

2004 No. 176

MAGISTRATES' COURTS, ENGLAND AND WALES

The Fines Collection Regulations 2004

Made - - - - - 27th January 2004

Laid before Parliament 30th January 2004

Coming into force in accordance with regulation 1(2)

The Lord Chancellor, in exercise of the powers conferred on him by sections 97(1), 108(6) and 109(2) of, and paragraph 15 of Schedule 9 and paragraphs 27(4), 33(3), 38(1)(e) and (2)(b), 41, 42(3), 43, 44, 45, 46, 47 and 50 of Schedule 5 to, the Courts Act 2003(a), hereby makes the following Regulations:

Part I—Introduction

Citation, commencement, duration, application and interpretation

- 1.—(1) These Regulations may be cited as the Fines Collection Regulations 2004.
- (2) This Part of these Regulations shall come into force on 23rd February 2004, Parts II and III of these Regulations shall come into force—
 - (a) on 23rd February 2004 in respect of the petty sessions areas specified in columns 1 and 3 of Part I of the Schedule to the Order;
 - (b) on 29th March 2004 in respect of the petty sessions areas specified in columns 1 and 3 of Part II of the Schedule to the Order; and
 - (c) on 5th April 2004 in respect of all other petty sessions areas in England and Wales, and Part IV of these Regulations shall come into force on 29th March 2004.
- (3) These Regulations shall cease to have effect on 31st March 2005.
- (4) These Regulations apply to petty sessions areas in England and Wales to which the provisions of Schedule 5 have effect in accordance with the Collection of Fines (Pilot Schemes) Order 2004(b).
- (5) In these Regulations—
 - “the Act” means the Courts Act 2003(c);
 - “approved clamping organisation” means an organisation approved by the Lord Chancellor, the members of which undertake clamping operations;
 - “charges due” means the charges referred to in regulation 18(2)(b) payable by P at the time in question;
 - “clamp” means an immobilisation device and related expressions shall be construed accordingly;

(a) 2003 c. 39. Paragraphs 42(3) and 47 of Schedule 5 are modified by the Collection of Fines (Pilot Schemes) Order 2004 (S.I. 2004/175).
(b) S.I. 2004/175.
(c) Schedule 5 to the Courts Act 2003 is modified by the Collection of Fines (Pilot Schemes) Order 2004 (S.I. 2004/175).

“clamping contractor” means a person authorised to undertake the clamping, removal and storage of vehicles by and in accordance with a contract (a “clamping contract”) with the Lord Chancellor or the justices’ chief executive for a court, “the contractor” means the clamping contractor and “the contract” means the clamping contract;

“clamping notice” means an immobilisation notice;

“fine” means a sum adjudged to be paid mentioned in paragraph 1(1) of Schedule 5 and includes any increase, compensation and costs;

“the Order” means the Collection of Fines (Pilot Schemes) Order 2004;

“Schedule 5” means Schedule 5 to the Act;

“vehicle” means a motor vehicle; and

“working day” means a day other than a Saturday or Sunday which is not a bank or other public holiday,

and, save where the context requires otherwise, a reference to clamping or storage includes release from clamping or, as the case may be, release from storage.

(6) In these Regulations a reference to a numbered regulation is a reference to the regulation so numbered in these Regulations.

Part II—Application of Enactments with Modifications

Purpose of the application of enactments

2. The application of enactments with modifications in this Part is for the purpose of giving effect to Schedule 5 and section 97 of the Act so far as it relates to that Schedule.

Transitional provision

3.—(1) In the case of an attachment of earnings order or an application for benefit deductions made in a petty sessions area before the date of coming into force of this Part of these Regulations in respect of that area, the enactments modified by these Regulations shall continue to apply in respect of any such order or application as if this Part of these Regulations had not come into force.

(2) In the case of an attachment of earnings order or application for benefit deductions made in a petty sessions area on or after the date of coming into force of this Part of these Regulations in respect of that area and before these Regulations cease to have effect, the enactments modified by these Regulations shall continue to apply in respect of any such order or application as if these Regulations had not ceased to have effect.

Application with modifications of the Attachment of Earnings Act 1971

4. In the case of a person aged 18 or over liable to pay a sum to which Schedule 5 applies, the Attachment of Earnings Act 1971(a) applies to attachment of earnings orders made under Schedule 5 as it applies to such orders made under that Act but with the following modifications—

(a) delete section 1(3)(b);

(b) in section 1(4) insert at the end “or by a fines officer under Schedule 5 to the Courts Act 2003”;

(c) delete section 3(3B);

(d) in section 6(1) after the first and second references to “the court” and in sections 7, 9(1) and (4) and 12(2) after the references to “the court” insert “or, as the case may be, the fines officer”;

(e) delete section 6(5) and for Part I of Schedule 3 substitute the following Part I—

(a) 1971 c. 32. Section 3(3B) was inserted by section 53 of the Criminal Procedure and Investigations Act 1996 (c. 25) and section 6(7)(c) is amended by section 90(1) of, and paragraphs 64 and 66 of Schedule 13 to, the Access to Justice Act 1999 (c. 22).

