

**EXPLANATORY MEMORANDUM TO**  
**THE CRIMINAL JUSTICE AND POLICE ACT 2001 (AMENDMENT) ORDER 2005**

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. It adds further offences to those listed in the Table in section 1(1) of the Criminal Justice and Police Act 2001 as capable of attracting a fixed penalty notice.
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) of the 2001 Act provides for further offences to be added to the Table in section 1(1) by Order. Two Orders have been made under that power adding offences to the Table. They are The Criminal Justice and Police Act 2001 (Amendment) Order 2002 (No. 1934 of 2002) and The Criminal Justice and Police Act 2001 (Amendment) and Police Reform Act 2002 (Modification) Order 2004 (No. 2540 of 2004).
  - 4.4 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 force on 20<sup>th</sup> January 2004.
  - 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. That extension of the scheme came into force on 26<sup>th</sup> December 2004.

4.6 Pilots of penalty notices for disorder for 10 to 15 year olds have commenced in seven police force areas and will run for a year.

4.7 The Order adds two further offences to the Table in section 1 of the 2001 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, Counter-Terrorism and Resilience 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) Order 2005 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 penalty notice for disorder scheme is now in place across all police forces in England and Wales. The scheme is proving to be successful with the police with nearly 60,000 penalty notices issued during 2004.

7.6 Penalty notices for disorder have been used to good effect by the police in alcohol misuse enforcement campaigns that have operated in England and Wales in 2004 during the summer and over the Christmas and New Year period. The police have found penalty notices provide a quick and effective tool to deal with the minor, alcohol-related offending which occurs in city centres late at night and weekends. Police officers are freed up from completing paperwork and can return to patrolling the streets rapidly.

7.7 The Order adds more penalty offences to build on the success of the existing scheme. It adds two further alcohol-related offences to help police tackle underage and binge drinking.

- 7.8 Including the offence under section 169C(1) of the Licensing Act 1964 of buying alcohol in licensed premises by an under 18 supplements the existing penalty offence under section 169E of that Act of consumption of alcohol in licensed premises by an under 18.
- 7.9 The offence under section 172(3) of the Licensing Act 1964 of selling alcohol to a drunken person will also supplement the existing offences. Its use will allow the police to deal with premises that are found to be serving alcohol irresponsibly by continuing to serve alcohol to a person who should no longer be served.
- 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 significant 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.