

EXPLANATORY MEMORANDUM TO
THE LEGAL AID, SENTENCING AND PUNISHMENT OF OFFENDERS
ACT 2012 (CHILDREN ACT 1989) (CHILDREN REMANDED TO YOUTH
DETENTION ACCOMMODATION) REGULATIONS 2012

2012 No. 2813

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 This instrument provides that certain duties of local authorities do not apply in relation to children who are remanded to youth detention accommodation and children who are remanded to local authority accommodation. Children remanded to youth detention accommodation will be treated as looked after by their designated local authority following the commencement of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 on 3 December 2012.
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 Act 2012 (“the LASPO Act”), creates a new custodial remand framework for 10-17 year olds who are charged with, or convicted of, a criminal offence or concerned in extradition proceedings. Section 104 (1) of the LASPO Act provides that a child who is remanded to youth detention accommodation is to be treated as looked after by their designated local authority. Such a child is “a relevant child” for the purposes of this instrument.
 - 4.2. Youth detention accommodation comprises a secure children’s home, a secure training centre, a young offender institution and accommodation specified by order under section 107(1)(e) of the Powers of Criminal Courts (Sentencing) Act 2000 (youth detention accommodation for the purpose of detention and training order provisions) (see section 102 of the LASPO Act).
 - 4.3. The Children Act 1989 (“the 1989 Act”) places duties on local authorities in relation to children that they look after (i.e. children who are the subject of a care order, or children who are accommodated by the local authority in the exercise of their social services functions). This instrument provides that certain of those duties shall not apply in

relation to a relevant child and in relation to children who are remanded to local authority accommodation under section 91 of the LASPO Act. The scope of these amendments is described below.

4.4. Section 22C of the 1989 Act (which is fully in force in relation to England) sets out the ways in which a local authority may accommodate a looked after child. The local authority must, where practicable and consistent with the child's welfare, make arrangements for the child to live with his parents, or someone with parental responsibility for him. Where that is not possible, the local authority must place the child in the most appropriate placement available, and a 'placement' is defined in section 22(6) as being (a) with a local authority foster parent who is connected with the child, (b) with a local authority foster parent who does not fall within (a), (c) in a children's home, or (d) in other arrangements (such as supported lodgings). Section 22C requires that in deciding which is the most appropriate placement available, the local authority must, in addition to their duty under section 22(3)(a) of the 1989 Act to safeguard and promote the child's welfare, ensure so far as practicable that the child's placement does not, for example, disrupt his education or training, and allows him to live near home. This instrument provides that those duties will not apply in relation to a relevant child. This is because, whilst local authorities will have responsibilities towards this group of children, they will not be responsible for making the arrangements to "place" them in youth detention accommodation. The Youth Justice Board exercising functions concurrently with the Secretary of State for Justice will direct where the child will be detained (section 102 of the LASPO Act). A saving provision is made in relation to the Care Planning, Placement and Case Review (England) Regulations 2010 which make provision about care planning for looked after children.

4.5 Section 22D of the 1989 Act requires that, where a local authority is providing accommodation for a child other than by placing him in 'other arrangements' under section 22C(6)(d), and is considering placing him under section 22C(6)(d), the local authority must first review the child's case in accordance with section 26 of the 1989 Act (unless they are satisfied that it is necessary to make the arrangements as a matter of urgency to safeguard and promote the child's welfare). This instrument provides that section 22D shall not apply in relation to a relevant child as their period of remand will not be controlled by the designated local authority responsible for their care.

4.6 Similar provision is made in relation to Wales. Section 23 of the 1989 Act sets out duties of local authorities in relation to the provision of accommodation and maintenance for looked after children. Section 23 applies in relation to Wales, as section 8 of the Children and Young Persons Act 2008, which substitutes sections 22A to 22F for section 23, is not yet fully in force in relation to Wales. This instrument provides that section 23(2) to (8) of the 1989 Act shall not apply in relation to a relevant child. A saving is made for the purpose of the

making of regulations under section 23(2) to (8).

4.7 Paragraph 21 of Schedule 2 to the 1989 Act provides that local authorities have a responsibility to consider in relation to a looked after child whether they should recover contributions towards a child's maintenance. This instrument provides that this duty will not apply in relation to a relevant child and in relation to a child who is remanded to local authority accommodation under section 92 of the LASPO Act and is looked after by virtue of Chapter 3 of the LASPO Act.

