Foreword

In April 2005 the newest judicial post in Northern Ireland, that of Lay Magistrate, will come into being. Proposed by the Criminal Justice Review and given life by the Justice (Northern Ireland) Act 2002, the post is effectively an amalgam of aspects of the historic office of Justice of the Peace and the office of Lay Panellist. The contribution made by the holders of these two offices to the administration of justice over many years has demonstrated the value and importance of lay involvement in the justice system.

The Justice (Northern Ireland) Act 2002 requires newly appointed Lay Magistrates to undergo a programme of training. It is the responsibility of the Judicial Studies Board to provide that training and the programme begins with the publication of this manual.

Lay Magistrates are, by definition, not lawyers and the induction training will not seek to turn them into lawyers but will recognise that their role is different. The manual is intended to provide a clear, concise and accessible introduction to the work of a Lay Magistrate. It is, above all, a practical guide that may be used in preparation for and during training and thereafter as a useful point of reference. It does not claim to be a definitive work, for that would inevitably be dense and inaccessible. Rather, the manual offers a ready insight into the key features of the justice system and responsibilities of the post. I commend it to you.

I would like to take this opportunity to thank the staff of the Judicial Studies Board for all they have done to ensure that Lay Magistrates receive the induction training required for their new role. This manual forms a very important component of that objective. In particular, I would pay tribute to Terence Dunlop whose work on the manual has been invaluable, and to the many who took the trouble to comment on earlier drafts.

The Rt Hon Lord Justice Campbell
Chairman
Judicial Studies Board

Preface

The purpose of this manual is to provide a basic grounding in the main powers and duties which have been conferred by Parliament on the new judicial office of Lay Magistrate. It should also serve as a companion and guide which Lay Magistrates may consult in the performance of their functions, both in court and out of court. It is not intended to be an exhaustive legal account of the Lay Magistrate's role which, if undertaken, would run to many more pages than is contained in this present volume. References to legislation have deliberately been kept to a minimum. The emphasis has instead been placed on the practical and procedural knowledge necessary for the role.

As a means of equipping Lay Magistrates to carry out their functions the manual cannot stand on its own but must be viewed together with the induction training which, by law, all Lay Magistrates must receive. It is hoped that the manual will provide useful introductory material for the various topics to be covered in training and that the training will also inform and amplify the guidance contained in the manual. Both of these resources will undoubtedly also be supplemented by the invaluable benefit which only experience in the post will, in course of time, bring.

Just as the Lay Magistrate's post is new so is the need for a manual such as this. Accordingly, this document constitutes a first attempt to set out for the benefit of the Lay Magistracy the sort of information which it will require to fulfil its purpose. How successful it will be must depend on the extent to which Lay Magistrates make the manual their own and are able to put it to the sort of use for which it is intended. The manual's initial publication is not the end of the process. The likelihood of further legal developments in areas impinging on the work of Lay Magistrates should ensure that subsequent revisions will prove necessary. But, more than that, it is hoped that at the revision stage the manual might also be modified, where appropriate, to reflect the experience of Lay Magistrates in using it so that it becomes more tailored and responsive to their needs.

I am indebted to the following, whose comments have proved extremely helpful in the preparation of the manual: Mr. Harry McKibbin R.M., Mrs. Bernie Kelly R.M., the Lay Panel Training Committee under the chairmanship of Mrs. Lorraine Young, Mrs. Deirdre Dorman and Dr. Willie McCarney. Responsibility for any shortcomings in the manual is entirely mine.

Finally, it should be noted that throughout the manual I have endeavoured to make the language gender-inclusive by simultaneous use of both male and female pronouns. The only exception to this is in places where I have taken wording direct from legislation in which case the pronoun "he" does duty for both the male and female.

Terence Dunlop
Judicial Studies Board

November 2004

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1. INTRODUCTION

The History of Lay involvement in the Administration of Justice

Justices of the Peace

1.1 The office of **Justice of the Peace** appeared for the first time in an English Statute (another name for an Act of Parliament or other law) of 1361 and was first mentioned in an Irish Statute of 1449, although the office was already in existence prior to these dates and had itself developed out of an earlier office known as Keeper of the Peace/Conservator of the Peace.

