

## **EXPLANATORY MEMORANDUM TO**

### **THE PENALTIES FOR DISORDERLY BEHAVIOUR (AMOUNT OF PENALTY) (AMENDMENT) (NO. 2) ORDER 2013**

#### **2013 No. 1579**

**1.** This explanatory memorandum has been prepared by Ministry of Justice (MoJ) and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

2.1 This Order revokes the Penalties for Disorderly Behaviour (Amount of Penalty) (Amendment) Order 2013 (S.I. 2013/1165) and amends the Penalties for Disorderly Behaviour (Amount of Penalty) Order 2002 (S.I. 2002/1837). The effect of the Order is to increase the value of both lower and higher-tier Penalty Notices for Disorder (“PNDs”) by £10 from £50 and £80 to £60 and £90 respectively, in relation to an offence alleged to have been committed on or after 1 July 2013.

**3. Matters of special interest to the Joint Committee on Statutory Instruments**

3.1 This Order does not adhere to the rule that a statutory instrument subject to the negative resolution procedure must be laid before Parliament for 21 days before coming into force. The MoJ apologises for this. S.I. 2013/1165, which this Order revokes, was to have come into force on 1 July 2013, and would have raised the value of PNDs in the same way as this Order by amending S.I. 2002/1837. However, it has very recently come to light, and subsequent to making and laying that Order on 20 May 2013, that the computer system used to issue a PND (“PentiP”) would be unable to operate in accordance with the provisions of S.I. 2013/1165. This is because PentiP has been configured to determine the amount of a PND by reference to the date the offence was alleged to have been committed, not the date the PND is issued; a PND need not be issued on the day the offence occurred. This issue has an impact on cases where an offence for which a PND may be given was alleged to have been committed before 1 July 2013, but the PND falls to be issued on or after 1 July. Accordingly, it has been necessary to revoke urgently S.I. 2013/1165 by way of this Order without providing for at least 21 days scrutiny. This Order features provision the effect of which is to save S.I. 2002/1837 as in force before 1 July 2013, which will ensure that the amount of a PND issued by PentiP after 1 July 2013 in respect of conduct preceding that date will be unchanged.

3.2 Forces have prepared operationally for the increase to PND values from 1st July and the making of this order will ensure that this deadline is still met, minimising any possible disruption. This Order is being issued free of charge to all known recipients of S.I. 2013/1165.

#### **4. Legislative Context**

4.1 Chapter 1 of Part 1 of the Criminal Justice and Police Act 2001 (c.16) (“the 2001 Act”) introduced a regime for the award of a penalty where a constable has reason to believe that certain specified offences have been committed. The penalties take the form of a penalty notice which can be issued by an authorised constable. A PND is an alternative to prosecution. It does not amount to a conviction and does not require an admission of guilt on behalf of the person receiving the notice. The list of offences in respect of which a PND may be issued is set out in section 1(1) of the 2001 Act and may be amended by order made by the Secretary of State.

4.2 Section 3(1) enables the Secretary of State to set the amount payable in respect of a PND by order; section 3(2) places a condition on the Secretary of State’s power to specify that amount. The condition is that the amount must not exceed a quarter of the amount of the maximum fine for which a person would be liable on summary conviction of the offence plus half of the “relevant surcharge”. The “relevant surcharge”, is by virtue of section 3(2A) of the 2001 Act, the amount payable as a surcharge under section 161A of the Criminal Justice Act 2003 where a person was fined the maximum amount for the offence. The amount of the “relevant surcharge” is currently to be determined by reference to the Criminal Justice Act 2003 (Surcharge) Order 2012 (S.I. 2012/1696).

#### **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 the negative resolution procedure and does not amend primary legislation, no statement is required.

#### **7. Policy background**

7.1 This instrument gives effect to proposals published in the MoJ consultation, ‘Getting it right for Victims and Witnesses’<sup>1</sup>. The Government response to the consultation was published on 2 July 2012.

7.2 The consultation, ‘Getting it right for Victims and Witnesses’ sets out the policy intention to ensure that offenders are responsible for greater reparation to victims and to contribute to the cost of victim support services. Central Government in 2010 spent approximately £66m each year on providing such services, with offenders contributing only around £10m through the Victim Surcharge. To redress this imbalance the Government has already implemented the Prisoners’ Earnings Act 1996 and introduced provision in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 to place a stronger duty on the courts to consider ordering offenders to pay compensation to their victims.

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<sup>1</sup> [https://consult.justice.gov.uk/digital-communications/victims-witnesses/consult\\_view](https://consult.justice.gov.uk/digital-communications/victims-witnesses/consult_view)

7.3 The Government intends to increase the value of both lower and higher tier PNDs by £10, as set out in this instrument, with the additional revenue to be used to fund victim support services. This measure and the other proposals contained in the consultation will contribute to the stated intention to raise up to an additional £50m for victims' services.

## **8. Consultation outcome**

8.1 The proposals on increasing the amount of the penalty for PNDs, together with a full explanation of the policy and supporting impact and equality impact assessments, were published in MoJ's consultation document 'Getting it right for Victims and Witnesses' and were subject to formal consultation between January and April 2012.

8.2 The consultation included a series of public engagement events.

8.3 Of the responses received on the two questions on PNDs in the consultation, a clear majority of respondents were in favour of increasing PNDs by £10 and using the additional revenue to fund victim support services. There was also considerable support for applying the £10 increase to both lower and upper-tier PNDs although some respondents put forward more nuanced proposals.

8.4 The Government has published a summary of the responses in its response to 'Getting it right for Victims and Witnesses'<sup>2</sup>.

## **9. Guidance**

9.1 The Secretary of State's operational guidance to the police and the public on the PND scheme, issued under section 6 of the 2001 Act, will be updated to take account of the changes made by this instrument.

## **10. Impact**

10.1 A full impact assessment relating to the content of this order accompanied the consultation 'Getting it right for Victims and Witnesses' on 30 January 2012. The impact assessment was updated and published on 2nd July 2012 alongside the Government response. The policy has not changed and the MoJ is not aware of any further data which may affect the impact of the instrument. Therefore the original impact assessment has not been amended and a copy of the signed impact assessment from July 2012 can be found at <https://consult.justice.gov.uk/digital-communications/victims-witnesses>.

10.2 The equality impact assessment ("EIA") which accompanied the consultation 'Getting it right for Victims and Witnesses' analysed the potential impact of the measures in this order on people subject to the protected characteristics specified in the Equality Act 2010. The EIA was also updated and published on 2nd July 2012 with the Government response. The Government does not consider that any new data which has a

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<sup>2</sup> [https://consult.justice.gov.uk/digital-communications/victims-witnesses/consult\\_view](https://consult.justice.gov.uk/digital-communications/victims-witnesses/consult_view)

potential negative equality impact arising from the proposals has emerged since that EIA was prepared. A copy of the revised EIA from July 2012 can be found at <https://consult.justice.gov.uk/digital-communications/victims-witnesses>.

## **11. Regulating small business**

11.1 This legislation applies only to individuals.

## **12. Monitoring & review**

12.1 The Government is committed to reviewing the operation and implementation of the increase of PNDs. There will be an operational review scheduled at 6 and 18 months and a policy review 3 years after implementation of the reforms.

## **13. Contact**

Martin Hau and Hannah Meyer at the MoJ can answer any questions regarding this instrument.

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