

STATUTORY INSTRUMENTS

1998 No. 1504

The Criminal Justice (Children) (Northern Ireland) Order 1998

PART VI

SENTENCING AND OTHER POWERS

PROSPECTIVE

[^{F1}Custody care orders

F1 Arts. 44A-44G and preceding cross-heading inserted (prosp.) by [Justice \(Northern Ireland\) Act 2002](#) (c. 26), ss. 56, 87(1)

Custody care orders

44A.—(1) Where a child who has not attained the age of 14 is found guilty by or before any court of an offence punishable, in the case of an adult, with imprisonment, other than an offence the sentence for which is (in the case of an adult) fixed by law as imprisonment for life, the court (subject to Article 32(1)) may make a custody care order.

(2) A custody care order is an order that the child shall be placed in secure accommodation by the appropriate authority and be subject to a period of being kept in secure accommodation by the appropriate authority followed by a period of supervision.

(3) A custody care order shall be for a period of six months unless the court specifies in the order a longer period not exceeding two years.

(4) A court shall not make a custody care order unless, after taking into account any matters which it is required to take into account by Article 37 of the Criminal Justice (Northern Ireland) Order 1996 (N.I. 24) (previous convictions etc.), it has formed the opinion under Articles 19 and 20 of that Order that a custodial sentence would be justified for the offence.

(5) Where a court makes a custody care order for a period longer than six months, it shall state in open court its reasons for doing so.

(6) Subject to paragraph (7), the period for which a child is to be kept in secure accommodation under a custody care order shall be one half of the period of the order; but the appropriate authority may, with the consent of the [^{F2}Department of Justice], at any time discharge a child who is being so kept.

(7) The length of the period for which the child is to be kept in secure accommodation shall be treated as reduced by any period which is a relevant period within the meaning of section 26(2) and (2A) of the Treatment of Offenders Act (Northern Ireland) 1968 (c. 29 (N.I.)) (reduction of sentence).

(8) Where a court makes a custody care order in the case of a child who will attain the age of 14 at a time during the period for which he is to be kept in secure accommodation under the order,

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the court may provide that he shall be detained in a juvenile justice centre for the whole or any part of the period following that time.

(9) Any reference in any statutory provision to the length of the period of a custody care order shall, unless the context otherwise requires, be construed as a reference to the length of the period imposed by or under paragraph (3) and not the length of the period as reduced by paragraph (7).

F2 Words in [art. 44A](#) substituted by 2002 (c. 26), ss. 56, 87(1) (as amended (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 11, [Sch. 13 para. 11\(2\)](#) (with arts. 28-31)); [S.I. 2010/977](#), [art. 1\(2\)](#) (but this amendment cannot take effect until the commencement of [S.I. 1998/1504](#), [art. 44A](#))

Period in secure accommodation under custody care order

44B.—(1) This Article makes provision about the application of the Children (Northern Ireland) Order 1995 (N.I. 2) in relation to a child during any period for which he is kept in secure accommodation by the appropriate authority under a custody care order (or under any other order under this Order or as a place of safety).

(2) Of the provisions about a child looked after by an authority (within the meaning of Article 25) those specified in paragraph (3) (and no others) apply.

(3) Those provisions are—

- (a) Article 26 (duty to safeguard and promote welfare);
- (b) Article 27(1), (2)(b), (e) and (f), (8) and (9) and Article 28(2) (accommodation and maintenance);
- (c) Article 29(1), (2) and (4) to (6) (promotion and maintenance of contact with family);
- (d) Articles 30 and 31 (visits);
- (e) Article 34 (death);
- (f) Article 35(1) and Article 36(1) and (4) (advice, assistance and befriending);
- (g) Article 45 (reviews and representations); and
- (h) Articles 72 and 73 (provision of homes).

(4) In their application by virtue of paragraph (2)—

- (a) Article 29(4) has effect with the omission of sub-paragraph (a); and
- (b) Article 34(1)(a) has effect as if the reference to the Department were to the Department and the [^{F3}Department of Justice].

(5) The following provisions—

- (a) Article 5(7) (person having parental responsibility not to act inconsistently with order);
- (b) Article 52(3) to (6), (7)(a) and (9) (effect of care order); and
- (c) Article 53(1) to (9) (parental contact),

apply as if the custody care order (or the other order or the placing of the child in a place of safety) were a care order and the appropriate authority were the authority designated by it and in whose care the child is.

(6) Articles 8 to 14 (residence, contact etc. orders) and Articles 17 to 24 (children in need) do not apply.

(7) No care order or supervision order under Part 5 may be made or, if such an order has already been made, it does not have effect.

