

JUSTICE (NORTHERN IRELAND) ACT 2002

EXPLANATORY NOTES

COMMENTARY

Part 4: Youth Justice

Aims

Section 53: Aims of youth justice system

98. The principal aim of the youth justice system is set out in *subsection (1)*: to protect the public by preventing offending by children. This section provides that all persons and bodies exercising functions in relation to the youth justice system (such as the police, the Director of Public Prosecutions and the courts) must have regard to the principal aim of the youth justice system and to the welfare of children affected by the exercise of those functions (*subsections (2) and (3)*). Thus, decisions as to whether to prosecute children, how to deal with them if they are found guilty, and the content of any sentence will have to be made having regard to these matters. The “youth justice system” is defined in *subsection (4)*. “Children” is defined in *subsection (6)* as persons under the age of 18.

New Orders

Section 54: Reparation orders

99. This section amends the 1998 Order by adding to that Order a number of Articles dealing with reparation orders.
100. A reparation order is a new sentence available to courts dealing with child offenders in Northern Ireland. The reparation ordered to be made by the child would be either to the victim of the offence or some other person affected by it or to the community at large. It would be for the court to decide to whom the reparation is to be made and what form it should take in any individual case. Forms of reparation will be as varied as the offences in respect of which they are imposed, but reparation could take the form of repairing property in cases of property damage or some worthwhile community work. A reparation order must not require the offender to carryout activities for more than 24 hours and the reparation must be made within 6 months of the order being made (new Article 36C(1)(a) and (3)(b)).
101. The court cannot make a reparation order unless the offender and, where reparation is to be made to a person, that person consent (new Articles 36B(1) and 36C(1)(b)). The effect of new Article 36B(2) and new Article 36J(8) (see section 60) is that a reparation order may only be combined with an attendance centre order, probation order or fine. By virtue of new Article 36A(4) and (5), before making a reparation order, the court must obtain a report indicating the type of activity suitable for the offender and the attitude of the victim or victims of the offence to the requirements proposed to be included in the order. The court must also obtain a pre-sentence report before imposing a reparation order, unless it considers it unnecessary in the circumstances (see

the amendment to Article 9(3) of the [Criminal Justice \(Northern Ireland\) Order 1996 \(S.I. 1996/3160 \(NI 24\)\)](#) (the “1996 Order”), made by [paragraph 56](#) of Schedule 12).

102. Reparation orders are a “community sentence” within the meaning of Article 2(2) of the 1996 Order (by virtue of the amendment made to that Order by [paragraph 55\(2\)](#) of Schedule 12). New Article 36B(4) requires that the court, before making a reparation order, must state in open court that it is of the opinion that Article 8(1) of the 1996 Order applies and why it is of that opinion. This means that the court must be satisfied that the offence, or the combination of the offence and one or more other offences associated with it, was serious enough to warrant a reparation order. The concept of offences associated with other offences is defined in Article 2(7) of the 1996 Order¹. Provision for dealing with breach of a reparation order and for the revocation or amendment of an order is made in Schedule 10 (which adds a new Schedule 1A to the 1998 Order). Under Article 36C(5) and (6) the Secretary of State may make rules regulating the making of reparation by persons subject to reparation orders. These may regulate the functions of responsible officers (defined in new Article 36D(2)) and limit the number of hours of making reparation on any one day as well as setting the requirement for keeping records of such hours.

