EXPLANATORY MEMORANDUM

THE DISCHARGE OF FINES BY UNPAID WORK (PRESCRIBED HOURLY SUM) REGULATIONS 2004 No. 2196

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 make provision for "the prescribed hourly sum" for the purposes of paragraph 1(2) of Schedule 6 (discharge of fines by unpaid work) to the Courts Act 2003 (c.39). This is the sum used by the court to determine the number of hours of unpaid work required to discharge a fine that is the subject of a work order made under the Schedule, or to calculate the amount outstanding following revocation of a work order.

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

None.

4. Legislative background

4.1 Sections 108(2) and (3) together provide that regulations under Schedule 6 relating to the prescribed hourly sum are subject to the affirmative resolution procedure. During the passage of the Bill through Parliament, the Delegated Powers Committee took the view that either the principle to be applied in deciding the 'prescribed hourly sum' should be explicitly stated on the face of the Bill, for example by linking it to the National Minimum Wage, or the regulations setting the sum should be subject to the affirmative procedure.

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 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 The rate at which fines are be discharged through work is called "the prescribed hourly sum". The amount of the fine outstanding translates into hours of work using this figure. The work order must specify the number of hours of unpaid work that the offender must perform and must state the amount of the relevant sum. The number of hours to be specified is to be determined by dividing the relevant sum by the prescribed hourly sum and rounding up to the nearest whole number.

7.3 In order to meet concerns raised in Parliament during the passage of the legislation, the conversion rate needs to be at least equivalent to the National Minimum Wage. It also needs to be more generous to the offender than the unpaid work option in the Criminal Justice Act 2003 for dealing with fine defaulters, as these latter provisions are to deal with offenders who are unwilling rather than unable to pay. This suggested a conversion rate of £6 per hour.

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 summer. 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 go towards achieving the Government's aim, stated in its response to the Carter Report, 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

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