

COURTS ACT 2003

EXPLANATORY NOTES

COMMENTARY

Provisions relating to criminal procedure and appeals

Section 86: Alteration of place fixed for Crown Court trial

229. This section provides that an application for variation of a place fixed for Crown Court trial no longer needs to be heard by a High Court judge or in open court.

Section 87: Appeals to Court of Appeal: Procedural directions

230. **Section 87** extends the powers of a single judge in the Court of Appeal Criminal Division and the Registrar of the Court of Appeal Criminal Division when making procedural directions that need not bother the full court. It amends sections 31 and 31A of the CAA 1968 by allowing a single judge and the Registrar respectively to make orders under section 23(1)(a) of the CAA 1968. This will allow them to order the production of any document, exhibit or anything else connected with the appeal proceedings which they consider to be necessary for the determination of the case.
231. **Section 87** inserts two new sections into the CAA 1968. This first section, section 31B, further extends the specific powers of both a single judge in the Court of Appeal Criminal Division and the Registrar of Criminal Appeals as detailed in sections 31 and 31A respectively of the CAA 1968, by allowing them a general power to make procedural directions.
232. The second new section, section 31C, allows for (a) the decision of the single judge, upon application by either the appellant or the prosecution to be reviewed by the full appeal court and (b) the decision of the Registrar to be reviewed by a single judge, again upon application.

Section 88: Prosecution Appeals from Court of Appeal

233. **Section 88** makes several small amendments to the Administration of Justice Act 1960 and the CAA 1968 which extend the time within which both the defence and prosecution may make an application for leave to appeal to the House of Lords from 14 days to 28 days.

Section 89: Retirement of Registrar of Criminal Appeals

234. This section brings the retirement age of the Registrar of Criminal Appeals into line with that for other judicial office holders (i.e. a normal compulsory retirement age of 70 for those appointed after the implementation of the JPRA 1993 in March 1995). Currently, by virtue of section 92 (2D) and (2E) of the SCA 1981, the registrar must retire at the age of 62.

Section 90: Appeals to Courts-Martial Appeal Court: procedural directions

235. **Section 90** extends the powers of both a single judge in the Courts-Martial Court of Appeal and the Registrar of the Courts-Martial Appeal Court when making procedural directions that need not bother the full court. It amends sections 36 and 36A of the Courts-Martial (Appeals) Act 1968 (CM(A)A 1968) by allowing a single judge and the Registrar respectively to make orders under section 28(1)(a) of the CM(A)A 1968. This will allow them to order the production of any document, exhibit or anything else connected with the appeal proceedings which they consider to be necessary for the determination of the case.
236. The section also inserts two new sections into the CM(A)A 1968. Firstly, new section 36B further extends the specific powers of (a) a single judge in the Courts-Martial Appeal Court as detailed in section 36 of the CM(A)A 1968 and (b) the registrar as detailed in section 36A, by allowing them to make further binding procedural directions in a wider range of circumstances than at present
237. Secondly, new section 36C allows for (a) the decision of the single judge, upon application by either the accused or the Defence Council to be reviewed by the full appeal court and (b) the decision of the registrar to be reviewed by a single judge, again upon application. This is to maintain consistency with the procedure in the Court of Appeal (section 87).

Section 91: Extension of time for appeals from Courts-Martial Appeal Court

238. **Section 91** makes several small amendments to the Courts-Martial (Appeals) Act 1968 which extend the time within which both the accused and the Defence Council may make an application for leave to appeal to the House of Lords to 28 days. This is to maintain consistency with appeals from the Court of Appeal (section 88).

Fees, costs and fines

Section 92: Fees

239. The Lord Chancellor is provided with a single power, with Treasury consent, to prescribe the fees payable in the Supreme Court, county courts and magistrates' courts. He may set different scales or rates of fees and may provide for exemptions, reductions or remissions of fees. The Lord Chancellor will consult the most senior judiciary in relation to any proposed fees order, as well as the Civil Justice Council for civil proceedings only. The Lord Chancellor is placed under a duty to provide appropriate information on fees to those who might have to pay them. It is intended to use a variety of methods of displaying and disseminating this information. In cases of default, fees in the Supreme Court, county courts and magistrates' courts may be recovered summarily as a civil debt by the court. Unlike fees orders under the current legislation which are simply laid before Parliament, any order made under this section will be subject to the negative resolution procedure. By virtue of subsection (3) the Lord Chancellor must have regard to the principle that access to the courts must not be denied.

Section 93: Award of costs against third parties

240. **Section 93** amends the POA 1985 to provide for magistrates' courts, the Crown Court and the Court of Appeal to have power to order a third party to pay the costs of parties to criminal proceedings that are wasted or incurred as a result of the third party's serious misconduct when the judge thinks it appropriate that the third party should pay the costs.
241. The new section allows for regulations to specify types of misconduct that should not lead to a costs order and ensuring that the court can take account of other costs orders that have been, or will be, made in the case. Regulations may also provide that orders can be made at any time. The third party's conduct, and its effect on the costs in the case, may only come to light after the proceedings have ended. This provision would

enable costs to be ordered against a third party where, for example, a verdict is set aside on later discovery that jurors were intimidated.

242. It is intended that regulations will also provide for a third party to have an opportunity to be heard by the court before it makes an order. Third parties ordered to pay costs by a magistrates' court or the Crown Court will have a right of appeal to a higher court. This mirrors the provisions for appeal against wasted cost orders under section 19A.

