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THE YOUTH JUSTICE SYSTEM IN NORTHERN IRELAND

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THE CRIMINAL JUSTICE REVIEW (PARAGRAPHS 1-16)

1. In February 1999 Criminal Justice (Children) Lobby Group (1) submitted a response to the consultation document issued by the Criminal Justice Review, A Review of the Criminal Justice System in Northern Ireland (2). The members of this consortium voiced concern at this time in relation to the almost total absence of any reference to children and young people and the youth justice system in the document. This written submission was followed subsequently by an oral submission to the Criminal Justice Review Group by the Criminal Justice (Children) Lobby Group and a consultation with children and young people.

2. In March 2000, The Criminal Justice Review was published and this Review contained a chapter on the youth justice system with a series of recommendations for reform (3). Chapter 10 of this Review is dedicated to Juvenile Justice, which opens with the following statement;

"Our terms of reference invite us to address the structure, management and resourcing of the publicly funded elements of the criminal justice system and ..bring forward proposals for future criminal justice arrangements. Juvenile justice is an important and integral part of the criminal justice system. Early in our consultation it became clear that a number of organisations were anxious that we should examine ways of dealing with juvenile crime and the arrangements for managing and delivering juvenile justice."

There are also significant proposals for youth justice in chapter nine of the Criminal Justice Review in relation to youth conferencing.

Aims and Principles

3 The Criminal Justice Review (the Review) recommended that the government should develop, agree and incorporate a clear statement of the aims of the juvenile justice system in Northern Ireland and a statement of the principles which should guide those who exercise the powers conferred by the legislation with due regard to international human rights standards. The Review stated that the focus of the juvenile justice system should be the prevention of offending and that the system should embrace the rehabilitation of the offender and diversion. It is of particular interest that the Review also considered that the juvenile justice system should pay particular regard to the provisions of the United Nations Guidelines for the Prevention of Juvenile Delinquency, and the duty

to regard the best interests of the child as a primary consideration under Article 3 of the United Nations Convention on the Rights of the Child. They were of the opinion that there was considerable merit in enshrining such a statement of aims and principals in future juvenile justice legislation. The Justice (NI) Act 2002 ultimately did not explicitly incorporate the "best interests" principal.

The Age of Criminal Responsibility

4. Article 40 (3) a) of The United Nations Convention on the Rights of the Child requires states to "promote the establishment of a minimum age below which children shall not have the capacity to infringe the criminal law". In Northern Ireland the age of criminal responsibility is 10, which is one of the youngest ages of criminal responsibility in Europe. The United Nations Committee on the Rights of the Child in their report preceding the Criminal Justice Review in 1998 had recommended raising the age of criminal responsibility. The Review , however stated their position in relation to the age of criminal responsibility as follows;

"We believe that, where appropriate, 10 - 13 year old children should continue to be criminally responsible for their actions, but that they should not be drawn into the juvenile custodial system and that the presumption should be that they will be diverted away from prosecution unless they are persistent, serious or violent offenders. Where there is a need for accommodation outside the family home for children in this age group, we believe that it should be provided by the care authorities, rather than the juvenile justice system."

5. The Review recommended that 10 - 13 year old children found guilty of criminal offences should not be held in juvenile justice centres, and that their accommodation needs should be provided by the care system. This recommendation led to the introduction of the provisions in the Justice (NI) Act 2002 introducing custody care orders.(4) These provisions have not to date been commenced.

The Definition of a Child

6. The Review recommended that 17 year olds should be brought within the ambit of the Youth Court. This recommendation was on the basis that the United Nations Convention on the Rights of the Child clearly defines a child or young person as a person below the age of 18. The Northern Ireland Court Service indicated to the Review at this time that if 17 year olds are brought within the youth justice system that business in the youth courts could be expected to increase by 50% and that it would require additional funding in the region of £150 000 per annum to provide additional judicial and staff support to facilitate this change.

The Availability of Disposals to the Court

7. The Review recommended that it should continue to be the practice for most 17 year olds to be remanded and sentenced to the Young Offenders Centre, but that care should be taken to take special measures, including the provision of separate accommodation for any 17 year olds who were assessed as being particularly vulnerable or immature.

8. It was also recommended that a form of community service should be developed for young people under the age of 16 years of age, with a maximum period of service of 40 hours and also that reparation orders should be introduced which would allow the young person to undertake some form of practical reparative activity which would benefit the victim.

Bail and Remand

9. The Review, bearing in mind Rules 13.1 to 13.5 of the Beijing Rules which require that "detention pending trial should be used only as a matter of last resort and for the shortest period of time" made a series of recommendations in respect of bail and remand provisions for children and young people. They recommended:

- i) the piloting and evaluation of bail information and support schemes to provide the courts with information and advice to assist them with making bail and remand decisions in respect of individual juveniles;
- ii) the development of bail hostel accommodation especially for juveniles particularly in Belfast;
- iii) that those remanded in custody should be assessed as quickly as possible to determine the nature of the regime required including the degree of supervision;
- iv) that remands in custody should be for the shortest period of time possible.

Custody

10. The Review visited Lisnevin Juvenile Justice Centre in Millisle and concluded that it was not suitable for holding young people. They were also concerned that there were no secure facilities for girls. It was recommended that Lisnevin Juvenile Justice Centre should close and that consultation should take place about the options for the future of the juvenile justice custodial estate.

Partnership and Diversionary Approaches

11. The Review endorsed the development of further diversionary mechanisms based on a partnership approach and recommended that any savings from the rationalisation of the juvenile justice estate should be reallocated to diversionary programs and other community based sanctions for juveniles. It was also recommended that "prosecutor driven" diversionary schemes for juveniles should be developed, including the power to refer back for a police caution and the development of agreed guidelines on good practice in diversion at police and prosecutor.

