



**Criminal Justice and Police Act 2001 (s1-11)
Penalty Notices for Disorder (PND)**

**Supplementary Operational Guidance for Persons Accredited under
the Police Reform Act 2002.**

1. Introduction

1.1 Penalty Notices for Disorder (PNDs) are a disposal available to Accredited Persons (APs) to issue when dealing with low-level offending, anti-social and nuisance behaviour. Under the Police Reform Act 2002 (PRA 2002), Chief Officers can assess and then accredit employees of organisations which help to keep their communities safe. All APs wear a nationally recognised badge to indicate their status. Further information about Community Safety Accreditation Schemes, can be found on the Home Office website.

1.2 The powers of a constable to give PNDs (for certain offences) under the Criminal Justice and Police Act 2001 (CJPA 2001) were extended to APs by paragraph 1(2)(aa) of Schedule 5 to the PRA 2002, which was inserted by section 89(5) of the Anti-social Behaviour Act 2003 with effect from 31 March 2004. In order for PNDs to be an effective alternative means of dealing with problems such as drinking in a designated public place, causing harassment, alarm or distress, and throwing fireworks, it is important that they are issued in accordance with current operational guidance. This supplement is provided for APs, their employers, police officers working with APs and other relevant partners. It is intended to be read in conjunction with the following documents:

- Police Operational Guidance 2013 (www.gov.uk)
- Supplementary Guidance for Community Support Officers (CSOs) (which can be found on the Home Office website and will be made available on the Gov.uk website in due course)

1.3 This supplement covers those areas where there is a substantive difference between the operational guidance for APs and for Police Officers. It is not a legal document or code of practice and thus is not legally binding. It does, however, offer practical advice on the operation of the PND scheme by APs, which should be adhered to.

2. Legislative Powers Available

2.1 A full list of offences for which a constable may give a PND (penalty offences) can be found in the Police Operational Guidance referred to above.

2.2 Paragraph 9A of Schedule 5 to the PRA 2002 ensures that APs can only be accredited to give those PNDs which are considered appropriate. It enables the Secretary of State to remove, by order, APs' power to give PNDs under section 1 of the Criminal Justice and Police Act 2001, in relation to offences specified in the order. This includes any future PND offences added to this section.

2.3 APs cannot be accredited to give PNDs for the following penalty offences:

- Retail Theft (under £100) (section 1(1) and (7) Theft Act 1968)
- Criminal Damage (under £300) (section 1 Criminal Damage Act 1971)
- Drunk and Disorderly in a public place (section 91 Criminal Justice Act 1967)
- Drunk in a highway (section 12 Licensing Act 1872).
- Leave or deposit litter (section 87 (1) and (5) Environmental Protection Act 1990)

2.4 APs may be accredited to give PNDs for the following penalty offences:

Offences for which Accredited Persons may give penalty notices for disorder under Chapter 1 Part 1 of the CJPA 2001	Relevant legislation
Wasting police time, Giving false report	s.5(2) Criminal Law Act 1967
Using public electronic communications to cause annoyance	s.127(2) Communications Act 2003
Knowingly giving a false alarm to a fire brigade	s.49 Fire and Rescue Services Act 1947
Behaviour likely to cause harassment, alarm or distress.	s.5 Public Order Act 1986
Throwing fireworks	s.80 Explosives Act 1875
Sells or attempts to sell alcohol to a person who is drunk	s.141 Licensing Act 2003
Supply of alcohol by or on behalf of a club to a person aged under 18	s.146(3) Licensing Act 2003
Sale of alcohol anywhere to a person under 18	s.146(1) Licensing Act 2003
Buys or attempts to buy alcohol on behalf of a person under 18	s.149(3) Licensing Act 2003
Buys or attempts to buy alcohol for consumption on relevant premises by a person under 18	s.149(4) Licensing Act 2003
Delivery of alcohol to person under 18 or allowing such delivery	s.151 Licensing Act 2003
Breach of fireworks curfew	Reg.7 Fireworks Regulations 2004 under s11 of the Fireworks Act 2003
Possession of a category 4 firework	Reg.5 Fireworks Regulations 2004 under s11 of the Fireworks Act 2003
Possession by a person under 18 of an adult firework.	Reg.4 Fireworks Regulations 2004 under s11 of the Fireworks Act 2003
Trespassing on a railway	s.55 British Transport Commission Act 1949
Throwing stones at a train	s.56 British Transport Commission