Section 94: Award of costs in appeals under Proceeds of Crime Act 2002

243. This section amends the Proceeds of Crime Act making it clear that the criminal division of the Court of Appeal has the power to award costs in appeals relating to the making of a restraint order or the appointment of a receiver. Part 2 of the Proceeds of Crime Act provides a single consolidated scheme in the Crown Court for the confiscation of benefit from all criminal conduct. This includes the power to make a restraint order that freezes assets which might be used to satisfy a confiscation order, and a power to appoint a receiver to manage and realise such assets. It is unclear as a matter of law whether these proceedings are criminal or civil in nature, and on appeal the criminal division of the Court of Appeal can only automatically award costs in criminal cases. This amendment provides explicit provision to ensure costs can be awarded. The power is retrospective to the date of the commencement of the confiscation scheme, 24 March 2003.

Section 95: Fixing of fines: failure to furnish statement of financial circumstances

244. **Section 95** amends section 20A of the Criminal Justice Act 1991 and section 128 of the Powers of Criminal Courts (Sentencing) Act 2000.
245. The amendment to section 20A of the Criminal Justice Act 1991 creates an offence for failing to provide requested financial information
246. Section 128 of the 2000 Act obliges a court, following conviction but before fixing the amount of any fine to be imposed on an individual, to take into account both the financial circumstances of the offender and the seriousness of the offence. Subsection (5) sets out the circumstances under which, if the court considers it has insufficient information to make a proper determination of the financial circumstances of the offender, it may make such determination as it thinks fit.
247. **Section 95** amends section 128(5) so that where an official request has been made for financial information and a defendant has attended court without that information, if he is sentenced to a financial penalty, an inference can be drawn as to his means.
248. "Official request" is defined in s20A of the CJA 1991 as a request which is made by the court for the offender to inform the court, in the event of conviction, of his financial circumstances for the purpose of determining the amount of any fine the court may impose.
249. The intention is to ensure that the onus is on the defendant to provide information about his income and expenditure to the court, on request, before the court considers the case. If he fails to respond to an official request the court will be entitled to make assumptions about his ability to pay and fine accordingly. The provision is aimed at providing an incentive for the offender to co-operate so the court will be able to set any fine at an appropriate level (making it more likely to be paid).

Section 96: Recovery of fines etc by deductions from income support: failure to provide information.

250. **Section 96** amends section 24 of the Criminal Justice Act 1991 to enable a court to require an offender on benefits to provide such information as is necessary to make a DFB application. It amends section 24 of the Act by making it an offence for an offender to fail to provide such information or gives false, recklessly false or knowingly

incomplete information. The sanction for this offence is a Level 2 fine (not exceeding £500).

Section 97: Collection of fines and discharge of fines by unpaid work

251. **Section 97** gives effect to Schedules 5 and 6 which specify the new powers available to the court and to fines officers, created by section 36, to enforce payment of fines. Section 97 also provides the Lord Chancellor with powers to introduce the arrangements for fines collection, and discharge of payment by unpaid work schemes set out in Schedules 5 and 6 as pilot schemes in specified local justice areas. It enables him to introduce a permanent scheme after completion of the pilots. The permanent scheme could be either one of the pilot schemes or a version that has been modified in the light of operational experience.

Schedule 5: Collection of fines

252. This makes provision for payment and enforcement of fines, costs and compensation imposed after criminal proceedings. It provides new powers for fines officers to enable enforcement action to be taken swiftly and without the need for a court hearing in many instances. It also provides additional powers of enforcement to the court.

Part 1: Introductory

253. **Paragraph 1** defines the types of financial penalty to which the Schedule applies. The Schedule applies if the sum a person ('P' - the offender), who is over 18, is liable to pay consists of or includes a fine. 'Fine' does not include pecuniary forfeiture or compensation. If P is not liable to pay a fine no collection order may be made. But if he is liable to pay a fine other sums he is liable to pay, such as compensation, may also be collected under the new regime.
254. **Paragraph 2** defines 'the sum due'. The definition includes compensation and costs. This definition is important in differentiating fines (which may be subject to a discount or increase - see below) from compensation, costs or fixed penalties registered as fines.
255. **Paragraph 3** defines 'existing defaulter'. The effect of paragraph 3 is that P is classed as an existing defaulter if he is currently in default on any fine or similar sum ordered to be paid by the court (whether or not a collection order has been made under this schedule), unless he can show an adequate reason for the default.
256. In the case of fixed penalties registered as fines, there will already have been opportunities for the offender to show he has good reason for being in default. Therefore, once the unpaid penalty has reached the stage of being registered as a fine, no excuses will be accepted and the offender will be classed as an existing defaulter.
257. **Paragraph 3** also defines 'immediately' as meaning, where the offender has been informed of his liability to pay in a notice, that he must pay within 10 working days of the date of the notice.

Part 2: Immediate payment of fines: discounts

258. **Part 2** deals with fines which are paid immediately.
259. **Paragraphs 4 - 6** provide that P is eligible for a discount on the fine if the sum due less the amount of the discount is paid immediately. They empower the Lord Chancellor (not the fines officer) to make regulations setting out the amount of the discount (so the percentage may be changed without requiring further primary legislation). The maximum discount allowed is 50%. The purpose of the discount is to provide an incentive for offenders to pay their fines promptly. The discount does not apply to any compensation or costs element of the sum due.
260. By virtue of paragraph 4, the discount is not available:

- if P is an existing defaulter (unless the court has accepted that there is a good reason for the default and is prepared to allow the discount - such cases are likely to be rare). The underlying philosophy is that the discount should not be available to offenders who are currently in default; or
- if the sum due is a fixed penalty registered as a fine (unpaid fixed penalties are increased prior to registration as a fine). It would be if the offender was able to wipe out the increase in the fixed penalty by promptly paying up once the money owed was registered as a fine.

