

**EXPLANATORY MEMORANDUM TO THE
DRAFT PENALTIES FOR DISORDERLY BEHAVIOUR (AMENDMENT OF
MINIMUM AGE) ORDER 2004**

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty.

2. Description

The above Order is made in exercise of the power conferred under section 2(6) of the Criminal Justice and Police Act 2001 (as inserted by section 87 (3) of the Anti-social Behaviour Act 2003). It reduces the age at which a Penalty Notice for Disorder can be given from 16 years of age to 10 years of age, and makes the parent or guardian of an offender under the age of 16 liable to pay the penalty. Subject to approval by both Houses, the Order will come into effect 24 days after it has been made.

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

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 section 1 of that Act. Penalty notices could only be issued to offenders aged 18 and over. The offences covered include wasting police time, causing harassment, alarm or distress (section 5 of the Public Order Act 1986), throwing fireworks and being 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 cannot be tried for the offence, has no criminal record and is diverted from the criminal justice system. If, within 21 days, he asks to go to court, he may be tried for the offence in the normal way. If he does nothing within 21 days, then an amount of one and a half times the penalty is registered against him as a fine.

4.3 By virtue of section 38 of and paragraph 1 of Schedule 4 to the Police Reform Act 2002, the power to issue a penalty notice for disorder may also be exercised by a police civilian. A Community Support Officer (and only a CSO - no other police civilians) may issue a PND. This power came into force on 15 November 2003.

4.4 Section 87(2) of the Anti-social Behaviour Act 2003 amended section 2(1) of the 2001 Act so that penalty notices for disorderly behaviour could also be issued to 16 and 17 year olds. That extension came into effect on 20 January 2004 and has been extended on a national basis.

4.5 At the moment, penalty notices for disorderly behaviour cannot be given to those aged 15 and under. This has the effect that youngsters engaged in offences for which a penalty notice for disorder would be available must be dealt with within the criminal justice system as no other options are available. Section 87(3) of the Anti-social Behaviour Act 2003 inserts a power into section 2 of the 2001 Act, which enables the Secretary of State by order to reduce the minimum age for receipt of a penalty notice and to make provision for a parent or guardian to be notified of the giving of the notice and for that parent or guardian to be liable to pay the notice. During debate in the Lords on 5 February, Baroness Scotland (at column 795) said “we intend to introduce penalty notices for disorder as soon as possible for 16 and 17 year-olds in the same areas as for adults. Later this year we expect to pilot in some areas for 10 to 15 year-olds, taking account of early experience with the 16 to 17 year olds”.

4.6 The Order reduces the minimum age at which a penalty notice for disorder can be given from 16 to 10. It provides that, where a penalty notice for disorder is given to a person aged 10 to 15, then the police must notify his parent or guardian within 28 days. This can be whichever parent or guardian the police think fit and includes a local authority which has parental responsibility for the child. The inclusion of local authorities is in keeping with existing legislation requiring local authorities to pay fines imposed on young offenders (section 137 of the Powers of Criminal Courts (Sentencing) Act 2000).

4.7 Where a parent or guardian is notified that a child has been given a penalty notice for disorder, that parent or guardian becomes liable to pay the penalty under the notice. Therefore, the 21 day period in which to decide whether to go to court or pay the penalty only runs from the day on which the parent or guardian is notified of the penalty notice, rather from the date on which the child is given the penalty notice. If no decision is taken in the 21 days after the parent or guardian is notified, then the penalty is registered as a fine against the parent or guardian. The parent or guardian will be able to appeal on the grounds that he is not actually a parent or guardian of the child who received the notice or that he was not properly notified about the penalty notice.

4.8 The Order also provides for the police to cancel a notification which has been sent out and notify someone else. This is necessary in case a notification is sent to a person who turns out not to be a parent or guardian of the child or, if information subsequently comes to light which causes the police to think that they have wrongly exercised their discretion as to which parent or guardian should be notified of the penalty notice and become liable to pay the penalty. A notification can only be cancelled in the 21 days after it has been sent out. If the notification is cancelled, the police have 14 days to send out a new notification to another parent or guardian.

