

1.0 POLICY IDENTIFICATION PAGE

This policy has been drafted in accordance with the principles of human rights legislation.

Public disclosure is approved unless otherwise indicated and justified.

Policy title: Penalty Notices for Disorder

Policy reference number: 05/04

Policy Ownership: Dyfed Powys Police

Portfolio/ Business-Area Owner: Head of Administration of Justice,

Police Department responsible: Criminal Justice Unit

Person responsible: Jason Rudall

Links or overlaps with other policies: Custody Policy, Adult Cautioning Policy, PNC Policy, Central Ticket Office Policy, Youth Offending Policy

Policy implementation date: 1st November 2004, updated 1st August 2005, updated 1st September 2007, updated 1st March 2009.

Policy review date: September 2010

2.0 POLICY STATEMENTS/INTENTIONS

- 2.1 Sections 1-11 of the Criminal Justice and Police Act 2001 provide for the Penalty Notice for Disorder scheme. These sections are designed to offer an additional method for dealing with low-level, anti-social behaviour, disorder and nuisance offending.
- 2.2 Dyfed Powys Police will make full use of these powers in accordance with the attached guidance notes.
- 2.3 We will exercise these powers in a manner which takes due notice of the rights of the individual and balances it against the rights of other individuals and the interests of the community as a whole.

3.0 THE AIMS OF THE POLICY

3.1 The aims of this policy are:-

- To utilise the PND scheme proactively and positively to effectively tackle relevant offences thereby contributing to the aims within 'Safeguarding Our Communities' and the Safer Counties initiative
- To offer operational officers a quick and effective alternative means of dealing with low-level, anti-social and nuisance offending.
- To improve the quality of life of people living in and visiting our community.
- To reduce the amount of time that police officers spend completing paperwork and attending court, while simultaneously reducing the burden on the courts and CPS.
- To ensure the PND scheme is introduced and used effectively
- To increase the amount of time officers spend on the street and dealing with more serious crime.
- To deliver swift, simple and effective justice, that carries a deterrent effect.

4.0 INTRODUCTION

4.1 Motivators/Driving Forces

Part 1, Chapter 1 of the Criminal Justice and Police Act 2001 introduced Penalty Notices for Disorder (PND), for a range of offences involving minor disorder or anti-social behaviour. As a result of a change in policy to allow the issue of Penalty Notices Disorder (PND) on the street, it is necessary to amend the policy.

4.2 The legitimate aims and legal basis

The legitimate aim of this policy is to effectively tackle low level anti-social offending, disorderly and nuisance behaviour amounting to an offence and minor crime.

The legal basis for the exercise of powers and duties outlined in this policy are:

- The Criminal Justice and Police Act 2001
- The Anti-Social Behaviour Act 2003
- The Human Rights Act 1998

5.0 IMPLICATIONS OF THE POLICY

5.1 Financial implications/Best Value

Dyfed Powys Police will be subject to internal review mechanisms including the review responsibilities of Supervisors, Managers and Professional Standards

5.2 Human Resources/Training

Consideration has been given to the training requirements, their cost and how the training will be funded. Consultation has also taken place with the Training Department before the paper is presented to the Corporate Strategy Board.

5.3 Corporate/Business Plan

The use of PNDs will contribute to the following key areas: -

Divisional Community Safety Strategies: -

- Reduce Violent crime (Through early intervention in public disorder. It should be noted that PND's must not be used where there has been injury or a realistic threat or risk of injury)
- Theft
- Substance abuse (alcohol)
- Anti-social behaviour
- Criminal Damage
- Vandalism and graffiti

National policing priorities 2007/08: -

- Reduce overall crime
- Enable people to feel safer in their communities
- Continue to bring offences to justice

Force priorities: -

- Reduce levels of violent crime particularly that which is directed towards children and young people and vulnerable adults
- To tackle anti-social behaviour

5.4 Consultation

The below named have been consulted:

- Divisional Commanders/Heads of Department
- Chief Officers Group
- Force Legal Adviser
- Her Majesty's Court Service
- Crown Prosecution Service

6.0 HUMAN RIGHTS CONSIDERATIONS/CERTIFICATION

6.1 **Auditing for potential interference and discrimination**

6.1.1 This policy deals with the issue of Fixed Penalties for Disorder for dealing with minor disorder, anti-social behaviour and nuisance offending and as such may engage the following articles of the Human Rights Act 1998: -

- Article 5: right to liberty and security of the person
- Article 6: Right to a fair trial
- Article 7: No punishment without law
- Article 8: Right to respect private/family life
- Article 10: freedom of expression

6.1.2 The legitimate aims in respect of this policy, for interfering with an individual's rights, have been identified and considered as necessary for the following reasons: -

- National security.
- Public safety or the economic well-being of the country.
- Prevention of disorder or crime.
- Protection of health or.
- Protection of the rights or freedom of others

6.1.3 In the application of this policy the Dyfed Powys Police Service will not discriminate against any persons on the grounds of sex, race, colour, language, religion, political, or other opinion, national or social origin, association with national minority, property, birth, or other status as defined under Article 14, European Convention Human Rights (ECHR)

6.2 **Key Human Rights principles**

6.2.1 When utilising the powers set out in this policy and accompanying guidance notes, Police Officers in the exercise of their duty must ensure that:

(a) they follow a clearly defined decision making process by detailing their objective(s), assessing all available and relevant information and feasible options, documenting decisions made where possible. Where it is not possible to document this prior to exercising this function a subsequent note must be made.

