
DRAFT STATUTORY INSTRUMENTS

1998 No.

Criminal Justice (Children) (Northern Ireland) Order 1998

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
- (b) is one where in the case of an adult similarly charged he would be liable on conviction on indictment to imprisonment for 14 years or more.

(3) This paragraph applies—

- (a) where the offence charged is an arrestable offence; and
- (b) the child either—
 - (i) was on bail on any date on which he is alleged to have committed the offence; or
 - (ii) has been found guilty of an arrestable offence within the period of two years ending on the date on which he is charged with the offence mentioned in sub-paragraph (a).

(4) This Article is subject to section 3 of the Northern Ireland (Emergency Provisions) Act 1996.

Remand in custody

13.—(1) Where the court decides not to release a child as mentioned in Article 12(1), it shall give reasons for doing so in open court and shall make an order committing the child—

- (a) to a juvenile justice centre; or

(b) if he is aged 15 or over and the court considers that he is likely to injure himself or other persons, to a young offenders centre,
for the period for which he is remanded or until he is brought back before the court.

(2) Where a court remands a child for a further period such that the total period for which he is remanded in custody will exceed three months, the court shall give reasons for doing so in open court.

Power to enforce attendance of child

14.—(1) Without prejudice to any other powers conferred by or under any statutory provision (including this Order), any justice of the peace may require by summons any parent or guardian of a child in relation to whom any proceedings are pending to produce the child before a court of summary jurisdiction.

(2) Any person who fails without reasonable excuse to comply with a summons under paragraph (1) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 2 on the standard scale.

(3) Where failure to comply with a summons under paragraph (1) is repeated or continued after conviction, that person shall be guilty of an offence and shall be liable to a further fine not exceeding one-fifth of level 2 on the standard scale for every day subsequent to the day on which he is first convicted of an offence under this Article during which the failure is so repeated or continued.

Attendance of parent or guardian

15. Where a child is brought before a court in any proceedings against him or for any other reason—

- (a) his parent or guardian may be required to attend the court before which the case is heard or determined during all the stages of the proceedings; and
- (b) his parent or guardian shall be so required at any stage where the court thinks it desirable, unless the court is satisfied that it would be unreasonable to require his attendance.

Separation of child from adults charged with offences

16.—(1) Arrangements shall be made for preventing a child while he is waiting before or after attendance in any criminal court or while being taken to or from any criminal court, 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 waiting before or after attendance in any criminal court or while she is being taken to or from any criminal court, she shall be under the care of a woman.

Summary trial of indictable offences

17.—(1) Where a child is charged with any indictable offence other than homicide and—

- (a) a court of summary jurisdiction before which he is so charged thinks it expedient to deal with the case summarily;

(b) the parent or guardian of a child under the age of 14 or in any other case, the child so charged, is informed by the court of his right to have the case tried by a jury and consents to the case being dealt with summarily; and

(c) the prosecution consents,

the court may deal summarily with the offence.

(2) The court may on a finding of guilt—

- (a) make any order which might have been made if the case had been tried on indictment; or
- (b) impose a fine of such amount as the court may, subject to Article 34, think fit.

(3) Where the court is satisfied that it is expedient to deal with the case summarily, it shall cause the charge to be read—

- (a) in the case of a child under the age of 14, to the parent or guardian (unless paragraph (5) applies); or
- (b) in the case of any other child, to the child, and

shall then address to him a question to the following effect: “Do you wish the case to be tried by a jury or do you consent to the case being dealt with summarily?”.

(4) The court shall explain in ordinary language to the person to whom the question is addressed the meaning of the case being dealt with summarily and the explanation shall include a statement as to the Crown Court at which the case may be tried.

(5) Where the parent or guardian of a child under the age of 14 is not present when the child is charged with an indictable offence before a court of summary jurisdiction, the court may—

- (a) if it thinks it just to do so, remand the child for the purpose of causing notice to be served on the parent or guardian, with a view, so far as is practicable, of securing his attendance at the hearing of the charge; or
- (b) if it thinks it expedient to do so, deal with the case summarily without the consent of the parent or guardian.

(6) Every finding of guilt or dismissal under this Article—

- (a) of a child under the age of 14 shall contain a statement as to the consent or otherwise of his parent or guardian;
- (b) of any other child shall contain a statement of his consent,

to his being tried summarily.