F3 Words in [art. 44B](#) substituted by 2002 (c. 26), ss. 56, 87(1) (as amended (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 11, [Sch. 13 para. 11\(2\)](#) (with arts. 28-31)); S.I. 2010/977, [art. 1\(2\)](#) (but this amendment cannot take effect until the commencement of S.I. 1998/1504, [art. 44B](#))

Escape from secure accommodation

44C.—(1) If a child who has been ordered to be kept in secure accommodation under a custody care order—

- (a) escapes from secure accommodation in which he is being kept or from any hospital or institution in which he is receiving medical treatment;
- (b) being absent from secure accommodation on temporary leave of absence or under supervision, runs away from the person in whose charge he is or fails to return to the secure accommodation at the end of his leave; or
- (c) being absent from secure accommodation under supervision, fails to return to the secure accommodation on being recalled,

he may be arrested without warrant by a constable or any person authorised by the appropriate authority and taken to any secure accommodation, or (if he has attained the age of 14) to any juvenile justice centre, or returned to any hospital or institution from which he escaped or to any person in whose charge he was.

(2) A child arrested under paragraph (1) may at any time be brought with the authority of the [^{F4}Department of Justice] before a court of summary jurisdiction having jurisdiction where the child is found or where the secure accommodation, hospital or institution is situated.

(3) Where a child is brought before a court under paragraph (2), the court—

- (a) may order the period for which he is to be detained under the custody care order to be increased by a further period not exceeding 30 days; but
- (b) if it does not do that, shall revoke the custody care order and deal with the child in any manner in which the court could deal with him if he had just been found guilty of the offence by the court.

(4) In dealing with a child under paragraph (3)(b) the court shall take into account the period for which the custody care order would, but for its revocation, have continued in effect.

(5) If any person—

- (a) knowingly assists a child who escapes, runs away or fails to return as mentioned in paragraph (1) or knowingly induces any child to so escape, run away or fail to return;
- (b) without lawful authority takes a child away from any accommodation, hospital, institution or person as is mentioned in that paragraph; or
- (c) knowingly harbours or conceals a child who escapes, runs away or fails to return as mentioned in paragraph (1), or prevents him from returning,

he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale, or to imprisonment for a term not exceeding six months, or to both.

F4 Words in [art. 44C](#) substituted by 2002 (c. 26), ss. 56, 87(1) (as amended (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 11, [Sch. 13 para. 11\(2\)](#) (with arts. 28-31)); S.I. 2010/977, [art. 1\(2\)](#) (but this amendment cannot take effect until the commencement of S.I. 1998/1504, [art. 44C](#))

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Taking of children to secure accommodation

44D.—(1) The court which makes a custody care order shall cause it to be delivered to the constable or other person responsible for taking the child to the secure accommodation in which he is to be placed, and the person who takes him there shall deliver the order to the appropriate authority.

(2) The court by which a custody care order is made shall cause a record, containing such information in the possession of the court with respect to the child as is in the opinion of the court likely to be of assistance to the appropriate authority, to be sent to that authority.

(3) Where a child is taken to a juvenile justice centre by virtue of Article 44A(8), the appropriate authority shall send a copy of the record sent to it under paragraph (2) to the managers or person for the time being in charge of the juvenile justice centre.

(4) Where a child has been ordered to be placed in secure accommodation, any person who harbours or conceals him after the time has come for him to go there shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale or to imprisonment for a term not exceeding six months, or to both.

(5) Where a constable or other person authorised to take a child to secure accommodation is, when the time has come for him to go there, unable to find him or unable to obtain possession of him, a lay magistrate, if satisfied by complaint on oath that there is a reasonable ground for believing that some person named in the complaint can produce the child, may issue a summons requiring the person so named to attend at a court of summary jurisdiction on such day as may be specified in the summons and produce the child.

(6) If the person required by the summons to produce the child fails without reasonable excuse to do so, he shall, in addition to any other liability to which he may be subject under the provisions of this Order, be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Supervision under custody care order

44E.—(1) During the period of supervision under a custody care order, the child shall be under the supervision of a probation officer or such other person as the [^{F5}Department of Justice] may designate.

(2) Before the commencement of the period of supervision—

(a) the appropriate authority shall give him a notice specifying—

(i) the period of supervision; and

(ii) the person under whose supervision he will be; and

(b) the person under whose supervision he will be shall give him a notice specifying any requirements with which he must comply.

(3) During the period of supervision the person under whose supervision the offender is or another person designated by the [^{F5}Department of Justice] may give the child a notice specifying any alteration to the matters mentioned in paragraph (2)(a)(ii) or (b).

