Justice (Northern Ireland) Act 2002

2002 CHAPTER 26

PART 4

YOUTH JUSTICE

New orders

54 Reparation orders

After Article 36 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)) insert—

"Reparation orders

36A **Reparation orders**

(1) Where a child is found guilty by or before any court 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, the court (subject to Article 32(1)) may make a reparation order.

(2) A reparation order is an order requiring the offender to make such reparation for the offence, otherwise than by the payment of compensation, as is specified in the order—

(a) to a person or persons so specified; or

(b) to the community at large.

(3) Any person so specified must be a person identified by the court as—

(a) a victim of the offence; or

(b) a person otherwise affected by it.

(4) Before making a reparation order, the court must obtain and consider a written report by—

(a) a probation officer;
(b) a social worker of the appropriate authority; or
(c) such other person as the Secretary of State may designate.

(5) The report must indicate—
(a) the type of requirements that it would be appropriate to impose on the offender; and
(b) the attitude of the victim or victims of the offence to the requirements proposed to be included in the order.

36B Restrictions on reparation orders

(1) The court must not make a reparation order in respect of the offender unless he consents.

(2) The court must not make a reparation order in respect of the offender if it proposes—
(a) to pass on him a custodial sentence; or
(b) to make in respect of him a community service order, a community responsibility order or a combination order.

(3) The court must not make a reparation order unless—
(a) it has been given notice by the Secretary of State that arrangements for implementing such orders are available in the district proposed to be named in the order under Article 36D(1); and
(b) the notice has not been withdrawn.

(4) Before making a reparation order, the court must state in open court that it is of the opinion that Article 8(1) of the Criminal Justice (Northern Ireland) Order 1996 (N.I. 24) (restrictions on imposing community sentences) applies and why it is of that opinion.

(5) It must also explain to the offender in ordinary language—
(a) why it is making the order;
(b) the effect of the order and of the requirements proposed to be included in it;
(c) the consequences which may follow under Schedule 1A if he fails to comply with any of those requirements; and
(d) that the court has power under that Schedule to review the order on the application either of the offender or of the responsible officer.

36C Requirements of reparation orders

(1) A reparation order must not require the offender—
(a) to make reparation for more than 24 hours; or
(b) to make reparation to any person without the consent of that person.

(2) Requirements specified in a reparation order must, as far as practicable, be such as to avoid—
(a) any conflict with the offender's religious beliefs or with the requirements of any order to which he may be subject; and

(b) any interference with the times, if any, at which he normally works or attends school or any other educational establishment.

(3) The reparation required by a reparation order must be made—
(a) under the supervision of the responsible officer; and
(b) within the period of six months beginning with the date on which the order is made.

(4) But, unless revoked, the order remains in force until the offender has made the reparation required by the order.

(5) The Secretary of State may make rules for regulating the making of reparation by persons subject to reparation orders.

(6) Such rules may, in particular, make provision—
(a) regulating the functions of responsible officers;
(b) limiting the number of hours of making reparation on any one day;
(c) as to the reckoning of hours spent in complying with the requirements imposed by a reparation order;
(d) as to the keeping of records of such hours; and
(e) for the payment of travelling and other expenses incurred in connection with complying with such requirements.

(7) Rules under this Article are subject to annulment in pursuance of a resolution of either House of Parliament in the same manner as a statutory instrument; and, accordingly, section 5 of the Statutory Instruments Act 1946 (c. 36) applies to such rules.

36D **Supplementary provisions about reparation orders**

(1) A reparation order must name the petty sessions district in which it appears to—
(a) the court making the order; or
(b) the court amending under Schedule 1A any provision included in the order,

that the offender resides or will reside.

(2) In this Order "responsible officer", in relation to an offender subject to a reparation order, means one of the following who is specified in the order—
(a) a probation officer;
(b) a social worker of the appropriate authority; and
(c) such other person as the Secretary of State may designate.

(3) Where a reparation order specifies as the responsible officer a probation officer, the officer must be an officer appointed for or assigned to the petty sessions district named in the order.

