



MINISTRY OF JUSTICE

HM Government of Gibraltar

**Penalty Notice for Disorder
(PND) scheme**

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Introduction

This guidance has been issued by the Minister for Justice under section 7 of the Crime (Disorderly Behaviour Penalty Notice) Act 2023 (“the 2023 Act”) about the operation of the penalty notices under that Act.

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 or orders under section 12 of the 2023 Act.

1. Overview of PND scheme

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

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

1.2 A PND is a statutory disposal introduced by the 2023 Act. 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 Gibraltar for a specified range of penalty offences. The full list of penalty offences is included in the Schedule to the Act.

1.4 Penalty offences may be divided into lower and upper tier offences depending on seriousness and attract penalties of £50 and £100 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.

1.6 No admission of guilt is required to give a PND. When the person pays the penalty amount in full 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 applying the evidential and public interest test.

1.8 If a person fails to pay the penalty amount in full or request to be tried within the 21 day SEP then a fine of one and a half times the penalty amount will be registered in the magistrates’ court for enforcement as a fine.

1.9 A PND does not form part of an individual’s criminal record as a conviction but a record shall be kept by the RGP which may be disclosed as part of a relevant vetting request or used in deciding if the issue of a PND in relation to another matter is suitable.

1.10 PNDs are only available to a person aged 18 years or over who is suitable to receive a PND.

1.11 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.

1.12 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.

2. Decision making stage

2.1 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. The evidence should be capable of satisfying the evidential and public interest tests and interviews and questioning must comply with the practice and procedures established by CPEA Codes of Practice C1.

2.2 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.

2.3 A person does not have the right to demand a PND - equally no person should be forced to accept one.

2.4 Where a person is uncooperative consideration must be given to an alternative disposal.

2.5 A PND may only be given:

- a. for a penalty offence, and
- b. where the offence is at the lower end of the spectrum in terms of seriousness, and
- c. where the penalty offence is not committed in association with another penalty offence or does not overlap with another offence

2.6 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.

2.7 All serious offences should be considered for charge as only a court has the suitable powers to deal appropriately with the offending behaviour.

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

Particular Offences

Possession of cannabis – Section 506 of the Crimes Act 2011

- A PND may be appropriate for a person found in possession of cannabis or cannabis resin for personal use. A PND cannot be given for any other drug possession offence.
- Only one PND for cannabis or cannabis resin possession should ever be given to an individual. Therefore, it will be necessary for a constable to check to establish whether a previous PND or caution for possession of that drug 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.

- A constable should use their judgment and experience to assess whether the amount of drug appears reasonable for personal use. A PND must not be issued if the constable has reasonable grounds to suspect possession with the intent to supply or the amount is in excess of 20 grams.
- 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 the Standard Operating Procedures for handling drugs. If a person is given a PND and requests to be tried, the cannabis will be treated as evidence in the normal way.

Throwing fireworks – Section 9 of the Explosives Act 1960

- 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.

Criminal damage – Section 354 of the Crimes Act 2011

- The value of criminal damage must not exceed £300.
- The victim should be made aware that the PND disposal removes the possibility of criminal proceedings and therefore obtaining a compensation in their favour.
- Constables should use their best judgement and discretion when assessing values.

Theft – Section 397 of the Crimes Act 2011

- Only one PND should ever be given to an individual for theft. 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.
- The value of goods stolen should not exceed £100. It is expected that in most cases the property will have been recovered and (where applicable, such as in cases of shoplifting) 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.
- A PND will not be appropriate where the theft is in breach of trust such as where a person has stolen from their employer.
- The victim should be made aware that the PND disposal removes the possibility of criminal proceedings and therefore obtaining a compensation in their favour.
- Constables should use their best judgement and discretion when assessing values.

Handling stolen goods - Section 404 of the Crimes Act 2011

- Only one PND should ever be given to an individual for handling stolen goods. 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.
- The value of goods should not exceed £100. It is expected that in most cases the property will have been recovered.

- The victim should be made aware that the PND disposal removes the possibility of criminal proceedings and therefore obtaining a compensation in their favour.
- Constables should use their best judgement and discretion when assessing values.

Offences under the Child and Young Persons (Alcohol, Tobacco and Gaming) Act 2006

- 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 underage drinkers. It may not be suitable in respect of the licence holder.

Improper use of a public telecommunications network – Section 97 of the Crimes Act 2011

- A PND will not be appropriate where the communication constitutes part of a pattern of intimidation or there was intention to cause harm.

Offensive conduct (Section 81 of the Crimes Act 2011), Making a disturbance (Section 82 of the Crimes Act 2011), Harassment, alarm or distress (Section 89 of the Crimes Act 2011) or Common assault (Section 175 of the Crimes Act 2011)

- A PND will not be appropriate in respect of offensive conduct (Section 81 of the Crimes Act 2011), making a disturbance (Section 82 of the Crimes Act 2011), harassment, alarm or distress (Section 89 of the Crimes Act 2011) or common assault (Section 175 of the Crimes Act 2011) where the offence is alleged to have been committed in domestic circumstances.
- Domestic circumstances are where the person and the victim of the offence are personally connected in that (a) they are, or have been, married to each other; (b) they are, or have been, civil partners of each other; (c) they are living together, or have lived together, as if married or in a civil partnership; (d) they are, or have been, otherwise in an intimate personal relationship with each other; or (e) they are members of the same family.
- Only one PND should ever be given to an individual for each of these offences. If a second PND is given in good faith for a particular offence, but it subsequently comes to light that a previous one has been given to a person, the PND will stand.