The Right of Silence and Emergency Legislation

12. The Review recommended that government should commission and publish independent research into the effects of the Criminal Evidence (NI) Order 1988 on juvenile defendants as a matter of urgency.

Court Issues, Children's Evidence and Hearsay (5)

13. In respect of the youth court the Review recommended the following:

- i) Guidelines should be developed for the layout and operation of the youth court, emphasising the need for all the participants in court to sit at the same level, the need for participants to hear what is being said in court, the need for simple, plain language to be used during the proceedings and the need for the defendant and his/her parents to be given opportunities to participate and express themselves freely;
- ii) Defence and prosecution advocates should be encouraged through professional education and development to enhance their expertise in respect of juvenile cases and their awareness of human rights instruments and jurisprudence as it relates to juveniles. This should not interfere with the juvenile's right to a lawyer of his or her own choice. Professional and lay members of the bench should receive similar training under the auspices of the Judicial Studies Board;
- iii) In the light of the outcome of the evaluation, the child witness scheme should be extended to all criminal courts in Northern Ireland, including the youth courts;
- iv) Efforts to deal with delay in cases being brought before the youth courts should continue;
- v) Given the need to tackle delay and the impact of extending the jurisdiction of the youth courts to include 17 year olds, there should be an examination of youth court sittings and consequential implications for magistrates courts.
- vi) The government should carefully consider the implications of judgments in T&V v UK for the operation of the juvenile justice system in Northern Ireland

Complaints and Inspection Issues

14. Concerns had been raised with the Review by some consultees about the adequacy of the complaints and inspection systems in the juvenile justice system, in particular for those children in custody. The Review recommended that complaints mechanisms should be reviewed as a matter of urgency to ensure that they complied with the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and to ensure that they included an independent element. It was also recommended that all young people entering custody should be given a written description of their rights and responsibilities in an accessible format, together with details of how to make a complaint and addresses of private and public organisations, which could assist them in making a complaint.

In relation to inspection, it was recommended that all agencies providing facilities and services for juvenile offenders should come within the remit of the Criminal Justice Inspectorate.

Management of the Juvenile Justice System

15. The Review recommended that a next steps agency should be created to take on the responsibilities, which fell at that time to the Juvenile Justice Board (6). Juvenile Justice policy should be dealt with by a separate unit within the department in which the next steps agency was based. Pending devolution it was recommended that

political responsibility for the juvenile justice system should remain with the Secretary of State for Northern Ireland and that policy and legislative advice should continue to be provided by the Northern Ireland Office.

Youth Conferences

16. Chapter 9 of the Criminal Justice Review is entitled Restorative and Reparative Justice. Restorative Justice was considered by many consultees to be an "invaluable tool for dealing with young offenders in particular". The Review conducted international research on models of best practice throughout the world and recommended the development of restorative approaches for juvenile offenders (7). It was recommended that restorative justice should be integrated into the juvenile justice system using a youth conference model based in statute, available for all juveniles and subject to the full range of human rights safeguards. The key recommendations in this regard were that a court based youth conferencing scheme should operate on the basis of court referrals, with the youth conference resulting in a report to the court containing a draft plan. If approved by the court, the plan would form the basis for the court disposal. Court ordered referrals, it is stated, should be required after guilt has been admitted or determined, but before disposal and should be discretionary for offences triable only on indictment. It was recommended that every effort should be made to encourage victims to attend the youth conference, but that there would of course be no question of compelling victims to attend. They recommended that the following people should attend the youth conference: the youth conference co ordinator, the juvenile and his or her parents or guardians and either a police officer or prosecutor. The following people could participate in the youth conference; the victim (if he or she agrees) and the victim's supporters, significant others relevant to the offender, a defence solicitor or barrister and where appropriate professionals such as probation and social services.

It was also envisaged by the Review that a national level interagency body should be set up which would be responsible for youth conferencing and also that in the longer term, pre court diversionary strategies would be developed. This would encompass two principal forms of pre court restorative justice diversion, the first of which would be driven by the police as part of their discretionary power to issue formal advice and warnings and formal cautions and the second of which would be driven by prosecutors.

THE JUSTICE (NI) BILL 2001 (PARAGRAPH 17)

17. The Justice (NI) Bill 2001 together with Explanatory Notes and an Implementation Plan was published in December 2001. The Implementation Plan showed which recommendations of the Criminal Justice Review had been accepted by the government and what action was being taken (8). The Children's Law Centre and Include Youth made a submission to the Draft Bill, but unfortunately the timescale for comment was very short (9).

The House of Lords debated the youth justice provisions of the Bill on 18 June 2003 including debate in relation to the "best interests of the child" principle (10). It is of particular note that two amendments were made to the youth justice section of the Bill in the House of Lords relating to the provisions regulating custody care orders.

THE JUSTICE (NI) ACT 2002 (PARAGRAPHS 18-29)

18. The Justice (NI) Act 2002 received Royal Assent on 24 July 2002.

Some of the main changes for the Youth Justice System in the Justice (NI) Act 2002 are set out below:

Aims of the Youth Justice System

19. Article 53 of the Justice (NI) Act 2002 sets out the aims of the youth justice system as follows;

1. "The principal aim of the youth justice system is to protect the public by preventing offending by children.
2. All persons and bodies exercising functions in relation to the youth justice system must have regard to that principal aim in exercising their functions, with a view, in particular, to encouraging children to recognise the effects of crime and to take responsibility for their actions.
3. But all such persons and bodies must also have regard to the welfare of children affected by the exercise of their functions (and to the general principle that any delay in dealing with children is likely to prejudice their welfare), with a view (in particular) to furthering their personal, social and educational development. "

There is no reference to international children's rights standards or of the best interest principle in the section on youth justice, as recommended by the Review.

