

## **EXPLANATORY MEMORANDUM**

### **THE DISCHARGE OF FINES BY UNPAID WORK (ISSUE OF SUMMONS) REGULATIONS 2004 No. 2197**

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by Command of Her Majesty.
2. **Description**
  - 2.1 These Regulations enable a fines officer to issue a summons for the purpose of ensuring that an offender subject to a “work order” attends court. A work order is made by a court to allow an offender subject to a fine to discharge the fine by means of unpaid work. If the offender fails to comply with the order an application may be made by the fines officer for the court to vary or revoke the order. The court’s action in response to such an application will depend upon whether or not it believes that the offender had a reasonable excuse for his failure to comply, or that his circumstances have changed so that he is unlikely to be able to comply. These Regulations allow a fines officer to issue a summons requiring the offender to attend the court to which such an application has been made.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None.
4. **Legislative background**
  - 4.1 The power for a court to enable an offender to discharge his fine by unpaid work is provided by section 97(2) of, and Schedule 6 to, the Courts Act 2003. Paragraph 8(5) of Schedule 6 provides that regulations may provide for a fines officer to be able to issue a summons for the purpose of ensuring that an offender subject to a work order attends court. Paragraph 1 of Schedule 6 states that "regulations" means regulations made under the Schedule by the Lord Chancellor.
5. **Extent**
  - 5.1 These Regulations extend to England and Wales.
6. **European Convention on Human Rights**
  - 6.1 The Lord Chancellor has signed a statement that the legislation is compatible with Convention rights.
7. **Policy Background**
  - 7.1 Fine payment work - or the conversion of fines into work - is designed to enable an offender who cannot afford to pay a fine to work it off instead. Schedule 6 to the

Courts Act 2003 enables a court to allow an offender sentenced to a fine to discharge his sentence by means of unpaid work, where it appears to the court that the amount owing cannot be collected by any of the normally available methods, such as a distress warrant or attachment of earnings. The court achieves this by making a “work order”. The offender must consent to the making of such an order. The Schedule applies to people aged 18 or over who are liable to pay a fine or a sum treated for enforcement purposes as a fine, such as an unpaid fixed penalty, but excludes compensation, costs and confiscation orders.

- 7.2 Paragraph 8(5) of Schedule 6 to the Act provides a regulation-making power to allow fines officers to issue a summons for the purpose of ensuring that an offender attends the court to which an application has been made under paragraph 8(1) or (2). Paragraph 8(1) places a duty on the court to revoke a work order, if it appears to the court that the offender has failed to comply with the order without a reasonable excuse. Paragraph 8(2) gives a power to the court to revoke or postpone the work order if the offender has failed to comply with the order and has a reasonable excuse, or because the offender is unlikely to be able to comply because his circumstances have changed. There is already a power, in paragraph 2(2), for a court considering making a work order to require the offender to appear before it.
- 7.3 There is a similar provision in Schedule 5 to the Act, in relation to fines collection. It provides that fines collection regulations may give fines officers the power to issue a summons for the purpose of ensuring that the offender attends a magistrates' court to which his case has been referred. This regulation-making power has already been exercised in the Fines Collections Regulations 2004. Regulation 11 gives the power for a fines officer to issue a summons requiring the offender to come before the court:
- 7.4 Fine Payment Work is to be piloted together with other fine enforcement measures in the Courts Act. The pilots started in February and March 2004, with fine payment work due to start this autumn. The pilot areas are Cumbria, South Yorkshire, Cheshire, Cambridgeshire, Gloucestershire and Devon and Cornwall. Fine payment work is regarded as an integral part of the package of Courts Act provisions designed to improve fine enforcement and it is hoped that it will make a valuable contribution towards increasing confidence in the fine as a sentence and increasing its use by the courts. This will contribute to achieving the Government's aim of rebuilding the fine as a credible punishment.

## **8. Impact**

- 8.1 No impact is anticipated on the private or voluntary sector, nor any costs to the Exchequer as a result of these Regulations.

## **9. Contact**

Beverley Moore, Sentencing Policy and Penalties Unit, 020 7273 2220