EXPLANATORY MEMORANDUM TO

THE PENALTIES FOR DISORDERLY BEHAVIOUR (AMOUNT OF PENALTY) (AMENDMENT) ORDER 2012

2012 No. 1431

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 ("the 2001 Act"). It sets the penalty amounts to be applied to three new penalty offences included in the Criminal Justice and Police Act 2001 (Amendment) Order 2012 by adding to the Table in Part II of the Schedule to the Penalties for Disorderly Behaviour (Amount of Penalty) Order 2002 (No. 1837 of 2002). The offences are all under the Royal Parks and Other Open Spaces Regulations 1997 (No. 1639 of 1997): regulation 3(3) (dropping or leaving litter or refuse); regulation 3(4) (illegal cycling) and regulation 3(6) (dog fouling).

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 2001 Act introduced penalty notices for disorderly behaviour. These provisions empowered police officers and other designated officers to issue penalty notices for the offences listed in the table in section 1(1) of the Act, to persons aged 18 or over. The offences included causing harassment, alarm or distress (section 5 of the Public Order Act 1986), being drunk and disorderly.

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. Four 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); the Criminal Justice and Police Act 2001 (Amendment) and Police Reform Act 2002 (Modification) Order 2004 (No. 2540 of 2004); the Criminal Justice and Police Act 2001 (Amendment) Order 2005 (No. 1090 of 2005); the Criminal Justice and Police Act 2001 (Amendment) Order 2009 (No. 110 of 2009)

4.3 Sections 3(1) and (1A) provide for the setting of the amounts payable for the penalty offences listed in the 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/she pays the penalty within 21 days he/she discharges all liability for conviction of that offence, and receives no record of criminal conviction. If, within 21 days he/she requests a court hearing then he/she may be tried by a court in the normal way. If he/she does nothing then a fine is registered against him/her 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. That amendment came into force on 26 December 2004.

4.6 The Criminal Justice and Police Act 2001 (Amendment) Order 2012 has been approved by Parliament and will come into force on 30th June 2012. It adds the following offences listed in the Royal Parks and Other Open Spaces Regulations 1997 to the Table in section 1 of the 2001 Act:

- Regulation 3(3) Dropping or leaving litter or refuse
- Regulation 3(4) Illegal cycling
- Regulation 3(6) Dog fouling

4.7 This Order sets the penalty amount to be applied to those new penalty offences at the lower tier level of £50.

5. Territorial Extent and Application

5.1 This instrument extends 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 PND scheme, established under the Criminal Justice and Police Act 2001, enables police officers to issue a fixed penalty notice for a specified range of minor anti-social behaviour and regulatory offences. Some offences carry a penalty of £50, others of £80, as set out in the Schedule to the Penalties for Disorderly Behaviour (Amount of Penalty) Order 2002 (No.1837 of 2002). There are currently 26 offences for which a PND can be issued. PNDs are designed to tackle low-level, anti-social and nuisance offending and provide the police with a swift financial punishment to deal with low-level offences where previously little or no action had been taken. Over 1,107,000 penalty notices have been issued since the scheme was implemented in all 43 police forces in England and Wales in 2004.

7.2 Officers are able to deliver swift and effective justice for lower level criminality, freeing up the courts to concentrate on more serious offences and

officers are able to return to frontline duties. No admission of guilt is required and by paying the penalty the recipient discharges all liability to conviction of the offence and receives no record of criminal conviction.

7.3 The addition of the new penalty offences of dropping or leaving litter or refuse; illegal cycling and dog fouling by the Criminal Justice and Police Act 2001 (Amendment) Order 2012 will supplement and complement existing penalty offences.

7.4 The penalty amount applied to the new offence of dropping or leaving litter or refuse in a Royal Park will be the same as that applied to the existing penalty offence under section 87 of the Environmental Protection Act 1990 of depositing and leaving litter. In the case of illegal cycling and dog fouling (£50) where no equivalent offences exist, section 3 (2) of the 2001 Act specifies that the penalty amount for a penalty offence must not exceed a quarter of the amount of the maximum fine for which a person is liable on summary conviction of the offence, which in the case of all the Royal Park offences is £200. The penalty amounts must therefore be set at £50.

Consolidation

7.5 The statutory instrument will be available at www.legislation.gov.uk. Consolidated versions are not available at this time.

8. Consultation Outcome

8.1 This Order has been drafted following a short informal consultation with the Department for Culture Media and Sport (DCMS), Friends of the Royal Parks and other key stakeholders. Although there has been no formal public consultation, the consultation document was sent to stakeholders, both in and outside of Government who have an interest in the Royal Parks, the PND scheme or the Criminal Justice System more widely. The informal consultation period commenced on 5 January 2012 and ended on 23 January 2012. In all 20 responses were received and the vast majority of respondents were supportive of all three offences being added to the 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 An impact assessment has not been produced for this instrument as it has no impact on the private or voluntary sectors.

10.2 The three offences are not expected to be high volume and we believe that the costs and savings following their addition will be minor.

11. Regulating Small Business

11.1 This legislation applies only to individuals.

12. Monitoring and Review

12.1 The policy behind the PND scheme is kept under regular review by the Ministry of Justice.

12.2 We will review the impact of this Order in 12 months.

13. Contact

Emily Pemberton at the Ministry of Justice (tel: 0203 334 2867, email emily.pemberton@justice.gsi.gov.uk)can answer any queries regarding the instrument.