“PART I

TABLES OF PERIODICAL DEDUCTIONS FROM EARNINGS

TABLE A

DEDUCTIONS FROM WEEKLY EARNINGS

<i>(1) Net earnings</i>	<i>(2) Percentage deductions rate</i>
Not exceeding £55	0
Exceeding £55 but not exceeding £100	3
Exceeding £100 but not exceeding £135	5
Exceeding £135 but not exceeding £165	7
Exceeding £165 but not exceeding £260	12
Exceeding £260 but not exceeding £370	17
Exceeding £370	17 in respect of the first £370 and 50 in respect of the remainder

TABLE B

DEDUCTIONS FROM MONTHLY EARNINGS

<i>(1) Net earnings</i>	<i>(2) Percentage deductions rate</i>
Not exceeding £220	0
Exceeding £220 but not exceeding £400	3
Exceeding £400 but not exceeding £540	5
Exceeding £540 but not exceeding £660	7
Exceeding £660 but not exceeding £1,040	12
Exceeding £1,040 but not exceeding £1,480	17
Exceeding £1,480	17 in respect of the first £1,480 and 50 in respect of the remainder

TABLE C

DEDUCTIONS FROM DAILY EARNINGS

<i>(1) Net earnings</i>	<i>(2) Percentage deductions rate</i>
Not exceeding £8	0
Exceeding £8 but not exceeding £15	3
Exceeding £15 but not exceeding £20	5
Exceeding £20 but not exceeding £24	7
Exceeding £24 but not exceeding £38	12
Exceeding £38 but not exceeding £53	17
Exceeding £53	17 in respect of the first £53 and 50 in respect of the remainder”;

- (f) in section 6(7)(c) after “in the case of an order made by a magistrates’ court,” insert “a fines officer of that court or”;
 - (g) in section 8(5) for “section 1(3)(b) and (c) of this Act” substitute “paragraph 1 of Schedule 5 to the Courts Act 2003 or section 1(3)(c) of this Act”;
 - (h) rules of court under section 9(3)(b) shall not apply to attachment of earnings orders under Schedule 5 to the Courts Act 2003;
 - (i) in section 14—
 - (i) after any reference to “a court” insert “or, as the case may be, a fines officer” and after any reference to “the court” insert “or, as the case may be, the fines officer”;
 - (ii) in subsections (1) for “it” substitute “the court or, as the case may be, the fines officer” and in subsection (2)(b) after “it” insert “or, as the case may be, him”;
- and

- (iii) delete subsection (3);
- (j) rules of court having effect under the words from “and of any other prescribed matters” to the end of section 14(4) shall not apply;
- (k) in section 15, in paragraph (a) after the reference to “the court” insert “or, as the case may be, the fines officer” and in paragraph (c) after the reference to “what court” insert “or, as the case may be, which fines officer” and after the reference to “that court” insert “or, as the case may be, that fines officer”;
- (l) in section 17(1) after “under those sections” insert “or under Schedule 5 of the Courts Act 2003” and at the end insert “or in paragraph 1 of that Schedule”; and
- (m) in section 25 after subsection (1) insert the following subsection—
 - “(1A) In this Act “fines officer” has the meaning given—
 - (a) in respect of cases subject to the national pilot scheme under article 2 of the Collection of Fines (Pilot Schemes) Order 2004, by paragraph 26(4) of Schedule 5 to the Courts Act 2003 as modified by that Order, and
 - (b) in respect of cases subject to a local pilot scheme under article 3 of that Order, by paragraph 13(2) of that Schedule.”.

Application with modifications of the Fines (Deductions from Income Support) Regulations 1992

5. In the case of a person aged 18 or over liable to pay a sum to which Schedule 5 applies, the Fines (Deductions from Income Support) Regulations 1992^(a) apply to applications for benefit deductions made under Schedule 5 as they apply to such applications made under those Regulations but with the following modifications—

- (a) in regulation 1 after paragraph (2) insert the following paragraph—
 - “(2A) In these Regulations “fines officer” has the meaning given—
 - (a) in respect of cases subject to the national pilot scheme under article 2 of the Collection of Fines (Pilot Schemes) Order 2004, by paragraph 26(4) of Schedule 5 to the Courts Act 2003 as modified by that Order, and
 - (b) in respect of cases subject to a local pilot scheme under article 3 of that Order, by paragraph 13(2) of that Schedule.”;
- (b) delete regulation 2;
- (c) in regulation 3, for paragraph (1)(g) substitute—
 - “(1)(g) that, in the case of an application by the court, the offender is an existing defaulter and his existing default (or defaults) cannot be disregarded, that the offender has consented to the making of the application or that, in the case of an application by a fines officer, the offender is in default on a collection order or any other order of the court allowing time for payment.”;
- (d) delete regulation 7(2)(c); and
- (e) in regulations 3(2) and (3), 4, 7(4)(c), (6) and (7) and 8 after any reference to “a court” insert “or, as the case may be, a fines officer” and after any reference to “the court” insert “or, as the case may be, the fines officer”.

Application with modifications of the Magistrates’ Courts Act 1980

6. In the case of a person aged 18 or over liable to pay a sum to which Schedule 5 applies, the provisions of the Magistrates’ Courts Act 1980^(b) specified below apply with the following modifications—

- (a) section 89 (transfer of fine order)—
 - (i) with the substitution for subsection (2) of the following subsection—
 - “(2) As from the date on which a transfer of fine order is made with respect to any sum—
 - (a) where the transfer is from a court in a non local pilot petty sessions area to a non local pilot petty sessions area or from a court in a local pilot petty sessions area to a local pilot petty sessions area, all functions under this Part

^(a) S.I. 1992/2182. The relevant amending instruments are S.I.s 1999/3178 and 2003/1360.

