EXPLANATORY MEMORANDUM TO THE

THE CRIMINAL JUSTICE AND POLICE ACT 2001 (AMENDMENT) ORDER 2009

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 This instrument is made in exercise of the powers conferred by section 1(2) of the Criminal Justice and Police Act 2001. It adds one further offence to the Penalty Notice for Disorder (PND) Scheme to those listed in the Table in section 1(1) of the Criminal Justice and Police Act 2001 as amended.

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

3.1 An earlier version of the order was laid before Parliament on 15 December. The present order proposes adding just one offence to the scheme: that of possessing cannabis. Cannabis is being reclassified as a Class B drug on 26 January and it would greatly aid the enforcement of the offence of cannabis possession if PNDs were available to the police for this purpose as soon as possible. It would therefore be extremely helpful if early consideration could be given to the new order. The Justice Secretary has approached the Chairman of the Committee asking if the Committee could expedite its consideration of the draft order.

3.2 A copy of the substituted draft Order will be provided free of charge to all known purchasers of the earlier version of the draft Order which was laid on 15 December 2008.

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 and other designated 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 causing harassment, alarm or distress (section 5 of the Public Order Act 1986), being drunk and disorderly.

4.2 Under sections 4 and 5 of the 2001 Act, the recipient of a penalty notice has 21 days in which to decide what to do. If he pays the penalty within 21 days he discharges all liability for conviction for that offence, and receives no record of criminal conviction. 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. Three 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); the Criminal Justice and Police Act 2001 (Amendment) and Police Reform Act 2002 (Modification) Order 2004 (No. 2540 of 2004), and the Criminal Justice and Police Act 2001 (Amendment) Order 2005 (No.1090 of 2005)

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 20th 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 26th December 2004.

4.6 The Order adds one further offence – that of the possession of cannabis etc. - to the Table in section 1 of the 2001 Act.

4.7 The (negative resolution) Penalties for Disorderly Behaviour (Amount of Penalty) Order 2008 which sets out the penalty payable in relation to this offence was laid before Parliament on 2 January 2009. This order included penalties applicable to the offences which were included in the original draft affirmative order, but on which the Government now plans to consult. A further negative order will be laid to have the effect that the only new penalty amount being added is that which relates to the possession of cannabis. The aim is that both Orders should come into force on 26 January 2009, or as soon as possible thereafter, to coincide with the coming into force of the Misuse of Drugs Act 1971 (Amendment) Order 2008, made on 10 December 2008 relating to the reclassification of cannabis as a controlled Class B drug.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Lord Chancellor and Secretary of State for Justice, the Right Honourable Jack Straw MP, has made the following statement regarding Human Rights

"In my view the provisions of the Criminal Justice and Police 2001 (Amendment) Order 2009 are compatible with the Convention rights."

7. Policy background

7.1 The PND Scheme, established under the Criminal Justice and Police Act 2001, enables officers to issue a fixed penalty notice of £50 or £80 for a specified range of minor anti-social behaviour and regulatory offences. There are now 25 offences for which a PND can be issued. The disposal has proved popular with the police, providing them with a simple and efficient financial punishment to deal with low-level anti-social behaviour. Over 400,000 penalty notices have been issued since the Scheme was implemented in all 43 police forces in England Wales in 2004.

7.2 The list of offences is kept under review and we receive suggestions for new ones to be added to the Scheme from Association of Chief Police Officers (ACPO) and other stakeholders both inside and outside Government. The new offence now proposed for inclusion is possession of cannabis and cannabis-based substances.

7.3 The addition of the offence of possession of cannabis will form part of the strengthened escalated process for the police to deal with simple cannabis possession. Cannabis will be re-classified from a Class C to a Class B drug on 26 January 2009. (The Order in Council that gives legal effect to that re-classification was approved on 9th December).

8. Consultation Outcome

8.1 We conducted a limited consultation on a wider list of offences in 2006 including the Magistrates' Association, the Justice Clerks Society, and the Association of Chief Police Officers. More recently, the Home Office, which has substantive policy responsibility for the reclassification of cannabis, has conducted consultations with its own stakeholders. In addition, the wide publicity given to reclassification and the debates in both Houses have made clear the intention, subject to Parliamentary approval, to make PNDs available for cannabis possession. A full consultation is now planned in relation to the other offences included in the draft order which was withdrawn from the House.

9. Guidance

9.1 The Secretary of State's operational guidance to the police on the PND Scheme will be updated to take account of the change made by this Order. The guidance will, in particular, provide that a penalty notice for possession of cannabis etc. is a disposal limited to adults, not those under 18.

10. Impact

10.1 The Home Office has produced an impact assessment (IA) for the re-classification of cannabis covering enforcement of fines arising from unpaid PNDs by the courts. It has been estimated that costs of enforcement may be in

the order of £1.5 million by year 3. Any costs will be off-set to some extent by collection of revenues from payment of the PND penalties and any fines imposed for non-payment.

11. Regulating Small Business

11.1 This legislation applies only to individuals.

12. Monitoring and Review

12.2 We will review the impact of this order in 12 months.

13. Contact

13.1 Chris Morris-Perry at the Ministry of Justice Tel: 020 3334 5039 or email chirs.morris-perry@justice.gsi.gov.uk can answer any queries regarding the instrument.