



Ministry
of Justice

Penalty Notices for Disorder (PNDs)

Commencement date: 24 June 2014

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Introduction

This guidance has been issued by the Secretary of State for Justice under section 6 of the Criminal Justice and Police Act 2001 (“the 2001 Act”) about the operation of the penalty notices for disorder scheme.

This guidance is not legally binding on constables. However, due regard should be had to this guidance and any departure from it may need to be justified. In addition, this guidance is separate to, and not intended to fulfil the role of any regulations that may be made under sections 1 to 11 of the 2001 Act.

This guidance has been prepared by the Ministry of Justice with the approval of both the Home Office and the Association of Chief Police Officers (ACPO).

Copies of this guidance are available on the Ministry of Justice website:
www.justice.gov.uk

Any enquiries about this guidance should be made to:
PNDenquiries@justice.gsi.gov.uk

Supplementary guidance is available for:

Community Support Officers and Accredited Persons and their powers to give a PND and can be found at www.gov.uk.

Anti-social behaviour on public transport and the use of PNDs and can be found at www.gov.uk.

This guidance replaces previous guidance on Penalty Notices for Disorder issued by the Secretary of State

1. Overview of PND scheme

Why

1.1 The aims of the Penalty Notice for Disorder (PND) scheme are:

1. To offer operational officers a quick and effective alternative disposal option for dealing with low-level, anti-social and nuisance offending.
2. To deliver a swift and simple method of deterrence.
3. To reduce the amount of time that police officers spend completing paperwork and attending court, while simultaneously reducing the burden on the courts.
4. To increase the amount of time that constables spend on the street and dealing with more serious crime.

What

- 1.2 A PND is a statutory disposal introduced by the Criminal Justice and Police Act 2001 (sections 1-11). It does not in any way preclude the use of any existing methods of disposal. Powers of arrest are unchanged and should be exercised where appropriate.
- 1.3 A PND is a type of fixed penalty notice that is available in England and Wales for a specified range of penalty offences. See the full list of penalty offences at section 7 of this guidance.
- 1.4 Penalty offences are divided into lower and upper tier offences depending on seriousness and attract penalties of £60 and £90 respectively.
- 1.5 A person has 21 days from the date the PND is given (the suspended enforcement period) ("SEP") to either pay the penalty amount in full or request a court hearing (or in some cases ask to attend an educational course).
- 1.6 No admission of guilt is required to give a PND. When the person pays the penalty amount in full (or pays for and completes an educational course) the person discharges any liability to be convicted of the penalty offence. Paying the penalty amount is not an admission of guilt.
- 1.7 Where a person is given a PND and requests to be tried the case will be reviewed by a Crown Prosecutor, applying the evidential and public interest test set out in the Code for Crown Prosecutors.
- 1.8 If a person fails to pay the penalty amount in full or request to be tried (or in some cases ask to attend an educational course) within the 21 day SEP then a fine of one and a half times the penalty amount will be registered in the magistrates' court where the person resides for enforcement as a fine.
- 1.9 A PND does not form part of an individual's criminal record but in relation to a recordable offence an entry may be made on the Police National Computer (PNC) which may be disclosed as part of an enhanced Disclosure and Barring Service check.

Who

- 1.10 PNDs are only available to a person aged 18 years or over who is suitable to receive a PND. For further information on suitability see section 3 of this guidance.

1.11 PNDs can be given by:

- Constables (including special constables)
- Police Community Support Officers (for certain offences)
- Trading Standards Officers (for certain offences)
- Accredited persons (for certain offences)

1.12 See section 2 of this guidance for further information about who can give a PND. A reference in the guidance to “constable” includes any other person who is permitted to give a PND under the 2001 Act.

When/where

1.13 PNDs may be given if a constable has reason to believe that a person aged 18 years of age or over has committed a penalty offence and they are suitable to receive a PND, and there is sufficient evidence to satisfy the evidential test set out in the Code for Crown Prosecutors.

1.14 A PND may be given either on the spot or at a police station or any other place at a later date for example at a person’s home. A PND with an education option will probably not be given on the spot because the constable may need to conduct additional background checks. See section 6 of this guidance for further information.

2. Legislation

Criminal Justice and Police Act 2001

- 2.1 The PND scheme is provided for by sections 1-11 of the Criminal Justice and Police Act 2001 (“the 2001 Act”).
- 2.2 Provisions inserted into the 2001 Act by section 132 and Schedule 23 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012:
 - (i) permit a chief officer of police to establish an educational course scheme and offer a person a penalty notice with an education option;
 - (ii) repeals the power to give PNDs to a person aged under 18 years;
 - (iii) removes the requirement that a constable must be authorised by the chief officer of police to give a PND;
 - (iv) removes the requirement that a constable must be in uniform to give a PND

Police Reform Act 2002 - Community Support Officers

- 2.3 Under section 38 of, and Schedule 4 to the 2002 Act a community support officer (CSO) has the power to give a PND for certain offences where designated by the chief officer of police.

