EXPLANATORY MEMORANDUM TO

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

2009 No.

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 further offences 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 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 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); 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 21 further offences to the Table in section 1 of the 2001 Act.

4.7 An advanced draft of the (negative resolution) Penalties for Disorderly Behaviour (Amount of Penalty) Order 2008 which, subject to final Ministerial approval, will set out the penalties payable in relation to the new penalty offences is attached for information. The aim is that both Orders should come into force on 26 January 2009 to coincide with the coming into force of the Misuse of Drugs Act 1971 (Amendment) Order in Council 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 the Association of Chief Police Officers (ACPO) and other stakeholders both inside and outside Government. The list of proposed new offences includes possession of a Class B drug, underage

sales of tobacco, Royal Parks regulations such as littering and illegal cycling, and national framework railway and London Underground byelaws, such as smoking and possession of alcohol. The Framework Railway Byelaws can be found on the website of the Department for Transport website: http://www.dft.gov.uk/pgr/rail/legislation/regs/railwaysbyelaws
The London Regional Transport Railway Byelaws 2000 can be found on the Transport for London website: http://www.tfl.gov.uk/termsandconditions/5004.aspx

7.3 The addition of the offence of possession of a Class B drug will form part of the strengthened escalated process for the police to deal with the simple possession of cannabis by adults. Cannabis[1] will be reclassified from a Class C to a Class B drug under the Misuse of Drugs Act 1971 on 26 January 2009. (The Order in Council that gives legal effect to that reclassification was approved on 10 December 2008). The policy intention is to restrict the use of this power to possession of cannabis by adults through administrative guidance to the police. The addition of railway byelaw and Royal Parks regulations to the Scheme will provide the police with a very useful tool; currently other than prosecution, which is very costly, there are no effective punishments for dealing with such crimes on the spot.

8. Consultation Outcome

8.1 We conducted a limited consultation on a wider list of offences in 2006 including the Magistrates' Association, the Justices' Clerks' Society and the Association of Chief Police Officers. More recently, Departments with substantive policy responsibility for the various offences now being added have conducted consultations with their own stakeholders Therefore, although there has been no formal public consultation, all those most involved and affected have had ample opportunity to make their views known.

9. Guidance

9.1 Police operational guidance on the PND Scheme and the Association of Chief Police Officers guidance for policing cannabis possession will be updated to take account of the changes made by this Order. In particular, guidance will have the result that cannabis will be the only Class B drug for which it is appropriate for the police to give a penalty notice and that it is a disposal limited to adults.

10. Impact

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

[1] Cannabis, cannabis resin, cannabinol and its derivatives under Schedule 2 to the Misuse of Drugs Act 1971, including any preparation or other product containing these substances.

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.

10.2 None of the remaining offences is expected to be high volume and we believe that the costs and savings following their addition will be minor.

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.

STATUTORY INSTRUMENTS

2008 No. 00

CRIMINAL LAW, ENGLAND AND WALES

POLICE, ENGLAND AND WALES

The Penalties for Disorderly Behaviour (Amount of Penalty) Order 2008

Made - - - -	***
Laid before Parliament	***
Coming into force - -	***

The Secretary of State makes this Order in exercise of the powers conferred by section 3(1) and (1A) of the Criminal Justice and Police Act 2008([2]):

Citation and commencement

1. This Order may be cited as the Penalties for Disorderly Behaviour (Amount of Penalty) Order 2008 and shall come into force on 26 January 2009.

Amount of penalty

2. For the Schedule to the Penalties for Disorderly Behaviour (Amount of Penalty) Order 2002([3]) substitute the Schedule to this Order.

Revocations

3. The following Orders are revoked—

(a) the Penalties for Disorderly Behaviour (Amount of Penalty) (Amendment No. 2) Order 2004([4]);

(b) the Penalties for Disorderly Behaviour (Amount of Penalty) (Amendment) Order 2005([5]).

