Draft Order in Council laid before Parliament under the Northern Ireland Act 1974, Schedule 1 paragraph 1(4)(a), for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

1998 No. (N.I.)

NORTHERN IRELAND

Criminal Justice (Children) (Northern Ireland) Order 1998

Made - - - - 1998
Coming into operation on days to be appointed under Article 1(2)

At the Court at , the day of 1998

Present,

The Queen's Most Excellent Majesty in Council

Whereas a draft of this Order has been approved by a resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1 of Schedule 1 to the Northern Ireland Act 1974 and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

PART I

INTRODUCTORY

Title and commencement

1.—(1) This Order may be cited as the Criminal Justice (Children) (Northern Ireland) Order 1998.

(2) This Order shall come into operation on such day or days as the Secretary of State may by order appoint.

Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order —

"adult" means a person who has attained the age of 17;

"appropriate authority" means, in relation to a child, the authority within whose area the child is ordinarily resident or, if that is not known, the authority within whose area the child is, and "authority" and "area" have the same meaning as in the Children (Northern Ireland) Order 1995;

"arrestable offence" has the same meaning as in the Police and Criminal Evidence (Northern Ireland) Order 1989 and "serious arrestable offence" has the meaning assigned to it by Article 87 of that Order;

"attendance centre" has the meaning given by Article 50(1);

"attendance centre order" means an order under Article 37(1);

"child" means a person who is under the age of 17;

"community order", "community sentence" and "custodial sentence" have the same meanings as in Article 2(2) of the Criminal Justice (Northern Ireland) Order 1996;

"custody officer" has the meaning assigned to it by Article 6(4);

"doctor" means a fully registered medical practitioner;

"guardian" includes any person (including an authority) who has for the time being the care of a child;

"health" means physical or mental health;

"juvenile justice centre" has the meaning given by Article 51(1);

"juvenile justice centre order" means an order under Article 39(1);

"managers", in relation to a juvenile justice centre, means the persons for the time being having the management or control of it;

"notice" means notice in writing;

"parental responsibility" has the meaning assigned to it by Article 6 of the Children (Northern Ireland) Order 1995;

"relative", in relation to a child, means a grandparent, brother, sister, uncle or aunt (whether of the full blood or half blood or by affinity), or step-parent;

"sexual offence" has the meaning assigned to it by Schedule 1;

"statutory provision" has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

"violent offence" has the meaning assigned to it by Schedule 1.

(3) References in this Order to findings of guilt and findings that an offence has been committed shall be construed as including references to pleas of guilty and admissions that an offence has been committed.

PART II

GENERAL

Age of responsibility

3. It shall be conclusively presumed that no child under the age of 10 can be guilty of an offence.

Child's welfare

4. In any proceedings for an offence, the court shall have regard to—

(a) the welfare of any child brought before it; and

(b) the general principle that any delay in dealing with a child is likely to prejudice his welfare.

Words not to be used in relation to children dealt with summarily

5.—(1) The words "conviction" and "sentence" shall not be used in relation to children dealt with summarily.

(2) Any reference in any statutory provision (whenever passed or made) to a person convicted, a conviction or a sentence shall in the case of a child be construed as including a reference to a child found guilty of an offence, a finding of guilt or an order made upon such finding, as the case may be.

PART III

ARREST AND DETENTION

Child arrested in pursuance of warrant to be released

6.—(1) A child arrested in pursuance of a warrant shall be released if the child or his parent or guardian (with or without sureties) enters into a recognizance for such amount as the custody officer considers will secure the attendance of the child at the hearing of the charge.

(2) A recognizance entered into in pursuance of paragraph (1) may be—

(a) taken before the officer;

(b) conditioned for the attendance of the parent or guardian at the hearing in addition to the child;

(c) enforced in the same manner as a recognizance to appear before a court may be enforced under Article 138 of the Magistrates' Courts (Northern Ireland) Order 1981.

(3) Paragraph (1) shall not apply if the custody officer considers that—

(a) the child was arrested for a serious arrestable offence; or

(b) for the protection of the public the child should not be released.

(4) In this Order "custody officer" means a member of the Royal Ulster Constabulary performing the functions of custody officer (within the meaning of the Police and Criminal Evidence (Northern Ireland) Order 1989) at the police station to which the child is brought.

Child apparently under 14 arrested without warrant for offence other thanhomicide tobe released

7.—(1) This Article applies where a child apparently under the age of 14 is arrested without warrant for an offence other than homicide.

(2) If the child cannot forthwith be brought before a magistrates' court, the custody officer shall inquire into the case.