Associated with other offences

- 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
- 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.
- 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 caution.
- 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 charge may be brought 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.

Person

2.9 A PND must only be given to a suitable person.

2.10 Identity checks must be rigorous. Where possible, documentary evidence as to age, identity and place of residence should be sought. Where doubt as to identity exists a constable should consider exercising powers under section 42 of the Criminal Procedure and Evidence Act 2011. It is advisable to record a full description of the person on the penalty notice to assist with any later identification issues. Fingerprints may be taken with consent in accordance with section 86 of CPEA and paragraph D4 of the Codes of Practice.

2.11 A PND cannot be given to a person below the age of 18. Where doubt exists, rigorous checks must be made to establish age. 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.

2.12 A PND will not be appropriate where the constable is unable to ascertain a satisfactory address for enforcement purposes or where the constable is otherwise of the opinion that enforcement would not be possible or practicable.

2.13 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.

2.14 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 other powers. 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.

2.15 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.

2.16 A PND will not be appropriate where a constable believes the person presents a considerable risk of not paying the penalty.

2.17 A PND may not be appropriate where it is known that the person has previous convictions for similar offences or where it is known that the person has been given a PND in the recent past, or has been given a caution for such offences.

2.18 A PND will not be appropriate if the person is subject to a custodial sentence, or a suspended sentence, a community sentence or a is subject to a parole licence.

2.19 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 caution which can direct a person to suitable substance treatment.

2.20 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.

2.21 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. 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.

2.22 A constable should be mindful that giving a PND removes the possibility of the criminal court awarding a compensation 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.

3. Giving the penalty notice

3.1 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.

3.2 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 SEP has expired except where it is subsequently discovered that the person is under 18.

3.3 At the point of giving the PND the constable should fully explain the PND process and implications and complete the penalty notice.

3.4 It is important to fully explain the implications of receiving a PND. It is not appropriate to suggest to a person that there are no further implications if the penalty is paid.

3.5 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 SEP specified on the penalty notice in order to discharge the person's liability to be convicted of the penalty offence.

3.6 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 for enforcement as a fine.

3.7 If a PND is given for a recordable offence then a person must be told that an entry may be made on the persons record and are urged to explain to a person that a PND may be revealed as part of a vetting check.

4. After a PND has been given

Recording

4.1 All relevant PNDs should be recorded in a timely manner. In order that the integrity of the penalty notice scheme is maintained, all crime recording shall be carried out in accordance with relevant recording standards. Logging of offences will facilitate checks on whether a person has previously been given with a PND. This entry will not constitute a record of criminal conviction, but will enable DNA, fingerprints and a photograph to be logged against the entry. In order that the integrity of the penalty notice scheme is maintained, all crime recording must be carried out in accordance with the RGP's Crime Recording Standard (CRS) and Counting Rules Policy.

Prosecution

4.2 Where the 21 day SEP has elapsed and the person has not paid the penalty notice or requested to be tried 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.

4.3 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.

Sharing information

4.4 Police have common law powers to share information for a "police purpose". This includes preventing the commission of offences and bringing offenders to justice.

4.5 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 certain other contexts such as 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

4.6 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

4.7 All matters concerning payment should be referred to the magistrates' court. In no circumstances should payment be accepted by a constable.

UPPER TIER £100 Penalty

Section 81 of the Crimes Act 2011	Offensive conduct conducive to breaches of the peace
Section 82 of the Crimes Act 2011	Making disturbances
Section 86 of the Crimes Act 2011	Disorderly conduct in a police station
Section 89 of the Crimes Act 2011	Harassment, alarm or distress
Section 97 of the Crimes Act 2011	Improper use of a public telecommunications network
Section 175 of the Crimes Act 2011	Common assault
Section 354 of the Crimes Act 2011	Destroying or damaging property (where the damage to the property is valued at or under £300)
Section 397 of the Crimes Act 2011	Theft (where the property is valued at or under £100)
Section 404 of the Crimes Act 2011	Handling stolen goods (where the property is valued at or under £100)
Section 412 of the Crimes Act 2011	Making off without payment
Section 506(1) or (2) of the Crimes Act 2011	Possession of cannabis / cannabis resin (where the amount is equal to or below 20 grams)
Section 3 Child and Young Persons (Alcohol, Tobacco and Gaming) 2006	Selling alcohol to persons under 18 years
Section 3A Child and Young Persons (Alcohol, Tobacco and Gaming) 2006	Selling alcohol to persons under 18 years who are drunk
Section 6A Child and Young Persons (Alcohol, Tobacco and Gaming) 2006	Breach of the peace in a public place (after consuming alcohol)
Section 7 Child and Young Persons (Alcohol, Tobacco and Gaming) 2006	Buying alcohol for persons under 18 years
Section 7A Child and Young Persons (Alcohol, Tobacco and Gaming) 2006	Buying alcohol for persons under 18 years who are drunk
Section 548 of the Crimes Act 2011	Noise
Section 556(1)(b) of the Crimes Act 2011	Throwing missiles
Section 559 of the Crimes Act 2011	Disorderly or indecent conduct whilst intoxicated
Section 9 Explosives Act 1960	Throwing fireworks in a thoroughfare
Section 97 Public Health Act 1950	Restriction on operation of loudspeakers on highways etc.

LOWER TIER £50 Penalty

Section 558 of the Crimes Act 2011	Intoxication in a public place
Section 563 of the Crimes Act 2011	Procuring alcohol for an intoxicated person



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