



House of Commons  
Regulatory Reform Committee

---

**Draft Legislative  
Reform (Revocation of  
Prescribed Form of  
Penalty Notice for  
Disorderly Behaviour)  
Order 2009**

---

**Tenth Report of Session 2008–09**

*Report, together with formal minutes and  
written evidence*

*Ordered by the House of Commons  
to be printed 10 November 2009*

**HC 1108**  
Published on 18 November 2009  
by authority of the House of Commons  
London: The Stationery Office Limited  
£0.00

## The Regulatory Reform Committee

The Regulatory Reform Committee (previously the Deregulation and Regulatory Reform Committee) is appointed to consider and report to the House on draft Legislative Reform Orders under the Legislative and Regulatory Reform Act 2006. Its full remit is set out in S.O. No. 141, which was approved on 4 July 2007.

### Current membership

Andrew Miller (*Labour, Ellesmere Port & Neston*) (Chairman)  
Gordon Banks (*Labour, Ochil and South Perthshire*)  
Lorely Burt (*Liberal Democrat, Solihull*)  
Mr Quentin Davies (*Labour, Grantham and Stamford*)  
Mr James Gray (*Conservative, North Wiltshire*)  
John Hemming (*Liberal Democrat, Birmingham, Yardley*)  
Mrs Sharon Hodgson (*Labour, Gateshead East & Washington West*)  
Mr Stewart Jackson (*Conservative, Peterborough*)  
Judy Mallaber (*Labour, Amber Valley*)  
Dr Doug Naysmith (*Labour/Co-operative, Bristol North West*)  
John Penrose (*Conservative, Weston-Super-Mare*)  
Mr Jamie Reed (*Labour, Copeland*)  
Mr Anthony Steen (*Conservative, Totnes*)  
Phil Wilson (*Labour, Sedgefield*)

### Criteria against which the Committee considers each draft legislative reform order

Paragraph (3) of Standing Order No.141 requires us to consider any draft legislative reform order against the following criteria:

... whether the draft legislative reform order —

- (a) appears to make an inappropriate use of delegated legislation;
- (b) serves the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft Order under section 1 of the Act);
- (c) serves the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft Order under section 2 of the Act);
- (d) secures a policy objective which could not be satisfactorily secured by non-legislative means;
- (e) has an effect which is proportionate to the policy objective;
- (f) strikes a fair balance between the public interest and the interests of any person adversely affected by it;
- (g) does not remove any necessary protection;
- (h) does not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
- (i) is not of constitutional significance;
- (j) makes the law more accessible or more easily understood (in the case of provisions restating enactments);
- (k) has been the subject of, and takes appropriate account of, adequate consultation;
- (l) gives rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order No 151 (Statutory Instruments (Joint Committee)) as are relevant;
- (m) appears to be incompatible with any obligation resulting from membership of the European Union.

## **Publications**

The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at [www.parliament.uk/regrefcom](http://www.parliament.uk/regrefcom). A list of Reports of the Committee in the present Session of Parliament is at the back of this volume.

## **Committee staff**

The current staff of the Committee are John Whatley (Clerk), Neil Caulfield (Inquiry Manager) and Liz Booth (Committee Assistant).

All correspondence should be addressed to the Clerk of the Regulatory Reform Committee, Delegated Legislation Office, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 2837; the Committee's email address is [regrefcom@parliament.uk](mailto:regrefcom@parliament.uk).



# Contents

---

<b>Report</b>	<i>Page</i>
<b>Summary</b>	<b>3</b>
<b>1 Introduction</b>	<b>5</b>
<b>2 Background</b>	<b>5</b>
Penalty Notices for Disorder	5
Background to the draft Order	6
<b>3 What the draft Order proposes</b>	<b>6</b>
<b>4 Consultation</b>	<b>7</b>
Timing of consultation	7
Consultation responses	8
<b>5 Preconditions and tests for LROs</b>	<b>9</b>
Removal of burden	9
Removal of necessary protection	10
<b>6 Conclusion</b>	<b>10</b>
<b>7 Annex</b>	<b>11</b>
Response by the Ministry of Justice to written questions	11
<b>Formal Minutes relating to the report</b>	<b>23</b>
<b>List of Reports from the Committee during the current Parliament</b>	<b>25</b>



## Summary

---

Penalty Notices for Disorder (PNDs) are a way of dealing with minor offences without the need for prosecution. The forms used to issue them are currently prescribed in statutory instruments that set out exact templates for the form contents.

The draft Legislative Reform (Revocation of Prescribed Form of Penalty Notice for Disorderly Behaviour) Order 2009 and Explanatory Document (ED) were laid before Parliament on 21 October 2009 by the Ministry of Justice under section 14(1) of the Legislative and Regulatory Reform Act 2006 (LRRRA). The draft Order would de-prescribe the PND form so that police forces would be free to adopt their own models. The Department believes that that would assist in the transition from paper-based systems to more efficient electronic issuing procedures. The Government has proposed that the draft Order be dealt with under the affirmative resolution procedure.

**Whilst we have some concerns about the consultation process undertaken in this case, we believe the draft Order is fundamentally sound and we recommend that it be approved.**



# 1 Introduction

---

1. The draft Legislative Reform (Revocation of Prescribed Form of Penalty Notice for Disorderly Behaviour) Order 2009 and Explanatory Document (ED) were laid before Parliament on 21 October 2009 by the Ministry of Justice under section 14(1) of the Legislative and Regulatory Reform Act 2006 (LRRRA). The draft Order would de-prescribe the PND form so that police forces would be free to adopt their own models. The Department believes that that would assist in the transition from paper-based systems to more efficient electronic issuing procedures. The Government has proposed that the draft Order be dealt with under the affirmative resolution procedure.

## 2 Background

---

### Penalty Notices for Disorder

2. Penalty Notices for Disorder are a way of dealing with minor criminal offences without the need for prosecution and court proceedings. Importantly, acceptance of a PND is not obligatory; there is always the option to elect for a court hearing. However, if the PND is accepted and the penalty paid, the recipient is discharged from liability to conviction for the relevant offence.

