EXPLANATORY MEMORANDUM TO

The Justice (2011 Act) (Amendment of Schedule 4) Order (Northern Ireland) 2026

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Justice to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under Section 59(2) of the Justice Act (Northern Ireland)2011 ("the 2011 Act") and is subject to the draft affirmative resolution procedure.

2. Purpose

2.1. The Statutory Rule will enable the Police Service of Northern Ireland (PSNI) to issue a Penalty Notice, provided for in the Part 6, Chapter 1 of, and Schedule 4 to, the Justice Act (Northern Ireland) 2011 for a broader range of offences. In relation to offences which PSNI can presently issue a Penalty Notice for under the Act it will increase the financial amounts of Penalty Notices.The statutory rule will add four additional offences, namely Common Assault and the individual offences of Possession of Class A, B and C drugs. Common Assault and the Possession of Class A drugs will attract penalty amounts of £150. Possession of class B and C drugs will attract penalty amounts of £120. The penalty amounts of existing offences will all be increased to £120, with the exception of the offence of being drunk in a public place which due to legislative reasons may only be increased to £50

3. Background

3.1. Penalty Notices were introduced in the Justice Act (NI) 2011 in order to provide PSNI with additional tools to deal with low-level offending. The expansion of offences suitable for disposal by way of a Penalty Notice aims to provide police officers with a broader, more consistent, range of tools to address low-level, first-time, and non-habitual offences. The appropriateness of using a Penalty Notice for any given case will be guided by PSNI operational instructions and guidance which sets out a range of factors for PSNI officers to consider, one of which is the view of the victim.

3.2. The proposed expansion of Penalty Notices in the Justice Act (Northern Ireland) 2011 in Northern Ireland has been underpinned by engagement, partnership and flexibility throughout its development with extensive engagement incorporating a wide range of stakeholders.

3.3. Penalty Notices were introduced in 2012 to help provide speedier ways of delivering justice and improve the efficiency of the system. The cross-justice Out of Court Disposals working group has identified a number of additional offence types which often result in low level court fines and

other non-custodial disposals when prosecuted at court which it believes would be suitable for bringing within the current Penalty Notice scheme. Dealing with low-level cases by way of a diversionary disposal, which involves diverting an alleged offender away from the formal criminal justice system, as an alternative to prosecuting those cases at court offers a number of benefits. These include:offering a proportionate response to low level offending where the offender has admitted the offence; delivering swift, simple and effective justice that serves as a deterrent; recording an individual's criminal conduct for possible reference in future criminal proceedings such as in criminal records or other similar checks; reducing the likelihood of reoffending; and reducing the amount of time police officers spend completing paperwork and attending court (in addition to simultaneously reducing the burden on courts themselves), allowing them to focus on dealing with more serious crime.

4. Consultation

4.1. The Department's consultation on the proposed expansion of Out of Court disposals including Penalty Notices in the Justice Act (Northern Ireland) 2011 ran for 12 weeks from the 7th July 2025 to the 28th September 2025. Officials decided to run the consultation for 12 weeks as opposed to the standard 8 weeks, taking account of the summer holiday period. To encourage responses to the consultation Officials conducted a series of actions and events beyond the standard press release and targeted mailshots to key stakeholders. Other key steps taken included: - Organising online public awareness sessions on 12th and 13th August and 18th September; Additional social media posts to engage the public; Delivering an awareness session to a range of Victims groups on 21 August; Meeting with the Victims of Crime Commissioner Designate; and Sending additional targeted mailshots specifically to Police and Community Safety Partnerships (PCSPs).

4.2. In addition to these awareness-raising measures, the proposals underwent significant scrutiny through a series of Assembly Questions and debates, as well as commentary on social media and radio coverage.

4.3. There were 162 responses to the consultation. Of this total, 25 were from organisations and 137 from individuals. In general, there was a significant divergence of opinion in relation to proposals to expand the use of Penalty Notices between organisations and individuals.

4.4. Additionally, a significant number of the organisational responses to the inclusion of the offences proposed were "unanswered" or "unsure" ranging between 32% to 40%, which perhaps highlighted the complexity of the matters under consideration.

4.5. Some of the criminal justice stakeholders that responded to the consultation included Probation Board for Northern Ireland (PBNI), Chief Inspector of Criminal Justice, The Bar of Northern Ireland, Commissioner for Victims of Crime Office, Law Society, Northern Ireland Policing Board, Police Federation for Northern Ireland, Public Prosecution Service (PPS), Superintendents' Association of Northern Ireland, and the PSNI.

4.6. The complete analysis of the consultation responses was published in February 2026 and can be found at the Department's website.

4.7. The consultation invited views on expanding police powers to enable a greater range of offences regarded as low-level offending to be diverted away from the courts, through extending the use of Penalty Notices (often referred to as 'Penalty Notices for Disorder' or 'PNDs'), expanding powers for the Public Prosecution Service (PPS) for Prosecutorial Fines legislation and on a number of related matters. The amendments to schedule 4 of the Justice Act (Northern Ireland) 2011 brought forward by this statutory rule are only concerned with expanding the use of Penalty Notices and increasing the penalty amounts, therefore this summary focusses on the outcomes relating to these topics only.

