

## **EXPLANATORY MEMORANDUM TO**

### **The Attorney General's Human Rights Guidance (Youth Justice Agency – Restorative Justice) Order (Northern Ireland) 2015**

**SR 2015 No. 362**

#### **1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the the Attorney General for Northern Ireland to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under the powers conferred by section 8(3)(c) of the Justice (Northern Ireland) Act 2004 and is subject to the negative resolution procedure.

#### **2. Purpose**

- 2.1. The Statutory Rule brings into operation human rights guidance for the Youth Justice Agency in relation to restorative justice by the Attorney General for Northern Ireland on the exercise of Youth Justice Agency functions in a manner consistent with international human rights standards.

#### **3. Background**

- 3.1. Section 8(1) of the Justice (Northern Ireland) Act 2004 obliges the Attorney General for Northern Ireland to issue guidance for criminal justice organisations on the exercise of their functions in a manner consistent with international human rights standards. This Statutory Rule brings into operation guidance for the Youth Justice Agency as required by section 8(3)(c) of the 2004 Act.

#### **4. Consultation**

- 4.1. The Attorney General has consulted with the Advocate General pursuant to section 8(1A) and section 8(5A) of the Justice (Northern Ireland) Act 2004.

#### **5. Equality Impact**

- 5.1. The Attorney General for Northern Ireland is not listed as a public authority for the purpose of section 75 of the Northern Act 1998.
- 5.2. The Statutory Rule provides for the coming into force of the guidance under section 8 of the Justice (Northern Ireland) Act 2004. This guidance is based upon international human rights standards and therefore the principles of equality and non-discrimination form a central component of the guidance which the Statutory Rule brings into operation.

#### **6. Regulatory Impact**

- 6.1. A Regulatory Impact Assessment is not required.

#### **7. Financial Implications**

- 7.1. Not applicable.

## **8. Section 24 of the Northern Ireland Act 1998**

- 8.1. It is the view of the Attorney General that this Statutory Rule is compliant with section 24 of the Northern Ireland Act 1998.

## **9. EU Implications**

- 9.1. Not applicable.

## **10. Parity or Replicatory Measure**

- 10.1. The Attorney General is making the Statutory Rule in fulfilment of a legal requirement under section 8 of the Justice (Northern Ireland) Act 2004.
- 10.2. The Statutory Rule applies to Northern Ireland only. There is no corresponding Great Britain Statutory Instrument.

## **11. Additional Information**

- 11.1. The text of the guidance is attached to this Explanatory Memorandum at Annex A.

ANNEX A

**HUMAN RIGHTS GUIDANCE FOR THE**  
**YOUTH JUSTICE AGENCY**  
**RESTORATIVE JUSTICE**

**INTRODUCTION**

1. Human rights standards are designed to make life better for individuals and communities and they should not be, and not be viewed as, burdens to competent professionals conscientiously carrying out their duties. When competent professionals are working diligently to the high standards set by their own disciplines they will almost invariably comply with human rights standards. This guidance is designed to assist professionals by offering them a framework within which their own professional standards can safely operate. By following this guidance those to whom it is addressed can be confident that their work is compliant with international human rights standards.
2. This guidance is without prejudice to the requirement on all public authorities to comply with their obligations under section 6 of the Human Rights Act 1998 and with EU law.

**THIS GUIDANCE IS ADDRESSED TO THE YOUTH JUSTICE AGENCY IN RELATION TO RESTORATIVE JUSTICE**

3. While based on international standards of human rights law, this guidance is intended to be focused on those areas of most relevance and assistance to the Youth Justice Agency in Northern Ireland (“the Agency”). Guidance under section 8 of the Justice (Northern Ireland) Act 2004 is not designed to be static or unduly rigid. It will be revised in light of adjustments in

human rights standards and the experience both of those to whom it is addressed and the public.

