

**EXPLANATORY DOCUMENT**

**THE LEGISLATIVE REFORM (REVOCATION OF PRESCRIBED FORM OF PENALTY NOTICE FOR DISORDERLY BEHAVIOUR) ORDER 2010**

**STATEMENT BY CLAIRE WARD – PARLIAMENTARY UNDER SECRETARY OF STATE FOR CRIMINAL JUSTICE**

## **CHAPTER 1 – INTRODUCTION**

1.1 This statement is laid before Parliament in accordance with section 14(1) of the Legislative and Regulatory Reform Act 2006 (“the 2006 Act”);’ together with the draft of the Legislative Reform (Revocation of Prescribed Form of Penalty Notice for Disorderly Behaviour) Order 2010 (“the draft Order”) which I propose to make under section 1 of that Act. The purpose of the Order is to remove the need to prescribe by delegated legislation the form of the penalty notices used for the purposes of the Criminal Justice and Police Act 2001.

1.2 I recommend that the draft Legislative Reform Order and the Explanatory Document be laid in Parliament under the affirmative resolution procedure, for which provision is made by section 17 of the 2006 Act. The procedure has been chosen because although the proposed change is of a simple, technical nature, the Penalty Notice for Disorder Scheme attracts significant public interest.

## Chapter 2 – Background to the Policy and Legislation at Issue

2.1. Fixed penalties, including Penalty Notices for Disorder (PNDs), aim to provide a simple, proportionate, fair and effective response to certain low risk, largely uncontested offences. They are appropriate for low level, minor offences which do not always call for a court hearing.

2.2. The Penalty Notice for Disorder (PND) Scheme was introduced as part of the Government's strategy to tackle low level anti-social and nuisance behaviour. The Scheme was established by the Criminal Justice and Police Act 2001 (CJPA) to provide the police with the power to issue a fixed penalty notice, now £50 or £80, for a specified range of disorder offences which include low value retail theft (under £100), cannabis possession and section 5 of the Public Order Act 1986 (behaviour likely to cause harassment, alarm or distress).

2.3. PNDs are proving to be a simple and efficient way for police to deal with low-level anti-social behaviour on the street or at the police station. For example, they enable the police to handle a large number of relatively minor anti-social behaviour incidents in an evening which might otherwise escalate into more serious offences. They also allow the police to deal appropriately with offences that should be sanctioned, but which, were PNDs not available, might consume a disproportionate amount of police time to prosecute and many that would go unpunished. Figures show that by the end of 2007 over 600,000 PNDs had been issued since the Scheme was implemented in all 43 forces in England and Wales in 2004.

2.4. A person who opts to pay a PND rather than asking to be tried for the alleged offence does not receive a conviction; no admission of guilt is required. The payment of the penalty discharges the recipient from all liability to conviction of the offence. In every case the recipient of a PND has the option of having their case heard in court. Failure to pay the penalty or request a court hearing within 21 days results in a fine of one and half times the penalty amount being registered by the courts. Once registered, these fines fall into Her Majesty's Court Service fine enforcement and collection systems and are enforced as any other unpaid fine.

2.5. Suspects issued with a PND do not receive a record of criminal conviction. However, certain offences, such as retail theft and cannabis possession are recordable. A recordable offence is an offence that is either punishable by a term of imprisonment or is declared as a recordable offence by statute. Guidance issued by the Association of Chief Police Officers (ACPO), results in PNDs issued for those recordable crimes (such as retail theft, cannabis possession and Section 5) being logged on the Police National Computer (PNC). The details recorded ensure that offenders can be traced and if they commit another offence their details can be checked against a record on the PNC. In addition, details of the PND may be disclosed to a third party as part of an enhanced criminal records check if it is deemed relevant.

2.6. PNDs can be issued by police officers, Community Support Officers (CSOs) and other persons accredited by the Chief Officer of Police such as Trading Standards Officers (TSOs), who may issue tickets for a more limited range of offences. PNDs may be issued 'on the spot' or in custody depending on the nature of the offence, offender and local force practice. PND Operational Guidance is issued by the Secretary of State to forces in accordance with Section 6 of the CJPA; a copy of the guidance can be found at:

[http://police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/PenaltyNotices\\_March105.pdf](http://police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/PenaltyNotices_March105.pdf)

The guidance sets out the factors to be considered before issuing a PND and includes a model ticket template. Replacement guidance on retail theft and criminal damage was issued on 16 July 2009; this can be found at <http://www.justice.gov.uk/publications/criminal-justice-police-act-retail-pnd.htm>.

New guidance on cannabis possession was issued on 23 July and can be found at <http://www.justice.gov.uk/publications/criminal-justice-police-act-cannabis-pnd.htm>

2.7. Currently all PNDs are issued manually and books of tickets are allocated to each police officer, numbered for audit purposes. Forces are responsible for producing their own tickets at considerable expense. There are four different types of ticket: two for adults - for upper (£80) and lower (£50) tier offences - and two for juveniles - upper tier (£40) and lower (£30). A number of police forces, including the British Transport Police (BTP), Lancashire, Hampshire, Wiltshire and Staffordshire have developed electronic hand-held devices (PDAs) to provide frontline officers with information and access to a variety of force and national systems, and the capability to issue forms electronically. These forces now wish to issue PNDs electronically from their PDAs. However they are unable to progress any further because of the difficulties in aligning the current prescribed format of the PND form with the automated devices.

2.8. BTP officers are already using the PDA to issue various forms, for example stop and search and street bail receipts, on the spot without the need to carry large quantities of paper forms. The force would like to be able to issue PNDs electronically; however they are facing real difficulties because the current prescribed format is not compatible with the automated system. The problem is that the current mobile printer is too small to reproduce the current PND form and it would not be practical or cost effective to increase the size of the printer simply to accommodate the PND. The other forces listed above, which are developing their automated devices separately, have also raised this as an obstacle. Automation would reduce costs and the amount of paper an officer has to carry. In addition the BTP has estimated that around 50 minutes of extra patrol time per day are available for PDA-equipped officers.

2.9. In order to proceed with development of the hand-held devices, a number of forces wish to make changes to the form of the penalty notice. However under current legislation this is prevented because the format of the ticket is prescribed by regulations made under section 3 of the CIPA (SI 2002 No.1838 and juvenile order SI 2004 No. 3169). The form may have been prescribed originally because PNDs were a brand new disposal, so as to ensure consistency among forces and to enable the disposal to be easily recognised and understood. On the other hand, it should also be noted that the PND scheme was modelled on the existing road traffic fixed penalty notice scheme. In the road traffic penalty notice scheme the notices are not prescribed and there are no wide variations between forces.

2.10. Section 3(3)(a) of the CIPA requires the penalty notice to be in the prescribed form and section 3(4) sets out that prescription is to be by regulations made by the Secretary of State. Sections 3(5) and (6) explain that this power to make regulations is exercisable by Statutory Instrument (SI) subject to the negative resolution procedure. The form of the ticket for persons aged

16 and over is currently prescribed under SI 2002 No 1838. The form of the ticket for persons aged 10 – 15 is currently prescribed under SI 2004 No 3169.

