Justice Committee  
Management of Offenders (Scotland) Bill  
Written submission from Lewis Macdonald MSP

Please find enclosed a written submission to the Justice Committee’s inquiry into the Management of Offenders (Scotland) Bill.

My submission contains a proposal to amend the Bill to make it mandatory for offenders to complete the Declaration of Income (DoI) form. The DoI form collects information on offenders including their financial and benefit details. With this information, Fines Enforcement Officers employed by the Scottish Courts and Tribunals Service can utilise their enforcement powers when offenders fail to pay fines or compensation.

Making the form mandatory would help to improve collection rates, communicate to offenders that the courts are serious about recovering unpaid fines and compensation, and would improve victims’ faith in the system. It would also free up police and court time so they can focus on the management and control of more serious offenders.

I would be grateful if you were able to accept this as a Stage 1 submission. Please also accept my apologies for not submitting sooner.

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Management of Offenders (Scotland) Bill

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- **Proposal:** To amend the Management of Offenders (Scotland) Bill to make completion of the Declaration of Income (DoI) form mandatory. The general principles of the Bill relate to the management and control of offenders in a number of different ways. The Bill therefore offers an opportunity to address an anomaly in the current system, around the collection of a range of different fines. Addressing this anomaly will ensure these fines become a more meaningful option for the courts and fiscals, and will free up police and court time, so they can focus on the management and control of more serious offenders.

**Background**
- Fines Enforcement Officers (FEOs) are employed by the Scottish Courts and Tribunals Service (SCTS) to recover unpaid fines issued to offenders including court fines, fiscal fines and police anti-social behaviour fines. They are also responsible for recovering compensation owed to victims by offenders. FEOs have a range of sanctions they can impose on offenders who do not pay their fines or compensation. For instance, they can deduct money from their bank accounts, earnings or benefits.
- In order to utilise these powers, FEOs need information on offenders’ income details (employment, benefits), bank details and outgoings (household, travel, bills). To this end, FEOs will encourage offenders to complete the Declaration of Income (DoI) form, which is an important source of such information. The form also collects information on personal details (name, date of birth, address, telephone numbers); vehicle ownership and registration number; accommodation and living circumstances (dependents and partner income); and any other relevant circumstances.
- As well as providing FEOs information to help recover unpaid fines and compensation, it helps them to make an appropriate payment plan with an offender, and helps the Justice of the Peace or Sheriff decide whether a fine is a suitable disposal in the first place. FEOs will request that the offender complete a DoI at every opportunity. It can also be completed in court when requested by a Sheriff or JP, or sent out by Clerks of court. For summary cases heard in court, COPFS also include DoI forms when notifying accused individuals of the details of the case and the court date.

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2 The Procurator Fiscal Office can offer offenders the opportunity to pay compensation to victims, as an alternative to being prosecuted. The courts can also issue what are referred to as compensation orders.
4 Scottish Courts and Tribunals Service, [https://www.scotcourts.gov.uk/taking-action/pay-a-fine/feo-role](https://www.scotcourts.gov.uk/taking-action/pay-a-fine/feo-role)
• Offenders who receive fines or agree to pay compensation are under no legal obligation to complete the form\(^6\). Because it is not mandatory for any fine type (court fines, fiscal fines and police anti-social behaviour fines), offenders often choose not to complete it, making it harder for FEOs to recover unpaid fines or compensation. Further, some FEOs who participated in a study into the Fines Enforcement System published in 2011 suggested that defence agents actively discourage their clients not to complete the form.\(^7\) The DoI form is mandatory in both England and Wales.\(^8\)

Case for making DoI form mandatory

• When FEOs hold little information on the financial means of offenders, there is often no alternative but to cite them to court. Often they will fail to turn up when cited, so an arrest warrant is issued. Some offenders can be cited and arrested on warrant numerous occasions. As a result, a considerable amount of court and police time is taken up chasing these offenders.

• In the last decade, 275,000 apprehension warrants and 619,000 court citations were issued for the non-payment of fines (this is for all fine types including court fines, fiscal fines and police anti-social behaviour fines) and compensation.\(^9\) Despite this, the latest quarterly fines report published by the SCTS shows that fines to the value of £9m issued between 2014-15 to 2016-17, have still to be paid. The report also shows that 60,000 fines are either in arrears or have received no-payment whatsoever.\(^10\)

• The current system also fails to address offenders’ behaviour, and makes the chance of rehabilitation less likely. In 2014-15, roughly a fifth of offenders who received a court fine or fiscal fine reoffended within one year.\(^11\) Making the DoI form mandatory will send out a strong signal to offenders that the courts are serious about recovering fines and compensation.

• The following statement from an evaluation of the Fine Enforcement System published in 2011 published by the Scottish Government sums up the benefits of improving FEOs access to information on offenders:

> “There is still some ‘churn’ (in the system) which prolongs the process as a whole – cases in which non-payment is accompanied by limited information about defaulters, who are then cited to court, fail to appear, have a warrant issued, are given more time to pay, do not pay, are cited back to court, fail to appear, and so on. Improving access to information and therefore the ability of FEOs to pursue defaulters effectively could reduce this churn and limit the input of police and courts, improve the speed of fine payment and

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\(^6\) Ibid., p. 15.
\(^7\) Ibid., p. 20.
\(^8\) Confirmation provided by SPICe.
enforcement and potentially reduce the costs associated with enforcement whilst increasing fine payment and thus the credibility of the fine\textsuperscript{12}.

- It would also help to improve victims’ faith in the justice system. Two years ago a constituent of mine was the victim of damage to her property when a man entered her garden. The bill ran into hundreds of pounds. The Procurator Fiscal offered the offender the opportunity to pay compensation to my constituent, as an alternative to prosecution. Two years on since the incident, and she has only received £7.50 in compensation, in large part because FEOs do not have the information necessary that would allow them to utilise their powers of enforcement due to the DoI form not being mandatory. As a result of her experience, my constituent feels badly let down by the justice system.

**Management of Offenders (Scotland) Bill**

- As introduced, the Bill does a number of things in relation to the management and control, supervision and monitoring, de-stigmatising and rehabilitation, reintegration and parole of offenders in different ways.\textsuperscript{13} It has three purposes (electronic monitoring of offenders, disclosure of convictions and the Parole Board for Scotland) with a broad linking theme of the management and control of offenders. Therefore, it follows that a fairly wide range of amendments would be admissible.\textsuperscript{14} Making the DoI form mandatory relates to a particular disposal (imposition of a fine or compensation) made after establishment of guilt, and the control of that offender (recovery of assets etc.) by the court, as well as to fiscal disposals, and therefore this amendment would be within the scope of the Bill.


\textsuperscript{13}Scottish Parliament’s Justice Committee website.