## **INTERNATIONAL STANDARDS**

4. This guidance reflects the international standards from the following instruments:

- European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR);
- Charter of Fundamental Rights of the European Union;
- International Covenant on Civil and Political Rights;
- United Nations Convention on the Rights of the Child;
- United Nations Convention of the Rights of People with Disabilities;
- Council of Europe Recommendation (2010) 1 on the Council of Europe Probation Rules;
- United Nations standard minimum rules for non-custodial measures ('the Tokyo Rules');
- Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime;
- United Nations Handbook on Probation Services Guidelines for practitioners and managers 1998;
- Council of Europe Recommendation Rec (92)16 on the European Rules on community sanctions and measures;

- Council of Europe Recommendation Rec (2003) 20 concerning new ways of dealing with juvenile delinquency and the role of juvenile justice;
- Council of Europe Recommendation Rec (2000) 22 on improving the implementation of the European Rules on community sanctions and measures;
- United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders ('the Bangkok Rules');
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules");
- Council of Europe Recommendation Rec (2006) 8 on assistance to crime victims;
- United Nations Basic Principles on the use of restorative justice in criminal matters;
- European Convention on the Supervision of Conditionally Sentenced or Conditionally released Offenders;
- Council of Europe Recommendation Rec (2008) 11 on the European Rules for juvenile offenders subject to sanctions or measures;
- United Nations Guidelines for the Prevention of Juvenile Delinquency ("the Riyadh Guidelines");
- Guidelines of the Committee of Ministers of the Council of Europe on Child Friendly Justice 2010.

## **GENERAL PRINCIPLES**

5. This guidance refers to children throughout. This applies to children and young people under the age of 18 years.

6. The main purpose of the Youth Justice Agency should be to reduce reoffending and contribute to community safety by establishing positive relationships with children in order to supervise, guide and assist them and to promote their successful social inclusion.
7. In all interventions by the Agency due regard shall be given to the dignity, health, safety, well being and best interests of children. Children should be treated with care, sensitivity, fairness and respect throughout any procedure or case, with special attention for their personal situation, well-being and specific needs and with full respect for their physical and psychological integrity.
8. In all interventions by the Agency the rights of children shall be secured without discrimination on any grounds such as sex, race, colour or ethnic background, age, language, religion, political or other opinion, national or social origin, socio-economic background, status of their parent(s), association with a national minority, property, birth, sexual orientation, gender identity, or disability.
9. Interventions with children should, as far as possible, be based on evidence of what works, with whom and under what circumstances.
10. In order to prevent discrimination records should be kept on the 'impact' of potential consequences of new policies and practices on children of ethnic minorities through the fulfilment of the Agency's obligations under section 75 of the Northern Ireland Act 1998.
11. Interventions should not impose any burden or restriction on the rights of the child greater than that provided by the disposal and required in an individual case by the seriousness of the

offence or by the properly assessed risk of reoffending. As far as possible, the child's informed consent and co-operation should be sought regarding interventions affecting him or her.

12. The child's freedom of thought, conscience and religion should be respected.
13. A child's freedom to practise his or her religion should be facilitated and respected. Care should be taken in planning work that would restrict the child's religious practices or observances; restrictions should only be applied where necessary to protect the interests of order, public health, safety or decency.
14. Measures and sanctions for children in conflict with the law should always be individualised and constructive responses to the acts committed, bearing in mind the principle of proportionality, the child's age, physical and mental well-being and development and the circumstances of the case. The right of the child to education, vocational training, employment, rehabilitation and reintegration should be respected

## **TRAINING**

15. Youth Justice Agency staff should have initial and ongoing training throughout their career to develop, maintain, and improve the skills and knowledge appropriate to their role and level of professional responsibility. Training should support the staff of the Agency in rehabilitating the child, ensuring the child's rights and protecting society. It should also take into account, where practicable, any work-related needs expressed by the staff.
16. Special consideration should be paid to children in contact with the Agency and, where applicable, victims, who may be

particularly vulnerable or have distinct needs. This may include:

- a) Girls;
- b) Those with a disability or special educational needs including difficulties understanding or communicating;
- c) Members of minority groups;
- d) Those who require an interpreter or translator; and
- e) Children who have themselves been victims of crime.

17. The Agency should ensure that its organisational structure is suitable for the delivery of its services and that managers direct resources appropriately to ensure that work is of a high standard, and that good internal communication is achieved. A policy statement should be published, and updated as necessary, defining the general aim, principles, values and methods of the organisation. Staff welfare policies should be in place.

## **RELATIONSHIPS WITH OTHER AGENCIES**

18. The Youth Justice Agency should develop and maintain good working relationships and contacts with other agencies, public authorities, the media, and the public to assist in achieving the objective of assisting children who have committed offences, with a view to reducing offending and improving community safety.

19. In order to implement its tasks and duties effectively, the Agency should, as appropriate, liaise and co-operate with other criminal justice organisations. In particular, the Agency should work closely with the Public Prosecution Service (PPS), the Police Service of Northern Ireland (PSNI), the Northern Ireland

Courts and Tribunals Service (NICTS) and the Probation Board for Northern Ireland (PBNI).

