EXPLANATORY MEMORANDUM TO

THE PENALTIES FOR DISORDERLY BEHAVIOUR (AMOUNT OF PENALTY) (AMENDMENT) ORDER 2008

2008 No. 3297

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

2. Purpose of the instrument

2.1 This instrument is made in exercise of powers under section 3(1) and (1A) of the Criminal Justice and Police Act 2001. It sets the penalty amounts for the penalty offences listed in the Criminal Justice and Police Act 2001 (Amendment) Order 2009 and sets out afresh the penalties for all such offences by substituting a new Schedule into the Penalties for Disorderly Behaviour (Amount of Penalty) Order 2002 (S.I. 2002/1837).

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

3.1 None

4. Legislative Context

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 and other designated officers to issue penalty notices in respect of the penalty offences listed in the Table in section 1(1) of that Act. A "penalty offence" as defined in section 1 of the 2001 Act means an offence committed under any of the provisions listed in the Table in section 1(1) of the 2001 Act. The offences included causing harassment, alarm or distress (section 5 of the Public Order Act 1986), being drunk and disorderly. Chapter 1 has been amended by the Anti-social Behaviour Act 2003 empowering the giving of penalty notices to persons under 18.

4.2 Section 1(2) of the 2001 Act provides for further offences to be added to the Table in section 1(1) by Order. Orders have been made under that power adding further penalty offences to the Table.

4.3 Section 3(1) and (1A) provide for the setting of the amounts payable for the penalty offences listed in Table in section 1 (1) of the 2001 Act, and for the power to specify different amounts for persons of different ages.

4.4 Under sections 4 and 5 of the 2001 Act, the recipient of a penalty notice has 21 days in which to decide what to do. If he pays the penalty within 21 days he

discharges all liability to conviction of that offence, and receives no record of criminal conviction. 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.

4.5 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.

4.6 A draft instrument, the Criminal Justice and Police Act 2001 (Amendment) Order 2009 was laid before Parliament on 15 December 2008. It seeks to add 21 new offences to the Table in section 1 of the 2001 Act. This negative resolution Order sets the penalty amounts to be applied, subject to parliamentary approval, to those new penalty offences.

4.7 The amounts specified for the current penalty offences apply as from 26th January 2009. The amounts specified for the new penalty offences are contingent upon the coming into force, following parliamentary approval, of the Criminal Justice and Police Act 2001 (Amendment) Order 2009.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The penalty offence Scheme, established under the Criminal Justice and Police Act 2001, enables officers to issue a fixed penalty notice of £50 or £80 for a specified range of minor anti-social behaviour and regulatory offences. There are now 20 offences for which a penalty notice can be issued. The disposal has proved popular with the police, providing them with a simple and efficient financial punishment to deal with low-level anti-social behaviour. Over 400,000 penalty notices have been issued since the Scheme was implemented in all 43 police forces in England Wales in 2004.

7.2 Penalty notice disposal provides the recipient with the benefit of an administrative disposal which does not require attendance at court nor an admission of guilt and does not result in a record of criminal conviction. Payment of the penalty discharges all liability to conviction of the offence. Frontline officers have found the disposal to be an efficient and effective means of dealing with minor crimes

7.3 The addition of 21 new penalty offences, including possession of cannabis, and contravention of prohibitions in Royal Parks regulations such as littering and illegal cycling, and national framework railway and London Underground

byelaws, such as smoking and possession of alcohol, by the Criminal Justice and Police Act 2001 (Amendment) Order 2009 will supplement and complement existing penalty offences.

7.4 The penalty amounts applied to the new offences by this instrument reflect the levels applicable to existing similar penalty offences. For example, the penalty set for sales of tobacco to persons under 18 is the same as that applied to the penalty offence of sale of alcohol to a person under 18. In the case of possession of cannabis where no equivalent offence exists, the penalty amount (£80) reflects the average fine given out by a magistrate for the offence.

8. Consultation outcome

8.1 We consulted Departments and other agencies with substantive policy responsibility for the various offences on the level of penalties applicable to the list of new offences to be added to the PND Scheme.

9. Guidance

9.1 The Secretary of State's operational guidance to the police on the PND Scheme, issued under section 6 of the 2001 Act, will be updated to take account of the changes made by this instrument.

10. Impact

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

11. Regulating small business

11.1 The legislation applies only to individuals.

12. Monitoring & review

12.1 We keep penalty amounts under regular review.

13. Contact

13.1 Chris Morris-Perry at the Ministry of Justice Tel: 020 3334 5039 or email chris.morris-perry@justice.gsi.gov.uk can answer any queries regarding the instrument.