^(b) 1980 c. 43. Sections 89, 90 and 91 are amended by section 90(1) of, and paragraphs 95, 107, 108 and 109 of Schedule 13 to, the Access to Justice Act 1999 (c. 22).

of this Act or, as the case may be, Schedule 5 to the Courts Act 2003 relating to that sum which, if no such order had been made, would have been exercisable by the court which made the order or the justices' chief executive for, or, as the case may be, a fines officer of, that court, shall be exercisable by a court acting for the petty sessions area to which the fine is transferred or the justices' chief executive for, or, as the case may be, a fines officer of, that court, and not otherwise;

(b) where the transfer is from a court in a local pilot petty sessions area to a non local pilot petty sessions area and the person liable to pay the fine is not subject to a collection order, all functions under this Part of this Act relating to that sum which, if no transfer of fine order had been made, would have been exercisable by the court which made the transfer of fine order, or the justices' chief executive for that court, shall be exercisable by a court acting for the petty sessions area to which the fine is transferred, or the justices' chief executive for that court, and not otherwise, and where the person liable to pay the fine is subject to a collection order, subject to the exercise of those functions—

(i) the payment terms or reserve terms under the collection order, but not the collection order, shall, continue to have effect;

(ii) any attachment of earnings order or application for benefit deductions made shall continue to have effect; and

(iii) any increase imposed on the fine shall continue to have effect as if it were part of the fine; and

(c) where the transfer is from a court in a non local pilot petty sessions area to a local pilot petty sessions area all functions under this Part of this Act relating to that sum which, if no such order had been made, would have been exercisable by the court which made the order, or the justices' chief executive for that court, shall be exercisable by a court acting for the petty sessions area to which the fine is transferred, or the justices' chief executive for that court, and not otherwise, but subject to the modifications made by the Fines Collection Regulations 2004, and the court may, if the case comes before it, make a collection order under paragraph 12 of Schedule 5 to the Courts Act 2003 relating to the payment of the sum due, and that Schedule (as modified by the Collection of Fines (Pilot Schemes) Order 2004) and those Regulations shall have effect in relation to the sum due.”; and

(ii) with the insertion of the following subsection at the end—

“(5) In subsection (2) above—

“local pilot petty sessions area” means a petty sessions area specified in column 1 of Parts I and II of the Schedule to the Collection of Fines (Pilot Schemes) Order 2004 and “non local pilot petty sessions area” means a petty sessions area in England and Wales other than one so specified.”;

(b) section 90 (transfer of fines to Scotland or Northern Ireland)—

(i) with the substitution for subsection (3) of the following subsection—

“(3) Where an order is made under this section with respect to any sum, any functions—

(a) under this Part of this Act or under this Part of this Act as modified by the Fines Collection Regulations 2004, or

(b) under Schedule 5 to the Courts Act 2003, as modified by the Collection of Fines (Pilot Schemes) Order 2004,

relating to that sum, which, if no such order had been made, would have been exercisable by the court which made the order, by the justices' chief executive for that court or, as the case may be, a fines officer of that court, shall cease to be so exercisable.”; and

(ii) with the insertion in subsection (3A) after “court” of “or the fines officer” and after “court’s” of “or the fines officer’s”;

(c) section 91 (transfer of fines from Scotland or Northern Ireland)—

(i) with the insertion in subsection (1) after “and the justices' chief executive for that court” of “or, as the case may be, a fines officer of that court” and after “under

- this Part of this Act” of “or under this Part of this Act as modified by the Fines Collection Regulations 2004, and under Schedule 5 to the Courts Act 2003 as modified by the Collection of Fines (Pilot Schemes) Order 2004”; and
- (ii) with the insertion in subsection (3) after “under this Part of this Act” of “or under this Part of this Act as modified by the Fines Collection Regulations 2004 and under Schedule 5 to the Courts Act 2003 as modified by the Collection of Fines (Pilot Schemes) Order 2004”; and
- (d) section 150 (interpretation of other terms) with the insertion in subsection (1), after the definition of “fine” of the following definition—
- ““fines officer” in sections 89, 90 and 91 has the meaning given—
- (a) in respect of cases subject to the national pilot scheme under article 2 of the Collection of Fines (Pilot Schemes) Order 2004, by paragraph 26(4) of Schedule 5 to the Courts Act 2003 as modified by that Order, and
- (b) in respect of cases subject to a local pilot scheme under article 3 of that order, by paragraph 13(2) of that Schedule.”
- and the addition at the end of—
- “and in sections 89, 90 and 91 expressions used which are also used in Schedule 5 to the Courts Act 2003 have the same meaning as in that Schedule”.

Part III—Implementing Provisions

Increase in fine

7. The increase in the fine under paragraph 27 (increase in fine) or 33 (increase in fine on first default) of Schedule 5 shall—
- (a) in the case of the petty sessions areas specified in column 1 of paragraph 4 in Part II of the Schedule to the Order, be 50% of the fine; and
- (b) in the case of the petty sessions areas specified in column 1 of paragraph 1 in Part I and in column 1 of paragraphs 3 and 6 in Part II of that Schedule, be 25% of the fine.

Delivery of increase notice or further steps notice

8. An increase notice under paragraph 28 or a further steps notice under paragraph 37 of Schedule 5 may be delivered by hand or by being sent by post to P’s last known address.

Another step available against defaulters

- 9.—(1) For the purposes of paragraph 38(1)(e) of Schedule 5, another step which may be taken under that Schedule is the exercise of the enforcement powers of section 87 (enforcement of payment of fines by High Court or county court) of the Magistrates’ Courts Act 1980(a) as modified for those purposes by paragraph (2) below.
- (2) The modifications of section 87 of the 1980 Act referred to in paragraph (1) above are—
- (a) in paragraph (1) after “the justices’ chief executive for the magistrates’ court” insert “or the fines officer of that court”;
- (b) in paragraph (3) after “the justices’ chief executive” insert “or, as the case may be, the fines officer” and delete “under section 82 above”; and
- (c) in paragraph (4) after “a justices’ chief executive” insert “or, as the case may be, a fines officer”.