Inclusion of 17 year olds in the Youth Justice System

20. Schedule 11 of the Justice (NI) Act 2002 makes provision for the extension of the youth justice system to 17 year olds. Article 64 Justice (NI) Act 2002 amends Article 39 of the Criminal Justice (Children) (NI) Order 1998 by inserting the following;

" 3A A court shall only make a juvenile justice centre order in the case of a child who has attained the age of 17 if;-

- a) he will not become an adult during the period of the order
- b) he has not had a custodial sentence imposed on him within the last two years
- c) the court, after considering a report made by a probation officer, considers that it is in his best interest to make such an order"

The Explanatory Note to the Justice (NI) Act 2002 indicates that this clause has the effect of limiting the circumstances when a 17 year old will be held in a juvenile justice centre to situations where he or she is particularly vulnerable. In all other cases and also in cases where the 17 year old would become 18 throughout the duration of the order, he or she will be sent to the Young Offenders Centre.

This clause commenced in August 2005.

Reparation Orders

21. Clause 54 of the Justice (NI) Act 2002 inserts a new clause Clause 36A into the Criminal Justice (Children) (NI) Order 1998 to create a new order, the reparation order. These are orders requiring the offender to make reparation for the offence, otherwise than by the payment of compensation to a person or to the community. It is for the court to decide what form the reparation should take in an individual case e.g. repairing property/community work. Before making a reparation order the court must obtain a report from a probation officer, a social worker of the appropriate authority or such other person as the Secretary of State designates. The report must indicate the type of requirements that it would be appropriate to impose upon the offender and the attitude of the victim or victims of the offence to the proposed requirements. Reparation orders must not require the offender to work for more than 24 hours and the reparation must be made within 6 months of the order being made. The requirements in a reparation order should not, as far as possible, interfere with times a child or young person normally works or attends school or any other educational establishment. The offender and the victim must consent to the reparation order being made.

A reparation order can be made where a child is found guilty of an offence, other than an offence, the sentence for which is (in the case of an adult) fixed by law as imprisonment for life. A reparation order cannot be made by a court where the court proposes to pass a custodial sentence or to make a community service, community responsibility or combination order.

The Reparation Order Rules (NI) 2003 (11) came into operation on 18 December 2003. Rule 2 sets out the responsibilities of the responsible officers in relation to preparing for and supervising the reparation required by a reparation order. Rule 3 sets out certain responsibilities of the child - the child must keep in touch with the responsible officer in accordance with instructions given by that officer and the child must give notice to the responsible officer of any change of address. Rule 4 (1) states that children under the age of 14 shall not be required to make reparation for more than two hours on any day and Rule 4 (2) states that children aged 14 and over shall not be required to make reparation for more than 4 hours on any one day.

Community Responsibility Orders

22. Clause 55 of the Justice (NI) Act 2002, inserts a new clause 36E into the Criminal Justice (Children) (NI) Order 1998 to create a new order, the community responsibility order. Where a child is found guilty of an offence other than an offence for which the court could (if the sentence were committed by an adult) sentence him to life imprisonment, the court may make a community responsibility order. These orders have two components; the offender will be required to attend a specific place where they will receive relevant instruction in citizenship (this term covers personal and social responsibility, the impact of crime on victims and any other factors in the offender's life which may be linked to crime) and will carry out for the number of hours specified in the order such practical activities as the responsible officer considers appropriate in light of instruction. A responsible officer is defined as a probation officer, social worker or other person designated by the Secretary of State.

The aggregate number of hours should be not less than 20 and not more than 40 hours. Where a court makes a community responsibility order in respect of two or more offences of which the offender has been found guilty by or before the court, it may direct that the hours specified in any of the orders should be concurrent or additional to those specified in any other of those orders.

The community responsibility order can only be made with the offender's consent. The court cannot make a community responsibility order if it purposes to deal with the offence in any other way.

Community responsibility orders are community sentences within the meaning of Article 2 (2) of the Criminal Justice (NI) Order 1996 As required by Article 9 (3) Criminal Justice (NI) Order 1996, the court must obtain a pre-sentence report before making a community responsibility order and must state in open court that the offence or series of offences was serious enough to warrant a community responsibility order.

The obligations imposed by a community responsibility order must be performed within the period of six months beginning with the date on which the order is made.

The Community Responsibility Order Rules (NI) 2003 (14) came into force on 18 December 2003. Rule 2 sets out the functions of responsible officers in preparing for and supervising the attendance of a child who is subject to a community responsibility order. Rule 3 (1) states that a child under 14 shall not be required to attend or carry out any activity for the purposes of a community responsibility order for more than two hours on any one day. Rule 3 (2) states that a child aged 14 years or over shall not be required to attend or carry out any activity for the purposes of a community responsibility order for more than 4 hours on any one day.

Custody Care Orders

23. Clause 56 of the Justice (NI) Act 2002, inserts new clauses 44A - G into The Criminal Justice (Children) (NI) Order 1998. Custody care orders are new forms of custodial sentences for children. The Criminal Justice Review had recommended that children between the ages of 10 and 13 inclusive should not be held in juvenile justice centres (at present children as young as 10 can be held in juvenile justice centres). The Review recommended that children of this age should be looked after by the care system.

The Justice (NI) Act 2002 does not raise the age of criminal responsibility, therefore children of this age will still be criminally prosecuted, but the court can make a custody care order, which would mean that the child would be placed in a secure accommodation setting, followed by a period of supervision.