3. As a means for disposing of traffic offences expediently, fixed penalty notices have existed for many years. They were introduced for litter and noise offences in the 1990s, and were applied to other offences by the Criminal Justice and Police Act 2001 (“the CJPA”). The CJPA sets out some 21 offences for which PNDs can be issued. These are divided into two tiers by regulations under section 3: the penalty for lower-tier offences such as low-value shoplifting is currently £50 and that for upper-tier offences such as harassment under section 5 of the Public Order Act 1986 is £80.<sup>1</sup> The most recent addition to the list of PND offences is cannabis possession, which was included as a lower-tier offence in January 2009.

4. If a PND remains unpaid within 21 days of issue, the penalty increases by 50%. Thereafter, if it remains unpaid, details of the offence can be passed to the appropriate local magistrates court and the offence can be dealt with by way of normal prosecution. It is not entirely clear to us to what extent that happens in actual practice.

5. Although recipients of PNDs who pay the penalty do not receive a criminal record, certain offences such as retail theft and cannabis possession are “recordable”, a recordable offence being one that is punishable by a term of imprisonment or that is designated as such by statute. As explained in the ED, Association of Chief Police Officers guidance results in PNDs for recordable crimes being logged on the police national computer, with the result that offenders can be traced and their details checked if they commit another offence. Details of PNDs on the police national computer can be disclosed to third parties as part of an enhanced criminal records check if that is deemed relevant.<sup>2</sup>

---

1 For juveniles the respective amounts are £30 and £40

2 See ED paragraph 2.5

## Background to the draft Order

6. At present, PNDs are issued by means of a paper notice whose exact form is prescribed in regulations under section 3 of the CIPA. Equipping officers to issue PNDs by means of a paper-based system requires them to carry books containing four different types of ticket (one each for upper and lower-tier offences for adults and one each for upper and lower-tier offences for juveniles). That is clearly a clumsy and unsatisfactory arrangement. Furthermore, the form needs to be republished if offences are added or the amount of a penalty is altered, which carries a cost (£75,000 for each Metropolitan Police Service reissue, according to the ED.<sup>3</sup>)

7. Most police forces have now developed electronic handheld devices in the form of personal digital assistants (PDAs) for use by officers—for instance, British Transport Police officers already use PDAs to issue stop and search receipts. Using them to issue PNDs would address the logistical problems mentioned above. The ED also suggests that use of PDAs could potentially save police officers up to around 50 minutes of time (in total) per day.<sup>4</sup>

## 3 What the draft Order proposes

---

8. Section 3(3)(a) of the CIPA stipulates that “A penalty notice must...be in the prescribed form.” Merely changing the regulations made under section 3<sup>5</sup> so as to alter the form would not provide sufficient flexibility to address the problems already outlined because forces might want to adopt different templates depending on the type of PDA they adopt. The present draft Order proposes de-prescribing the form template by entirely repealing section 3(3)(a) of the CIPA and making two further, minor consequential changes to the CIPA. The regulations containing the prescribed forms would also be repealed together with a number of items of related secondary legislation.

9. It is important to note that, if the draft Order proceeds, other parts of section 3(3) would remain in place to address certain absolute requirements for PNDs; notably:

- i. section 3(3)(b) requires the offence to be stated;
- ii. section 3(3)(c) requires the form to “give such particulars of the circumstances alleged to constitute the offence as are necessary to provide reasonable information about it”;
- iii. section 3(3)(d) requires specification of the suspended enforcement period;
- iv. section 3(3)(e) requires the amount of the penalty to be stated; and
- v. section 3(3)(g) requires the notice to inform the recipient of his right to ask to be tried for the alleged offence and explain how that right may be exercised.

---

3 See ED paragraph 2.12

4 See ED paragraph 2.8

5 SI 2002 No. 1838 for persons aged 16 and over; SI 2004 No. 3169 for persons aged 10 to 15

In addition, guidance on model PNDs would continue to be issued, ensuring that all essential information was retained on the various forms.

## 4 Consultation

---

### Timing of consultation

10. Consultation on the proposal took place between 22 August 2007 and 3 October 2007—a period of some six weeks—more than two years ago. According to the ED, the abbreviated consultation period was decided on “in view of the minor nature of the proposal.”<sup>6</sup>

11. There are a number of reasons why we find this state of affairs less than satisfactory. The Code of Practice on Consultation<sup>7</sup> says that “consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.” In other words, the Code envisages a minimum period of 12 weeks. Given the amount of time that has elapsed between the consultation and laying of the draft Order, there is no reason why a 12-week consultation or re-consultation could not have been undertaken even as recently as earlier this year, by which time any disagreements should have been evident from the initial consultation responses.

12. Particularly worrying is the lack of understanding shown in the Department’s response to our question about delay.<sup>8</sup> The rationale of the response is essentially that the Department did not want to delay, but was unable to lay the draft Order immediately after consultation because consultation had shown the proposal to be more controversial than expected. That rather misses the point that a principal purpose of consultation is to establish whether there are views on a policy that might cause it to be reconsidered.

13. As for its response to the outcome of consultation in terms of dialogue with objecting parties, the Department finally responded to the objections made by the Police Federation and the Law Society in letters dated March 2008, five months after the end of the consultation, and 19 months before eventual laying. Our counterpart Committee in the House of Lords contacted the Law Society on 28 October 2009 to confirm whether the Law Society’s position on the proposal had changed. The reply, indicating that it had not, was received the following day.

14. The ED states that the Minister has considered whether to re-consult and decided against on the basis that, in her assessment, “nothing has changed to make de-prescription less desirable than it was in 2007. If anything, there is now an even stronger case for de-prescription as I understand that the vast majority of police forces have developed hand-held devices and are keen to use them for issuing penalty notices, including PNDs.” We question whether that assessment is susceptible of being made in abstract. The assumption that nothing has changed without confirmation of whether there are contrary views is one that begs the question of whether further consultation should have been undertaken.

---

6 See ED, paragraph 3.7

7 <http://www.berr.gov.uk/files/file47158.pdf>

8 See Annex, question 1

Despite the claim that the vast majority of police forces have now developed hand-held devices, the initial response to our request for figures was that this was an “operational matter.”<sup>9</sup> It is indeed an operational matter, but that did not answer the question. By pressing our inquiries further we have established that PDAs are in use by some 39 or so out of 43 forces and that they are expected to be in use by all forces next year.