Execution of warrant of distress

10. A warrant of distress issued by the court or by a fines officer under Schedule 5 shall be executed as if it were a warrant of distress issued by a justice of the peace and sections 78 and 125 to 126 of the Magistrates’ Courts Act 1980 shall apply accordingly.

(a) 1980 c. 43. Section 87A is inserted by section 62(1) of the Criminal Justice Act 1988 (c. 33) and sections 125A, 125B, 125C and 125D are inserted respectively by sections 92, 93(2), 94 and 96 (as amended by the Powers of the Criminal Courts (Sentencing) Act 2000, section 165(1) and paragraph 204 of Schedule 9) of the Access to Justice Act 1999 (c. 22).

Summons for ensuring attendance of P before the court

11. A fines officer may for the purpose of ensuring that P attends a magistrates' court to which he has referred P's case under paragraph 35, 37 or 42 of Schedule 5, issue a summons requiring P to appear before the court at the time and place appointed in the summons.

Standard powers of the court

12. Any power that a magistrates' court would have had if P had not been subject to a collection order but had been liable to pay the sum due applies for the purposes of Schedule 5, that is where a case is referred to the court by the fines officer, or on an appeal to the court, under that Schedule, subject—

- (a) in the case of the Attachment of Earnings Act 1971, to the modifications in regulation 4(e); and
- (b) in the case of the Magistrates' Courts Act 1980, to the modifications in regulation 6 and to the following modifications—
 - (i) in section 83 (process for securing attendance of offender for the purposes of section 82), in subsection (2), after "a summons under this section" insert "or under regulation 11 of the Fines Collection Regulations 2004";
 - (ii) in section 87A (fines imposed on companies), in subsection (1)(b), after "under section 76(1) above" insert "or the court or a fines officer has issued a warrant of distress under Schedule 5 to the Courts Act 2003".

Part IV—Clamping of Motor Vehicles

Requirements with respect to the making of a clamping order

13. Before a clamping order is made by the court under paragraph 39(3)(b), or by the fines officer under paragraph 40, of Schedule 5 the court or, as the case may be, the fines officer must be satisfied—

- (a) that P has the means to pay the fine; and
- (b) that the value of the vehicle or vehicles to be clamped, if sold, would be likely to exceed the amount of the fine, the amount of the likely charges due and the likely costs of sale.

Matters to be included in a clamping order

14. A clamping order must specify—

- (a) P's full name, address and date of birth,
- (b) details—
 - (i) of P's conviction (including date and nature) for which the fine was imposed,
 - (ii) of the fine imposed and
 - (iii) of the collection order,
- (c) details (including date) of the increase notice,
- (d) details (including date) of the further steps notice, if any,
- (e) details of the vehicle or vehicles to be clamped,
- (f) the date on or after which the order must be executed if the fine is not paid,
- (g) the name, official address and telephone number of the fines officer and the court, and
- (h) how the fine may be paid.

Procedure on making a clamping order

15.—(1) On the making of a clamping order by the court or the fines officer, the fines officer must send a copy of the order to a clamping contractor who, if the fine is not paid, must execute the order in accordance with these Regulations on or after the date specified in the order.

(2) The copy of the clamping order sent to the clamping contractor must be accompanied by details of P's last known address, the vehicle or vehicles to be clamped and, if known, the likely whereabouts of the vehicle or vehicles to be clamped.

Places where vehicles may be clamped

16. Vehicles may be clamped at any place (including on any highway or road) to which the public has access or on any private land to which access may be had at the time of clamping without opening or removing any door, gate or other barrier, and authorised persons and other employees of the contractor may enter such private land with their equipment and with or without a vehicle or vehicles for the purpose of clamping a vehicle on the land, releasing it from clamping or removing it to secure storage.

Defect in clamping order or irregularity in its execution

17.—(1) A clamping order made for the purpose of enforcing payment of a fine shall not be held void by reason of any defect in the order.

(2) A person acting in the execution of a clamping order shall not be deemed to be a trespasser from the beginning by reason only of any irregularity in the execution of the order.

(3) Nothing in this regulation shall prejudice the claim of any person for special damages in respect of any loss caused by a defect in the order or irregularity in its execution.

Matters to be included in a clamping contract

18.—(1) A clamping contract must authorise the contractor to undertake—

- (a) the clamping of vehicles in accordance with clamping orders and the fitting of clamping notices on vehicles which have been clamped;
- (b) the removal of such vehicles to secure storage after the period specified in regulation 22(1) has expired;
- (c) subject to the conditions specified in regulation 21, the release of such vehicles from clamping or storage; and
- (d) the sale or other disposal of vehicles which have not been released from clamping or storage pursuant to an order of the court under paragraph 41 of Schedule 5, made after the expiry of the period of three months from the date of clamping.

(2) A clamping contract must specify—

- (a) any contractual charges payable to the contractor;
- (b) the charges to be retained by the contractor payable by P in addition to the fine—
 - (i) when payment is made to an authorised person so that the vehicle is not clamped;
 - (ii) as a condition of the release of the vehicle from clamping; and
 - (iii) as a condition of the release of the vehicle from storage,within the range approved by the Lord Chancellor for such charges.

(3) The charges mentioned in paragraph (2)(b) above must be inclusive of value added tax and together with the fine represent the total amount that P may be required to pay. There must be no surcharge for payment by debit or credit card.

(4) In the case of the charge mentioned in paragraph (2)(b)(iii) above the contract must specify the daily or weekly rate of charge.

(5) A clamping contract must specify the descriptions of vehicles which may not be clamped in accordance with regulation 19(1).

