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STATUTORY INSTRUMENTS

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**1998 No. 1504**

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

**PART VI**

**SENTENCING AND OTHER POWERS**

*Preliminary*

**Remission by other courts of offenders to youth courts**

**32.**—(1) Any court by or before which a child is found guilty of an offence other than homicide,—

- (a) if it is a magistrates' court other than a youth court shall; and
- (b) if it is a court other than a magistrates' court may,

remit the case to a youth court acting for the place where the child was committed for trial, or, if he was not committed for trial, to a youth court acting either for the same place as the remitting court or for the place where the child resides.

(2) Where any case is remitted under paragraph (1), the child shall be brought before a youth court accordingly, and that court may deal with him in any way in which it might have dealt with him if he had been tried and found guilty by that court.

(3) Where any case is remitted under paragraph (1)—

- (a) the child shall have the same right of appeal against any order of the court to which the case is remitted as if he had been found guilty by that court, but shall have no right of appeal against the order of remission; and
- (b) any appeal against the finding of guilt shall, if the finding was made by a youth court or other court of summary jurisdiction, be made to the county court having jurisdiction to hear an appeal under sub-paragraph (a).

(4) A court by which an order remitting a case to a youth court is made under paragraph (1)—

- (a) may give such directions as appear to be necessary with respect to the custody of the child or for his release on bail until he can be brought before the youth court; and
- (b) shall cause to be transmitted to the clerk of the youth court a certificate stating—
  - (i) the nature of the offence;
  - (ii) that the child has been found guilty of the offence; and
  - (iii) that the case has been remitted for the purpose of being dealt with under this Article.

**Power to notify appropriate authority if child's welfare requires it**

**33.** Where a child is charged with an offence and a court—

- (a) finds him not guilty; or
- (b) finds him guilty but does not pass a custodial sentence or a community sentence,

the court may, if the court considers that his welfare requires it, notify the appropriate authority of such matters as the court thinks fit.

### *Fines and recognizances*

#### **Fines**

**34.** Notwithstanding anything contained in any statutory provision (including a provision of this Order), it shall not be lawful for a court of summary jurisdiction to impose a fine exceeding—

- (a) in the case of a child under the age of 14, level 1 on the standard scale; or
- (b) in the case of any other child, level 3 on the standard scale.

#### **Parent or guardian to pay fine, etc., instead of child**

**35.—**(1) Where a child is found guilty of any offence for the commission of which a fine may be imposed or costs, damages or payment of compensation may be awarded, if the court is of the opinion that the case would be best met by the imposition of a fine or by an award of costs, damages or compensation, whether with or without any other punishment, the court—

- (a) shall if the child is under the age of 16, and
- (b) may in any other case,

order that the fine, costs, damages or compensation be paid by the parent or guardian of the child instead of by the child, unless the court is satisfied that there is good reason for not so doing.

(2) Any sums ordered under this Article 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 with which the child was charged.

(3) A parent or guardian may appeal against an order under this Article or Article 36—

- (a) if made by a magistrates' court, to the county court; and
- (b) if made by the Crown Court, to the Court of Appeal in accordance with section 9 of the Criminal Appeal (Northern Ireland) Act 1980.

(4) In this Article “compensation” means any compensation for loss under Article 14 of the Criminal Justice (Northern Ireland) Order 1994.

#### **Parent or guardian to enter into recognizance**

**36.—**(1) In the case of a child found guilty of any offence, the court, either in addition to or in lieu of any other order which the court has power to make, may order his parent or guardian to enter into a recognizance as security for his good behaviour.

(2) Where the court makes an attendance centre order in respect of any child, it may order his parent or guardian to enter into a recognizance as security for his compliance with that order.

(3) An order under this Article may be made against a parent or guardian who, having been required to attend, has failed to do so, but, except in the circumstances mentioned, no such order shall be made without giving the parent or guardian an opportunity of being heard.

(4) The Magistrates' Courts (Northern Ireland) Order 1981 shall apply in relation to recognizances under paragraph (1) or (2) as it applies in relation to recognizances to be of good behaviour, and where such a recognizance is ordered to be estreated, the court, instead of ordering the person bound thereby to pay the sum in which he is bound or part of that sum, may remit payment of it.

