
EXPLANATORY NOTE

(This note is not part of the Order)

The provisions of Schedule 5 to the Courts Act 2003⁽¹⁾(collection of fines) have been piloted in various forms since February 2004. On the completion of those pilots, this Order will give effect to the final version of Schedule 5 (“the final scheme”) in all local justice areas and indefinitely. It also amends other legislation in connection with the operation of that final scheme. The Order comes into force on 3rd July 2006.

Amendments to Schedule 5 of the Courts Act 2003

Article 6 amends the application of Schedule 5, with the effect that the final scheme will apply to the collection of any sum imposed on conviction (such as fines, costs or sums required to be paid under a compensation order or a confiscation order), regardless of whether those sums are imposed together with a fine, or on their own without a fine. The following articles are consequential to that article: articles 7 (in part), 8(a)(ii), 21, 27(c), 28(a)(i), 30, 33 (in part) and 54.

Article 8, 10 and 14 remove the definition of immediate payments and alters the scheme so that no difference is made between the treatment of cases where an offender is required to pay immediately or is given time to pay.

Article 10 also makes the following provision. It ensures that the provisions of Part 3 (attachment of earnings orders and applications for benefit deductions) apply in every case where the relevant court is dealing with a person who is liable to pay a sum imposed on conviction (“P”), other than where the court is hearing an appeal. It also makes it clear that an attachment of earnings order or an application for benefit deductions is made to secure the whole of the sum due rather than any single constituent part of that sum, such as a sum payable under a compensation order.

Article 11 inserts a new provision requiring the court (where appropriate) to make either an attachment of earnings order or an application for benefit deductions in cases where P is liable to pay a sum under a compensation order. In contrast to paragraphs 8 and 9 of Schedule 5, this duty is not dependent on any conclusion that P is an existing defaulter, nor does it require P’s consent. The following articles are consequential to that article: articles 7 (in part), 12, 13 and 15.

Articles 9 and 17 remove those provisions giving discounts for early payments. Those provisions were not piloted.

Articles 19 and 22 together remove those provisions imposing automatic increases in fines. The following articles are consequential to those articles: articles 16, 20, 23, 25 and 27.

Article 26 specifies a further step available against defaulters. This step (which has been piloted) allows a fines officer to take enforcement proceedings in a county court or the High Court, where a third party debt order or a charging order can be made to secure the payment of the sum due. Following the completion of the pilot schemes, Article 26 will also remove the power to make fines collection regulations permitting the taking of other steps, because the purpose of that power was to facilitate the testing of “further steps” during the pilot period.

Article 29 inserts a new provision allowing the court to increase a fine in cases where P is in default on a collection order due to his wilful refusal or culpable neglect.

(1) 2003 c. 39.

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Article 28(a)(i) and (b) allows the court, on the referral of a case to it under paragraph 42 of Schedule 5, to exercise any of its standard powers whilst keeping the collection order in place, if required.

Article 28(a)(ii) removes the reference to the fines collection regulations, which was required only for the purposes of piloting the provisions in Schedule 5.

Article 31 removes the power to make provision in fines collection regulations for cases that are transferred from one area to another. That power was required only for the purposes of piloting the provisions in Schedule 5.

Article 33 substitutes the definition of the “standard powers in respect of persons liable to pay fines”, with the effect that those standard powers will no longer be applied (with or without modifications) by fines collection regulations. Instead, the standard powers will be those powers that the court would have had if a collection order had not been made, but P had been liable to pay the sum due.

Amendments to the Attachment of Earnings Act 1971

Article 35(a)(ii) removes the power of a magistrates' court to make an attachment of earnings order (“AEO”) under the Attachment of Earnings Act 1971 (the “1971 Act”) to secure the payment of a sum imposed on conviction. It ensures that the only powers and obligations to make AEOs in relation to those sums, are the powers and obligations under Schedule 5 to the Courts Act 2003 (the “2003 Act”).

Articles 35(b), 36 and 38 to 43 ensure that the relevant provisions of the 1971 Act apply to AEOs made by the court, or by the fines officer under Schedule 5 to the 2003 Act.

Article 37(a) disapplies the provisions about applications for AEOs in cases where the AEO is to be made under Schedule 5 to the 2003 Act. Schedule 5 gives powers to, and imposes obligations on, the courts and fines officers to make AEOs of their own motion.

Article 37(b) repeals the powers to make attachment of earnings orders, without the need for an application, in relation to fines and compensation orders. This is because those provisions are superseded by equivalent powers contained in Schedule 5 to the 2003 Act, as amended by this Order.

Article 38(b) and (c) and article 45 together ensure that, where an AEO is made under Schedule 5 to the 2003 Act, the deductions from earnings are calculated and made in accordance with fines collection regulations made under Schedule 5 to the 2003 Act.

Article 44 inserts a definition of “the fines officer” into the 1971 Act.

Amendments to the Magistrates' Courts Act 1980

Article 47 allows the court to issue a warrant of arrest to secure P's attendance before it following his failure to appear in answer to a summons issued by a fines officer by virtue of Schedule 5 to the 2003 Act.

Article 48 allows the fines officer to take proceedings in the High Court or county court (where, for example, a charging order or third party debt order can be made) to recover a sum imposed on conviction. This is one of the “further steps” specified in paragraph 38 of Schedule 5 to the 2003 Act, as amended by this Order.

Articles 49 to 51 ensure that the provisions relating to the transfer of fines, from one area or jurisdiction to another, apply to fines that are being enforced under Schedule 5 of the 2003 Act. It also allows a fines officer to make the relevant order for transfer.

Article 52 ensures that any warrant of distress issued by a court or a fines officer under Schedule 5 to the 2003 Act, can be executed in the same way that a warrant of distress issued by a justice of peace is executed.

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Article 53 inserts definitions of “collection order” and “the fines officer” into the Magistrates' Courts Act 1980.