(6) A clamping contract must require the contractor to authorise persons in his employment (the “authorised persons”) to carry out, or direct and supervise, the clamping, release from clamping, removal and release from storage, of vehicles on behalf of the contractor.

(7) A clamping contract must specify the functions of the clamping contractor and of the authorised persons and other members of the contractor’s staff under these Regulations.

(8) A clamping contract must specify the grounds for termination of the contract including the contractor ceasing to be a member of an approved clamping organisation.

Duties of an authorised person and other members of the contractor's staff

19.—(1) An authorised person must not carry out, or direct and supervise, the clamping of—

- (a) a vehicle not registered in P's name under the Vehicle Excise and Registration Act 1994^(a);
- (b) a vehicle on which a current disabled person's badge is displayed or in relation to which there are reasonable grounds for believing that it is used for the carriage of a disabled person;
- (c) a vehicle used for police, fire or ambulance purposes;
- (d) a vehicle being used by a doctor on call away from his usual place of work on which is displayed a British Medical Association badge or other health emergency badge showing the doctor's address.

(2) If a vehicle to be clamped is so positioned that, while the vehicle is clamped in that position, there would be at any time a contravention of any prohibition or restriction imposed by or under any enactment, the authorised person must, before the vehicle is clamped, have it repositioned to the nearest place where there would be no such contravention while it is clamped there.

(3) If a repositioned vehicle is not visible from the place in which it was originally positioned, the authorised person must ensure that a notice is placed at or near the original position of the vehicle indicating that the vehicle has been clamped as required by the clamping order, where the vehicle may be found and giving a telephone number available during all reasonable hours for enquiries by P or a person acting on his behalf.

(4) No extra charge may be required in respect of the repositioning of the vehicle.

(5) On clamping a vehicle the authorised person must affix in a prominent position on the vehicle, and where access to the site where the vehicle is clamped is not possible during certain hours, at the entrance to the site, a clamping notice specifying—

- (a) that the vehicle has been clamped and that it is an offence under paragraph 49 of Schedule 5 to remove or attempt to remove the clamp or the notice;
- (b) details of the clamping order;
- (c) how to secure the release of the vehicle;
- (d) the fine and charges payable for the release of the vehicle;
- (e) a telephone number and address for enquiries;
- (f) the name and address of the clamping contractor;
- (g) the name, official address and telephone number of the fines officer and the court;
- (h) the opening hours of the contractor and the court;
- (i) how to complain under regulation 25; and
- (j) the clamping sign of the approved clamping organisation of which the contractor is a member.

(6) The authorised person carrying out, or directing and supervising the carrying out, of the clamping of a vehicle must take or cause to be taken a photograph of it, in the case of a repositioned vehicle, in the original position as well as the position in which it is clamped.

(7) The authorised person and any other member of the contractor's staff engaged on the clamping, release from clamping, removal, storage or release from storage, of a vehicle must, on demand by P or a person acting on his behalf, permit him to inspect the identification card required by regulation 20(9).

(8) In the event of a complaint by P or a person acting on his behalf in connection with the clamping, removal or storage of a vehicle the authorised person must give him a leaflet about the complaints procedure under regulation 25.

(a) 1994 c. 22.

Duties of the clamping contractor

20.—(1) The contractor must conduct clamping, removal and storage operations, and must ensure that authorised persons and other persons in his employment carry out such operations, under the contract in accordance with Schedule 5, these Regulations, guidance issued by the Lord Chancellor and the code of clamping practice of the approved clamping organisation of which he is a member.

(2) The contractor must transmit the amount of any fine, collected directly or by an authorised person, to the court which made the collection order in respect of the fine.

(3) The contractor must use only clamps of a type approved by the Secretary of State.

(4) The contractor must display the clamping sign of the approved clamping organisation of which he is a member on all his signs, stationary and literature.

(5) The contractor must ensure that vehicles used for clamping, removal or storage operations are—

- (a) designed and maintained so as to be suitable for the operation for which they are used and so as not to cause damage to the vehicles the subject of the operations;
- (b) clearly marked as such and show in a prominent position on the vehicle the name, address and telephone number of the contractor and the clamping sign of the approved clamping organisation of which he is a member; and
- (c) used and kept in accordance with the law.

(6) The contractor must ensure that authorised persons and other members of his staff engaged on clamping, removal and storage operations have gained the award of the Parking Control National Vocational Qualification or are undergoing training which is expected to lead to this award within 6 months of the commencement of their employment with the contractor.

(7) The contractor must use equipment for the clamping, removal or storage of vehicles which is so designed and maintained as not to cause damage to the vehicles.

(8) The contractor must when undertaking clamping, removal or storage operations be covered, and must ensure that their authorised persons and other employees are covered, by public liability insurance for not less than £5 million and employer's liability insurance for not less than £10 million.

(9) The contractor must ensure that any authorised person and other member of his staff engaged on such operations receives appropriate training and is dressed in an identifiable uniform with attached to the uniform in a prominent position an identification card which has a photograph of the member of staff, his name or identification number or both and the name, address and telephone number of the contractor.

(10) The contractor must be and remain a member of an approved clamping organisation.

Payment of the fine and any charge or charges and release of the vehicle

21.—(1) The office of the contractor where payment of the fine and charge or charges due may be made must be readily accessible from the place where the vehicle is clamped during all hours when the contractor undertakes clamping and for at least 2 hours thereafter.

(2) A vehicle in respect of which the fine and charge or charges due have been paid in full must be released from clamping or, as the case may be, storage within—

- (a) 4 hours of the time of payment if payment is made at or to the contractor's office or the court; or
- (b) 2 hours of the time of payment if payment is made to an authorised person.

