EXPLANATORY MEMORANDUM TO

THE PENALTIES FOR DISORDERLY BEHAVIOUR (AMOUNT OF PENALTY) (AMENDMENT) ORDER 2014

2014 No. 1383

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 The Order sets the amount of penalty that a person will have to pay when given a penalty notice for disorder ("PND") for the offence of possession of khat. The Order complements separate orders which classify khat as a class C drug and which make possession of khat an offence for which a penalty notices for disorder can be given.

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

3.1 None.

4. Legislative Context

4.1 This order is made in support of the Criminal Justice and Police Act 2001 (Amendment) Order 2014 (No. 1365) which amends section 1 of the Criminal Justice and Police Act 2001 to provide that a penalty notice for disorder can be given for the offence of possession of khat under section 5(2) of the Misuse of Drugs Act 1971 ("the 1971 Act"). The Misuse of Drugs Act 1971 (Amendment) Order 2014 (No. 1352) classifies khat as a class C drug under the 1971 Act.

5. Territorial Extent and Application

5.1 This Order applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

7.1 Under Part 1 of Chapter 1 of the Criminal Justice and Police Act 2001 ("the 2001 Act"), a constable can give a penalty notice of £60 or £90 for a range of low level offences specified in section 1 of that Act. PNDs are designed to tackle low-level, anti-

social and nuisance offending and provide the police with a swift financial punishment to deal with these offences. 106,000 PNDs were issued in 2012.

7.2 PNDs free 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 any liability to be convicted for the offence. However, a penalty notice may be disclosed as part of an enhanced criminal records check by the Disclosure and Barring Service.

7.3 The UK Government has taken the view that the risks and potentials harms associated with khat are sufficient as to warrant its control as a Class C drug – alongside its active ingredients.

7.4 The Government has amended the 2001 Act as part of an escalation framework for the policing of simple possession offences for khat. This framework will be similar to the existing framework for cannabis (a class B drug) possession offences committed by adults in England and Wales. As with possession of cannabis, 'khat warnings' will be available for a first possession offence and a PND for a second possession offence in the absence of aggravating circumstances to these offences. The Penalties for Disorderly Behaviour (Amount of Penalty) Order 2002 ("the 2002 Order") specifies the amount of the penalty for each offence for which a PND can be given. The penalty amount is either £60 or £90. This order amends the 2002 Order to specify that the penalty amount for possession of khat will be £60. This is in contrast to the penalty amount for possession of cannabis, which is £90 reflecting its higher classification under the 1971 Act.

Consolidation

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

8. Consultation outcome

8.1 In deciding the wider strategy on classification of khat as a class C drug under the 1971 Act, the Home Office has consulted the Advisory Council for the Misuse of Drugs, the Medicines and Healthcare products Regulatory Agency and the Department for Business Innovation and Skills. They have also consulted police organisations about the wider policy of dealing with first-time possession offence of khat by way of a warning, and a second offence by way of a PND.

9. Guidance

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

10. Impact

10.1 The escalation framework, of which this forms part, will not affect the private or voluntary sector.

10.2 An Impact Assessment has not been prepared for this instrument. However, an assessment has been completed on the associated instrument that will classify khat as a class C drug under the 1971 Act (S.I. 2014/1352)[1].

11. Regulating small business

11.1 The legislation does not apply to small businesses. Although some small businesses may currently supply khat, penalty notices will apply only to possession of Khat for personal use, not supply or possession with intent to supply.

12. Monitoring & review

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

13. Contact

Diana Symonds at the Ministry of Justice Tel: 0203 334 5012 or email: Diana.Symonds@justice.gsi.gov.uk can answer any queries regarding the instrument.

[1] http://www.legislation.gov.uk/uksi/2014/1352/impacts