

**EXPLANATORY MEMORANDUM TO THE  
THE CRIMINAL JUSTICE AND POLICE ACT 2001 (AMENDMENT) AND POLICE  
REFORM ACT 2002 (MODIFICATION) ORDER 2004**

**2004 No. 2540**

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.
  
2. **Description**
  - 2.1 The above Order is made in exercise of the powers conferred by section 1(2) of the Criminal Justice and Police Act 2001, paragraph 15A of Schedule 4 and paragraph 9A of Schedule 5 to the Police Reform Act 2002. It adds further offences to those listed in the Table under section 1(1) of the Criminal Justice and Police Act 2001 as capable of attracting a fixed penalty notice. In addition, it excludes certain of these new offences from the powers exercisable by police civilians under paragraph 1(2)(a) of Schedule 4 to the Police Reform Act 2002, and those exercisable by accredited persons under paragraph 1(2)(aa) to Schedule 5 of the Police Reform Act 2002.
  
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
  - 3.1 None
  
4. **Legislative Background**
  - 4.1 Chapter 1 of Part 1 of the Criminal Justice and Police Act 2001 (“the 2001 Act”) introduced on the spot penalties for disorderly behaviour. These provisions empowered police officers to issue penalty notices in respect of the offences listed in the Table in section 1 of that Act to persons aged 18 or over. The offences included wasting police time, causing harassment, alarm or distress (section 5 of the Public Order Act 1986), throwing fireworks and bring drunk and disorderly.
  - 4.2 Under section 4 and 5 of the 2001 Act, the recipient of a penalty notice has 21 days to decide what to do. If he pays the penalty within 21 days he discharges all liability for that offence, has no criminal record and is diverted from the criminal justice system. If, within 21 days, he requests a court hearing then he may be tried by a court in the normal way. If he does nothing then a fine is registered against him of one and a half times the amount of the penalty.
  - 4.3 Section 1(2) and (5) of the 2001 Act provides for further offences to be added to the Table in section 1(1) by Order.
  - 4.4 By virtue of section 38 and paragraph 1 of Schedule 4 of the Police Reform Act 2002 (“the 2002 Act”), the power to issue a penalty for disorder may also be exercised by a Community Support Officer. This power came into force on 15 November 2003.

- 4.5 Section 87(2) of the Anti-Social Behaviour Act 2003 (“the 2003 Act”) amended section 2(1) of the 2001 Act so that penalty notices could also be issued to persons aged 16 or 17 years of age. That extension came into effect on 20 January 2004.
- 4.6 Section 89 (5) of the 2003 Act amended paragraph 1(2) of Schedule 5 of the 2002 Act to give accredited persons the power to issue fixed penalty notices for disorder except in respect of an offence under section 12 of the Licensing Act 1872 and section 91 of the Criminal Justice Act 1967 (the two offences involving drunkenness). This power came into force on 31 March 2004.
- 4.7 Section 89 (4) of the 2003 Act amended the 2002 Act to allow specified penalty offences in the 2001 Act to be disapplied from issue by Community Support Officers. Section 89 (6) of the 2003 Act amended the 2002 Act to allow specified penalty offences in the 2001 Act to be disapplied from issue by accredited persons. These disapplications are to be made by Order.
- 4.8 The Order adds further offences to the Table in section 1 of the 2001 Act and disapplies specified offences from this list from issue by Community Support Officers and accredited persons under the powers inserted by the 2003 Act into the 2002 Act.

## **5. Extent**

- 5.1 This instrument applies to England and Wales.

## **6. European Convention on Human Rights**

- 6.1 The Minister of State for Crime Reduction, Policing, Community Safety and Counter-Terrorism has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

“In my view the provisions of the Criminal Justice and Police Act 2001 (Amendment) and Police Reform Act 2002 (Modification) Order 2004 are compatible with the Convention rights.”

## **7. Policy background**

- 7.1 Penalty notices for disorder provide a quick and effective means of dealing with low-level, anti-social offences. Payment of the penalty within the time limit enables the offender to discharge all liability for the offence, requires no admission of guilt and is not discloseable. This disposal therefore provides a way for punishing offenders without drawing them into the criminal justice system.
- 7.2 Evidence from the pilots of the penalty notice scheme for persons aged 18 years and over is that a significant amount of police time is freed up by using penalty notices instead of cautions or charging.
- 7.3 Evidence from the pilots also shows that the use of penalty notices for disorder diverts these minor cases from the courts freeing the courts up to deal with the more serious cases more quickly.
- 7.4 Police views, surveyed for the evaluation of the pilots, were overwhelmingly positive providing support for its success with frontline officers and management.

- 7.5 The Order adds more penalty offences to build on the success of the existing scheme. It adds four further alcohol related offences to help police tackle underage drinking
- 7.6 Littering is added for the police to use, but is disapplied from use by Community Support Officers and accredited persons as they may already issue fixed penalty notices under the Environmental Protection Act 1990 for this offence on behalf of local authorities.
- 7.7 Firework offences provided for under section 11 of the Fireworks Act are added to enable firework misuse to be dealt with using the quick and effective penalty notice disposal to help tackle this type of nuisance offending.
- 7.8 Criminal damage and theft are included to enable police to use penalty notices for minor cases of these offences of low value. Theft will be restricted in guidance to theft from businesses only. The values for both offences will be restricted in guidance to under £200.
- 7.9 The offences of littering and theft are disapplied from penalty notice disposal by Community Support Officers and accredited persons. Criminal damage is disapplied from penalty notice disposal by accredited persons.
- 7.10 Guidance, as provided for under section 6 of the Criminal Justice and Police Act 2001, will be provided setting out in detail how these offences should be handled.
- 7.11 Before the Order comes into force an Order made under section 3 of the 2001 Act will be made specifying the penalty amounts which will be applied to each offence.

## **8. Impact**

- 8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

## **9. Contact**

- 9.1 Philippa Goffe at the Home Office, tel: 020-7273-4134 or e-mail: philippa.goffe@homeoffice.gsi.gov.uk, can answer any queries regarding the instrument.