

EXPLANATORY MEMORANDUM TO
THE YOUTH JUSTICE BOARD FOR ENGLAND AND WALES (AMENDMENT OF
FUNCTIONS) ORDER 2015

2015 No. 79

1. This explanatory memorandum has been prepared by the Ministry of Justice and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 The purpose of this Order is to give additional functions to the Youth Justice Board for England and Wales ('the Board'). These functions are intended to improve the Board's ability to oversee the youth justice system more efficiently and effectively.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 There are no matters of special interest to the Joint Committee on Statutory Instruments.
4. **Legislative Context**
 - 4.1 The Board was established by section 41 of the Crime and Disorder Act ('CDA') 1998, which also sets out the sole functions of the Board in subsection (5). In addition to these functions, the Board exercises, concurrently with the Secretary of State, some of the Secretary of State's functions in relation to the youth justice system. The Board's concurrent functions are set out in an order made under section 41(6) of the 1998 Act, the Youth Justice Board for England and Wales Order 2000 ('the 2000 Order').
 - 4.2 The Board has been given additional powers in legislation since the 2000 Order through the Youth Justice Board for England and Wales (Amendment) Order 2008, the Policing and Crime Act 2009 and the Legal Aid, Sentencing and Punishment of Offenders Act 2012. Each of these has given the Board more of a role in overseeing the youth justice system and commissioning the youth secure estate.
 - 4.3 This Order extends the Board's functions in line with the Ministry of Justice's Transforming Youth Custody consultation response ("Transforming Youth Custody")¹ and recommendations made by the Triennial Review of the Youth Justice Board². Further details on both can be found in the section on Policy Background.

¹ Transforming Youth Custody – Government response to the consultation
<https://consult.justice.gov.uk/digital-communications/transforming-youth-custody/results/transforming-youth-custody-consultation-response.pdf>

²Triennial Review of the Youth Justice Board for England and Wales – Combined Report on Stages One and Two
<https://consult.justice.gov.uk/digital-communications/yjb-triennial-review-2012/results/triennial-review-yjb-stages1-2.pdf>

5. Territorial Extent and Application

5.1 This Instrument applies to England and Wales.

6. European Convention on Human Rights

6.1 The Parliamentary Under Secretary of State for Justice, Andrew Selous, has made the following statement regarding Human Rights.

“In my view the provisions of the Youth Justice Board for England and Wales (Amendment of Functions) Order 2015 are compatible with the Convention rights.”

7. Policy background

7.1 The Board was established in 2000 by the 1998 Act to provide leadership and coherence to a new youth justice system.

7.2 In 2013 the Board was reviewed by the Government’s Triennial Review Programme. The Review concluded that the Board should remain as a Non Departmental Public Body but recommended that amendments be made, including legislative amendments, so that the Board could more effectively prevent offending and reoffending by children and young persons.

a) To extend the Board’s grant making function (article 2(c))

7.3 Under its existing functions the Board, with the approval of the Secretary of State, can provide grant funding to local authorities and other bodies for the purposes of developing good practice and commissioning research in the area of youth justice. The main grant, the ‘youth justice good practice grant’ is given to all Youth Offending Teams in England and Wales on an annual basis. This Instrument implements the Triennial Review recommendation to widen the Board’s powers in this area as³ the purpose of the existing grant making power is outdated and limited. By increasing the scope of the services for which the grant money can be used, it will better promote the front line delivery of youth justice services locally, rather than simply developing good practice and commissioning research. This will enable the Board to fund new services such as the delivery and running of Junior Attendance Centres by local authorities, rather than the National Offender Management Service (NOMS).

b) To give the Board the function of providing assistance to local authorities and other persons in relation to information technology systems and equipment used or to be used for the youth justice system (article 2(c))

³ Triennial Review of the Youth Justice Board for England and Wales – Combined Report on Stages One and Two <https://consult.justice.gov.uk/digital-communications/yjb-triennial-review-2012/results/triennial-review-yjb-stages1-2.pdf> Summary of Recommendations – paragraph 84

7.4 Youth justice information technology systems are in place to facilitate the flow and management of information through the youth justice system, including permitting information to be shared between frontline agencies working directly with children and young people such as local authorities and the youth secure estate.

7.5 The Board's key oversight role of the youth justice system means that it is highly knowledgeable about the needs of these systems. This function will enable the Board to play a more active role in the development, management and maintenance of the information technology systems than it can under its existing functions. This would include providing advice to local authorities on the management and maintenance of their case management systems and helping local authorities to co-commission from their case management suppliers. Aside from the case management systems, the Ministry of Justice currently holds the contracts for the youth justice systems. This new function will enable the Board to assist suppliers of the systems, for example, in helping to design the systems and to make changes to the systems where necessary.

c) To give the Board concurrent powers with the Secretary of State to temporarily release young people from Secure Training Centres (article 3(3)(a))

7.6 'Transforming Youth Custody' set out plans to improve the resettlement of young people following custody, including making more effective use of temporary release⁴. Where a young person is risk assessed as suitable for temporary release, permission will be given for them to leave the establishment for an agreed period of time to undertake constructive activities without compromising security or public protection. The aim is to provide young people with a phased re-introduction into the community.

