

JUSTICE (NORTHERN IRELAND) ACT 2002

EXPLANATORY NOTES

COMMENTARY

Part 4: Youth Justice

Youth Conferences

General

114. Sections 57 to 60 add a number of new Articles to the 1998 Order. These new Articles create for Northern Ireland a wholly new way of dealing with child offenders and with children who, but for these provisions, would be the subject of proceedings.

Section 57: Youth conferences and youth conference plans

115. This section inserts new Article 3A into the 1998 Order, which makes general provisions about youth conferences. A youth conference is a meeting or series of meetings held to consider how a child ought to be dealt with for an offence (new Article 3A(1)). The meetings will be under the chairmanship of a person to be known as a youth conference co-ordinator (new Article 3A(2)(a)). This person will be given powers to run the meetings effectively (under rules to be made under new Article 3B) and the Secretary of State may set a time limit for completing the youth conference. The aim of the youth conference will be to devise a youth conference plan which will propose how the child should be dealt with (new Article 3C). The purpose of a youth conference plan is to require the child to carry out specified actions in order to make reparation for the offence, address the child's offending behaviour, and/or meet the needs of the victim. The content of the plan is for the youth conference to decide, from the various options listed in new Article 3C(1), such as apologising, making reparation, or participating in activities designed to address offending behaviour, offer education or assist with rehabilitation. The conference can propose any combination of these options it wishes. The plan must specify the period within which it must be completed, and this must not be more than one year (new Article 3C(4) and (5)).
116. There are three distinct groups of people who may be involved in a youth conference. The first is the core group without whom the youth conference cannot proceed. These are the youth conference co-ordinator, the child, a police officer and an "appropriate adult" (new Article 3A(2)). "Appropriate adult" means a parent or guardian of the child, but provision is made for the case where such a person is unable or unwilling to participate or the child is in care (within the meaning of the 1995 Order) (new Article 3A(4) and (5)). The second group are those who have a right to participate but in whose absence the youth conference may proceed. This group includes the victim of the offence (new Article 3A(6)). The final group are those who may participate or attend if the youth conference co-ordinator thinks that would be of value (new Article 3A(8)). This could include persons who play a significant role in the child's life (such as a community or religious leader) or people who can provide support to the victim.
117. A key feature of youth conferences is that neither the child, his parents or guardians, nor the victim can be compelled by any person or the court to participate. In particular, the

child must agree to a youth conference being held (new Article 10A(3)(b) (section 58) and new Article 33A(6) (section 59)) and must agree to the youth conference plan or the youth conference order (new Article 10C(1)(a) (section 57) and new Article 36J(5) (section 60)). Neither the fact that a child has made any admission to a Public Prosecutor or agreed to participate in a diversionary youth conference, or withdrawn such an admission or agreement (new Article 10B(2) (section 58), nor any matter relating to a youth conference (new Article 3A(9)) may be used in any subsequent criminal proceedings as evidence of the child's guilt.

118. There are two distinct types of youth conference: diversionary youth conferences (section 58) and court-ordered youth conferences (section 59).

Section 58: Diversionary youth conferences

119. A reference to a diversionary youth conference can be made by the Director of Public Prosecutions (and only the Director) and will be made at an early stage, either before proceedings had been instituted for the offence or shortly after (new Article 10A(1)). The decision as to whether to refer the child and offence to a diversionary youth conference is for the Director, but he can only make a reference if the child admits that he has committed the offence (new Article 10A(3)). If a reference is made no further steps may be taken in relation to proceedings against the child for the offence until the youth conference is completed or terminated (new Article 10A(5)). As the youth conferencing provisions are to be introduced area by area, the Director may only make a reference if he has been notified that the provisions have been brought into force in the area in which the child lives or will live (new Article 10A(4)).
120. The youth conference co-ordinator may make one of three recommendations (Article 10A(2)). One of these is that the child be subject to a youth conference plan, in which case the youth conference co-ordinator will submit a plan (as agreed by the child and any other person required to agree by new Article 10C) to the Director. The Director must decide whether to accept the youth conference plan or not. If he accepts it, no further steps in any proceedings against the child for the offence may be taken unless the child fails to comply with the youth conference plan to a significant extent (new Article 10A(7)). The child's compliance is monitored by the youth conference co-ordinator or other person nominated by the Secretary of State, and this person must report to the Director on the child's compliance (new Article 10D). If the Director rejects the plan, or if he accepts it but the child fails to comply to a significant extent, or if the conference is unable to agree a plan, the Director can institute or continue the proceedings against the child in the normal way. For the purpose of calculating any time limits for instituting proceedings, the period taken by the diversionary youth conference and compliance with any youth conference plan is to be disregarded (new Article 10B(4)).
121. The Director may refer any offence to a youth conference, i.e. there is no restriction on referring even the most serious offences. However, the youth conference can recommend to the Director that the child should not be the subject of a youth conference plan at this stage but that proceedings should be instituted in the normal way (new Article 10A(2)(b)). Equally, the youth conference may recommend that no further action should be taken against the child (new Article 10A(2)(a)).

