Northern Ireland) 2011^(a), hereby makes the following Regulations:-

Citation and commencement

1. These Regulations shall be known as the Penalty Notices (Justice Act (Northern Ireland) 2011) (Enforcement of Fines) Regulations (Northern Ireland) 2012 and shall come into operation on the day after Part 6, Chapter 1 of the Justice Act (Northern Ireland) 2011 commences.

Interpretation

2. In these Regulations —

“Chief Constable” means the Chief Constable of Northern Ireland;

“clerk of petty sessions” has the same meaning as in Article 2(4) of the Magistrates’ Courts (Northern Ireland) Order 1981^(b);

“court” means a district judge (magistrates’ court) sitting in or out of petty sessions held pursuant to Article 11 of the Magistrates’ Courts (Northern Ireland) Order 1981;

“complaint” means complaint for failing to pay a sum payable in default;

“county court division” has the same meaning as in Article 3 of the County Courts (Northern Ireland) Order 1980^(c)

“defaulter” means a person against whom a sum payable in default has been registered under section 66(1) of the Justice Act;

“defendant” means a defaulter against whom a complaint has been made;

“Justice Act” means the Justice Act (Northern Ireland) 2011;

“notice of registration” means notice of registration in accordance with Article 66(3) of the Justice Act;

“petty sessions district” has the same meaning as in Article 11 of the Magistrates’ Courts (Northern Ireland) Order 1981;

(a) 2011 c.24 (N.I.)
(b) S.I. 1980/1675
(c) S.I. 1980/1320

“district judge (magistrates’ courts)” means a district judge (magistrates’ courts) appointed under Part II of the Magistrates’ Courts (Northern Ireland) Order 1981;

“sum payable in default” means a sum registered under section 66 of the Justice Act for enforcement as a fine.

Procedure on registration of a sum payable in default

3.—(1) This regulation applies where the Chief Constable, or a person authorised by him to act in that behalf, issues a registration certificate under section 66 of the Justice Act.

- (2) A registration certificate issued under section 66 of the Justice Act shall be registered in –
 - (a) the petty sessions district in which the offender appears to reside; or
 - (b) in the event that the offender does not appear to reside in Northern Ireland, in the petty sessions district in which the offence occurred.
- (3) The clerk of petty sessions shall upon receipt of such a certificate—
 - (a) in the Order Book sign the entry required to be made by him by section 67(1) of the Justice Act; and
 - (b) give the defaulter notice of registration in the form in the Schedule.
- (4) A sum payable in default shall be enforced only in accordance with regulations 4, 5 and 6.

Enforcement where defaulter appears to reside in Northern Ireland and fails to pay by due date

4.—(1) This regulation applies where a defaulter has failed to pay a sum payable in default by the due date.

(2) A magistrates’ court may, upon complaint made to him by the clerk of petty sessions, at any time after the expiration of 14 days from the due date and before the expiration of 6 months from that date —

- (a) issue and cause to be served on the defendant a summons for the appearance of the defendant before a court acting for the same petty sessions district in which the sum payable in default is registered; or
- (b) by warrant cause the defendant to be brought before a court acting for the same petty sessions district in which the sum payable in default is registered or for any petty sessions district in the same county court division.

(3) In paragraphs (1) and (2) the “the due date” means—

- (a) within the time stated in the notice of registration; or
- (b) where any application for a longer time to pay than that stated in the notice of registration has been granted by the court under Article 91(1) of the Magistrates’ Courts (Northern Ireland) Order 1981 the final date by which payment was to have been made; or
- (c) where any application for payment by instalments has been granted by the court under Article 91(1) of the Magistrates’ Courts (Northern Ireland) Order 1981 where the defendant has failed to pay any one instalment and the final date by which that instalment was due to have been paid has passed.

(4) A warrant shall not be issued under paragraph (2)(b) unless the complaint is written and substantiated on oath.

Enforcement where defaulter appears to reside in England, Wales or Scotland and fails to pay by due date

5.—(1) This regulation applies where a defaulter, who appears to the Chief Constable to reside in England, Wales or Scotland, has failed to pay by the due date.

(2) On the registration of any sum payable in default against a defaulter who appears to the relevant person to reside in England, Wales or Scotland, a complaint in accordance with regulation 4 shall not be necessary.

(3) In this regulation, “due date” has the same meaning as in regulation 4(3).

(4) Where paragraph (2) applies, the court may, on the application of the clerk of petty sessions, make such order under the provisions of the Magistrates’ Courts (Northern Ireland) Order 1981 (as modified by regulation 8) relating to the satisfaction and enforcement of sums adjudged to be paid by conviction as it sees fit.

