

EXPLANATORY MEMORANDUM TO
THE LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS
ACT 2012 (CONSEQUENTIAL AMENDMENTS) REGULATIONS 2013

2013 No. 903

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. These regulations make consequential amendments to reflect the changes to penalty notices for disorderly behaviour (“PNDs”) in the Criminal Justice and Police Act 2001 (“the 2001 Act”). The changes were made by the Legal Aid Sentencing and Punishment of Offenders Act 2012 (“the 2012 Act”).

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

3.1. None.

4. Legislative Context

4.1. The changes to PNDs made by section 132 of, and Schedule 23 to the 2012 Act:

- 4.1.1. provide that a penalty notice can no longer be given to a person under the age of 18;
- 4.1.2. remove the requirement that a constable who gives a PND to a person other than at a police station must be in uniform;
- 4.1.3. remove the requirement that a constable in a police station may not give a PND unless they are an “authorised constable”; and
- 4.1.4. permit a constable to give a penalty notice with an educational option, if an education course scheme is established in the chief officer’s area;

4.2. These regulations amend two other instruments to reflect the first three changes, above. No amendments are required in relation to the new penalty notice with an education option.

5. Territorial Extent and Application

5.1. This instrument extends 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. A PND enables a constable and, in certain circumstances, others (such as a community support officer or a person accredited under a community safety accreditation scheme) to give a fixed penalty to a person for a specified range of minor anti-social behaviour and regulatory offences. Lower-tier offences carry a penalty of £50 and higher tier offences carry a penalty of £80.
- 7.2. The 2012 Act made a number of changes to PNDs including abolishing PNDs for under 18s. PNDs were not specifically designed to be used for young people. They were often used to circumvent the rigid escalating system of reprimands and warnings and the penalties were sometimes paid by parents which meant that there was no effective punishment for the young offender. Removing PNDs for under 18s simplifies the framework of youth out-of-court disposals and enables the police to focus on offering youth disposals (for example youth conditional cautions) that allow rehabilitative and reparative activities to take place.
- 7.3. In addition, the 2012 Act reduces bureaucracy and simplified frontline processes by removing the requirement that a constable giving a PND other than in a police station must be in uniform. It also removed the requirement that only an authorised constable could give a PND inside a police station. The uniformed constable provision was particularly problematic in plain clothes operations – for example, test purchasing to tackle underage alcohol sales – where a police officer was forced to take a person back to the police station to give a PND.

Consolidation

- 7.4 The amendments made by these regulations are minor and therefore no consolidation exercise is planned.

8. Consultation Outcome

- 8.1. In December 2010 the Ministry of Justice (MoJ) launched a consultation on proposals for radical reform to the criminal justice system. The Green Paper, *Breaking the cycle: effective punishment, rehabilitation and sentencing of offenders*, set out a commitment to conduct a full review of sentencing policy to ensure that it is effective in deterring crime, protecting the public, punishing offenders and cutting reoffending. Within the Green Paper a number of proposals were established relating to PNDs including consideration of the future use of youth PNDs.
- 8.2. The consultation ran until 4 March 2011. The MoJ published its response to the consultation in June 2011 and the Legal Aid, Sentencing and Punishment of Offenders Bill was introduced later that month.

9. Guidance

9.1. The Secretary of State for Justice has issued new guidance on PNDs under section 6 of the 2001 Act to reflect the changes made by the 2012 Act. The guidance is for the benefit of both the police and the public and came into effect on 8 April 2013. It can be found at: <http://www.justice.gov.uk/out-of-court-disposals>

10. Impact

10.1. An impact assessment has not been produced for this instrument because it has no impact on the private or voluntary sectors.

11. Regulating Small Business

11.1. This legislation applies only to individuals.

12. Monitoring and Review

12.1. The policy behind PNDs is kept under regular review by the MoJ.

13. Contact

13.1. Emily Pemberton at the Ministry of Justice (tel: 0203 334 2867, email emily.pemberton@justice.gsi.gov.uk) can answer any queries regarding the instrument.