EXPLANATORY MEMORANDUM TO THE

PENALTIES FOR DISORDERLY BEHAVIOUR (FORM OF PENALTY NOTICE) (AMENDMENT) REGULATIONS 2005

2005 No. 630

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

The above Regulations are made in exercise of the power conferred under section 3(3) (having regard to the definition of "prescribed" in section 3(4)) of the Criminal Justice and Police Act 2001, and section 26(3)(b) of the Welsh Language Act 1993. The Regulations specify the form that Penalty Notices for Disorder given to juveniles aged 10 to 15 will take. The Regulations amend the Penalties for Disorderly Behaviour (Form of Penalty Notice) Regulations 2002 ("the 2002 Regulations").

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

3.1 This instrument breaches the 21 day rule. The instrument could not have been made and laid sooner because of the necessary time that it took to consult with the relevant police forces piloting the scheme as to proposed changes to the penalty notices. The instrument needs to come into force on 24th March 2005 because the pilots have been put on hold until the new penalty notices for 10 to 15 year olds are prescribed. We want the pilots to re-commence as soon as possible as these penalty notices for disorderly behaviour are seen as an efficient and cost-effective way for low-level anti-social offences to be dealt with.

3.2 This instrument also corrects errors previously reported by the JCSI. The instrument that required correction was the Penalties for Disorderly Behaviour (Form of Penalty Notice (Amendment) Regulations 2004 (S.I 2004/3169). The JCSI letter to the Home Office was dated 11 January 2005. The Home Office memorandum in response was sent to the JCSI on 17 January 2005. Details about the changes that have been made in response to the comments made by the JCSI are included in Paragraph 6.1 of this Explanatory Memorandum.

4. Legislative Background

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 section 1 of that Act. Penalty notices could only be issued to offenders aged 18 and over.

4.2 Under sections 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 cannot be tried for the offence, has no criminal record and is diverted from the criminal justice system. If, within 21 days, he asks to go to court, he may be tried for the offence in the normal way. If he does nothing within the 21 days, then an amount of one and a half times the penalty is registered against him as a fine.

4.3 Section 87(2) of the Anti-social Behaviour Act 2003 amended section 2(1) of the 2001 Act so that penalty notices could be issued to 16 and 17 year olds. That extension came into effect on 20 January 2004 and has been extended on a national basis.

4.4 Section 87(3) of the Anti-social Behaviour Act 2003 inserted a power into section 2 of the 2001 Act, which enables the Secretary of State by order to reduce the minimum age for receipt of a penalty notice and to make provision for a parent or guardian to be notified of the giving of the notice and for that parent or guardian to be liable to pay the notice.

4.5 The Penalties for Disorderly Behaviour (Amendment of Minimum Age) Order 2004, which came into force on 26th December 2004, exercised that power so that 10 to 15 year olds can be given Penalty Notices for Disorder.

4.6 The Penalties for Disorderly Behaviour (Form of Penalty Notice) (Amendment) Regulations 2004 also came into force on 26th December 2004. These Regulations amended the 2002 Regulations and prescribed the penalty notice to be given to this age group.

4.7 The above Regulations also amend the 2002 Regulations. They insert a new Schedule 2 and, accordingly, prescribe a new penalty notice to be given to this age group.

5. Extent

This instrument applies to England and Wales.

6. European Convention on Human Rights

Not applicable.

7. Policy background

7.1 These Regulations respond to comments made by the JCSI in relation to the prescribed form of penalty notices to be given to 10 to 15 year olds. These Regulations amend the 2002 Regulations.

7.2 We have prescribed, for Wales, both an English and Welsh version of the penalty notice. The notes in Part 3A of the notice now refer to the address of the central ticket office at the end of Part 2. The address has been left blank on both the English and the Welsh form so as to allow for operational flexibility.

7.3 We have also made other desirable changes. We have included additional helpful information for juveniles that receive a penalty notice. This new information

is contained in Part 3A of the notice. This reflects the content of the adult notice prescribed in the 2002 Regulations (with appropriate modifications for this age group).

8. Impact

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

8.2 The impact on the public sector is likely to be a small increase in Local Authority costs as they will be responsible, as guardian, for those children in their care for penalty notices issued to them. Costs to the police will be reduced as research from the adult pilots show that around 2 hours is saved in each case where a penalty notice is issued. Whilst such savings may not be possible in cases involving 10 to 15 year olds, it is still expected that there will be a saving. This will be quantified during the pilots.

9. Contact

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