Community Safety Accreditation Scheme - Accredited Persons

- 2.4 Under section 40 of the Police Reform Act 2002, the chief officer of police has the power to establish a Community Safety Accreditation Scheme (CSAS) and to designate **limited** powers to employers of organisations who contribute towards community safety.
- 2.5 A chief officer of police can assess and then accredit employees of organisations which help to keep their communities safe. Under paragraph 1 of Schedule 5 to the 2002 Act Accredited Persons are permitted to give PNDs for certain offences.
- 2.6 All accredited persons wear a nationally recognised badge to indicate their status. Further information about Community Safety Accreditation Schemes, can be found at www.gov.uk.
- 2.7 Not all accredited persons will have the same powers. Chief officers of police may choose to give accredited persons in their force all, some or none of the available powers. Powers will only be granted if they are appropriate to the role that is being performed. They must also comply with local needs, policies and priorities

Weights and Measure Inspectors

- 2.8 Chapter 1 of Part 4 of the Police Reform Act 2002 permits a chief officer of police to grant accreditation to a weights and measures inspector (commonly known as Trading Standards Officer (TSO) so that they may give a PND for certain offences.

3. Decision making stage

- Evidential standard
- Admission
- Offence
- Person
- Victim

Evidential standard

- 3.1 A PND may only be given where a constable **has reason to believe that a person aged 18 or over has committed a penalty offence and they have sufficient evidence to support a successful prosecution.**
- 3.2 The evidence should be capable of satisfying the evidential and public interest tests of the CPS's Code for Crown Prosecutors.
- 3.3 Interviews and questioning must comply with the practice and procedures established by PACE Code C¹.

Admission

- 3.4 A person does not have to admit guilt in order to be given a PND. Payment of the penalty is not an admission of guilt.
- 3.5 A person does not have the right to demand a PND - equally no person should be forced to accept one.
- 3.6 Where a person is uncooperative consideration must be given to an alternative disposal.

Offence

- 3.7 A PND may only be given:
- for a **penalty offence** (see section 7 of this guidance), **and**
 - where the offence is at the lower end of the spectrum in terms of seriousness, **and**
 - where the penalty offence is **not committed in association with another penalty offence or does not overlap with another offence**
- 3.8 A PND should *not* be given where the nature of the offence is too serious. Constables should consider the harm caused or intended and any aggravating or mitigating factors as well as the impact upon the victim. Constables may wish to use the Gravity Factors Matrix² to assist them in making this determination.
- 3.9 All serious offences should be considered for charge as only a court has the suitable powers to deal appropriately with the offending behaviour.

¹ Police and Criminal Evidence Act 1984, Code C – Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers

² Located on the Police National Legal Database

WHEN A PND MAY BE APPROPRIATE - QUICK OVERVIEW	
PND may be appropriate	Where a simple caution or conditional caution might be used. In some cases that would normally result in a charge.
PND may not be appropriate	Where custody or sentence more serious than a fine would be expected if the case were to be tried at court.
PND will not be appropriate	Where there has been any injury to any person or any realistic threat or risk of injury. Where there has been substantial financial or material loss to private property of an individual. Where a penalty offence is committed in association with another offence, including a penalty offence. Where the offence involves domestic violence (follow ACPO guidance). For any football related offences. Where an offence has been committed jointly with a person below the age of 18 years. Where the provisions of the Protection from Harassment Act 1997 might apply.

3.10 The use of police bail should be considered where further enquiries are needed to inform proper case disposal decisions.

Shoplifting - Theft Act 1968

3.11 A PND may only be given for the offence of '**shoplifting**' as defined under the Home Office Counting Rules for recorded crime³.

3.12 **Only one PND should ever be given** to an individual for shoplifting. A constable should therefore check the PNC before giving a PND for this offence. If a second PND is given in good faith, but it subsequently comes to light that a previous one has been given to a person, the PND will stand.

3.13 The value of goods stolen should **not exceed £100 inclusive of VAT**. It is expected that in most cases the property will have been recovered and remain fit for sale. However, a PND may still be appropriate in exceptional cases where it is not possible to recover property, for example where the items were drink or food and have been consumed.

3.14 A PND *will not* be appropriate for shop workers who have stolen from their employers. Such behaviour is a breach of trust and needs to be dealt with by other means such as prosecution.

3.15 The victim should be made aware that the PND disposal removes the possibility of criminal proceedings and therefore obtaining a compensation order in their favour.

3.16 Constables should use their best judgement and discretion when assessing values, as they do when compiling crime reports.

³ <http://www.homeoffice.gov.uk/science-research/research-statistics/crime/counting-rules/>

- 3.17 A constable may give a person a PND for **label swapping** (whereby a person changes the label on goods in a shop to one showing a lower price) if they opt to deal with the offence under the Theft Act 1968.
- 3.18 A PND *cannot* be given for the offence of making off without payment under section 3 of the Theft Act 1978.

Criminal damage - Criminal Damage Act 1971

- 3.19 The value of criminal damage must **not exceed £300**.
- 3.20 Paragraphs 3.15 and 3.16 apply.