(4) The court by which a reparation order is made must immediately give copies of the order to—
(a) the offender subject to the order;
(b) his parent or guardian; and
(c) the responsible officer.

(5) Except where the court is itself a magistrates' court acting for the petty sessions district specified in the order, the court must send to the clerk of petty sessions for the petty sessions district so specified—

(a) a copy of the order; and

(b) such documents and information relating to the case as it considers likely to be of assistance to a youth court acting for that district in exercising its functions in relation to the order.

(6) A magistrates' court must cause a reason stated by it under Article 36B(4) or (5)(a) to be entered in the Order Book.

(7) The Secretary of State may pay any expenses of a person designated by him which are incurred under Article 36A or in performing any functions as the responsible officer of an offender subject to a reparation order.

(8) Schedule 1A (which makes provision for dealing with failures to comply with reparation orders and for their revocation and amendment) shall have effect."

55 Community responsibility orders

After Article 36D of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)) (inserted by section 54 of this Act) insert—

"Community responsibility orders

36E Community responsibility orders

(1) Where a child is found guilty by or before any court 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, the court (subject to Article 32(1)) may make a community responsibility order.

(2) A community responsibility order is an order requiring the offender—

(a) to attend at a place specified in the order for the number of hours so specified for relevant instruction in citizenship; and

(b) to carry out for the number of hours specified in the order such practical activities as the responsible officer considers appropriate in the light of that instruction.

(3) "Relevant instruction in citizenship", in relation to an offender, means instruction dealing with—

(a) citizenship (including, in particular, the responsibilities a person owes to the community);

(b) the impact of crime on victims; and

(c) any factors relating to the offender which may cause him to commit offences.

(4) In this Order "responsible officer", in relation to an offender subject to a community responsibility order, means one of the following who is specified in the order—

(a) a probation officer;

(b) a social worker of the appropriate authority; and

(c) such other person as the Secretary of State may designate.

(5) The number of hours specified under paragraph (2)(a) must be not less than one half of the aggregate number of hours specified in the order.

(6) The aggregate number of hours specified in the order must be—

(a) not less than 20; and

(b) not more than 40.

(7) Where a court makes community responsibility orders 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 those orders be—

(a) concurrent with those specified in any other of those orders; or

(b) additional to those so specified.

(8) But the total number of hours which are not concurrent must not exceed the maximum specified in paragraph (6)(b).

(9) The Secretary of State may by order amend paragraph (6)(a) or (b) (or both).

(10) An order under paragraph (9) is subject to annulment in pursuance of a resolution of either House of Parliament in the same manner as a statutory instrument; and, accordingly, section 5 of the Statutory Instruments Act 1946 (c. 36) applies to such an order.

36F Restrictions on community responsibility orders

(1) The court must not make a community responsibility order in respect of the offender unless he consents.

(2) The court must not make a community responsibility order in respect of the offender if it proposes to deal with him for the offence in any other way.

(3) The court must not make a community responsibility order unless—

(a) it has been given notice by the Secretary of State that arrangements for implementing such orders are available in the district proposed to be named in the order under Article 36I(1); and

(b) the notice has not been withdrawn.

(4) Before making a community responsibility order, the court must state in open court that it is of the opinion that Article 8(1) of the Criminal Justice (Northern Ireland) Order 1996 (N.I. 24) (restrictions on imposing community sentences) applies and why it is of that opinion.

(5) It must also explain to the offender in ordinary language—

(a) why it is making the order;

(b) the effect of the order and of the requirements proposed to be included in it;

(c) the consequences which may follow under Schedule 1A if he fails to comply with any of those requirements; and

(d) that the court has power under that Schedule to review the order on the application either of the offender or of the responsible officer.

36G Requirements of community responsibility orders

(1) An offender in respect of whom a community responsibility order is in force must—

(a) attend the place specified in the order at such times as he may be instructed by the responsible officer; and

(b) carry out such activities as he may be instructed by the responsible officer to carry out at such times as he may be so instructed to carry them out.

(2) Such an offender must—

(a) keep in touch with the responsible officer in accordance with such instructions as he may be given by that officer; and

(b) give notice to him of any change of address.