A court can make a custody care order in respect of a child who has not yet attained the age of 14 and who 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.

Custody care orders will be for a period of six months, although the court can specify for the order to last for two years. Where the court makes an order for longer than six months it must state reasons in open court for doing this. The court must be satisfied that a custodial sentence is appropriate for the offence.

The period during which the child will be kept in secure accommodation is one half of the period of the order.

Where the court makes a custody care order in respect of a child who will become 14 in the duration of the order, the court can provide that the child should spend the whole or part of his or her time after he or she has reached 14 in a juvenile justice centre rather than secure accommodation.

Article 44B makes provision about the application of some of the provisions of The Children (NI) Order 1995 to children held under custody care orders (15). This article was subject to amendment by The House of Lords and now includes representation and complaints procedures for children who are the subject of custody care orders, which were not included in the original Justice (NI) Bill (16). A care order ceases to have effect if a custody care order is made.

Custody care orders have not yet been implemented in Northern Ireland.

Youth Conferences

24. Clause 57 of the Justice (NI) Act 2002, inserts a new clause 3A into the Criminal Justice (Children) (NI) Order 1998. The Justice (NI) Act 2002 provides the statutory footing for two types of youth conferences, diversionary and court ordered. There will be a youth conference coordinator and youth conference plans for both. The Youth Justice Agency has appointed a director for the Youth Conference Service and the first youth conferences are due to be piloted in December 2003. Rules are presently being drawn up with regard to the procedure to be followed in respect of youth conferences.

The following people must by law attend the youth conference; a youth conference co coordinator, the child, a police officer and an appropriate adult.

The following people are entitled to participate in the youth conference; the victim of the offence, or if the victim is not an individual, an individual representing the victim, a legal representative of the child acting as his adviser, if a community order or youth conference order is in force in respect of the child or the child is the subject of supervision under a juvenile justice centre order, the supervising officer.

The youth conference coordinator may allow other people to participate if he or she considers that their participation or attendance would be of value.

Where a youth conference is convened with respect to a child and an offence, neither the fact that it has been convened nor anything said or done in or in connection with any meeting constituting or forming a part of the youth conference is admissible in any criminal proceedings as evidence that the child has committed the offence.

The Youth Conference Service has been established and further information can be obtained from their website at www.youthconference.serviceni.gov.uk.

The Youth Conference Rules (NI) 2003 came into force on 18 December 2003 (18)

Diversiory Youth Conference

25. Clause 58 Justice (NI) Act 2002 inserts new clauses 10 A - 10 D into the Criminal Justice (Children) (NI) Order 1998. Clause 58 provides for Diversiory Youth Conferences, which can be requested by the Director of Public Prosecutions (only the Director). A diversiory youth conference is a youth conference which can make one of the following recommendations; a) that no further action be taken against the child in respect of the offence, b) that proceedings against the child in respect of the offence be continued or instituted c) that the child be subject to a youth conference plan. The Director can only make a referral to a diversiory youth conference if the child has admitted to the director that he or she has committed the offence and agrees to participate in a diversiory youth conference.

When a recommendation is made by the youth conference coordinator, the Director can consider whether to accept or reject it.

Court Ordered Youth Conferences

26. Clause 59 Justice (NI) Act 2002 inserts new clauses 33A - E into the Criminal Justice (Children) (NI) Order 1998 and provides for court ordered youth conferences. This must be ordered by the court after a child has pleaded guilty or been found guilty of an offence (19). The court has discretion as to whether to refer a case to a youth conference if the child has already been the subject of a diversiory youth conference and the youth conference co coordinator made a recommendation. Specific rules are being drawn up about when the court can refer a child to a youth conference and also in relation to who attends the conference.

A court ordered youth conference is defined under the legislation as a youth conference convened with a view to the youth conference co coordinator making one of the following recommendations to the court which are set out in Article 33A) 5) a), b) and c) below;

- a) "that the court exercise its powers (apart from Article 36J) to deal with the child for the offence;
- b) that the child be subject to a youth conference plan in respect of the offence;
- c) that the court exercise its powers to deal with the child for the offence by imposing a custodial sentence and that the child be subject to a youth conference plan in respect of the offence.

The child must agree to anticipate in the conference and if the child at any time withdraws his agreement the youth conference must be terminated.

A recommendation of a youth conference coordinator must be in the form of a written report. If the youth conference coordinator makes a recommendation that a custodial sentence should be imposed, he or she should not specify what sort or what length of custodial sentence should be imposed by the court. When recommendations are made that a case should be dealt with otherwise than by imposing a custodial sentence, the youth conference coordinator can include details of how the court should exercise its powers.

If the recommendation is made under Article 33A (5) b), the report must include details of the youth conference plan. The court must consider the report and recommendations of the youth conference coordinator before dealing with the child for the offence.

Legal Aid

27. Pursuant to Clause 61 Justice (NI) Act 2002, legal aid will be available for the attendance of solicitors at Diversionary and Court Ordered Youth Conferences. In the case of a diversionary youth conference written application for legal aid must be made to the clerk of the petty sessions for a magistrate's court on the prescribed form. In respect of attendance of a solicitor at a court ordered youth conference, if the court has already granted a criminal certificate, this will cover any court ordered conference.