20. With full respect to the child's right to private and family life the Agency should facilitate close co-operation between different professionals where this is of assistance in order to obtain a comprehensive understanding of the child as well as an assessment of their legal, social, emotional, physical and cognitive situation.

### **INFORMATION, COMMUNICATION AND DATA PROTECTION**

21. The child's right to privacy should be respected, as should be the right to privacy of the child's family.
22. The Agency should ensure the existence and application of clear policies regarding professional confidentiality, data protection and exchange of information with other authorities, agencies and partners exercising relevant jurisdiction.
23. There should be clear policies in place to ensure confidential information is only shared based on strict procedures of handling and for clearly defined purposes.

### **INFORMATION AND ADVICE**

24. At the earliest opportunity the child and their parents should be adequately informed of:
  - a) The rights children have in relation to recourse to judicial or non-judicial proceedings including the likely duration of proceedings, possible access to appeals and independent complaints mechanisms, where appropriate;
  - b) The system and procedures involved including the role the child may play and the different procedural steps;

- c) Existing support mechanisms;
  - d) The time and place of court proceedings;
  - e) The appropriateness and possible consequences of in-court or out-of-court proceedings;
  - f) The general progress or outcome of the proceedings;
  - g) The existing mechanisms of review; and
  - h) The availability of services.
25. The information and advice should be provided to children in a manner adapted to their age and maturity, in a language which they can understand and which is gender and culture sensitive.
26. Normally, both children and their parents or legal representatives should directly receive the information. Provision of the information to the parents or legal representative should not be an alternative to communicating the information to the child.
27. Where it is the responsibility of the Agency to do so, information on any charges against the child must be given promptly after the charges are brought. The information should be given to both the child and the parents in such a way that they understand the exact charge as well as the possible consequences.
28. Children have the right to their own legal counsel and representation.
29. Whenever the consent of children or their parents or legal guardians is required for the imposition or implementation of community sanctions or measures, such consent shall be informed and explicit.

30. Children shall be informed, in a manner and language they understand, as to how the community sanction or measure imposed on them will be implemented and about their rights and duties in regard to its implementation.
31. Children shall have the right to make oral or written representations prior to any formal decision concerning the implementation of the community sanctions or measures, as well as the right to apply to alter the conditions of implementation.

### **REPARATIVE WORK IN THE COMMUNITY**

32. Priority should be given to sanctions and measures that may have an educational impact as well as constituting a restorative response to the offences committed by children.
33. The implementation of community sanctions and measures shall be based on individualised assessments and methods of intervention that are consistent with proven professional standards.
34. The rights of children to benefits in respect of education, vocational training, physical and mental health care, safety and social security shall not be limited by the imposition of community sanctions or measures.
35. The Intervention and Management plan for a child should take full account of the individual characteristics, circumstances and needs of that child. The Agency will seek the child's informed consent and co-operation regarding interventions affecting him or her. Due weight should be given to the child's views and opinions in view of their age and maturity.
36. The plan for the child may include unpaid work undertaken for the benefit of the community as real or symbolic reparation for

harm caused by him or her. This should not be stigmatising in nature. Rather, the Agency should seek to identify and use working tasks which support the development of skills and social inclusion of children, and should not be unjust or oppressive. Community service should not be undertaken for the profit of the Agency, its staff or any associated commercial undertaking.

37. In identifying a community service scheme for a particular child, the Agency should take into consideration the different skills and needs of the individual. In particular, care should be taken to ensure that there are appropriate opportunities available for girls, children with disabilities, and children from ethnic or linguistic minorities.
38. Children should be consulted about the type of plan they could undertake. Particular attention should be paid to the needs of those who are deemed unfit for particular types of work because of physical or mental illness.
39. The safety of those in the community, the beneficiaries of the work, and of the child should be taken in to account when considering and implementing a community service scheme. Adequate health and safety precautions should be in place to protect the child.
40. Community sanctions and measures shall be implemented in such a way that makes them meaningful to children and that contributes to their educational and personal development and the enhancement of their social skills.

## **SUPERVISION**

41. Agency supervision of children should be seen as a means of advising, assisting and motivating children. Supervision by the

Agency should be combined, where appropriate, with other interventions intended to reduce the child's risk of reoffending.