(b) they give due regard to the welfare, safety, general well being and human rights of all individuals involved;

(c) they do not unjustifiably discriminate against any individual or groups of individuals;

(d) the actions taken are justified, strictly proportional to, and the least intrusive and damaging option to the achievement of their legitimate aims and

(e) they follow the guidance contained within this policy document, accompanying guidance notes and their training.

6.3 **Delineating between policy and tactics**

There are no issues in this policy that are unsuitable for external publication.

6.4 **Rights, Publication, Audit and Inspection**

6.4.1 This Document will be published and made readily available to all police officers, police staff and volunteers within the Dyfed Powys Police via the Force Intranet system, or where this facility is not available, and at the discretion of Divisional Commanders / Heads of Departments, through paper dissemination.

The document will be made available to the general public via the force external Internet Site, (www.dyfed-powys.pnn.police.uk) or upon written requests made to the Force Policy Co-ordinator.

Any person (or persons) who has / have cause to feel aggrieved by any matter outlined in this policy may seek redress via the Dyfed Powys Police Professional Standards Department in either of the following ways:

In relation to the content of this policy, any question or complaint will be dealt with in accordance with the Dyfed Powys Police direction and control procedures.

Matters relating to the specific conduct of Police Officers will be dealt with using the Police Misconduct Regulations, and/ or where appropriate criminal investigations.

In exercising their right as detailed above, the individual will have a right to make representation to the Dyfed Powys Police Professional Standards Department and in so doing may seek legal advice.

The operation of this policy by Dyfed Powys Police Officers may be subject to internal and external review mechanisms. These include Her Majesty's Inspector of Constabularies (HMIC), the Dyfed Powys Police Professional Standards Department, and other bodies as appropriate.

This policy will be reviewed annually by the Dyfed Powys Police.

Human Rights Generic Audit Compliance List

POLICY NAME: **PENALTY NOTICES DISORDER**

Policy Owner: **ADMINISTRATION OF JUSTICE DEPARTMENT**

Audited by:

Issue	Question	Response	Page or Paragraph reference
AUDITING FOR POTENTIAL INTERFERENCE AND DISCRIMINATION	Have the contents of this policy (and any attendant powers, authorities and directions contained within it) been audited for potential interference with an individuals rights?	YES	See Para 6
	Have the contents of this policy been audited for the potential for it to be discriminatory. In relation to the application or provision of such rights?	YES	See Para. 6.1
KEY HUMAN RIGHTS PRINCIPLES	Does the policy contain a statement explaining what the legal basis is for the policy (and any attendant powers, authorities or directions given within it)?	YES	See Para. 4.2
KEY HUMAN RIGHTS PRINCIPLES	Does the policy provide details of what could be considered a legitimate aim(s) for the potential interference with an individuals rights by virtue of exercising the policy and its attendant powers, authorities or directions?	YES	See Para. 4.2
KEY HUMAN RIGHTS PRINCIPLES	Are supervisors and practitioners made aware of the need to follow a clearly defined decision making process in considering all information, and deciding on courses of action?	YES	See Para. 6.2.1
KEY HUMAN RIGHTS PRINCIPLES	Is it explicit within the policy what the minimum standards are in relation to the documentation of such decision-making?	YES	See Para. 6.2.1
KEY HUMAN RIGHTS PRINCIPLES	Does the policy provide managers and practitioners with clear guidance on establishing the: - Legal basis of their actions The aim of their actions (legitimate aims can only be established by virtue of the exemptions and derogation's given in the act)	YES YES	See Para. 6.2.1 See Para. 4.2
DELINEATING BETWEEN POLICY AND TACTICS	Does the policy incorporate police tactics that would make it impractical to publish the contents? (NB: due to publication	NO	

	requirements it is suggested that tactical material is not included in policy documentation for security reasons).		
RIGHTS, PUBLICATION AUDIT AND INSPECTION	Does the policy contain a statement in favour of public disclosure or, if this is inappropriate, justification of any reservation to this rule on public interest/other grounds?	YES	See Para 6.4.1
	Does the policy contain: - a statement about the availability of the policy (method of proposed publication to public).	YES	See Para 6.4.1
	a recommendation about maintaining audits and inspection of decision-making?	YES	See Para 6.4.1
CERTIFICATION OF COMPLIANCE	Does the policy contain a certification that it has been drafted in accordance with the Human Rights Act and the principles underpinning it?	YES	
LEGAL VETTING	Has this policy been through legal vetting for human rights compliance?	YES	
POLICY REVIEW	Has the policy got a review date to ensure ongoing compliance in light of emergent legislation and human rights case law?	YES	

CERTIFICATE OF COMPLIANCE

This policy has been drafted in accordance with the Human Rights Act and has been reviewed on the basis of its contents and the supporting evidence and it is deemed compliant with that Act and the principles underpinning it.

