EXPLANATORY MEMORANDUM TO

THE PENALTIES FOR DISORDERLY BEHAVIOUR (AMOUNT OF PENALTY) (AMENDMENT) ORDER 2005

2005 No.581

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

2.1 The above Order is made in exercise of the power conferred by sections 3(1) and (1A) of the Criminal Justice and Police Act 2001. It specifies penalty amounts to be applied to two new penalty offences:

Section 172(3) of the Licensing Act 1964	Selling alcohol to a drunken person
Section 169C(1) of the Licensing Act 1964	Buying or attempting to buy alcohol by a person under 18.

These offences are to be added to the penalty notice for disorder scheme by means of the draft Criminal Justice and Police Act 2001 (Amendment) Order 2005 that was laid in draft before Parliament on 10th February 2005. That draft Order is made in exercise of the powers conferred by section 1(2) of the Criminal Justice and Police Act 2001 and requires affirmative resolution of each House of Parliament.

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

3.1 The draft Criminal Justice and Police Act 2001 (Amendment) Order 2005 which seeks to add two penalty offences to the penalty notice for disorder scheme has been scrutinised by the Joint Committee on Statutory Instruments and the Merits Committee. The draft Order is subject to affirmative resolution. It is to be debated in the House of Commons on Wednesday 9th March but a debate is still to be scheduled for the House of Lords; it has not yet been approved.

4. Legislative Background

4.1 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 the Table in section 1 of that Act to persons aged 18 or over. The offences included wasting police time, causing harassment, alarm or distress (section 5 of the Public Order Act 1986), throwing fireworks and bring drunk and disorderly.

4.2 Under section 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 discharges all liability for that offence, has no criminal record and is diverted from the criminal justice system.

If, within 21 days, he requests a court hearing then he may be tried by a court in the normal way. If he does nothing then a fine is registered against him of one and a half times the amount of the penalty.

4.3 Section 1(2) of the 2001 Act provides for further offences to be added to the Table in section 1(1) by Order. Two Orders have been made under that power adding offences to the Table. They are The Criminal Justice and Police Act 2001 (Amendment) Order 2002 (No. 1934 of 2002) and The Criminal Justice and Police Act 2001 (Amendment) and Police Reform Act 2002 (Modification) Order 2004 (No. 2540 of 2004).

4.4 Section 87(2) of the Anti-Social Behaviour Act 2003 ("the 2003 Act") amended section 2(1) of the 2001 Act so that penalty notices could also be issued to persons aged 16 or 17 years of age. That extension came into force on 20th January 2004.

4.5 The Penalties for Disorderly Behaviour (Amendment of Minimum Age) Order 2004 (No. 3166 of 2004) amended section 2(1) of the 2001 Act so that penalty notices could be issued to persons aged 10 or above. That extension of the scheme came into force on 26th December 2004.

4.6 The Penalties for Disorderly Behaviour (Amount of Penalty) (Amendment No.3) Order (No. 3167 of 2004) set penalty amounts to be applied to penalty offences issued to juveniles aged between 10 and fifteen years of age.

4.7 Pilots of penalty notices for disorder for 10 to 15 year olds have commenced in seven police force areas and will run for a year.

4.8 A draft Order, The Criminal Justice and Police Act 2001 (Amendment) Order 2005, was laid in draft before Parliament on 10 February 2005. This draft Order seeks to adds two further penalty offences under the Licensing Act 1964 to the penalty notice for disorder scheme: selling alcohol to a drunken person (section 172(3)) and buying or attempting to buy alcohol by a person under 18 (section 169C(1)).

4.9 This Order sets the penalty amounts to be applied to the two new penalty offences under the Licensing Act 1964. The penalty for selling alcohol to a drunken person (section 172(3)) is £80 for a person issued with a penalty notice aged 16 and over. The penalty for buying or attempting to buy alcohol by a person under 18 (section 169C(1)) is £50 for persons issued with a penalty notice aged 16 and over and £30 for juveniles aged from 10 to fifteen years of age.

5. Extent

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

The Minister of State for Crime Reduction, Policing, Community Safety, Counter-Terrorism and Resilience has made the following statement under section 19(1)(a) of the Human Rights Act 1998:

In my view the provisions of The Penalties for Disorderly Behaviour (Amount of Penalty) (Amendment) Order 2005 are compatible with the Convention rights.

7. Policy background

7.1 Penalty notices for disorder provide a quick and effective means of dealing with low-level, anti-social offences. Payment of the penalty within the time limit enables the offender to discharge all liability for the offence, requires no admission of guilt and is not discloseable. This disposal therefore provides a way for punishing offenders without drawing them into the criminal justice system.

7.2 Evidence from the pilots of the penalty notice scheme for persons aged 18 years and over is that a significant amount of police time is freed up by using penalty notices instead of cautions or charging.

7.3 Evidence from the pilots also shows that the use of penalty notices for disorder diverts these minor cases from the courts freeing the courts up to deal with the more serious cases more quickly.

7.4 Police views, surveyed for the evaluation of the pilots, were overwhelmingly positive providing support for its success with frontline officers and management.

7.5 The penalty notice for disorder scheme is now in place across all police forces in England and Wales. The scheme is proving to be successful with the police with nearly 60,000 penalty notices issued during 2004.

7.6 Penalty notices for disorder have been used to good effect by the police in alcohol misuse enforcement campaigns that have operated in England and Wales in 2004 during the summer and over the Christmas and New Year period. The police have found penalty notices provide a quick and effective tool to deal with the minor, alcohol-related offending which occurs in city centres late at night and weekends. Police officers are freed up from completing paperwork and can return to patrolling the streets rapidly.

7.7 The addition of the two penalty offences of selling alcohol to a drunken person and buying or attempting to buy alcohol by an under 18 will supplement and complement the existing penalty offences tackling alcohol misuse.

7.8 The penalty amounts to be applied to these offences reflect the level of penalty applicable to existing similar penalty offences. The penalty set for the offence of buying or attempting to buy alcohol by a person under 18 is the same as that applied to the penalty offence of consumption of alcohol by an under 18. Selling alcohol to a drunken person has a penalty which is the same as that for selling alcohol to a person aged under 18.

8. Impact

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

9. Contact

Philippa Goffe at the Home Office, tel: 020-7035-8372 or e-mail: philippa.goffe@homeoffice.gsi.gov.uk, can answer any queries regarding the instrument.