### *Attendance centre orders*

#### **Attendance centre orders**

**37.**—(1) Where any court has power, or would but for section 1 of the Treatment of Offenders Act (Northern Ireland) 1968 or Article 47 have power, to impose imprisonment on a child or to deal with a child under Schedule 2 to the Criminal Justice (Northern Ireland) Order 1996 for failure to comply with any of the requirements of a community order, the court (subject to Articles 32(1) and 45(1)) may, if the clerk of the court has been notified by the Secretary of State that an attendance centre is available for the reception of children from that court, order the child to attend at such a centre, to be specified in the order, for such number of hours as may be so specified.

(2) The aggregate number of hours for which a child may be required to attend at an attendance centre by virtue of an attendance centre order—

- (a) shall not be less than 12 except where he is under the age of 14 and the court is of the opinion, having regard to his age or any other circumstances, that 12 hours would be excessive; and
- (b) shall not exceed 12 except where the court is of the opinion, having regard to all the circumstances, that 12 hours would be inadequate, and in that case shall not exceed 24 hours.

(3) A court shall not make an attendance centre order unless it is satisfied that the attendance centre to be specified in the order is reasonably accessible to the child concerned, having regard to his age, the means of access available to him and any other circumstances.

(4) The times at which a child is required to attend at an attendance centre under this Article shall be such as to avoid interference, so far as practicable, with his school hours or working hours.

(5) The first time at which a child is required to attend shall be specified in the order (being a time at which the centre is available for the attendance of the child in accordance with the notification of the Secretary of State) and the subsequent times shall be fixed by the officer in charge of the centre, having regard to the child's circumstances.

(6) A child shall not be required under this Article to attend at an attendance centre on more than one occasion on any day, or for more than three hours on any occasion.

(7) A court may make an attendance centre order in respect of a child before a previous attendance centre order in respect of him has ceased to have effect, and may determine the number of hours to be specified in the order without regard—

- (a) to the number specified in the previous order; or
- (b) to the fact that that order is still in effect.

(8) Where a court makes an attendance centre order, the clerk of the court shall serve a copy of the order on—

- (a) the officer in charge of the attendance centre specified in the order; and
- (b) the child; and
- (c) his parent or guardian.

(9) Where a child has been ordered to attend at an attendance centre in default of the payment of any sum of money, then—

- (a) on payment of the whole sum to any person authorised to receive it, the order shall cease to have effect;
- (b) on the payment of a part of the sum to any such person, the total number of hours for which the child is required to attend at the centre shall be reduced proportionately, that is to say by such number of complete hours as bears to the total number the proportion most

nearly approximating to, without exceeding, the proportion which the part paid bears to the whole sum.

### **Discharge, revocation or variation of attendance centre orders**

**38.**—(1) A court of summary jurisdiction may, on an application made by complaint by the child or by the officer in charge of the attendance centre specified in an attendance centre order—

- (a) discharge the order; or
- (b) vary the day or hour specified in the order for the child's first attendance at the centre;

and where the application is made by the officer in charge of the attendance centre, the court may deal with it without summoning the child.

(2) Where an attendance centre order has been made and it appears upon a complaint made to a justice of the peace that the child—

- (a) has failed to attend in accordance with the order; or
- (b) while attending at the centre has committed a breach of the rules made under Article 50(3) which cannot be adequately dealt with under those rules;

the justice may—

- (i) issue a summons directed to that child requiring him to appear before a youth court for the petty sessions district in which that child resides or in which the attendance centre specified in the order is situated; or
- (ii) if the complaint is in writing and on oath, issue a warrant for that child's arrest requiring him to be brought before such a court.

(3) If it appears to the satisfaction of the court before which the child appears or is brought under paragraph (2) that—

- (a) he has failed without reasonable excuse to attend as mentioned in paragraph (2)(a); or
- (b) he has committed such a breach of rules as is mentioned in paragraph (2)(b),

that court may revoke the order and deal with him in any manner in which he could have been dealt with by the court which made the order, if the order had not been made.

(4) Where a child in respect of whom an attendance centre order is in effect is convicted by a court of an offence, the court may—

- (a) revoke the order; and
- (b) in passing sentence for the offence take into account the number of hours which, but for the revocation, the child would have had to attend at an attendance centre to comply with the order.

(5) The discharge, variation or revocation under this Article of an attendance centre order shall be by order of the court, and where a court makes an order under this Article the clerk of the court shall serve a copy of the order on—

- (a) the officer in charge of the attendance centre specified in the attendance centre order which is discharged, varied or revoked; and
- (b) the child; and
- (c) his parent or guardian.