Signed:

(Force Legal Adviser)

Name: Ms. S. Gainard

Department: Legal Services

REVIEW

This policy is due for review by:

Date: 1st September 2010

LIST OF APPENDICES

APPENDICES THAT WILL BE PUBLIC DOCUMENTS

APPENDIX	A	Guidelines for the operation of the fixed penalty notice for disorder scheme
APPENDIX	B	Schedule of penalty notice offences showing levels of penalty
APPENDIX	C	Flow charts for the issue of PNDs on the street and in custody

Penalty Notices – Disorder

Guidance

1.0 INTRODUCTION

- 1.1 Part 1, Chapter 1 of the Criminal Justice and Police Act 2001 introduced Penalty Notices – Disorder (PND), for a range of offences involving minor disorder, nuisance offending or anti-social behaviour. It provides that a constable may issue a penalty notice (PND) where he/she has reason to believe that a person has committed one of the penalty offences in the schedule, see appendix B, and they have sufficient evidence to support a successful prosecution. This scheme continues to provide a highly effective method of dealing with minor offences, thereby freeing up officers to return to operational duties and reducing court delays. This procedure **is not** designed to cater for serious offences (for which custody or other sentence more severe than a fine would be expected if the offender were to be tried by a court and convicted). The notices cater for two levels of fine (£50 and £80) dependant on the severity/nature of the offence.
- 1.2 Section 87(2) of the Anti-social behaviour Act 2003 allows for the issue of PNDs to persons **aged 16 years and over**.
- 1.3 PNDs can be issued on the street or whilst in custody **subject to the provisions of this policy and guidance notes**.
- 1.4 This policy document should be read in conjunction with the Force Strategy in relation to PND.

2.0 DISTRIBUTION OF PENALTY NOTICES TO DIVISIONS

- 2.1 Divisional Commanders will be responsible for ensuring that they have sufficient PNDs for their needs and should update CJU (CTO) with requests for additional PNDs as soon as the need is anticipated. Divisions will be responsible for issuing PNDs to designated custody facilities, officers, Special Constables and Police Community Support Officers (procedures for recording and distribution at division can be seen at 2.2 – 2.9). It is imperative that the use of these notices to combat disorder and anti-social behaviour is not jeopardised as a result of supplies becoming exhausted.
- 2.2 All Fixed Penalty Notices are numbered and must be accounted for as they are subject to Government Audit.
- 2.3 Fixed Penalty Registers will be maintained at Divisional Headquarters and Section Stations.
- 2.4 Serial numbers of Notices will be recorded in numerical order in the register as they are received, indicating the date they are received.
- 2.5 Notices will be issued in sequential order in which they appear in the register.
- 2.6 Entries will be made against each Notice issued, indicating date and to whom issued. The receiving officer will sign for Notices issued.
- 2.7 Entries in the register will be made by authorised person/s only.
- 2.8 Inspectors will Audit the register at least once each month and append their signature and date in the remarks column against the last Notice issued.

2.9 When a notice is lost or destroyed a report will be submitted by a senior officer at division and forwarded to the manager of the Central Ticket Office.

3.0 ISSUING A PENALTY NOTICE

3.1 **Appendix C provides simple flow charts, showing the process for issuing PNDs on both the street and in custody.** The option of issuing a PND is in addition to existing forms of disposal for these offences, (i.e. report for summons, charge, caution / reprimand / final warning, etc). However the appropriateness of a caution, reprimand or final warning must be considered prior to issuing a PND. A PND should not replace a decision to caution an offender. The purpose of a formal caution is to deal quickly and simply with less serious offenders, to divert them from unnecessary appearance in the criminal courts and to reduce the chances of their re-offending. A formal caution is a serious matter. It is recorded by the police and it will influence a decision whether or not to institute proceedings if the person should offend again, and it may be cited in any subsequent court proceedings. When reaching a decision on the appropriateness or otherwise of PND disposal in respect of juveniles i.e. 16 and over, officers may find it helpful to take account of any mitigating and aggravating factors as per the current ACPO gravity factors used in juvenile custody disposal decisions.