(4) The [^{F5}Department of Justice] may make rules regulating the supervision of a child subject to a custody care order.

(5) Rules under paragraph (4) are subject to [^{F6}negative resolution].

(6) The [^{F5}Department of Justice] may pay the expenses incurred by any person designated under paragraph (1) arising from the supervision of a child under this Article.

- F5** Words in [art. 44E](#) substituted by 2002 (c. 26), ss. 56, 87(1) (as amended (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 11, [Sch. 13 para. 11\(2\)](#) (with arts. 28-31)); [S.I. 2010/977](#), [art. 1\(2\)](#) (but this amendment cannot take effect until the commencement of [S.I. 1998/1504](#), [art. 44E](#))
- F6** Words in [art. 44E\(5\)](#) substituted by 2002 (c. 26), ss. 56, 87(1) (as amended (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 11, [Sch. 13 para. 11\(3\)](#) (with arts. 28-31)); [S.I. 2010/977](#), [art. 1\(2\)](#) (but this amendment cannot take effect until the commencement of [S.I. 1998/1504](#), [art. 44E](#))

Breach of supervision requirements

44F.—(1) Where a custody care order has been made in respect of a child and it appears, on a complaint made to a lay magistrate, that the child has failed to comply with any requirements under Article 44E(2) or (3), the lay magistrate may—

- (a) issue a summons directed to the child requiring him to appear before a youth court specified in the summons; or
- (b) if the complaint is in writing and on oath, issue a warrant for the child's arrest requiring him to be brought before a youth court specified in the warrant.

(2) If it is proved to the satisfaction of the court before which the child appears or is brought under this Article that he has failed without reasonable excuse to comply with requirements under Article 44E(2) or (3), the court may—

- (a) if he has not attained the age of 14, deal with him as specified in paragraph (3); and
 - (b) if he has attained that age, deal with him as specified in paragraph (4).
- (3) If the child has not attained the age of 14, the court may either—
- (a) impose on him a fine not exceeding £200; or
 - (b) order him to be placed in secure accommodation by the appropriate authority and kept there by the appropriate authority for a period not exceeding 30 days;

but the appropriate authority may, with the consent of the [^{F7}Department of Justice], at any time discharge a child who is being so kept.

- (4) If the child has attained the age of 14, the court may either—
- (a) impose on him a fine not exceeding £1,000; or
 - (b) order him to be detained in a juvenile justice centre for a period not exceeding 30 days.

(5) Where the court imposes a fine on the child under paragraph (3)(a) or (4)(a), it shall order that the fine be paid by the parent or guardian of the child instead of by the child, unless it is satisfied that there is good reason for not so doing.

(6) A fine ordered under paragraph (5) to be paid by a parent or guardian may be recovered from him by distress, or he may be imprisoned in default of payment, in like manner as if the order had been made on the conviction of the parent or guardian of the offence for which the custody care order was made.

(7) A parent or guardian may appeal to a county court against an order under paragraph (5).

(8) Any period of supervision shall not be reduced by any period during which the child is detained under this Article.

- F7** Words in [art. 44F](#) substituted by 2002 (c. 26), ss. 56, 87(1) (as amended (12.4.2010) by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts.

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1(2), 11, **Sch. 13 para. 11(2)** (with arts. 28-31)); S.I. 2010/977, **art. 1(2)** (but this amendment cannot take effect until the commencement of S.I. 1998/1504, art. 44F)

Effect of subsequent conviction where custody care order is in effect

44G.—(1) Where a child in respect of whom a custody care order is (or but for Article 44A(8) would be) in effect is convicted by or before a court of an offence and the court imposes a custodial sentence on the child for the offence, the court shall—

- (a) revoke the order; and
- (b) in dealing with the child for the offence take into account the period for which, but for the revocation, the order would have continued in effect.

(2) Where in such a case the court decides to make a custody care order, Article 44A shall have effect as if—

- (a) in paragraph (3) for the words from “a period of six months” to “two years” there were substituted “such period not exceeding two years as the court specifies in the order”; and
- (b) in paragraph (6) for the words “one half of the period of the order” there were substituted “such part of the period of the order as the court specifies in the order”.

(3) Where in such a case the court decides to make a juvenile justice centre order, Article 39 shall have effect as if—

- (a) in paragraph (2) for the words from “a period of six months” to “two years” there were substituted “such period not exceeding two years as the court specifies in the order”; and
- (b) in paragraph (5) for the words “one half of the period of the order” there were substituted “:such part of the period of the order as the court specifies in the order”.]

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