Signed by authority of the Secretary of State

Name
Address — Parliamentary Under Secretary of State
Date — Ministry of Justice

([2]) 2001 c.16. Section 3(1A) was inserted by section 87 of the Anti-social Behaviour Act 2003 (c.38).
([3]) S.I. 2002/1837. That Schedule was substituted by S.I. 2004/2468 and further amended by S.I.2004/3371 and S.I. 2005/3048.
([4]) S.I. 2004/2468
([5]) S.I. 2005/581

SCHEDULE

Article 2

PART 1

Offences attracting penalty of £80 for persons aged 16 or over, and £40 for persons under 16

Offence creating provision	*Description of offence*
Section 80 of the Explosives Act 1875([6])	Throwing fireworks in a thoroughfare
Section 7(1) of the Children and Young Persons Act 1933([7])	Sale of tobacco etc to persons under 18 years
Section 5(2) of the Criminal Law Act 1967([8])	Wasting police time or giving false report
Section 91 of the Criminal Justice Act 1967([9])	Disorderly behaviour while drunk in a public place
Section 1 of the Theft Act 1968([10])	Theft
Section 1(1) of the Criminal Damage Act 1971([11])	Destroying or damaging property
Section 2 of the Criminal Damage Act 1971	Threatening to destroy or damage property
Section 5(2) of the Misuse of Drugs Act 1971([12]) so far as relating to the following- (a) cannabinol, (b) cannabinol derivatives (within the meaning of Part 4 of schedule 2 to that Act (c) cannabis or cannabis resin (within the meaning of that Act), (d) any stereoisomeric form of a substance specified in any of paragraphs (a) to (c), (e) any ester or ether of a substance specified in paragraph (a) or (b), (f) any salt of a substance specified in paragraphs (a) to (e), (g) any preparation or other product containing a substance or product specified in any of paragraphs (a) to (f), not being a preparation falling within paragraph 6 of Part 1 of Schedule 2 to that Act.	Possession of cannabis etc
Section 3 of the Theft Act 1978([13])	Making off without payment
Section 5 of the Public Order Act 1986([14])	Behaviour likely to cause harassment, alarm or distress
Section 4 of the Children and Young Persons (Protection from Tobacco) Act 1991([15])	Failing to display in retail premises and on vending machines a warning notice that it is

([6]) Prospectively repealed by the Fireworks Act 2003 (c.22) from a date to be appointed.
([7]) 1933 c.12
([8]) 1967 c.58
([9]) 1967 c.80
([10]) 1968 c.60
([11]) 1971 c.48
([12]) 1971 c.38
([13]) 1978 c.31
([14]) 1986 c.64

	illegal to sell tobacco products to anyone under the age of 18 years
Section 167 of the Criminal Justice and Public Order Act 1994([16])	Touting for hire car services
Section 3 of the Private Security Industry Act 2001([17])	Engaging in licensable conduct without or not in accordance with a licence
Section 9 of the Private Security Industry Act 2001	Contravening the conditions of a licence
Section 140 of the Licensing Act 2003([18])	Allowing disorderly conduct on licensed premises
Section 141 of the Licensing Act 2003	Sale of alcohol to a person who is drunk
Section 142 of the Licensing Act 2003	Obtaining alcohol for consumption on relevant premises for a person who is drunk
Section 143 of the Licensing Act 2003	Failure of person who is drunk or disorderly to leave relevant premises on request
Section 145 of the Licensing Act 2003	Allowing unaccompanied children under 16 on certain premises
Section 146(1) and (3) of the Licensing Act 2003	Sale of alcohol to persons under 18
Section 149(3) and (4) of the Licensing Act 2003	Purchase of alcohol on behalf of persons under 18
Section 151 of the Licensing Act 2003	Delivery of alcohol to persons under 18 or allowing such delivery
Section 127(2) of the Communications Act 2003([19])	Using a public electronic communications network in order to cause annoyance, inconvenience or needless anxiety
Section 11 of the Fireworks Act 2003([20])	Contravention of a prohibition or failure to comply with a requirement imposed by or under fireworks regulations or making false statements
Section 49 of the Fire and Rescue Services Act 2004([21])	Knowingly giving a false alarm to a person acting on behalf of a fire and rescue authority

PART 2

Offences attracting penalty of £50 for persons aged 16 and over, or £30 for persons under 16

