EXPLANATORY MEMORANDUM TO

THE CRIME & DISORDER ACT 1998
(YOUTH CONDITIONAL CAUTIONS: CODE OF PRACTICE) ORDER 2009

2009 No.

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 draft Crime and Disorder Act 1998 (Youth Conditional Cautions: Code of Practice) Order 2009 ("the draft Order"), if approved by Parliament, would provide guidance to the Crown Prosecution Service and the police (and to other "relevant prosecutors" and "authorised persons") on the use of Youth Conditional Cautions, in respect of those aged 16 and 17 years old, under Part IV of the Crime & Disorder Act 1998 (as amended by the Criminal Justice & Immigration Act 2008). The Code can be downloaded from the Official Documents website (at http://www.official-documents.gov.uk/menu/other2009.htm).

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 Schedule 9 to, the Criminal Justice and Immigration Act 2008, 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. If he intends to do so, the Secretary of State must publish a draft of the code of practice, consider representations made to him about the draft, 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.

4.3 This is the first use of the enabling power.

5. Territorial Extent and Application

5.1 This instrument applies to England and Wales.

6. European Convention on Human Rights

The Minister of State, Maria Eagle, has made the following statement regarding Human Rights:

"In my view the provisions of The Crime & Disorder Act 1998 (Youth Conditional Cautions: Code of Practice) Order 2009 are compatible with the Convention rights."

7. Policy background

7.1 Conditional cautioning for adults was a statutory out-of-court disposal introduced by the Criminal Justice Act 2003 as 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 provisions in the Crime and Disorder Act 1998 to create the Youth Conditional Caution.

7.2 The Youth Conditional Caution 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 will be used 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 used up the options available under the Reprimand and Warning scheme. In either case, the offence must not be sufficiently serious so as to require a referral to court. The Youth Conditional Caution cannot be used where the young offender has previously been convicted of an offence or where there is no admission of guilt.

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

8. Consultation outcome

8.1 The draft Code, 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 A total of thirty two responses to the consultation paper were received. Nine respondents indicated that they were satisfied with the draft Code of Practice, five were not satisfied and five were unsure. Detailed amendments to the draft Code have been made as a result of the consultation. These included replacing the term "youth" with "young person", clarifying the possibility of private prosecutions in light of Jones v Whalley, providing a paragraph on welfare responsibly of practitioners and a stipulation added that the prosecutor should be a youth specialist where possible. Further detailed

clarifications where ambiguity was noted and to harmonise with the adult code of practice were also made.

9. Guidance

9.1 The Code of Practice governs the operation of the Youth Conditional Caution. Further detailed guidance relating to the Crown Prosecution Service will be set out in the Director'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.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 We intend to carry out an implementation review at the end of the pilots for 16/17 year olds which will inform future decisions on the Youth Conditional Caution.

13. Contact

Kevin Walsh 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 7787 or email: Kevin.walsh@dcsf.gsi.gov.uk can answer any queries regarding the instrument.