

**EXPLANATORY MEMORANDUM TO
THE FINES COLLECTION (DISCLOSURE OF INFORMATION) (PRESCRIBED
BENEFITS) REGULATIONS 2008**

2008 No. 3242

1. This explanatory memorandum has been prepared by Ministry of Justice and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 The Regulations prescribe benefits for the purposes of the definition of “prescribed” benefits under section 9C(4) of Schedule 5 to the Courts Act 2003. They will permit the Secretary of State for Work and Pensions, in response to an information request from a designated officer in a magistrates’ court, to disclose details of whether a person is in receipt of any benefit prescribed in the Regulations, in order to assist a court in deciding whether to make an application for benefit deductions.

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

3.1 There are none.

4. Legislative Context

4.1 Schedule 5 to the Courts Act 2003 applies where a person aged 18 or over is liable to pay any fine, costs or other sum adjudged to be paid by an order made on a finding of guilt, including a compensation order (a “fine etc”). Under Part 3 of Schedule 5 to the Courts Act 2003, to enforce the payment of a fine etc, a court or a fines officer must or may, depending on the circumstances, make an application to the Secretary of State for Work and Pensions for a deduction from benefits. If the Secretary of State makes such deductions, the person’s fine etc is paid in instalments from certain benefits. However, until recently there was no power for the court to be able to seek disclosure of relevant information to determine whether the making of such an application was practicable or appropriate.

4.2 This changed when section 41 of the Criminal Justice and Immigration Act 2008 inserted new paragraphs 9A to 9C into Part 3 of Schedule 5 to the Courts Act 2003 (the provision came into force on 3 November 2008). Paragraph 9A empowers a designated officer in a magistrates’ court to ask for information about a person from the Secretary of State, including their “benefit status”, in order to assist a court in deciding whether to make an application for benefit deductions.

4.3 Under paragraph 9C of Schedule 5 to the 2003 Act, a person’s “benefit status” includes which prescribed benefit(s) the person is in receipt of. These regulations set out which benefits are prescribed. Under article 2 they are:

- (i) contribution-based jobseeker’s allowance;
- (ii) income-based jobseeker’s allowance;

- (iii) income-related employment and support allowance;
- (iv) income support; and
- (v) state pension credit.

In respect of prescribed benefits the Secretary of State is able, under paragraph 9C(2) of Schedule 5 to the Courts Act 2003, to disclose which deductions apply and how much money is finally received after those deductions have been made.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As this instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Since 2001, HM Courts Service has been able to access the Department for Work and Pensions (“DWP”) Customer Information System for very limited purposes. Section 125C of the Magistrates’ Courts Act 1980, inserted by the section 94 of the Access to Justice Act 1999, permitted the disclosure by DWP of “basic personal information”. This information, which HM Courts Service can access via DWP’s Customer Information System, is restricted to an offender’s name, address, date of birth and National Insurance Number. Such information is only available for the purpose of enforcing certain warrants.

7.3 HM Courts Service has had an information sharing arrangement, in the context of the enforcement of warrants, with DWP since 1 April 2003. Access to DWP Customer Information System was rolled out nationally between July and September 2005.

7.4 Separately the courts have been able to make applications for deductions from certain benefits to the Secretary of State and, since the coming into force of the Courts Act 2003, this power has been extended to fines officers. However, currently both the courts and fines officers apply for deduction from benefit without knowing which benefits, if any, the individual is in receipt of. Once an application is made it is the DWP’s task to check their own systems to see if an offender is on the correct benefit or has other deductions in place.

7.5 Now that paragraphs 9A to 9C of the Courts Act 2003 have been brought into force (see above) these Regulations will allow HM Courts Service to ask DWP about whether an individual is on one of the specified benefits and the response will enable the court or fines officer to make a decision as to whether it would be practicable or worthwhile to make an application for deductions from benefits. It will help HM Courts Service and DWP to improve the current system and better manage resources.

8. Consultation outcome

8.1 No public consultation was held as the need to prescribe benefits was made clear during the passage of the Bill and the benefits are the same as those from which deductions may be made.

9. Guidance

9.1 A Memorandum of Understanding exists between the HM Courts Service and DWP. This will be amended to reflect these Regulations.

10. Impact

10.1 The impact on the public sector is limited to HM Courts Service and DWP.

10.2 An Impact Assessment is not required for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 HM Courts Service will continue to monitor management information to determine the effect this change has on the number of deduction from benefit applications made and the proportion successful. HM Courts Service will continue to liaise with the DWP regarding the effect the changes have on resources, in order to understand any efficiency gains.

13. Contact

13.1 Jasber Jittlar at HM Courts Service can answer any queries regarding the instrument. He can be contacted on 020 3334 6357 or by e-mail to: Jasber.Jittlar@justice.gsi.gov.uk.