(3) The instructions given by the responsible officer must, as far as practicable, be such as to avoid—

(a) any conflict with the offender's religious beliefs or with the requirements of any order to which he may be subject; and

(b) any interference with the times, if any, at which he normally works or attends school or any other educational establishment.

(4) 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.

(5) But, unless revoked, the order remains in force until the offender has performed the obligations contained in the order.

36H Rules relating to community responsibility orders

(1) The Secretary of State may make rules for regulating—

(a) the attendance by persons subject to community responsibility orders at places for the purposes of those orders; and

(b) the carrying out by such persons of practical activities for those purposes.

(2) Such rules may, in particular, make provision—

(a) regulating the functions of responsible officers;

(b) limiting the number of hours of attendance or of carrying out activities on any one day;

(c) as to the reckoning of hours spent in complying with the requirements imposed by a community responsibility order;

(d) as to the keeping of records of such hours; and

(e) for the payment of travelling and other expenses incurred in connection with complying with such requirements.

(3) Rules under this Article are subject to annulment in pursuance of a resolution of either House of Parliament in the same manner as a statutory instrument; and, accordingly, section 5 of the Statutory Instruments Act 1946 (c. 36) applies to such rules.

36I **Supplementary provisions about community responsibility orders**

(1) A community responsibility order must name the petty sessions district in which it appears to—

(a) the court making the order; or

(b) the court amending under Schedule 1A any provision included in the order,

that the offender resides or will reside.

(2) Where a community responsibility order specifies as the responsible officer a probation officer, the officer must be an officer appointed for or assigned to the petty sessions district named in the order.

(3) The court by which a community responsibility order is made must immediately give copies of the order to—

(a) the offender subject to the order;

(b) his parent or guardian; and

(c) the responsible officer.

(4) Except where the court is itself a magistrates' court acting for the petty sessions district specified in the order, the court must send to the clerk of petty sessions for the petty sessions district so specified—

(a) a copy of the order; and

(b) such documents and information relating to the case as it considers likely to be of assistance to a youth court acting for that district in exercising its functions in relation to the order.

(5) A magistrates' court must cause a reason stated by it under Article 36F(4) or (5)(a) to be entered in the Order Book.

(6) The Secretary of State may pay any expenses of a person designated by him which are incurred in performing any functions as the responsible officer of an offender subject to a community responsibility order.

(7) Schedule 1A (which makes provision for dealing with failures to comply with community responsibility orders and for their revocation and amendment) shall have effect."

56 Custody care orders

After Article 44 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (S.I. 1998/1504 (N.I. 9)) insert—

"Custody care orders

44A **Custody care orders**

(1) Where a child who has not attained the age of 14 is found guilty by or before any court of an offence punishable, in the case of an adult, with imprisonment, other than an offence the sentence for which is (in the case of an adult) fixed

by law as imprisonment for life, the court (subject to Article 32(1)) may make a custody care order.

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

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

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

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

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

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

(8) Where a court makes a custody care order in the case of a child who will attain the age of 14 at a time during the period for which he is to be kept in secure accommodation under the order, the court may provide that he shall be detained in a juvenile justice centre for the whole or any part of the period following that time.

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

44B Period in secure accommodation under custody care order

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

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

(3) Those provisions are—

(a) Article 26 (duty to safeguard and promote welfare);

(b) Article 27(1), (2)(b), (e) and (f), (8) and (9) and Article 28(2) (accommodation and maintenance);

(c) Article 29(1), (2) and (4) to (6) (promotion and maintenance of contact with family);
(d) Articles 30 and 31 (visits);
(e) Article 34 (death);
(f) Article 35(1) and Article 36(1) and (4) (advice, assistance and befriending);
(g) Article 45 (reviews and representations); and
(h) Articles 72 and 73 (provision of homes).

(4) In their application by virtue of paragraph (2)—
(a) Article 29(4) has effect with the omission of sub-paragraph (a); and
(b) Article 34(1)(a) has effect as if the reference to the Department were to the Department and the Secretary of State.