Youth Conference Plans

28. A youth conference plan is a plan drawn up by the youth conference coordinator after the youth conference has taken place, which requires the child or young person to do one or more of the following;

- a) "apologise to the victim of the offence or to any other person otherwise affected by it;
- b) make reparation for the offence to the victim or any such person or to the community at large;
- c) make a payment to the victim of the offence not exceeding the cost of replacing or repairing any property taken, destroyed or damaged by the child in committing the offence;
- d) submit himself to the supervision of an adult;
- e) perform unpaid work or service in or for the community;
- f) Participate in activities (such as activities designed to address the offending behaviour, offering education or training or assisting with the rehabilitation of persons dependent on, or having a propensity to misuse, alcohol and drugs);(20)
- g) Submit himself to restrictions on his conduct or whereabouts (including remaining at a particular place for particular periods); and
- h) Submit himself to treatment for a mental condition or a dependency on alcohol and drugs

A youth conference plan can only specify a requirement for a young person to perform unpaid work or service in the community if the young person is over 16 years of age. The period within which the child or young person must comply with the requirements must not be more than one year.

Youth Conference Orders

29. The Court may make a youth conference order under clause 60, Justice (NI) Act 2002. Where a recommendation has been made under Article 33A (5) (b) or (c), the court may make a youth conference order. This order could be the same as the youth conference plan produced by the youth conference participants, or the court can vary the plan (but must consult the youth conference co coordinator if it intends to do so).

The Court must be satisfied that the offence or the combination of the offence and one or more offences associated with it, was serious enough to warrant a youth conference order being made. Before making a youth conference order the court must explain to the young person in ordinary language why it is making the order, the effect if the order and the requirements imposed by it, the failure to comply with those requirements and that the court has power to review the order.

A youth conference order cannot be combined with any other sentence unless the youth conference recommended that it be combined with a custodial sentence. The child or young person must consent to the youth conference order and to any custodial sentence imposed.

THE YOUTH JUSTICE AGENCY

30. Pursuant to the recommendations of the Criminal Justice Review, a new youth justice agency was launched on 1 April 2003. The Agency launched its corporate and business plan, which outlines its responsibilities:

"The Agency is concerned with operations and service delivery and will work in partnership with others in diverting children from crime and assisting their integration into the community youth justice policy is separate from the functions of the agency and is one of the responsibilities of the Criminal Justice Directorate of the Northern Ireland Office".

There are three strands to the work of the youth justice agency namely youth conferencing, community services and custodial provision. There is a Chief Executive and four directors of community services, youth conference services, the juvenile justice centre and corporate services respectively.

31. The Agency provides custodial facilities for boys and girls aged 10 - 16 at the Juvenile Justice Centre for Northern Ireland in Rathgael, Bangor. Since the commencement of Article 64 of the Justice (NI) Act 2002 referred to above, 17 year olds who meet the necessary criteria can also be sent to the Juvenile Justice Centre.

32. This site is also used for the detention of 10 - 13 year olds until such time as accommodation needs for these children can be met by the care system as required by the Justice (NI) Act 2002.

33. In terms of community services, there are 20 community based projects throughout Northern Ireland.

THE CRIMINAL JUSTICE (CHILDREN) (NI) ORDER 1998 (PARAGRAPHS 34-48)

34. The Criminal Justice (Children) (NI) Order 1998 (CJCO) came into effect on the 1 February 1999. The Magistrate's Courts (Criminal Justice Children) Rules (Northern Ireland) 1999 were published in conjunction with the legislation together with The Juvenile Justice Centre Rules.

THE YOUTH COURTS

35. Juvenile Courts were renamed Youth Courts under Article 27 Criminal Justice (Children NI Order). The courts consist of 3 members one of whom must be female. The panel consists of two lay members and a legally qualified Resident Magistrate.

THE AGE OF CRIMINAL RESPONSIBILITY

36. The age of criminal responsibility is set at 10 yrs old. The doctrine of doli incapax, which meant that in cases involving children between the ages of 10 and 14 the prosecution had to show clear and positive evidence that the child knew what s/he was doing was seriously wrong has been abolished. It was abolished by Article 3 Criminal Justice (NI) Order 1996, which came into force in November 1998.

The effect of this is that children who are over the age of criminal responsibility, which is 10, will be treated in the same way as other juveniles and the court will not be required to assume that children under 14 may be incapable of moral judgments.

The Justice (NI) Act 2002 does not amend the age of criminal responsibility despite criticism from the United Nations Committee On The Rights of The Child about the very low age in this jurisdiction.

THE UPPER AGE LIMIT

37. The upper age limit was not extended under the Criminal Justice (Children) (NI) Order 1998 to allow for 17 yr olds to be included in the juvenile justice system. At present the Youth Courts will only deal with children and young people up to the age of 17 (not including 17). The Justice (NI) Act 2002 has extended the remit of the Youth Courts to include 17 year olds, although this has not yet been implemented.

WELFARE OF THE CHILD

38. The Youth Court is obliged to have regard to the welfare of any child brought before it and the general principle that any delay is likely to prejudice the child's welfare (Article 4 Criminal Justice (Children) (NI) Order 1998). The Order does not encompass the "best interests of the child" principle.

The Justice (NI) Act 2002 does not incorporate the "best interests" principle into the youth justice system. The Criminal Justice Review had recommended the inclusion of the principle of the best interests of the child as a primary consideration and the development of a clear statement of the aims of the youth justice system guided by international human rights standards. The opportunity was not taken to do this in the Justice (NI) Act 2002.

POLICE DETENTION

39. Where a child is in police detention there is an additional duty to the duties under The Police and Criminal Evidence Order 1989 (right to solicitor and appropriate adult) in respect of juveniles.

The duty under the Criminal Justice Children (NI) Order 1998 is to inform a person responsible for the welfare of the child that the child has been arrested, why he has been arrested and where s/he is being detained.

Persons responsible for a child's welfare are defined as being parents or guardians or any other person who has for the time being assumed responsibility. The reference to parent or guardian in the case of a child who is looked after within the meaning of Article 5 of the Children (NI) Order 1995 is a reference to the Trust concerned and to the parent and guardian. This right applies also to children held under the emergency legislation.