3.2 A Penalty Notice will only be issued in relation to simple, straightforward cases. PNDs will NOT be issued where the offence includes any **aggravating circumstances**, including:

- injury to any person or any realistic threat or risk of injury to any person. Officers **may** seek the views of any potential victim before making a decision on the most appropriate course of action. However see paragraph 4.1 below in respect of consulting the victims of Theft and Criminal Damage;
- where there has been a substantial financial/material loss to the private property of an individual. Loss in these circumstances is serious if, having regard to all the circumstances, it is serious for the person who suffers it (see also later provisions in respect of criminal damage and theft).
- homophobic or racially motivated incidents
- where there are grounds for believing that the terms of the Protection from Harassment Act 1997 might apply.
- domestic incidents
- football related offences, where the offender may be subject to a football banning order if prosecuted

3.3 PNDs will also NOT be issued where:

- The offender is **under 16** years of age. (Where a suspect lies about their age and it is subsequently established that they are under 16 years of age, the penalty notice will be withdrawn, any monies paid will be returned and officers may proceed in any way that was available prior to issue).
- The offender is un-cooperative or is non-compliant, consideration should be given to an alternative disposal. Penalty notices must be issued to and received by the suspect.
- It is clear that offenders are unable to pay for a PND. In such circumstances, alternative forms of disposal should be considered. Part payments will not be accepted by the Fixed Penalty Office under any circumstances, and where full payment is not received within 21

days, any monies paid will be returned to offenders, reiterating that full payment is required with 21 days.

- The offender is on police or court bail for any offence – Local systems and PNC checks must be carried out.
- The offender is serving a custodial sentence, including a Home Detention Curfew.
- The offender is subject to an ASBO / CRASBO, (where the offence may constitute a breach) or a community penalty other than a fine.
- The offender is unable to understand the implications of a PND. Officers should make reasonable efforts to ensure offenders understand the implications of a PND, but where these efforts fail, officers will revert to existing disposal options.
- The offender is a foreign national resident outside the UK.
- The statutory defence for an offence under section 5 Public Order Act 1986 would be applicable.
- The offender has been identified as a Prolific and other Priority Offender – PNC check must be carried out.
- The offender has been identified as a Persistent Young Offender – PNC check must be carried out.
- There is insufficient evidence as to age, identity and place of residence
- The case is an offence under Section 169 E of the Licensing Act 1964 (consumption of alcohol by a person under 18 in a bar) and the offender is the licensee. Licensees need to be prosecuted in order to ensure that offences are recorded to support action to revoke a licence.

Officers may only issue a PND where there is sufficient evidence to prosecute the alleged offender for that offence. The issuing of PNDs however is not limited to offences directly witnessed by police officers. Officers may issue a PND based upon evidence provided by other reliable witnesses. In such circumstances a statement proving the offence must be attached to the copy of the PND that is submitted to the Central Ticket Office.

- 3.4 Interviews and questioning must be consistent with the practice and procedures established by PACE 1984, Code C.
- 3.5 Officers may consider that offenders known to have previous charges, cautions or PNDs for any penalty notice offences should not be issued with a PND. However, the number of PNDs issued to an individual will not be limited and officers should use discretion, based upon the individual circumstances of each case to judge whether a PND would be an appropriate disposal. For specific advice relating to 16/17 year olds see paragraph 4.8.
- 3.6 No-one has the right to demand a PND and no-one should be forced to accept a PND. The notice must be issued to and received by the offender. There is no requirement for offenders to admit an offence in order that a PND can be issued. The fact that an offender appears to be intending to contest a case does not necessarily preclude the issuing of a PND, and officers should consider issuing a PND in appropriate cases as offenders may elect to pay a PND fine some time later, having re-considered their situation. Where an offender clearly refuses to accept a PND, officers should revert to other disposal options. Once a PND has been issued

then no alternative form of disposal should be considered. A notice may not be withdrawn or any other action taken until the 21 days suspended enforcement period has expired.

- 3.7 A Penalty Notice will not be an appropriate response where a penalty offence is committed in association with another penalty notice offence or an offence that can be said to overlap with the penalty offence. However discretion should be exercised to ensure that a penalty notice is not issued in addition to dealing with a very serious offence. Where an offender under 16 is jointly responsible for a PND offence with an offender 16 years or over, officers will not issue the older offender with a PND, reverting instead to existing forms of disposal.
- 3.8 Before issuing a PND it is **ESSENTIAL** that officers carry out the fullest identity checks possible, including ID documents, driving licence, etc. together with PNC, Voters Index. A PND will not be appropriate where the alleged offender has no satisfactory address for enforcement purposes. **It is imperative that checks to ascertain and verify the identity of the offender are robust. A fingerprint may be taken with consent to support identification for any PND for a penalty offence.**
- 3.9 Officers may note that Wasting Police Time is a PND offence, and requires DPP consent for prosecution, however for the purposes of the PND scheme, officers may issue PNDs for minor instances of this offence without recourse to CPS advice (minor instances of wasting police time will be dependant on the circumstances and facts existing at the relevant time).
- 3.10 Regardless of whether or not a PND is issued in relation to an offence, officers should ensure that offenders are referred where appropriate to relevant organisations offering support and treatment for drug, alcohol or substance misuse.
- 3.11 In the event of a PND being issued, it will be the responsibility of the officer in the case to retain any property/ evidence for a period of at least 35 days, thus allowing the offender time to request a court hearing (see 7.1b).

