EXPLANATORY MEMORANDUM TO

THE LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS ACT 2012 (FINES ON SUMMARY CONVICTION) REGULATIONS 2015

2015 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.

2. Purpose of the instrument

2.1 The Legal Aid, Sentencing and Punishment of Offenders Act 2012 (Fines on Summary Conviction) Regulations 2015 ("The Regulations") are intended to come into force at the same time as section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("the 2012 Act") Act is commenced.

2.2 Section 85 of the 2012 Act will, when commenced, remove the cap on fines imposed in the magistrates' courts on summary conviction. The Regulations ensure that the position in section 85 which has been approved by Parliament works sensibly and coherently in practice by making necessary and desirable amendments to legislation. The Regulations also provide for exceptions from section 85 for some customs offences and provide for alternative fines of a finite amount.

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

3.1 The Legal, Aid, Sentencing and Punishment of Offender Act 2012 (Disapplication of section 85(1), Fines Expressed as Proportions and Consequential Amendments) Regulations 2014 ("the previous Regulations") were considered by the Committee on 25th June 2014 with no adverse comment in the Committee's Third Report.

3.2 These Regulations repeat the previous Regulations to a large extent save that provisions dealing with fines over £5000 expressed numerically have also been dealt with in these Regulations. The new provisions ensure that all fines of £5000 or above however expressed are dealt with in the same Regulations so that there is a coherent approach to implementation.

3.3 The Committee also considered the Legal, Aid, Sentencing and Punishment of Offender Act 2012 (Increases to Levels 1 to 4 Fines) Order 2014 at the same time as it considered the previous Regulations. This Order has also been withdrawn and there are no immediate plans to lay it again in the near future. There will therefore be no increase to Level 1 to 4 fines on summary conviction at this point.

3.4 The Regulations when considered as a whole concern penalties in the summary criminal jurisdiction and do not concern any specific substantive subject-matter. The Welsh Government does not have devolved legislative power in the criminal justice area and therefore no formal procedures have been undertaken in respect of the Welsh Assembly. The Welsh Government have accepted this approach.

4. Legislative Context

4.1 Legislation provides for the maximum level of fines to be imposed on summary conviction. These are variously expressed as Levels 1 to 5 on the Standard Scale; the Statutory Maximum or the Prescribed Sum. Level 5, the Statutory Maximum and the Prescribed Sum are currently £5,000.

4.2 Section 85(1) of the 2012 Act will, when commenced, remove the upper limits on fines that can be imposed on summary conviction where the upper limit of such a fine is currently expressed as "Level 5", "statutory maximum", "prescribed sum" or a numerical amount of £5,000 or above. The effect is that, on commencement of section 85, a fine of any amount may be imposed instead. Section 85(2) of the 2012 Act has a similar effect in relation to powers to create offences; that is, its effect is that any power to create an offence punishable on summary conviction by a fine of £5,000 or more (again, however expressed) will instead mean that a fine of any amount may be imposed on summary conviction.

4.3 The Regulations ensure that the policy approved by Parliament of removing the cap on summary fines imposed in the magistrates' courts works sensibly and coherently in practice by making necessary and desirable amendments to legislation, including providing for some exceptions.

4.4 The Regulations:

(a). Disapply s. 85(1) of the 2012 Act in relation to a number of offences (regulation 2 and Schedule 1) (primarily relating to customs issues) and substitute new maximum penalties (Schedule 2). Current provision provides for fines of either Level 5 or the value of the goods whichever is the greater. It is necessary to provide for a numerical figure to replace Level 5 and HMRC for consistency purposes set that figure at £20,000. Again for consistency reasons, it is desirable for the fines that make no comparison to the value of goods but that are in the same legislation for customs offences to have the same numerical fine as opposed to an unlimited fine.

(b). Deal with penalties which are currently expressed as proportions of Level 5, the statutory maximum or the prescribed sum. As these fines would on commencement on section 85, have become a fine of any amount, it is necessary to amend the provisions for these fines by reference to a specific figure. Regulation 3 and Schedule 3 have the effect of maintaining the penalty's current amount for the present (£5000), but allowing for it to increase in line with any future changes to the amounts of levels 1 to 4 (paragraph 7.8 below sets out what the current amount of levels 1 to 4 are).

(c). Regulation 4 and Schedule 4 make various consequential amendments on section 85(1) and (2) to provide that fines or powers to create offences of £5,000 or over expressed as a specified amount become an unlimited fine. Section 85(1) would have operated to amend these fines however it was considered that the limitation of the effect of section 85(1) and (2) to fines on summary conviction meant that there would not be sufficient clarity without the consequential amendments.

