

**EXPLANATORY MEMORANDUM TO
THE PENALTIES FOR DISORDERLY BEHAVIOUR (AMOUNT OF
PENALTY) (AMENDMENT) ORDER 2009**

2009 No. 83

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 This instrument is made in exercise of powers under section 3(1) and (1A) of the Criminal Justice and Police Act 2001. It sets the penalty amount for the penalty offence of possession of cannabis etc. included in the Criminal Justice and Police Act 2001 (Amendment) Order 2009 and sets out afresh the penalties for all such offences by substituting a new Schedule into the Penalties for Disorderly Behaviour (Amount of Penalty) Order 2002 (S.I. 2002/1837).
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 An earlier version of the order was laid before Parliament on 2 January, due to come into force on 26 January 2009. The present order revokes that order. It sets out afresh the current amounts of penalties for existing penalty offences and inserts one new penalty amount for the proposed new penalty offence of possession of cannabis etc. The Lord Chancellor has decided to consult on the other offences before determining whether they should be added to the list of penalty offences. That new penalty offence will be added to the PND scheme, subject to Parliamentary approval, by the draft Criminal Justice and Police Act 2001 (Amendment) Order 2009, currently before Parliament.

In order that the amount of the penalty is in force at the time the affirmative order adding cannabis comes into force as a penalty offence, this replacement order abridges the 21 day period.
 - 3.2 A copy of the new order revoking the order which was laid on 2 January will be provided free of charge to all known purchasers of the earlier version of the earlier order.
4. **Legislative Context**
 - 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 and other designated officers to issue penalty notices in respect of the penalty offences listed in the Table in section

1(1) of that Act. A “penalty offence” as defined in section 1 of the 2001 Act means an offence committed under any of the provisions listed in the Table in section 1(1) of the 2001 Act. The offences included causing harassment, alarm or distress (section 5 of the Public Order Act 1986), being drunk and disorderly. Chapter 1 has been amended by the Anti-social Behaviour Act 2003 empowering the giving of penalty notices to persons under 18.

4.2 Section 1(2) of the 2001 Act provides for further offences to be added to the Table in section 1(1) by Order. Orders have been made under that power adding further penalty offences to the Table.

- 4.3 Section 3(1) and (1A) provide for the setting of the amounts payable for the penalty offences listed in Table in section 1 (1) of the 2001 Act, and for the power to specify different amounts for persons of different ages.
- 4.4 Under sections 4 and 5 of the 2001 Act, the recipient of a penalty notice has 21 days in which to decide what to do. If he pays the penalty within 21 days he discharges all liability to conviction of that offence, and receives no record of criminal conviction. 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.
- 4.5 The Penalties for Disorderly Behaviour (Amendment of Minimum Age) Order 2004 (No. 3166 of 2004) amended section 2(1) of the 2001 Act so that penalty notices could be issued to persons aged 10 or above.
- 4.6 A revised draft instrument, the Criminal Justice and Police Act 2001 (Amendment) Order 2009 was laid before Parliament on 20 January 2009. It seeks to add the offence of possession of cannabis etc. to the Table in section 1 of the 2001 Act. This negative resolution Order sets the penalty amount (£80) to be applied, subject to Parliamentary approval, to that new penalty offence.
- 4.7 The amounts specified for the current penalty offences apply as from 24 January 2009. The amount of £80 specified for the new penalty offence is contingent upon the coming into force, following Parliamentary approval, of the Criminal Justice and Police Act 2001 (Amendment) Order 2009.

5. Territorial Extent and Application

- 5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

- 6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 The penalty notice for disorder scheme, established under the Criminal Justice and Police Act 2001, enables officers to issue a fixed penalty notice of £50 or £80 for a specified range of minor anti-social behaviour and regulatory offences. There are now 21 offences for which a penalty notice can be issued. The disposal has proved popular with the police, providing them with a simple and efficient financial punishment to deal with low-level anti-social behaviour. Over 400,000 penalty notices have been issued since the Scheme was implemented in all 43 police forces in England Wales in 2004.
- 7.2 Penalty notice disposal provides the recipient with the benefit of an administrative disposal which does not require attendance at court nor an admission of guilt and does not result in a record of criminal conviction. Payment of the penalty discharges all liability to conviction of the offence. Frontline officers have found the disposal to be an efficient and effective means of dealing with minor crimes
- 7.3 The addition of the new penalty offence of possession of cannabis etc. by the Criminal Justice and Police Act 2001 (Amendment) Order 2009 will supplement and complement existing penalty offences.
- 7.4 The penalty amount applied to the new offence by this instrument (£80) reflects the average fine imposed by magistrates for the offence.

8. Consultation outcome

- 8.1 Responsibility for the offence of cannabis possession lies with the Home Office, who have agreed the penalty applicable to the new PND offence.

9. Guidance

- 9.1 The Secretary of State's operational guidance to the police on the PND Scheme, issued under section 6 of the 2001 Act, will be updated to take account of the change made by this instrument. In particular the guidance will have the result that the use of a PND, and consequently the penalty amount (£80) is only applied to persons aged 18 or over.

10. Impact

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

11. Regulating small business

11.1 The legislation applies only to individuals.

12. Monitoring & review

12.1 We keep penalty amounts under regular review.

13. Contact

13.1 Chris Morris-Perry at the Ministry of Justice Tel: 020 3334 5039 or email chris.morris-perry@justice.gsi.gov.uk can answer any queries regarding the instrument.