4.0 THEFT AND CRIMINAL DAMAGE

- 4.1 Since 1st November 2004, retail theft under £200.00 and criminal damage under £500.00 have been included on the schedule of offences for which a PND can be issued **subject to the limitations as set out below:**
- Officers should seek and record the views of all victims before making a decision on the most appropriate course of action. The victim should be consulted about the potential use of PND for the offence and their views taken into account when reaching a decision. PND disposal will not be appropriate where the victim is non-compliant.
 - PND disposal precludes the possibility of a court awarding a compensation order in favour of the victim. The victim should be appraised of this fact and advised that they would still have the right to seek redress through the civil courts (i.e. small claims court).
 - Victim should be advised that PND disposal would remove the need for the victim to act as a witness and / or give evidence in court.
 - The PND will provide the offender with an immediate fine
- 4.2 Retail thefts involving property over the value of £100.00 will be expected to be dealt with by existing disposal i.e. prosecution. PND disposal over this value up to the cap of £200.00 would be exceptional and require explanation as well as the agreement of the victim/retailer. PNDs must not be used for thefts over £200.00. It must be stressed that theft by employee from a

shop must not be dealt with by PND as the seriousness of the offence is exacerbated by the breach of trust involved.

- 4.3 It is expected that in most cases of theft suitable for PND disposal, the property will have been recovered although the value of the property will be relevant in assessing seriousness.
- 4.4 Criminal Damage involving values over £300.00 up to the cap of £500.00 will be expected to be dealt with by existing disposal i.e. prosecution unless it involves public property. PND disposal over £300.00 would be exceptional (except for public property) and require explanation as well as the agreement of the victim/retailer. Criminal Damage over £500.00 will not be dealt with by means of PND.
- 4.5 Officers should use their best judgement and discretion when assessing property values, as they currently do when compiling crime reports. The guideline amounts do not require that all such offences under the top limit should be dealt with by PND.
- 4.6 Penalty Notices for theft and criminal damage will be appropriate for low level, usually first time, offending. Penalty notice disposal will not be appropriate for those who repeatedly offend where prosecution will be considered more suitable. However the length of time that has passed since any previous offence should be taken into account.
- 4.7 Penalty notices for these offences may not be appropriate for those who are known to be substance mis-users. Officers will need to consider the relative seriousness of the offence and the effect of the incident on any staff or witness to the event.

4.8 16/17 YEAR OLDS

4.8.1 Officers should exercise particular care when dealing with 16 / 17 year olds. The PND system does not replace or supersede the established system of Reprimands and Final Warnings for juvenile offenders. Officers may elect to issue 16 / 17 year olds with a PND if this is deemed to be the most appropriate disposal in the circumstances. As with all juvenile disposal decisions, the Duty Inspector and Custody Sergeant should be consulted before any decision is reached.

4.8.2 The following advice is provided to assist officers:

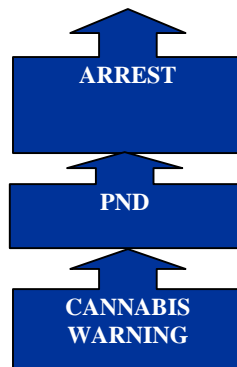
- PNDs will only be issued to 16 and 17 year old offenders for minor, straightforward offences, where the offence does not form part of a pattern of offending behaviour and intervention is unlikely to have an impact, e.g. a 'one off' single incidence of behaviour).
- PNDs are not intended as a replacement to Final Warnings/Reprimands or Cautions. Where offenders appear to be vulnerable and in need of intervention, for example due to vulnerable family circumstances, etc. then PNDs should not be used and officers should revert to existing forms of disposal to ensure appropriate intervention measures are implemented with local Youth Offending Teams, etc.
- PNDs for recordable offences should only be issued where 16/17-year-old offenders are in custody following arrest under existing powers where fingerprints and DNA will be taken. The PND will be recorded on PNC. An offender should not receive more than one fixed penalty notice for a recordable offence. The PNC records certain FPN's and officers should utilise this to ensure multiple tickets are not issued to 16 / 17 year olds.

- Officers can issue PNDs for non-recordable offences to 16/17 year olds on the street as they already can for minor traffic offences. Local Youth Offending Teams (YOTs) will be informed of the issuing of a PND to a 16 or 17-year-old offender, for information purposes. Where a young person has been arrested and is in custody, the Custody Officer will generate a Youth Referral Form in the usual way.

5.0 CANNABIS POSSESSION FOR PERSONAL USE

5.1 Since 28th January 2009, possession of cannabis has been included on the schedule of offences for which a PND can be issued. The core principals to be applied when considering a PND for this offence are as follows:

- In dealing with an offence of possession of cannabis, an officer will have three options:



The options are listed in the order of escalation that would be expected, taking into account all of the aggravating factors.