Part 3: Attachment of Earnings Orders and applications for benefit deductions

261. **Paragraph 7** stipulates that Part 3 of the Schedule applies if the sum due is not paid immediately, i.e. if the court decides that the offender should be allowed time to pay, or if the offender was required to pay immediately but failed to do so.
262. It defines 'the relevant court' as being the court that imposed the liability to pay the sum due, or if the offender was required to pay immediately but failed to do so, the magistrates' court responsible for the enforcement. Fines may be imposed by a magistrates' court or by the Crown Court, but responsibility for enforcement falls solely to the magistrates' courts.
263. **Paragraph 8** applies if the court finds that the offender is an existing defaulter who can show no good reason for being in default. In such cases, and provided it is not impracticable or inappropriate to do so, the court must either:
- immediately make an AOE order if the offender is employed, or
 - immediately apply to the Secretary of State for Work and Pensions for a DFB

If it appears to the court that it would be possible to attach earnings or make a DFB, it must do one or the other, but not both.

264. **Paragraph 9** enables the court to make an AOE or DFB application, with the offender's consent, provided he is not an existing defaulter (if he is an existing defaulter, the attachment is imposed automatically, by virtue of paragraph 8). Under current legislation, while an offender can ask for an AOE to be made, he is unable to volunteer for DFBs.
265. **Paragraph 10** defines 'relevant benefit' as being income support or jobseekers allowance, and ' applications for benefit deductions' as being an application to the Secretary of State for Work and Pensions.

Part 4: Making of collection orders

266. **Paragraph 11** stipulates that Part 4 of the Schedule applies if the court decides either that the offender should be allowed time to pay, or if the offender was required to pay immediately and failed to do so. It also stipulates that Part 4 applies whether or not the court has made an attachment order or applied for DFB under Part 3.
267. **Paragraph 12** provides that the court must make a collection order relating to payment of the sum due, unless it appears to the court that it is impracticable or inappropriate to do so. Once subject to a collection order, the offender can be dealt with using the powers contained in Schedule 5 and the fines collection regulations made under the Schedule.
268. **Paragraph 13** sets out the contents of the collection order. The order must give a breakdown of the sum due; state whether the court has decided that the offender is an existing defaulter; whether an AOE or DFB has been ordered or applied for; identify the fines office which is to be empowered to deal with the case; and contain information about the effect of the order (i.e. the consequences of default).

269. 'Fines officer' is defined as a fines officer or any fines officer working at the fines office specified in the collection order.
270. [Paragraph 14](#) specifies that if the court has not ordered AOE or applied for a DFB under Part 3, the collection order must state payment terms. These are defined as either a term requiring the offender to pay within a specified period, or terms requiring payment by instalments.
271. [Paragraph 15](#) specifies that if the court has ordered AOE or applied for DFB under Part 3, the collection order must state the 'reserve terms'. These are repayment terms with which the offender will be expected to comply if either order should fail. These reserve terms may be varied by the fines officer if the offender's circumstances have changed in the interim. The offender may appeal against the fines officer's decision to vary or not to vary. (Paragraphs 31, 32, 35 and 39 of the Schedule).
272. [Paragraph 16](#) sets out the circumstances under which an AOE order fails. These are:
- if the offender's employer fails to comply with the order; or
 - if the order is discharged at a time when the offender is still liable to pay any part of the sum due.
273. [Paragraph 17](#) sets out the circumstances under which an application for benefit deductions fails. These are:
- if the court withdraws the application;
 - if the Secretary of State for Work and Pensions decides not to make deductions (e.g. if the offender has already reached the limit on deductions from his benefits because of other debts);
 - if an appeal against the decision of the Secretary of State for Work and Pensions to make deductions succeeds; or
 - if the Secretary of State for Work and Pensions ceases to make deductions (e.g. because the offender is already subject to the maximum of three deductions from benefits, including the fine, and a deduction for a higher priority debt displaces the fine).

Part 5: Discount where collection order made

274. [Part 5](#) deals with the prompt payment discount where a collection order is made. [Paragraph 18](#) stipulates that [Part 5](#) applies if a collection order has been made in respect of a sum due, the sum due is not a fixed penalty which has been registered as a fine and the offender is not an existing defaulter. In other words, provided the offender is not an existing defaulter, he is eligible for the prompt payment discount on his fine. But no discount is available for a fixed penalty registered as a fine ([Paragraph 4](#) of the Schedule).
275. By virtue of [Paragraph 19](#), the offender is entitled to a discount on the fine (but not costs or compensation) if the sum due (i.e. all monies owing, including any compensation and costs) is paid without the offender at any time having been in default on the order. If the offender defaults, the discount is lost.
276. The amount of the discount is to be determined (by the Lord Chancellor not the fines officer) in the fines collection regulations, but the discount must not be more than 50% of the fine. The discount is given effect by wiping out the offender's liability to pay the part of the fine that is equal to the amount of the discount. For example, if the offender is ordered to pay a fine of £100 in weekly instalments of £10, and the discount is set at 20%, provided he pays the first £80 in accordance with the terms set, he will not have to pay the final two instalments.

277. [Paragraph 20](#) defines 'in default on a collection order' as being failure by the offender to pay any amount due under the payment terms (or, if they have effect, the reserve terms) on or before the date specified.

