

COURTS ACT 2003

EXPLANATORY NOTES

COMMENTARY

Fees, costs and fines

Part 8: Collection orders: operation if attachment of earnings order etc fails

294. [Part 8](#) (Paragraph 29) deals with what should happen if an AOE or benefits made under Part 3 or Part 6 should fail. In other words, this is what should happen on failure of the attachment, whether the attachment was imposed on the offender straightaway (Part 3), or whether the offender volunteered for an attachment when applying for a variation in payment terms (Part 6).

295. [Paragraph 30](#) stipulates that the fines officer must write to the offender (i.e. send a 'payment notice') informing him that the AOE or DFB has failed and that the reserve terms of the collection order now have effect. The notice must say what the offender must do to comply with the reserve terms, and inform him that he may apply to the fines officer (under paragraph 31 of the Schedule) for the reserve terms to be varied.

296. [Paragraph 31](#) stipulates that the offender may apply to the fines officer for a variation in the reserve terms at any time after he has been informed (by means of a payment notice under paragraph 30) that the attachment or deductions order has failed and before an increase in the fine has been imposed under paragraph 33. The application may only be made if:

- the offender is not in default on the collection order; and
- there has been a material change in the offender's circumstances since the reserve terms were set, or since the fines officer last issued his powers to vary under this paragraph; or
- the offender has provided more information about his circumstances.

On application the fines officer may decide whether or not to vary the payment terms in the offender's favour.

297. The fines officer's decision must be in writing, dated and delivered to the offender.

298. [Paragraph 32](#) gives the offender the right of appeal to the magistrates' court against the fines officer's decision. The appeal must be lodged within 10 working days of the date of the decision. On appeal the magistrates' court may:

- confirm or vary the reserve terms; or
- discharge the collection order and handle the case itself, using its standard powers. These are defined in paragraph 50 of the Schedule as being any power which a magistrates' court would have had if a collection order had not been made, any power given to the court by virtue of the fines collection regulations made under this Schedule.

*These notes refer to the Courts Act 2003 (c.39)
which received Royal Assent on 20 November 2003*

299. [Paragraph 33](#) provides for an increase to be imposed on the fine (but not compensation or costs) if the offender defaults on the collection order. Unlike the discount, the increase will apply to fixed penalties registered as fines. The amount of the increase is determined (by the Lord Chancellor, not the fines officer) in the fines collection regulations, but the increase must not be more than 50% of the fine. The increase is given effect by treating it as part of the fine originally imposed on the offender.
300. The liability to pay the increase ranks after the liability to pay any other part of the sum due (i.e. after the original fine and any compensation or costs).
301. Whether the increase then takes place is dependent on the behaviour of the offender. If he co-operates and makes arrangements leading to the full payment of the sum due, without further default, the offender's liability to pay the increase is waived (see paragraphs 35(6) and 39(2)).
302. [Paragraph 34](#) stipulates that the fines officer must send the offender an 'increase notice', which informs him of the increase. The increase notice must state that the offender has 10 working days from the date of the notice to contact the fines officer (in person or in writing) to explain why he is in default. New payment terms, which include the increase, will then be set by the fines officer (see Part 9 below). The offender will be warned that the increase will stand and further enforcement steps will be taken unless he sticks to the new payment terms. Provided the offender co-operates and makes arrangements leading to the full payment of the sum due, without further default, he does not have to pay the increase.