EXPLANATORY MEMORANDUM TO

THE LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012 (AMENDMENT OF STANDARD SCALE OF FINES FOR SUMMARY OFFENCES) ORDER 2014

2014 No. [DRAFT]

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee.

2. Purpose of the instrument

2.1 This Order is to be made alongside the commencement of section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("the 2012 Act"), and the coming into force of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Disapplication of Section 85(1), Fines Expressed as Proportions and Consequential Amendments) Regulations 2014 (which is laid in draft alongside this Order).

2.2 Section 87(1) of the 2012 Act gives the Secretary of State power to amend the standard scale of fines for summary offences.

2.3 The levels are set out in section 37(2) of the Criminal Justice Act 1982. Prior to the coming into force of this Order, they are:

Level 1	£200
Level 2	£500
Level 3	£1,000
Level 4	£2,500

2.4 The Order increases the amounts of each of levels 1 to 4 on the standard scale by 400%. Accordingly, the new levels are:

Level 1	£800
Level 2	£2,000
Level 3	£4,000
Level 4	£10,000

3. Matters of special interest to the Joint Committee on Statutory Instruments and the Secondary Legislation Scrutiny Committee

3.1 There are a few matters of interest to the Committees.

3.2 It is worth mentioning level 5 on the standard scale. The power in s. 87(1) is to amend levels 1 to 4. Level 5 therefore remains unamended by this Order. By virtue of section 85(1) and (2) of the Act, a reference in relation to a relevant offence or a relevant power respectively to a fine or maximum fine not exceeding level 5 on the standard scale is to be read as a reference to a fine of any amount. An offence is relevant if, immediately before the commencement of section 85(1), it is a common law offence or it is contained in an Act or an instrument made under an Act (whether or not the offence is in force at that time). A power is relevant if, immediately before the commencement of section 85(1), it is contained in an Act or an instrument made under an Act (whether or not the offence is in force at that time). So, although level 5 remains on the statute book, it is 'glossed' in relation to existing legislation, so that references to it are read as to a fine of any amount.

3.3 It will be drafting policy not to use level 5 in relation to criminal offences (and powers to create criminal offences) following the coming into force of section 85 of the 2012 Act.

3.4 It is proposed to make a further set of regulations amending references in legislation to maximum penalties expressed numerically. This Order is to be made in reliance on the power in s. 86(1) of the 2012 Act where the maximum penalty is less than £5,000, and in reliance on s. 149(5) where the maximum is £5,000 or more. We do not consider that these provisions are necessary in order for s. 85(1) / (2) to have effect, but they are plainly desirable.

4. Legislative Context

4.1 The legislative context is set out in para. 2 above.

5. Territorial Extent and Application

5.1 This instrument extends to England and Wales only.

6. European Convention on Human Rights

The Parliamentary Under-Secretary of State in the Ministry of Justice, Jeremy Wright MP has made the following statement regarding Human Rights:

In my view the provisions of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Amendment of Standard Scale of Fines for Summary Offences) Order 2014 are compatible with the Convention rights.

7. Policy background

7.1. As explained in paragraph 2 above, these draft Regulations make both necessary and desirable amendments to existing legislation to ensure that we will have a sensible and coherent sentencing framework once section 85 of the 2012 Act comes into force.

The Legal Aid, Sentencing and Punishment of Offenders Act 2012 fines provisions

7.2. Section 85 is intended to give magistrates greater flexibility to identify the most effective punishment appropriate to the offences and offenders before them.

7.3. The Government believes that financial penalties, as long as they are set at the right level, can be just as effective as community sentences in punishing offenders and deterring them from further offending. Most offenders do not like parting with cash, so fines can be a deterrent to further offending. They also have the advantage of not affecting opportunities for employment and having less of an impact on family responsibilities than some other types of sentence, and hence can prevent further acceleration into a criminal lifestyle. Moreover, they do not impose a further burden on the taxpayer or on society as a whole. Not only are fines punitive; they provide reparation for society, and serve as part of offenders' restoration to the public.

7.4. That is why courts already have flexibility to impose fines in cases that have passed the community sentence threshold. The law specifically provides that even if the courts have the power to impose a community sentence they do not have to do so, meaning that they can impose a fine instead. The courts can consider the circumstances of the offences and of the offenders before them, and, having weighed up the various purposes of sentencing, to decide that a fine will provide an appropriate level of punishment and deterrence without needing to consider a community order. This power was made explicit in the Criminal Justice and Immigration Act 2008 and was intended to increase the number of fines imposed instead of low level community sentences. Courts already have wide discretion to make use of fines in appropriate cases, and section 85 will support and encourage that.

7.5. The aim of the package of provisions in the 2012 Act affecting fines is to ensure that magistrates, who issue the vast majority of fines, have the powers that they need to set them at levels that are proportionate to the most serious offences that come before them for trial. The provisions make two key changes to the way that fines operate in the magistrates' courts.

7.6. The first is to replace all upper limits of £5,000 or more for fines available on summary conviction. At the moment, where an offence is summary only, magistrates do not have the option of committing the case to the Crown Court for sentence and are constrained in their ability to fine by the statutory maximum fines. For the most serious offences tried by magistrates, that maximum is generally £5,000, although for certain offences where the financial gain from offending is substantial—for example, in some environmental offences—the maximum fine can be as high as £50,000.