Part 6: Variation of collection order containing payment terms

278. [Part 6](#) deals with applications to the fines officer to vary the payment terms set by the court when imposing a collection order. [Paragraph 22](#) stipulates that the offender may apply to the fines officer for a variation in payment terms at any time after the collection order is made and before [Part 7](#) applies, provided he is not in default on the order.

279. The offender may apply for the payment terms to be varied, or volunteer for AOE or DFB. However, such an application may not be made unless:

- there has been a material change in the offender's circumstances since the collection order was made, or since the fines officer last used his powers to vary under this paragraph; or
- if the offender has provided more information about his circumstances (i.e. the information that was not available to the court when the original payment terms were set).

On application, the fines officer may decide whether or not to vary the payment terms in the offender's favour, or decide whether or not to make an AOE or application for DFB.

280. If the fines officer decides to make an AOE or application for DFB, he must also set reserve terms which will apply should the order fail. The reserve terms must be no more onerous than the payment terms originally set by the court.

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

282. [Paragraph 23](#) 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 payment terms (or reserve terms);
- make an AOE or application for DFB benefits; 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, and any power given to the court by virtue of the fines collection regulations made under this Schedule.
- if the court attached earnings or benefits, it must vary the collection order so that it states reserve terms for use should the attachment/deduction fail.

283. [Paragraph 24](#) details the nature of the power to vary the terms of the collection order in the offender's favour. Under this paragraph, the fines or court may:

- require the offender to pay by instalments rather than within a given period; or
- require the offender to pay within a given period, rather than by instalments.

284. If the sum due is to be paid by instalments, the fines officer may vary the number of instalments, the amount of any instalment, and the date on which any instalment should be paid.

285. The paragraph also gives the fines officer the same powers in relation to varying the reserve terms which may be applied should an AOE or DFB fail.

Part 7: Effect of first default on collection order containing payment terms

286. **Part 7** sets out the effect of the first default on a collection order containing payment terms (see Part 4). Paragraph 25 states that Part 7 applies unless one of the following is pending:

- an application by the offender for the fines officer to vary payment terms or attach earnings or benefits;
- an appeal against the fines officer's decision;
- a referral of the case, by the fines officer, to the magistrates' court.

287. **Paragraph 26** stipulates that on first default, and provided it is not impracticable or inappropriate to do so, the fines officer must either:

- make an AOE order if the offender is employed; or
- apply to the Secretary of State for Work and Pensions for deductions to be made from benefit.

If it appears to the fines officer that it would be possible to attach earnings or make a DFB, it must do one or the other(not both).

288. **Paragraph 27** provides for an increase to be imposed on the fine (but not compensation or costs) if:

- the AOE or DFB application made on first default (under paragraph 26) fails; or
- the fines officer does not make an AOE or DFB under paragraph 26.

289. 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.

290. 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).

291. Whether the increase takes effect is then dependent on the behaviour of the offender. If he co-operates and make arrangements leading to full payment of the sum due, without further default, the offender's liability to pay the increase is waived (Paragraph 35(6) and 39(2)).

292. **Paragraph 28** stipulates that if an increase is imposed 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) so that the case can be reviewed.

293. New payment terms, which include the increase, will then be sent 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 complies with these new payment terms. Provided the offender co-operates and makes arrangements leading to full payment of the sum due, without further default, he does not have to pay the increase (see paragraphs 35(6) and 39(2)).

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.
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.

Part 9: Operation of collection orders after increase imposed

303. [Part 9](#) deals with the operation of collection orders after an increase in the fine has been imposed as a result of the offender going into default.
304. [Paragraph 35](#) explains what should happen if the offender contacts the fines officer as required by an increase notice issued under Paragraphs 28 or 34 of the Schedule.
305. The fines officer may decide whether or not to vary the payment terms (or reserve terms) in the offender's favour. The new terms cover the sum due, plus the increase that has been imposed. The fines officer's decision must be in writing, dated and delivered to the offender.
306. The offender has the right to 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.
307. The offender will be warned that the increase will stand and further enforcement steps will be taken unless he sticks to these new terms. Provided the offender co-operates and makes arrangements leading to full payment of the sums due, without further default, he does not have to pay the increase.
308. [Paragraph 36](#) stipulates that following a variation in payment terms (or reserve terms) the offender may at any time apply to the fines officer for a further variation, provided:
- he is not in default on the collection order;
 - he is not subject to a 'further steps' notice under paragraph 37; and
 - there has been a material change in circumstances since the last variation was made; or
 - he has provided more information about his circumstances.
- On application, the fines officer may decide whether or not to vary the payment terms (or reserve terms) in the offender's favour. The fines officer's decision must be in writing, dated and delivered to the offender.
309. The offender has 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.
310. [Paragraph 37](#) sets out what should happen if:
- the offender fails to contact the fines officer as required by an increase notice issued under Paragraph 28 or 34 of the Schedule; or
 - if the offender does contact the fines officer, but the fines officer decides not to vary terms and the offender does not appeal against the decision.
311. The paragraph also applies if, after the increase is imposed and payment terms have been varied to accommodate this, the offender again defaults and provided:
- no appeal is outstanding;
 - no application for a further variation in terms is outstanding; and
 - the fines officer has not referred the case back to the court.
312. Under these circumstances, the fines officer must either refer the case to the magistrates' court, or issue a notice (a 'further steps notice') stating that he intends to take one or more of the enforcement measures set out in Paragraph 38 of the Schedule.