	Act 1949
Consume alcohol in a designated public place, contrary to requirement by constable not to do so.	s.12(4) Criminal Justice and Police Act 2001
Consumption of alcohol by a person under 18 on relevant premises	s.150(1) Licensing Act 2003
Allowing consumption of alcohol by a person under 18 on relevant premises	s.150(2) Licensing Act 2003
Buying or attempting to buy alcohol by a person under 18	s.149(1) Licensing Act 2003
Possession of cannabis (but see paragraph 2.6 below)	s5(2) and Sch 4 Misuse of Drugs Act 1971 so far as it relates to specified drugs
Drop / leave litter / refuse except in a receptacle provided for the purpose in a Royal Park or other open space	(Regulation 3(3) of the Royal Parks and Other Open Spaces Regulations 1997)
Use pedal cycle / skates / blade / board / foot-propelled device in a Royal Park or other open spaces	(Regulation 3(4) of the Royal Parks and Other Open Spaces Regulations 1997)
Failing to immediately remove animal faeces from a Royal Park or other open space	(Regulation 3(6) of the Royal Parks and Other Open Spaces Regulations 1997)

2.5 Powers available to APs are granted at the discretion of the Chief Officer who has accredited them. When granting these powers the Chief Officer should consider both the functions carried out by the AP and the views of relevant local partners. Prior to granting the power to give PNDs, Chief Officers should ensure it would be in accordance with local policy, priorities and procedures. This will require full negotiation between the force, the AP's employer and other local criminal justice agencies. Although extremely unlikely the force should bear in mind that the responsibility for the prosecution of contested PNDs given by APs remains with the force.

2.6 The power to give PNDs for possession of cannabis was made available to APs by Statutory Instrument 2009/110, which amended the Criminal Justice and Police Act 2001. Home Office guidance remains that Chief Officers should not accredit APs to exercise this power. This is because APs are unable to issue a cannabis warning, which should be the first stage of the escalation process of enforcement nor are they able to check at which stage of the process an offender has reached in order to decide whether a PND should be given or not. Additionally, APs do not have the power of seizure (part of the process of issuing a ticket is the seizure of the drug as evidence).

2.7 It should be noted that the powers of weights and measures inspectors derive from a separate schedule of the Police Reform Act 2002 (Schedule 5A) that can only be amended by primary legislation. Hence, it will remain possible to grant them the power to give PNDs for possession of cannabis. However, our guidance is that for the reasons set out above Chief Officers should not accredit weights and measures inspectors to exercise this power.

3. Decision making and issuing a PND

3.1 The key considerations for an AP at the PND decision making stage are the same as those for a police officer and are set out in the Police Operational Guidance. However, there are a number of important differences that forces and employers should consider carefully when developing their scheme. Employers should ensure that APs granted these powers have been correctly trained in their use. Failure to do so could lead to their accreditation being revoked, and civil litigation.

3.2 Section 67(9A)(b) of the Police and Criminal Evidence Act 1984 (PACE) makes provisions for the PACE Codes of Practice to apply to APs. The wording of the subsection is as follows:

(9A) Persons on whom powers are conferred by-

(a) ..., or

(b) any accreditation under s.41 of that Act (accreditation under community safety accreditation schemes),

shall have regard to any relevant provision of a code of practice. . . in the exercise or performance of the powers and duties conferred or imposed on them by that designation or accreditation.

Therefore, an accredited person exercising powers given to them under s.41 of the PRA 2002 must have regard to any relevant provisions of the PACE codes when carrying out their duties.

4. Uniform

4.1 The Legal Aid Sentencing and Punishment of Offenders Act 2012 removed the requirement that police officers must be in uniform to give a PND outside a police station. However, APs must always be in uniform when giving a PND.

5. Powers of Arrest.

5.1 APs do not have any powers of arrest or detention. The exercise or performance of the powers and duties conferred or imposed on them by their accreditation does not entitle them to use the power of arrest under section 24A of PACE conferred on persons other than constables.

5.2 They may not give a PND to a person in custody. The health and safety implications of their issuing a PND are therefore significantly different from those of a police officer or CSO. APs should always carefully evaluate an incident to assess whether their intervention is likely to be successful or whether the full powers of a police officer are required. At all times the safety of the APs and members of the public is paramount and where it is at risk the AP should consider seeking police assistance before becoming involved.

6. Drunkenness.

6.1 A person who is drunk cannot be issued a PND. The Police Operational Guidance advises that the person must be capable of understanding what is happening to them. As APs cannot keep a person in custody until they're sober, they should not consider giving a PND in these circumstances.

