EXPLANATORY MEMORANDUM TO

THE CRIME AND DISORDER ACT 1998
(YOUTH CONDITIONAL CAUTIONS: FINANCIAL PENALTIES) ORDER 2009

2009 No. 2781

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: Financial Penalties) Order 2009 ("the Order") allows financial penalties to be attached to a Youth Conditional Caution ("YCC"). The Order prescribes the offences or description of offences for which a financial penalty can be attached to a YCC. It also prescribes the maximum financial penalty in respect of each of the prescribed offences or each description of offence.

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 and Disorder Act 1998 ("the 1998 Act"), inserted by section 48 of, and Schedule 9 to, the Criminal Justice and Immigration Act 2008, makes provision for YCCs (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. One of the conditions which may be attached to a YCC is a financial penalty.

4.2 Under section 66C(1) of the 1998 Act a condition that an offender pay a financial penalty may only be attached to a YCC if the offence is prescribed, or of a description prescribed, in an order made by the Secretary of State. Section 66C(2) of that Act provides that such an Order must prescribe the maximum level of penalty for each prescribed offence or group of offences. Under subsection (3) the amount must not exceed £100.

4.3 This is the first use of the power.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

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

7. Policy background

- ***What is being done and why***

7.1 Conditional cautioning for adults is a statutory out-of-court disposal introduced by the Criminal Justice Act 2003 and subsequently amended by the Police and Justice Act 2006. The Criminal Justice and Immigration Act 2008 extended the use of conditional cautions to 10-17 year olds by inserting sections 66A to 66H into the 1998 Act to create the YCC.

7.2 The YCC is designed to provide an additional option at the pre-court stage in order to allow more young people to be dealt with out of the formal court system. It may be given to a young person if the offender has not previously been convicted of an offence and five other requirements, listed in section 66B of the 1998 Act, are met. Subject to Parliamentary approval, YCCs will be given in accordance with the "*Code of Practice for Youth Conditional Cautions for 16 and 17 year olds*" (the "Code of Practice") laid with the draft Crime and Disorder Act 1998 (Youth Conditional Cautions: Code of Practice) Order 2009. In addition, the Director of Public Prosecutions will issue guidance in respect of YCCs to police officers and the Crown Prosecution Service under section 37A of the Police and Criminal Evidence Act 1984.

7.3 Typically, a YCC may be given where the offender has either committed an offence which is too serious to be dealt with by way of a Reprimand or Warning or where the offender has already received a Warning. However, the offence must not be sufficiently serious so as to require a referral to court. The YCC cannot be used where the young offender has previously been convicted of an offence or where there is no admission of guilt.

7.4 The list of offences for which a YCC can be administered will be annexed to the Director of Public Prosecution's guidance on the YCC. The list of offences for which a YCC can be given will be exactly the same as currently available for the adult conditional caution. The list includes a number of "either way" offences ie which if prosecuted for an adult could be tried either in the magistrates court or in the Crown Court (including theft and criminal damage) and most summary only offences (with the exception of road traffic offences).

7.5 One of the conditions which can be attached to a YCC is a requirement that the offender pay a financial penalty. This punitive condition will be available as a condition of the YCC if rehabilitative or reparative conditions are not appropriate or proportionate. For instance if no rehabilitative interventions are deemed necessary and the victim does not want any reparation. Financial penalty conditions will be appropriate if it is likely a prosecution would have resulted in a fine. It will therefore be available for most but not all offences for which a YCC could be given – a financial penalty will not be available for loitering and soliciting or possession of any class of drug.

7.6 During the passage of the Criminal Justice and Immigration Bill, the Government made it clear in the House of Lords that the YCC would be introduced in stages. To fulfil this commitment, pilots for 16 and 17 year olds to test the operation of the YCC by the police and the Crown Prosecution Service will start if the Code of Practice is approved (although the YCC is available to a range of prosecutors, the initial pilot will be limited to the Crown Prosecution Service). A proposed review of the pilots will inform decisions on any nationwide roll-out of YCCs for 16-17 year olds and, subsequently, for 10-15 year olds.

- ***Consolidation***

7.7 Not applicable.

8. Consultation outcome

8.1 As indicated above, under section 66G of the 1998 Act, the Secretary of State must issue a Code of Practice in relation to YCCs. The YCC, including the use of the financial penalty condition, is governed by the Code of Practice. The draft Code of Practice, with the agreement of the Attorney-General, was issued for consultation on 2 March 2009 and comments were invited by Monday 25 May 2009. The consultation was conducted in line with the Cabinet Office Code of Practice on written consultation. A total of 29 responses were received and were considered. The responses have been published on the Ministry of Justice's and Department of Children, Schools and Families websites:
(www.dfes.gov.uk/consultations/downloadableDocs/YCC%20Consultation%20Response.doc)

8.2 No specific comments regarding financial penalties were received during this consultation. A consultation specific to the financial penalty condition was not conducted as it was felt to be adequately covered by the consultation on the Code and the condition was consistent with the adult financial penalty order in terms of offences. The penalty levels are also set to be consistent with, but lower than, for the adult conditional caution as provided for by the Criminal Justice Act 2003 (Conditional Cautions: Financial Penalties) Order 2009 (currently before Parliament) in line with current practice for fines received by young people in court.

9. Guidance

9.1 The legislation cited above and the Code of Practice referred to in paragraph 7.2 governs the operation of the YCC. Further detailed guidance relating to the police and Crown Prosecution Service will be set out in the Director's guidance, also referred to in paragraph 7.2 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 YCC 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.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Government intends to carry out an implementation review at the end of the pilots for 16/17 year olds which will inform future decisions on the YCC.

13. Contact

13.1 Toby Hamilton at the Joint Youth Justice Unit (a joint unit of the Ministry of Justice and the Department for Children, Schools and Families Tel: 0207 340 7640 or Email: toby.hamilton@dcsf.gsi.gov.uk) can answer any queries regarding the instrument.