EXPLANATORY MEMORANDUM TO

THE RECOVERY OF COSTS (REMAND TO YOUTH DETENTION ACCOMMODATION) (ENGLAND AND WALES) REGULATIONS 2012

2012 No. 2822

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 This instrument makes provision about the recovery of costs from local authorities in respect of children who are remanded to youth detention accommodation.

The instrument sets out the amounts that the local authority for the child (as designated by the court) is liable to pay to either:

- the provider of a secure children's home to which the child has been remanded; or
- the Youth Justice Board for England and Wales, where the child is remanded to a secure training centre.

The instrument also makes provision for the payment of such amounts and the enforcement or repayment of such amounts in cases of default or mistake respectively.

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

3.1 None.

4. Legislative Context

4.1 The Legal Aid, Sentencing and Punishment of Offenders (LASPO) Act 2012 repeals the previous remand framework that applied to 10 to 17 year olds and puts in place a new youth remand framework under which children who have been refused bail are remanded to non-secure local authority accommodation or, in the case of 12 to 17 year olds only, secure youth detention accommodation. The LASPO Act 2012 permits the Secretary of State to make provision about the recovery of costs, by regulations, from a local authority designated by the court, of a child remanded to youth detention accommodation and associated transport costs. 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. 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

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

7.1 Central government currently funds the majority of the costs incurred in respect of children remanded to secure accommodation. Local authorities pay approximately one third of the costs of remands to secure children's homes and secure training centres. They pay nothing towards the costs of remandees accommodated in young offender institutions. If a child is remanded to local authority accommodation and placed in the community (for example, into remand foster care), the local authority has to fund fully the costs that may arise. So there is currently very little financial incentive for the local authority to make community alternatives available as an option to the court making the remand decision.

7.2 Section 103(2) of the LASPO Act 2012, which will come into force on 3 December 2012, allows the Secretary of State to make provision for the recovery of the costs from local authorities of all 12 to 17 year olds remanded to youth detention accommodation.

7.3 This instrument gives effect to the Government's policy to continue to subsidise the costs of secure remand on the same terms as it does currently until the start of the next financial year. The Ministry of Justice is currently consulting in respect of its proposals to give local authorities greater financial responsibility for secure remand from April 2013 onwards. These proposals will give local authorities the incentive to invest in alternatives to custody, and also, in the longer term, to shift their resources towards early intervention and prevention work. Further information on this consultation exercise is set out at paragraph eight.

7.4 This instrument allows for the recovery of the costs of accommodation in secure children's homes and secure training centres only. In both cases costs will be met by the Youth Justice Board for England and Wales and the designated local authority under the new remand framework according to the same proportions as existed under the previous remand framework. It is the Government's intention that the cost of children on remand in young offender institutions will be met by the Youth Justice Board until 31 March 2013.

7.5 The Youth Justice Board for England and Wales currently pays for the cost of children on remand in secure training centres under existing contracts with private sector providers (recovering a specified amount from the designated local authority). The instrument sets out how much is to be recovered from the designated local authority by the Youth Justice Board for England and Wales in respect of each night on which the child is remanded in the secure training centre. This is currently set at £233.56.

7.6 The provider of a secure children's home currently recovers two thirds of the cost of a child on remand in such accommodation from the Youth Justice Board for England and Wales and one third from the designated local authority. The instrument sets out that one third of the cost may be recovered from the designated local authority. The remaining two thirds will be paid by the Youth Justice Board for England and Wales under contractual arrangements between the Youth Justice Board and the provider of the secure children's home.

7.7 This instrument also provides that any amount owing by a designated local authority is enforceable as a civil debt.

- ***Consolidation***

7.8 This statutory instrument does not amend any other statutory instruments and therefore no consolidation is required.

8. Consultation outcome

8.1 This instrument allows for costs to be recovered from designated local authorities. The Ministry of Justice and the Youth Justice Board for England and Wales are currently consulting on proposals to alter the level of costs recovered from local authorities from April 2013 onwards in the paper *The new remand framework for children: allocation of new burdens funding to local authorities*: https://consult.justice.gov.uk/digital-communications/remand-funding/.

8.2 The consultation closes on 16 November 2012 and, subject to the outcome of the consultation, a further statutory instrument may be laid before Parliament to come in force on 1 April 2013.

9. Guidance

9.1 The statutory instrument makes no changes to existing financial arrangements and transactions.

10. Impact

10.1 This instrument will ensure that local authorities continue to contribute to the costs of accommodation for children who are remanded to secure training centres. This

instrument will ensure that local authority providers of secure children's homes continue to be paid by designated local authorities for the provision of such accommodation to children who are remanded. Designated local authorities will continue to pay for the remand of children in secure children's homes and secure training centres in the same proportions as currently exist.

10.2 An Impact Assessment has not been prepared for this instrument because no impact on the private sector or voluntary sector is foreseen.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 As set out above the Ministry of Justice is currently consulting on costs to be recovered from local authorities after April 2013. These arrangements will subsequently be reviewed annually and legislation amended accordingly.

13. Contact

Richard Bishop at the Ministry of Justice Tel: 020 3334 4543 or email: richard.bishop1@justice.gsi.gov.uk can answer any queries regarding the instrument.