Section 55: Community responsibility orders

103. This section amends the 1998 Order to provide for a further additional sentencing option for the courts in relation to children.
104. Where a child is found guilty of an offence, other than an offence the sentence for which the sentence is fixed by law as imprisonment for life, the court may make a community responsibility order. Such an order will have two distinct components. The first part will require the offender to attend a specific place for a few hours at a time where they will receive “relevant instruction in citizenship” (new Article 36E(2)(a)). This part must be at least one-half of the total number of hours specified in the order (new Article 36E(5)). “Relevant instruction in citizenship” is defined in new Article 36E(3) and covers personal and social responsibility, the impact of crime on victims and any factors in the offender’s life that may be linked to crime. The second part of the order will require the offender to carry out, for a specified number of hours, such practical activities as the responsible officer (defined in new Article 36E(4)) considers appropriate in the light of the instruction given to the offender. The aggregate number of hours specified in the order must be not less than 20 and not more than 40 (new Article 36E(6)). Both aspects of the order must be completed within 6 months of the order being made (new Article 36G(4)). A community responsibility order can only be made with the offender’s consent (new Article 36F(1)).
105. Community responsibility orders are community sentences within the meaning of Article 2(2) of the 1996 Order (by virtue of the amendment to that Order made by [paragraph 55\(2\)](#) of Schedule 12). By virtue of Article 9(3) of the 1996 Order (as amended by [paragraph 56](#) of Schedule 12) the court must obtain a pre-sentence report before making a community responsibility order, unless it considers it unnecessary to do so in the circumstances. New Article 36F(4) requires the court, before making a community responsibility order, to state in open court that it is of the opinion that Article 8(1) of the 1996 Order applies and why it is of that opinion. This means that the court must be satisfied that the offence, or the combination of the offence and one or more other offences associated with it, was serious enough to warrant a community responsibility order. The concept of offences associated with other offences is defined in Article 2(7) of the 1996 Order².
106. Provision for dealing with breach of a community responsibility order and for the revocation or amendment of an order is made in Schedule 10 (which adds a new Schedule 1A to the 1998 Order). Article 36H allows the Secretary of State to make rules

¹ Applied by Article 2(5) of the 1998 Order, inserted by [paragraph 67\(9\)](#) of Schedule 12.

² See footnote 4 above.

for regulating both the attendance of offenders subject to community responsibility orders and the functions of responsible officers (defined in Article 36E(4)).

Section 56: Custody care orders

107. This section creates a new form of custodial sentence for child offenders, to be known as a custody care order. It does this by adding a number of Articles to the 1998 Order.
108. A custody care order may only be imposed on a child who has attained the age of 10 but is not yet 14 and who has been found guilty of an offence for which the court could (if the offence had been committed by an adult) sentence him to a period of imprisonment (new Article 44A(1)). At present, if a court wished to impose a custodial sentence on such a child, it would have to make a juvenile justice centre order (under Article 39 of the 1998 Order). A child in respect of whom a custody care order is made would be held in secure accommodation by an “appropriate authority” for a specified period (rather than being held in a juvenile justice centre), and thereafter be under supervision for a further period (new Article 44A(2)). The period of time for which a child would be held in secure accommodation is to be one half of the total period of the order unless discharged sooner with the consent of the Secretary of State (new Article 44A(6)). The total period of the order is to be 6 months unless the court specifies a longer period, which cannot be more than 2 years (new Article 44A(3)). An “appropriate authority”, in relation to a child, is (by virtue of Article 2(2) of the 1998 Order) the Health and Social Services Board or Trust within whose area the child is ordinarily resident or, if that is not known, the Board or Trust within whose area the child is. “Secure accommodation” is also defined in Article 2(2) of the 1998 Order (as amended by *paragraph 67(7)* of Schedule 12).
109. New Article 44A(4) provides that a court must not make a custody care order unless, after taking into account the matters which it is required to by Article 37 of the 1996 Order, it has formed the opinion under Articles 19 and 20 of that Order that a custodial sentence would be justified for the offence. Article 37 provides that, when considering the seriousness of any offence, the court may take into account any previous convictions of the offender or any failure of his to respond to previous sentences. It also provides that, when considering the seriousness of any offence committed while the offender was on bail, the court must treat this as an aggravating factor (that is to say, something which makes the offence more serious). Thus a custody care order could not be imposed if the offence, taking into account these further matters, was not serious enough to warrant a custodial sentence.
110. New Article 44B sets out the legal regime which is to apply to a child held in secure accommodation pursuant to a custody care order. It does this by applying, and modifying where necessary, a number of provisions in the [Children \(Northern Ireland\) Order 1995 \(S.I. 1995/755 \(NI 2\)\)](#) (the “1995 Order. Only those specified in Article 44B(3) The effect is that the regime which will apply is in a number of respects similar to that which would apply if the child were the subject of a care order within the meaning of Article 49 of the 1995 Order. Nonetheless, while in secure accommodation pursuant to a custody care order, a child is subject to a legal regime distinct from that which applies to a child under a care order. To help keep this distinction clear, new Article 44B(7) provides that any care order made in respect of a child has no effect while the child is held in secure accommodation pursuant to a custody care order. In the light of the custodial nature of this order, provision is made to deal with those children who escape from secure accommodation, and those who assist them or take them away without lawful authority (new Article 44C) and with the taking into custody by the police or other responsible person of the child (new Article 44D). These provisions are comparable to the provisions which apply in respect of a child in respect of whom a juvenile justice centre order is made (see Articles 54 and 42 of the 1998 Order, respectively).

