EXPLANATORY MEMORANDUM

THE PENALTIES FOR DISORDERLY BEHAVIOUR (AMOUNT OF PENALTY) (AMENDMENT No.2) ORDER 2004 No.2468

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

2. Description

2.1 This Order increases the penalty amount relating to some penalty notices for disorder (PNDs) from £40 to £50. PNDs may be issued by the police and other enforcement officers enabling recipients to pay the penalty as an alternative to having their case heard by a court. (Penalty amounts for the remaining penalty offences stay at £80). The Order also assigns the relevant penalty amount to all penalty offences by replacing the existing Schedule which sets these out. Ten of these offences are newly created as penalty offences and this Order assigns their penalty amounts for the first time.

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

3.1 None.

4. Legislative Background

4.1 PNDs were introduced under the Criminal Justice and Police Act 2001. That legislation listed ten penalty offences and a further one was subsequently added by affirmative order under section 1(2) of that Act. Penalty amounts were assigned to these offences by the Penalties for Disorderly Behaviour (Amount of Penalty) Order 2002 (S.I. 2002 No. 1837) made under section 3(1) of the Act. These amounts were £80 and £40. The Schedule to the 2002 Order set out the penalty offences and the penalty amounts assigned to them. This created two tiers of penalty offences; a higher (£80) and a lower (£40). One offence has since been moved from the lower to the higher tier by the Penalties for Disorderly Behaviour (Amount of Penalty) (Amendment)Order 2004 (S.I. 2004 No. 316).

4.2 Ten new penalty offences have been added to the list by the Criminal Justice and Police Act 2001 (Amendment) and Police Reform Act 2002 (Modification) Order 2004 (this has not yet been allocated an S.I. number). The purpose of the present Order is to exercise the power of the Secretary of State under section 3(1) of the 2001 Act to assign penalty amounts to these new offences. The new amounts are £80 for higher tier offences and £50 for the lower tier.

4.3 The effect of assigning £50 as the penalty amount for those lower tier penalty offences not added by the Criminal Justice and Police Act 2001 (Amendment) and Police Reform Act 2002 (Modification) Order 2004 is to exercise the power of the Secretary of State in section 3(1) of that Act to change those amounts from £40 to £50.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 Not applicable.

7. Policy background

7.1 Penalty notices for disorder were introduced by the Criminal Justice and Police Act 2001 as an additional means for police officers to deal with minor, anti-social offending that can blight communities and cause distress and annoyance to local people. The recipient of a notice may opt to pay the penalty or may choose to have the case prosecuted in the normal way. Paying the penalty means that no proceedings may be brought for the offence and involves no admission of guilt or record of conviction. If the recipient does nothing, a fine of one and a half times the penalty amount may be registered against him or her.

7.2 Initially there were 10 penalty offences with another added later. The PND scheme was piloted with these offences and the penalty amounts of £80 and £40. The pilots ran from August 2002 to September 2003 and the scheme has been available nationally since April 2004. Initially the scheme applied only to those aged over 18, but was extended to 16 and 17 year olds in early 2004.

7.3 Because the scheme has been shown to be successful in dealing with low-level disorderly offending, and saves significant amounts of police and court time, a decision was taken to further extend it. In September 2004 Parliament approved instruments extending the scheme to those aged 10 to 15 years and adding 10 new penalty offences. The new offences relate to minor theft and criminal damage; to littering and to some offences involving the misuse of alcohol and fireworks. Limitation of theft and criminal damage to low level offending only will be achieved by guidance issued to the police by the Secretary of State under section 6 of the 2001 Act.

7.4 This Order assigns penalty amounts to these new offences, some of which are in the higher tier and some in the lower. The Order also changes the lower tier amount from £40 to £50. This was foreshadowed by Home Office Ministers during the debates in both Houses on the order adding the new offences and appeared entirely uncontroversial.

7.5 The Association of Chief Police Officers welcome the addition of the new offences to the PND scheme and are content with the penalty amounts. The Association of Convenience Stores has been consulted and has given its approval to the addition of minor retail theft to the scheme.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for this instrument as it has no impact on charities or voluntary bodies. The impact on business is minimal and is likely to be welcomed as it will enable the police to take action to punish offenders committing minor acts of shoplifting, where at present only an informal warning is often given.

8.2 The impact on the public sector is to save significant amounts of police and court time. This is likely to result in more police hours spent on the street and more time for the courts to deal with serious offenders than in a saving to the Exchequer. So far over 20,000 PNDs have been issued. It has been estimated that each notice saves between 1.5 and 2.5 hours of police time compared with preparing a case for court or issuing a caution. Although not all cases where a PND is issued would have resulted in a prosecution or a caution, the potential gains are considerable.

9. Contact

9.1 Philippa Goffe at the Home Office Tel: 020 7273 4134 or e-mail: philippa.goffe@homeoffice.gsi.gov.uk can answer any queries regarding the instrument.