Offences under the Licensing Act 2003

- 3.21 The Licensing Act 2003 introduced a split licensing system:
- premises licences, club premises certificates and temporary event notices (TENs) authorise the carrying on of licensable activities;
 - personal licences permit individuals to meet certain requirements in relation to premises licences.
- 3.22 Revised guidance issued under section 182 of the Licensing Act 2003, available at www.gov.uk, contains more information about what constitutes a 'qualifying' club and when a TEN is appropriate. The following paragraphs relate primarily to premises licences and personal licences.
- 3.23 The holder of a premises licence may be a business rather than an individual. In the case of a chain of pubs, for example, the individual premises may be in Manchester and the headquarters of the company holding the premises licence may be in London.
- 3.24 Every premises licence that authorises the supply of alcohol must specify a designated premises supervisor. The only exception is for community premises which have successfully applied to remove the relevant mandatory condition under the Licensing Act 2003. All designated premises supervisors are required to hold a personal licence but not all personal licence holders are designated premises supervisors. The 2003 Act requires that all sales of alcohol must be authorised by a personal licence holder. The designated premises supervisor could be the holder of the premises licence as well as his/her personal licence. The designated premises supervisor will, therefore, not always be an employee. He/she is the person specified in the premises licence as the personal licence holder that will normally be in day to day charge of the premises. For example, in the case of the chain he/she will often be the manager in charge.
- 3.25 Some larger businesses will sometimes employ more than one personal licence holder, but only one may be the designated premises supervisor and be the single point of contact for the police and other relevant enforcement agencies.
- 3.26 There is no requirement in the Act for the designated premises supervisor or a personal licence holder to be present at all times when alcohol is being sold.
- 3.27 A PND *will not* be appropriate for any designated premises supervisor. They should be prosecuted in order to ensure that offences are recorded to support action to revoke a licence by the relevant licensing authority. A personal licence holder is required to declare to his/her relevant licensing authority that they have been convicted of a relevant offence.

3.28 A PND may be appropriate for bar staff or staff in off-licences/stores when taking action against premises found or known to be serving alcohol to under age drinkers. Where a PND has been given to a person who has sold alcohol to a person aged under 18, it will contribute towards the offence of persistently selling alcohol to children⁴. For this additional offence to be committed, at least one other sale to a person aged under 18 must have taken place from the same premises within the same period of three consecutive months. In that instance, the premises licence holder (or premises user in relation to a TEN) will be guilty of the persistent selling offence which attracts a maximum sentence of £20,000 or an alternative sanction of a voluntary closure period during which alcohol cannot be sold. This can range from 48 hours to a maximum of 336 hours. For this reason, it is important that constables record not only the name of the person who received the PND but also the premises in case a future offence is committed.

Throwing fireworks - Explosives Act 1875

3.29 A PND may be appropriate where fireworks are thrown in such a way as to cause annoyance and nuisance, e.g. by causing excessive noise outside a person's home. However, a PND *will not* be appropriate where this constitutes part of a pattern of intimidation or there was intention to cause harm.

Offences under the Communications Act 2003, Criminal Law Act 1967, Fire and Rescue Service Act 2004

3.30 A PND may be appropriate where there has been misuse of the 999 service or threatening calls. A PND *will not* be appropriate for serious misuse of the 999 service, e.g. making a hoax bomb threat.

3.31 A PND may be given for the offence of wasting police time. Where a person is given a PND and requests to be tried a summons will be raised following a review and decision by a crown prosecutor. The DPP's consent to prosecute will be required.

Possession of cannabis or khat - Misuse of Drugs Act 1971

3.32 A PND may be appropriate for a person found in possession of cannabis and its derivatives, or khat and any preparation or other product containing khat for personal use. A PND cannot be given for any other drug possession offence.

3.33 Under ACPO Guidance on Cannabis Possession for Personal Use⁵ and National Policing Guidance on Khat Possession for Personal Use Intervention Framework (England and Wales only) there is a three-stage escalation procedure under which it is expected that an offender will:

- receive a cannabis or a khat warning for a first possession offence,
- receive a PND for a second offence, and
- be charged for a third or subsequent offence.

3.34 **Only one PND for cannabis or khat possession should ever be given to an individual.** Therefore, it will be necessary for a constable to check the PNC and PentIP to establish whether a previous PND or warning for possession of that drug

⁴ See section

⁵ <http://www.drugscope.org.uk/Resources/Drugscope/Documents/PDF/virtuallibrary/ACPOCannabisWarnings09.pdf>

has been given. If a second PND is given in good faith, but it subsequently comes to light that a previous one has been given to a person, the PND will stand.

- 3.35 A constable should use their judgment and experience to assess whether the amount of cannabis or khat appears reasonable for personal use. The above process of escalation should not apply if the constable has reasonable grounds to suspect possession with the intent to supply. In that case, arrest is always appropriate.
- 3.36 It is expected that a person will have received a khat or cannabis warning prior to being given a PND for possession of that drug. However, there may be particular operational circumstances or aggravating factors (see Part 2 of the ACPO Guidance) where it is decided, that although a cannabis warning has not previously been given, a PND is the more appropriate means of disposal.
- 3.37 If a PND is given a constable should seize the drug as evidence; **it should not be disposed of at the scene**. A constable should follow their force's Standard Operating Procedures for cannabis or, for khat, the locally agreed handling and submission procedure.. If a person is given a PND and requests to be tried, the cannabis will be treated as evidence in the normal way. However, khat will be preserved in-house then submitted to forensic providers for analysis, or submitted to forensic providers for preservation and analysis, to confirm identification/as evidence in a prosecution. (See Home Office Circular 11 of 2014 – Annex B forensic strategy). An accredited person does not have powers to seize cannabis or khat and so should not give a PND for this offence.

