



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

**Supplementary Operational Guidance for Community Support Officers.**

**1. Introduction**

1.1 Penalty Notices for Disorder (PNDs) are an optional disposal for Community Support Officers (CSOs) to use when dealing with low-level, anti social and nuisance behaviour. A PND is a statutory disposal introduced by virtue of the Criminal Justice and Police Act 2001 (CJPA 2001).

1.2 In order for PNDs to be an effective alternative means of dealing with problems such as disorderly behaviour whilst drunk in a public place, destroying or damaging property and causing harassment, alarm or distress, it is important that they are given in accordance with current operational guidance. This supplement is provided for CSOs and their supervisors and is intended to be read in conjunction with the following guidance:

- Police Operational Guidance 2013 ([www.gov.uk](http://www.gov.uk))
- Supplementary Guidance for Accredited persons (this document can be found on the Home Office website and will be made available on the Gov.uk website in due course)

1.3 This guidance covers those areas where there is significant difference between the operational guidance for CSOs and Police Officers. It is not a legal document or code of practice and thus is not legally binding. It does, however, offer practical guidance on the operation of the PND scheme by CSOs, which due regard should be given to and any departure from it may need to be justified.

**2. Legislative Powers Available**

2.1 The powers of a constable under the Criminal Justice and Police Act 2001 to give a penalty notice for disorder are extended to CSOs by virtue of schedule 4, paragraph 1(2)(a) of the Police Reform Act 2002. This power is only available if the Chief Officer chooses to designate it to a CSO.

2.2 If a Chief Officer wishes to enable a CSO to use this power he does not have to designate them to give penalty notices for all offences available under the Criminal Justice and Police Act 2001. The Chief Officer may choose to give a CSO powers in relation to one or two offences if he feels that this is more appropriate to respond to the individual needs and priorities of the local area.

2.3 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.

2.4 CSOs cannot be designated to give PNDs for the following penalty offences:

- Retail theft (section 1 of the Theft Act 1968)
- Leave or deposit litter (section 87 of the Environmental Protection Act 1990)

2.5 Police forces may consider allowing their designated Detention Officers to give PNDs to persons in custody. This is possible if the Detention Officer is dual designated as a CSO under the Police Reform Act 2002 and then given the powers of an authorised officer under the Criminal Justice and Police Act 2001.

2.6 The secretary of State reserves the right, by order, to amend, add or remove offences described within section 1 of the Criminal Justice and Police Act 2001.

### **3. Decision making and issuing a PND**

3.1 The pre-conditions for giving a penalty notice by a CSO are the same as those for a Police Officer and are set out in the Police Operational Guidance. However a CSO 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.

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

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

(a) any designation under section 38 or 39 of the Police Reform Act 2002 (police powers for civilian staff),

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.

3.3 If a person has been arrested and is in police detention there may be occasions where a charge rather than a PND is a more appropriate disposal for the case. Such decisions should be made by Police Officers and CSOs should seek advice on this matter. A charge might be considered appropriate due to local circumstances, aggravating factors or if the offender has been given a previous PND. It should be noted that the prosecution file may need to be checked to identify the reason for the charge.

### **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. A CSO **must** always be in uniform when issuing a PND.

## **5. Powers of Arrest**

5.1 CSOs are unable to use powers of arrest under section 24 of PACE and the exercise or performance of the powers and duties conferred or imposed on them by their designation does not entitle them to use the power of arrest under section 24A of PACE conferred on persons other than constables.

5.2 Force will have provided their CSOs with guidance on operational procedures and the use of citizens powers of arrest, they may wish to review these procedures if CSOs are given penalty notice powers.

5.3 Under paragraph 2 of Schedule 4 of the Police Reform Act 2002 CSOs can be designated the power to detain. This is not a standard power and is given at the designation of the Chief Officer where they deem appropriate.

5.4 When considering whether to give a PND CSOs should give due consideration to this guidance and the relevant operational procedures in place within their own force area.

5.5 At all times the safety of the CSO and members of the public is paramount and where it is at risk the CSO should consider seeking Police Officer assistance prior to becoming involved.

## **6. Drunkenness and substance mis-users**

6.1 A person who is drunk cannot be given a PND. The Police Operational guidance advises that the person must be capable of understanding what is happening to them. A PND may be given at a later date once the person is sober.

