EXPLANATORY MEMORANDUM TO

THE CRIMINAL JUSTICE AND POLICE ACT 2001 (AMENDMENT) ORDER 2013

2013 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 The instrument amends the Criminal Justice and Police Act 2001 ("the 2001 Act") by adding the offence of possession of khat to the list of offences for which a Penalty Notice for Disorder ("PND") can be given.

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

3.1 None.

4. Legislative Context

4.1 Chapter 1 of Part 1 of the 2001 Act provides for 'on the spot' penalties for disorderly behaviour. These provisions permit a constable to give a penalty notice to a person aged 18 or over, in respect of the offences listed in the table in section 1 of that Act. The offences include causing harassment, alarm or distress (section 5 of the Public Order Act 1986), and being drunk and disorderly (section 91 of the Criminal Justice Act 1967) and leaving litter in contravention of regulations made under the Parks Regulation (Amendment) Act 1926.

4.2 This order adds the offence of possession of khat to the table in section 1 of the 2001 Act. A separate order will be made under the Misuse of Drugs Act 1971 to classify khat as a Class C drug (the draft Misuse of Drugs Act 1971 (Amendment)(No.2) Order 2013 (S.I.2013/DRAFT)). It is intended that the two orders will come into force together.

4.3 A further order (using the negative resolution procedure) will be laid which will set out a fixed penalty of £60 for the new offence of possession of khat. This will also come into force at the same time as the current order.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

5.2 The offence of possession of khat will apply throughout the United Kingdom, however PNDs are available only in England and Wales.

6. European Convention on Human Rights

The Lord Chancellor and Secretary of State for Justice, the Right Honourable Chris Grayling MP, made the following statement regarding Human Rights:

'In my view the provisions of the Criminal Justice and Police Act 2001 (Amendment) Order 2013 are compatible with the Convention rights.'

7. Policy background

7.1 The PND provisions, established under the 2001 Act, enables a constable to give a fixed penalty notice of £60 or £90 for a specified range low level offences. Other legislation permits certain designated individuals to give a penalty notice under the 2001 Act too. PNDs are designed to tackle low-level, anti-social and nuisance offending and provide the police with a swift financial punishment to deal with these offences. 106,000 PNDs were issued in 2012.

7.2 PNDs free up the courts to concentrate on more serious offences and officers are able to return to frontline duties. No admission of guilt is required and by paying the penalty the recipient discharges any liability to be convicted for the offence and receives no record of a criminal conviction. However, a penalty notice may be disclosed as part of an enhanced criminal records check by the Disclosure and Barring Service.

7.3 The UK Government has taken the view that the risks and potentials harms associated with khat are sufficient as to warrant its control as a Class C drug – alongside its active ingredients.

7.4 The Government is amending the 2001 Act as part of an escalation framework for the policing of simple possession offences for khat . This framework will be similar to the existing framework for cannabis (Class B drug) possession offences committed by adults in England and Wales. 'Khat warnings' will be available for a first possession offence and a PND for a second possession offence in the absence of aggravating circumstances to these offences.

Consolidation

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

8. Consultation outcome

8.1 In deciding the wider strategy on classification of khat, the Home Office has consulted the Advisory Council for the Misuse of Drugs, the Medicines and Healthcare products Regulatory Agency and the Department for Business Innovation and Skills. They have also consulted police organisations about the wider policy of dealing with first-time possession offences by way of a warning, and second offences by way of a PND.

9. Guidance

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

10. Impact

10.1 The escalation framework, of which this forms part, will not affect the private or voluntary sector.

10.2 An Impact Assessment has not been prepared for this instrument. However, an assessment has been completed on the associated instrument that will classify khat. (S.I. 2013/xxxx)

11. Regulating small business

11.1 The legislation does not apply to small businesses.

12. Monitoring & review

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

13. Contact

Diana Symonds at the Ministry of Justice Tel: 0203 334 5012 or email: Diana.Symonds@justice.gsi.gov.uk can answer any queries regarding the instrument.