4.8 The Children (Secure Accommodation) Regulations 1991 ("the 1991 Regulations") make provision regarding the use of accommodation for restricting the liberty of children under section 25 of the 1989 Act. The 1991 Regulations provide, in particular, that the use of secure accommodation under section 25 does not apply to certain categories of children. This instrument provides that section 25 does not apply to a relevant child. This is because such children will already be detained in accommodation which is of a secure nature.

4.9 This instrument is made under section 104(2) of the LASPO Act, which is not yet in force. Section 104(2) will be brought into force on 3 December 2012 by a commencement order yet to be made. This instrument is made in reliance on section 13 of the Interpretation Act 1978 which relates to the anticipatory exercise of powers.

5. Territorial Extent and Application

5.1 This instrument extends 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

7.1 The proposal to create a single remand framework for youth which would result in all remanded children being looked after and therefore being provided with appropriate support from local authorities was included in the Green Paper issued by the Ministry of Justice *Breaking the Cycle: effective punishment, rehabilitation and sentencing of offenders*. This proposal was intended to simplify the remand framework for children which has been in place to date and to offer a consistent standard of support to children on remand who are likely to be a very vulnerable group. Responses to the consultation on the Green Paper indicated that there was broad stakeholder support for this measure.

7.2 The remand framework introduced by the LASPO Act sets a high threshold before a child can be remanded in youth detention accommodation. This is intended to steer children away from

custodial remands, so that, in future, they will only be securely remanded where this is absolutely necessary to prevent further offending and/or for public protection.

- 7.3 The new framework requires local authority involvement to support children who become looked after as a result of being remanded. This will include paying for the costs of remand. This policy is intended to offer an incentive for local authority children's services to support individual children earlier in their offending history to prevent their offending from escalating; as well as to encourage local children's services and youth offending services to work in a more joined up way to invest in community initiatives designed to prevent re-offending.

8. Consultation outcome

- 8.1 Proposals for remanded children to become looked after were consulted on as part of wider reforms to sentencing and punishment of offenders set out in the Green Paper *Breaking the Cycle: effective punishment, rehabilitation and sentencing of offenders*. The response to this consultation was published in June 2011.
<http://open.justice.gov.uk/breaking-the-cycle-response.pdf>
- 8.2 We have not consulted on the provisions set out in this instrument as these provisions must necessarily follow from the new remand framework for children introduced by the LASPO Act, as described in section 4.
- 8.3 We will be consulting in November of this year regarding changes to be made to regulation 6 of the 1991 Regulations. This sets out the circumstances in which a local authority may detain a child in secure accommodation where that child has been detained by the police under the Police and Criminal Evidence Act 1984 or is remanded in the course of criminal or extradition proceedings. The consultation arises from the need to align those criteria with the new remand framework for children that is being introduced by the LASPO Act
- 8.4 With the commencement of the remand provisions of the LASPO Act, there will also be a need for amendment to the Care Planning, Placement and Case Review (England) Regulations 2010 which set out how local authorities plan and review the care of looked after children. We will be conducting a consultation with local authorities and youth justice services about proposed amendments to these Regulations early in the New Year, with a view to introducing revisions to the regulatory framework in May 2013.

9. Guidance

- 9.1 We will be issuing new guidance to local authorities on support for looked after children in contact with youth justice services, at the same

time that we introduce the revisions outlined at paragraph 8.4. This guidance will include information for local authorities about how they might effectively respond to children remanded to youth detention accommodation who will be treated as looked after as a result of the LASPO Act.

- 9.2 We are planning a comprehensive consultation exercise with local authorities and youth justice services to fully inform the development of the new guidance, referred to at 9.1. In the meantime, we will be issuing some interim non-statutory advice prior to the commencement of the LASPO Act, to assist local authorities in carrying out their new duties to remanded children.

10. Impact

- 10.1 The provision made by this instrument solely impact on local authority services.

11. Regulating small business

- 11.1 The legislation does not apply to small businesses.

12. Monitoring & review

- 12.1 DfE produces an annual statistical collection with comprehensive data on children looked after in England. This will allow us to monitor the future numbers of children who are remanded to youth detention accommodation and who will be treated as looked after children following the commencement of the LASPO Act on 3 December 2012. These statistics also include wider information about looked after children in custody.
- 12.2 The Youth Justice Board also collects information about the numbers and patterns of children on remand.
- 12.3 Over time, analysis of these data sources will offer one measure of how effective the new remand has been in reducing the number of children remanded in custody and in enabling better support for those who must continue to be detained.

13. Contact

- 13.1 Contact **Mark Burrows** at the Department for Education, Tel: 020 7783 8079 or email: mark.burrows@education.gsi.gov.uk with any queries regarding this instrument.