EXPLANATORY MEMORANDUM TO

THE PENALTIES FOR DISORDERLY BEHAVIOUR (AMOUNT OF PENALTY) (AMENDMENT NO. 4) ORDER

2004 No.3371

1. This explanatory memorandum has been prepared by the Home Office and is laid before Parliament by Command of Her Majesty. This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Description

The above Order is made in exercise of the power conferred under subsections 3(1) and 3(1A) of the Criminal Justice and Police Act 2001 (subsection 1A was inserted by section 87(4) of the Anti Social Behaviour Act 2003). It sets the amount payable in respect of Penalty Notices for Disorder issued to offenders aged 10 to 15. In accordance with section 2(6) of the Criminal Justice and Police Act 2001 (as inserted by section 87(3) of the Anti Social Behaviour Act 2003) the parent or guardian will be liable to pay the penalty under the notice.

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

3.1 This Order revokes and replaces the Penalties for Disorderly Behaviour (Amount of Penalty)(Amendment No.3) Order 2004 (S.I. 2004/3167).

3.2 That Order contained an erroneous reference in article 2(5) to the penalty for offences committed by persons aged 16 or over. This Order corrects that error by changing the reference to "£40" in article 2(5) to "£50". The Order is otherwise unchanged. This Order comes into force on 26th December 2004, thus breaching the 21 day rule. The Department apologise for this breach, which is necessary so that the Order comes into force as the same time as two related instruments: S.I. 2004/3166 and S.I. 2004/3169. The Penalties for Disorderly Behaviour (Amendment of Minimum Age) Order 2004 (S.I. 2004/3166) enables penalty notices for disorder to be given to 10 to 15 year olds and comes into force on 26th December. Unless this Order comes into force at the same time, those under 16 will be liable to the higher penalties payable by those who are 16 or over.

4. Legislative Background

4.1 Chapter 1 of Part 1 of the Criminal Justice and Police Act 2001 ("the 2001 Act") introduced on the spot penalties for disorderly behaviour. These provisions empowered police officers to issue penalty notices in respect of the offences listed in section 1 of that Act. Penalty notices could only be issued to offenders aged 18 and over.

4.2 Under sections 4 and 5 of the 2001 Act, the recipient of a penalty notice has 21 days to decide what to do. If he pays the penalty within 21 days, he cannot be tried for the offence, has no criminal record and is diverted from the criminal justice system. If, within 21 days, he asks to go to court, he may be tried for the offence in the normal

way. If he does nothing within 21 days, then an amount of one and a half times the penalty is registered against him as a fine.

4.3 Section 87(2) of the Anti-social Behaviour Act 2003 amended section 2(1) of the 2001 Act so that penalty notices could be issued to 16 and 17 year olds. That extension came into effect on 20 January 2004 and has been extended on a national basis.

4.4 Section 87(3) of the Anti-social Behaviour Act 2003 inserted a power into section 2 of the 2001 Act, which enables the Secretary of State by order to reduce the minimum age for receipt of a penalty notice and to make provision for a parent or guardian to be notified of the giving of the notice and for that parent or guardian to be liable to pay the notice. The Penalties for Disorderly Behaviour (Amendment of Minimum Age) Order 2004, due to come into force on the same date as this Order, exercises this power so that 10 to 15 year olds can be given Penalty Notices for Disorder. The Penalties for Disorderly Behaviour (Form of Penalty Notice) (Amendment) Regulations), also due to come into force on the same date as this Order, prescribes a different form of penalty notice for this age group.

4.5 Unless the power under subsections 3(1) and 3(1A) of the 2001 Act is exercised, the level of penalty payable by the parent or guardian will be the same as the amount payable by offenders aged 16 and over (£80 or £50).

5. Extent

This instrument applies to England and Wales.

6. European Convention on Human Rights

Not applicable.

7. Policy background

7.1 Penalty Notices for Disorder are seen as an efficient and cost-effective way for low-level anti-social offences to be dealt with. Payment of the penalty by the offender does not constitute an admission of guilt and is not disclosable. It, therefore, provides a way for offenders to accept responsibility but in a way that will not draw them into the criminal justice system.

7.2 Evidence from the adult scheme is that a considerable amount of police time is freed up by the use of Penalty Notices, even when issued at a police station. This will allow officers to spend more time on the street providing the visible presence the public wants to see.

7.3 Under16s who receive penalty notices for disorderly behaviour will be allowed another chance to keep out of the criminal justice system and avoid any problems that might arise from inclusion, such as the creation of a criminal record.

7.4 Extending penalty notices for disorderly behaviour to the 10 to 15 age group will encourage parents to take more responsibility for their children's behaviour as they will be liable to pay the penalty.

7.5 The level of the penalty must be set at a level which is both realistic and will encourage compliance with the Penalty Notice for Disorder scheme. Research has shown that for the range of offences dealt with under the scheme, offenders aged 10-15 can expect to receive a fine if the matter is brought before a Court. The fines imposed are £40 for the more serious offences listed in section 1 of the 2001 Act and £30 for the other offences. Leaving the level of penalty at the same level as for adults would not reflect current sentencing practice and might encourage more offenders to seek a court hearing in the hope of receiving a lesser penalty.

7.7 Detailed guidance will be issued to those police forces taking part in the initial pilots for extending penalty notices to 10-15 year olds.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

8.2 The impact on the public sector is likely to be a small increase in Local Authority costs as they will be responsible, as guardian, for those children in their care for penalty notices issued to them. Costs to the police will be reduced as research from the adult pilots show that around 2 hours is saved in each case where a penalty notice is issued. Whilst such savings may not be possible in cases involving 10 to 15 year olds, it is still expected that there will be a saving. This will be quantified during the pilots.

8.3 The other costs associated with this order relate to printing the guidance for issue to police forces. These will be offset by the saving in police time, as well as some criminal justice system time for those cases that will be diverted to it.

9. Contact

Kevin Walsh at the Home Office Tel: 0207 273 3981 or e-mail: kevin.walsh@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.