

**EXPLANATORY MEMORANDUM TO THE
FINES COLLECTION REGULATIONS 2005**

2005 No.484

1. This explanatory memorandum has been prepared by the Department for Constitutional Affairs and is laid before Parliament by command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

2.1 The Fines Collection (Amendment) Regulations 2005 amends the Fines Collection Regulations 2004 (“the 2004 Regulations”) to incorporate the findings of the evaluation of pilots to test the fines collection scheme, as set up by the Courts Act 2003, before national rollout, and to take into account the inclusion of the magistrates courts in Her Majesty’s Court Service.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 These regulation are being commenced on 30th March 2005 for the purposes of extending the operation of the 2004 Regulations, before it would otherwise cease to have effect. Other amendments made by these Regulations come into force on the 1st April 2005. This is because certain amendments are made in relation to the commencement of the unified administration provisions in the Courts Act 2003 on the 1st April 2005, which will alter the references to “petty sessions areas” and remove the post of “justices’ chief executives” and those changes cannot be brought into force before the 2004 order falls.

4. Legislative background

4.1 The Regulations derive their authority from the Courts Act 2003, which under Schedule 5 of that Act, established a fines collection scheme. Provision was made in that Act for the scheme to be piloted and for legislation to be modified to give effect to the pilots. The Fines Collection Regulations 2004 were laid in January of 2004 modifying the legislation listed below and providing the details of the fines collection scheme, for example the clamping regime. The initial piloting and evaluation was expected to take about a year so the 2004 Regulations cease to have effect on 31st March 2005. The amendment Regulations now being provided are to extend the pilot schemes taking into account alterations that have been identified by the evaluations. Consequential amendments have also been made to the 2004 Regulations to take into account the commencement on the 1st April of the unified administration provisions in the Courts Act.

4.2 The Regulations modify the Attachment to Earnings Act 1971 and the Magistrate Courts Act 1980.

4.3 The Regulations also modify the Fines (Deductions from Income Support) Regulations 1992

4.4 These Regulations work alongside the Collection of Fines (Pilot Schemes) (Amendment) Order 2005 and the Register of Fines (Amendment) Regulations 2005.

5. Extent

5.1 The Regulations apply to England and Wales

6. European Convention on Human Rights

6.1 Lord Falconer has made the following statement concerning the Courts Act 2003, under the authority of which these Regulations are laid, regarding Human Rights: “In my view, the provisions of the Courts Act 2003 are compatible with the Convention rights.”

7. Policy background

7.1 One of the Government’s key objectives is to improve confidence in the criminal justice system. One of the ways it has identified to do that is to improve the effectiveness of fines as a penalty. There is a history of poor performance in this area and the Government has therefore launched a major programme of work to deliver sustainable improvements in performance.

7.2 Part of this work was contained in the Courts Act 2003, which was passed to provide the legislative framework for more effective and efficient enforcement. The Act introduced a number of new measures to ensure offenders pay their fines. The collection scheme set up by the Courts Act is based on three principles:

7.2.1 Fine enforcement should be an administrative process, and should not take up the time of magistrates.

7.2.2 There should be every opportunity for the offender to co-operate and to pay the fine promptly, but persistent offenders should not be able to play the system.

7.2.3 Help should be available for those who are genuinely struggling to pay.

7.3 Before these new measures were introduced nationally it was decided to test them in a number of areas to determine whether they worked, to what extent and how they might best be deployed. These areas were designated as pilot areas. The pilots started in February 2004 and were formally evaluated in September 2004.

7.4 The automatic use of Attachment of Earnings orders (AEOs) and Deductions from Benefit orders (DBs), together with a new means form - were rolled out across all magistrates courts in England and Wales in a national pilot commencing in April 2004. However, the scope of the evaluation was limited to the local pilot areas and the control areas (that only implemented the national pilot measures). Comparisons between the results in the pilot and control courts enabled the study to evaluate the benefits of new measures compared to traditional methods.

7.5 Other measures were tested in the pilot areas alone:

7.5.1 A new instrument was created – the collection order – to regulate the enforcement process.

7.5.2 The role of fines officer was created to take on the administrative management of fine collection.

7.5.3 Increasing the fine if the offender failed to pay. The increase was disapplied if the offender then paid in accordance with a further agreed payment plan.

- 7.5.4 Registration of the fine to initiate processes which may lead to the offender being denied credit, so that details can be passed to credit agencies, who may choose to deny the offender credit.
- 7.5.5 Clamping the offender's vehicle and selling it if the offender still refuses to pay.
- 7.5.6 Fines Payment Work assigned to the offender to pay off the fine.
- 7.6 In light of information gained from the evaluation of the pilots amendments have been made to the Regulations. The amendments to the 2004 Regulations have the following effects:
 - 7.6.1 For Regulations governing Attachment to Earning Orders Definitions of 'pay-day' and 'attachable earnings' and a full scheme for calculating the attachable earnings in different circumstances were added. These were essentially matters of clarity.
 - 7.6.2 The level of fine increase was set at 50%, the level found most effective in the pilots
 - 7.6.3 In the clamping Regulations the requirement that a fines officer be present for the complaints procedure to be initiated was removed to make the procedure easier to undertake. The timings were altered so that the clamp would remain on the vehicle for 24 hours following which it would be stored for 28 days after which it would be sold. This will make the sanction more cost effective and will enable it to be used more often. The Regulations now allow clamping contractors to take payments by credit card and clamping will now be able to take place at any time at which the fine can be paid in order to ease payment. The requirement to take a photograph of the clamped vehicle has been removed as unnecessary.
 - 7.6.4 Other amendments to the fines collection scheme are being introduced in the Collection of Fines (Pilot Schemes) (Amendment) Order 2005 and the Register of Fines (Amendment) Regulations 2005, which operate alongside these Regulations.

8. Impact

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.
- 8.2 No impact on the public sector is anticipated.

9. Contact

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