2.11. In the absence of this Order, amendments could continue to be made to the ticket using the negative resolution parliamentary procedure to make it compatible with hand-held devices. However, making even the most minor changes using secondary legislation requires significant use of resources, including Parliamentary time. As forces are developing their own electronic devices individually, it is likely that they would need to make a number of separate changes at different times. It would simply not be feasible to use the current legislation in this way.

2.12. Apart from the mobile data printer issue, prescription also adds to the cost and operational burden to forces when changes to the scheme are made, such as adding new offences or increasing penalty amounts. Currently such changes can result in forces incurring significant costs from printing new books of tickets and destroying unused out-of-date ones. The Metropolitan Police Service (MPS) has estimated that it incurs a cost of £75,000 each time new offences are added or the penalty amount increased. Such changes require all the old notices to be destroyed and new ones printed; the MPS print 100,000 books at any one time. De-prescription would enable forces to modify ticket templates so that if changes were made there may be no need to destroy old books.

## **THE PROPOSAL**

2.13. In view of the reasons set out, a number of forces have requested that I consider de-prescribing the form of the penalty notice. I am satisfied that the case is a good one. The obligation to use a prescribed notice amounts, in my view, to a burden imposing financial cost, administrative inconvenience and is an obstacle to efficiency in law enforcement. I accordingly propose achieving this by amending section 3 of the CJPA, which requires the form to be prescribed. I intend to do this by means of a Legislative and Regulatory Reform Act 2006 Order as this burden comes within the powers conferred by section 1(3)(a) to (c) of that Act. As the change is of a minor technical nature I had proposed to make the amendment using the negative resolution procedure; DA clearance had been given for this. However as the topic seems inherently controversial and not all of the respondents were in favour of the change, I have concluded that the affirmative resolution procedure is the appropriate vehicle for making the change.

2.14 I propose to remove the requirement to prescribe the format of the ticket by repealing Section 3 (3) (a) of the CJPA. The purpose of this change is to give police forces the freedom to design their own tickets, should they so wish, and to remove the obstacle to the electronic issue presented by an inflexible ticket format. It would also provide operational benefits as it would allow changes to the PND scheme to be made more quickly; currently forces request up to 3 months notice to introduce changes to ensure that tickets can be re-printed and issued. I also do not want to stand in the way of forces seeking to develop hand-held equipment/electronic ways of processing the forms.

2.15. The effect of this change will be to pass the responsibility for ticket format from the Secretary of State to individual police forces. Requirements regarding the content of the ticket as set out in sections 3(3) (b) to (g) of the CJPA will remain in place. Forces would therefore still be required to

include certain information on the ticket e.g. details of the offence and reasonable information about it, the amount of the penalty and how to pay it, and their right to be tried for the offence.

2.16 I believe that this change will result in efficiency savings and operational benefits for all forces for the reasons set out above. However, as the development of electronic devices is in its infancy, it is difficult to quantify the likely savings. Consultees were asked to include any information on costs and savings as part of their response and these have been included in the Impact Assessment at Annex D.

2.17 In addition, I propose the repeal of the words ‘regulations or’ in section 3 (5) of the 2001 Act, as a consequence of the amendment to section 3(3) and the repeal of section 3 (4). This is because it is only the penalty notice that at present has to be in the ‘prescribed’ form. By repealing that requirement, it becomes unnecessary to define ‘prescribed’ or to provide a power to make such ‘regulations’ by statutory instrument. Section 3 (5), as amended, will remain in place.

## **CHAPTER 3 – CROSS-CUTTING ISSUES**

### **Legislative and Regulatory Reform Act 2006 (“The Act”)**

3.1 I consider the Act to be an appropriate vehicle for the proposed changes set out in chapter 2.

#### **The case for a Legislative Reform Order (LRO)**

3.2 The proposal forms part of the Government’s commitment to reduce unnecessary bureaucracy. I believe that the Legislative Reform Order (LRO) is the most appropriate vehicle to achieve the proposed change, as it is designed for removing burdens resulting directly or indirectly from any legislation. Section 1 (3) of the Act sets out what is meant by a ‘burden’. Under the terms of this section, prescription of the format of the PND represents both an administrative inconvenience, and an obstacle to efficiency to forces. My reasons for doing so are set out in section 2 of the memorandum and the following paragraphs in this section. The LRO provides the quickest option for removal and the most economical use of Parliamentary time

3.3 The change could be made by means of primary legislation however; there are no suitable legislative vehicles currently available. There are no non-legislative means available either. Section 3(3) (a) of the CIPA requires the penalty notice to be in the prescribed form, as set out in regulations. Without the proposed order, minor changes made to the ticket by individual police forces might be unlawful.

3.4 The LRO proposes the de-prescription of the format of the penalty notice form. The effect of the provision is solely to give police forces freedom to re-design the format of the ticket to meet operational requirements more effectively. Forces, such as the Btp, which issue a large volume of tickets on the street (as opposed to at a police station) would be given the ability to re-design the ticket format in order for it to be issued electronically by means of a hand-held device. As such, it is a relatively minor change, but one that I believe will result in significant operational and cost benefits to police forces such as BTP. Further, the appropriate safeguards and protections will remain in place, as discussed above and below.

3.5. The public interest is served by the order by reducing the operational and cost burden on forces. PND recipients should not be adversely affected by this change as the order will not affect the main statutory provisions of the Scheme, such as the 21 day suspended enforcement period during which a recipient can choose either to pay the penalty or to go to court. Further, the ticket will still have to contain the remaining six requirements in section 3(3) (b) to (g) of the CIPA. These include the requirements that the tickets must state the alleged offence and the amount of the penalty and must inform recipients of their rights. I will also continue to publish detailed operational guidance for police forces which will contain a “model” ticket.

#### **Consultation**

3.6 As noted in paragraph in 2.16 above, consultation on the proposals was undertaken under Section 13 of the 2006 Act. Details of the consultation are given in Annex A.

### **Summary of Consultation Responses**

3.7 The consultation period commenced on 22 August 2007 and ended on 3 October 2007. While the normal consultation period is 12 weeks, in view of the minor nature of the proposal, a shorter consultation period was agreed. The paper remained on the Cabinet Office web-site throughout the consultation period. In all, 21 responses were received, the majority of these from police forces in favour of the proposal. However the Law Society and Police Federation were opposed to the idea on the grounds that it will lead to further variation in the use of PNDs and inappropriate issue. We are aware of concerns about police operational inconsistencies in the use of PNDs which I am seeking to address, for example, through revised guidance to forces.

3.8 The Police Federation has argued that giving forces the freedom to re-design their forms will result in many different types of form which will lead to confusion among recipients. My assessment, however, is that there is no reason to believe that this will be the result. Under the road traffic fixed penalty notice scheme, on which the PND Scheme is based, notices have never been prescribed and there are no wide variations in ticket format between forces. Forces would still be required by law to include certain information on the ticket e.g. details of the offence and reasonable information about it, the amount of the penalty and how to pay it, and their right to be tried for the offence. I will also continue to include a specimen ticket in the operational guidance to forces. I have written to the Law Society and the Police Federation informing them of my decision to proceed and the reasons for doing so.

