

EXPLANATORY MEMORANDUM TO
THE RECOVERY OF COSTS (REMAND TO YOUTH DETENTION
ACCOMMODATION) (AMENDMENT NO. 3) REGULATIONS 2018

2018 No. 1126

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 This instrument amends the Recovery of Costs (Remand to Youth Detention Accommodation) Regulations 2013 which make provision about the recovery of costs from local authorities in respect of children or young people who are remanded to youth detention accommodation.
- 2.2 This instrument amends 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 Secure Children's Home (SCH). This follows a re-tender of the relevant contracts.

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 and Wales. It is made under section 103 of the Legal Aid, Sentencing and Punishment of Offenders (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.

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 The 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.

- 6.2 This instrument sets the amount local authorities are charged where a child or young person is detained on remand in an SCH to reflect revised prices following a re-tendering of the relevant contract.

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 make provision for such cost recovery. Youth detention accommodation comprises SCHs, Secure Training Centres (STCs) and Youth Offender Institutions (YOIs).
- 7.3 The Government regularly updates the Regulation to reflect changes to the costs of providing youth detention accommodation. The latest updates to the cost of remanding young people at YOIs and STCs were effective on and from 1 April 2018, and updates to the cost of remands to SCHs were effective on and from 12 May 2018. These updates were achieved through the Recovery of Costs (Remand to Youth Detention Accommodation) (Amendment) Regulations 2018 and Recovery of Costs (Remand to Youth Detention Accommodation) (Amendment No. 2) Regulations 2018.
- 7.4 The Ministry of Justice retender for contracts with SCHs will result in an increase in the costs for these services; we therefore need to update the bed-night price to reflect this change.

The main reasons for the increased prices are as follows:

- a. Lack of price uplifts for the duration of the previous (existing) contracts;
- b. Increasingly complex needs and risks of children requiring SCH provision (both welfare and justice cases);
- c. Overall demand for SCH places now outstripping supply (largely the welfare market); and
- d. Local authorities requiring homes to ensure that all related costs are included within pricing proposals to the MoJ (feedback from homes has included that some costs have previously been “absorbed” either through welfare bed prices or by the Local Authority).

7.5 The applicable amount for an SCH is therefore £678.70, to come into force on 1 December 2018. This is an increase of £68.70 per place per night from £610 as at 1 April 2018.

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 No consolidation of the relevant legislation is planned.

10. Consultation outcome

10.1 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 and 107 responses were received from a range of stakeholders including youth offending teams and local authorities. The Ministry of Justice and Youth Justice Board for England and Wales’ 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>

10.2 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 2014/562, 2015/569, 2016/330, 2017/230 and 2018/498 this instrument implements the same methodology outlined in the consultation paper in relation to determining the applicable amounts for SCHs. As the same methodology is being used to update the relevant figures, the consultation process remains relevant.

11. Guidance

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

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 there is no, or no significant, impact for business, charities, voluntary bodies or the public sector arising from this instrument.

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

13. Regulating small business

- 13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

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

15. Contact

- 15.1 Sarah Cross at the Ministry of Justice, Telephone: 07989660623 or email: sarah.cross@justice.gov.uk can be contacted with any queries regarding the instrument.
- 15.2 Clare Toogood, Deputy Director for Youth Justice and Claire Fielder, Deputy Director for Bail, Sentencing and Release Policy, at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.
- 15.3 Edward Argar MP at the Ministry of Justice can confirm that this Explanatory Memorandum meets the required standard.