EXPLANATORY MEMORANDUM TO

THE DISCHARGE OF FINES BY UNPAID WORK (PILOT SCHEMES) ORDER 2005

2005 No. 563

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 SI No. 2198 enabled the piloting of fine payment work to take place in specified petty sessions areas from 21 September 2004 to 31 March 2005. The present order extends the pilot period in specified local justice areas within six Magistrates' Courts Committee areas from 30 March 2005 until 31 March 2006. Fine payment work is unpaid work carried out by an offender whom the court believes is genuinely unable to pay a fine. The work done discharges the liability to pay the fine at a standard, statutory rate per hour. The specified local justice areas are: Peterborough, Huntingdon and Wisbech in Cambridgeshire; Sheffield and Barnsley in South Yorkshire; Halton and Warrington in Cheshire; Kendal and Barrow in Cumbria; South Devon, Central Devon, East Cornwall and West Cornwall in Devon and Cornwall. Gloucester, Stroud and Forest of Dean in Gloucestershire.

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

3.1 The Order comes into force on 30th March 2005. This Order was prepared by the Home Office, but signed on behalf of the Lord Chancellor by a Minister of the Department of Constitutional Affairs, reflecting the fact that "fine payment work" is the policy responsibility of the Home Office. Unfortunately, administrative delays in processing the Order between the Department of Constitutional Affairs and the Home Office after it had been signed have led to an inadvertent breach of the "21 day rule". This is a matter of regret to both the Departments concerned.

4. Legislative background

4.1 The power for a court to allow an offender to discharge his fine by unpaid work is provided by section 97(2) of, and Schedule 6 to, the Courts Act 2003. Section 97(5) gives the Lord Chancellor the power to make an order to give the Schedule effect in relation to the local justice areas specified in the order, for the period specified in the order.

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5. Extent

5.1 This Order extends 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 Fine Payment Work is being piloted alongside other fine enforcement measures in the Courts Act. Piloting of these measures started in February and March 2004 and was evaluated in October. The scheme excluding fine payment work is currently being rolled out nationally with an amended combination of sanctions, but it is still technically a pilot and is operating under a section 97(5) order. The affirmative resolution order to set the scheme in its final form will not proceed until all local justice areas have implemented the pilot scheme. The piloting of Fine Payment Work began during December 2004 and January 2005, but it is still to start in some of the areas. The pilot areas are Cumbria, South Yorkshire, Cheshire, Cambridgeshire, Gloucestershire and Devon and Cornwall.

7.3 The current piloting period will end on 31 March 2005. This extension will run from 30 March 2005 until 31 March 2006 to ensure that sufficient data can be collected for an effective evaluation, prior to any amendment by affirmative order to finalise the sanction.

7.4 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. With regards to funding for the next financial year, we are negotiating with DCA.

9. Contact

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