EXPLANATORY MEMORANDUM TO

THE CRIME & DISORDER ACT 1998
(YOUTH CONDITIONAL CAUTIONS: CODE OF PRACTICE) ORDER 2013

2013 No. 613

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 Crime and Disorder Act 1998 (Youth Conditional Cautions: Code of Practice) Order 2013 ("the Order"), if approved by Parliament, would bring into force a revised code of practice in relation to youth conditional cautions. This code of practice provides guidance to the Crown Prosecution Service and the police (and to other "relevant prosecutors" and "authorised persons") on the use of Youth Conditional Cautions, under Part IV of the Crime & Disorder Act 1998 (as amended by the Criminal Justice and Immigration Act 2008 and the Legal Aid, Sentencing and Punishment of Offenders Act 2012). The Code can be downloaded from the Official Documents website. The Order revokes the Order which brought into force the first code of practice, namely the Crime and Disorder Act 1998 (Youth Conditional Cautions: Code of Practice) Order 2010.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 Part IV (sections 66A to 66H) of the Crime & Disorder Act 1998 ("the 1998 Act"), inserted by section 48 of, and paragraph 3 of Schedule 9 to, the Criminal Justice and Immigration Act 2008 and amended by sections 136-138 of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ("the 2012 Act"), makes provision for Youth Conditional Cautions (cautions to which specified conditions are attached) as a means of dealing with offenders aged 10-17 in certain circumstances as an alternative to prosecution.

4.2 The 1998 Act obliges the Secretary of State to prepare a code of practice in relation to Youth Conditional Cautions. The Secretary of State may revise the code of practice from time to time. The first code of practice was brought into force in 2010. If the Secretary of State intends to revise the code of practice, he must first publish a draft and consider representations made to him about the draft. He may then amend the draft accordingly and obtain the consent of the Attorney General to the publication and amendment of the draft. He is then obliged to lay the code of practice before each House of Parliament. The code may be brought into force by order.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

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

7.1 Conditional cautioning for adults is a statutory out-of-court disposal introduced by the Criminal Justice Act 2003 as amended by the Police and Justice Act 2006 and the Legal Aid, Sentencing and Punishment of Offenders Act 2012. The Criminal Justice and Immigration Act 2008 extended the use of conditional cautions to 10-17 year olds by inserting provisions into the Crime and Disorder Act 1998 to create the Youth Conditional Caution.

7.2 The decision to use a Youth Conditional Caution has the effect of preventing any criminal prosecution for the offence for which the caution is to be given while the young person is given an opportunity to comply with the agreed conditions. The caution lasts for three months. Where the conditions are complied with, a prosecution is not commenced. However, where there is no reasonable excuse for non-compliance, the caution can be cancelled and criminal proceedings commenced for the original offence. The recipient must agree to accept the caution and the attached conditions. The YCC is intended as a proportionate response to relatively low-level offending that allows conditions to be added that serve the function of rehabilitation, reparation or punishment.

7.3 The Legal Aid, Sentencing and Punishment of Offenders Act 2012 amends the Youth Conditional Caution scheme in three ways. Firstly it removes the requirement that a relevant prosecutor authorises every Youth Conditional Caution, secondly it removes the proscription that a Youth Conditional Caution cannot be given if a young offender has ever previously been convicted of an offence and finally it puts the referral to the Youth Offending Team on a statutory footing to allow for a Parenting Order to be applied for in appropriate circumstances.

7.4 The Code has also been revised to take into account these changes and to clarify certain elements of the previous Code of Practice.

8. Consultation outcome

8.1 The draft Code, with the agreement of the Attorney-General, was issued for consultation on 4th October 2012. A total of 37 responses were received from Police Forces, Prosecutors, Youth Offending Teams, Magistrates, the third sector and professional associations. The majority of respondents agreed that the Code was satisfactory and several amendments to the Code were suggested. Several detailed amendments to the draft Code have been made as a result of the consultation. The Government's full response to the consultation can be found on the Ministry of Justice website at:
https://consult.justice.gov.uk/digital-communications/code-youth-conditional-cautions

9. Guidance

9.1 The Code of Practice governs the operation of the Youth Conditional Caution. Further detailed guidance for the police and Crown Prosecution Service will be set out

in the Director of Public Prosecution's guidance which will be published at the same time that the Code of Practice comes into force.

10. Impact

10.1 The impact on business, charities or voluntary bodies will be negligible.

10.2 The impact on the public sector will be limited as in most cases the work carried out for a Youth Conditional Caution will replace work that would have been carried out under a court order.

10.3 An Impact Assessment has not been prepared for this instrument as we do not anticipate any impact on the private or voluntary sectors. Any impact on the public sector will be limited as at 10.2 above. An Impact Assessment was prepared for the consultation on the Government's Green Paper: 'Breaking the Cycle: effective punishment, rehabilitation and sentencing of offenders' (published on 7th December 2010) which consulted on these proposals and the Legal Aid, Sentencing and Punishment of Offenders Act 2012.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The changes in the Code of Practice aim to make guidance on Youth Conditional Cautions clearer. There will not be a formal review of the Code, however this will be monitored internally.

13. Contact

Philippa Goffe at the Ministry of Justice Tel: 0203 334 6657 or email: philippa.goffe@justice.gsi.gov.uk can answer any queries regarding the instrument.