7.7. Magistrates set the amount of a fine taking into account both the seriousness of the offence and the financial circumstances of the offender. The courts are obliged to follow any relevant sentencing guidelines, unless this would be contrary to the interests of justice. In the case of the magistrates' courts the sentencing guidelines are the Magistrates

Courts Sentencing Guidelines http://sentencingcouncil.judiciary.gov.uk/docs/MCSG_(web)_-_April_2014.pdf. These set out in detail how the courts set the fine in relation to the offender's "relevant weekly income" which is income after tax and national insurance. Under the guidelines, fines are set at between 25% and 175% of the relevant weekly income amount. Where an offender has an unusually high income the guidelines say that the fine should not be more than 75% of the maximum. It is therefore very possible that the current (general) £5,000 limit is restricting the amount of the fine that a court may impose on an offender with a very high income, meaning that the sentence may not be sufficiently punitive.

7.8. The second key change affects the sentencing of less serious offences. Parliament has provided a power to change the amounts of levels 1 to 4 on the standard scale which are currently fine maxima of £200, £500, £1,000 and £2,500 respectively. The Order mentioned at paragraph 2.11 above will propose a fourfold increase in these amounts which will retain the differentials between the punishments (as required by section 87(2)), but also provide the courts with greater sentencing flexibility to deal with this type of less serious offence.

This order

7.9. The last time the levels were raised was in 1992 when, along with similar rises across the scale, level 1 was raised by 400% of the previous level, from £50 to £200. The purpose of legislating in the 2012 Act to make fines of £5,000 or more unlimited was to give sentencers greater discretion when deciding the appropriate fine to impose. That provision had cross-party supporting during the passage of the Bill, and was described as sensible and non-contentious. This order provides the opportunity to create a similarly greater discretion in relation to maximum fines of less than £5,000.

7.10. The new proposed levels represent the same percentage increase as was undertaken on the last occasion. The 2012 Act requires that levels 1 to 4 be increased without disturbing the ratios between them. Overall this represents a substantial increase in the available fines at levels 1 to 4 and demonstrates that the Government is serious about giving magistrates greater flexibility to exercise their discretion in individual cases. The court would, of course, continue to set the actual level of any fine imposed, with regard to the offender's financial circumstances as well as the seriousness of the offence, in the usual way.

- ***Consolidation***

7.11 This is the first order to be made under s.87 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 so no consolidation issues arise.

8. Consultation outcome

8.1 There was no consultation on the fourfold multiplier for levels 1 to 4. None is required by the 2012 Act. But Ministerial and non-Ministerial Departments have considered, on their own behalf and on behalf of their agencies and public bodies,

whether there were any fines with a numerical maximum of less than £5,000 which should not be increased fourfold, in line with the proposed changes to levels 1 to 4. The result of this consideration will be reflected in regulations made under section 86 of the 2012 Act, to be made at a later date.

9. Guidance

9.1 Guidance to magistrates about sentencing is achieved via the Sentencing Council and their sentencing guidelines, and by training provided by the Judicial College. The MoJ has made both bodies aware of the impending changes and the likely timetable for them. In addition, we have informed and continue to update all Government Departments about the likely timetable for change and are requesting that they use their own communications channels to contact their agencies, public bodies and other stakeholders who may need to make changes to their publicity and promotional material etc. that will be affected by the changes. For example, the BBC uses the maximum fine for TV licence evasion (Level 3, which will increase from £1,000 to £4,000) as an incentive to purchasing a licence.

10. Impact

10.1 The impact of this order on business, charities or voluntary bodies will depend on the extent to which they use the fine maxima at Levels 1 to 4 in their publicity and promotional material. Individual Government Departments will make stakeholders aware of these changes so that there is time for this material to be updated. The MoJ is also planning its own publicity at the time the order is commenced.

10.2 The impact on the public sector is largely focused on magistrates and district judges who sentence offenders in the magistrates' courts and will need to be aware of their new powers. Guidance to magistrates about sentencing is achieved via the Sentencing Council and their sentencing guidelines, and by training provided by the Judicial College. But actual fines are imposed taking into account the seriousness of the offending and the financial circumstances of the offender, so for the majority of cases fines are unlikely to change a great deal. The Impact Assessment for the LASPOA fines provisions under which this order is made said that, based on the evidence available, it was not anticipated that there will be a significant impact of raising the fine limits in the magistrates' courts.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 Small businesses will be affected in a similar way to all businesses as indicated in paragraph 10.1 above. Publicity from Government departments will help to ensure that businesses and the public in general are aware of the changes.

12. Monitoring & review

12.1 The MoJ publishes the amounts of fines imposed in the magistrates' courts as averages and in relation to particular offence groups such as theft and drug offences. Any changes in the amounts of fines imposed will be evident from this publication and trends can be monitored taking into account changes in the value of money.

13. Contact

Beverley Moore at the Ministry of Justice (020 3344 5038 and beverley.moore@justice.gsi.gov.uk) can answer any queries regarding the instrument.