Associated with other offences

- 3.38 A PND *will not* be appropriate where a penalty offence is known to have been committed in association with a second or subsequent offence, including a penalty offence, where that offence can clearly be said to be associated with the first penalty offence. Both offences should be charged together. For example, where a constable suspects a person of being drunk and disorderly and of committing an act of criminal damage, due to their drunkenness.
- 3.39 It may be appropriate to give a PND for a subsequent offence, if that offence can clearly be said not to 'overlap with' or be 'associated with' the first penalty offence. For example, where a person is suspected of being drunk and disorderly or committing an offence under section 5 of the Public Order Act 1986 and they are found, upon arrest, to be in possession of stolen credit cards for which a charge is deemed appropriate.
- 3.40 It may be appropriate to give a PND in addition to dealing with a person for a second or subsequent offence in another way, for example by administering a conditional caution. However, discretion should be exercised to ensure that a PND is not given in addition to dealing with a *very serious* offence.
- 3.41 If a PND is given for a penalty offence and it subsequently comes to light after the incident that a more serious or non-penalty offence was committed on the same occasion, a constable may bring a charge for the subsequent offence. Payment of a penalty discharges the person's liability to be convicted only for the offence for which the penalty notice was given. Ultimately, it will be for the CPS to determine, based on the facts of the case, whether a prosecution may be brought, in respect of the subsequent offence.

Person

- 3.42 A PND must only be given to a suitable person.
- 3.43 Failure to identify a person and their address could prevent the enforcement of the penalty notice - identity checks must therefore be rigorous. Where possible, documentary evidence as to age, identity and place of residence should be sought in preference to non-physical sources e.g. electoral register or PNC checks.

Identity

- 3.44 The PNC and PentiP must be thoroughly checked - including the disposals page. Where doubt as to identity exists a constable should consider exercising powers under section 24 of the Police and Criminal Evidence Act 1984.
- 3.45 It is advisable to record a full description of the person on the penalty notice to assist with any later identification issues.
- 3.46 Fingerprints may be taken with consent in accordance with section 4(A) of PACE Code D and section 61 of the 1984 Act.

Age

- 3.47 A PND *cannot* be given to a person below the age of **18**. Where doubt exists, rigorous checks must be made to establish age.
- 3.48 If a person lies about their age the PND should be withdrawn and any monies paid returned. In such circumstances a constable may proceed in any way that was available prior to giving the PND.

Address

- 3.49 A PND *will not* be appropriate where the constable is unable to ascertain a satisfactory address for enforcement purposes. For example this will be the case for a person who is not resident in England and Wales. This may also apply where the constable has reason to believe that the person is homeless or is sleeping rough. Enquiries should be made where doubt exists.

Able to understand

- 3.50 A PND *will not* be appropriate where the person is unable to understand what is being given to them or there is any doubt about the person's ability to understand the procedure.
- 3.51 A PND *will not* be appropriate where the person is unable to understand English. Therefore use of a translator should be considered.
- 3.52 A PND *will not* be appropriate where the constable has reason to believe that the person is impaired by the influence of drugs or alcohol. Where such circumstances exist a constable should consider the appropriateness of exercising powers under section 24 of the Police and Criminal Evidence Act 1984. If the constable is satisfied as to a person's identity and place of residence, it may be appropriate to consider

giving a PND at a later time, e.g. the next day. The constable should be satisfied that the person's offending behaviour has ceased, or will take steps to ensure that this is the case.

Compliance

3.53 A PND *will not* be appropriate where the person is uncooperative. Where a person is uncooperative or non-compliant, consideration must be given to an alternative course of action.

3.54 A PND *will not* be appropriate where a constable believes the person presents a considerable risk of not paying the penalty (or completing the educational course).

Offending history

3.55 A PND may not be appropriate where it is known that the person has previous convictions for disorder offences or where it is known that the person has been given a PND in the recent past, or has been given a simple or conditional caution for such offences. Constables should use their discretion.

3.56 A PND *will not* be appropriate if the person is subject to:

- a custodial sentence, including Home Detention Curfew, or a suspended sentence order;
- a community penalty other than a fine, including an anti-social behaviour order (under which the alleged conduct may constitute a breach);

Substance misusers

3.57 A PND *will not* be appropriate if the person is a known class A drug misuser. 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.

Jointly committed offence involving an under 18 year old

3.58 Where a person below 18 years of age and a person aged 18 years or over are jointly responsible for committing a penalty offence, a PND will not be appropriate for the person aged 18 years or over. Other forms of disposal should be considered. This should avoid any allegations of unfairness resulting from the older person being able to discharge any liability to be convicted of the penalty offence.

3.59 Where a PND is given to a person under 18 years of age in error, the Central Ticket Office should be instructed to cancel the notice and refund any monies paid. A constable may then deal with the person in any other way they might have previously. In these circumstances the 21-day SEP does not apply.

Victim

- 3.60 It is important that constables should seek and record the views of victims before making a decision on the most appropriate course of action and should be consulted on the possibility of giving a PND.
- 3.61 The views of the victim are important but cannot be conclusive. Care must be taken not to raise the expectations of a victim whilst seeking their views.
- 3.62 A constable should be mindful that giving a PND removes the possibility of the criminal court awarding a compensation order in favour of the victim. However, the victim would retain the right to seek redress through civil litigation. And giving a PND to a person could save the victim from having to attend court to give evidence provided that the person does not request to be tried for the offence. The victim should be made aware of this.

