EXPLANATORY MEMORANDUM TO

THE CHILDREN (SECURE ACCOMMODATION) (AMENDMENT) (ENGLAND) REGULATIONS 2015

2015 No. 1883

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Education and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument provides for the consequential amendment of regulation 6 of the Children (Secure Accommodation) Regulations 1991 ("the 1991 Regulations") in relation to children looked after by a local authority who are aged 12 or over but under the age of 17, and who are detained under section 38(6) of the Police and Criminal Evidence Act 1984 ("PACE"). It will apply modified criteria under section 25(1) of the Children Act 1989 ("the 1989 Act") which must be met if such detained 17 year olds are to be accommodated by local authorities in secure accommodation between charge and appearing before a court.

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 the negative 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 Section 25(1) of the 1989 Act enables local authorities to place a child who is being looked after by a local authority in secure accommodation, only if certain criteria are met, namely:

(a) that –

(i) he has a history of absconding and is likely to abscond from any other description of accommodation; and

(ii) if he absconds, he is likely to suffer significant harm; or

(b) that if he is kept in any other description of accommodation he is likely to injure himself or other persons.

4.2 The 1991 Regulations make provision regarding the use of secure accommodation in relation to certain categories of children. In particular, Regulation 6 the 1991 Regulations contains modifications to the criteria in section 25(1) of the 1989 Act in relation to children looked after by a local authority who are aged 12 or over but under the age of 17, and who are detained under section 38(6) of PACE.

4.3 Section 38(6) of PACE applies to arrested juveniles who have been charged with an offence. It imposes an obligation on a custody officer who has authorised an arrested juvenile to be detained, rather than be released with or without bail, to move that arrested juvenile to local authority accommodation unless the custody officer certifies that:

(a) it is impracticable to do so; or

(b) in the case of an arrested juvenile who has attained the age of 12, no secure accommodation is available, and that keeping him in other local authority accommodation would not be adequate to protect the public from serious harm from him.

If the custody officer certifies that either (a) or (b) above applies, then the arrested juvenile may be kept in a police station.

4.4 The effect of the modified section 25(1) criteria is that such children who are detained under section 38(6) of PACE and who are moved to local authority accommodation may only be placed in secure accommodation if there is a likelihood of them absconding, or they are likely to injure themselves or others if kept in any other accommodation. There is no longer a requirement to show a history of absconding and a consequent likelihood of suffering significant harm.

4.5 The definition of an "arrested juvenile" in section 37(15) of the Police and Criminal Evidence Act 1984 ("PACE") was amended through section 42 of the Criminal Justice an Courts Act 2015, to mean a person arrested with or without warrant who appears to be under the age of 18, rather than under the age of 17.

5. Extent and Territorial Application

5.1 This instrument extends to England and Wales.

5.2 This instrument applies to England only.

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 In the case of R (on the application of HC) v Secretary of State for the Home Department [2014] 1 W.L.R. 1234, the Divisional Court held that 17 year olds in custody must be permitted to be accompanied by a parent or an appropriate adult (previously this requirement had only applied to young people between the ages of 12 and 16). The government accepted the court's findings and an amended version of PACE Code C was issued in which the appropriate adult safeguards were extended. In response to the case, the government also made a commitment to review more generally primary legislation relating to the treatment of 17 year olds as adults in the criminal justice system. The review also covered the consequential changes that would need to be made to other legislation, including the 1991 Regulations, should 17 year-olds be regarded as juveniles. As a result of that review section 42 of the Criminal Justice and Courts Act 2015 includes within the definition of "arrested

juvenile" in Part 4 of PACE, 17 year-olds in the context of police detention following charge.

7.2 Following this, an amendment has been made to the definition of "arrested juvenile" in section 37(15) of PACE, through the Criminal Justice and Courts Act 2015, to mean a person arrested with or without a warrant who appears to be under the age of 18.

7.3 As the (section 38(6) of PACE) obligation on a custody officer to move arrested juveniles to local authority accommodation has now been extended to children under 18 years of age, there is a need to align the provisions of Regulation 6 of the 1991 Regulations accordingly.

7.4 The age references in the existing regulation 6 of the 1991 Regulations were originally inserted by the Children (Secure Accommodation) (Amendment) (England) Regulations 2012. This was part of a broader restructuring of the remand framework for young people, introduced by the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

Consolidation

7.5 The Department does not intend to consolidate relevant legislation.

8. Consultation outcome

8.1 No formal consultation.

9. Guidance

9.1 We do not plan to introduce guidance for practitioners on the amendments to the 1991 Regulations introduced by this instrument.

10. Impact

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

10.2 The impact on the public sector is limited to local authority services.

10.3 That impact is covered in the impact assessment completed by the Home Office and is available on request.

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 Home Office is looking at monitoring police referrals and transfers to local authorities for all juveniles under section 38(6) to ensure compliance with the law.

13. Contact

13.1 Louise Bridson at the Department for Education, Tel: 02077838394 or email: Louise.Bridson@education.gsi.gov.uk. She can answer any queries regarding the instrument.