Procedure where warrant issued

6.—(1) Where a defendant has been taken into custody in pursuance of a warrant issued under regulation 4(2)(b) or paragraph (5) of this regulation or the purpose of causing him to be brought before a court he shall, if it will not be practicable to bring him before a court within twenty four hours after he was taken into custody, be brought, as soon as practicable, before a lay magistrate.

(2) If he thinks fit the lay magistrate may discharge the defendant upon the defendant entering into a recognizance for a reasonable amount to appear before a court at the time and place named in the recognizance.

(3) Where a defendant is not so discharged the lay magistrate shall commit him to prison and direct that he shall be brought before a court as soon as practicable thereafter and in any case not later than seven days from the date of such commitment.

(4) A court before which a defendant is brought under regulation 4(2)(b) or paragraph (5) of this regulation may hear the complaint in accordance with regulation 7 or may, if it thinks fit, discharge such person upon his entry into a recognizance for a reasonable amount to appear before a court at the time and place named in the recognizance.

(5) If the defendant fails to appear at the time and place mentioned in a recognizance entered into under paragraph (2) or (4) the court may by warrant cause him to be brought before a court acting for the same petty sessions district in which the sum payable in default is registered or for any other petty sessions district in the same county court division.

Procedure at hearing

7.—(1) Subject to paragraph (2) at the hearing of a complaint the court shall hear the evidence and such representation, if any, as may be made to it by or on behalf of the parties and the court may make such order under the provisions of the Magistrates’ Courts (Northern Ireland) Order 1981 relating to the satisfaction and enforcement of sums adjudged to be paid by a conviction (as modified by regulation 8) as it sees fit.

(2) At the hearing of a complaint, if the defendant or his representative on his behalf admits the truth of the complaint the court may make an order without hearing the evidence.

(3) Where at the time and place appointed for the hearing or adjourned hearing of a complaint the defendant fails to appear, the court may adjourn the hearing or, if satisfied that there are no sufficient grounds for adjournment or further adjournment may, subject to paragraphs (4) and (6), proceed in his absence.

(4) Where the defendant fails to appear in answer to a summons issued under regulation 4(2)(a) the court shall only proceed in his absence if it is proved that the summons was duly served on him or that he is evading service of the summons.

(5) Where a defendant appears at the time and place appointed for the hearing or adjourned hearing of a complaint the court may, if the complainant (having in the case of a warrant issued under regulation 4(2)(b) or 5(5) due notice of the defendant’s arrest) fails to appear —

- (a) dismiss the complaint;
- (b) order the complaint to be struck out;
- (c) adjourn or further adjourn the hearing; or

(d) if evidence has been received on a previous occasion, proceed in the absence of the complainant.

(6) Where at the time and place appointed for the hearing or adjourned hearing of a complaint both the complainant and the defendant fail to appear, the court may —

- (a) dismiss the complaint;
- (b) order the complaint to be struck out;
- (c) adjourn or further adjourn the hearing or;
- (d) if evidence has been received on a previous occasion, proceed in the absence of the parties.

Modification of the Magistrates' Courts (Northern Ireland) Order 1981 in respect of proceedings against defendants

8. The provisions of the Magistrates' Courts (Northern Ireland) Order 1981 relating to the satisfaction and enforcement of sums adjudged to be paid by a conviction shall apply to a sum payable in default registered against a defendant as if —

- (a) in Article 91(1) the words “, subject to Article 93,” were omitted;
- (b) in Article 92(1) the words “and Article 93,” were omitted;
- (c) Article 93 were omitted;
- (d) in Article 115(1) after the words “this Order”, the words “or under the Penalty Notices (Justice Act (Northern Ireland) 2011) (Enforcement of Fines) Regulations (Northern Ireland) 2012” were inserted.

Remittal of sums payable in default

9. The court may, on the application in writing by the clerk of petty sessions remit the sum so registered or any part of it if the court is satisfied that —

- (a) the defaulter or defendant cannot be found;
- (b) the defaulter or defendant is living outside Northern Ireland;
- (c) the defaulter or defendant is dead;
- (d) on the return of a warrant of distress it appears that the money and goods of the defaulter or defendant are insufficient to satisfy the sum.

Right of appeal

10. A defendant may appeal to a county court against any order of a court made with respect to the enforcement of payment of a sum payable in default as if the order had been made upon his conviction by a magistrates' court.

Service of document

11. Section 24 of the Interpretation Act (Northern Ireland) 1954 shall apply in relation to the manner in which a person may be provided with a document for the purpose of enforcing the payment of a sum registered under section 66 of the Order as fine as if in subsection (1) of that section the word “registering” were omitted.