(3) Payment of, or towards the payment of, the fine and charge or charges due—

- (a) if made at or to the office of the contractor must be accepted by cash, cheque (up to the amount specified on the payer's debit card or cheque guarantee card) or credit card (up to the credit limit for which the card is valid); or
- (b) if made to the authorised person, must be accepted by cash or cheque (up to the amount specified in the payer's debit card or cheque guarantee card).

(4) If a payment made by P or a person acting on his behalf at any stage is less than the amount of the fine and charge or charges due, it must first be applied to meet the charge or charges and any balance remaining must then be applied towards payment of the fine.

(5) On payment by P or a person acting on his behalf of, or towards the payment of, the fine and charge or charges due, the contractor or the authorised person must issue a receipt which includes the following information—

- (a) the contractor's name, address and telephone number;
- (b) the contractor's value added tax registered number;
- (c) the registration mark of the vehicle;
- (d) the date of the clamping order requiring the vehicle to be clamped;
- (e) the name, official address and telephone number of the fines officer and the court;
- (f) if applicable, the date and time of clamping;
- (g) the name of P and, if payment is made by a person acting on his behalf, of that person;
- (h) the name or identification number or both of the member of the contractor's staff issuing the receipt;
- (i) the amount of the payment;
- (j) the date and time of payment;
- (k) how to complain under regulation 25;
- (l) if applicable, the place where the vehicle is clamped; and
- (m) the serial number of the receipt.

Removal for storage

22.—(1) A vehicle clamped under a clamping order must, unless released from clamping under regulation 21, 25 or 26, remain clamped where it is positioned or repositioned for the period of not less than 7 clear days from the date of clamping.

(2) When the period referred to in paragraph (1) above has expired, if—

- (a) the fine and charge or charges due have not been paid in full;
- (b) there is no complaint under regulation 25 or 26 outstanding; and
- (c) the case has not been referred to the court under paragraph 42(1) of Schedule 5,

the contractor must have the vehicle removed by, or under the direction and supervision of, an authorised person to secure premises for storage.

(3) When a vehicle is removed to storage the contractor must send by post to P at his last known address or have delivered to him by hand, with a copy to the fines officer, a written notice specifying—

- (a) the contractor's name, address and telephone number;
- (b) his value added tax registered number;
- (c) the registration mark of the clamped vehicle;
- (d) the date, time and place of clamping;
- (e) that the vehicle was clamped under the clamping order;
- (f) the date of the clamping order and the name, official address and telephone number of the fines officer and the court;
- (g) that since the fine and charges due have not been paid in full the vehicle has been removed for storage;
- (h) the date of removal of the vehicle and the address, telephone number for, and hours of opening of, the storage premises;
- (i) the daily or weekly storage charge payable;
- (j) that the vehicle will be released on payment of the amount of the fine and charges due in full with a statement of how the amount is made up;
- (k) how to pay the fine and charges due;
- (l) how to complain under regulation 25; and
- (m) a serial number.

Storage

23.—(1) A vehicle removed to storage must remain in storage, unless released on payment of the fine and charges due in full or pursuant to a decision under regulation 25 or 26, or sold or otherwise disposed of by order of the court under paragraph 41(2) of Schedule 5.

(2) The clamping contractor may subcontract the storage of vehicles to another person or storage may be undertaken by another person under a contract with the Lord Chancellor and, in any such case, references in these Regulations to the “clamping contractor”, except in this paragraph, and “the contractor”, so far as applicable to the storage of vehicles under these Regulations, shall be construed as references to that other person.

(3) Premises used for the storage of vehicles must be secure and such as to protect the vehicles from damage or deterioration.

Sale of clamped vehicles

24.—(1) The period referred to in subparagraph (1)(b) of paragraph 41 (power to order sale of clamped vehicle) of Schedule 5 at the end of which that paragraph applies in respect of a vehicle clamped under a clamping order if at the end of that period the fine or any part of it remains unpaid, shall be the period of 3 months from the date the vehicle was clamped.

(2) If the fine has not been paid in full before the expiry of the period of 10 clear working days from the date the vehicle was clamped the fines officer must apply in writing to the court, sending a copy of the application to P by post at his last known address, for an order for sale of the vehicle under paragraph 41(2) of Schedule 5 but the application must not be listed for hearing before the expiry of the period of 21 days from that date.

(3) When the application under paragraph (2) above is listed for hearing the court must notify P in writing—

- (a) of the date, time and place of the hearing;
- (b) that he may attend, and be represented at, the hearing and may submit written representations;
- (c) that the court has power to order the sale of the vehicle if the fine has not been paid in full before the expiry of the period of 3 months from the date the vehicle was clamped; and
- (d) of the amount of the fine and charges payable to secure the release of the vehicle,

and must notify the fines officer of the date and time of the hearing.

(4) The fines officer must ensure that the file concerning P’s case, information available about P’s means, his conviction and the fine imposed, the terms of the collection order made, the dates and amounts of any payments received, the likely value of the vehicle and copies of the increase notice, any further steps notice and the clamping order, are provided to the court via the listing officer in readiness for the hearing of the application.

(5) The fines officer must make himself available for the hearing but only for the purpose of answering the court’s questions or providing information.

(6) If at the hearing the court decides that it will order the vehicle to be sold on the expiry of the period of 3 months from the date the vehicle was clamped if the fine is not paid in full before the expiry of that period, the fines officer must so notify P in writing.

(7) If at the hearing the court decides that the vehicle should not be sold it may direct that the vehicle be released to P with or without payment of the charges due.