3.9 In view of the time which has elapsed, I have considered whether there was a need to re-consult, but I don't believe that to be necessary. In my assessment, nothing has changed to make de-prescription less desirable than it was in 2007. If anything, there is now an even stronger case for de-prescription as I understand that the vast majority of police forces have developed hand-held devices and are keen to use them for issuing fixed penalty notices, including PNDs. My plans have been endorsed by the Home Office and the Association of Chief Police Officers.'

### **Extent**

3.9 The change relates to England and Wales only. The Welsh Assembly does not have devolved authority for PNDs under the Criminal Justice and Police Act 2001. However I have advised Assembly officials of my plan and they have raised no objections. In response to the consultation, the Welsh Language Board asked the Ministry of Justice to ensure that the proposed changes do not prevent or hinder the police forces in Wales issuing tickets bilingually. As part of the operational guidance, I will continue to provide a specimen ticket translated into the Welsh Language.

3.10 Scotland operates a separate penalty notice scheme covered by its own legislation.

### **Impact Assessment**

3.11 An impact assessment is attached at Annex E.



### **Compatibility with the European Convention on Human Rights**

3.12 I, Claire Ward, consider that the provisions of the The Legislative Reform (Revocation of Prescribed Form of Penalty Notice for Disorderly Behaviour) Order 2009 are compatible with Convention Rights.

### **Plain English**

3.13 All efforts have been made to write the consultation paper, impact assessment, explanatory document and draft order in plain English.

### **Charges on public revenue**

3.14 These proposals do not impose charges on any public revenue.

### **Retrospective Effect**

3.15 The proposals will not have retrospective effect.

## **ANNEX A: DETAILS OF THE PUBLIC CONSULTATION EXERCISE**

The proposal contained in the draft order has been subject to consultation. The consultation period ran from 22 August to 3 October 2007 (6 weeks): in view of the minor non-controversial nature of the change the Department for Business Enterprise and Regulatory Reform agreed to a shorter than normal consultation period. The consultation was conducted in accordance with Section 13 of the Legislative and Regulatory Reform Act 2006

Views were invited on all aspects of the proposal. The following specific questions were asked:

1. Do you think the proposal will remove/reduce the burden?
2. Do you have views regarding the expected benefits of the proposal?
3. If there is any empirical evidence that you are aware of that supports the need for these reforms, if so, please provide details.
4. Is the proposal proportionate to the policy objective?
5. Does the proposal strike a fair balance between the public interest and any person adversely affected by it?
6. Does the proposal remove any necessary protection?
7. Does the proposal prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise?
8. Do you agree that the proposed Parliamentary resolution procedure i.e. secondary (negative) order should apply to the scrutiny of the proposal?

**Annex A 1**

**Consultees**

**43 England and Wales police forces – Circulated by Richard Brunstrom.**

**Association of Chief Police Officers -Richard Brunstrom QPM**  
Chief Constable  
North Wales Police, Police HQ  
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Tel. 01492 5110 80  
(PA Sandra Jones)

**Crown Prosecution Service -** David Evans  
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50 Ludgate Hill  
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Tel. 0207 796 8083  
Mobile: 07775 937 920

**Her Majesty's Court Service -** Anne Yeouart  
4<sup>th</sup> Floor  
Steel House  
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**Magistrates Association -** Sonia Andrews  
Committee Officer  
Judicial Policy and  
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Tel. 0207 387 2353

**Police Superintendent's Association-** Chief Supt Patrick Stayt  
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**Police Home Office departments -** Police Standards Unit  
Policing Powers & Protection Unit  
Police Human Resources Unit  
Police Leadership & Powers Unit  
Police Resources Unit  
Public Order Unit  
Police Reform Unit

**National Police Improvement Agency -**

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**Joint Youth Justice Unit -**

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Department of Children, Schools and Families  
Sanctuary Buildings  
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**Police Federation -**

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**British Transport Police**

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**Her Majesty's Inspectorate of Constabulary -**

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Assistant Inspector of constabulary  
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**Annex A 2**

**Respondents**

**The Association of Convenience Stores -**

Shane Brennan  
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**Cambridgeshire police -**

Chief Inspector Robin Laird  
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PE29 6NP

**Cumbria Constabulary -**

Peter Berry  
Cumbria Constabulary Headquarters  
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**Dorset Police -**

Chief Inspector Nick Budden  
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**Durham Constabulary –**

Supt B. Knevitt  
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**Essex Police -**

Jackie Hammond  
Essex HQ

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**Greater Manchester Police x 2**

Alison Green & Kate Atton  
Greater Manchester Police  
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**Humberside Police -**

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**Lancashire police -**

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**The Law Society -**

Ian Kelcey  
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**Leicestershire Police -**

Helen Fletcher  
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**Magistrates Association -**

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**Norfolk Constabulary-**

Claire Dellar on behalf of  
Supt Sarah Francis  
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Police Federation of England  
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**Surrey Police -**

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**Welsh Language Board -**

Ianto Brychan  
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Welsh Language Board  
Market Chambers  
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## Annex A 3 - Summary of Responses

### Summary of responses

#### Overview

A consultation document on de-prescribing the penalty notice form was published on 22 August 2007. 21 responses were received by 3 October 2007 (the closing date for responses); 15 from police forces.

The majority of respondents answered all 8 questions in the consultation paper. As a number of the questions did not lend themselves to a straight forward 'yes' or 'no' answer, some respondents commented on the issue raised rather than answering the question directly. In view of this, the summary below does not always include a statistical analysis of the responses. Instead it gives an indication of the balance of views held by the respondents and records the main arguments given in support of, or opposition to, the proposal put forward.

There was majority support for the proposal to de-prescribe the penalty notice form. However objections were raised by the Law Society and the Police Federation which are set out below. In view of their concerns, we have written to both organisations informing them of our intention to proceed.

The proposal was endorsed by the Home Office Flanagan Review of policing, including reducing bureaucracy.