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

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

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

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

44C **Escape from secure accommodation**

(1) If a child who has been ordered to be kept in secure accommodation under a custody care order—
(a) escapes from secure accommodation in which he is being kept or from any hospital or institution in which he is receiving medical treatment;
(b) being absent from secure accommodation on temporary leave of absence or under supervision, runs away from the person in whose charge he is or fails to return to the secure accommodation at the end of his leave; or
(c) being absent from secure accommodation under supervision, fails to return to the secure accommodation on being recalled,

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

(2) A child arrested under paragraph (1) may at any time be brought with the authority of the Secretary of State before a court of summary jurisdiction having jurisdiction where the child is found or where the secure accommodation, hospital or institution is situated.

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

(a) may order the period for which he is to be detained under the custody care order to be increased by a further period not exceeding 30 days; but

(b) if it does not do that, shall revoke the custody care order and deal with the child in any manner in which the court could deal with him if he had just been found guilty of the offence by the court.

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

(5) If any person—

(a) knowingly assists a child who escapes, runs away or fails to return as mentioned in paragraph (1) or knowingly induces any child to so escape, run away or fail to return;

(b) without lawful authority takes a child away from any accommodation, hospital, institution or person as is mentioned in that paragraph; or

(c) knowingly harbours or conceals a child who escapes, runs away or fails to return as mentioned in paragraph (1), or prevents him from returning,

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

44D Taking of children to secure accommodation

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

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

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

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

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

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

44E Supervision under custody care order

(1) During the period of supervision under a custody care order, the child shall be under the supervision of a probation officer or such other person as the Secretary of State may designate.

(2) Before the commencement of the period of supervision—
- (a) the appropriate authority shall give him a notice specifying—
  - (i) the period of supervision; and
  - (ii) the person under whose supervision he will be; and
- (b) the person under whose supervision he will be shall give him a notice specifying any requirements with which he must comply.

(3) During the period of supervision the person under whose supervision the offender is or another person designated by the Secretary of State may give the child 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 a child subject to a custody care order.

(5) Rules under paragraph (4) are subject to annulment in pursuance of a resolution of either House of Parliament in the same manner as a statutory instrument; and, accordingly, section 5 of the Statutory Instruments Act 1946 (c. 36) applies to such rules.

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

44F Breach of supervision requirements

(1) Where a custody care order has been made in respect of a child and it appears, on a complaint made to a lay magistrate, that the child has failed to comply with any requirements under Article 44E(2) or (3), the lay magistrate may—
- (a) issue a summons directed to the child requiring him to appear before a youth court specified in the summons; or
- (b) if the complaint is in writing and on oath, issue a warrant for the child's arrest requiring him to be brought before a youth court specified in the warrant.

(2) If it is proved to the satisfaction of the court before which the child appears or is brought under this Article that he has failed without reasonable excuse to comply with requirements under Article 44E(2) or (3), the court may—
- (a) if he has not attained the age of 14, deal with him as specified in paragraph (3); and
- (b) if he has attained that age, deal with him as specified in paragraph (4).

(3) If the child has not attained the age of 14, the court may either—

(a) impose on him a fine not exceeding £200; or

(b) order him to be placed in secure accommodation by the appropriate authority and kept there by the appropriate authority for a period not exceeding 30 days;

but the appropriate authority may, with the consent of the Secretary of State, at any time discharge a child who is being so kept.

(4) If the child has attained the age of 14, the court may either—

(a) impose on him a fine not exceeding £1,000; or

(b) order him to be detained in a juvenile justice centre for a period not exceeding 30 days.

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

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

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

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

44G Effect of subsequent conviction where custody care order is in effect

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

(a) revoke the order; and

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

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

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

(b) in paragraph (6) for the words “one half of the period of the order” there were substituted “such part of the period of the order as the court specifies in the order”.

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

(a) in paragraph (2) for the words from “a period of six months” to “two years” there were substituted “such period not exceeding two years as the court specifies in the order”; and

(b) in paragraph (5) for the words "one half of the period of the order" there were substituted "such part of the period of the order as the court specifies in the order"."