4. Giving the penalty notice

- **Explain the process and implications**
- **Complete the penalty notice**

- 4.1 A PND may be given immediately or at a later date. There is no restriction on a constable giving a PND days or weeks after the offence, although due consideration should be given to the appropriateness of such action.
- 4.2 Once a constable has given a PND no alternative method of disposal can be considered. Once given, a notice should not be withdrawn or any action taken until the 21 day suspended enforcement period has expired except where it is subsequently discovered that the person is under 18.
- 4.3 At the point of giving the PND the constable should:
- **fully explain the PND process and implications**
 - **complete the penalty notice**

Explain the process and implications

- 4.4 **It is important to fully explain the implications of receiving a PND (or penalty notice with an education option). It is *not* appropriate to suggest to a person that there are no further implications if the penalty is paid.**
- 4.5 The constable should explain to the person that they can either pay the penalty amount or request to be tried. This must be done within the 21 day suspended enforcement period (SEP) specified on the penalty notice in order to discharge the person's liability to be convicted of the penalty offence.
- 4.6 The constable should also explain that if a person fails to pay the penalty or requests to be tried then a fine of one and a half times the value of the original penalty will be registered in the magistrates' court where the person resides for enforcement as a fine.
- 4.7 There are different processes that should be explained to a person given a penalty notice with an education option. For further detail see section 6 of this guidance.
- 4.8 If a PND is given for a recordable offence then a person must be told that an entry may be made on the Police National Computer.
- 4.9 Constables are urged to explain to a person that a PND may be revealed as part of an enhanced Disclosure and Barring Service (DBS) check.
- 4.10 The 2001 Act does not require information to be provided on the penalty notice about the potential disclosure to a third party such as a prospective employer that a PND has been given. However, chief officers of police should consider providing this information on the penalty notice.

Complete the penalty notice

- 4.11 Penalty notices no longer have to be in a prescribed form so that police forces can design the notice to best meet their local needs, including electronic issue of the notice.
- 4.12 However, in accordance with section 3(3) of the 2001 Act, the notice must:
- state the alleged offence;
 - give such particulars of the circumstances alleged to constitute the offence as are necessary to provide reasonable information about it;
 - specify the 21 day suspended enforcement period and explain its effect;
 - state the amount of the penalty;
 - state the designated officer for the local justice area to whom, and the address at which, the penalty may be made; and
 - inform the person to whom it is given of his right to ask to be tried for the alleged offence and explain how that right may be exercised.
- 4.13 The penalty notice may also require the person's signature as proof of receipt of the penalty notice.
- 4.14 Section 64A(1B)(d) of the Police and Criminal Evidence Act 1984 and paragraphs 5.12 and 5B-5F of PACE Code D contain provisions about photographing a person at a police station and elsewhere.
- 4.15 Supervisory quality checks should be undertaken to ensure that penalty notices are completed to the requisite standard and to avoid Central Ticket Offices (CTOs) having to return a penalty notice to a constable for clarification. Quality assurance should be incorporated in local processes and supervisors should ensure that action is taken to prevent errors arising. Completed penalty notices should be forwarded promptly to the CTO for entering onto the computer system.

5. After a PND has been given

- **Recording**
- **Prosecution**
- **Sharing of information and disclosure**
- **Contested fines**
- **Enquiries**

Recording

- 5.1 All PNDs given for recordable offences should be recorded on the Police National Computer (PNC) in a timely manner in accordance with the PNC code of practice. Logging of recordable offences will facilitate checks on whether a person has previously been given with a PND for a recordable offence. This entry will not constitute a record of criminal conviction, but will enable DNA, fingerprints and a photograph to be logged against the entry.
- 5.2 In order that the integrity of the penalty notice scheme is maintained, **all crime recording in relation to notifiable offences must be carried out in accordance with the National Crime Recording Standard (NCRS) and the Home Office Counting Rules for Recorded Crime (HOCR)⁶.**

Prosecution

- 5.3 Where the 21 day suspended enforcement period (SEP) has elapsed and the person has not paid the penalty notice or requested to be tried (or has not asked to attend a course where a penalty notice with an education option is given) it will be permissible, in exceptional circumstances, for a prosecution to be brought against the person for the original offence. This may be where, for example, further evidence has emerged as to the seriousness of the original offence, or the person's full criminal history is discovered.
- 5.4 The onus rests with the constable who gave the penalty notice to establish the status of a particular case once the SEP has elapsed if a prosecution is deemed appropriate. Central Ticket Office staff will not alert a constable to a case where no response is received.

Sharing of information and disclosure

Sharing information

- 5.5 Police have common law powers to share information for a "police purpose". This includes preventing the commission of offences and bringing offenders to justice. There are also certain statutory powers that permit the sharing of information. In certain circumstances the police, under their common law or statutory powers may share information that a person has been given a PND. Chapter 6 of the Guidance on the Management of Police Information⁷ contains further information.

Disclosure and Barring Service (DBS)

⁶ <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/crime-research/counting-rules/>

⁷ MoPI, Information Management, Authorised Professional Practice

- 5.6 In accordance with Part V of the Police Act 1997 an enhanced criminal records certificate issued by the DBS may give details of a PND given to a person if the information is reasonably believed to be relevant. However, the mere fact that a PND had been given to a person would not make it relevant. Further information can be found in the statutory disclosure guidance to assist chief officers of police issued in accordance with Part V of the Police Act 1997⁸.