(3) Subject to paragraph (5), the child shall be released if the child or his parent or guardian (with or without sureties) enters into a recognizance for such amount as the custody officer considers will secure the attendance of the child at the hearing of the charge.

(4) A recognizance entered into in pursuance of paragraph (3) may be—

(a) taken before the officer;

(b) conditioned for the attendance of the parent or guardian at the hearing in addition to the child;

(c) enforced in the same manner as a recognizance to appear before a court may be enforced under Article 138 of the Magistrates' Courts (Northern Ireland) Order 1981.

(5) Paragraph (3) shall not apply if the custody officer considers that—

(a) the child was arrested for a serious arrestable offence; or

(b) for the protection of the public the child should not be released.

Child not released under Article 7

8.—(1) Where a child apparently under the age of 14—

(a) is arrested without warrant for an offence other than homicide; and

(b) is not released under Article 7,

the child shall be brought before a magistrates' court as soon as is practicable and in any case within a period of 36 hours from the time of his arrest.

(2) Paragraph (1) shall not apply if a member of the Royal Ulster Constabulary of a rank not below that of superintendent certifies to a magistrates' court within the period of 36 hours from the time of the child's arrest that by reason of illness or accident the child cannot be brought before the court.

(3) The custody officer shall ensure that the child is moved to a juvenile justice centre until the child can be brought before a magistrates' court.

(4) Paragraph (3) shall not apply if the custody officer certifies—

(a) that it is impracticable to move the child to a juvenile justice centre; or

(b) that by reason of his character or his state of health it is inadvisable to do so.

(5) A certificate made under paragraph (4) in respect of a child shall be produced to the court before which he is first brought.

(6) Where under this Article—

(a) a child is brought before a magistrates' court; or

(b) a certificate made under paragraph (2) in respect of a child is produced in a magistrates' court,

the court may remand him.

Separation of child in police detention from adults charged with offences

9.—(1) Arrangements shall be made for preventing a child while he is detained in a police station from associating with a person who is charged with any offence other than an offence with which the child is jointly charged.

(2) Paragraph (1) shall not apply where the person is—

(a) a parent or guardian of the child;

(b) a relative of the child; or

(c) a child.

(3) Arrangements shall be made for ensuring that so far as practicable while a child who is a girl is detained in a police station she shall be under the care of a woman.

Duty to inform person responsible for welfare of child in police detention

10.—(1) Where a child is in police detention, such steps as are practicable shall be taken to ascertain the identity of a person responsible for his welfare and inform him—

(a) that the child has been arrested;

(b) why he has been arrested; and

(c) where he is being detained.

(2) Where information falls to be given under paragraph (1), it shall be given as soon as it is practicable to do so.

(3) For the purposes of this Article the persons who may be responsible for the welfare of a child are—

(a) his parent or guardian; or

(b) any other person who has for the time being assumed responsibility for his welfare.

(4) If it appears that at the time of the child's arrest a supervision order under Part V of the Children (Northern Ireland) Order 1995 or a probation order is in force in respect of him, his supervisor or probation officer shall also be informed as described in paragraph (1) as soon as it is reasonably practicable to do so.

(5) The reference to a parent or guardian in paragraph (3)(a) is, in the case of a child being looked after by an authority (within the meaning of Article 25 of the Children (Northern Ireland) Order 1995), a reference to that authority and the parent or guardian of the child.

(6) The provisions of this Article are in addition to those of Article 57 of the Police and Criminal Evidence (Northern Ireland) Order 1989 (right to have someone informed when arrested).

(7) In paragraph (1) the reference to a child who is in police detention includes a reference to a child who has been detained under the terrorism provisions; and the references to arrest include references to such detention.

(8) In paragraph (7) "the terrorism provisions" has the meaning assigned to it by Article 2(2) of the Police and Criminal Evidence (Northern Ireland) Order 1989.

PART IV

CRIMINAL PROCEEDINGS

Notice of charges against child

11.—(1) Where a child is to be brought before a court in respect of an offence alleged to have been committed by him, the complainant shall as soon as reasonably practicable notify the date and the time when, and the nature of the charge on which, the child is to be brought before the court—

(a) to a probation officer assigned to the petty sessions district in which the court will sit; and

(b) to the appropriate authority.

(2) Where the probation officer receives a notification under paragraph (1), he may require the appropriate authority to make such investigations and make available to him such information as appears to him to be likely to assist the court.

Release on bail

12.—(1) 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

(b) paragraph (2) or (3) applies.

(2) This paragraph applies where the offence charged—

(a) is a violent or sexual offence; or