15. The ED now describes the proposal as “inherently controversial.”<sup>10</sup> It is hard to understand the thinking whereby a policy proposal that was previously considered “minor” has now been deemed “inherently” controversial. It seems to us that what actually changed was that the consultation revealed a greater degree of concern than had been expected. That might well have been considered a good reason to re-consult with an extended period for responses and perhaps a wider pool of targeted consultees.

16. We do not believe that the curtailed consultation procedure should inhibit progress of the draft Order in this case, but in future we would expect that departures from the Consultation Code of Practice should occur only when there are exceptionally good reasons.

## Consultation responses

17. Notwithstanding the comments above, most consultation responses showed support for the proposal. Police forces pointed to the advantages of a more flexible system that would accommodate electronic issuing of forms; specific advantages that were mentioned included the financial savings that would flow from dispensing with re-publication on amendment, and the reduced time taken in issuing and processing forms electronically. There was a clear majority view among consultees that the proposal would alleviate an administrative burden.

18. On the question of whether the proposal would remove any necessary protection, 13 respondents answered negatively, while two, the Greater Manchester Police Force crime registrar and the Police Federation, had concerns. The Greater Manchester crime registrar was concerned that removing the evidence section of the form might reduce the quality of the issuing process and leave police forces susceptible to criticism. However, we note that an evidence section is not actually prescribed by the current form.<sup>11</sup> Relevant evidence is noted by officers under other procedures.

19. The Police Federation was concerned that the real purpose behind the proposal was to allow wider use of PNDs. Referring to the extension of offences to which PNDs apply, the federation cited concerns that PNDs are used as a way of improving the statistics for clear-up of crime, creating an appearance of addressing offending while the actual rate of payment of fines remains poor. It was also concerned about potential variation in practice, and also about the public confusion and bad publicity that could follow de-prescription.

20. The Criminal Law Committee of the Law Society accepted that there are practical and environmental advantages to electronic issuing systems. However, it was concerned about

---

9 Annex, question 7

10 See ED, paragraph 2.13

11 See the answer to question 10 in the Annex to this Report

existing variations in the practice of issuing PNDs around the country and, like the police Federation, expressed misgivings that the proposal could exacerbate such variations. The Committee sought clearer guidance and training on the circumstances in which PNDs should be issued, together with the removal of statistical incentives to inappropriate issuing of PNDs. The Committee was concerned also about so-called “net-widening”, whereby PNDs are issued to individuals who otherwise would have no action taken against them owing to the minor nature of the offence or because the offence is a first offence, and about issuing of PNDs in circumstances where there is insufficient evidence to support prosecution.

21. The Criminal Law Committee went on to suggest that PNDs should include a statement that legal advice can and should be sought before payment, together with information about the consequences of acceptance of a notice in relation to potential employment and immigration matters. The latter point relates to disclosure of recordable offences as part of an enhanced criminal records check, as mentioned in paragraph 5 above.

**22. We have sought to obtain some reassurance about these matters through questions to the Department<sup>12</sup> and have obtained clarification on a number of issues which has satisfied us about the bona fides of the draft Order.**

## 5 Preconditions and tests for LROs

---

23. The LRRRA sets out a number of tests for legislative reform orders (LROs). In addition, House of Commons Standing Order No. 141 requires us to consider whether LROs give rise to issues under the criteria for consideration of statutory instruments (such as whether the draft Order appears to have retrospective effect) and whether the draft Order purports to make an inappropriate use of delegated legislation.

**24. We do not consider that any issues arise under the Standing Orders, nor that there is inappropriate use of delegated legislation. The statutory tests that we consider relevant in the present case are those of whether a burden exists and whether there is removal of necessary protection, which are addressed below.**

### Removal of burden

25. The weight of consultation responses clearly suggests that the proposal would help to make issuing PNDs more efficient and would save both money and officer time. In answers to questions from us, the Department indicated that issuing a PND takes an officer approximately 30 minutes as opposed to the 2½ hours required to prepare a prosecution case file,<sup>13</sup> which is clearly a very substantial time saving. There were essentially no strong counter-arguments. In any event it seems fairly self-evident to us that, once the decision has been taken to invest in PDA technology, electronic procedures will offer greater

---

<sup>12</sup> See Annex

<sup>13</sup> See Annex, question 3

efficiency. **We agree that the proposal would remove an administrative burden within the meaning of the LRRA.**

### Removal of necessary protection

26. On the face of it, the proposal is merely about a change of format and should therefore remove no protection at all. We do not believe that the ED is as informative and cogent in explaining this as it might have been. However, through our questions to the Department we have established that the proposal is not about removing important sections of the current form, but rather about allowing police forces the flexibility, when they are ready, to move away from the strict template required by the current legislation to a form that can be adapted to local technology. It is clear also that since consultation there have been important improvements in guidance.

27. We are conscious of the worries raised by the Police Federation and the Law Society. **The principal concern flowing from this proposed reform, rather than from general misgivings about PNDs which are not strictly a matter for consideration here, is that of potential greater inconsistency in the practice of issuing PNDs resulting from the use of different forms. So far as that is concerned, we welcome the provision of both additional guidance and the proposed non-statutory model PND form. We encourage police forces to follow both the guidance and the model form closely unless there are sound practical reasons to depart from the model. Such changes should not prejudice consistency of application.**

## 6 Conclusion

---

28. The Government has recommended that the draft Order be proceeded with under the affirmative resolution procedure. **We agree with that procedure and recommend that the draft Order be approved.**

## 7 Annex

---

### Response by the Ministry of Justice to written questions

**Q 1** The consultation on the LRO ran for six weeks from 22 August 2007 to 3 October 2007, the reason given in the Explanatory Document (ED) for the shorter than recommended consultation time being the “minor nature of the proposal.” However, as the LRO has been laid more than two years after consultation the comparative delay caused by observing the full 12-week time period for consultation would have been negligible. What is the reason for the delay? Why were the views of civil liberties bodies such as Liberty not specifically solicited in consultation?