313. The notice must be in writing and dated, and must specify the steps that are to be taken. The offender has 10 working days from the date of the notice in which to lodge an appeal against it to the magistrates' court.
314. [Paragraph 38](#) sets out the range of further steps available against defaulters. These are:
- issuing a distress warrant;
 - registering the sum in the register of judgments set up under the Act (and so potentially affecting the defaulter's credit rating);
 - making an AOE order or DFB application ;
 - making a clamping order (i.e. immobilising a vehicle registered in the offender's name);
 - taking any other step that may be permitted under the fines collection regulations.
315. [Paragraph 39](#) deals with the powers of the magistrates' court after an increase has been imposed, when hearing:
- an appeal against the fines officer's decision about variations following an increase;
 - a referral of the case by the fines officer to the court;
 - an appeal against a further steps notice.

If the court is satisfied that there are exceptional circumstances, and the sum due is paid without the offender again defaulting, it may make an order waiving the increase.

316. The court may also vary or quash any decision made by the fines officer, take any of the further steps listed in paragraph 38 of the Schedule, or discharge the collection order and deal with the case itself using any of 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, and any power given to the court by virtue of the fines collection regulations made under this Schedule.
317. [Paragraph 40](#) stipulates that if the offender does not appeal against a further steps notice, or if his appeal fails, any step specified in the notice may be taken.
318. [Paragraph 41](#) provides the power for the court to order a vehicle that has been clamped and held in accordance with a clamping order to be sold. This gives the court the opportunity to decide whether the sale of the vehicle is proportionate to the amount of the fine outstanding, taking into consideration the history of the case.
319. [Paragraph 42](#) provides that a fines officer may refer a case to the magistrates' court at any time before the fine is paid in full. It enables the court to deal with cases where there may be exceptional or mitigating circumstances, which the fines officer does not have the powers to deal with appropriately. For example, where an offender has no means with which to pay the fine (and where an order making the offender subject to fines payment work under Schedule 6: Discharge of Fines by Unpaid Work may be appropriate), or where an offender is not co-operating with the fines officer. The fines officer may also issue a summons requiring the offender to attend court.

Part 10: Supplementary provisions and interpretation

320. [Paragraph 43](#) defines 'fines collection regulations' as meaning any regulations made by the Lord Chancellor for the purpose of giving effect to the Schedule.
321. [Paragraph 44](#) enables regulations to modify any statute for the purpose of giving effect to the Schedule. The new measures are to be piloted, and therefore enactments for the implementation of the scheme cannot be permanently modified until completion of the pilots. These powers are required so that the court and the fines officer are given

powers enabling the new measures to be tested fully. Once the pilots are finished all amendments to primary legislation will be laid before Parliament by way of affirmative resolution in accordance with section 108.

322. [Paragraph 45](#) will enable provision to be made, by means of the fines collection regulations, for the method of calculating the amounts which are to be deducted from an offender's earnings. The intention is to pilot a fixed table approach to such calculations, similar to that currently in operation for recovering Council Tax from an offender's earning. This approach will greatly simplify the calculation of the amount to be deducted, saving time for both court staff and employers.
323. [Paragraph 46](#) provides that regulations will set out the operational procedures and safeguards applicable to a clamping order being imposed. A clamping order will provide opportunities to pay the fine before the vehicle is sold.
324. [Paragraph 47](#) enables regulations to make provision for cases which are transferred from one area to another where the offender moves to a different address. They will set out a procedure for the information held on a defaulter to be passed to another fines officer in a different area.
325. [Paragraph 48](#) permits a fines officer to request information about an offender's means at any time. This will enable him to make a decision on the approach to take in enforcing the sum. It establishes the offence, punishable by a fine (level 4, up to £2,500) of giving false information to a fines officer or failing to disclose relevant information, similar to an existing offence for providing false information to a court. It also establishes the offence, also punishable by a fine (level 2, up to £500) of failing to provide a statement of his financial circumstances to a fines officer on request (this information will be used to enable an AOE or DFB to be made). The paragraph also specifies the time period within which such proceedings may be taken.
326. [Paragraph 49](#) establishes an offence, punishable by a fine (level 3, up to £1,000) for removal, or attempted removal, of an immobilisation notice or immobilisation device which has been fitted to a vehicle as a further sanction against a fine defaulter.
327. [Paragraph 50](#) defines the courts 'standard powers in respect of persons liable to pay fines' as being any power which a magistrates' court would have had if a collection order had not been made, and any power given to the court by virtue of the fines collection regulations made under this Schedule.
328. [Paragraph 51](#) provides that references to the period during which an appeal is pending include the period within which it may be brought (whether or not an appeal is in fact brought).
329. [Paragraph 52](#) defines '10 working days' as being any period of 10 days excluding weekends and public holidays.
330. [Paragraph 53](#) defines 'the magistrates' court' in relation to a collection order as being any magistrates' court acting in the local justice area in which the court which made the collection order was sitting.

Schedule 6: Discharge of fines by unpaid work

331. This Schedule 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. The court does this by means of making a 'work order'.

Part 1: Introductory

332. [Paragraph 1](#) applies the Schedule to individuals over 18 who are liable to pay a fine or a sum treated for enforcement purposes as a fine, but excluding amounts due as

compensation or costs. It defines terms used subsequently, in particular, 'the prescribed hourly sum', which is the conversion rate from amount owing into hours of work, to be as prescribed by regulations, and 'the relevant court' to be the court imposing the fine or the magistrates' courts enforcing a fine imposed by any court.