NOTIFICATION

40. Article 11 of the Criminal Justice Children (NI) Order 1998 requires that probation services and social services should be notified when a child is brought before the court.

It requires social services to provide any information about the child, which is likely to assist the court. This article should be read in conjunction with Article 21 Criminal Justice (NI) Order 1996, which requires the court to obtain and consider a pre sentence report when it is considering passing a custodial sentence.

The court must obtain pre sentence reports before it makes a probation order, a community service order or a combination of these two orders. It should always be obtained where a custodial sentence is being considered for a child/young person under 17.

The pre-sentence report may be provided by a probation officer or social worker (Criminal Justice (NI) Order 1996 Art 2). Social services do not prepare reports where a probation officer is required to do so but must provide the necessary information to the probation officer.

The pre-sentence report should contain information about the child's home circumstances, physical and mental health and character. The report should also deal with the child's background and history of offending, reasons for the behaviour, potential for family support systems, risk and mitigating factors and the impact of the proposed sentencing options on the particular child.

BAIL

41. One of the aims of The Criminal Justice (Children) (NI) Order 1998 was to ensure that the number of young people who are refused bail was reduced.

There are, however, a number of exceptions to the requirement to release on bail and these are stated at Article 12 of the Criminal Justice Children (NI) Order 1998 as follows;

"Where a court remands or commits for trial a child charged with an offence, it shall release him on bail unless-

- a) the court considers that to protect the public it is necessary to remand him in custody AND the offence charged is a violent or sexual offence OR
- b) is one where in the case of an adult similarly charged he would be liable to conviction on indictment to imprisonment for 14 years or more
- c) the young person is already on bail for another offence or has been found guilty of an arrestable offence within the period of two years preceding the date when he/she was charged with the current offence."

For scheduled offences, the Youth Court cannot grant bail at present and an application has to be made to the High Court.

Article 12(4) of the Criminal Justice Children (NI) Order 1998 was amended by Section 67 Terrorism Act 2000. The Terrorism Act 2000 was brought into force on the 19th February 2001 by SI 2001 no 421, The Terrorism Act Commencement No 3 Order 2001.

Section 67 of the Terrorism Act 2000 concerns limitations of the power to grant bail and states as follows:

- 1) This section applies to a person who
 - a) has attained the age of fourteen and
 - b) is charged with a scheduled offence which is neither being tried summarily nor certified by the DPP as suitable for summary trial
- 2) Subject to sub sections 6) and 7) a person to whom this section applies shall not be admitted to bail except
 - a) by a judge of the High Court or the Court of Appeal or
 - b) by the judge of the court of trial on adjourning the trial of a person charged with a scheduled offence
- 3) A judge may in his discretion admit a person...to bail unless satisfied that there are substantial grounds for believing that the person will, if released on bail (whether subject to conditions or not)
 - a) fail to surrender to custody
 - b) commit an offence while on bail
 - c) interfere with a witness
 - d) otherwise obstruct or attempt to obstruct the course of justice whether in relation to himself or any other person or
 - e) fail to comply with conditions of release (if any)
- 4) In exercising his discretion in relation to a person under subsection 3 a judge shall have regard to such of the following considerations as he considers relevant (as well as to any others which he considers relevant)
 - a) the nature and seriousness of the offence
 - b) the character, antecedents associations and community ties of the person
 - c) the time which the person has already spent in custody and the time which he is likely to spend in custody if he is not admitted to bail and
 - d) the strength of evidence of his having committed the offence"

The judge can impose conditions on bail.

REMANDS IN CUSTODY

42. It is stated under Article 13 of the Criminal Justice Children (NI) Order 1998 that where the court decides not to release a child on bail it must give reasons in open court and has to make an order committing the child to a juvenile justice centre or if the child is aged 15 or over and the court considers that he is likely to injure himself or others to the Young Offenders Centre.

Article 31 of the Criminal Justice (Children) (NI) Order states that where a child is remanded in custody for information to be obtained about him, the court may in the absence of the child extend the period of remand, but the child must be brought before the court at least once every two weeks.

Article 4 of The Criminal Justice (NI) Order 1998 states that " After Article 30 of The Criminal Justice (Children) (NI) Order 1998 there shall be inserted;

"Power of the Youth Court in relation to remands

30 A Youth Court shall not be required to adjourn any proceedings for an offence at any stage by reason only of the fact;

that the court commits the accused for trial for another offence; or
that the accused is charged with another offence"

Children should only be remanded in custody in the exceptional circumstances outlined above and should not be remanded for care reasons. Article 22 of the Criminal Justice (Children) (NI) Order 1998 places restrictions on reporting a child's name address or school except where the court or Secretary of State is satisfied that it is in the interests of justice to do so.

AVAILABLE DISPOSALS

43. A Disposal is an option available to a court for dealing with a child or young person's case. The term "sentencing" should not be used in this context. The new disposals under The Justice (NI) Act 2002 namely reparation orders, community responsibility orders, custody care orders and youth conference orders have been set out above.

The other existing disposals available are;

Juvenile Justice Centre Orders

44. The main change introduced by the Criminal Justice Children (NI) Order 1998 was the introduction of the juvenile justice centre order, which replaced the old indeterminate training school order. The juvenile justice centre order lasts for a period of 6 months of which half will be spent in custody and the other half in the community under the supervision of the Probation Services and with the support of statutory and voluntary agencies. Orders can be made for a period of up to two years in exceptional circumstances (Article 39(2)). Children and young people subject to juvenile justice centre orders will now be sent to the single site justice centre for Northern Ireland at Rathgael, Bangor.