- To assist understanding, the aggravating factors for cannabis possession adopted by ACPO are listed below:
 - a) Public Place or view
 - b) Locally identified policing problem
 - c) Protecting young people
 - d) Repeat or persistent offenders
 - e) Impact on the offender
- If the offender has already received a cannabis warning on a previous occasion, then a further warning should not be issued. The officer should escalate the action.
- If the offender has received a cannabis warning since the 26th January 2009, the officer should escalate action to issuing a PND or to arrest if appropriate.
- If the offender has already received one PND for cannabis possession on a previous occasion then the only option should be to arrest.
- An officer may use operational discretion to decide that, although the offender has never received a cannabis warning, due to the circumstances they should immediately escalate to the issue of a PND or arrest.

- Offenders must be aware of the fact that they cannot continue to re-offend and receive multiple cannabis warnings or PND's.

6.0 ISSUING A PND

6.1 PNDs can be issued in the following circumstances subject to the provisions of this policy: -

- Whilst in custody, for all offences
- Whilst on the street for recordable offences, where the powers of arrest under section 24 of the Police and Criminal Evidence Act are not available. In the event of a PND being issued on the street for a recordable offence, a copy of the Notice must be faxed within 24 hours to the Central Ticket Office at CJU on 01267 221620. This will enable the PND to be inputted on to PNC in a timely fashion in accordance with the PNC Codes of Practice. The original Notice will be forwarded to CTO in the normal manner.

6.2 Officers from other Forces are not to issue Dyfed Powys PNDs

6.3 Procedure on the street

6.3.1 A penalty Notice may be issued by a Constable, Special Constable or Police Community Support Officer **in uniform** 'on the street subject to this policy. (This can include any public or private place). PCSOs are currently only empowered to issue PNDs for throwing fireworks and littering.

6.3.2 An officer may issue a PND on the street where:

- Sufficient evidence to prosecute exists
- The name and address of the alleged offender can be confirmed to the satisfaction of the officer.
- The offender is cooperative
- The offender understands the implications of the PND
- There are no aggravating circumstances (see above)
- The offence is minor and straightforward

6.3.3 Where an offenders identity cannot be confirmed, or where offenders are drunk, likely to become violent, or are non-compliant etc. officers will not issue PNDs on the street and will take positive action including arresting offenders where necessary. There is no power to arrest or detain an offender to issue a PND and officers must have sufficient grounds to arrest using existing powers of arrest. Where grounds to detain an offender no longer exist, for example where an offender calms down or their name and address have been confirmed en route to the police station, officers will not delay their release and will issue PNDs as soon as practicable.

6.3.4 Where a PND is issued and officers subsequently find that the PND disposal was not appropriate, (for example where fuller details of an offenders criminal history becomes known or further evidence regarding the seriousness of the offences emerges), a PND can be withdrawn and the offender prosecuted for an offence in exceptional circumstances, **but only where the offender fails to respond to the PND within 21 days**. Officers should contact CTO without delay to ensure that a PND is withdrawn. A full prosecution file for the original offence including details as to why the PND has been withdrawn should be forwarded to the appropriate DSU to arrange the raising of a summons.

6.4 Procedure at a Police Station (custody suite)

- 6.4.1 At a police station any constable or special constable can issue a PND, **whether in uniform or not. Custody Detention Officers, (CDOs) are not authorised to issue PND's under any circumstances.** Once detention is authorised at a police station, custody officers will be responsible for disposal decisions from the range of options, (e.g. charge, caution/ reprimand / final warning, report for summons, NFA), which now includes issuing a PND).
- 6.4.2 Where a custody officer decides that a PND disposal is appropriate, officers dealing with the offender should issue the PND and the custody officer should refuse to charge the offender for that offence. Custody records should be endorsed accordingly with the PND serial number together with details of the issuing officer, and custody officers should use the 'Penalty Notice' disposal screen on the Custody System on completion of the process.
- 6.4.3 Where it is necessary to bail people to complete enquiries a PND can be issued on their return to custody as a means of disposal.
- 6.4.4 Where officers choose to report or charge an offender with a penalty notice offence, officers should record the reasons why a PND was not deemed to be appropriate on the confidential information form (MG6). This may be due to the severity of the offence, aggravating circumstances, offenders' demeanour, previous PNDs issued or local directives in place to deal with a crime and disorder hotspot. This will enable CPS to respond to any queries raised by Magistrates or defence lawyers, and should prevent court sentencing from undermining the level of PND fines where guilt is proved e.g. where an offender is fined £60.00 by a court for an offence that would carry a £80.00 PND penalty.