### Responses to individual questions

#### Q1 Do you think the proposals will remove or reduce burdens?

The majority of respondents agreed that the proposal will remove or reduce burdens. Out of the 21 respondents, 15 responded positively to this question. Three responded negatively, two were neutral and one did not comment. Responses included:

- “They will reduce burdens, reduce costs by wastage when there needs to be an amendment to the penalty amount or an increase in the range of offences and will facilitate the use of electronic devices to produce the PND in a more efficient manner.” (*Lancashire police*)
- “The National Policing Improvement Agency (NPIA), have been working with a number of forces to developing a mobile information business change. One of these forces, British Transport Police (BTP); uses handheld devices with a printing capability at the point of need. This business change has the potential to print PND tickets and this has been successfully demonstrated over the last 12 months with the issuing of stop and account forms. PNDs have not been issued electronically to date due to the overly prescriptive nature of the PND format.” (*NPIA*)

- “Yes- allowing the redesign of the ticket would enable GMP to change the ticket to address current operational restrictions.....Allowing changes to the ticket would also reduce the costs incurred when there is a change in legislation e.g. a change in the amount payable or the creation of additional offences. The proposals would encourage research into the introduction of hand held devices, as it would remove one of the current barriers of aligning current ticket format with hand held devices.” (*Greater Manchester Police*)
- “Yes both financial and administrative convenience. Electronic production of tickets is the way forward and will reduce ongoing costs when changes to penalty charges and additional offences are introduced. It will also ensure legibility and possibly take less time to complete the ticket.” (*Merseyside police*)
- “The de-prescribing of the PND has come about due to forces wanting to move to PDA and the ability to issue the form from such a device. Our force would still be using the paper ticket for the time being but in the future our force may move to such devices. I cannot provide facts and figures but I would say that anything electronic would reduce what the LRRRA defines as a burden. From my forces point of view having the ability to make the form suit our individual needs would help. I understand that there would be certain parts of the ticket that would have to remain but by removing/adding generic information will reduce officers time, making them more stream lined will assist in the aim of PNDs.....”(Leicestershire police)
- “Yes- Enabling forces to alter the forms will have a significant impact on current printing costs for those wishing to use mobile data. It will also allow forces to adapt the form for local procedures. ...” (*Humberside Police*)
- “Yes, de-prescribing PNDs will enable forces to amend the format to reflect local needs/issues and guidance without the delays currently experienced. The proposal will also enable forces to proceed with current developments/initiatives in respect of hand held devices. Current safeguards regarding the content of the notices as set out in subsections 3(3) (b) to (g) of the CJPA are to be retained.” (*Durham Constabulary*)

**Q2 Do you have views regarding the expected benefits of the proposals as identified in paragraph 34 of this consultation document and addressed in the partial Impact Assessment attached in Annex D?**

Of the 21 respondents – 13 expressed a view; two made no comment. Responses from the remaining six respondents did not address the question directly.

The general consensus was that savings and operational benefits for forces would result from the proposal. .

**Q3 If there is any empirical evidence that you are aware of that supports the need for these reforms, please provide details here.**

None of the respondents was able to provide empirical evidence. However there was general agreement that de-prescribing the form would result in cost and efficiency savings, particularly from automated ticket issue.

**Q4 Are the proposals put forward in this consultation document proportionate to the policy objective?**

The majority of respondents agreed that the proposal was proportionate. Of the 21 respondents – 13 responded positively, one negatively and one did not comment. The remainder did not address the question directly. Responses included:

- “The aim of the policy is to try and help forces move forward and develop as technology improves. The proposals need to set boundaries with regards to the fine amount, how to pay etc but this needs to be included so the recipient of the ticket has clear written instructions and information.” (*Leicestershire police*)
- “I cannot see any reason why the proposals would have anything other than a positive effect on the administration of the PND process and I consider that they meet the objectives hoped to be achieved.” (*Humberside Police*)
- “Yes the proposals are proportionate to the policy objective, the ability to redesign the ticket would reduce cost and create time-savings, but would not alter the type of offence for which a PND is issued or the process by which they are issued.” (*Greater Manchester Police*)
- “Yes, on the grounds of change requirements and removal of obstacles to both ticket formats and operational benefits to officers.” (*Cumbria Constabulary*)

**Q5 Do the proposals put forward in this consultation document taken as a whole strike a fair balance between the public interest and any person adversely affected by it?**

Of the 21 respondents, 14 agreed that the proposals did strike a fair balance; one disagreed, and one failed to comment. The remaining five did not address the question specifically.

**Q6 Do the proposals put forward in this consultation document remove any necessary protection?**

13 of the respondents stated that the proposals put forward would not remove any necessary protection. Of these, responses included:

- “No. But it would be necessary to ensure that tickets include clear instructions for the recipient so that they aren’t penalised for failure to understand what they need to do.” (*Northamptonshire police*)
- “No, as long as the current guidance ‘Penalty Notices for Disorder – Police Operational Guidance March 2005’ is clearly updated to show exactly what information must be contained on the PND ticket, whether paper copy or electronic copy.” (*Essex police force crime registrar*)
- “Protection is still provided in that although the form is de-prescribed it will still contain the necessary detail to satisfy legislation and police requirements.” (*Humberside Police*)

Six of the respondents did not address the question specifically in their response. Two responses were negative as follows:

- “Only if the evidential section is removed. This is effectively ‘Notes made at the time’ and should be properly accommodated. Any reduction in quality in any form, particularly in light of negative media coverage may leave forces at risk and subject to litigation. The results of the HMIC Detections Review of forces should be considered within this proposal.” (*Greater Manchester Police force crime registrar*)
- “Yes, Under Section 1 (3) of the LRRRA. We believe that the real purpose of these proposals is to allow additional offences such as assault to be included on a PND. We acknowledge the preconditions in paragraph 9 but are wary of allowing the proposals following our objection last year to an extension of offences for PNDs. We are aware of a number of abuses of the PND scheme simply to facilitate sanction detections. This is corroborated by the continuous high non payment rate of PNDs. We believe that a culture is developing whereby a PND is being issued with no concern for the consequences of its enforcement. We are also apprehensive that a National scheme will be administered on local force guidelines following the initial National implementation. We believe the existence of a variety of different forms and/or electronic varieties will lead to confusion and derision amongst the public. There is still no National database or central record of persons in receipt of a PND; in fact forces have different criteria as to the numbers that an individual can receive before being charged directly to a court for their behaviour. We would like to see these issues addressed before the current scheme is de-prescribed.” (*Police Federation*)

**Q7 Do the proposals put forward in this consultation prevent any person from continuing to exercise any right or freedom which he might be reasonably expect to continue to exercise etc?**

14 of the respondents responded with a straight forward ‘no’. Six respondents did not address the question directly in their response. One respondent made no comment.

**Q8 Do you agree that the proposed parliamentary resolution procedure should apply to the scrutiny of this proposal?**

14 of the respondents agreed that the proposed parliamentary procedure of negative resolution should apply to the scrutiny of the proposal. Six respondents did not address the question specifically. One respondent disagreed.

- “We believe the offences covered by a PND are serious criminal acts. The ability to be able to administer justice for one of these offences is a considerable change to the criminal justice system in England and Wales. For example, the fact that no criminal record is recorded for a theft or an act of criminal damage is a fundamental issue. We believe that any future extension or changes to the scheme should be properly examined in Parliament. We do not believe that the Negative Resolution Procedure is thorough enough. We believe that the alternative Affirmative Resolution Procedure is the appropriate method of scrutiny for these changes.” (*Police Federation*)

**Concerns**

Only one respondent, the Law Society, objected to the proposal. The Police Federation, although not directly opposed to it, had specific concerns (see comments above). The following are some of the comments and suggestions raised by the Law Society against de-prescription:

- “The Society is concerned that the issuing of PNDs varies considerably across the country and there are concerns that by amending the law to allow police forces to issue their own forms could result in even more variation.
- There is a need for clearer guidance and training for officers on appropriate and inappropriate issue.
- Strong central control should be maintained over the forms that individual forces may produce to ensure that they do comply with legislation.
- Further information should be contained on all fixed penalty notices i.e. the recipients right to seek legal advice, consequences of accepting a notice.”