111. A child in respect of whom a custody care order is made may attain the age of 14 before the period he is to serve in secure accommodation is completed. In the light of this, new Article 44A(8) gives the court, when making the order, a power to provide that such a child shall be detained in a juvenile justice centre for the whole or part of the period after he reaches 14.
112. The supervision element of a custody care order will be carried out by a probation officer or other person designated by the Secretary of State (new Article 44E(1)). The Secretary of State may make rules regulating this supervision (new Article 44E(4)). Article 44F provides that, in the event of a failure to comply with supervision requirements, a court may impose a fine, to be paid in normal circumstances by the parent or guardian of the child instead of the child, or a period of detention not exceeding 30 days (new Article 44F(3) and (4)). A child, parent or guardian has a right of appeal against an order made against him under Article 44F (new Article 44F(7) and *paragraph 31* of Schedule 12).
113. Where a child in respect of whom a custody care order is in force is convicted by or before a court of another offence and given a custodial sentence, that court must revoke the custody care order and, in passing sentence for the new offence, take into account the length of time left to run on that order (new Article 44G(1)). If, in respect of the new offence, the court decides to make a further custody care order the effect of new Article 44G(2) is that the order may be of any period not exceeding 2 years and the period of secure accommodation can be whatever portion of the whole the court specifies. Similar provision is made where the court, in sentencing the child for the new offence, makes a juvenile justice centre order (i.e. where the child has reached 14 between the passing of the first custody care order and his conviction for the later offence) (new Article 44G(3)).

Youth Conferences

General

114. *Sections 57 to 60* add a number of new Articles to the 1998 Order. These new Articles create for Northern Ireland a wholly new way of dealing with child offenders and with children who, but for these provisions, would be the subject of proceedings.

Section 57: Youth conferences and youth conference plans

115. This section inserts new Article 3A into the 1998 Order, which makes general provisions about youth conferences. A youth conference is a meeting or series of meetings held to consider how a child ought to be dealt with for an offence (new Article 3A(1)). The meetings will be under the chairmanship of a person to be known as a youth conference co-ordinator (new Article 3A(2)(a)). This person will be given powers to run the meetings effectively (under rules to be made under new Article 3B) and the Secretary of State may set a time limit for completing the youth conference. The aim of the youth conference will be to devise a youth conference plan which will propose how the child should be dealt with (new Article 3C). The purpose of a youth conference plan is to require the child to carry out specified actions in order to make reparation for the offence, address the child's offending behaviour, and/or meet the needs of the victim. The content of the plan is for the youth conference to decide, from the various options listed in new Article 3C(1), such as apologising, making reparation, or participating in activities designed to address offending behaviour, offer education or assist with rehabilitation. The conference can propose any combination of these options it wishes. The plan must specify the period within which it must be completed, and this must not be more than one year (new Article 3C(4) and (5)).
116. There are three distinct groups of people who may be involved in a youth conference. The first is the core group without whom the youth conference cannot proceed. These are the youth conference co-ordinator, the child, a police officer and an "appropriate adult" (new Article 3A(2)). "Appropriate adult" means a parent or guardian of the

child, but provision is made for the case where such a person is unable or unwilling to participate or the child is in care (within the meaning of the 1995 Order) (new Article 3A(4) and (5)). The second group are those who have a right to participate but in whose absence the youth conference may proceed. This group includes the victim of the offence (new Article 3A(6)). The final group are those who may participate or attend if the youth conference co-ordinator thinks that would be of value (new Article 3A(8)). This could include persons who play a significant role in the child's life (such as a community or religious leader) or people who can provide support to the victim.