333. [Paragraph 2](#) sets out the circumstances in which a 'work order' may be made. A court may make such an order on the application of a fines officer, or may decide to do so itself, where it appears that, from the information before it of the offender's financial circumstances, the normal methods of fine collection are likely to be impracticable or inappropriate. It lists these collection methods as warrants of distress; application for enforcement by the High Court or county court; imposition of a supervision order; AOE; DFB; and a collection order under the Collection of Fines Schedule in this Act. The court must be satisfied that the offender appears suitable to carry out the work. The paragraph also requires that the offender must consent to the making of the order.
334. [Paragraph 3](#) sets out the provisions of a work order. It requires the offender to work for a specified number of hours in accordance with instructions given by a fines officer. The order must state the amount that is to be discharged by work; the fines office to which the order is allocated and the person who is to supervise the actual work being carried out by the offender. This person is called 'the supervisor'. The number of hours to be worked is calculated by dividing the sum owed by the prescribed hourly sum and rounding up to the nearest hour. The order must specify a date by which the number of hours is to be performed.
335. [Paragraph 4](#) requires that the payment of the amount to be discharged through work must not be enforced unless the work order is revoked. It also requires that any existing orders relating to such enforcement must be revoked when a court makes a work order.
336. [Paragraph 5](#) stipulates that no supervisor may be appointed without the offender's consent. It also sets out the duties of a supervisor as being to monitor the offender's compliance with the requirements of the work order and to provide information to the court about that compliance as required.
337. [Paragraph 6](#) states that an offender subject to a work order must work where, when and for the specified number of hours as instructed by the fines officer. The fines officer must ensure that, so far as is practicable, the instructions given should avoid both conflict with the offender's religious beliefs and interference with his work or education. It also provides that if the work is completed before the specified date, the liability to pay the amount due is discharged.
338. [Paragraph 7](#) allows the offender to discharge his liability by paying the sum in respect of which the work was set. He can also reduce the number of hours he has to work by paying part of the sum, in which case fractions of an hour are to be disregarded.
339. [Paragraph 8](#) provides for the order to be revoked or varied at any time on application to the fines officer. If the offender has failed, or is failing to comply but has a reasonable excuse, or a change in circumstances means he is unlikely to be able to comply, the court may revoke the order or may allow more time to do the work. The fines officer is given the power to issue a summons to require the offender to attend court where such an application has been made.
340. [Paragraph 9](#) stipulates that where an order has been revoked and it appears to the court that the offender has performed at least one hour of work, the court must specify, by order, the number of hours that have been worked, rounding down to the nearest hour. The offender's liability to pay is then reduced by the amount corresponding to this number of hours (calculated using the prescribed hourly sum).
341. [Paragraph 10](#) allows the amount outstanding following the revocation of an order, reduced under paragraph 9 if applicable, to be enforced against the offender. When doing so, the court may nevertheless allow time for payment or direct bpayments by instalments.

342. **Paragraph 11** provides that the only way of enforcing the obligations of an offender subject to a work order is under the provisions of paragraph 10.
343. **Paragraph 12** gives a court the power to issue a summons requiring the attendance of the supervisor before it. The power is available where the court is determining whether the offender has performed the work and where it believes that the supervisor will be able to help, but where the supervisor will not attend voluntarily.
344. **Paragraph 13** gives a power to make regulations requiring:
- a work order to contain prescribed information;
 - that copies of the order are given to prescribed persons; and
 - that a court varying or revoking an order gives notice of the revocation or variation to prescribed persons.

Register of judgments etc. and execution of writs

Section 98: Register of Judgments and order etc.

345. A new register is set up by this provision to replace the county court register under sections 73 and 73A of the CCA 1984. The new register expands the scope of the previous register, which was only concerned with county court judgments and orders.
346. The new register is designed to incorporate judgments of the High Court and criminal court fines. This will bring defaults from all the civil and criminal courts under one register. In the case of civil proceedings all judgments and orders will be registered unless an exception applies. In the criminal courts only certain cases, decided on an individual basis, will be registered. The provision allows for the register to be kept in house or contracted out.

Section 99: High Court writs of execution

347. This section will relieve High Sheriffs (being unpaid volunteers, appointed annually) of their legal obligations in connection with the enforcement of High Court judgments. The existing competence and probity of those actively engaged in High Court enforcement, currently in the names of the Sheriffs, will be maintained.
348. The High Court will continue to issue writs of execution - that is, in summary, writs for the enforcement of judgment debts, and writs to enforce judgments for the possession of land. England and Wales will be divided into enforcement districts defined by the Lord Chancellor. There will be a number of individuals authorised as High Court enforcement officers, either by the Lord Chancellor or by someone acting on his behalf. The Lord Chancellor (or his delegate) will assign at least one authorised enforcement officer to every district.
349. The existing jurisdiction of the High Court in relation to writs of execution will not be removed. But these provisions will give the High Court a new, efficient and adaptable tool to enforce its judgments.

Schedule 7: High Court writs of execution

350. **Schedule 7** gives High Court enforcement officers the same obligations and powers that sheriffs have under common law. The Lord Chancellor or his delegate must approve arrangements for the allocation of a writ where more than one enforcement officer could be obliged to execute it. In practice, those arrangements are likely to be based closely on the existing administrative arrangements under which writs directed to sheriffs can be delivered to a single address in central London from which they are distributed. The constable's duty to assist an enforcement officer, adopts and brings up to date the comparable provision that applies to sheriffs under section 8 of the Sheriffs Act 1887.