Conduct of proceedings

12. A civil servant in the Department of Justice designated by the Department although not of counsel or a solicitor may prosecute and conduct any proceedings under these Regulations before a court or a lay magistrate on behalf of the clerk of petty sessions.

Sealed with the Official Seal of the Department of Justice on 14th May 2012



David Ford
Minister of Justice

SCHEDULE 1

Regulation 3(3)

Justice Act (Northern Ireland) 2011: Section 67

The Penalty Notices (Justice Act (Northern Ireland) 2011) (Enforcement of Fines) Regulations (Northern Ireland) 2012: Regulation 3(3)

Notice of Registration of a Penalty Notice as a Fine

To:

(Petty Sessions Office, Courthouse)

Order Book No:

On the day of 20..... , a penalty notice was issued against you and remains unpaid.

The Chief Constable (or person authorised on his behalf) has now issued a registration certificate under section 66(2) of the Justice Act (Northern Ireland) 2011 requiring a sum equal to the fixed penalty plus one half of the amount of that penalty to be registered under section 67 of the Justice Act (Northern Ireland) 2011 for enforcement as fine.

You are hereby given notice that:

(a) in consequence of the registration certificate issued by the Chief Constable or person authorised to act on his behalf the sum of £..... has been registered as a fine and is now enforcement by the court of summary jurisdiction acting for the petty sessions district of

(b) the particulars of the offence to which the fixed penalty relates are:

Date of the offence

Location of the offence

Nature of the offence

Penalty Notice No.

Date Notice issued

(c) you must pay the fine on or before the day of 20..... either by post in a pre-paid envelope addressed to the clerk of petty sessions at (address of court house) or personally at that office.

If you cannot pay you should on or before the last date for payment mentioned in paragraph (c) above either make an application in writing for further time to pay or for payments to be made in instalments. Your application to the court should be addressed to me, the clerk of petty sessions at the address above.

WARNING

1. Failure to pay this fine within the time allowed may result in a summons or warrant for your attendance at court being issued against you. A court hearing will take place to decide how this fine is to be enforced and an order may be made committing you to prison in default of payment of the fine.

2. Where it appears that the defaulter resides in England, Wales or Scotland, this fine may be transferred to the relevant local justice area or court of summary jurisdiction in that jurisdiction for enforcement.

Dated this day of 20...

Clerk of Petty Sessions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations prescribe the procedure for enforcing an unpaid Penalty Notice given under Part 6, Chapter 1 of the Justice Act (Northern Ireland) 2011 (“the 2011 Act”). Under the 2011 Act, the police may issue a Penalty Notice to an offender (who is over 18 years) in respect of certain specified offences (e.g. criminal damage). Where the offender fails to pay the Penalty Notice within the time allowed, the police may register it with a magistrates’ court for enforcement as a sum adjudged to be paid by a conviction. Specifically –

Regulation 2 sets out a number of definitions of phrases used in the Regulations.

Regulation 3 provides that an unpaid Penalty Notice should be registered either in the petty sessions district in which the offender appears to reside, or where the offender does not appear to reside in Northern Ireland, in the petty sessions district in which the offence occurred. It also provides that the clerk of petty sessions must give notice of the registration of the offender.

Regulation 4 prescribes the procedure for enforcement where the offender appears to reside in Northern Ireland. In such circumstances it is open to the court to either issue a warrant or a summons requiring the offender to be before the court.

Regulation 5 provides that where the offender appears to reside in England, Wales or Scotland, the court may use any of the powers open to it under Part IX of the Magistrates’ Courts (Northern Ireland) Order 1981 (Satisfaction and Enforcement of Orders) (“the 1981 Order”).

Regulation 6 prescribes the procedure which is to be followed where the court has issued a warrant.

Regulation 7 prescribes the procedure to be followed at the hearing and allows the court to make any order open to it under Part IX of the 1981 Order.

Regulation 8 sets out certain modifications to Part IX of the 1981 Order in its application to enforcement of Penalty Notices under these Regulations.

Regulation 9 allows the court to remit the sum payable under the Penalty Notice in certain circumstances (e.g. where the offender has died or cannot be found).

Regulation 10 provides that an appeal against an order of the court in relation to a Penalty Notice shall be to the county court and shall be treated as if it were an order made on conviction.

Regulation 11 provides that section 24 of the Interpretation Act (Northern Ireland) 1954 applies in relation to the service of documents under these Regulations.

Regulation 12 allows a civil servant in the Department of Justice to prosecute and conduct any proceedings under these Regulations before the court.

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