42. Wherever possible, in the context of an Intervention and Management Plan a continuous relationship shall be maintained between the staff implementing a community sanction or measure and the child, even when the child's place of residence or legal status changes.
43. Special attention shall be paid to appropriate interventions for linguistic or ethnic minorities and children who are foreign nationals.
44. Supervision should be combined where appropriate with other interventions which may be delivered by the Agency or other organisations, such as training, skills development, employment opportunities and treatment.
45. The Agency should assess children before and during supervision when required. The assessment should thoroughly consider the child's circumstances, including the risks, needs and interventions required to address those needs, as well as the child's likely and actual responsiveness to these interventions. Children should be able to contribute to the assessment and due weight should be given to their contribution. Children should be made aware of the process and the outcomes.
46. Where appropriate, a plan should be prepared by the Agency and included in the child's case record. This should guide the Agency in its work and enable staff and the child to assess progress. The plan should be negotiated and, as far as possible, agreed with the child.

47. The Agency should ensure that any proposed intervention is proportionate to the aims of rehabilitation and preventing reoffending.
48. The Agency should co-ordinate interventions and assess the progress of the child at regular intervals. A final assessment should be made and recorded. The child should be made aware that this assessment will remain in their case records and may be referred to in the future.
49. The Agency should work to ensure the active compliance of children with their supervision and any conditions imposed on them and should not rely solely on sanctions for non-compliance. Children should be made fully aware of what is required of them and of the consequences of non-compliance. Where a child fails to comply, Agency staff should respond actively and promptly.
50. Children and their parents or legal guardians shall be informed of the consequences of non-compliance with the conditions and obligations of community sanctions or measures and the rules under which allegations of non-compliance will be considered.
51. The procedures to be followed by the authorities reporting or deciding on non-compliance with the requirements of the community sanctions or measures shall be defined clearly.
52. Minor transgressions shall be noted in the individual case file but need not be reported to the authority deciding on non-compliance, unless national law requires that this be done. Such transgressions may be promptly dealt with by discretionary means.
53. Where the revocation or modification of a community sanction or measure is being considered, due account shall be taken of the extent to which the child has already fulfilled the

requirements of the initial sanction or measure in order to ensure that a new or modified sanction or measure is still proportionate to the offence.

54. If the child fails to comply with the conditions and obligations of the community sanctions or measures, where possible modified or new community sanctions or measures shall replace the previous ones.
55. Current and accurate records of work should be kept. These should typically include relevant personal details, records of contacts with the Agency, work undertaken, and records of assessments, planning, interventions and evaluation.
56. These records should be regarded and used as a means of ensuring accountability of the Agency and its staff.
57. Children should have access to the information kept about them in accordance with domestic law and to the extent that it does not infringe the privacy of others. A child should have the right to challenge the contents of the records held about him or her.

#### **WORK WITH VICTIMS OF CRIME**

58. All victims should be treated with dignity and respect, and should expect to be so treated by the Agency.
59. Some victims and witnesses may be particularly vulnerable as a result of their personal characteristics and the nature, or circumstances of the crime. Individuals are also vulnerable where they are at risk of secondary and repeat victimisation, intimidation or retaliation.
60. Youth Justice Agency staff coming into personal contact with victims or providing services to victims should receive initial and ongoing training to assist victims to deal with consequences of

the offence committed, at a level appropriate to their contact with them. This should include training on:

- a) Treating victims and vulnerable witnesses with respect and in a sensitive manner, tailored, as far as possible, to their individual needs in order to reduce the risk of further victimisation by the victim's engagement with the Agency;
- b) Awareness of the negative effect of crime on victims;
- c) Understanding that certain victims and witnesses are more likely to be vulnerable because of their personal characteristics, and the nature and circumstances of the crime;
- d) Understanding their role in co-operating with other agencies to provide support to victims and witnesses; and
- e) Equality and non-discrimination.

61. The Agency should take into account the diverse needs of individual victims and be aware that the following categories of persons may require special support:

- a) Children;
- b) Women;
- c) Those with a disability or special educational needs including difficulties understanding or communicating;
- d) Members of minority groups;
- e) Those who require an interpreter or translator;
- f) Victims of trafficking;
- g) Victims of gender-identity based crime;

- h) Victims of domestic and sexual violence;
  - i) Victims of violent crime including bereaved families;
  - j) Victims of hate crime; or
  - k) Victims or witnesses of terrorism or organised crime.
62. The Agency should liaise with victim support services, where appropriate, to ensure that the needs of victims are met.
63. Where the Agency is in contact with a victim and seeks his or her view, the victim should be clearly informed that decisions regarding the sanctioning of children are taken on the basis of a number of factors and not only the harm done to a particular victim.
64. In all work with children who have committed offences, whether or not victims are directly involved in the work, the Agency should aim to increase the child's awareness of the harm caused to victims.