In summary, the Society’s view was that before local police forces are permitted to create their own forms the concerns highlighted above should be addressed.

**Wales**

The Welsh Language Board, although not opposed to de-prescription, asked the Ministry of Justice to ensure that the proposed changes do not prevent or hinder the police forces in Wales issuing tickets bilingually. The electronic hand-held devices must be able to produce both Welsh and English language penalty notices or the police forces will not be able to comply with their Welsh language requirements.



#### **Annex A 4 Government Response**

The Government welcomes the support of the majority of respondents to the proposal to de-prescribe the penalty notice form. While acknowledging concerns that such a change could lead to variations in the penalty notice form between forces, which could in turn lead to confusion among recipients, the Government believes that sufficient safeguards will remain in place to prevent this happening.

The Government remains convinced that de-prescription will result in efficiency savings and operational benefits for all forces and better enforcement of the Penalty Notice for Disorder Scheme. It therefore intends to proceed with its plans by laying an order before Parliament seeking approval for the change.



## Annex B :

### On the Spot Penalties for Disorderly Behaviour

#### *Offences to which this Chapter applies*

#### 1 Offences leading to penalties on the spot

(1) For the purposes of this Chapter "penalty offence" means an offence committed under any of the provisions mentioned in the first column of the following Table and described, in general terms, in the second column:

<i>Offence creating provision</i>	<i>Description of offence</i>
Section 12 of the Licensing Act 1872 (c 94)	Being drunk in a highway, other public place or licensed premises
Section 80 of the Explosives Act 1875 (c 17)	Throwing fireworks in a thoroughfare
Section 55 of the British Transport Commission Act 1949 (c xxix)	Trespassing on a railway
Section 56 of the British Transport Commission Act 1949 (c xxix)	Throwing stones etc at trains or other things on railways
Section 91 of the Criminal Justice Act 1967 (c 80)	Disorderly behaviour while drunk in a public place
Section 5(2) of the Criminal Law Act 1967 (c 58)	Wasting police time or giving false report
Section 1 of the Theft Act 1968 (c 60)	Theft
Section 1(1) of the Criminal Damage Act 1971 (c 48)	Destroying or damaging property
Section 5 of the Public Order Act 1986 (c 64)	Behaviour likely to cause harassment, alarm or distress
Section 87 of the Environmental Protection Act 1990 (c 43)	Depositing and leaving litter
Section 12 of this Act	Consumption of alcohol in designated public place
Section 127(2) of the Communications Act 2003	Using public electronic communications network in order to cause annoyance, inconvenience or needless anxiety
Section 11 of the Fireworks Act 2003 (c 22)	Contravention of a prohibition or failure to comply with a requirement imposed by or under fireworks regulations or making false statements
Section 141 of the Licensing Act 2003 (c 17)	Sale of alcohol to a person who is drunk
Section 146(1) and (3) of the	Sale of alcohol to children

Licensing Act 2003 (c 17)	
Section 149 of the Licensing Act 2003 (c 17)	Purchase of alcohol by or on behalf of children
Section 149(4) of the Licensing Act 2003	Buying or attempting to buy alcohol for consumption on licensed premises, etc by child
Section 150 of the Licensing Act 2003 (c 17)	Consumption of alcohol by children or allowing such consumption
Section 151 of the Licensing Act 2003 (c 17)	Delivering alcohol to children or allowing such delivery
Section 49 of the Fire and Rescue Services Act 2004 (c 21)	Knowingly giving a false alarm of fire
Section s.5(2) & Sch 4 Misuse of Drugs Act 1971	Possess a controlled drug of Class B - cannabis/cannabis resin.

- (2) The Secretary of State may, by order, amend an entry in the Table or add or remove an entry.
- (3) An order under subsection (2) may make such amendment of any provision of this Chapter as the Secretary of State considers appropriate in consequence of any change in the Table made by the order.
- (4) The power conferred by subsection (2) is exercisable by statutory instrument.
- (5) No order shall be made under subsection (2) unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

### *Penalty notices and penalties*

#### **2 Penalty notices**

- (1) A constable who has reason to believe that a person aged 10 or over has committed a penalty offence may give him a penalty notice in respect of the offence.
- (2) Unless the notice is given in a police station, the constable giving it must be in uniform.
- (3) At a police station, a penalty notice may be given only by an authorised constable.
- (4) In this Chapter "penalty notice" means a notice offering the opportunity, by paying a penalty in accordance with this Chapter, to discharge any liability to be convicted of the offence to which the notice relates.
- (5) "Authorised constable" means a constable authorised, on behalf of the chief officer of police for the area in which the police station is situated, to give penalty notices.
- (6) The Secretary of State may by order--
- (a) amend subsection (1) by substituting for the age for the time being specified in that subsection a different age which is not lower than 10, and

- (b) if that different age is lower than 16, make provision as follows--
  - (i) where a person whose age is lower than 16 is given a penalty notice, for a parent or guardian of that person to be notified of the giving of the notice, and
  - (ii) for that parent or guardian to be liable to pay the penalty under the notice.
- (7) The provision which may be made by virtue of subsection (6)(b) includes provision amending, or applying (with or without modifications), this Chapter or any other enactment (whenever passed or made).
- (8) The power conferred by subsection (6) is exercisable by statutory instrument.
- (9) No order shall be made under subsection (6) unless a draft of the order has been laid before and approved by a resolution of each House of Parliament.

### **3 Amount of penalty and form of penalty notice**

- (1) The penalty payable in respect of a penalty offence is such amount as the Secretary of State may specify by order.
- (1A) The Secretary of State may specify different amounts for persons of different ages.
- (2) But the Secretary of State may not specify an amount which is more than a quarter of the amount of the maximum fine for which a person is liable on [summary] conviction of the offence.
- (3) A penalty notice must--
  - (a) be in the prescribed form;
  - (b) state the alleged offence;
  - (c) give such particulars of the circumstances alleged to constitute the offence as are necessary to provide reasonable information about it;
  - (d) specify the suspended enforcement period (as to which see section 5) and explain its effect;
  - (e) state the amount of the penalty;
  - (f) state the [designated officer for a local justice area] to whom, and the address at which, the penalty may be paid; and
  - (g) inform the person to whom it is given of his right to ask to be tried for the alleged offence and explain how that right may be exercised.
- (4) "Prescribed" means prescribed by regulations made by the Secretary of State.
- (5) The power to make regulations or an order conferred by this section is exercisable by statutory instrument.
- (6) Such an instrument shall be subject to annulment in pursuance of a resolution of either House of Parliament.

### **4 Effect of penalty notice**

- (1) This section applies if a penalty notice is given to a person ("A") under section 2.
- (2) If A asks to be tried for the alleged offence, proceedings may be brought against him.
- (3) Such a request must be made by a notice given by A--
  - (a) in the manner specified in the penalty notice; and
  - (b) before the end of the period of suspended enforcement (as to which see section 5).

(4) A request which is made in accordance with subsection (3) is referred to in this Chapter as a "request to be tried".

