EXPLANATORY MEMORANDUM TO

THE CRIMINAL JUSTICE AND POLICE ACT 2001 (AMENDMENT) ORDER 2012

2012 No. [DRAFT]

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. (The offences subject to the PND scheme are 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 Context

4.1 PNDs were introduced by Chapter 1 of Part 1 of the Criminal Justice and Police Act 2001 ("the 2001 Act"). They may be issued by a police officer or other designated officer where the officer has reason to believe that a person has committed a "penalty offence" (i.e. one of the offences listed in the table in section 1(1) of the 2001 Act. Existing penalty offences include causing harassment, alarm or distress (section 5 of the Public Order Act 1986) and being drunk and disorderly.

4.2 Under sections 4 and 5 of the 2001 Act, the recipient of a PND has 21 days to either request a court hearing or pay the penalty amount in full. By paying the penalty amount in full, the recipient discharges all liability for conviction for the penalty offence and receives no record of criminal conviction. If the recipient requests a court hearing then they may be tried by a court in the normal way. If the recipient fails to do either of these things within 21 days then a fine is registered against the recipient equal to one and a half times the penalty amount.

4.3 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. That extension came into force on 20 January 2004.

4.4 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 over. That extension of the scheme came into force on 26 December 2004.

4.5 Section 1(2) of the 2001 Act gives the Secretary of State power by order to add further offences to the table in section 1(1). The following four orders have been made under that power, adding new offences to the table: 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); the Criminal Justice and Police Act 2001 (Amendment) Order 2009 (No. 110 of 2009).

4.6 This Order adds three further offences to the Table in section 1 of the 2001 Act.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales.

6. European Convention on Human Rights

6.1 Crispin Blunt, the Parliamentary Under Secretary of State, Ministry of Justice, has made the following statement:

"In my view the provisions of the Criminal Justice and Police Act 2001 (Amendment) Order 2012 are compatible with the Convention rights."

7. Policy background

7.1 The PND scheme enables police officers to issue a fixed penalty notice for a specified range of minor anti-social behaviour and regulatory offences. Some offences carry a penalty of £50, others of £80, as set out in the Schedule to the Penalties for Disorderly Behaviour (Amount of Penalty) Order 2002 (No.1837 of 2002). There are now 26 offences for which a PND can be issued. PNDs are designed to tackle low-level, anti-social and nuisance offending and provide the police with a swift financial punishment to deal with low-level offences where previously little or no action had been taken. Over 1,107,000 penalty notices have been issued since the scheme was implemented in all 43 police forces in England and Wales in 2004.

7.2 The list of penalty offences is kept under review by the Ministry of Justice and we receive suggestions for new offences to be added to the scheme from the Association of Chief Police Officers (ACPO) and other stakeholders both inside and outside Government.

7.3 Arguments have been made for a number of years that three offences listed in the Royal Parks and Other Open Spaces Regulations 1997 should be added to the PND scheme. The offences are:

- Regulation 3(3) Dropping or leaving litter or refuse
- Regulation 3(4) Illegal cycling
- Regulation 3(6) Dog fouling

7.4 Currently these offences can only be dealt with by the magistrates' courts. This means that offending of this type in the Royal Parks tends to go unenforced as prosecution is costly and may in many cases be disproportionate for what are relatively minor offences. The ability to issue a PND for these offences will free up police time for additional patrols and provide a more effective deterrent to persistent offenders. In addition it would bring the penalties for these offences into line with the penalties for similar offences committed outside the Royal Parks.

7.5 This Order applies to the Royal Parks and Open Spaces included in Schedule 1 to the Royal Parks and Other Open Spaces Regulations 1997: St. James's and the Green Parks, Hyde Park, Kensington Gardens, Richmond Park, The Regent's Park, Bushy Park, Brompton Cemetery, Canning Green, being the lawn on the land bounded by Great George Street, Parliament Square, Broad Sanctuary and Little George Street, London SW1, The garden surrounding the Jewel Tower and the lawn surrounding the King George V Memorial, on Abingdon street, London SW1, The Longford River and those parts of its banks which are for the time being under the control or management of the Secretary of State, Greenwich Park, being those parts of the Park which are for the time being under the control or management of the Secretary of State, The Grosvenor Square Gardens, Hampton Court Gardens, Hampton Court Green, Hampton Court Park, Natural History Museum Gardens, Primrose Hill, The Green Park, Tower Gardens or Victoria Tower Gardens.

Consolidation

7.6 The statutory instrument will be available at www.legislation.gov.uk. Consolidated versions are not available at this time.

8. Consultation Outcome

8.1 This Order has been drafted following a short informal consultation with the Department for Culture Media and Sport (DCMS), Friends of the Royal Parks and other key stakeholders. Although there has been no formal public consultation, the consultation document was sent to stakeholders, both in and outside of Government who have an interest in the Royal Parks, the PND scheme or the Criminal Justice System more widely. The informal consultation period commenced on 5 January 2012 and ended on 23 January 2012. In all 11 responses were received; only 2 respondents highlighted their specific support for the illegal cycling offence to be included; we received no responses objecting to the offences being added to the scheme. There was a

clear majority view among consultees that the offences were suitable to be added to the scheme.

9. Guidance

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

9.2 Before this Order comes into force, an order will be made under section 3 of the 2001 Act to specify the penalty amounts which will be applied to each of the offences covered by this order.

10. Impact

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

10.2 The three offences are not 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

12.1 The policy behind the PND scheme is kept under regular review by the Ministry of Justice.

12.1 We will review the impact of this Order in 12 months.

13. Contact

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.