It is stated at Article 39(3) that the court is not allowed to make a Juvenile Justice Centre Order unless it has taken all matters into account under Article 37 of the Criminal Justice (Northern Ireland) Order 1996 (previous convictions etc) and has formed the opinion that a custodial sentence would be justified for the offence.

Where a court makes an order for more than 6 months the reasons must be stated in open court. The child will spend one half of the order in custody and one half in the community under the supervision of probation. The length of time the child spends in custody will be reduced by any period spent on remand.

Where a Juvenile Justice Centre Order is made with respect to a child who is subject to a care order the care order has no effect whilst the child is in custody.

There is a duty on social services to assist and befriend the child in the Juvenile Justice Centre and to visit the child where a care order has been in place prior to admission to the Juvenile Justice Centre.

The Criminal Justice Children (NI) Order 1998 repeals the obligation to consider religion when placing a child.

Supervision under a Juvenile Justice Centre Order

45. Article 40 of the Criminal Justice Children (NI) Order 1998 states that the Probation Service in Northern Ireland has the duty to supervise the period of supervision in the community. Before the commencement of the period of supervision the manager of the juvenile justice centre where the young person is detained must give him/her a notice specifying the period of supervision and the person under whose supervision he should be.

Enforcement of Compulsory Supervision Conditions;

46. If a young person breaches the conditions it is the duty of the Probation Services to return the case to court for enforcement.

The young person who breaches the order is liable on conviction to 30 days in a Juvenile Justice Centre (with no reduction in the period of supervision) or a fine not exceeding £200 if under 14 or £1000 if older.

Attendance Centre Orders

47. Article 37 of the Criminal Justice Children (NI) Order 1998 re enacts similar provisions in The Children and Young Persons Act 1968 and sets out the circumstances for making an attendance centre order and the requirements for the number of hours for which a child may be required to attend.

It is stated in the Criminal Justice Children (NI) Order 1998 that the court should not make an attendance centre order unless the attendance centre is reasonably accessible to the child concerned having regard to the child's age the means of access open to him and any other circumstances. The times a child is required to attend the centre should not conflict with his /her religious beliefs, or interfere with working hours or hours he/she is required to attend school or any other educational establishment. There are currently * designated attendance centres in Northern Ireland.

Punishment for Grave Crimes

48. Article 45 of the Criminal Justice Children (NI) Order 1998 allows for a child to be detained at the pleasure of the Secretary of State, which means the child can be detained for an indeterminate period and will only be released on foot of an order of the Secretary of State.

Article 45(2) states;

Where

- a) a child is convicted on indictment of any offence punishable in the case of an adult with imprisonment for 14 years or more, not being an offence the sentence for which is fixed by law and
- b) the court is of the opinion that none of the other methods in which the case may be dealt with are suitable;
- c) the court may sentence the child to be detained for such period as may be specified in the sentence; and where the sentence has been passed the child, shall during that period notwithstanding any other provisions of this order, be liable to be detained in such place and under such conditions as the Secretary of State may direct.

Community Service Order

49. A young person over 16, with his consent, may be subject to a community service order for an offence punishable by imprisonment or detention. The young person would be required to undertake unpaid community work for at least 40 and not more than 240 hours (Art 13 Criminal Justice (NI) Order 1996). If a Community Service Order is made for two separate offences the work can run concurrently or consecutively as long as the total does not exceed 240 hours.

Probation Orders

50. A probation order can be made in respect of anyone over the age of criminal responsibility as long as the sentence is not fixed by law (Criminal Justice (NI) Order 1996). The court must explain the reasons for making the order to the young person and if the young person is over 14 their consent must be obtained.

The requirements which, can be included in a Probation Order made by the court, are set out in Schedule 1 Criminal Justice (NI) Order 1996. These requirements may be amended by applying to the court (Schedule 2 part IV para 13 and 14).

Absolute Discharge/Conditional Discharge

51. A young person can be discharged absolutely or discharged, subject to staying out of trouble for any length of time between 6 months and 2 years. However if another offence is committed during this time the court can deal with the old offence as well as the new one.

Deferment

52. The Court may defer sentence for up to six months to enable the court to monitor the young person's behaviour.

Fines

53. The court can impose a fine, but there are limits on the amount a young person can be fined.

PARENTAL RESPONSIBILITY

54. Article 53 of the Criminal Justice (Children) (NI) Order 1998 provides that the managers of the Juvenile Justice Centres shall have responsibility for a child in custody and have the power to determine the extent to which a parent meets parental responsibility.

THE MAGISTRATE'S COURTS CRIMINAL JUSTICE (CHILDREN) RULES (NI) 1999

55. These are the rules, which accompany the Criminal Justice Children (NI) Order 1998 and deal with court procedures. There is a duty on the court under Rule 5 to explain to the child the nature of the proceedings and, where he is charged with an offence, the substance of the charge. It is important to note that the explanation is required to be given in simple language suitable to the child's age and understanding.

Parents, guardians or a responsible person can help the child conduct his/her defence in the absence of legal representation.

Where the court is dealing with a child who has been found guilty of an offence the court must give the child and his parent or guardian the opportunity of making a statement, must obtain information about the child's general conduct, home surroundings, school record and medical history of the child and all information provided under Article 11 of the Criminal Justice Children (NI) Order 1998 by social services to probation services.

Any written reports of probation officers, Trusts or medical practitioners may be received by the court without being read aloud but importantly the rules state that the child should be told the substance of any part of the report bearing on his character or conduct which the court considers to be relevant to the manner he/she should be dealt with.

The rules then go on to state that if the child or his parent or guardian having been told the content of a certain report wish to get their own report the court should consider adjourning the proceedings.