(5) If, by the end of the suspended enforcement period--

- (a) the penalty has not been paid in accordance with this Chapter, and
- (b) A has not made a request to be tried,

a sum equal to one and a half times the amount of the penalty may be registered under section 8 for enforcement against A as a fine.

## **5 General restriction on proceedings**

(1) Proceedings for the offence to which a penalty notice relates may not be brought until the end of the period of 21 days beginning with the date on which the notice was given ("the suspended enforcement period").

(2) If the penalty is paid before the end of the suspended enforcement period, no proceedings may be brought for the offence.

(3) Subsection (1) does not apply if the person to whom the penalty notice was given has made a request to be tried.

## **6 Secretary of State's guidance**

The Secretary of State may issue guidance—

- (a) about the exercise of the discretion given to constables by this Chapter;
- (b) about the issuing of penalty notices;
- (c) with a view to encouraging good practice in connection with the operation of provisions of this Chapter.

### *Procedure*

## **7 Payment of penalty**

(1) If a person to whom a penalty notice is given decides to pay the penalty, he must pay it to the designated officer specified in the notice.

(2) Payment of the penalty may be made by properly addressing, pre-paying and posting a letter containing the amount of the penalty (in cash or otherwise).

(3) Subsection (4) applies if a person--

- (a) claims to have made payment by that method, and
- (b) shows that his letter was posted.

- (4) Unless the contrary is proved, payment is to be regarded as made at the time at which the letter would be delivered in the ordinary course of post.
- (5) Subsection (2) is not to be read as preventing the payment of a penalty by other means.
- (6) A letter is properly addressed for the purposes of subsection (2) if it is addressed in accordance with the requirements specified in the penalty notice.

## **8 Registration certificates**

- (1) The chief officer of police may, in respect of any registrable sum, issue a certificate (a "registration certificate") stating that the sum is registrable for enforcement against the defaulter as a fine.
- (2) If that officer issues a registration certificate, he must cause it to be sent to the [designated officer for the local justice] area in which the defaulter appears to that officer to reside.
- (3) A registration certificate must--
  - (a) give particulars of the offence to which the penalty notice relates, and
  - (b) state the name and last known address of the defaulter and the amount of the registrable sum.
- (4) "Registrable sum" means a sum that may be registered under this section as a result of section 4(5).
- (5) "Defaulter" means the person against whom that sum may be registered.

## **9 Registration of sums payable in default**

- (1) If the designated officer for a local justice for a petty sessions area receives a registration certificate, he must register the registrable sum for enforcement as a fine in that area by entering it in the register of a magistrates' court acting for that area.
- (2) But if it appears to him that the defaulter does not reside in that area--
  - (a) subsection (1) does not apply to him; but
  - (b) he must cause the certificate to be sent to the person appearing to him to be the designated officer for the local justice area in which the defaulter resides.
- (3) A designated officer registering a sum under this section for enforcement as a fine, must give the defaulter notice of the registration.

- (4) The notice must--
- (a) specify the amount of the sum registered, and
  - (b) give the information with respect to the offence, and the authority for registration, which was included in the registration certificate under section 8.

(5) If a sum is registered in a magistrates' court as a result of this section, any enactment referring (in whatever terms) to a fine imposed, or other sum adjudged to be paid, on conviction by such a court applies as if the registered sum were a fine imposed by that court on the conviction of the defaulter on the date on which the sum was registered.

## **10 Enforcement of fines**

(1) In this section—

- “fine” means a sum which is enforceable as a fine as a result of section 9; and
- “proceedings” means proceedings for enforcing a fine.

(2) Subsection (3) applies if, in any proceedings, the defaulter claims that he was not the person to whom the penalty notice concerned was issued.

(3) The court may adjourn the proceedings for a period of not more than 28 days for the purpose of allowing that claim to be investigated.

(4) On the resumption of proceedings that have been adjourned under subsection (3), the court must accept the defaulter’s claim unless it is shown, on a balance of probabilities, that he was the recipient of the penalty notice.

(5) The court may set aside a fine in the interests of justice.

(6) If the court does set a fine aside it must—

(a) give such directions for further consideration of the case as it considers appropriate; or

(b) direct that no further action is to be taken in respect of the allegation that gave rise to the penalty notice concerned.

### *Interpretation*

## **11 Interpretation of Chapter 1**

In this Chapter—

- “chief officer of police” includes the Chief Constable of the British Transport Police;
- “defaulter” has the meaning given in section 8(5);
- “penalty notice” has the meaning given in section 2(4);
- “penalty offence” has the meaning given in section 1(1);

- “registrable sum” has the meaning given in section 8(4).







## Annex D: Current list of PND offences and the amount of the penalties payable

Upper Tier £80				
PND Offence Code	CCCJS Code	Act	Description	Notifiable/Recordable
DA01	CL67008	S 5, Criminal Law Act 1967	Causing wasteful use of police time/ wasting police time, Giving false report	Recordable
DA02 <sup>i</sup>	CA03007	s127(2) of the Communications Act 2003	Send false message/persistently use a public electronic communications network in order to cause annoyance, inconvenience or needless anxiety	Recordable
DA03 <sup>ii</sup>	FS04009	S49 of the Fire and Rescue Services Act 2004	Knowingly give a false alarm to a person acting on behalf of a fire and rescue authority.	Recordable
DA04 <sup>iii</sup>	PU86107	S 5, Public Order Act 1986	Use words/conduct likely to cause harassment, alarm or distress	Notifiable & recordable
DA05	EP75005	S 80, Explosives Act 1875	Fire/ throw firework(s)	Non-recordable
DA06	CJ67002	S 91, Criminal Justice Act 1967	Drunk & disorderly in a public place	Recordable
DA11 <sup>iv</sup>	CD71040	s1(1) of the Criminal Damage Act 1971	Destroying or damaging property (under £500)	Notifiable & recordable
DA12 <sup>iv</sup>	TH68010	s1 of the Theft Act 1968	Theft (retail under £200)	Notifiable & recordable
DA13 <sup>v</sup>	FW04003	Fireworks Regulations 2004 under s11 of the Fireworks Act 2003	Breach of fireworks curfew (11pm-7am)	Recordable
DA14 <sup>v</sup>	FW04002	Fireworks Regulations 2004 under s11 of the Fireworks Act 2003	Possession of a category 4 firework	Recordable
DA15 <sup>v</sup>	FW04001	Fireworks Regulations 2004 under s11 of the Fireworks Act 2003	Possession by a person under 18 of an adult firework	Recordable
DA16 <sup>vi</sup>	LG03036	*Section 141 of the Licensing Act 2003 (c.17)	Sells or attempts to sell alcohol to a person who is drunk.	Recordable (1/12/05)
DA17	LG03067	*s146(3) of the Licensing Act 2003	Supply of alcohol by or on behalf of a club to a person aged under 18	Recordable (1/12/05)
DA18 <sup>iv</sup>	LG03064	*s146(1) of the Licensing Act 2003	Sale of alcohol anywhere to a person under 18	Recordable (1/12/05)
DA19 <sup>iv</sup>	LG03081	*s149(3) of the Licensing Act 2003	Buys or attempts to buy alcohol on behalf of person under 18	Recordable (1/12/05)
DA20	LG03083	*s149(4) of the Licensing Act 2003	Buys or attempts to buy alcohol for consumption on relevant premises by person under 18.	Recordable (1/12/05)