ASBOs

- 5.7 Acceptance of a PND, and subsequent payment of the penalty, discharges all liability to be convicted of that offence. However, this does not preclude the information being used in the civil context of seeking an ASBO. The fact that a PND has been given to a person can be disclosed in an ASBO hearing if it contributes to establishing a pattern of behaviour.

Contested fines

- 5.8 A constable should be aware that in the event that a fine arising from an unpaid PND is contested, the constable who gave the PND may be called upon to appear in court or to undertake investigations to verify the identity of the recipient.

Enquiries

- 5.9 All enquiries from persons given PNDs, other than those concerning payment must be referred to the relevant Central Ticket Office (CTO). A constable should therefore refer any correspondence or enquiries about a PND to their local CTO. All matters concerning payment should be referred to the relevant magistrates' court Fixed Penalty Office. In no circumstances should payment be accepted by a constable.

⁸ <http://www.homeoffice.gov.uk/publications/crime/statutory-disclosure-guidance>

6. Educational course schemes

- **Overview**
- **Aims of an educational course scheme**
- **Setting up an educational course scheme**
- **Operational process**

Overview

- 6.1 The Criminal Justice and Police Act 2001 contains provisions that permit a chief officer of police to establish a PND educational course scheme in relation to one or more penalty offences, if they wish. It also permits constables to give a person a penalty notice with an education option where appropriate. These provisions were introduced by section 132 of, and Schedule 23 to, the Legal Aid, Sentencing and Punishment of Offenders Act 2012. They may be used for any penalty offence committed on or after the 8 April 2013.
- 6.2 A penalty notice with an education option (“PND-E”) provides a person with the opportunity to discharge their liability to be convicted of the penalty offence by paying for and completing an educational course that relates to the penalty offence (although a record of the PND-E will remain on PentiP and the PNC (if given for a recordable offence) as with a ‘standard’ PND). A person can, alternatively, opt to pay the penalty amount in full or request to be tried as is the case with a ‘standard’ PND. A person does not have the right to demand a PND-E - equally no person should be forced to accept one.
- 6.3 These provisions have been introduced in response to requests by chief officers of police. It offers chief officers the opportunity to adapt how the PND-E scheme operates in their local area to best meet local needs, if they so wish.
- 6.4 It is **not mandatory** to set up an educational course scheme.

Aims of an educational course scheme

- 6.5 The aims of an educational course scheme are:
1. To change the person’s behaviour and reduce the likelihood of committing the penalty offence through an educational course - for example, highlighting the social and health implications of their behaviour.
 2. To provide chief officers of police with an additional tool to tackle offending in their local area.
 3. To increase compliance with penalty notices and reduce enforcement costs by providing a person with an additional means of discharging their liability to be convicted of the penalty offence.

Setting up an educational course scheme

- 6.6 A chief officer of police who wishes to run an educational course scheme will be responsible for establishing the scheme. This will include, amongst other things:
- ensuring sufficient funding from local budgets;

- selecting a course provider (in accordance with local procurement arrangements);
- approving course content and setting the fee (in conjunction with course providers);
- putting in place necessary operational processes;
- piloting (if desired); and
- implementing and maintaining the scheme.

6.7 There will not be a national educational course scheme but it is possible to develop joint schemes with other forces if desired.

The educational course

6.8 Educational courses may relate to any penalty offence and a chief officer is not limited to running just one course. It is envisaged that the majority of courses will relate to alcohol or drug awareness, which would be suitable for a person given a PND for an offence under section 5 of the Public Order Act 1986 (where related to alcohol) or possession of cannabis under section 5 of the Misuse of Drugs Act 1971.

6.9 Courses should address the implications of the offending behaviour (for example, the health and social implications) and aim to reduce the likelihood of further offending. In some cases course providers may signpost a person to other services although this will not be an additional requirement to complete the course.

6.10 A chief officer (in conjunction with course providers) will determine the duration of the educational course. It is envisaged that the majority will be a course on a single day lasting approximately 2-3 hours.

6.11 A chief officer (in conjunction with course providers) will also determine an appropriate course fee to cover running costs.

Course providers

6.12 A chief officer will be responsible for identifying suitable course providers, in conjunction with local procurement processes.

6.13 Roles and responsibilities should be properly documented in a contract or Memorandum of Understanding or similar document.

Operational process

6.14 *Please note that some of the following guidance in italics is temporary until the necessary system changes have been made to the PNC and PentiP (National database for Fixed Penalty Notices). Once changes have been made these elements of the guidance will be updated to reflect the new processes.*

6.15 *Police forces will be notified in advance about these changes to this guidance.*

Decision making stage

6.16 A PND-E may only be given if:

- a constable has reason to believe that a person aged 18 or over has committed a penalty offence and it would be appropriate to give a penalty notice

and

- an approved educational course is available in relation to the penalty offence committed in the chief officer's area.
- 6.17 Approved educational course means an educational course run as part of an education course scheme established by the chief officer of police in relation to one or more kinds of penalty offence committed in the chief officer's area.
- 6.18 For example a constable may give a PND-E where the constable has reason to believe that a person has committed the penalty offence of being drunk and disorderly **and** an alcohol awareness educational course as part of an educational course scheme established by the chief officer of police in relation to the penalty offences committed in the chief officer's area.
- 6.19 As is the case with a 'standard' PND, it **will not** be appropriate to give a PND-E to a person who has serious alcohol or substance misuse problems. Such cases should be referred to appropriate support programmes.
- 6.20 Background checks may be necessary to ensure that a person is eligible to attend a course. Checks may involve determining whether there are any behavioural issues, such as anger management problems or a history of violence that may make attendance at a course inappropriate.
- 6.21 It will be at the chief officer's discretion whether to allow a person to attend the same educational course more than once, but careful consideration should be given to whether a course is likely to be effective if attended more than once. Background checks will be necessary if it is the policy to limit attendance in this way.
- 6.22 Any background checks will need to be made by the constable before a PND E is given to a person. The constable should consider the provisions in Section 3 of this guidance on the use of bail.