7.7 This Instrument will enable the Board to temporarily release trainees from Secure Training Centres (STCs), a form of youth detention accommodation for young people between 12 and 17 years. Oversight of temporary release in STCs is currently provided through a combination of NOMS on behalf of the Secretary of State for Justice, and STC Directors who are responsible for operating STCs. It is the Board, rather than NOMS, that is responsible for commissioning delivery of youth custody services in STCs. The Board is better placed to work with STCs on a temporary release procedure as they already monitor processes in that sector. It will also ensure more consistent use of temporary release than if decisions are taken by individual STC Directors. Under this proposal, STC Directors in conjunction with the YOTs will assist in the processing of temporary release by making assessments for the Board to consider.

d) To give the Board concurrent powers with the Secretary of State to enter into education contracts for directly managed Young Offender Institutions (article 3(3)(b))

⁴ <https://consult.justice.gov.uk/digital-communications/transforming-youth-custody/results/transforming-youth-custody-consultation-response.pdf>

Transforming Youth Custody (Cm8792) paragraph 42

7.8 ‘Transforming Youth Custody’ also set out the Governments’ plans to place education at the heart of detention,⁵ including plans for the Board to take responsibility on behalf of the Ministry of Justice⁶ for managing education delivery in directly managed young offender institutions (YOIs). These are secure establishments catering for 15-17 year old young offenders and which are run by NOMS rather than a private provider. This Order will give effect to these proposals.

7.9 The outcome of a competition for new providers of education in YOIs was announced in December 2014, and the new service is due to commence in March 2015. The overall aim is to increase the number of hours of education those detained in YOIs receive and to equip them with the skills and qualifications they need to fulfil their potential on release. The Board currently leads the commissioning of custodial provision from NOMS and has considerable expertise in designing services for young people in the youth justice system. Providing the Board with new responsibilities for education in YOIs will ensure closer working between the Board, NOMS and education providers, will improve accountability and provide an improved service for young people.

- ***Consolidation***

7.10 The Ministry of Justice recognises that the list of functions in section 41(5) of the CDA 1998 and the 2000 Order have been subject to a number of amendments. There are no current plans to consolidate either but the Ministry remains mindful of the need to keep this matter under review.

8. Consultation outcome

8.1 A call for evidence was issued as part of the Triennial Review of the Board in January 2013. Thirty responses were received from a range of groups including the judiciary and the police, custody providers, local authorities and the voluntary sector. These responses alongside supplementary research contributed to the Stage One report⁷ which was published as an interim report in July 2013, which included 14 recommendations to improve the Board’s ability to deliver its functions effectively. Those respondents that commented on the YJB’s grant making function were supportive of improvements to be made in ensuring value for money in how the grant was used.

8.2 The proposal to give the Board concurrent powers with the Secretary of State to enter into education contracts for directly managed YOIs was raised in the ‘Transforming Youth Custody’⁸ consultation. The proposal to give the Board concurrent powers to temporarily

⁵ <https://consult.justice.gov.uk/digital-communications/transforming-youth-custody/results/transforming-youth-custody-consultation-response.pdf>

⁶ Ibid page 9

⁷ <http://www.parliament.uk/documents/commons-vote-office/November-2013/21%20November/8-Justice-YouthJusticeBoard.pdf>

⁸ <https://consult.justice.gov.uk/digital-communications/transforming-youth-custody/results/transforming-youth-custody-consultation-response.pdf>

release young people from STCs is part of the Government's aim to make more effective use of temporary release.

9. Guidance

- 9.1 The Board will issue specific communications about the provisions in this Instrument through the Boards communications network to all youth offending teams, secure establishments and stakeholders with an interest in youth justice. The Board will also develop guidance for use by STCs on temporary release, including the preparation of the temporary release applications.
- 9.2 In addition the Board will ensure that the terms and conditions of the grants issued to local authorities will clearly advise on its purpose and how it will be monitored each year.

10. Impact

- 10.1 There is no foreseen impact on business, charities or voluntary bodies.
- 10.2 The impact on the public sector is a change in the organisation delivering functions but the functions themselves remain the same. As far as financial implications are concerned, the Board's work on the directly managed YOI education contracts is being managed within existing resources. The Board will manage any other costs associated with the new policies from within their existing budget.
- 10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

- 11.1 The legislation does not apply to small business.

12. Monitoring & review

- 12.1 a) The Board will monitor the impact of the change in the purpose of the grants given to local authorities and other persons on an annual basis. In addition, Ministry of Justice (MoJ) Internal Audit conducts an annual audit of the Board's governance to evaluate the overall adequacy and effectiveness of the Board's framework of governance, risk management and control.
- 12.2 b) and c) The MoJ and the Board shall review the outcome after 12 months.
- 12.3 d) In terms of education in directly managed YOIs the standard of education provision is subject to inspection by the Office for Standards in Education, Children's Services and Skills (Ofsted) and HM Inspectorate of Prisons and the reports published.

13. Contact

13.1 Jackie Hartley at the MoJ Tel: 020 334 4237 [email: jackie.hartley@justice.gsi.gov.uk] can answer any queries regarding the instrument.