

JUSTICE (NORTHERN IRELAND) ACT 2002

EXPLANATORY NOTES

COMMENTARY

Part 4: Youth Justice

New Orders

Section 56: Custody care orders

107. This section creates a new form of custodial sentence for child offenders, to be known as a custody care order. It does this by adding a number of Articles to the 1998 Order.
108. A custody care order may only be imposed on a child who has attained the age of 10 but is not yet 14 and who has been found guilty of an offence for which the court could (if the offence had been committed by an adult) sentence him to a period of imprisonment (new Article 44A(1)). At present, if a court wished to impose a custodial sentence on such a child, it would have to make a juvenile justice centre order (under Article 39 of the 1998 Order). A child in respect of whom a custody care order is made would be held in secure accommodation by an “appropriate authority” for a specified period (rather than being held in a juvenile justice centre), and thereafter be under supervision for a further period (new Article 44A(2)). The period of time for which a child would be held in secure accommodation is to be one half of the total period of the order unless discharged sooner with the consent of the Secretary of State (new Article 44A(6)). The total period of the order is to be 6 months unless the court specifies a longer period, which cannot be more than 2 years (new Article 44A(3)). An “appropriate authority”, in relation to a child, is (by virtue of Article 2(2) of the 1998 Order) the Health and Social Services Board or Trust within whose area the child is ordinarily resident or, if that is not known, the Board or Trust within whose area the child is. “Secure accommodation” is also defined in Article 2(2) of the 1998 Order (as amended by *paragraph 67(7)* of Schedule 12).
109. New Article 44A(4) provides that a court must not make a custody care order unless, after taking into account the matters which it is required to by Article 37 of the 1996 Order, it has formed the opinion under Articles 19 and 20 of that Order that a custodial sentence would be justified for the offence. Article 37 provides that, when considering the seriousness of any offence, the court may take into account any previous convictions of the offender or any failure of his to respond to previous sentences. It also provides that, when considering the seriousness of any offence committed while the offender was on bail, the court must treat this as an aggravating factor (that is to say, something which makes the offence more serious). Thus a custody care order could not be imposed if the offence, taking into account these further matters, was not serious enough to warrant a custodial sentence.
110. New Article 44B sets out the legal regime which is to apply to a child held in secure accommodation pursuant to a custody care order. It does this by applying, and modifying where necessary, a number of provisions in the [Children \(Northern Ireland\) Order 1995 \(S.I. 1995/755 \(NI 2\)\)](#) (the “1995 Order. Only those specified in Article

*These notes refer to the Justice (Northern Ireland) Act
2002 (c.26) which received Royal Assent on 24th July 2002*

44B(3) The effect is that the regime which will apply is in a number of respects similar to that which would apply if the child were the subject of a care order within the meaning of Article 49 of the 1995 Order. Nonetheless, while in secure accommodation pursuant to a custody care order, a child is subject to a legal regime distinct from that which applies to a child under a care order. To help keep this distinction clear, new Article 44B(7) provides that any care order made in respect of a child has no effect while the child is held in secure accommodation pursuant to a custody care order. In the light of the custodial nature of this order, provision is made to deal with those children who escape from secure accommodation, and those who assist them or take them away without lawful authority (new Article 44C) and with the taking into custody by the police or other responsible person of the child (new Article 44D). These provisions are comparable to the provisions which apply in respect of a child in respect of whom a juvenile justice centre order is made (see Articles 54 and 42 of the 1998 Order, respectively).

111. A child in respect of whom a custody care order is made may attain the age of 14 before the period he is to serve in secure accommodation is completed. In the light of this, new Article 44A(8) gives the court, when making the order, a power to provide that such a child shall be detained in a juvenile justice centre for the whole or part of the period after he reaches 14.
112. The supervision element of a custody care order will be carried out by a probation officer or other person designated by the Secretary of State (new Article 44E(1)). The Secretary of State may make rules regulating this supervision (new Article 44E(4)). Article 44F provides that, in the event of a failure to comply with supervision requirements, a court may impose a fine, to be paid in normal circumstances by the parent or guardian of the child instead of the child, or a period of detention not exceeding 30 days (new Article 44F(3) and (4)). A child, parent or guardian has a right of appeal against an order made against him under Article 44F (new Article 44F(7) and *paragraph 31* of Schedule 12).
113. Where a child in respect of whom a custody care order is in force is convicted by or before a court of another offence and given a custodial sentence, that court must revoke the custody care order and, in passing sentence for the new offence, take into account the length of time left to run on that order (new Article 44G(1)). If, in respect of the new offence, the court decides to make a further custody care order the effect of new Article 44G(2) is that the order may be of any period not exceeding 2 years and the period of secure accommodation can be whatever portion of the whole the court specifies. Similar provision is made where the court, in sentencing the child for the new offence, makes a juvenile justice centre order (i.e. where the child has reached 14 between the passing of the first custody care order and his conviction for the later offence) (new Article 44G(3)).