(8) In considering whether or not to order the sale of the vehicle the court must consider the history of P’s case, in particular whether the clamping order was justified, reasonable and proportionate.

(9) After the court’s decision on the application the case remains with the fines officer under the collection order, and if the court makes an order for sale he must send a copy of the order for sale to the contractor who must thereupon arrange for the vehicle or vehicles to be sold by an agent for sale or by auction.

(10) On the sale of a vehicle pursuant to an order under paragraph 41(2) of Schedule 5 the ownership of the vehicle shall vest in the purchaser and the contractor must secure the registration of the vehicle in the name of the purchaser under the Vehicle Excise and Registration Act 1994.

(11) When the vehicle has been sold the contractor must first deduct from the net proceeds of sale an amount equal to the charges due in respect of clamping, removal and storage and must then transmit the remaining balance to the fines officer who, after deducting an amount sufficient to discharge P's liability in respect of the fine, must send P a cheque for any balance remaining within 10 working days of the date of sale of the vehicle, accompanied by a written statement of account.

(12) If when a vehicle is sold the net proceeds of sale are not sufficient to meet the amount of the fine and charges due the net proceeds of sale must first be applied towards meeting the charges due and then if a balance remains towards discharging P's liability in respect of the fine and the fines officer must then seek to recover the outstanding amount of the fine under the collection order and the powers conferred by Schedule 5 including his power to refer the case to the court under paragraph 42 of that schedule.

Complaints procedure

25.—(1) A senior manager of the contractor and the fines officer must be available during the hours that a vehicle may be released from clamping or storage to consider any complaint about clamping, removal or storage and, if justified, to order the release of the vehicle.

(2) If a complaint to the senior manager concerns the content or making of the clamping order he must refer the complaint to the fines officer and if a complaint to the fines officer concerns the execution of the clamping order, removal or storage the fines officer must refer the complaint to the senior manager.

(3) On receipt of a complaint concerning the execution of the clamping order, removal or storage the senior manager of the contractor must—

- (a) record the date the complaint was received and allocate a serial number to it;
- (b) send the complainant an interim reply in writing—
 - (i) acknowledging receipt of the complaint and the date of its receipt;
 - (ii) informing the complainant that the complaint is being investigated;
 - (iii) specifying the location of the vehicle;
 - (iv) giving the name, official address and telephone number of the fines officer;
 - (v) advising the complainant to obtain and retain receipts for expenses and evidence of loss or inconvenience incurred as a consequence of the clamping, removal or storage of the vehicle; and
 - (vi) informing the complainant that a decision on the complaint will be taken within 7 working days of the date of receipt of the complaint;
- (c) within that period investigate and consider the complaint and send a letter to the complainant recording his decision on the complaint and his reasons for it;
- (d) notify the complainant in that letter that if he is not satisfied with the decision he may under regulation 26, within 10 working days of the date of the letter or such further time as the court may allow, refer the complaint to the court for decision and enclose a leaflet explaining the procedure for such a reference; and
- (e) if his decision accepts the complaint in whole or in part, send the complainant with that letter a form on which he can claim reimbursement of expenses and compensation for loss and inconvenience together with the necessary proof.

(4) If the senior manager's decision is to the effect that the vehicle should not have been clamped he must arrange for the immediate release of the vehicle without charge.

(5) On receipt of the completed claim form from the complainant the senior manager must send him a letter recording his decision on the claim and his reasons for it and, if the claim is accepted in whole or in part, together with a cheque for the reimbursement of the expenses and compensation for the loss and inconvenience accepted.

(6) If the claim is not accepted in whole or in part the letter to the complainant must notify him that he may under regulation 26, within 10 working days of the date of the letter or such further time as the court may allow, refer the claim or part of it to the court for decision and enclose a leaflet explaining the procedure for such a reference.

(7) On receipt of a complaint concerning the making of the clamping order the fines officer must—

- (a) record the date the complaint was received and allocate a serial number to it;

- (b) send the complainant an interim reply in writing—
 - (i) acknowledging receipt of the complaint and the date of its receipt;
 - (ii) informing the complainant that the claim is being investigated;
 - (iii) specifying the location of the vehicle;
 - (iv) giving the name, official address and telephone number of the senior manager of the contractor;
 - (v) advising the complainant to obtain and retain receipts for expenses and evidence of loss or inconvenience incurred as a consequence of the clamping, removal or storage of the vehicle; and
 - (vi) informing the complainant that a decision on the complaint will be taken within 7 working days of the date of receipt of the complaint;
- (c) within that period investigate and consider the complaint and send a letter to the complainant recording his decision on the complaint and his reasons for it;
- (d) notify the complainant in that letter that if he is not satisfied with the decision he may under regulation 26, within 10 working days of the date of the letter or such further time as the court may allow, refer the complaint to the court for decision and enclose with the letter a leaflet explaining the procedure for such a reference; and
- (e) if his decision accepts the complaint in whole or in part, send the complainant with that letter a form on which he can claim reimbursement of expenses and compensation for loss and inconvenience together with the necessary proof.

(8) If the fines officer's decision is to the effect that the clamping order should not have been made in respect of the vehicle he must arrange with the contractor for the immediate release of the vehicle without charge.

(9) On receipt of the completed claim form from the complainant the fines officer must send him a letter recording his decision on the claim and his reasons for it and, if the claim is accepted in whole or in part, together with a cheque for the reimbursement of the expenses and compensation for loss and inconvenience accepted.

(10) If the claim is not accepted in whole or in part the letter to the complainant must notify him that he may under regulation 26, within ten working days of the date of the letter or such further time as the court may allow, refer the claim or part of it to the court for decision and enclose a leaflet explaining the procedure for such a reference.

