EXPLANATORY MEMORANDUM TO

THE RECOVERY OF COSTS (REMAND TO YOUTH DETENTION ACCOMMODATION) (AMENDMENT) REGULATIONS 2017

2017 No. 230

1. Introduction

1.1 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 Recovery of Costs (Remand to Youth Detention Accommodation) Regulations 2013 (S.I. 2013/507) ("the 2013 Regulations") make provision for and in connection with payment by local authorities to the Youth Justice Board for England and Wales of the cost of a child being subject to a remand in a Secure Children's Home (SCH), Secure Training Centre (STC) or Young Offender Institution (YOI).

2.2 This instrument amends the 2013 Regulations to adjust the amount the local authority designated by the court is liable to pay to the Youth Justice Board for England and Wales where a child or young person is detained on remand in a SCH, STC or YOI.

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 The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 permits the Secretary of State, by regulations, to make provisions about the recovery of the costs of a child or young person being remanded to youth detention accommodation and associated transport costs from a local authority that has been designated by the court. Cost recovery may be undertaken by the Secretary of State, a provider of youth detention accommodation or the Youth Justice Board for England and Wales.

5. Extent and Territorial Application

5.1 The extent of this instrument is England and Wales.

5.2 The territorial application of this instrument is England and Wales. It is made under section 103 of the LASPO Act 2012 which, under section 152 of that Act, extends to England and Wales and there is nothing in this instrument to further limit its application.

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 A 32 per cent decline in the youth custody population occurred between 2008/9 and 2011/12. A similar decline did not, however, occur in the level of children and young people being remanded securely. Furthermore 60 per cent of children remanded securely in 2011/12 were acquitted or did not go on to receive a custodial sentence. As a result of this disparity, it was determined that a better approach to secure remand for children and young people was needed.

7.2 From 1 April 2013 local authorities were given greater financial responsibility for the secure remand of children and young people. Section 103(2) of the LASPO Act allows the Secretary of State to make provision for recovery of the costs from local authorities for all 12 to 17 year olds remanded to youth detention accommodation. The Recovery of Costs (Remand to Youth Detention Accommodation) Regulations 2013 came into force on 1 April 2013 and makes provision for such cost recovery. Youth detention accommodation comprises SCHs, STCs and YOIs.

7.3 To coincide with the beginning of the new financial year on 1 April 2017 we are updating the applicable amount to reflect changes in the cost to remand young people at each youth custodial site and shifts in the remand population between these sites. This update will be achieved through the *Recovery of Costs (Remand to Youth Detention Accommodation) (Amendment) Regulations 2016.* As this is a negative procedure statutory instrument, a debate will not be required.

7.4 The applicable amount per place per night for a SCH is £579 as at 1 April 2017. This is an increase of £5 per place per night from £574 as at 1 April 2016. The increase is driven by slight increases in the cost per place across all SCHs except three which have remained unchanged since April 2016.

7.5 The applicable amount per bed per night for a STC is £536 as at 1 April 2017. This is an increase of £64 per place per night from £472 as at 5 May 2016. The figure as at 5 May 2016 reflected the re-tendering of the one of the STC contracts which caused a large decrease in the price per bed per night. However, this STC has since seen a large cost increase to just slightly below the figure as at April 2016 (prior to the re-tendering of the contract). There have also been increases in the unit cost at the other two STCs.

7.6 The applicable amount for an under-18 YOI is £191 as at 1 April 2017. This is an increase of £14 per place per night from £177 as at 1 April 2016. There were increases in unit costs in all the under-18 YOIs except one which decreased and one which remained the same.

Consolidation

7.7 No consolidation of the relevant legislation is planned.

8. Consultation outcome

8.1 The Ministry of Justice and the Youth Justice Board for England and Wales consulted publicly on proposals to alter level of costs recovered from local authorities from April 2013 onwards. An eight week consultation was undertaken through the paper *The new remand framework for children: allocation of new burdens funding to local authorities.* The consultation closed on 16 November 2012. 107 responses were received from a range of stakeholders including youth offending teams and local authorities. The Ministry of Justice and Youth Justice Board's response to the consultation was published on 25 February 2013. Both the consultation paper and the response are available via the following link : https://consult.justice.gov.uk/digital-communications/remand-funding

8.2 The vast majority of respondents to the consultation paper felt that using per bed per night applicable amounts was a fair and reasonable way to recover costs and would help with financial planning. Respondents asked for transparency in the calculation of costs and a clear indication of the circumstances in which costs can and will be recovered. As with previous statutory instruments 2013/2243, 2014/56, 22014/981, 2014/2931, 2015/256, 2016/330 this instrument implements the same methodology outlined in the consultation paper in relation to determining the applicable amounts for STCs, SCHs and YOIs. As the same methodology is being used to update the relevant figures, the consultation process remains relevant.

9. Guidance

9.1 The statutory instrument makes no changes to existing financial arrangements and transactions. Existing guidance is available on the GOV.UK website

10. Impact

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

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

10.4 Local authorities will continue to pay for remands to youth detention accommodation according to demand for places in SCHs, STCs, and YOIs.

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 arrangements for the recovery of costs will continue to be reviewed on a regular basis and legislation amended accordingly.

13. Contact

13.1 Rose Lamb at the Ministry of Justice, Telephone: 07580 910 618 or email: rose.lamb@justice.gsi.gov.uk can answer any queries regarding the instrument.