351. Paragraphs 6 to 11 make the same provision, with the amendments needed to include enforcement officers, as sections 138, 138A and 138B of the SCA 1981, which the Act will omit. The Act will, by consequential amendments under Schedule 8, make it a criminal offence to obstruct a High Court enforcement officer who is executing a writ.

Damages

Section 100: Periodical payments

352. Section 100 replaces section 2 of the Damages Act 1996 with new sections 2, 2A and 2B for England, Wales and Northern Ireland and makes consequential amendments to section 329AA of the Income and Corporation Taxes Act 1988 (ICTA 1988) for the whole of the United Kingdom.
353. The new section 2 gives courts the power to order, without the consent of the parties, that damages for future pecuniary loss (i.e. loss of future earnings and care costs) in personal injury cases are wholly or partly to take the form of periodical payments, and requires the court to consider in all cases whether periodical payments are appropriate. The power to make an order without the consent of the parties only relates to awards in respect of future pecuniary loss, and the new section preserves the current position in respect of other damages (i.e. non-pecuniary loss and past financial loss) by allowing the court to order periodical payments where the parties consent. The court must be satisfied that the continuity of the payments is reasonably secure before it makes a periodical payments order. The continuity of payments is deemed to be reasonably secure if it is protected by the Financial Services Compensation Scheme or a Ministerial Guarantee given under section 6 of the 1996 Act or where the source of the payments is a government or health service body (new section 2A enables the Lord Chancellor to specify in an order the bodies that will constitute “government and health service bodies” for this purpose). The court must also be satisfied as to the security of any subsequent changes to the way in which payments are funded, unless the new method is protected in one of the above ways.
354. To ensure that the real value of periodical payments is preserved over the whole period for which they are payable, new section 2 provides that periodical payments orders will be treated as linking the payments to the Retail Prices Index (RPI). The timing and manner of adjustments to take account of inflation will be determined by, or in accordance with, Civil Procedure Rules. It is expected that, as now, periodical payments will be linked to RPI in the great majority of cases. However subsection (9) preserves the court’s power to make different provision where circumstances make it appropriate.
355. To avoid the possibility of claimants receiving less than the true value of the award as a result of their assigning their right to receive the payments in return for a lump sum, section 2 also prevents the assignment of the right to receive periodical payments unless the court is satisfied that there are special circumstances that make it necessary. This does not affect the claimant’s ability to borrow against their future income. Unsecured loans will thus be allowed, but not secured loans that put the claimant’s right to receive payments at risk.
356. The new section 2A enables Civil Procedure Rules to specify matters which the court is required to take into account when considering whether to order a periodical payment or approve an assignment, and when considering the security of the payment. These could for example specify factors which might make a periodical payments order less, or more, appropriate than a lump sum order, such as the life expectancy of the claimant (where a short life expectancy might make a lump sum preferable but periodical payments might be more suitable for a longer life expectancy) and where there has been significant contributory negligence (which may mean that periodical payments would not be adequate to support the care required).
357. The new section 2B gives the Lord Chancellor an order-making power to enable the court to vary periodical payments under specified circumstances. A range of provisions

which may be contained in such an order are set out in subsection (3). An order made under this power is subject to prior consultation by the Lord Chancellor and the affirmative resolution procedure. Following the recent consultation it is intended that the first order will enable variation of periodical payments orders only where there is a significant medical deterioration or improvement in the claimant's condition which can be foreseen at the time of the original order and where the court provides for the possibility of variation in that order. Because of the potential overlap with the current system of provisional and further damages, the section allows an order made by the Lord Chancellor to apply or vary the enactments governing these areas.

358. The section also makes a number of consequential amendments to section 329AA of the ICTA 1988 to reflect the new provisions and ensure that all periodical payments made in respect of personal injury (including those made by the Motor Insurers' Bureau under the Untraced Drivers Agreement and the Uninsured Drivers Agreement) are exempt for income tax purposes however funded.

Section 101: Periodical payments: security

359. **Section 101** replaces sections 4 and 5 of the Damages Act 1996 with a new section 4. The purpose of this amendment is to ensure that protection under the Financial Services Compensation Scheme (FSCS) can apply to a wider range of options for funding periodical payments. It replaces the term "structured settlement" which is no longer apt given the court's power to order periodical payments. The section also makes provision for the treatment of periodical payments in the event of the recipient's bankruptcy.
360. At present, private sector defendants and insurers generally provide periodical payments under a "structured settlement", that is by the purchase of an annuity for the claimant. This is because payments under an annuity are secured against the failure of the Life Office under the statutory protection provided by the FSCS (the scheme created under section 213 of the Financial Services and Markets Act 2000).
361. The FSCS currently provides protection in respect of 90% of the payments due under an annuity. Sections 4 and 5 of the DA 1996 override this limitation for annuities bought pursuant to a "structured settlement". In other words, periodical payments for personal injury damages can be 100% protected under the FSCS by this route.
362. Subsections (1) and (2) of the new section 4 have the same effect. They apply where a claimant has a right to receive periodical payments of damages for personal injury, and that right is protected under the FSCS – in other words the claimant is the beneficial owner of an annuity (whether purchased by the defendant, the defendant's insurer or the Motor Insurers' Bureau).
363. In future, periodical payments may be ordered rather than agreed. It is intended that defendants and their insurers should be entitled to fund these payments in whatever way they choose, provided the continuity of payment is adequately secure. Protection under the FSCS will be deemed to constitute adequate security. There are a number of options that may be relevant. For example, a general insurer may prefer to fund the payments directly rather than purchase an annuity, perhaps purchasing an annuity at a later date when annuity rates are more favourable. Or the insurer may wish to purchase an annuity in its own name, and then undertake to pass the periodical payments to the claimant. This may be attractive, for example, where there is a possibility of the payments being reduced on appeal or variation.
364. At present, the FSCS would not operate effectively to protect the claimant's right to continue to receive the payments in the event of the failure of the underlying insurer. In the example of self-funding by the defendant's insurer, the defendant rather than the claimant would be the policy-holder, and it would be for him to pursue any claim under the FSCS. But if the defendant was a large firm, it would not be eligible to claim under the FSCS. And unless the general insurance policy in question was one of compulsory

insurance (motor or employer's liability), the scheme would only protect 90% of the payments due. Similar issues arise where the insurer owns the annuity that is funding the periodical payments.