7.0 SUBMISSION & COMPLETION OF THE PND

- 7.1 Each PND consists of six parts on four pages, which will be completed as below.
- 6.1 PNDs consist of a carbonated multi-page ticket and officers need to exercise care to ensure that each page of the ticket is legible. Incomplete or illegible PNDs will be returned by CTO to originating officers for remedial action.
- 6.2 Page one, containing parts 1, 2 and 3, will be the **suspects copy** of the PND and includes full details of what action they should take on receipt of the PND. The remaining pages, containing parts 4, 5, 6a and 6b should be firmly fixed together, and submitted before the issuing officer finishes their tour of duty. PNDs will be forwarded without delay and in any case within 48 hours to CTO in the same manner as existing traffic PNDs.
- 6.3 **Part 1.** Officers should complete all fields in this part of the PND. Officers should invite offenders to sign part 1 of the PND in the appropriate field, acknowledging receipt of the PND. Signature is NOT an admission of guilt by the offender. There is no power to require a signature and offenders are under no obligation to sign. Where offenders refuse to sign, officers should indicate this in the signature field.
- 6.4 The officer issuing the PND to the offender should enter their details in the appropriate fields in Part 1. The issuing officer need not be the main police witness, and therefore could be an officer dealing with the offender as part of a **'handover'** following arrest.
- 6.5 Where an offender in custody may be subject to a PND disposal after some delay, to allow them to sober up/calm down, etc. the arresting officer may consider part completing a PND, including the statement of witness on part 6B, (see below), to hand over to other officers. Where a PND is subsequently not used for any reason, a PND should be clearly marked as

VOID and forwarded to CTO. Where a void PND is required for disclosure purposes, a photocopy of the PND should be forwarded to CTO.

- 6.6 **Part 2.** (Front of page 1, at the bottom). To be completed by the suspect, when paying the fine.
- 6.7 **Part 3.** (Rear of page 1, at the bottom). To be completed by the suspect when requesting a court hearing).
- 6.8 **Part 4.** Offender details will copy through from page 1. 'Additional Details of Recipient' at bottom of page to be completed in every case, including IC code and Ethnicity 16 + 1 code.
- 6.9 There is no requirement for officers to complete the 'Local Authority Code' field in part 4.
- 6.10 **Part 5.** All fields should copy through from previous two pages.
- 6.11 **Part 6A.** Officers MUST provide as detailed a description of an offender as possible, to enable identification should offenders subsequently choose to dispute identification. This should include details of marks, scars, tattoos, etc. Where relevant video footage or photographs of offenders exists, (e.g. custody video recording, or intelligence photos/recording taken by officers with digital cameras, etc.), officers should note where tapes or discs are stored with appropriate reference numbers in the 'Additional Notes' field. Relevant comments made by the offender after caution, etc. should be noted in the 'Reply to Caution' field. Officers should also note what ID checks were done in case of identification issues at a later date.
- 6.12 Officers should include any other information they deem necessary in the 'Additional Notes' field, which could include details of other witnesses, etc. Where an offender is arrested in relation to a PND offence, the Custody Record number will be entered in the appropriate field.
- 6.13 NOTE. Where disclosure of part 6A is required in subsequent court cases, DSU's CJUs and officers preparing files should ensure that all details of non-police witnesses included in part 6A are edited PRIOR to disclosure to the defence.
- 6.14 **Part 6B.** This part comprises of a Statement of Witness, to be completed by the main police witness to the offence in question. Officers should complete as full a statement as necessary. In view of the limited space in part 6B officers should continue on a form MG11a, (witness statement, continuation sheet), if necessary. There is no requirement for any other statements to be included at this stage other than from a third party whose evidence is required to prove the case. However details of any other witnesses must be included on the PND. Any continuation sheets or additional statements (e.g. from a third party witness or an officer who handed over the investigation having already completed a traditional MG11) should be attached securely to the rear of the PND when submitted to CTO.
- 6.15 Supervisors are responsible for ensuring that officers complete PNDs correctly and for monitoring the use of PNDs by individual officers. Supervisors should take appropriate action where officers are found to be using PNDs inappropriately or incorrectly.

7.0 ACTION BY OFFENDER

- 7.1 Completion and submission of PNDs are detailed below. Once issued with a PND, offenders have two options:
- a) Pay the fine within 21 days to the payment office, 'The Justices' Chief Executive, Penffynnon, Hawthorne Rise, Haverfordwest, Pembrokeshire SA61 2AZ. Payment of a PND fine is not an

admission of guilt, discharges liability for prosecution for that offence and removes the possibility of the creation of a record of criminal conviction.

NOTE. No payment of PND fines will be accepted by officers or police staff under any circumstances. Offenders CAN NOT pay PND fines at police stations and offenders will be instructed to pay the penalty as per instructions on Part 2 of the PND. Where payment is posted to police stations in error, they should be forwarded to the payment office, 'The Justices' Chief Executive, Penffynnon, Hawthorne Rise, Haverfordwest, Pembrokeshire, SA61 2AZ CTO without delay.

b) Request a court hearing, by returning the appropriate part of the PND to the CTO within 21 days. CTO will then forward the PND to the Divisional Support Unit (DSU) concerned, who in turn will ensure that a **FULL FILE** is prepared for trial. Completed files will be forwarded to the Criminal Justice Unit (CJU) who will be responsible for the raising of summons, which will take place in the normal way. The fact a PND has been issued and the offender elects to plead 'Not Guilty', should be endorsed on the MG6D.