Offence creating provision	*Description of offence*
Section 12 of the Licensing Act 1872([22])	Being drunk in a highway, other public place or licensed premises
Section 2(1) of the Parks Regulation (Amendment) Act 1926([23]), insofar as relating	Contravening a prohibition on littering, dog fouling or illegal cycling etc

([15]) 1991 c.23
([16]) 1994 c.33
([17]) 2001 c.12
([18]) 2003 c.17
([19]) 2003 c.21
([20]) 2003 c.22
([21]) 2004 c.21
([22]) 1872 c.94
([23]) 1926 c.36

to a failure to comply with or a contravention of the Royal Parks and Other Open Spaces Regulations 1997([24])	
Section 55 of the British Transport Commission Act 1949([25])	Trespassing on a railway
Section 56 of the British Transport Commission Act 1949	Throwing stones etc. at trains or other things on railways
Section 87 of the Environmental Protection Act 1990([26])	Depositing and leaving litter
Byelaw 24(1) of the London Regional Transport Railways Byelaws 2000 made under section 67 of the Transport Act 1962 and confirmed by the Secretary of State for Environment, Transport and the Regions on 19 December 2000 ("the London Regional Transport Byelaws 2000") so far as relating to a breach of byelaw 3 of those byelaws	Smoking on or near any part of a railway in contravention of a notice indicating that smoking is not allowed
Byelaw 24(1) of the London Regional Transport Railways Byelaws 2000 so far as relating to a breach of byelaw 4(1) of those byelaws	Entering or remaining on the railways while intoxicated
Byelaws 24(1) of the London Regional Transport Railways Byelaws 2000 so far as relating to a breach of byelaw 4(2) of those byelaws	Having intoxicating liquor on a train service where reasonable notice has been given prohibiting the possession of intoxicating liquor
Byelaw 24(1) of the London Regional Transport Railways Byelaws 2000 so far as relating to a breach of byelaw 6 of those byelaws	Engaging in unacceptable behaviour on the railway
Section 12 of the Criminal Justice and Police Act 2001([27])	Consumption of alcohol in designated public place
Section 149(1) of the Licensing Act 2003([28])	Purchase of alcohol by persons under 18 on relevant premises
Section 150 of the Licensing Act 2003	Consumption of alcohol by a person under 18 on relevant premises or allowing such consumption
Byelaw 24(1) of the Framework Railway Byelaws made under section 219 of the Transport Act 2000 and confirmed by the Secretary of State for Environment, transport and the Regions on 22 June 2005 ("the Railway Byelaws 2005") so far as relating to a breach of byelaw 3 of those byelaws	Smoking on or near any part of a railway in contravention of a notice indicating that smoking is not allowed
Byelaw 24(1) of the Railway Byelaws 2005 so far as relating to a breach of byelaw 4(1) of those byelaws	Entering or remaining on the railway while intoxicated
Byelaw 24(1) of the Railway Byelaws 2005 so far as relating to a breach of byelaw 4(2) of those byelaws	Having intoxicating liquor on a train service where reasonable notice has been given prohibiting the possession of intoxicating liquor
Byelaw 24(1) of the Railway Byelaws 2005 so	Engaging in unacceptable behaviour on the

([24]) S.I. 1997/1639
([25]) 1949 c.xxix
([26]) 1990 c.43
([27]) 2001 c.16
([28]) 2003 c.17

far as relating to a breach of byelaw 6 of those byelaws	railway

EXPLANATORY NOTE

(This note is not part of the Order)

This Order replaces the Schedule to the Penalties for Disorderly Behaviour (Amount of Penalty) Order 2002 (S.I. 2002/1837). It specifies the amounts of the penalties for offences to which Chapter 1 of Part 1 of the Criminal Justice and Police Act 2001 relates and includes the following newly added penalty offences—

— certain offences under Royal Parks Regulations,

offences relating to the sale of tobacco to persons under 18 years

threats to destroy or damage property,

possession of cannabis etc,

making off without payment,

touting for hire car services,

certain railway byelaw offences,

certain licence related offences relating to the private security industry,

certain alcohol related offences under the Licensing Act 2003 (c.17).