(7) The provisions of Article 19(1)(b), paragraphs (1), (2), (3) and (5) of Article 46 of, and paragraph 4 of Schedule 5 to, the Magistrates' Courts (Northern Ireland) Order 1981 and so much of the procedure for dealing summarily with an indictable offence under Article 45 of that Order as magistrates' courts rules make applicable, shall apply in relation to offences authorised to be dealt with or dealt with under this Article in like manner as they apply to offences authorised to be dealt with or dealt with under Article 45 of that Order.

(8) Any reference in this Article to a court of summary jurisdiction shall include a reference to a resident magistrate sitting out of petty sessions under Article 18(2) of the Magistrates' Courts (Northern Ireland) Order 1981.

Exclusion of child from court during the trial of other persons

18.—(1) A court shall not permit—

- (a) a child under the age of 14 (other than a baby); and
- (b) a child who has attained that age in any proceedings in relation to any conduct of an indecent or immoral nature, where the court so directs,

to be present in court during the trial of any other person charged with an offence, or during any preliminary proceedings, except during such time as his presence is required as a witness or otherwise for the purposes of justice.

(2) Any child under the age of 14 present in court when under this Article he is not permitted to be so, and any child who has attained that age and who is so present while any such direction is in force, shall be ordered to be removed from the court.

Form of oath for use in youth court and by children in other courts

19.—(1) Subject to paragraphs (2) and (3), in relation to any oath administered to and taken by any person before a youth court or administered to and taken by any child before any other court, section 1 of the Oaths Act 1978 shall have effect as if the words “I promise before Almighty God” were set out in it instead of the words “I swear by Almighty God that”.

(2) Where, in any oath otherwise duly administered and taken, either of the forms mentioned in this Article is used instead of the other, the oath shall nevertheless be deemed to have been duly administered and taken.

(3) This Article shall not apply in proceedings to which Article 169 of the Children (Northern Ireland) Order 1995 applies (civil proceedings).

Evidence given unsworn by child

20.—(1) Evidence given by a child in criminal proceedings shall be given unsworn.

(2) A deposition of a child’s unsworn evidence may be taken for the purposes of criminal proceedings as if that evidence had been given on oath.

(3) A child’s evidence shall be received unless it appears to the court that the child is incapable of giving intelligible testimony.

(4) If any child whose evidence is received unsworn in any proceedings for an offence intentionally gives false evidence in such circumstances that he would, if the evidence had been given on oath, have been guilty of perjury, he shall be guilty of an offence.

(5) A child guilty of an offence under paragraph (4) shall be liable on summary conviction to be dealt with as if he had been summarily convicted of an indictable offence punishable in the case of an adult with imprisonment.

(6) In this Article “child” means a person under the age of 14.

Power to clear court while child is giving evidence in certain cases

21.—(1) Where, in any criminal proceedings the court considers that the evidence of a child is likely to involve matter of an indecent or immoral nature, the court shall direct that during the taking of the evidence of that child all persons, not being members or officers of the court or parties to the case, their counsel or solicitors, or persons otherwise directly concerned in the case, be excluded from the court.

(2) Paragraph (1) is without prejudice to any power of the court to hear proceedings in private or to exclude a witness until his evidence is required.

Restrictions on reporting proceedings

22.—(1) Where a child is concerned in any criminal proceedings (other than proceedings to which paragraph (2) applies) the court may direct that—

- (a) no report shall be published which reveals the name, address or school of the child or includes any particulars likely to lead to the identification of the child; and

(b) no picture shall be published as being or including a picture of the child, except in so far (if at all) as may be permitted by the direction of the court.

(2) Where a child is concerned in any proceedings in a youth court or on appeal from a youth court (including proceedings by way of case stated)—

(a) no report shall be published which reveals the name, address or school of the child or includes any particulars likely to lead to the identification of the child; and

(b) no picture shall be published as being or including a picture of any child so concerned, except where the court or the Secretary of State, if satisfied that it is in the interests of justice to do so, makes an order dispensing with these prohibitions to such extent as may be specified in the order.

(3) If a court is satisfied that it is in the public interest to do so, it may, in relation to a child who has been found guilty of an offence, make an order dispensing with the prohibitions in paragraph (2) to such extent as may be specified in the order, in relation to—

(a) the prosecution of the offender for the offence or a finding of guilt;

(b) the manner in which he, or his parent or guardian, should be dealt with in respect of the offence;

(c) the enforcement, amendment, variation, revocation or discharge of any order made in respect of the offence;

(d) where an attendance centre order is made in respect of the offence, the enforcement of any rules made under Article 50(3); or

(e) where a juvenile justice centre order is made in respect of the offence, the enforcement of any requirements imposed under Article 40(2).

(4) A court shall not exercise its power under paragraph (3) without—

(a) affording the parties to the proceedings an opportunity to make representations; and

(b) taking into account any representations which are duly made.

