EXPLANATORY MEMORANDUM TO

THE NETHERTON PARK INSTRUMENT OF MANAGEMENT (VARIATION) ORDER 2019

2019 No. 1065

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 The purpose of this Statutory Instrument is to make amendments to the Netherton Park Instrument of Management Order 1973 (the 'IoM'). The amendments reflect operational changes in the management and administration of Netherton Park.

2.2 The Netherton Park site, at the time the IoM came into effect in 1973, covered a number of different units providing residential care for children who are looked after within the meaning of what is now section 22 of the Children Act 1989. The site is provided by a voluntary organisation (the Netherton Park Trust), but managed by the local authority (Northumberland County Council). The local authority has since closed all of the units at Netherton Park, other than Kyloe House Secure Children's Home.

2.3 The amendments to the IoM seek to reduce the administrative burden on the local authority and the Trust, reflecting the fact that the site is now significantly smaller and the view from the local authority and the Trust that the administration of the site should reflect this. This will generate minor cost savings for both parties.

2.4 Under the IoM, twelve managers are appointed to supervise Netherton Park. Four are Foundation Managers appointed by the Netherton Park Trust and eight are local authority managers appointed by Northumberland County Council. The local authority and the Netherton Park Trust wish to reduce the overall number of managers from twelve to six – with four being from the local authority and two from the Trust.

2.5 Further, in July 2017, a lease between the Trustees (as landlord) and Northumberland County Council (as tenant) was agreed at a peppercorn rent. This permits the local authority to operate on the Netherton Park site, on which the Kyloe House Secure Children's Home is situated, which is approved by the Secretary of State. The lease includes the rights of the Landlord to enter and inspect the property.

2.6 The Trustees believe that the elements of the IoM that are relevant to the management and reporting of the local authority concerning Kyloe House Secure Children's Home have now been superseded both by the lease, and by the management of the home through the local authority's Safeguarding and Corporate Parenting Group, who are responsible for operating Kyloe House. The Trust state that they have full confidence in the local authority running the home and no longer need the level of oversight required under the IoM, given, amongst other things, arrangements agreed under the lease.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England only.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Netherton Park voluntary home (the collective term for the Netherton Park site at the time the IoM came into effect) was designated a controlled community home under the Children and Young Person's Act 1969 ("the 1969 Act"), as confirmed in the original IoM made by the Secretary of State in 1973 under the 1969 Act powers.

6.2 Section 53(4) of the Children Act 1989 provides that a "controlled community home" is a community home provided by a voluntary organisation but managed by a local authority. This is a legacy from the 1969 Act. Schedule 4 to the Children Act 1989 supplements section 53 and sets out further provisions relating to the management and conduct of community homes including controlled community homes in Parts I and II of Schedule 4.

6.3 By virtue of section 17(3) of the Interpretation Act 1978, the IoM is to be treated as if it had been made under Schedule 4 of the Children Act 1989 and is therefore to be varied according to that Schedule.

7. Policy background

What is being done and why?

7.1 The request to vary the existing IoM is being driven by the local authority and the Trust, to reduce the administrative burden in managing the Netherton Park site, which has reduced in size since the IoM came into effect. The amendments to this IoM do not have national implications, and simply seek to generate minor cost and administrative savings for both parties, and reflect changes in management and oversight of the site. The Netherton Park Trust has full confidence in the local authority running the home appropriately and, in practice, does not have a role in determining how the home is run.

7.2 Kyloe House Secure Children's Home is approved by the Secretary of State to operate as a secure children's home, and is registered with Ofsted and is inspected by Ofsted

against the Children's Homes (England) Regulations 2015. The variations to the IoM have no effect on these arrangements but will lead to more cost-effective management and administration of Kyloe House Secure Children's Home by Northumberland County Council and the Netherton Park Trust. The proposed changes to the management of the home will not have a negative impact on any of the children who are placed in Kyloe House Secure Children's Home.

7.3 The opportunity is also being taken to update various references to legislation which have now been superseded.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act.

9. Consolidation

9.1 Not applicable.

10. Consultation outcome

10.1 The request for variation came from the Netherton Park Trust as supported by Northumberland County Council and we have consulted with both as regards the actual variations made by this instrument. Both parties have confirmed that they are content with the variations.

11. Guidance

11.1 No guidance is being produced by the Department for Education as it is unnecessary for this instrument given its limited application.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because the SI has very limited application. It makes amendments to the Netherton Park Instrument of Management Order 1973 to reflect operational changes in the management and administration of Netherton Park. The amendments are designed to reduce the administrative burden on the local authority and the Trust, and generate minor cost savings for both parties. No wider impact arises from the SI.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses. An Impact Assessment is not required for this instrument as it is not a regulatory activity for the purpose of the Small Business, Enterprise and Employment Act 2015.The Netherton Park Trust, in carrying out its functions, is a voluntary body acting on behalf of a public authority

14. Monitoring & review

14.1 A statutory review clause is not required as the regulation is subject to a statutory exemption contained in the Small Business, Enterprise and Employment Act 2015.

The Netherton Park Trust, in carrying out its functions, is a voluntary body acting on behalf of a public authority.

15. Contact

15.1 Jim Brown at the Department for Education Telephone: 0207 783 8086 or email: jim.brown@education.gov.uk can be contacted with any queries regarding the instrument.

15.2 Christina Bankes, Deputy Director for Children in Care and Permanence at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.

15.3 Nadhim Zahawi, Parliamentary Under Secretary of State for Children and Families at the Department for Education can confirm that this Explanatory Memorandum meets the required standard.