DA21 <sup>iv</sup>	LG03088	*s151 of the Licensing Act 2003	Delivery of alcohol to person under 18 or allowing such delivery	Recordable (1/12/05)
DA 22vii	MD71530	s.5(2) & Sch 4 Misuse of Drugs Act 1971	Possess a controlled drug of Class B - cannabis/cannabis resin.	Notifiable & recordable

### Lower Tier £50

PND Offence Code	CCCJS Codes	Act	Description	Notifiable/Recordable
DB03	BT49005	S 55, British Transport Commission Act 1949	Trespass on a railway	Non-recordable
DB04	BT49006	S 56, British Transport Commission Act 1949	Throwing stones/matter/thing at a train	Non-recordable
DB05	LG72008	S 12, Licensing Act 1872	Drunk in highway	Recordable
DB07	CJ01002	S12, Criminal Justice & Police Act 2001	Consume alcohol in designated public place, contrary to requirement by constable not to do so.	Non-recordable
DB08 <sup>iv</sup>	EP90046	s87(1) and (5) of the Environmental Protection Act 1990	Depositing and leave litter	Non-recordable
DB12 <sup>iv</sup>	LG03085	*s150(1) of the Licensing Act 2003	Consumption of alcohol by a person under 18 on relevant premises.	Recordable (1/12/05)
DB13 <sup>iv</sup>	LG03086	*s150(2) of the Licensing Act 2003	Allowing consumption of alcohol by a person under 18 on relevant premises.	Recordable (1/12/05)
DB14 <sup>vi</sup>	LG03079	*Section 149(1) of the Licensing Act 2003 (c.17)	Buying or attempting to buy alcohol by a person under 18.	Recordable (1/12/05)

i Offence repealed by Communications Act 2003 with effect from 5 March 2004

ii Offence repealed by Fire and Rescue Services Act 2004 with effect from 1 October 2004

iii Offence added with effect from 8 August 2002

iv Offence added with effect from 1 November 2004

v Offence added with effect from 11 October 2004

vi Offence added with effect from 4 April 2005

vii Offence added with effect from 28 January 2009

\* New legislative reference with effect from 24 November 2005 on implementation of Licensing Act 2003



## Summary: Intervention & Options

<b>Department /Agency:</b>	<b>Title:</b> <b>Impact Assessment of De-prescribing the penalty notice for disorder form</b>	
<b>Stage:</b> Consultation	<b>Version:</b> #1	<b>Date:</b>
<b>Related Publications:</b> Criminal Justice and Police Act 2001(s.1-11) Penalty Notices for Disorder Police Operational Guidance (March 2005) as amended		

**Available to view or download at:**

<http://www>.

**Contact for enquiries:** Chris Morris-Perry

**Telephone:** 020 3334 5039

What is the problem under consideration? Why is government intervention necessary?

Section 3(3) of the Criminal Justice and Police Act 2001 provides that a penalty notice must be in the prescribed form. The prescribed form for individuals aged 16 and over and juveniles aged 10 - 15 is set out in secondary legislation. Many police forces have found this form overly prescriptive and have asked for greater flexibility in deciding its format. In particular, some forces are developing hand-held electronic machines that will be used by officers to issue PNDs; they have found it difficult to adapt the technology so that it works effectively with the format

What are the policy objectives and the intended effects?

We are seeking to remove sections 3(3) (a) and (4) of the 2001 Act which require the PND to be in the prescribed form.. The purpose of this change is to give police forces the freedom to design their own tickets, should they so wish, and to remove the obstacle presented by an inflexible ticket format. However, forces would still be required to include certain information on the ticket e.g. details of the offence and reasonable information about it, the amount of the penalty and how to pay it, and their right to be tried for the offence.

What policy options have been considered? Please justify any preferred option.

1. Do nothing;
2. Amend or replace the Regulations which set out the prescribed form to increase flexibility.
3. De-prescribe the penalty form by amending primary legislation to remove section 3 (3) (a) and 3 (4) of the 2001 Act which specify that the form must be prescribed, using a legislative reform order made under the Legislative and Regulatory Reform Act 2006 (LRRRA).

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects?

A year after the change takes effect.

**Ministerial Sign-off** For consultation stage Impact Assessments:

***I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.***

Signed by the responsible Minister:

..... Date:

## Summary: Analysis & Evidence

<b>Policy Option: De-prescribe the penalty form</b>	<b>Description: Amend primary legislation by removing section 3 (3) (a) &amp; 3 (4) of the 2001 Act which specify that the form must be prescribed</b>
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<b>COSTS</b>	<b>ANNUAL COSTS</b>		Description and scale of <b>key monetised costs</b> by 'main affected groups' N/A.	
	<b>One-off</b>	<b>Yr</b>		
	<b>£ Not known</b>	0		
	<b>Average Annual Cost</b> (excluding one-off)			
	<b>£ Not known</b>		<b>Total Cost (PV)</b>	<b>£ Not known</b>
Other <b>key non-monetised costs</b> by 'main affected groups' None expected.				

<b>BENEFITS</b>	<b>ANNUAL BENEFITS</b>		Description and scale of <b>key monetised benefits</b> by 'main affected groups' N/A	
	<b>One-off</b>	<b>Yr</b>		
	<b>£ Not known</b>	0		
	<b>Average Annual Benefit</b>			
	<b>£ Not known</b>		<b>Total Benefit (PV)</b>	<b>£ Not known</b>
Other <b>key non-monetised benefits</b> by 'main affected groups' Potential efficiency savings arising from the use of de-prescribed forms have not been estimated.				

Key Assumptions/Sensitivities/Risks That the change will benefit all police forces by allowing greater flexibility when designing their PND forms

Price Base	Time Period	<b>Net Benefit Range (NPV)</b> £	<b>NET BENEFIT (NPV Best estimate)</b> £
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What is the geographic coverage of the policy/option?	England and
On what date will the policy be implemented?	
Which organisation(s) will enforce the policy?	N/A
What is the total annual cost of enforcement for these	£ N/A
Does enforcement comply with Hampton principles?	Yes
Will implementation go beyond minimum EU requirements?	No
What is the value of the proposed offsetting measure per	£ N/A
What is the value of changes in greenhouse gas emissions?	£ N/A
Will the proposal have a significant impact on competition?	No
Annual cost (£-£) per organisation (excluding one-off)	Micro    Small    Medium    Large



Are any of these organisations exempt?	No	No	N/A	N/A
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<b>Impact on Admin Burdens Baseline</b> (2005 Prices)				(Increase -	
Increase	£ Not	Decreases	£ Not	<b>Net</b>	£ Not known

Key:	<b>Annual costs and benefits: Constant Prices</b>	<b>(Net) Present Value</b>
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[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

### Issue

Section 3(3) of the Criminal Justice and Police Act 2001 provides that a penalty notice must be in the prescribed form. The prescribed form is set out in secondary legislation. Many police forces have found this form overly prescriptive and have asked for greater flexibility in deciding its format. In particular, some forces are developing hand-held electronic machines that will be used by officers to issue various types of forms on the street including Penalty Notices for Disorder (PNDs); they have found it difficult to adapt the technology so that it works effectively with the format of the prescribed form.