(d). Regulation 4(5) and Schedule 5 make various consequential amendments dealing with non-criminal sanctions which depend in some way on the existence of a maximum fine of £5,000 or more (however expressed). The amendments are made in order either to provide clarity or to ensure that those provisions continue to work.

(e). Schedule 5 makes amendments to section 32 of the Magistrates' Courts Act 1980 and section 37 of the Criminal Justice Act 1982 to make clear that those provisions (which define "the prescribed sum" and "level 5 on the standard scale" respectively) are affected by section 85 of the 2012 Act.

5. Territorial Extent and Application

5.1 The Regulations extend to England and Wales only. They do not have any effect on a fine imposed on conviction in Scotland or Northern Ireland even where the amended legislation extends to Scotland or Northern Ireland.

6. European Convention on Human Rights

6.1 The Parliamentary Under-Secretary of State in the Ministry of Justice, Rt Hon Mike Penning 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 (Fines on Summary Conviction) Regulations 2015 are compatible with the Convention rights.

7. Policy background

7.1 As explained in paragraph 4.3 above, these draft Regulations make both necessary and desirable amendments to existing legislation to ensure a sensible and coherent sentencing framework relating to the most serious offences that come before the magistrates' courts once section 85 of the 2012 Act comes into force.

7.2 Section 85 of the 2012 Act is intended to ensure magistrates, who impose the vast majority of fines, have greater flexibility to identify the most effective and proportionate 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 orders 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 also provide reparation for society.

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. 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 Government has also introduced legislation, in the Crime and Courts Act 2013, providing that since December 2013 every community order must include a punitive element unless there are exceptional circumstances that would make this unjust. The Act provides that a fine imposed alongside the community order can provide that mandatory punitive element.

7.6 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)_-_October_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 in most cases the fine for a first time offender pleading not guilty 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 Section 87 of the 2012 Act deals with fines for 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 Government is

considering how these powers should be exercised and there are no immediate plans to introduce legislation under these provisions.

Consolidation

7.9 These are the first regulations to be made in relation to section 85 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 so no consolidation issues arise.

8. Consultation outcome

8.1 There was no public consultation on these regulations. They are designed to ensure that the policy approved by Parliament of removing the cap on fines imposed in the magistrates' courts works sensibly in practice. All Ministerial and non-Ministerial Departments considered, on their own behalf and on behalf of their agencies and public bodies, firstly, whether there were any offences or powers to create offences where there was a clear and pressing reason for s.85 to be disapplied and, if so, what the new maximum should be and secondly whether there were any penalties expressed as a proportion of £5,000 or more. The result of these considerations is reflected in the Regulations.

9. Guidance

9.1 Guidance to magistrates about sentencing is the statutory responsibility of the Sentencing Council and their sentencing guidelines, and by training provided by the Judicial College. 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.

10. Impact

10.1 The impact of these regulations on business, charities or voluntary bodies is limited. They may find it helpful to be aware of the changes to penalty amounts in the regulations, but the main impact will be from the commencement of section 85. Individual Government Departments will make stakeholders aware of these changes. The Ministry of Justice is also planning its own publicity at the time the Regulations are commenced.

10.2 The impact on the public sector is likely to be minimal. The Regulations chiefly ensure that the main policy change – commencement of section 85 - does not give rise to any anomalies in the sentencing framework. As indicated above, the Ministry of Justice will publicise the regulations when they come into force.

10.3 An Impact Assessment has not been prepared for this instrument. The Impact Assessment for the 2012 Act fines provisions under which these regulations are 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 https://www.justice.gov.uk/downloads/legislation/bills-acts/legal-aid-sentencing/laspo-royal-assent-eia.pdf .

11. Regulating small business

11.1 These regulations do not apply directly to small business as they affect only the sentencing powers of the magistrates' courts. There are many changes to the maximum fines for offences that could be committed by small businesses, such as VAT offences or evading specified taxes, duties and levies, but they will apply only if the business fails to comply with the law. Publicity will help to ensure that the public in general are aware of the changes.

12. Monitoring & review

12.1 The Ministry of Justice 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. This will be monitored taking into account changes in the value of money.

13. Contact

Beverley Moore at the Ministry of Justice (07580 701103 and beverley.moore@justice.gsi.gov.uk) can answer any queries regarding the instrument.