

CRIMINAL JUSTICE AND POLICE ACT 2001

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 1: Provisions for Combatting Crime and Disorder.

Chapter 1: On the spot penalties for disorderly behaviour (Sections 1 to 11)

5. The Government issued a consultation paper on 26 September 2000 entitled “Reducing Public Disorder, the Role of Fixed Penalty Notices” (This was published by Home Office Communication Directorate and is available on the Home Office website at <http://www.homeoffice.gov.uk>). The paper sought views on proposals to introduce penalty notices as a simple and swift way of addressing a range of low-level anti-social offending associated with disorderly conduct.
6. Whilst the conduct in question is already criminal, the need to focus police and court resources elsewhere means that much minor offending of this kind escapes sanction or consequence under current arrangements. In the light of the responses to the consultation paper the Government has introduced the provisions set out in sections 1 to 11. These provisions seek to provide a further means for the police to deal with low level, but disruptive, criminal behaviour.
7. They allow the police to issue penalty notices on the spot or at a police station for a range of disorder offences. These notices may be issued where there is reason to believe an offence has been committed, and where a penalty notice appears to be an appropriate response. The scheme is a discretionary one. Where a police officer believes that an offence is of such a nature that it should be dealt with by the courts, all the usual powers will be available to him to arrest and charge the alleged offender.
8. A penalty notice is notice of the opportunity to discharge any liability to conviction of the offence by payment of a fixed penalty. There is thus no criminal conviction or admission of guilt associated with payment of the penalty, though the alleged offender has the right to opt for trial by a court, and risk conviction, if he so chooses. Failure to pay the penalty or opt for trial may lead to the imposition of a fine equivalent to one and a half times the amount of the penalty on the defaulter.
9. The provisions are intended to be simple and straightforward and allow a considerable discretion to the police in their application. Guidance on the exercise of this discretion will be provided, and will be developed in partnership with the police.

Sections 1 to 6

10. These sections explain how the penalty notice system works, and set out the disorder offences for which they may be issued. They make clear that a penalty notice may be issued by a constable in uniform “on the spot” or may be issued at a police station.

Section 1: Offences leading to penalties on the spot

11. This lists in tabular form the disorder offences for which penalty notices may be issued. *Subsections (2) and (3) and (4)* provide powers for the Secretary of State to amend by order, subject to affirmative resolution, the list of offences for which a penalty notice may be given and to make any necessary consequential changes.

Section 2: Penalty notices

12. *Subsection (1)* has the effect of applying the scheme to adults (i.e.18 and over) only.
13. *Subsection (4)* explains that a penalty notice offers the recipient an opportunity to discharge all liability to conviction of the offence by paying the penalty.

Section 3: Amount of penalty and form of penalty notice

14. *Subsections (1) and (2)* allow the Secretary of State to specify the level of the penalty for each offence up to a maximum of $\frac{1}{4}$ of the maximum fine for the offence.
15. *Subsections (3) and (4)* list the information that must be included on a penalty notice and provides a power for the Secretary of State to specify the form of the notice.

Section 4: Effect of penalty notice

16. Explains that the recipient of a penalty notice may ask for the case to be tried by a court. Also, if he neither makes such a request nor pays the penalty within the prescribed period, a fine equal to one and a half times the amount of the penalty may be registered against him.

Section 5: General restriction on proceedings

17. This section prevents proceedings being brought for an offence for which a penalty notice has been issued for a period of 21 days unless within that period the recipient asks for a trial. It provides that where payment of the penalty is made no proceedings may be brought.

Section 6: Secretary of State's guidance

18. This section allows the Secretary of State to issue guidance about the operation of the scheme. The power to issue guidance is intended to allow the Secretary of State to ensure that police officers are aware of the factors they need to take into account in exercising the wide discretion inherent in this scheme. It may also be used to encourage good practices in the general operation of the scheme.

Section 7: Payment of penalty

19. This section sets out the ways in which a penalty may be properly paid.

Sections 8 and 9: Registration certificates and Registration of sums payable in default

20. These sections regulate the procedures that are to be followed in order to register an unpaid penalty as a fine, where the recipient has not requested a trial. They provide that a registration certificate may be sent to the justices' chief executive for the area where the defaulter lives, giving adequate details of the offence, offender and sum outstanding. The justices' chief executive will then give written notice of the fine registration to the defaulter. The sections further provide for the transfer of such cases, if necessary, between petty sessions areas. Section 9(5) provides that a fine so registered will then be regarded for the purposes of other legislation as a fine imposed by a court.

Section 10: Enforcement

21. This section sets out the powers of a magistrates' court to set aside a registered fine arising from an unpaid penalty and to adjourn default proceedings for up to 28 days for investigation if the identity of the offender is in question. It provides for a court to set aside a fine in the interests of justice, for example, if the person against whom the fine is registered appears not to be the person to whom the penalty notice was given. The magistrates' court must, if it sets aside a fine under this section, give direction as to how the case is to be dealt with. It provides for a situation in which a person receiving a fine registration notice wishes to challenge it on the ground that they had requested a trial, but that the request had not been acted upon.