1.2 Initially, Justices of the Peace were granted power to bind a person to the Peace and/or to be of good behaviour. Subsequently, however, various laws were passed extending the powers and duties of Justices of the Peace in Ireland, which included the authority to arrest and judge those who broke the law in their own county.

1.3 The office of Justice of the Peace continued to exist in Northern Ireland following the partition of the island of Ireland in 1921 when separate parliaments and legal systems were created for both parts of the island.

1.4 Until 1935 Justices of the Peace, who received no formal training for their role, exercised extensive powers while sitting on their own in courts known as Petty Sessions, which are the regular occasions on which a Magistrates' Court

sits, by direction. However, in 1935 an Act of the Northern Ireland Parliament removed the right of Justices of the Peace to sit in Petty Sessions.

1.5 Subsequently, their court activities were confined to sitting in "Special Courts" where they continued to sit alone to deal with the procedural aspects of the early stages of criminal prosecutions – mainly remands (first appearances in court of those who have been arrested, charged with a criminal offence and detained in custody) and committals for trial (where the Magistrates' Court determines whether there is sufficient evidence to send the accused to be tried in the Crown Court).

1.6 In addition, Justices of the Peace exercised out of court functions, some connected with the criminal law - such as issuing criminal summonses and warrants of arrest, and some not connected with the criminal law - such as signing summonses on a civil complaint as well as other official documents (*e.g.* passport applications, affidavits *etc.*). Both the criminal and non-criminal functions involved the taking of oaths and solemn affirmations.

Lay Panellists

1.7 In 1942 legislation provided for two lay persons known as Children's Guardians to sit with the Resident Magistrate in criminal cases involving juveniles. The Guardians' role was very limited, however. They could ask questions of witnesses but were not involved in the decision-making.

1.8 In 1950 the juvenile court structure, which still exists today, was created. The legislation provided for a panel of laypersons from whom two would be selected on each occasion to sit with a legally qualified Resident Magistrate who was chairman of the court. The lay members were given full judicial powers and where opinions differed among the panellists the decision of a majority of the members applied. The juvenile court, which sat to hear largely criminal matters, would later become known as the Youth Court. This court is defined as a magistrates' court.

1.9 In 1995 the Family Proceedings Court was created to deal with non-criminal proceedings brought under the Children (NI) Order 1995. Again, it forms part of the Magistrates' Court and hears applications relating to matters affecting children such as residence, contact and parental responsibility as well as having the power to grant *e.g.* care and supervision orders. The make–up of the court was the same as for the juvenile court noted above and its lay members were drawn from the same panel. **Lay Panellists** therefore sat to hear cases in both the youth court and family proceedings court as well as performing out of court work such as the granting of Emergency Protection Orders. Additionally, they sat as Assessors in appeals to Youth Court to the County Court.

The Background to the creation of Lay Magistrates

1.10 The Belfast Agreement of 1998 provided for a review of the criminal justice system in Northern Ireland. Many of the recommendations of the

resulting Criminal Justice Review of 2000 were incorporated into the Justice (Northern Ireland) Act 2002 which, among other things, created a new judicial post of Lay Magistrate. This post combined the work previously carried out in Youth Courts by Lay Panellists with the criminal justice functions of Justices of the Peace. This was to meet the need for a criminal justice system which is responsive to community concerns, encourages community involvement and promotes public confidence.

1.11 The Justice (Northern Ireland) Act 2002 also added the family proceedings court work to the functions of the new Lay Magistrates so that all the functions previously carried out by Lay Panellists together with the criminal justice functions previously carried out by Justices of the Peace are now performed by Lay Magistrates.

The role of the Lay Magistrate

1.12 The role of a Lay Magistrate in each of these functions is not to be a legal expert but rather to consider the evidence in each case in a reasonable and common sense manner and to reach a decision which best serves the interests of justice in accordance with the law. Lay Magistrates normally come to the post without any formal legal education and they are not expected to obtain such an education or to acquire the knowledge of a legally qualified person. Rather, Lay Magistrates bring an invaluable fund of life experience from a

diverse range of backgrounds to the task. When hearing cases in the Youth Court or Family Proceedings Court Lay Magistrates sit with a legally qualified Resident Magistrate who will have had considerable experience of the practice of law. In any such case there will be:

a) issues of law to be decided, and

b) issues of fact to be decided.