We still believe that this proposed change in the law is minor in nature and justified a shorter than normal consultation period. Although we did intend to lay the order shortly after the consultation period ended, we were prevented from doing so largely because of:

(a) the decision to move from a negative procedure order to an affirmative one, given the increasing media interest in PNDs generally and the concern expressed by the Police Federation in response to the consultation, involving a more complex procedure, and

(b) the necessary diversion of personnel to concentrate on other work on PNDs, including plans to extend the scheme which were not, in the end, proceeded with given the concern expressed and the range of other disposals now available to the police and the courts; responding to the Home Office request to introduce a PND for cannabis possession to coincide with reclassification of the drug; responding to two Private Members' Bills on PNDs for shop theft; revising the Secretary of State's guidance to the police on shop theft and criminal damage, and issuing guidance on cannabis possession.

We did not specifically seek the views of organisations such as Liberty as we do not believe that there are any civil liberties likely to be infringed by the order. We took into account all responses to the consultation document, whoever from.

**Q 2** The statistics in the ED do not include recent figures for issuing Penalty Notices for Disorder (PNDs), payment rates, number of elections for prosecution and number of successful convictions in the case of election for prosecution. Please provide these.

Please find attached figures for Penalty Notices for Disorder (PNDs) showing:

- the number of PNDs issued to offenders of all ages by offence, England and Wales 2004-2007;
- the number of PNDs issued to offenders of all ages, by police force, all offences, England and Wales 2004-2007, and
- the number of PNDs issued to all persons aged 16 and over, by age group, outcome and year, England and Wales 2004-2007

PND data for 2008 will be available in the late autumn of 2009.

The number of convictions of offences where the recipient of a PND has elected for trial is not separately recorded. Once a suspect chooses to go to court rather than pay the penalty, the case becomes like any other reported for prosecution.

**Q 3** The ED states that “PNDs are proving to be a simple and efficient way for police to deal with low-level anti-social behaviour...”. Given that this is stated in support of the measure, and given in particular the criticisms that have been made that PNDs have a low enforcement rate (by the Police Federation, for example), what is the objective evidence for this assertion? Are there statistics to

**demonstrate that the procedure involved in issuing and enforcing PNDs is translating to better use of police time and/or a reduction in offending? If so, please provide them.**

We believe that PNDs enable the police to deliver swift and effective justice for lower level criminality, freeing up the courts to concentrate on more serious offences. Information from the police shows that issuing a penalty notice takes an officer approximately 30 minutes compared with 2 ½ hours to prepare an evidential case file. The police officer is then freed up to return to patrolling the street and does not have to attend court.

We do not have published figures to demonstrate the effect of PNDs on reoffending, but the Justice Secretary wrote to Anne McIntosh MP in January this year in response to a question about reoffending rates providing some unpublished data. This letter is attached.

It should be noted that there is no such thing as “enforcement” of a PND. Once issued, the recipient has 21 days to choose how to respond – to pay the penalty or to opt for a court hearing. This period is called in law the “suspended enforcement period”. Enforcement can start only once that period is over. Either the case is reported for prosecution or a fine is registered and enforced as any other fine.

We do not separately identify how many of fines arising from PNDs are paid, but the payment rate for the year to date of all fines is 81% (71% excluding administrative cancellations). Even though we have anecdotal evidence that the payment rate for fines arising from PNDs is not as good as that for fines generally, some are paid and, when added to the 52% that were paid a penalties, give a figure which we do not believe can be described, as the Police Federation do, as a “continuous high non payment rate”.

**Q 4 What percentage of PNDs is issued by non-police officers?**

Information from the Home Office shows that, in the year up to August 2007, 27,711 fixed penalty notices (FPNs) were issued by Police Community Support Officers (PCSOs). These comprised PNDs and other FPNs. No information is available on the number issued by Accredited Persons. PCSOs and Accredited Persons have limited powers to issue PNDs compared to those of a police officer.

**Q 5 What figures are available on cases in which PNDs have been issued in circumstances outside of police guidance—for instance, to non-first offenders? Has revised guidance had an effect on these figures?**

Information about PNDs issued otherwise than in accordance with the guidance is anecdotal only. The Secretary of State issues operational guidance to the police on the issue of PNDs and the exercise of the discretion given to officers under the PND law. The guidance is detailed, but does leave the police with a degree of operational discretion. For example, for many offences there is no ban on repeat issue of PNDs – the guidance just says that this may not be appropriate if a suspect has been issued with a number of tickets in the recent past. It would not be in the public interest to prosecute an individual for littering, when a PND was an option, just because a year previously he had received a ticket for letting off a firework outside permitted hours.

It is too soon to see any effect of the issue of new guidance on shop theft and criminal damage, restricting tickets to first offenders only. Overall, there are provisional figures indicating a small decrease in the number of tickets issued for notifiable offences (those deemed serious enough to be recorded by the police) between year ending March 2009 and December 2008.

**Q 6 Of those who elect for prosecution rather than acceptance of a PND, what percentage have been acquitted?**

This information is not available (please see also 2 above)

**Q 7 What are the current figures on roll-out of personal digital assistants? What percentage of forces are already using them or plan to use them? What additional percentage of forces will use them if the measure is adopted? How much on average does a PDA cost when purchased by police force procurement?**

This order has been introduced at the request of a number of police forces, including the British Transport Police and Greater Manchester Police, requesting the removal of the statutory requirement to conform to a prescribed design of PND ticket, so that they can introduce personal digital assistants (PDAs). This was reflected in the responses from the police to the consultation. The extent to which PDAs are in use, or planned, is an operational matter, but the requests for de-prescription for this reason have increased since the consultation. The National Policing Improvement Agency website, link below, explains the advantages of PDAs generally. In particular, their benefits are said to include improved efficiency, effectiveness, visibility, information management, accuracy, time saving and identification.

<http://www.npia.police.uk/en/10500.htm>

### **Supplementary response dated 2 November 2009:**

With reference to the number of PDAs currently in use, I have just heard from the NPIA. They tell me that the figure of 27 last May has now increased to about 37, with an increase to all forces expected next year. They also tell me that about 40,000 devices are in use. I hope that is sufficient for the Committee's purposes.