Giving the PND-E

- 6.23 As set out in Section 4 of this guidance, at the point the PND-E is given a constable should explain the implications of receiving a PND-E, the options available to the person and the consequences of not taking any action.
- 6.24 A person has the **21 day suspended enforcement period (SEP)** to either:
- pay the penalty amount in full;
 - request to be tried for the offence; or
 - ask to attend an educational course (see paragraph 6.31).
- 6.25 If a person asks to attend an educational course during the 21 day SEP and then pays for and completes the educational course within the agreed period (see paragraph 6.26) they will discharge their liability to be convicted of the penalty offence. Alternatively if a person pays the penalty amount in full during the 21 day SEP they will discharge their liability to be convicted of the penalty offence. In addition, a person may request to be tried for the offence during the 21 day SEP.
- 6.26 The agreed period in which a person must pay for and complete the educational course will be determined by the chief officer but it is envisaged that, in the majority of cases, it will be 12 weeks or less from the date the PND-E is given.

6.27 If a person:

- requests to attend an educational course within the SEP but then fails to complete the course within the agreed period;
- or**
- takes no action within the 21 day SEP;

then a sum equal to one and a half times the original penalty amount will be registered in the magistrates' court where the person resides for enforcement as a fine.

6.28 The provisions about the recording of offences and potential disclosure as part of an enhanced Disclosure and Barring Service (DBS) check are the same as a 'standard' PND and should be explained to a person who is given a PND-E. For further information see Section 5 of this guidance.

Information provided to the person

6.29 Section 3(3) of the 2001 Act sets out the information that must be contained in the penalty notice. However, it is for the chief officer of police to determine what additional information should be provided to a person who is given a PND-E. It is envisaged that the information most likely to be given includes:

- the purpose of the educational course;
- the educational course fee;
- details of how to book onto an educational course;
- the time by which the person must ask to book onto a course i.e. the 21 day SEP;
- an explanation of the consequences of completing or failing to complete an educational course;
- an explanation of when a course will be considered complete (e.g. paid in full and attendance on the course);
- the time by which a person must complete a course;
- the expected conduct of the person during a course.

6.30 Information may be provided on the penalty notice itself or on a separate leaflet or letter.

After a PND-E has been given

Asking to attend a course

6.31 Within the 21 day SEP a person:

- may ask to attend an educational course by following instructions on the penalty notice, leaflet or letter

or

- may be contacted by a course provider to clarify whether they wish to attend, provided they have consented to their contact details being shared with a course provider.

Use of personal data

6.32 Data shared between police forces and course providers during the running of an educational course scheme should be properly documented in a Data Sharing Agreement (DSA). DSAs should set out the requirements for course providers to protect data and limit what they can use the data for.

6.33 It is envisaged that the chief officer of police will, in particular, set out the requirements about:

- obtaining the person's consent to share personal data with course providers;
- when the consent must be obtained; and
- 'informed' consent.

Booking, attending and completing the course and extensions of time

6.34 The chief officer of police will decide the procedure for booking and attending the course, when that person has been deemed to have completed the course and any requests from a person for an extension of time. However, it is envisaged that the following general guidance will apply to the majority of educational course schemes.

Booking onto a course

6.35 Course providers are responsible for booking a person onto an educational course. The penalty notice should be suspended by the Central Ticket Office to prevent automatic fine registration.

6.36 It is envisaged that, in the majority of cases a person will be expected to complete the educational course within 12 weeks from the date the PND-E was given.

Completing a course

6.37 A person will usually be expected to pay the course fee to the course provider in advance or on the day of the educational course.

6.38 A person will provide proof of identity on the day of the course so that the course provider can verify the identity of the person. Suitable photographic ID would include a passport or driving licence which contains a recent photograph of the person.

6.39 To complete an educational course a person will be expected to:

- pay the course fee in full;
- complete any exercise, test or assessment during the course;
- not be disruptive; and
- attend for the full duration of the course.

6.40 Chief officers of police may decide that the course provider will determine whether a person has completed the course and may take into account additional factors when reaching their decision. For example it may be necessary for the person to take a short test as part of the course. It is likely that course providers will also be responsible for informing the police force about whether a person has completed or failed to complete an educational course in accordance with processes agreed at local level.

6.41 Chief officers of police may also determine the process to follow in relation to the course fee and the penalty where a person has not completed the course. This will include the criteria for determining when to refund the course fee.

Extensions

6.42 If a chief officer of police permits extensions of time for the payment of the course fee, attending the course or completing the course the onus should be on the person to present clear reasons why they could not complete the necessary actions within a specified period. If the nominated person in the police force determines that there was good reason for the person not to have completed the necessary actions then they may grant that person an extension. It is envisaged that it will not usually be appropriate to grant more than one extension.