### *Juvenile justice centre orders*

#### **Juvenile justice centre orders**

**39.**—(1) Where a child is found guilty by or before any court of an offence punishable in the case of an adult with imprisonment (other than an offence to which Article 45(1) applies), the court (subject to Article 32(1)) shall have power to make a juvenile justice centre order, that is to say, an order that the child shall be sent to a juvenile justice centre and be subject to a period of detention in a juvenile justice centre followed by a period of supervision.

(2) A juvenile justice centre order shall be for a period of six months unless the court specifies in the order a longer period not exceeding two years.

(3) A court shall not make a juvenile justice centre 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 (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.

(4) Where a court makes a juvenile justice centre order for a period longer than six months, it shall state in open court its reasons for doing so.

(5) Subject to paragraph (6), the period of detention which the child is liable to serve under a juvenile justice centre order shall be one half of the period of the order.

(6) The length of the period of detention 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 (reduction of sentence).

(7) Any reference in any statutory provision to the length of the period of a juvenile justice centre order shall, unless the context otherwise requires, be construed as a reference to the length of the period imposed by or under paragraph (2) and not the length of the period as reduced by paragraph (6).

#### **Supervision under a juvenile justice centre order**

**40.**—(1) During the period of supervision under a juvenile justice centre order, the offender shall be under the supervision of a probation officer or such other person as the Secretary of State may designate.

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

(a) the managers of the juvenile justice centre where he is detained shall give him a notice specifying—

(i) the period of supervision; and

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

(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 Secretary of State may give the offender a notice specifying any alteration to the matters mentioned in paragraph (2)(a)(ii) or (b).

(4) The Secretary of State may make rules regulating the supervision of an offender subject to a juvenile justice centre order.

(5) Rules under paragraph (4) shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

(6) The Secretary of State may pay the expenses incurred by any person designated under paragraph (1) arising from the supervision of an offender under this Article.

### **Breach of supervision requirements**

**41.**—(1) Where a juvenile justice centre order has been made and it appears upon a complaint made to a justice of the peace that the offender has failed to comply with any requirements under Article 40(2) or (3), the justice may—

- (a) issue a summons directed to the offender 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 offender'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 offender appears or is brought under this Article that he has failed without reasonable excuse to comply with requirements under Article 40(2) or (3), the court may deal with him in respect of the failure in any of the following ways, namely—

- (a) it may impose on him a fine not exceeding—
  - (i) £200 if he is under the age of 14; or
  - (ii) £1,000 in any other case;
- (b) it may order him to be detained for a period not exceeding 30 days—
  - (i) in a juvenile justice centre; or
  - (ii) in a young offenders centre if he has attained the age of 17 or was detained in a young offenders centre before the period of supervision began.

(3) Any period of supervision shall not be reduced by any period during which the offender is detained under paragraph (2).

### **Taking of children to juvenile justice centre**

**42.**—(1) The court which makes a juvenile justice centre order shall cause it to be delivered to the constable or other person responsible for taking the child to the centre, and the person who takes him to the centre shall deliver the order to the person for the time being in charge of the centre.

(2) The court by which a juvenile justice centre 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 managers of the centre, to be sent to the managers or to the person for the time being in charge of the centre.

(3) Where a child has been ordered to be sent to a juvenile justice centre, any person who harbours or conceals him after the time has come for him to go to the centre 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.

(4) Where a constable or other person authorised to take a child to a juvenile justice centre is, when the time has come for him to go to the centre, unable to find him or unable to obtain possession of him, a justice of the peace, 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.

(5) 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.

#### **Effect of juvenile justice centre order where care order is in force**

**43.**—(1) Where a juvenile centre order is made with respect to a child who is subject to a care order under the Children (Northern Ireland) Order 1995, the care order shall be of no effect while he is detained in a juvenile justice centre.

(2) Where a child has ceased to be in the care of an authority by virtue of paragraph (1), the authority shall, where practicable, while the child is detained in a juvenile justice centre, cause him to be visited and befriended, and may, in exceptional circumstances, give him assistance in kind or in cash.

(3) Paragraphs (7) to (9) of Article 18 of the Children (Northern Ireland) Order 1995 shall apply to assistance under this Article as they apply to assistance under that Article.

#### **Effect of subsequent conviction where juvenile justice centre order is in effect**

**44.**—(1) Where a person in respect of whom a juvenile justice centre order is in effect is convicted by or before a court of an offence, the court shall—

- (a) revoke the order; and
- (b) in passing sentence 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 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 the words “such period not exceeding two years as the court specifies in the order”;
- (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”.