4.8. With regards to the expansion of offences suitable for disposal by way of a Penalty Notice which aims to provide PSNI with additional tools to deal with low-level offending and to seek to align more closely with the range of offences which PSNI can presently deal with by way of Community Resolution Notice (CRN), the six main offences that were consulted on as potential Penalty Notice offences were Common Assault, Assault on a constable, Assault Occasioning Actual Bodily Harm (AOABH), and Possession of Class A, Class B, and Class C drugs. The focus on these offences was informed by data which highlighted that they accounted for some of the highest volumes of cases prosecuted at magistrates' courts.

4.9. There was a notable lack of support for the proposal to include AOABH in the penalty notice framework, therefore the Department has excluded this offence from the amendments to schedule 4. Further engagement with the Committee for Justice underlined concerns around the inlcusion of the offence of Assault on a constable, therefore this offence has also been excluded from the amendments to schedule 4.

4.10. The Department also explored the potential expansion of Penalty Notices to a wide range of offences, specifically an additional 38 beyond the initial six offences noted above. The aim of this was to align with the current PSNI CRN offence list. Therefore, the consultation also asked for views on expanding Penalty Notices to 38 broader offences which include theft, public order, road traffic, licencing, public processions, fraud, and whether there was any merit in including any other offences as a Penalty Notice.

4.11. There was a notable lack of support for adding the additional 38 offences to the Penalty Notice list, therefore the Department concluded that there was limited benefit in moving forward with these offences.

4.12. The consultation also sought opinions on raising the monetary amounts of Penalty Notices for existing Penalty Notice offences, which have remained unchanged since their introduction in the 2011 Act. The consultation showed that there was substantial support for increasing these amounts. The consultation also explored by how much the penalty amounts should be increased. The most common suggestion was to adjust the penalties in line with the rate of inflation. These responses have informed the Department's decision to proceed with the changes to schedule 4 of the Justice Act (NI) 2011 as set out in the Draft Statutory Rule.

5. Equality Impact

5.1. Consideration has been given to compliance with section 75 of the Northern Ireland Act 1998. An Equality Impact Assessment was undertaken prior to consultation and has been reviewed in May 2026. The assessment concluded that that a higher proportion of young adult males (18-24) currently receive Penalty Notices / PNDs, therefore it is envisaged that any expansion to Penalty Notices will likely broadly affect the same group. This will result in those who accept a PND avoiding prosecution through the courts, which can be a lengthy process involving multiple appearances before the court and it is therefore envisaged that this will have a positive impact. The Department also met with the Equality Commission to discuss the proposals and provided the Equality Impact Assessment for review. The Commission confirmed that the Department had followed the correct approach.

6. Regulatory Impact

6.1. The proposed statutory rule will not affect any law-abiding citizens or businesses. The voluntary sector and charities should not be affected as a result of the rule being implemented. The main stakeholders affected will be those public bodies implementing and enforcing the rule. They are supportive of these changes. A full Regulatory Impact was not, therefore, considered necessary.

7. Financial Implications

7.1. There are no new significant costs/financial implications arising from the statutory rule. Fines for these offences are already handed down by the magistrates court. The statutory rule aims to reduce the burden on the Court by having these fines issued by way of penalty notice rather than by the Judiciary, thus creating efficiencies. The Out of Court Disposals Working Group determined the median fine amount imposed in the magistrates' court upon conviction for the offences to be added to schedule Advice from the group has guided the proposed setting of penalty notice amounts, which are established slightly below the court fines to encourage acceptance of an Out of Court Disposal. The operational efficiencies created by issuing the Penalty notices will result in benefits across the spectrum of Justice Partners; Police Service of Northern Ireland (PSNI); Public Prosecution Service (PPS); Northern Ireland Court Service (NICTS); and Lady Chief Justice's Office (LCJO).

8. Section 24 of the Northern Ireland Act 1998

8.1. The statutory rule is compliant with section 24 of the Northern Ireland Act 1998. The use of Penalty Notices is already provided for by the Justice Act (NI) 2011 and Penalty Notices have been operational for some time; the statutory rule is in keeping with established arrangements in relation to Penalty Notices.The Department also met with the Northern Ireland Human Rights Commission to discuss the proposals and provided the Human Rights Impact Assessment for review. No substantive concerns were raised; however, all points have been duly considered and reflected in the Department's approach.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. The position in Great Britain is broadly similar in approach to the proposed changes, with each Jurisdiction using their own equivalent measures to Penalty Notices to deal with low level first time/non-habitual offenders. From the wider context perspective, in his independent review of the criminal courts in England and Wales, Lord Leveson recommends a significant expansion in the use of Out of Court Resolutions (referred to as 'Out of Court Disposals' in Northern Ireland) as a central measure to reduce demand on the criminal courts and stabilise a system at risk of collapse. Lord Leveson argues that Out of Court Resolutions offer a faster, more proportionate and cost-effective response to low-level offending, while also improving victim satisfaction and creating opportunities for early rehabilitation.

11. Additional Information

11.1. No additional information applicable.