Section 59: Court-ordered youth conferences

122. The second type of youth conference is one ordered by the court. A court-ordered youth conference would occur after a court had found a child guilty of an offence and provides a way to consider how to deal with the child for the offence in question. It is not itself a sentence. Unlike diversionary youth conferences, specific rules are laid down as to when a court must, may and may not refer a child and offence to a youth conference (new Article 33A). The effect of this is that the court must refer a child and offence to a youth conference if the offence in question is anything other than -

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2002 (c.26) which received Royal Assent on 24th July 2002*

- an offence for which the sentence (in the case of an adult) is fixed by law as imprisonment for life (such as murder);
 - an offence which is, in the case of an adult, triable on indictment only (i.e. triable only in the Crown Court);
 - an offence which is a “scheduled offence”, i.e. an offence listed in Parts 1 to 3 of Schedule 9 to the Terrorism Act 2000;
 - in certain specified circumstances only, an offence for which a diversionary youth conference has been held (new Article 33C(2)); or
 - an offence for which the court intends to grant an absolute or conditional discharge (new Article 33C(5)).
123. A court may not refer a child and offence to a youth conference where the offence is either one for which the sentence (in the case of an adult) is fixed by law as imprisonment for life or where it intends to grant an absolute or conditional discharge. In any other case (i.e. where the offence is one of those mentioned in the second, third or fourth bullet points above) the court may refer the child and offence to a youth conference, but is not obliged to do so. As the youth conferencing provisions are to be introduced area by area, the court may only make a reference if it has been notified that the provisions have been brought into force in the area in which the child lives or will live (new Article 33C(1)).
124. New Article 33B sets out the rules to deal with the situation where the child is found guilty of more than one offence. If any of the offences are ones for which the sentence (in the case of an adult) is fixed by law as imprisonment for life the court cannot refer any of the offences to a youth conference (new Article 33B(2)). If the combination of offences includes both one or more for which a court-ordered youth conference is mandatory and one or more for which it is at the discretion of the court, the court may (but is not obliged to) refer all or any of the offences to a youth conference (new Article 33B(3)).
125. As well as recommending a youth conference plan to a court, a court-ordered youth conference can also recommend that the court simply exercise its existing powers to deal with the child or recommend that a youth conference plan and a custodial sentence be combined (new Article 33A(5)). In each case any person required by new Article 33E to consent to the recommendation must have indicated their agreement. If the conference is unable to agree any recommendation the co-ordinator will report this to the court.
126. If a court does not refer a case to a youth conference co-ordinator where it has the power to do so, it must give its reasons in open court (new Article 33C(4)).

Section 60: Youth conference orders

127. Where a recommendation made to a court by a youth conference includes a youth conference plan (whether alone or in combination with a recommendation that a custodial sentence be imposed) the court may make a youth conference order. This is a new type of sentence for the court. The youth conference order can be in identical terms to the youth conference plan or the court can vary that plan (and include within it anything from the range of options open to the youth conference) (new Article 36J(2)). In either case the child must consent to the youth conference order (new Article 36J(5)) and, where the court varies the youth conference plan, it must consult the youth conference co-ordinator (new Article 36J(6)). A youth conference order cannot be combined with any other court sentence unless the youth conference recommended it be combined with a custodial sentence, in which case the court may also impose any custodial sentence which it could have imposed for the offence (new Article 36J(8) and (9)). The youth conference is not empowered to recommend to the court any specific

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period of custody or type of custodial sentence. However, the child must agree to any custodial sentence imposed.

128. Before making such an order, the court must state in open court that it is of the opinion that the offence was serious enough to warrant it and why it is of that opinion (see new Article 36J(3) and (4) and new Article 36K(1)).
129. Provision for dealing with breach of a youth conference order and for revocation and amendment of such an order is made by new Schedule 1A of the 1998 Order (added by section 62 and Schedule 10).

Section 61: Legal aid for youth conferences

130. This section adds two new Articles to the [Legal Aid, Advice and Assistance \(Northern Ireland\) Order 1981 \(S.I. 1981/228 \(NI 8\)\)](#) (the “1981 Order”) which make free legal aid available for attendance by legal representatives at diversionary youth conferences and court-ordered youth conferences.