7.2 Where an offender fails to respond to a PND, the fine is increased to 1½ times the amount after 21 days. Further failure to pay will result, in most cases, in the registration of the penalty as a fine, which will be enforced by the courts.

8.0 CRIME RECORDING

8.1 Notifiable penalty notice offences will be subject of a crime report, as per the National Crime Recording Standards, the Home Office Counting Rules and force crime recording policy. A PND disposal will constitute a sanctioned detection for the purposes of crime recording.

8.2 Under the Home Office Counting Rules, officers cannot use a PND for Section 5 Public Order Act or Drunk and Disorderly to detect more serious recorded offences i.e. Section 47 Assault or Threats to Kill. **Where PNDs are used to detect crimes, which fall outside of this guidance, the detection will be removed and the crime will remain undetected.** If officers have any doubt about the validity of a detection by a PND, they should consult their line manager, divisional senior management or Force Crime Registrar.

9.0 CENTRAL TICKET OFFICE

9.1 CTO will be responsible for recording and administering the penalty notices on the NES computer system.

9.2 CTO will be the central point of contact for all enquiries & correspondence in relation to PNDs. All enquiries relating to individual PNDs received by divisions/ departments (for example, letters of mitigation, etc.) will be directed to the CTO for recording and action. CTO will either respond to enquiries itself, or may seek views of the relevant BCU/ department before responding.

9.3 CTO will retain all PNDs forwarded to them for 3 years, in accordance with the Force destruction policy.

9.4 On receipt of a request for a court hearing, the CTO will arrange with the appropriate Divisional Support Unit for a full file to be prepared for trial. Once the full file has been prepared for trial, the Divisional Support Unit will ensure the 'court hearing' is listed within four weeks of requesting the summons.

9.5 CTO staff will **NOT** accept payments of penalties. Only court staff can accept payment.

10.0 RECORDABLE OFFENCES – Taking of fingerprints and DNA

- 10.1 Appendix 'B' indicates which Penalty Notice offences are recordable for the purpose of taking fingerprints and DNA.
- 10.2 Where offenders are arrested (and are in custody) for a recordable offence, officers **must** ensure a C646 via Prisoner Processing is completed and that fingerprints, footwear impressions, photograph and DNA are obtained in the normal manner, at the earliest time.
- 10.3 **Every opportunity must be taken to secure the DNA and fingerprints of offenders.** In exceptional circumstances when PNDs are issued on the street for recordable offences, efforts must be made to obtain the DNA and fingerprints from the offenders. There are no powers to take samples in such circumstances however offenders can give informed consent, which must be in writing.

11.0 PNC 'PHOENIX' ENTRIES

- 11.1 Upon receipt of the C646, the Phoenix staff will update the subjects record as necessary i.e. warning signals, descriptive details, known associates etc.
- 11.2 The Phoenix staff will record details of the PND ticket serial number and details thereon.
- 11.3 The Phoenix staff will Result the Fixed Penalty Notice on PNC.

12.0 FURTHER GUIDANCE

- 12.1 Further Operational Guidance from the Home Office is available on the CJU website.

Appendix 'B'

SCHEDULE OF PENALTY NOTICE OFFENCE, SHOWING LEVELS OF PENALTY

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	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	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	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
DA07				
DA08				
DA09				
DA10				
DA11 ¹	CD71040	s1(1) of the Criminal Damage Act 1971	Destroying or damaging property (under £500)	Notifiable & recordable
DA12 ¹	TH68010	s1 of the Theft Act 1968	Theft (retail under £200)	Notifiable & recordable
DA13 ²	FW04003	Fireworks Regulations 2004 under s11 of the Fireworks Act 2003	Breach of fireworks curfew (11pm-7am)	Recordable
DA14 ²	FW04002	Fireworks Regulations 2004 under s11 of the Fireworks Act 2003	Possession of a category 4 firework	Recordable
DA15 ²	FW04001	Fireworks Regulations 2004 under s11 of the Fireworks Act 2003	Possession by a person under 18 of an adult firework	Recordable
DA16 ³	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 ¹	LG03064	* s146(1) of the Licensing Act 2003	Sale of alcohol anywhere to a person under 18	Recordable (1/12/05)
DA19 ¹	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 ¹	LG03088	* s151 of the Licensing Act 2003	Delivery of alcohol to person under 18 or allowing such delivery	Recordable (1/12/05)

Lower Tier £50

PND Offence Code	CCCJS Codes	Act	Description	Notifiable/Recordable
DB01				
DB02				
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	EP90046	s87(1) and (5) of the Environmental Protection Act 1990	Depositing and leave litter	Non-recordable
DB09				
DB10				
DB11				
DB12 ¹	LG03085	* s150(1) of the Licensing Act 2003	Consumption of alcohol by a person under 18 on relevant premises.	Recordable (1/12/05)
DB13 ¹	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 ³	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)

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

¹ = offence added with effect from 1 November 2004

² = offence added with effect from 11 October 2004

³ = offence added with effect from 4 April 2005

PENALTY NOTICE FOR DISORDER FLOW CHART