#### *Grave crimes*

#### **Punishment of certain grave crimes**

**45.**—(1) A person convicted of an offence who appears to the court to have been under the age of 18 at the time the offence was committed shall not be sentenced to imprisonment for life nor shall a sentence of death be passed on him but the court shall instead (notwithstanding any other statutory provisions) sentence him to be detained during the pleasure of the Secretary of State in such place and under such conditions as the Secretary of State may direct.

(2) 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 is suitable,

the court may sentence the child to be detained for such period as may be specified in the sentence; and where such a 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.

(3) A person detained pursuant to the directions of the Secretary of State under this Article shall, while so detained, be deemed to be in legal custody.

(4) The Secretary of State may by order direct that a person in respect of whom the Secretary of State is authorised to give directions under paragraph (2) shall be transferred and detained in a juvenile justice centre specified in the order.

(5) An order under paragraph (4) shall be an authority for the detention in that centre or in such other centre as the Secretary of State may determine of the person to whom it relates until such date as may be specified in the order.

(6) The date to be specified under paragraph (5) shall not be later than—

- (a) the date on which the person will, in the opinion of the Secretary of State, attain the age of 18; or
- (b) the date on which his detention under paragraph (2) would have expired.

(7) Nothing in paragraphs (4) to (6) shall prejudice the power of the Secretary of State to give directions under paragraph (2).

#### **Discharge on licence**

**46.**—(1) Any person detained pursuant to the directions of the Secretary of State under Article 45 may, at any time, be discharged by the Secretary of State on licence.

(2) Such a licence may be in such form and may contain such conditions as the Secretary of State may direct, and may at any time be revoked or varied by the Secretary of State.

(3) Where such a licence is revoked the person to whom the licence related may be arrested without warrant by any constable and taken to such place as the Secretary of State may direct.

#### *Miscellaneous*

#### **Limitation on punishment for contempt of court or default of payment of fine, etc.**

**47.**—(1) A child shall not be ordered to be detained in custody—

- (a) for contempt of court; or
- (b) in default of payment of a fine, costs, damages or compensation.

(2) Paragraph (1) shall not apply in the case of a child who has attained the age of 16 if the court certifies that his behaviour is such that no other method of dealing with him is appropriate.

#### **Power of courts on committal of offender**

**48.**—(1) Where a child would, if he were an adult, be liable to be committed to prison for any default, the court shall, in addition to any other powers exercisable by virtue of any other statutory provision (including a provision of this Order), have power to commit him to custody in a young offenders centre if he has attained the age of 16 and the court considers that no other method of dealing with him is suitable.

(2) The term for which a child may be committed to custody in a young offenders centre under this Article shall not exceed the maximum term for which he could (or could if he were an adult) have been committed to prison and shall not on any occasion exceed one month.

(3) This Article applies in relation to the fixing of a custodial sentence to be served in the event of default of payment of a fine or other sum of money as it applies in relation to committal to prison in default of such payment.



(4) Where a court commits a child to custody in a young offenders centre under this Article and at the time the warrant issued by the court for that committal falls to be executed the child is detained in any other place pursuant to the directions of the Secretary of State under Article 45, that committal shall have effect as if it were a committal to that other place in which he is detained.

(5) In this Article “default” means failure to pay, or want of sufficient distress to satisfy, any fine or other sum of money, or failure to do or abstain from doing anything required to be done or left undone.

#### **Duty of parent or guardian to notify change of address**

**49.**—(1) The parent or guardian of a child who is subject to an attendance centre order shall keep the officer in charge of the centre informed of the parent or guardian’s address.

(2) The parent or guardian of a child who is subject to a juvenile justice centre order shall keep the managers of the centre informed of the parent or guardian’s address.

(3) Where a child is transferred from one juvenile justice centre to another, the managers of the centre from which he is transferred shall, where possible, inform his parent or guardian of the transfer; and until his parent or guardian has been so informed, the parent’s or guardian’s duty under paragraph (2) shall be deemed to be duly discharged if he keeps the managers of the first-mentioned centre informed of his address.

(4) A parent or guardian of a child who, knowing that that child is subject to an attendance centre order or a juvenile justice centre order, contravenes paragraph (1) or (2) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(5) In any proceedings under paragraph (4) it shall be a defence for a parent to prove that he was residing at the same address as the other parent and had reasonable cause to believe that the other parent had kept the officer in charge of the attendance centre or the managers of the juvenile justice centre informed of the address of both.