117. A key feature of youth conferences is that neither the child, his parents or guardians, nor the victim can be compelled by any person or the court to participate. In particular, the child must agree to a youth conference being held (new Article 10A(3)(b) (section 58) and new Article 33A(6) (section 59)) and must agree to the youth conference plan or the youth conference order (new Article 10C(1)(a) (section 57) and new Article 36J(5) (section 60)). Neither the fact that a child has made any admission to a Public Prosecutor or agreed to participate in a diversionary youth conference, or withdrawn such an admission or agreement (new Article 10B(2) (section 58), nor any matter relating to a youth conference (new Article 3A(9)) may be used in any subsequent criminal proceedings as evidence of the child's guilt.
118. There are two distinct types of youth conference: diversionary youth conferences (section 58) and court-ordered youth conferences (section 59).

Section 58: Diversionary youth conferences

119. A reference to a diversionary youth conference can be made by the Director of Public Prosecutions (and only the Director) and will be made at an early stage, either before proceedings had been instituted for the offence or shortly after (new Article 10A(1)). The decision as to whether to refer the child and offence to a diversionary youth conference is for the Director, but he can only make a reference if the child admits that he has committed the offence (new Article 10A(3)). If a reference is made no further steps may be taken in relation to proceedings against the child for the offence until the youth conference is completed or terminated (new Article 10A(5)). As the youth conferencing provisions are to be introduced area by area, the Director may only make a reference if he has been notified that the provisions have been brought into force in the area in which the child lives or will live (new Article 10A(4)).
120. The youth conference co-ordinator may make one of three recommendations (Article 10A(2)). One of these is that the child be subject to a youth conference plan, in which case the youth conference co-ordinator will submit a plan (as agreed by the child and any other person required to agree by new Article 10C) to the Director. The Director must decide whether to accept the youth conference plan or not. If he accepts it, no further steps in any proceedings against the child for the offence may be taken unless the child fails to comply with the youth conference plan to a significant extent (new Article 10A(7)). The child's compliance is monitored by the youth conference co-ordinator or other person nominated by the Secretary of State, and this person must report to the Director on the child's compliance (new Article 10D). If the Director rejects the plan, or if he accepts it but the child fails to comply to a significant extent, or if the conference is unable to agree a plan, the Director can institute or continue the proceedings against the child in the normal way. For the purpose of calculating any time limits for instituting proceedings, the period taken by the diversionary youth conference and compliance with any youth conference plan is to be disregarded (new Article 10B(4)).
121. The Director may refer any offence to a youth conference, i.e. there is no restriction on referring even the most serious offences. However, the youth conference can recommend to the Director that the child should not be the subject of a youth conference plan at this stage but that proceedings should be instituted in the normal way (new Article 10A(2)(b)). Equally, the youth conference may recommend that no further action should be taken against the child (new Article 10A(2)(a)).

Section 59: Court-ordered youth conferences

122. The second type of youth conference is one ordered by the court. A court-ordered youth conference would occur after a court had found a child guilty of an offence and provides a way to consider how to deal with the child for the offence in question. It is not itself a sentence. Unlike diversionary youth conferences, specific rules are laid down as to when a court must, may and may not refer a child and offence to a youth conference (new Article 33A). The effect of this is that the court must refer a child and offence to a youth conference if the offence in question is anything other than -
- an offence for which the sentence (in the case of an adult) is fixed by law as imprisonment for life (such as murder);
 - an offence which is, in the case of an adult, triable on indictment only (i.e. triable only in the Crown Court);
 - an offence which is a “scheduled offence”, i.e. an offence listed in Parts 1 to 3 of Schedule 9 to the Terrorism Act 2000;
 - in certain specified circumstances only, an offence for which a diversionary youth conference has been held (new Article 33C(2)); or
 - an offence for which the court intends to grant an absolute or conditional discharge (new Article 33C(5)).
123. A court may not refer a child and offence to a youth conference where the offence is either one for which the sentence (in the case of an adult) is fixed by law as imprisonment for life or where it intends to grant an absolute or conditional discharge. In any other case (i.e. where the offence is one of those mentioned in the second, third or fourth bullet points above) the court may refer the child and offence to a youth conference, but is not obliged to do so. As the youth conferencing provisions are to be introduced area by area, the court may only make a reference if it has been notified that the provisions have been brought into force in the area in which the child lives or will live (new Article 33C(1)).
124. New Article 33B sets out the rules to deal with the situation where the child is found guilty of more than one offence. If any of the offences are ones for which the sentence (in the case of an adult) is fixed by law as imprisonment for life the court cannot refer any of the offences to a youth conference (new Article 33B(2)). If the combination of offences includes both one or more for which a court-ordered youth conference is mandatory and one or more for which it is at the discretion of the court, the court may (but is not obliged to) refer all or any of the offences to a youth conference (new Article 33B(3)).
125. As well as recommending a youth conference plan to a court, a court-ordered youth conference can also recommend that the court simply exercise its existing powers to deal with the child or recommend that a youth conference plan and a custodial sentence be combined (new Article 33A(5)). In each case any person required by new Article 33E to consent to the recommendation must have indicated their agreement. If the conference is unable to agree any recommendation the co-ordinator will report this to the court.
126. If a court does not refer a case to a youth conference co-ordinator where it has the power to do so, it must give its reasons in open court (new Article 33C(4)).