### **Further supplementary response dated 3 November 2009:**

Since yesterday I have heard that there are currently 39,418 mobile devices deployed to frontline officers across 39 Home Office forces and that they expect to cover all forces by March 2010.

#### **Q 8 How would destandardisation of the PND form allow more flexible working with local authorities, as submitted by Norfolk Constabulary?**

We are following this up with Norfolk and hope to have an answer by am on 29 October. *[No response was forthcoming as at 10 November 2009]*

#### **Q 9 What kinds of variation between forms is likely should the measure come into effect? Please provide examples of variations that forces have proposed to adopt.**

We have no information about exactly what new force forms would look like. They are no doubt waiting for the law to change before preparing any new designs. In the main, we expect forces to change the design of the form rather than make significant changes to the content. All officers will be aware that every case dealt with by PND has the potential to go before a court, so evidence to support a prosecution must always be available. Some of the consultation responses talked about forms in different languages, in large print and with the ability "to reflect local needs/issues".

#### **Q 10 Is or are any police force(s) proposing to remove the evidence section from the PND form (a concern raised by Greater Manchester Police)?**

The part of PND tickets on which evidence may be collected is not prescribed at the moment. Prescription applies only to the first two pages of any ticket. As stated above, evidence needs to be available in every case to support a prosecution, so there is no possibility that there will be no provision made for recording it.

#### **Q 11 Please provide a brief summary of the history of different guidance notes for PNDs.**

Guidance issued by the Secretary of State under section 6 of the Criminal Justice and Police Act 2001 is as follows:

- Police Operational Guidance (March 2005)
- Police Operational Guidance for young people aged 16-17
- Police Operational Guidance for young people aged 10-15
- Supplementary Operational Guidance for Accredited Persons
- Supplementary Operational Guidance for Community Support Officers

- Revised guidance on retail theft and criminal damage
- New guidance on cannabis possession

All guidance issued can be found on the Home Office website <http://police.homeoffice.gov.uk/operational-policing/crime-disorder/penalty-notice/> with a link on the Ministry of Justice website <http://www.justice.gov.uk/about/penalty-notice-for-disorder.htm>

**Q 12 Are recipients of PNDs advised in writing of their right to take legal advice? What is the Department's view of the Law Society's submission that the consequences of accepting a notice (such as adverse effects on employment opportunities) should be clearly spelt out? What is the Department's view of the legitimacy of such concerns?**

The prescribed ticket does not include advice on taking legal advice, but the recipient has 21 days in which to decide how to respond, during which time he can seek whatever advice he wishes. The law requires, and will continue to require, that considerable details of the offence and the procedure are included on the ticket. There is currently a requirement for the form to include details of a local contact point. We would expect this to remain.

We have sought the views of the Information Commissioner over what information should be provided to the recipient of a PND about the consequences of paying the penalty. We have been told that the significance of being issued with a PND must be fully and clearly explained. To this end we are in the process of including in the next revision of the operational guidance a statement along the following lines.

"If issued for a notifiable crime the officer must state that a crime will be recorded and the offender shown as responsible for this offence. Additionally that an enhanced disclosure check with the Criminal Records Bureau may lead to disclosure of the issue of a PND if a Chief Officer deems it relevant to the applicant's request (consideration should be given to including these details on the PND itself)."

The alternative to paying the penalty is a court hearing and a possible conviction. This would carry even more serious consequences for the offender. Paying the penalty offers the recipient the opportunity to discharge all liability to conviction of the offence and hence to avoid having a criminal conviction on his record.

**Q 13 Is it proposed that assault be included in the range of offences covered by PNDs? Please confirm that any such extension would be by affirmative statutory instrument.**

There is no proposal to include the offence of assault in the PND scheme. At present, we have no plans to add to the scheme at all. The only way to add a new offence to the scheme is by order subject to the affirmative resolution procedure.

**Q 14 The ED says "the current mobile printer is too small to reproduce the current PND form and it would not be practical or cost effective to increase the size of the printer simply to accommodate the PND." Why would it not be possible to retain all the constituent elements of the existing form but show them on PDAs as a series of screens and print them as a series of sheets? Alternatively, if the number of pages is to be restricted to allow for printer size expediency, which elements of the current form are to be removed?**

As indicated above, we do not know exactly how forces will change the format of PND forms to fit PDAs or for any other purpose. It may be that, as suggested, some forces will merely retain the existing form, but will have a larger number of smaller sheets.

Much of the information on the prescribed form will still have to appear on the form under the terms of the parent Act. This is information about the offence and reasonable information about it; the effect of the suspended enforcement period; the amount of the penalty and how to pay it and how to exercise the right to be tried for the offence. In our view, there is no danger that the offender will not have full and clear information about the ticket and his options for action. This suggests that the changes made will relate more to the design and layout of the form than to content.

Even if the form is de-prescribed the guidance will still contain details of what must be included on it by law and we expect the guidance still to include a model ticket for those forces who would find it helpful to follow the example. As explained above, every ticket issued has the potential to lead to a court hearing, so forces will ensure that their tickets are designed to capture all the necessary information that a trial would require.

We are further reassured that de-prescription will not result in tickets which are not fit for purpose by the road traffic fixed penalty scheme, which has been in operation in some form for around 50 years and under which millions of tickets are now issued annually, which has never had a prescribed form and has not, to our knowledge, been found deficient for that reason.

**Q 15 Which of the current PND offences are recordable?**

Recordable PND offences are set out in the attached list. (Notifiable offences are those recorded by the police for Government statistical purposes.)

**How long do PNDs remain on the Police National Computer?**

PNDs recorded on the PNC will remain on it for the life of the individual or until he/she reaches 100 years of age.

**Does the Rehabilitation of Offenders Act apply to PNDs?**

No. The ROA does not apply to PNDs: PNDs do not form part of a person's criminal record and therefore they do not need to be covered by the ROA.