365. Subsections (3) and (4) of the new section 4 provide for recipients of periodical payments to have a direct claim under the FSCS, and for that claim to cover 100% of the payments, when any arrangement is put in place to fund periodical payments that attracts the protection of the FSCS – that is where it is underpinned by an annuity or a relevant general insurance contract (certain categories of general insurance are not protected by the FSCS). In these circumstances, subsection (4) gives the claimant a direct claim under the FSCS in respect of the full amount of the periodical payments, and extinguishes any other potential claim. It provides that the claimant shall be deemed to be protected by an arrangement of the same kind as the one that is actually in place, that is by an annuity or a relevant general insurance contract. (It is not intended to suggest that the claimant is deemed to have the same class of general insurance as that underpinning the actual arrangement – this would not make sense for example in the case of third party liability insurance.)
366. The new approach makes it unnecessary to replicate the other provisions contained in the current section 5 of the 1996 Act in order to retain their effect (for example the fact that enhanced protection for the claimant no longer turns on his being an annuitant means that the express provisions in section 5(5) for payments to be received and held on trust on behalf of an annuitant will no longer be necessary). The courts will retain full discretion to specify the period for and intervals at which the payments are to continue, to provide for specified future increases or adjustments (e.g. an increase when the claimant turns 18).
367. [Section 101\(2\)](#) and (3) makes consequential amendments to section 6(1) of, and the Schedule to, the DA 1996 to reflect the terms of the new section 2 (as inserted by Section 100).
368. [Section 101\(4\)](#) and (5) protect the continuity of periodical payments in respect of future loss in the event of the recipient's bankruptcy. The effect of the provisions is that on bankruptcy, periodical payments do not automatically form part of the bankrupt's estate. They can only be claimed for the estate for the duration of the bankruptcy by way of an Income Payments Order, under section 310 of the Insolvency Act 1986. In order to fully protect any care cost element to the payments, the new section prevents an Income Payments Order being made in respect of any part of the payments identified as relating to expenditure likely to be incurred as a result of the injury.
369. Subsections (1) to (3) of section 101 will apply to the whole of the UK, although some of the funding arrangements envisaged are unlikely to be relevant in Scotland where the courts will not have the power to order periodical payments (subject to any future legislation which may be passed by the Scottish Parliament). Subsections (4) and (5) of the section apply to England, Wales and Northern Ireland only.

Provisions relating to Northern Ireland

Section 102: Power to alter judicial titles: Northern Ireland

370. This section provides the Lord Chancellor with a power to amend the judicial titles listed (the list encompasses all of the judicial titles in the Supreme Court and county courts in Northern Ireland) in the future should the need arise. Some titles may need modernisation, to make them more helpfully explanatory to court users. The acceptance commanded by titles containing a presumption of male gender might also change. Such orders may only be made following consultation with the Lord Chief Justice of Northern Ireland. Section 64 makes similar provision for England and Wales.

Section 103: Official Solicitor of Northern Ireland

371. This section removes the post of Official Solicitor to the Supreme Court in Northern Ireland from the list of statutory offices in Schedule 3 to the Judicature (Northern Ireland) Act 1978 as all the other statutory officers exercise judicial functions. This section specifies the amendments to section 75 of the J(NI)A 1978 that relate to the position and further to this, now allows barristers as well as solicitors to be appointed as the Official Solicitor of Northern Ireland.

Section 104: Alteration of place fixed for Crown Court trial: Northern Ireland

372. This section amends the J(NI)A 1978 to provide that an application for variation of the place fixed for Crown Court trial no longer needs to be heard in open court.

Section 105: Extension of time for criminal appeals to House of Lords: Northern Ireland

373. [Section 105](#) amends the J(NI)A 1978 and the Criminal Appeal (Northern Ireland) Act 1980 to extend, from 14 days to 28 days, the time within which applications may be made for leave to appeal to the House of Lords.

Section 106: Fees: Northern Ireland

374. This section provides for the insertion of a new subsection (1A) into section 116 of the J(NI)A 1978. Section 116(1) of the 1978 Act provides for the Lord Chancellor, after consultation with the Lord Chief Justice and the Treasury, to fix the fees to be taken in the Northern Ireland courts and the Enforcement of Judgments Office.
375. The effect of the new subsection will be to allow any order fixing fees to provide for the exemption from, or full or partial remission of, those fees.

Part 9: Final Provisions

Summary

376. [Part 9](#) contains minor definitions and qualifications referred to in the Act, and states the parliamentary scrutiny to be employed for sections allowing the Lord Chancellor to make rules, regulations and orders. This part also provides for the enactment of the transitional and saving, consequential and repeal Schedules of the Act and states that provisions in the Courts Act extend only to England and Wales, subject to a few exceptions. Part 9 allows the Lord Chancellor to make transitional and consequential provisions by order and also contains the short title of the Act.