### Background

2. The PND Scheme was introduced as part of the government’s strategy to tackle low level anti-social and nuisance behaviour. Under the Scheme established under the Criminal Justice and Police Act (CJPA) 2001, police are able to issue a fixed penalty notice of £50 or £80 for a specified range of disorder offences including low value retail theft (under £200) criminal damage (under £500) and section 5 of the Public Order Act 1986 (behaviour likely to cause harassment, alarm or distress). (A complete list of offences is attached at Annex D). PNDs may be issued ‘on the spot’ or in custody. No admission of guilt is required and if the penalty is paid the recipient discharges all liability to conviction of the offence. Failure to pay the penalty or request a court hearing within the 21 suspended enforcement period (SEP), results in a fine of one and half times the penalty amount being registered by the courts.

3. The purpose of the disposal is to provide the police with a quick simple financial punishment to deal with mostly first time offenders who previously would have received a warning and also to divert low-level cases from court which would have resulted in a fine so freeing up courts to deal with more serious cases. The PND has proved to be very popular with the police: over 600,000 PNDs have been issued since the disposal was implemented in all 43 police forces in England and Wales in 2004.

### Key statistics

PNDs	Issued	Paid	Court Hearing	Fine Registered
2004	63,639	24,126	360	28,180
2005	146,181	77,247	1,588	62,179

<b>2006</b>	<b>201,197</b>	<b>104,546</b>	<b>1,480</b>	<b>87,796</b>
<b>2007</b>	<b>207,544</b>	<b>106,925</b>	<b>1,253</b>	<b>90,057</b>

## **Rationale for government intervention**

4. Section 3 of the CJPA governs the setting of the penalty amount and the form of the penalty notice. It provides that the penalty notice must be in the prescribed form with prescription being by regulations. The notice must contain specified information including the alleged offence and amount of the penalty. It must inform the recipient of the right to ask to be tried for the alleged offence and explain how that right may be exercised.

5. Currently all PNDs are issued manually and forces are responsible for producing their own tickets at considerable expense. There are four different types of ticket: two for adults upper (£80) and lower (£50) tier offences, and two for juveniles (£40 and £30). However, a number of forces - British Transport Police (BTP), Lancashire, Hampshire and Staffordshire - which are developing electronic hand-held devices for front-line officers would like to issue PNDs electronically. But it has become clear that the current PND form is unsuitable to be reproduced using the latest technology and that changes that forces wish to make may be unlawful. The problem is that the size of the current mobile printer is too small to reproduce the current PND format and it would not be practical or cost effective to increase the size of the printer simply to accommodate the PND. In view of this ACPO has requested that changes are made to the current legislation to de-prescribe the form.

6. By de-prescribing the penalty notice form, the police would be given the freedom to re-design the ticket should they so wish, and so remove the obstacle to automation presented by an inflexible ticket format. Automation would reduce costs and the amount of paper an officer has to carry. The BTP has estimated that around 50 minutes of extra patrol time per day would be available for officers equipped with hand-held devices to issue forms such as PNDs.

7. In addition, forces would also be able to make changes to the ticket format to reduce the cost and operational burden when changes to the Scheme are made, such as adding new offences or increasing penalty amounts. Currently such changes can result in forces incurring significant costs from printing new books of tickets and destroying unused out-of-date ones. The Metropolitan Police (MPS) has estimated a cost saving of £75,000 each time new offences are added or the penalty amount increased. Such changes require all the old notices to be destroyed and new ones printed; the MPS print 100,000 books at any one time.

8. Our plans to de-prescribe the form have been endorsed by the Home Office. The aim of removing unnecessary prescription to reduce bureaucracy and costs to forces is in accordance with the approach to bureaucracy set out in The Review of Policing by Sir Ronnie Flanagan published in February 2008; that the Home Office/Government should remove any prescriptions that it can, followed by police forces then ensuring that any forms are short and standardised.

## **Options**

- **Option 1: Do Nothing**

**Costs** – There would be opportunity costs in forces not being able to move to PDAs.

**Benefits** - The Ministry of Justice would still control how the format of the penalty notice looks.

**Risks** - The current format is inflexible and difficult to adapt to some of the technological developments and local needs as mentioned above, which can frustrate the operational needs of forces. Furthermore, any changes made to the form, however minor, would require time-consuming changes to secondary legislation, which would be a costly procedure. Forces may therefore be tempted to make changes to the form to enable electronic issue which would be unlawful, thereby possibly undermining public confidence in the scheme.

- **Option 2: Amend/replace existing Regulations which set the prescribed form to make the wording more flexible, for example, by inserting the words ‘or a form to like effect’.)**

**Costs** – None.

**Benefits** – This would probably give some flexibility needed by forces, not provided for under current legislation, however careful consideration would need to be given to the exact wording and what it would mean in practice.

**Risks** – Forces may still be unclear as to whether any proposed changes were legal. As policy holders, the Ministry of Justice would then be required to adjudicate which would probably require seeking legal advice.

- **Option 3 – De-prescribing the PND form**

**Costs** – Forces seeking to automate the issue of PNDs will incur costs from redesigning the form together with any software costs arising from adding functionality to the hand-held devices. The devices being developed will offer a range of functionality to officers including the ability to issue forms such as fixed penalties.

**Benefits** – Forces would be free to re-design their tickets to remove the obstacle to automation presented by an inflexible ticket format and/or make changes to the ticket format to reduce the cost and operational burden when changes to the Scheme are made, such as adding new offences or increasing penalty amounts.

**Risks** – Giving forces the freedom to re-design their forms may result in many different types of form which could possibly lead to confusion amongst recipients. There is no reason to believe that this will be the result. Under the Road Traffic fixed penalty notice scheme, on which the PND scheme is based, notices are not prescribed and there are no wide variations in ticket format between forces. Forces would still be required to include certain information on the ticket e.g. details of the offence and reasonable information about it, the amount of the penalty and how to pay it, and the right to be tried for the offence. We will also continue to include a specimen ticket in our operational guidance to forces.

**Recommendation:** We believe that the third option provides the flexibility that forces need while still retaining the essential content of the form as specified in section 3(3)(b) to (g) of the CIPA.

## Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

**Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.**

<b>Type of testing undertaken</b>	<b><i>Results in Evidence Base?</i></b>	<b><i>Results annexed?</i></b>
Competition Assessment	No	No
Small Firms Impact Test	No	No
Legal Aid	No	No
Sustainable Development	No	No
Carbon Assessment	No	No
Other Environment	No	No
Health Impact Assessment	No	No
Race Equality	No	No
Disability Equality	No	No
Gender Equality	No	No
Human Rights	No	No
Rural Proofing	No	No

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