EXPLANATORY MEMORANDUM TO THE

THE FINES (DEDUCTIONS FROM INCOME SUPPORT) (AMENDMENT) REGULATIONS 2004

2004 No.2889

1. This explanatory memorandum has been prepared by the Department for Work and Pensions and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 Measures are being introduced which will (a) increase the rate of a fines Third Party Deduction from benefits to a maximum of £5 and (b) support the establishment of an offence of failure to provide information.

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

3.1 None

4. Legislative Background

4.1 Department for Constitutional Affairs (DCA) introduced legislation in the Courts Act 2003 for a range of pilot measures designed to improve enforcement of the collection of fines in England and Wales. One of the provisions is a new offence of "failure to provide information" in respect of declaration of benefit income. This brings the benefit deduction legislation in line with attachment of earnings legislation that already provides for such an offence.

4.2 Subsection (2) of Section 96 of the Courts Act 2003 inserts a provision into section 24 of the Criminal Justice Act 1991 allowing regulations to be made requiring an offender to provide prescribed information in connection with the application for a deduction order. Subsection (3) of Section 96 of the Courts Act inserts a provision into section 24 of the 1991 Act making it an offence not to provide this information. The amendment to the Fines (Deduction from Income Support) Regulations 1992 sets out what information is required, failure to provide which would constitute an offence.

4.3 The DWP Third Party Deductions (TPD) scheme is essentially a system of last-resort protection available to people receiving certain state benefits. A prescribed amount can be withheld from benefit and redirected to a third party creditor in respect of a debt for one or more of a number of important household outgoings including a fines repayment.

4.4 The Criminal Justice Act 1991, sections 24 and 30, and the Fines (Deductions from Income Support) Regulations 1992 allow DWP to make deductions from benefits to recover unpaid fines.

4.5 On 26 April 2004 The Parliamentary Under Secretary of State for Work and Pensions announced by written statement to the House that, to support the

Government's efforts to restore confidence in fines as an effective component of the criminal justice system, he proposes to increase the amount of the weekly deduction applied to certain benefits from £2.80 to £5 in April 2005. A later written statement to the House notified that the implementation date for this measure has now been brought forward to 18 December 2004 and the amended regulations will be laid accordingly.

5. Extent

5.1 This instrument applies to England and Wales in respect only of the prescribed information required in connection with the application for a deduction order.

5.2 It applies to Great Britain in respect only of the increase of a fines benefit deduction to a maximum of £5.

6. European Convention on Human Rights

6.1 Not applicable

7. Policy background

7.1 The TPD scheme is designed to prevent family or individual hardship caused by eviction, disconnection of fuel supply, court action for non-payment of water charges or council tax, or imprisonment for non-payment of fines. In the case of fines, the deduction also serves to enforce a personal and legal obligation and penalty.

7.2 The total amount deductible is subject to a cap of three arrears deductions at any one time (i.e. 3 x £2.80 = £8.40). This is intended to provide a safeguard against an overly burdensome amount of deductions from weekly income.

7.3 DCA and DWP Ministers consider that the £2.80 maximum for each Third Party Deduction was, in respect of fines, inadequate both in terms of fine recovery timescale and impact on the offender. As a result, it was agreed that the amount for a fines deduction should increase to a maximum of £5 (or, where there was insufficient benefit to deduct £5 or two deductions are already in place, the standard rate of £2.80 would apply).

7.4 A number of new provisions augment the fines collection package currently being piloted in courts in England and Wales. The aim is to try to give the courts the power to collect relevant information for the enforcement of a fine and to allow them to impose penalties when an offender fails to provide that information. Section 96 (Recovery of fines by deductions from income support: failure to provide information) of the Courts Act 2003 amends section 24 of the Criminal Justice Act 1991 and creates a new offence for non provision of information essential to make a deductions from benefit application. This brings deductions from benefits in line with attachment for earnings orders, where it is already an offence to fail to provide such information. However, the offence can only be established where the offender fails to provide information, as prescribed in the Fines (Deductions from Income Support) Regulations 1992 as amended, to the court. The regulation amendment will insert details of the prescribed information the court needs to

set the fine at the right level and, if necessary, to make a deductions from benefits order.

7.5 The Social Security Advisory Committee were presented with details of the changes on 27 October 2004.

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 The impact on the public sector will be an improved performance in the collection of fines and will re-invigorate fines as an effective penalty for those who commit crime, thereby increasing public confidence in the criminal justice system.

9. Contact

Philip Kampen at the Department for Work and Pensions Tel: 0113 2327893 or e-mail: PHILIP.KAMPEN@DWP.GSI.GOV.UK can answer any queries regarding the instrument.