1.13 It is solely for the Resident Magistrate to decide the issues of law. Thus it will be for the Resident Magistrate to determine *e.g.* which legal principles are relevant, which parts of the law apply and what orders the court is legally entitled to make in a given case. **The Lay Magistrates and the Resident Magistrate together decide the issues of fact**. These issues will involve questions like "Is the child, the subject of this application, likely to suffer significant harm if certain steps are not taken by the court to prevent it?" and "Did the accused youth strike the police officer with an iron bar?" Often issues of fact cannot be determined until legal issues have been clarified. Thus, in the first example of an issue of fact given above it will be necessary to be aware in advance how the law defines the term "significant harm". It is for all the members of the panel to decide as an issue of fact what order, if any, the court should make in a given case (*e.g.* an order granting parental responsibility in the Family Proceedings Court or an order for detention in a Young Offenders Centre in the Youth Court). Again, of course, this is only possible when the Resident Magistrate has determined what orders the court is legally empowered to make in the particular circumstances of the case.

1.14 Lay Magistrates may occasionally be required to sit on their own to hear very specific matters (*e.g.* to deal with an application for an Emergency Protection Order or to hear a complaint for the purpose of issuing a Summons to a Defendant). In these situations, about which more is said later in the manual, the Lay Magistrate obviously needs to be familiar with the procedure and the basic principles and requirements of the law in these cases. But these areas are dealt with in some detail below (and a separate and very detailed Emergency Protection Order pack is also provided to Lay Magistrates).

Qualities to be exercised in the role

1.15 In addition to meeting the formal eligibility requirements Lay Magistrates are required to exercise the following 6 essential qualities:

Good Character

- Personal Integrity
- Having the respect and trust of others
- Respect for confidentiality
- Nothing in his/her private or working life which might bring the Lay Magistracy into disrepute
- Willingness to be careful and discrete in private, public and working life

Commitment and Reliability

- Reliability
- Commitment to serving the community
- Willingness to undertake a fair share of duties as a Lay Magistrate in your own County Court Division
- Willingness to undertake the required training
- Sufficiently good health to undertake the duties of a Lay Magistrate on a regular basis

Understanding and Communication

- Ability to understand documents
- Ability to identify and understand relevant facts and follow evidence and arguments
- Ability to concentrate
- Ability to communicate confidently with a wide range of individuals

Social Awareness

- Appreciation and acceptance of the rule of law
- An understanding of the local community and the causes and effects of crime
- Respect for people from different ethnic, cultural and social backgrounds
- An understanding and awareness of the rights and best interests of children and young people

Maturity and Sound Temperament

- Ability to relate to and work with others
- Regard for the views of others and willingness to consider advice

- Willingness to learn and an open mind
- A sense of fairness in attitude and approach
- Courtesy and consideration of others

Sound Judgement

- Ability to use a common sense approach
- Ability to think logically, weigh arguments and reach a balanced decision
- Ability to make objective decisions and to recognise and set aside prejudices

Judicial Oath or Affirmation

1.16 Every person appointed as a Lay Magistrate must, before undertaking any functions of the office, *either* take an oath *or* make an affirmation and declaration specified by the Justice (Northern Ireland) Act 2002. The wording of these is as follows:

Oath

"I [Name] do swear that I will well and faithfully serve in the office of Lay Magistrate and that I will do right to all manner of people without fear or favour, affection or ill-will according to the laws and usages of this realm."

Affirmation and Declaration

"I [Name] do solemnly and sincerely and truly affirm and declare that I will well and faithfully serve in the office of Lay Magistrate and that I will do right

to all manner of people without fear or favour, affection or ill-will according to the laws and usages of this realm."

Human Rights

1.17 Lay Magistrates, in common with all the members of the judiciary, have an ongoing duty to ensure that certain fundamental human rights are respected and adhered to in the performance of their judicial duties.