USEFUL ADDRESSES

Include Youth
Alpha House
3 Rosemary Street
Belfast
BT 1 1QA
Tel 028 90311007

Youth Justice Agency, Corporate Headquarters, 41-43 Waring Street, Belfast, BT1 2DY, Tel 02890316400

Woodlands Juvenile Justice Centre
1 Mosswood Close, Mosswood Avenue, Rathgael Road, Bangor, BT19 1TA

CAJ
45-47 Donegall Street
BELFAST
BT1 2FG
Tel 028 90961122

NIACRO
169 Ormeau Road
BT7 1SQ
Tel 028 90320157

This information is for guidance purposes only and is not intended to be an authoritative statement of the law. In individual cases advices should always be sought from a solicitor.

READING LIST

LEGISLATION

The Criminal Justice (Children) (NI) Order 1998
The Magistrate's Courts (Criminal Justice)(Children) Rules (Northern Ireland) 1999
The Criminal Justice (Northern Ireland) Order 1996
The Juvenile Justice Centre Rules 1999
The Criminal Justice (NI) Order 1998(Extension Of Certain Provisions from Crime and Disorder Act 1998)
The Draft Justice (NI) Bill
Implementation Plan
The Criminal Justice Review

The Justice (NI) Act 2002
Explanatory Notes to the Justice (NI) Act 2002

GUIDANCE

Northern Ireland Office; Statements of Standards and Criteria For Juvenile Justice Centres In Northern Ireland

INTERNATIONAL LAW

United Nations Convention on the Rights Of the Child
The United Nations Standard Minimum Rules For the Administration Of Juvenile Justice
The United Nations Guidelines For the Prevention of Juvenile Delinquency
The United Nations Rules for the Protection Of Juveniles

PUBLICATIONS

SSI Inspection Of The Northern Ireland Training Schools 1997/98
NIO; Cautioning in N Ireland; A Profile Of Adult and Juvenile Offending
Training Schools; Child Protection Policies and Procedure, NIO
Its Part Of Life Here, 1994, CAJ; Robbie McVeigh
SSI; Overview Of Inspection Of Rathgael Centre, 1997, DHSS
SSI; Inspection Of The Remand Unit at Lisnevin Training School, 1997, DHSS
SSI; Overview Of Inspection Of St Patrick's Training School, 1997 DHSS
SSI; Inspection of Lisnevin Juvenile Justice Centre 1999
The Child And The European Convention On Human Rights (Includes a chapter on juvenile justice) 1999; Ursula
Kilkelly; Ashgate Press; www.ashgate.com; can be ordered
CAJ Handbook Civil Liberties In N Ireland; CAJ
Juvenile offenders And Reconviction in N Ireland; D Wilson H Kerr & M Boyle
Northern Ireland Criminal Procedure; John E Stannard Sweet & Maxwell Roundhall 2000
Booklet of Criminal Offences in N Ireland 1998 B Valentine, SLS

CHILD WITNESSES

The Children's Evidence (NI) Order 1995
Speaking Up For Justice; Report of The Interdepartmental Working Group on The Treatment Of Vulnerable or
Intimidated Witnesses June 1998; Home Office
Vulnerable or Intimidated Witnesses; A Consultation Paper; NIO October 1998
Vulnerable Or Intimidated Witnesses (NI) Working Group; Final Report; NIO July 1999

Footnotes

- 1 Members of this group include Include Youth, Save the Children, CAJ, Children's Law centre, NIACRO
- 2 Criminal Justice Review Group
- 3 The full text of the Criminal Justice Review can be accessed on the NIO website - www.nio.gov.uk
- 4 see para 23 for details about custody care orders
- 5 The Review Body recognised the importance in this context of articles 12 and 40 (2) (b) UNCRC and Rules 14.1 and 14.2 Beijing Rules which reads " the proceedings shall be conducive to the best interests of the juvenile and shall be conducted in an atmosphere of understanding, which shall allow the juvenile to participate therein and to express him or herself freely."
- 6 These are set out at art 56 (5) of the Criminal Justice (Children (NI) Order 1998
- 7 Also schemes for adult offenders to be piloted and evaluated.
- 8 HMSO and nio.gov.uk
- 9 This submission can be found on the Children's Law Centre website at www.childrenslawcentre.org
- 10 Hansard, Vol 636, No 153, 18 June 2002
- 11 2003 No 480
- 12 SI 1996/3160 (NI 24) , amendment made to the 1996 Order by para 30 (2) Schedule 10 of the Justice (NI) Act 2002
- 13 As amended by para 31, Schedule 10 of the Justice (NI) Act 2002
- 14 2003 No 479
- 15 Articles 26 (duty to safeguard and promote welfare), 27 (1), 2 (b), (e) and (f), (8), (9) and 28 (2) (accommodation and maintenance) , 29 (1), (2) and (4) to (6) (promotion and maintenance of contact with

family), 30 and 31 (visits) , 34 (death) , 35 (1), 36 (1) and (4) (advice assistance and befriending, 45 (reviews and representations), 72 and 73 (provision of homes Children (NI) Order 1995

16 Article 44B(3) (g)

17 appropriate adult is defined at 3A (4) and (5) of the Justice (NI) Act 2002

18 2003 No 473

19 Unless the offence falls within para 33A (1) (2) of the Justice (NI) Act 2002 i.e. is an offence for which the sentence is, in the case of an adult, fixed by law as imprisonment for life, b) is an offence triable only on indictment or c) is a scheduled offence for the purposes of Part 7 of the Terrorism Act 2000. In the case of b) and C) the court may refer the case to a youth conference.

20 new article 3C of the Criminal Justice (Children (NI) Order 1998 as inserted by article 57 of the Justice (NI) Act 2002