6.43 If an extension is not granted or the person fails to complete the necessary actions during the extension period then it is likely that the person will be treated as having failed to comply with PND-E and a sum equal to one and a half times the penalty amount may be registered in the magistrates' court where the person resides for enforcement as a fine.

Recording

6.44 As set out in Section 5 of this guidance, all PNDs (including those with an education option) given for recordable offences should be recorded on the PNC in a timely manner and in accordance with the PNC code of practice.

6.45 *If a person successfully completes an educational course then this should be noted on PentiP and/or the force information management system being used to manage the PND-E process. The penalty notice will not proceed to fine registration but a record of the PND-E will remain on PentiP and the PNC (where given for a recordable offence).*

6.46 If a person is not deemed to have completed an educational course then that person will not have discharged their liability to be convicted of the penalty offence. The Central Ticket Office will lift the suspension on the ticket and it will proceed to fine registration. The fine will be enforced in the usual way. A record on the PND-E will remain on PentiP and the PNC (where given for a recordable offence).

7. Penalty offences

Upper Tier £90 penalty

PND Code	CJS Code	Act	Description	Notifiable/ Recordable
DA01	CL67008	s.5(2) Criminal Law Act 1967	Wasting police time, giving false report	Recordable
DA02	CA03007	s.127(2) Communications Act 2003	Send false message/persistently use a public electronic communications network in order to cause annoyance, inconvenience or needless anxiety	Recordable
DA03	FS04009	s.49 Fire and Rescue Services Act 2004	Knowingly gives a false alarm to a person acting on behalf of a fire and rescue authority.	Recordable
DA04	PU86149	s.5 Public Order Act 1986	Words/behaviour likely to cause harassment, alarm or distress	Notifiable & recordable
DA05	EP75006	s.80 Explosives Act 1875	Fire or throw firework(s)	Non-recordable
DA06	CJ67002	s.91 Criminal Justice Act 1967	Drunk & disorderly in a public place	Recordable
DA11	CD71039	s.1 Criminal Damage Act 1971	Destroying or damaging property (under £300)	Notifiable & recordable
DA12	TH68010	s.1(1) Theft Act 1968	Retail Theft (under £100 and may only be given on one occasion)	Notifiable & recordable
DA13	FW04003	reg.7 Fireworks Regulations 2004 under s11 of the Fireworks Act 2003	Breach of fireworks curfew (11pm-7am)	Recordable
DA14	FW04002	reg.5 Fireworks Regulations 2004 under s11 of the Fireworks Act 2003	Possession of a category 4 firework	Recordable
DA16	LG03036	s.141 Licensing Act 2003 (c.17)	Sells or attempts to sell alcohol to a person who is drunk.	Recordable
DA17	LG03067	s.146(3) Licensing Act 2003	Supply of alcohol by or on behalf of a club to a	Recordable

			person aged under 18	
DA18	LG03064	s.146(1) Licensing Act 2003	Sale of alcohol anywhere to a person under 18	Recordable
DA19	LG03081	s.149(3) Licensing Act 2003	Buys or attempts to buy alcohol on behalf of person under 18	Recordable
DA20	LG03083	s.149(4) Licensing Act 2003	Buys or attempts to buy alcohol for consumption on relevant premises by person under 18.	Recordable
DA21	LG03088	s.151 Licensing Act 2003	Delivery of alcohol to person under 18 or allowing such delivery	Recordable
DA 22	MD71530	s.5(2) & Sch 2 Misuse of Drugs Act 1971	Possess a controlled drug of Class B - cannabis/cannabis resin (may only be given on one occasion)	Notifiable & recordable

Lower Tier - £60 penalty

PND Code	CJS Code	Act	Description	Notifiable/Recordable
DB03	BT49005	s.55 British Transport Commission Act 1949	Trespassing on a railway	Non-recordable
DB04	BT49006	s.56 British Transport Commission Act 1949	Throwing stones/matter/thing at a train or railway	Non-recordable
DB05	LG72008	s.12 Licensing Act 1872	Drunk in a highway, other public place or licensed premises	Recordable
DB07	CJ01002	s.12 Criminal Justice & Police Act 2001	Consume alcohol in designated public place, contrary to requirement by constable not to do so	Non-recordable
DB08	EP90046	s.87 Environmental Protection Act 1990	Depositing and leaving litter	Non-recordable
DB13	LG03086	s.150(2) Licensing Act 2003	Allowing consumption of alcohol by a person under 18 on relevant premises.	Recordable
DB29	RP97006	Regulation 3(3) of the Royal Parks and Other Open Spaces Regulations 1997	Drop / leave litter / refuse except in a receptacle provided for the purpose in a Royal Park or other open space	Non-recordable
DB30	RP97007	Regulation 3(4) of the Royal Parks and	Use pedal cycle / skates / blade / board / foot-propelled device in a	Non-recordable

		Other Open Spaces Regulations 1997	Royal Park or other open spaces	
DB31	RP97057	Regulation 3(6) of the Royal Parks and Other Open Spaces Regulations 1997	Unless the person is registered blind, failing to immediately remove animal faeces from a Royal Park or other open space	Non-recordable
N/A	MD 71599	S5(2) and Schedule 4 Misuse of Drugs Act 1971	Possess a controlled drug of class C – khat (May only be given on one occasion)	Notifiable & recordable