### **RESTORATIVE JUSTICE**

65. Where the Agency is involved in delivering restorative justice interventions or supporting other agencies in providing such approaches, the Agency should ensure that restorative processes are used only with the free and informed consent of the parties. Agreements should be arrived at voluntarily and be reasonable and proportionate. Potential power imbalances and the safety of the parties should be taken into account when considering recourse to a restorative justice intervention. Before agreeing to participate parties should:
- a) Have access to legal advice;
  - b) Be fully informed about the nature of the process;

- c) Be fully informed about their rights; and
- d) By fully informed about the possible consequences of their decision.

### **PREPARATION FOR RELEASE AND RESETTLEMENT**

- 66. Where the Agency is responsible for supervising children after release from detention, it should co-operate with the relevant authorities, the child, and, where appropriate, the family and community to facilitate release and reintegration into society. The preparation for conditional release should be concluded before the end of the minimum or fixed period of detention.
- 67. As far as practicable, and in co-operation with other organisations, the Agency should ensure the child's educational and social resettlement needs are met with the aim of ensuring compliance with any licence conditions and to reduce the risk of reoffending.

### **CRIME PREVENTION**

- 68. So far as practicable, the Agency should use its knowledge, expertise and experience to assist in developing crime reduction strategies.

### **MONITORING**

- 69. The Agency should ensure there are reliable systems in place to monitor and improve its own practice and ensure it meets internal standards. The Agency should co-operate fully with the relevant government or independent authorities to facilitate inspection and monitoring.

70. Youth Justice Agency practice should, as far as possible, be evidence-based. Revision of policy and practice should be based on sound scientific knowledge and research.
71. The Agency should provide the media and public with factual information about the work it carries out to encourage a better understanding of the Agency's role in society.
72. Agency statements of policy and practice should be made available to other agencies and the public in order to promote confidence and improve service delivery.
73. The Agency should ensure there is a clear and effective procedure for investigation and responding to complaints regarding its practice. The procedure should be fair and impartial and the complainant should be duly informed of the process and findings of any investigation.

#### **DELAY**

74. Timeliness is at the centre of a properly functioning justice system and is a requirement of international human rights standards. For the Agency the application of these principles should take the following form:
  - a) All interventions, meetings and provision of information to the child should occur in a timely manner to allow appropriate and effective assistance and intervention.
  - b) All persons within the Agency whose work may affect the timeliness of court proceedings, including sentencing, should carry out their work with due care and efficiency.
  - c) All persons within the Agency whose work could impact on the length of time a child spends in detention should carry out their work with due care and efficiency to

ensure that no prejudice arises to the child by reason of any action or inaction by the Agency.

### **WELFARE OF CHILDREN**

75. Effective policies should be in place to ensure that appropriate action, including referral to other agencies, is taken where there are concerns regarding the welfare of children with whom the Agency comes into contact. The best interests of any affected child should be a primary consideration.

### **DISABILITY**

76. Individuals with a disability have a right to respect for their inherent dignity, autonomy and personal independence. The Agency should ensure that its facilities enable children and others in contact with the Agency, to fully and effectively participate in programmes of work. In line with its obligations under the Disability Discrimination Act 1995, facilities should be accessible for people with disabilities. Training should be provided that is appropriate for the level of direct or indirect contact between Agency staff and children or the public in order to prevent discrimination on the basis of an individual's disability.

### **GENERAL**

77. The Agency should ensure that the above guidance is circulated to all staff to ensure awareness.
78. The Agency should also make this guidance available to other agencies with responsibility for provision of services for children to make them aware of the standards to which the Agency is

held and to ensure a co-ordinated approach in attaining these standards.

79. It is similarly important that the general public is aware of this guidance. This guidance should be made available to others who may have an interest in, or who may be affected by, the work of the Agency.
80. Regard must be had to this guidance when making or reviewing contractual or other agreements with other statutory agencies.

#### **REVIEW AND MONITORING**

81. Difficulties encountered in the application of this guidance by the Agency should be notified to the Attorney General as soon as possible.
82. The Attorney General will formally seek the views of the Agency on the review or amendment of this guidance annually. It is open to the Agency to suggest revision or amendment of this guidance at any time.

John F Larkin QC  
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