(5) If a report or picture is published in contravention of a direction under paragraph (1) or of paragraph (2), the following persons—

(a) in the case of publication of a written report or a picture as part of a newspaper, any proprietor, editor or publisher of the newspaper;

(b) in the case of the inclusion of a report or picture in a programme service, any body corporate which provides the service and any person having functions in relation to the programme corresponding to those of an editor of a newspaper,

shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 5 on the standard scale.

(6) For the purposes of this Article a child is “concerned” in any proceedings whether as being the person by or against or in respect of whom the proceedings are taken or as being a witness in the proceedings.

(7) In this Article—

“picture” means a picture in a newspaper and a picture included in a programme service;

“programme service” has the same meaning as in the Broadcasting Act 1990;

“publish” includes—

(a) include in a programme service;

(b) cause to be published;

“report” means a report in a newspaper and a report included in a programme service.

Evidence of child in committal proceedings for violent or sexual offence

23.—(1) In any proceedings before a magistrates' court conducting a preliminary investigation into a violent or sexual offence—

- (a) a child shall not be called as a witness for the prosecution; but
- (b) any statement made by or taken from a child shall be admissible in evidence of any matter of which his oral testimony would be admissible,

except in a case where the application of this paragraph is excluded under paragraph (3).

(2) In this Article—

- (a) “child”, in relation to a violent offence, means a child under the age of 14; and
- (b) any reference to a violent or sexual offence includes a reference to an offence which consists of attempting or conspiring to commit, or of aiding, abetting, counselling, procuring or inciting the commission of, a violent or sexual offence.

(3) Paragraph (1) does not apply—

- (a) where the prosecution requires the attendance of a child for the purpose of establishing the identity of any person; or
- (b) where the court is satisfied that it has not been possible to obtain from the child a statement that may be given in evidence under this Article; or
- (c) where the investigation into the offence takes place after the court has discontinued to try it summarily and the child has given evidence in the summary trial.

(4) Where in the course of a preliminary investigation into a violent or sexual offence, a resident magistrate decides under Article 45 of the Magistrates' Courts (Northern Ireland) Order 1981 to deal with the offence summarily, a statement admitted in pursuance of this Article shall not be deemed to be evidence of the matters to which it relates.

(5) Nothing in Article 33 of the Magistrates' Courts (Northern Ireland) Order 1981 shall apply to a statement to which this Article applies.

Power to proceed with case in absence of child in certain proceedings

24. Where in any proceedings in relation to any of the offences mentioned in Schedule 1 to the Children and Young Persons Act (Northern Ireland) 1968, the court is satisfied that the attendance before the court of any child in respect of whom the offence is alleged to have been committed is not essential to the just hearing of the case, the case may be proceeded with and determined in the absence of the child.

Extension of power to take deposition of child

25.—(1) Where a justice of the peace is satisfied by the evidence of a doctor that the attendance before a court of any child in respect of whom any of the offences mentioned in Schedule 1 to the Children and Young Persons Act (Northern Ireland) 1968 is alleged to have been committed would involve serious danger to his health, the justice may take in writing the deposition of the child on oath, and shall sign the deposition and add to it a statement of—

- (a) his reason for taking it;
- (b) the date when and place where it was taken; and
- (c) the names of the persons, if any, present at the taking of the deposition.

(2) The justice taking any such deposition shall send it with his statement—

- (a) if the deposition relates to an offence for which any accused person is already committed for trial, to the proper officer of the court for trial at which the accused person has been committed; and
- (b) in any other case, to the clerk of the court before which proceedings are pending in respect of the offence.

Admission of deposition of child in evidence in certain proceedings

26.—(1) Where, in any proceedings in respect of any of the offences mentioned in Schedule 1 to the Children and Young Persons Act (Northern Ireland) 1968, the court is satisfied by the evidence of a doctor that the attendance before the court of any child in respect of whom the offence is alleged to have been committed would involve serious danger to his health, any deposition of the child taken under the Magistrates' Courts (Northern Ireland) Order 1981 or under Article 25, shall be admissible in evidence either for or against the accused person without further proof if it purports to be signed by the justice by or before whom it purports to have been taken.

(2) Any such deposition shall not be admissible in evidence either for or against the accused person unless it is proved that reasonable notice of the intention to take the deposition has been served upon the person (whether prosecution or accused) against whom it is proposed to be given in evidence and that he or his counsel or solicitor had, or might have had if he had chosen to be present, an opportunity of cross-examining the child making the deposition.