7. Use of the Police National Computer.

7.1 The Police Operational Guidance states that it is not appropriate to give a PND to certain persons, including those who are already subject to a custodial sentence, community penalty or suspended sentence - this would be recorded on the Police National Computer. It is therefore recommended that APs consider giving a PND in one of the following ways:

- a. An AP gives a PND as part of a joint operation with police officers or CSOs to tackle specific and identified problems (examples include drinking in designated areas, the throwing of fireworks in approach to bonfire night and anti-social behaviour 'hot spots'). In this case a police officer or CSO would be on hand to check the eligibility of the person on behalf of the AP.

- b. Where the appropriate arrangements have been made for APs to have access to police communications centres the eligibility of the person may be checked by the APs themselves. In making these arrangements, the force and employer should develop protocols in line with Criminal Justice Xtranet (CJX) accreditation. Force Information Security Officers (ISOs) should be consulted to ensure that these protocols are accounted for in the CJX Accreditation Document Set.

8. 'Slow Time' Scenarios.

8.1 PNDs need not be given immediately. In appropriate cases they may be given at a later time and date. This may be because it is considered safer or because more time is required to make the relevant checks. In these cases the AP should be confident of the proof of the identity of the person and be sure to take full details before leaving the scene.

9. Warnings to desist.

9.1 Schedule 5 of the Police Reform Act 2002 gives APs the powers of a constable under section 12(2) of the Criminal Justice and Police Act 2001 to require a person drinking in a designated place to (a) stop drinking in that place and (b) to surrender the alcohol that is being drunk. Refusal to comply with one of these requirements is an offence for which a PND may be given. It follows that before an AP can legally give a PND the person must first have failed to comply with one of these requirements, as well as have been warned by the AP that failure to do so is an offence. Should a police officer later assist the AP the officer may arrest the person so long as an offence has been committed in accordance with the conditions above. The officer does not have to require the person to do either 1 or 2 above or issue a warning of his own if the AP has already done so.

9.2 The officer should consider whether arrest for the offence is *necessary* in accordance with section 24 of PACE & Code G (Arrest) see

<http://www.homeoffice.gov.uk/publications/police/operational-policing/pace-codes/pace-code-g-2012>

10. Offences Which Result in Charges.

10.1 As set out in the Police Operational Guidance a charge may be a more appropriate response than giving a PND in serious cases. Before giving a PND the AP should carefully assess this possibility. Employers should ensure that APs have received the appropriate training and police forces should take account of this training requirement when assessing for accreditation. Where a charge is considered appropriate police assistance should be sought.

11. Standards of Evidence.

11.1 It is important that PNDs are only given where there is sufficient evidence to support a successful prosecution. As part of the accreditation process APs must be trained to sufficient standards in, evidence gathering, recording and basic case file preparation (e.g. statement writing, points to prove and R v Turnbull principles of proving identification). Police forces should take account of this training requirement when assessing organisations and their employees for accreditation.

12. Notifiable Offences.

12.1 An offence under section 5 of the Public Order Act 1986 (causing harassment, alarm or distress) is a Notifiable Offence. Notifiable Offences are those that forces are required to report to the Home Office. Employers, the police and local criminal justice agencies should work to develop procedures to ensure that PNDs given by APs for this offence are reported in the same way as those issued by police officers.

12.2 It should be noted that under section 5(2) of the Misuse of Drugs Act 1971 possession of cannabis is a notifiable offence. As highlighted above APs should not be designated the power to give a PND for this offence for the reasons outlined within paragraph 2.6.

13. Recordable Offences.

12.1 Seventeen of the penalty offences for which APs may be accredited to give PNDs for are Recordable Offences. Forces and employers should agree protocols for recording PNDs in accordance with the Police Operational Guidance.

14. Persons under 18 years of Age.

14.1 Provisions in the Legal Aid, Sentencing and Punishment of Offenders Act 2012 repeals PNDs for all under 18's.

14.2 APs should not give PNDs to persons under **18 years of age**. Where doubt does exist CSOs should undertake rigorous checks to establish age.

14.3 APs should consider another form of disposal or seek the assistance of a police officer.

15. Jointly committed offences.

14.1 Where a youth aged under 18 and an individual aged 18 years or over are jointly responsible for a penalty offence it would be not appropriate for the AP to give a PND to the person aged over 18. This is to avoid an accusation of unfairness resulting from the fact of the person who is older than 18 is able to discharge their liability to conviction. In such an instance the AP should seek the assistance of a police officer.