

EXPLANATORY MEMORANDUM TO

THE RECOVERY OF COSTS (REMAND TO YOUTH DETENTION ACCOMMODATION) (AMENDMENT NO. 2) REGULATIONS 2017

2017 No. 1147

1. Introduction

- 1.1 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 This statutory instrument will have the effect of making the Secretary of State for Justice accountable for the collection from Local Authorities of remand costs incurred as a result of a child being subject to a remand in a Secure Children's Home (SCH), Secure Training Centre (STC) or Young Offender Institution (YOI), and remove this function from the Youth Justice Board for England and Wales (YJB). This statutory instrument provides for a period of 12 months during which this function can be performed by both the Secretary of State of Justice and the YJB. This transition period will allow time for the effective transfer of the required administrative arrangements from the YJB to the Secretary of State.
- 2.2 The YJB will continue to deliver this function until administrative systems and processes are in place for the Youth Custody Service (YCS) to carry it out. The 12 month period of concurrency allows time for those systems and processes to be put in place prior to YCS taking sole accountability for delivering this function.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

- 3.1 None.

Other matters of interest to the House of Commons

- 3.2 As this instrument is subject to negative resolution procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

4. Legislative Context

- 4.1 The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 permits the Secretary of State, by regulations, to make provisions about the recovery of the costs of a child or young person being remanded to youth detention accommodation and associated transport costs from a local authority that has been designated by the court. Cost recovery may be undertaken by the Secretary of State, a provider of youth detention accommodation or the YJB. Currently arrangements are in place for the recovery to be undertaken by the YJB.

5. Extent and Territorial Application

- 5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England and Wales. It is made under section 103 of the LASPO Act 2012 which, under section 152 of that Act, extends to England and Wales and there is nothing in this instrument to further limit its application.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

What is being done and why?

7.1 As set out in the Government Response to the Charlie Taylor Review, ministers were clear that there needed to be much greater clarity and accountability in the youth justice system with high standards of performance. They committed to working with the YJB to review the governance of the system. They also committed to clarifying commissioning functions and creating a director of youth custodial operations to strengthen accountability for youth custody and improve standards and to better address the needs of a smaller but more challenging cohort in custody.

7.2 In February 2017 the Secretary of State for Justice announced that:

- A new Youth Custody Service would be created as a distinct arm of HM Prison and Probation Service with a new Director post with operational responsibility for day-to-day running of the youth estate; and
- responsibility and accountability for commissioning youth custody services would be brought into the Ministry of Justice with the department being responsible for intervening decisively in the event of poor performance.

7.3 This statutory instrument seeks to align the responsibility for delivering the remand cost recovery function with this policy approach by transferring it from the YJB to the Secretary of State.

7.4 There are no financial implications arising from this SI as the recovery of remand costs is an existing function that will be exercised by HMPPS instead of YJB in the future.

7.5 Not laying this SI would result in an incoherent approach to the delivery of youth secure custodial estate operational functions whereby YJB retains one function which doesn't align with YJB's core role of advising ministers on the operation of the youth justice system.

Consolidation

7.6 None.

8. Consultation outcome

8.1 The policy team worked with relevant staff within YJB, including the Director of Finance on the transfer of this function and this SI reflects the agreed position.

8.2 A formal consultation exercise with the trade unions was conducted on the overall transfer of functions in 2017, with assurances accepted that staff terms and conditions

will be protected. 3 staff are likely to transfer with this function when it moves to the Youth Custody Service.

9. Guidance

9.1 None.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no wider impact on the public sector.

10.3 An Impact Assessment has therefore not been prepared

11. Regulating small business

11.1 The legislation does not apply to activities that are undertaken by small businesses.

12. Monitoring & review

12.1 The transfer of responsibility for delivering the remand cost recovery function is intended to be a permanent arrangement and therefore there is no plan to review this SI at a later date.

13. Contact

13.1 Laura Beaumont/Abigail Plenty at the Ministry of Justice (telephone: 0203 334 3555 or email: Beaumont-plenty@justice.gov.uk) can answer any queries regarding the instrument.