6.2 CSOs may be designated the power to give a PND for possession of cannabis under Chapter 1 of part 1 of the Criminal Justice and Police Act 2001. Under current guidance a cannabis warning should be the first stage of the process for an offender found in possession of this drug. This is a non-statutory warning and Chief Officers should therefore consider whether it is appropriate for CSOs to be permitted to issue this.

6.3 Checks should be undertaken to ascertain whether a cannabis warning has already been given; Chief Officers who wish to designate this power should therefore ensure that processes are in place to give CSOs access to police communications centre.

6.4 In line with current guidance on issuing cannabis warnings drugs should be seized as evidence. By virtue of paragraph 7B of Schedule 4 of the Police Reform Act 2002 CSOs have the power to 'seize drugs found in a persons possession'. It should be noted that CSOs do not have the power to search a person for possession of drugs but can exercise their power to seize drugs (as outlined above) if the CSO finds it in the course of searching a person in line with the search powers they have been designated.

6.5 A PND will not be appropriate for persons known to be substance misusers. Such cases will be more appropriately dealt with by a court or by way of a conditional caution which can direct a person to suitable substance treatment programmes. CSOs should seek the guidance of an officer.

6.6 Where a CSO has been designated the power to detain they should consider if this is the most appropriate course of action in the event that the suspect is impaired through alcohol or drugs, or whether they should seek the assistance of police colleagues. A CSO who is unable to detain may still be able to provide valuable evidence of offending behaviour.

## **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 information would be recorded on the Police National Computer and it is therefore recommended that CSOs consider this factor when considering giving a PND.

## **8. 'Slow Time' scenarios**

8.1 PNDs need not be given immediately after the offence has been committed and in some cases it may be appropriate to be given at a later time and date. This may be because it is considered safer or because more time is needed to undertake relevant checks. In this situation CSOs should be confident of the identity of the person and take full details prior to leaving the scene to aid contact at a later date.

## **9. Warning to desist**

9.1 Schedule 4 of the Police Reform Act 2002 give CSOs the powers of a constable under section 12 of the Criminal Justice and Police Act 2001 to require a person consuming alcohol in a designated public place to (a) stop drinking in that place and (b) to surrender the alcohol being drunk. Refusal to comply with one of these requests is an offence for which a PND can be given.

9.2 Should a Police Officer later assist they 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 either, stop drinking or surrender the alcohol or issue a warning of his own provided they are satisfied the CSO has already done so. 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>.

9.3 CSOs considering giving a PND to an offender who has been consuming alcohol should take note of section 6 of this document.

## **10. Offences which result in charge**

10.1 As set out in the Police Operational Guidance, in serious cases a charge may be more appropriate than giving a PND. Before giving a PND CSOs should consider this possibility and where relevant the assistance of a Police Officer should be sought.

10.2 Please refer to Operational Police guidance for further guidance on considering the seriousness of an offence.

## **11. Standards of evidence**

11.1 A PND may only be given where a CSO has reason to believe that a person has committed a penalty offence and they are satisfied that sufficient evidence could be obtained to support a successful prosecution.

11.2 Please refer to Operational Police Guidance for further guidance on evidential standards.

## **12. Notifiable Offences**

12.1 Notifiable Offences are those that forces are required to report to the Home Office. Forces should ensure that sufficient processes are in place to ensure that PNDs given by CSOs are captured in the same way as those given by Police Officers.

12.2 A list of notifiable offences for which a PND can be given can be found in the Police Operational Guidance.

## **13. Recordable Offences**

13.1 Twenty of the penalty offences for which CSOs may be accredited to give PNDs 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 CSOs 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 Persons under the age of 18 should be considered for another youth disposal.

14.4 In the event that a person lies about their age the PND should be withdrawn and any monies paid returned. CSOs may then proceed in any way that was available prior to the PND being given.

## **15. Jointly committed offences**

15.1 Where a youth aged under 18 and an individual aged 18 years or over are jointly responsible for a penalty offence it would not be appropriate for a CSO to give a PND to the individual aged over 18. This will mitigate against the risk of accusations of unfairness as a result of the fact that the individual who is over the age of 18 is able to discharge their liability to conviction. Other forms of disposal should be considered.

## **16. Process model for issuing a PND**