**What is an enhanced CRB check? (What percentage of checks are enhanced? What about juveniles?)**

An enhanced criminal records check is one made under section 113B of the Police Act 1997. In addition to a standard disclosure (which provides details of previous convictions, cautions etc). it includes any local information considered to be relevant to the post applied for which could include the issue of PND, by the chief officer of police holding the information. Around 90% of disclosures are enhanced (entitlement is governed by regulations made under the Police Act). There is no distinction made between juveniles and adults when processing a Disclosure although when the local police force undertakes their test of relevance of release of local intelligence the age of the offender or alleged offender may be a factor that is taken into consideration.

The effect of the ROA is that, for most purposes, an individual has no legal obligation to reveal a spent conviction, and an employer will not be entitled to know whether the individual has any spent convictions. However, sensitive areas of activity are exempted from the operation by the ROA by the Exceptions Order. Any employer in an occupation listed on the Exceptions Order will be entitled to a standard or an enhanced disclosure, which will include details of both spent and unspent convictions. Examples of such occupations are work with children and vulnerable adults such as nurses and teachers, in high financial positions, or in the administration of justice such as judges.

PNDs are not covered by the ROA because they do not form part of the criminal record. They may be disclosed under the 'other relevant information' section which only exists on an enhanced disclosure. It is worth noting that the police must apply a test of relevancy before deciding whether or not to include a detail in this section - contrast this to the disclosure of spent convictions on a standard or enhanced disclosure which are automatically included. Therefore a person who receives a PND rather than a conviction is in a slightly better position as regards disclosure.

**Penalty Notice for Disorder Offences – 13 September 2006***Upper Tier £80*

PND Offence Code	CCCJS Code	Act	Description	Notifiable/ Recordable
DA01	CL67008	S 5, Criminal Law Act 1967	Causing wasteful use of police time/ wasting police time, Giving false report	Recordable
DA02 <sup>1</sup>	CA03007	s127(2) of the Communications Act 2003	Send false message/persistently use a public electronic communications network in order to cause annoyance, inconvenience or needless anxiety	Recordable
DA03 <sup>2</sup>	FS04009	S49 of the Fire and Rescue Services Act 2004	Knowingly give a false alarm to a person acting on behalf of a fire and rescue authority.	Recordable
DA04 <sup>3</sup>	PU86107	S 5, Public Order Act 1986	Use words/conduct likely to cause harassment, alarm or distress	Notifiable & recordable
DA05	EP75005	S 80, Explosives Act 1875	Fire/ throw firework(s)	Non-recordable
DA06	CJ67002	S 91, Criminal Justice Act 1967	Drunk & disorderly in a public place	Recordable
DA11 <sup>4</sup>	CD71040	s1(1) of the Criminal Damage Act 1971	Destroying or damaging property (under £500)	Notifiable & recordable
DA12 <sup>4</sup>	TH68010	s1 of the Theft Act 1968	Theft (retail under £200)	Notifiable & recordable
DA13 <sup>5</sup>	FW04003	Fireworks Regulations 2004 under s11 of the Fireworks Act 2003	Breach of fireworks curfew (11pm-7am)	Recordable
DA14 <sup>5</sup>	FW04002	Fireworks Regulations 2004 under s11 of the Fireworks Act 2003	Possession of a category 4 firework	Recordable
DA15 <sup>5</sup>	FW04001	Fireworks Regulations 2004 under s11 of the Fireworks Act 2003	Possession by a person under 18 of an adult firework	Recordable

DA16 <sup>6</sup>	LG03036	Section 141 of the Licensing Act 2003 (c.17)	Sells or attempts to sell alcohol to a person who is drunk.	Recordable (1/12/05)
DA17	LG03067	*s146(3) of the Licensing Act 2003	Supply of alcohol by or on behalf of a club to a person aged under 18	Recordable (1/12/05)
DA18 <sup>4</sup>	LG03064	*s146(1) of the Licensing Act 2003	Sale of alcohol anywhere to a person under 18	Recordable (1/12/05)
DA19 <sup>4</sup>	LG03081	*s149(3) of the Licensing Act 2003	Buys or attempts to buy alcohol on behalf of person under 18	Recordable (1/12/05)
DA20	LG03083	*s149(4) of the Licensing Act 2003	Buys or attempts to buy alcohol for consumption on relevant premises by person under 18.	Recordable (1/12/05)
DA21 <sup>4</sup>	LG03088	*s151 of the Licensing Act 2003	Delivery of alcohol to person under 18 or allowing such delivery	Recordable (1/12/05)
DA 22	MD71530	s.5(2) & Sch 4 Misuse of Drugs Act 1971	Possess a controlled drug of Class B - cannabis/cannabis resin.	Notifiable & recordable

Lower Tier £50				
PND Offence Code	CCCJS Codes	Act	Description	Notifiable/ Recordable
DB03	BT49005	S 55, British Transport Commission Act 1949	Trespass on a railway	Non-recordable
DB04	BT49006	S 56, British Transport Commission Act 1949	Throwing stones/matter/thing at a train	Non-recordable
DB05	LG72008	S 12, Licensing Act 1872	Drunk in highway	Recordable
DB06				
DB07	CJ01002	S12, Criminal Justice & Police Act 2001	Consume alcohol in designated public place, contrary to requirement by constable not to do so.	Non-recordable
DB08 <sup>4</sup>	EP90046	s87(1) and (5) of the Environmental Protection Act 1990	Depositing and leave litter	Non-recordable
DB09				
DB10				
DB11				
DB12 <sup>4</sup>	LG03085	*s150(1) of the Licensing Act 2003	Consumption of alcohol by a person under 18 on relevant premises.	Recordable (1/12/05)
DB13 <sup>4</sup>	LG03086	*s150(2) of the Licensing Act 2003	Allowing consumption of alcohol by a person under 18 on relevant premises.	Recordable (1/12/05)
DB14 <sup>6</sup>	LG03079	*Section 149(1) of the Licensing Act 2003 (c.17)	Buying or attempting to buy alcohol by a person under 18.	Recordable (1/12/05)

<sup>1</sup> Offence repealed by Communications Act 2003 with effect from 5 March 2004

<sup>2</sup> Offence repealed by Fire and Rescue Services Act 2004 with effect from 1 October 2004