4.9 Before the Order comes into force, an order may need to be made under section 3(1) and (1A) of the 2001 Act (as amended by section 87(4) of the Anti-social Behaviour Act 2003) setting a different level of penalty for 10 to 15 year olds. The Department is still considering whether a different level of penalty is appropriate and, if so, what the difference should be. The penalty is currently set at £80 for the more serious offences listed in section 1 of the 2001 Act and £40 for the rest (see the Penalties for Disorderly Behaviour (Amount of Penalty) Order 2002 (S.I. 2002/1837 as amended by S.I. 2004/316)).

4.10 Before the Order comes into force, regulations will also need to be made under section 3(3)(a) of the 2001 Act, prescribing a different form of penalty notice for 10 to 15 year olds. The current form is prescribed in the Penalties for Disorderly Behaviour (Form of Penalty Notice) Regulations 2002 (S.I. 2002/1838). The new form will reflect the fact that the parent or guardian will be notified and will be liable to pay the penalty.

5. Extent

This instrument applies to England and Wales.

6. European Convention on Human Rights

Hazel Blears, the Minister of State for Crime Reduction, Policing, Community Safety and Counter-Terrorism has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of the draft Penalties for Disorderly Behaviour (Amendment of Minimum Age) Order 2004 are compatible with the Convention rights.

7. Policy background

7.1 Penalty notices for disorderly behaviour are seen as an efficient and cost-effective way for low- level anti-social offences to be dealt with. Payment of the penalty by the offender does not constitute an admission of guilt and is not disclosable. It, therefore, provides a way for offenders to accept responsibility but in a way that will not draw them into the criminal justice system.

7.2 Evidence from the adult scheme is that a considerable amount of police time is freed-up by the use of penalty notices, even when issued at a police station. This will allow officers to spend more time on the street providing the visible presence the public wants to see.

7.3 Under 16s who receive penalty notices for disorderly behaviour will be allowed another chance to keep out of the criminal justice system and avoid any problems that might result from inclusion, such as the creation of a criminal record

7.4 Extending penalty notices for disorderly behaviour to the 10-15 age group will encourage parents to take more responsibility for their children's' behaviour as they will be liable to pay the penalty.

7.5 Extensive consultations have taken place with the Youth Justice Board, the Association of Chief Police Officers, the Crown Prosecution Service, the Department for Education and Skills and the Department for Constitutional Affairs to ensure that all relevant issues, including the welfare of a child receiving a penalty notice, are taken account of. Guidance for the police has been prepared which makes it clear that the welfare of a child comes first and that appropriate action must be taken if there are concerns. As for tickets issued to adults it is anticipated that most will be issued at a police station. In that event either a parent (or guardian) will be present or an appropriate adult will be required.

7.6 Detailed guidance will be issued to those police forces taking part in the initial pilots for extending penalty notices to 10-15 year olds. The pilot areas are intended to be the same as those in the adult pilots, i.e. West Midlands (and the British Transport Police Division attached), Essex, North Wales and the Croydon Division of the Metropolitan Police. We are actively considering involving other areas in the pilots.

8. Impact

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

8.2 The impact on the public sector is likely to be a small increase in Local Authority costs as they will be responsible, as guardian, for those children in their care for penalty notices issued to them. Costs to the police will be reduced as research from the adult pilots shows that around 2 hours is saved in each case where a penalty notice is issued. Whilst such savings may not be possible in cases involving 10 to 15 year-olds, it is still expected that there will be a saving. This will be quantified during the pilots.

8.3 The other costs associated with this order relate to printing the guidance for issue to police forces. These will be offset by the saving in police time, as well as some criminal justice system time for those cases that will be diverted from it.

9. Contact

Kevin Walsh at the Home Office can answer any queries regarding the instrument.(Tel: 0207 273 3981 or e-mail: kevin.walsh@homeoffice.gsi.gov.uk.)