Reference of a complaint or claim to the magistrates' court for decision

26.—(1) A complainant who is dissatisfied with the senior manager's or fines officer's decision on his complaint or claim may, within 10 working days of the date of the decision letter or such further time as the court may allow, refer the complaint or claim to the court for decision.

(2) A reference to the court under paragraph (1) above must be made in writing on the form provided by the senior manager or the fines officer with his decision letter.

(3) On receipt of a reference the listing officer must list it for expedited hearing.

(4) When the reference is listed for hearing the court must send written notice to the complainant—

- (a) of the date, time and place of the hearing,
- (b) the subject matter of the reference, and
- (c) that he may attend, and be represented at, the hearing and submit written representations but that if he does none of these things his complaint is more likely to be rejected,

and must notify the fines officer and, as the case may be, the senior manager of the date, time and place of the hearing.

(5) When a complaint or claim is referred to the court against a decision of the senior manager of the contractor, he must ensure that a copy of his decision letter and such further information about the complaint or claim as the court may require is provided to the court via the listing officer in readiness for the hearing of the reference.

(6) When the complaint is referred to the court against a decision of the fines officer, he must ensure that his decision letter, the file concerning P's case, information available about P's means, his conviction and the fine imposed, the terms of the collection order, the dates and amounts of any payments received and copies of the increase notice, any further steps notice and the clamping order, are provided to the court via the listing officer in readiness for the hearing of the reference.

(7) The senior manager or, as the case may be, the fines officer must make himself available for the hearing but only for the purpose of answering the court's questions or providing information.

(8) On the hearing of the reference the court must make such a decision and give such directions to the senior manager or, as the case may be, the fines officer to implement the decision as the court thinks fit and the senior manager or, as the case may be, the fines officer must comply with the courts decision and directions.

On the authority of the Lord Chancellor

27th January 2004

Christopher Leslie
Parliamentary Under Secretary of State
Department for Constitutional Affairs

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations implement Schedule 5 (collection of fines) to the Courts Act 2003 (“Schedule 5”) to take account of the coming into force of the Collection of Fines (Pilot Schemes) Order 2004 (No. 175) which establishes schemes for the piloting of different provisions of that Schedule.

Part II applies with modifications the Attachment of Earnings Act 1971 (c. 32), the Fines (Deductions from Income Support) Regulations 1992 (No. 2182) and certain provisions of the Magistrates’ Courts Act 1980 (c. 43) to give effect to Schedule 5.

The substituted Part I of Schedule 3 to the 1971 Act introduces tables for the calculation of the amounts to be deducted under attachments of earnings orders (regulation 4(e)).

Provision is made for the collection of fines in the case of a change of residence by the person liable to pay the fine (regulation 6).

Part III contains provisions implementing Schedule 5.

Regulation 7 specifies the amount of the increase imposed on a fine under paragraph 27 or 33 of Schedule 5.

A notice of increase and a further steps notice under Schedule 5 may be delivered by hand or by being sent by post (regulation 8).

Section 87 of the Magistrates’ Courts Act 1980 which enables a fine to be enforced as if it were imposed by a judgment or order of the High Court or the county court is specified as another step which may be taken under Schedule 5 as listed in paragraph 38 (1) of that Schedule (regulation 9).

A warrant of distress issued under Schedule 5 is to be executed as if it had been issued by a justice of the peace and section 78 concerning a defect in a distress warrant or irregularity in its execution and the provisions concerning execution of distress warrants of the Magistrates’ Courts Act 1980 are applied (regulation 10).

A fines officer may issue a summons requiring P to attend a magistrates’ court to which he has referred P’s case under Schedule 5 (regulation 11).

Regulation 12 applies for the purposes of references of cases to the court by the fines officer, or appeals to the court, under Schedule 5 the existing powers of the magistrates’ courts in respect of fines as modified by the regulation.

Part IV provides for the clamping of vehicles under Schedule 5 for default in the payment of fines, and the storage and sale of clamped vehicles.

Regulation 13 specifies conditions to be met before a clamping order is made, regulation 14 specifies the matters to be included in a clamping order and regulation 15 provides for the procedure to be followed on the making of the order.

Regulation 16 specifies the places where vehicles may be clamped and regulation 17 deals with defects in clamping orders or irregularities in their execution.

The clamping order is to be executed by a clamping contractor under a contract with the Lord Chancellor or a justices’ chief executive (definition of “clamping contractor” in regulation 1(5)).

The matters to be included in a clamping contract are specified in regulation 18.

The duties of the persons authorised by the contractor to carry out, or direct and supervise the carrying out of, clamping, release from clamping, removal to and release from storage, of vehicles on behalf of the contractor and the duties of other members of the contractor’s staff are laid down in regulation 19 and the duties of the contractor in regulation 20.

Provision for the payment of the fine and any charges due and the release of the vehicle is in regulation 21.

Regulation 22 provides the circumstances in which a vehicle which has been clamped must be removed to storage and conditions for the storage of vehicles which have been clamped are specified in regulation 23.

Provision is made for the ultimate sale of clamped vehicles if, after the expiry of the period of 3 months from the date the vehicle was clamped, a magistrates' court so orders under paragraph 41 of Schedule 5 (regulation 24).

Regulations 25 and 26 contain the procedure for complaints and claims for compensation concerning the content, or making, or the execution, of clamping orders.

2004 No. 176

MAGISTRATES' COURTS, ENGLAND AND WALES

The Fines Collection Regulations 2004

£3.50

© Crown copyright 2004

Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E0094 2/2004 140094 19585

ISBN 0-11-048663-3



9 780110 486635