<sup>3</sup> Offence added with effect from 8 August 2002

<sup>4</sup> Offence added with effect from 1 November 2004

<sup>5</sup> Offence added with effect from 11 October 2004

<sup>6</sup> Offence added with effect from 4 April 2005

\* New legislative reference with effect from 24 November 2005 on implementation of Licensing Act 2003

**Number of penalty notices for disorder issued to offenders  
of all ages, by police force area, all offences, England and Wales 2004-2007**

Police force area	2004 <sup>(1)</sup>	2005	2006	2007
Avon and Somerset	508	3,244	3,951	2,950
Bedfordshire	503	1,239	1,645	1,336
British Transport police	**	**	3,058	4,867
Cambridgeshire	359	1,046	1,518	2,249
Cheshire	972	2,387	2,283	2,206
City of London	60	219	316	415
Cleveland	559	2,806	3,570	3,803
Cumbria	578	1,220	1,693	1,650
Derbyshire	656	1,593	2,583	2,730
Devon and Cornwall	1,889	5,134	7,022	5,703
Dorset	516	1,381	2,309	1,798
Durham	597	1,149	1,591	1,839
Essex	2,802	4,454	4,461	4,402
Gloucestershire	473	1,721	3,164	2,330
Greater Manchester	2,253	7,256	10,881	9,896
Hampshire	2,116	3,658	4,909	6,005
Hertfordshire	412	1,296	5,615	4,428
Humberside	1,596	3,265	5,490	8,339
Kent	767	5,032	7,080	7,960
Lancashire	5,077	10,222	12,479	12,856
Leicestershire	756	1,909	2,426	2,519
Lincolnshire	544	2,373	2,049	1,758
Merseyside	3,929	11,937	11,709	9,270
Metropolitan	12,758	18,047	20,856	24,655
Norfolk	475	676	1,332	1,560
North Yorkshire	1,078	1,596	2,395	3,715
Northamptonshire	570	1,403	2,541	2,377
Northumbria	211	2,147	6,418	7,542
Nottinghamshire	1,060	2,119	2,304	2,551
South Yorkshire	2,098	3,710	6,185	7,983
Staffordshire	1,450	2,169	3,261	2,967
Suffolk	472	901	1,472	1,879
Surrey	203	641	2,844	3,786
Sussex	1,509	4,193	5,268	5,091
Thames Valley	1,038	5,795	6,789	8,538
Warwickshire	481	933	1,049	897
West Mercia	275	1,774	3,533	2,914
West Midlands	4,773	7,320	8,015	7,860
West Yorkshire	4,277	9,217	8,930	6,002
Wiltshire	610	1,080	1,246	1,203
<b>England</b>	<b>61,260</b>	<b>138,262</b>	<b>186,240</b>	<b>192,829</b>
Dyfed Powys	459	1,214	1,393	995
Gwent	424	1,511	2,050	1,861
North Wales	1,255	3,792	6,167	5,907
South Wales	241	1,702	5,347	5,952
<b>Wales</b>	<b>2,379</b>	<b>8,219</b>	<b>14,957</b>	<b>14,715</b>
<b>England and Wales</b>	<b>63,639</b>	<b>146,481</b>	<b>201,197</b>	<b>207,544</b>

\*\* = Not applicable. The British Transport police started issuing PNDs on 1st March

(1) First year of PND scheme. Fully rolled out to all forces on 1 April 2004.

**Number of Penalty Notices for Disorder issued to all persons aged 16 and over, by age group and year, England and Wales 2004-2007<sup>(1)</sup>**

Year and age group	Number issued	Total paid in full %	Of those paid		Paid in full outside 21 days %	Fine registered %	Court hearing requested %	Other outcomes		Outcome unknown %
			Paid in full within 21 days %	Paid in full outside 21 days %				PND cancelled %	Potential prosecution %	
<b>2004</b>										
16-17 year olds	3,793	2,077 55	1,548 41	529 14	1,468 39	34 1	73 2	33 1	108 3	
18 and over	59,846	31,001 52	22,578 38	8423 14	26,712 45	326 1	1,164 2	542 1	101 0	
All ages	63,639	33,078 52	24,126 38	8,952 14	28,180 44	360 1	1,237 2	575 1	209 0	
<b>2005</b>										
16-17 year olds	12,454	7,024 56	5,182 42	1,842 15	4,549 37	144 1	266 2	157 1	314 3	
18 and over	134,027	70,223 52	51,641 39	18,582 14	57,630 43	1,444 1	2,171 2	1,648 1	911 1	
All ages	146,481	77,247 53	56,823 39	20,424 14	62,179 42	1,588 1	2,437 2	1,805 1	1,225 1	
<b>2006</b>										
16-17 year olds	19,598	11,096 57	8,135 42	2,961 15	7,598 39	125 1	486 2	250 1	43 0	
18 and over	181,599	93,450 51	68,456 38	24,994 14	80,198 44	1,355 1	3,782 2	2,460 1	354 0	
All ages	201,197	104,546 52	76,591 38	27,955 14	87,796 44	1,480 1	4,268 2	2,710 1	397 0	
<b>2007</b>										
16-17 year olds	19,246	11,096 58	8,437 44	2,659 14	7,120 37	99 1	638 3	289 2	4 0	
18 and over	188,298	95,829 51	73,696 39	22,133 12	82,937 44	1,154 1	4,611 2	3,691 2	76 0	
All ages	207,544	106,925 52	82,133 40	24,792 12	90,057 43	1,253 1	5,249 3	3,980 2	80 0	

Number of penalty notices for disorder issued to offenders of all ages by offence, England and Wales 2004-2007