Section 60: Youth conference orders

127. Where a recommendation made to a court by a youth conference includes a youth conference plan (whether alone or in combination with a recommendation that a custodial sentence be imposed) the court may make a youth conference order. This is a new type of sentence for the court. The youth conference order can be in identical

terms to the youth conference plan or the court can vary that plan (and include within it anything from the range of options open to the youth conference) (new Article 36J(2)). In either case the child must consent to the youth conference order (new Article 36J(5)) and, where the court varies the youth conference plan, it must consult the youth conference co-ordinator (new Article 36J(6)). A youth conference order cannot be combined with any other court sentence unless the youth conference recommended it be combined with a custodial sentence, in which case the court may also impose any custodial sentence which it could have imposed for the offence (new Article 36J(8) and (9)). The youth conference is not empowered to recommend to the court any specific period of custody or type of custodial sentence. However, the child must agree to any custodial sentence imposed.

128. Before making such an order, the court must state in open court that it is of the opinion that the offence was serious enough to warrant it and why it is of that opinion (see new Article 36J(3) and (4) and new Article 36K(1)).
129. Provision for dealing with breach of a youth conference order and for revocation and amendment of such an order is made by new Schedule 1A of the 1998 Order (added by section 62 and Schedule 10).

Section 61: Legal aid for youth conferences

130. This section adds two new Articles to the [Legal Aid, Advice and Assistance \(Northern Ireland\) Order 1981 \(S.I. 1981/228 \(NI 8\)\)](#) (the “1981 Order”) which make free legal aid available for attendance by legal representatives at diversionary youth conferences and court-ordered youth conferences.

Other Provisions

Section 63: Extension of youth justice system to 17 year olds

131. This section introduces Schedule 11. The amendments made by that Schedule have the effect that persons who have not attained the age of 18 will be treated as children in respect of proceedings against them for criminal offences. At present a “child” is defined as a person who has not attained the age of 17.

Section 64: Juvenile justice centre orders for 17 year olds

132. Currently a court cannot make a juvenile justice centre order in respect of a child who has attained the age of 17 (Article 39(1) of the 1998 Order). As a result of the amendments made in Schedule 11 (in particular that at [paragraph 17](#)), a court will be able to make such an order in respect of a 17 year old offender. The effect of the amendment made by this section is to limit the ability of a court to make such an order to cases of 17 year olds who may be particularly vulnerable, as recommended by the Review (paragraph 10.72). A 17 year old in respect of whom a court wishes to impose a custodial sentence and for whom a juvenile justice centre order cannot be made by virtue of this amendment will be sentenced to a period of detention in a young offenders centre.

Section 65: Consultation about detention

133. Article 45 of the 1998 Order deals with children who have been found guilty of offences the sentences for which are (in the case of an adult) fixed by law as imprisonment for life (Article 45(1)) and, on indictment, for which an adult could be sentenced to 14 years or more imprisonment and the court thinks no other way of dealing with the offender (i.e. non-custodial) is suitable (Article 45(2)). In the case of offences to which Article 45(1) applies, the child is detained during the pleasure of the Secretary of State; in the case of offences to which Article 45(2) applies, the court specifies the period of detention. But in both cases the Secretary of State directs the place and conditions in which the child is to be detained. The amendment made to Article 45 by this section requires the Secretary

*These notes refer to the Justice (Northern Ireland) Act
2002 (c.26) which received Royal Assent on 24th July 2002*

of State, before making such a direction in relation to a child of less than 14, to consult the appropriate authority (i.e. the Health and Social Services Board or Trust for the area where the child ordinarily resides or, if that is not known, for the area where he is).