Offence	2004	2005	2006	2007
<b>Higher Tier Offences (£80)</b>				
Wasting police time	1,171	2,525	3,933	3,966
Misuse of public telecommunications system	117	405	909	1,193
Giving false alarm to fire and rescue authority	44	92	106	96
Causing Harassment, alarm or distress	28,790	64,007	82,235	77,827
Throwing fireworks <sup>(1)</sup>	177	642	682	649
Drunk and disorderly <sup>(2)</sup>	26,609	37,038	43,556	46,996
Criminal Damage (under £500) <sup>(3)</sup>	1,190	12,168	20,620	19,946
Theft (retail under £200) <sup>(3)</sup>	2,072	21,997	38,772	45,146
Breach of fireworks curfew <sup>(4)</sup>	12	33	53	39
Possession of category 4 firework <sup>(4)</sup>	12	13	28	22
Possession by a person under 18 of adult firework <sup>(4)</sup>	20	47	76	106
Sale of alcohol to drunken person <sup>(5)</sup>	*	32	47	81
Supply of alcohol to a person under 18	-	3	60	54
Sale of alcohol to a person under 18 <sup>(3)</sup>	113	2,058	3,195	3,583
Purchasing alcohol for a person under 18 <sup>(3)</sup>	84	170	407	555
Purchasing alcohol for a person under 18 for consumption on the premises	-	83	60	64
Delivery of alcohol to a person under 18 or allowing such delivery <sup>(3)</sup>	20	209	297	431
<b>Lower Tier Offences (£50)</b>				
Trespassing on a railway	96	220	1,042	1,527
Throwing stones at a train / railway	66	20	15	25
Drunk in a highway	2,497	3,138	2,712	2,066
Consumption of alcohol in a designated public place	485	712	1,061	1,544
Depositing and leaving litter <sup>(3)</sup>	51	737	1,169	1,374
Consumption of alcohol by a person under 18 on relevant premises <sup>(3)</sup>	7	84	75	85
Allowing consumption of alcohol by a person under 18 on relevant premises <sup>(3)</sup>	6	27	14	11
Buying or Attempting to buy alcohol by a person under 18 <sup>(5)</sup>	*	21	73	158
<b>Totals</b>				
Total Higher Tier Offences	60,431	141,522	195,036	200,754
Total Lower Tier Offences	3,208	4,959	6,161	6,790
<b>Total all offences</b>	<b>63,639</b>	<b>146,481</b>	<b>201,197</b>	<b>207,544</b>

(1) Offence moved from the lower tier (£50) to the upper tier (£80) on 5th March 2004

(2) Offence moved from the lower tier (£50) to the upper tier (£80) on 1st November 2004

(3) Offence added with effect from 1 November 2004

(4) Offence added with effect from 11 October 2004

(5) Offence added with effect from 04 April 2005

\* = Not applicable

## Letter to Anne McIntosh MP from the Lord Chancellor and Secretary of State for Justice

### Reoffending following a penalty notice for disorder

Thank you for your letter of 2<sup>nd</sup> December 2008, in which you asked for the actual and proportionate reoffending figures for those issued with a fixed penalty notice for committing retail theft in the last three years.

We do not have published data on reoffending following a fixed penalty notice. However, in a study of a sample of 13,800 juvenile and adult offenders given a penalty notice for disorder (PND) for theft during 2005, we found that 33 per cent reoffended within 12 months of receiving the PND. This study used data recorded on the police national computer and counted as a 'reoffence' any offence committed during the 12 month period that resulted in a conviction or caution. This figure is a provisional, unpublished estimate and forms part of ongoing research in this area. This estimate cannot be directly compared to the published reoffending rates for three reasons:

- it includes offences leading to a caution as well as a conviction whilst the published National Statistics on adult reoffending counts only convictions
- it covers offenders who in general have very different offending backgrounds to those in the published cohorts; which cover offenders discharged from prison and offenders commencing a court order under probation supervision
- it covers both juvenile and adult offenders together, whereas reoffending data is published separately for adults and juveniles

The published reoffending rate for adults following a theft offence in 2005 was 65.9 per cent. The overall adult reoffending rate for 2005 was 41.6 per cent.

Penalty notices for disorder are issued without an admission of guilt and are therefore not included in our counts of reoffending.

I hope this information is useful.

*30 January 2009*

# Formal Minutes relating to the report

---

**Tuesday 10 November 2009**

Members present:

Andrew Miller, in the Chair

Gordon Banks  
John Hemming

Judy Mallaber  
Dr Doug Naysmith

Draft Report (Draft Legislative Reform (Revocation of Prescribed Form of Penalty Notice for Disorderly Behaviour) Order 2009), proposed by the Chairman, brought up and read.

*Ordered*, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 28 read and agreed to.

Annex and Summary agreed to.

Papers were appended to the Report as an Annex.

*Resolved*, That the Report be the Tenth Report of the Committee to the House.

*Ordered*, That the Chairman make the Report to the House.

[Adjourned till a date and time to be fixed by the Chairman



# List of Reports from the Committee during the current Parliament

The reference number of the Government's response to each Report is printed in brackets after the HC printing number.

## Session 2008-09

First	Draft Legislative Reform (Insolvency) (Advertising Requirements) Order 2009	HC 181
Second	Draft Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009	HC 209
Third	Draft Legislative Reform (Supervision of Alcohol Sales in Church and Village Halls &c.) Order 2009	HC 210
Fourth	Draft Legislative Reform (Local Government) (Animal Health Functions) Order 2009	HC 399
Fifth	Draft Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009	HC 400
Sixth	Draft Legislative Reform (Limited Partnerships) Order 2009	HC 794
Seventh	Draft Legislative Reform (Dangerous Wild Animals) (Licensing) Order 2009	HC 795
Eighth	Draft Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2009	HC 883
Ninth	Themes and Trends in Regulatory Reform	HC 329-I and II (HC 597)
Eleventh	Draft Legislative Reform (Insolvency) (Miscellaneous Provisions) Order 2009	HC 1111

## Session 2007-08

First	Draft Legislative Reform (Local Authority Consent Requirements) (England and Wales) Order 2007	HC 135
Second	Draft Legislative Reform (Health and Safety Executive) Order 2008	HC 398
Third	Draft Legislative Reform (Consumer Credit) Order 2008	HC 939
Fourth	Draft Legislative Reform (Local Authority Consent Requirements) (England and Wales) Order 2008	HC 940
Fifth	Getting Results: the Better Regulation Executive and the Impact of the Regulatory Reform Agenda	HC 474-I and II (HC 1186)
Sixth	Draft Legislative Reform (Lloyd's) Order 2008	HC 1090