1.18 The European Convention on Human Rights was drawn up in the period following World War II and approved by the United Kingdom Government in the 1950s. The Human Rights Act 1998 brought much of the European Convention on Human Rights into domestic (United Kingdom) law so that what is required by the European Convention on Human Rights is now a direct legal requirement within Northern Ireland. It is therefore unlawful for a court in which Lay Magistrates are sitting to act in a way which is incompatible with or contrary to a Convention right. So far as it is possible to do so, the laws of Northern Ireland must be read and given effect in a way which is compatible with the Convention rights. But it remains important for those operating the courts of law to be aware of the Convention rights and to ensure that they are complied with.

What rights should Lay Magistrates be especially aware of?

1.19 It is strongly recommended that Lay Magistrates become familiar with the contents of the European Convention on Human Rights - and copies of this document may be obtained from the Judicial Studies Board Training Library - but in terms of the issues arising in the courts the following articles of the Convention are probably most relevant:

1.20 a) **Article 3** provides that **no one shall be subjected to torture or to inhuman or degrading treatment or punishment**. Here, it is important to bear in mind that what may not be *e.g.* 'inhuman or degrading' for an adult may nevertheless be just that for children. The Youth Court and the Family Proceedings Court have been constituted in such a way as to make them as unthreatening and unintimidating as possible for children but it is important that Lay Magistrates, together with their Resident Magistrate colleagues, remain aware of the need to ensure that trial processes are carried out in a manner which could not be seen as in any way inhuman or degrading, that they do not humiliate or otherwise cause undue suffering to the children involved in them.

1.21 b) **Article 5** says, in effect, that **everyone has the right to liberty and security of person**. It also seeks to ensure that no one shall be deprived of his/her liberty except when it is done according to law for lawful and legitimate purposes. This article is aimed at preventing arbitrary detention (the taking into custody of someone without very good reason) and will ensure the

regular monitoring and sentence review of those imprisoned for criminal activity or detained on grounds of mental health or for their own safety. It safeguards rights relating to arrest such as prompt appearance before a judge, seeing a solicitor and being given an opportunity to challenge one's detention in a court of law. This has particular relevance in first remand hearings (see below) where it has become important to examine the arrest and detention of a suspect to ensure that it was lawful and where, in addition, there is an obligation to release the accused on bail while awaiting trial unless there are grounds established in legal principle for refusing it. For instance, a belief that the accused may not appear for his/her trial if released from custody may be a ground for refusing bail. It should also be noted that there are certain types of offence for which a Magistrate's Court does not have power to grant bail. The effect of this article should also mean that any decision to deprive a young person of his/her liberty by means of a custodial order in the Youth Court or a secure accommodation order in the Family Proceedings Court must only be taken after very careful consideration, having heard representations from all relevant parties, and where it is believed that no other suitable or effective remedies remain available.

1.22 c) **Article 6** establishes that **everyone has the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law**. "Tribunal" is simply another name for a court. Thus defendants in criminal trials will be guaranteed certain rights in the conduct of their defence such as: the presumption of innocence (see paragraph 3.15 below); the right of access to a solicitor; the right to adequate time to

prepare their case; the right to challenge evidence brought against them; and Legal Aid in cases where justice and a fair hearing demand it. In this regard it should also be noted that Article 40(2) of the United Nations Convention on the Rights of the Child, to which the United Kingdom government is a signatory, protects the right of children in juvenile court proceedings "to have the matter determined without delay by a competent, independent and impartial authority and judicial body in a fair hearing according to law". This clearly echoes the provisions of Article 6.

Bias

1.23 The question of impartiality is an important one for Lay Magistrates – and indeed for all judicial office holders. **Courts must always be impartial *and be seen to be* impartial**. To be impartial simply means not favouring or appearing to favour one party over the other(s). There are circumstances in which there may be a bias or apparent bias on the part of the Lay Magistrate in a given case and in such circumstances he/she is disqualified from sitting and any decision reached may well not be allowed to stand. He/she should therefore withdraw from hearing such a case to ensure that a fair and impartial hearing takes place and that Article 6 is properly complied with. These circumstances would arise where the Lay Magistrate:

i) knows a party to the proceedings personally or well.

ii) has an interest in or is affected by the outcome of the proceedings.

iii) has been approached about the case or by a party to the case

iv) has direct knowledge of the circumstances of the case

v) has already formed an opinion about the case

This list is not exhaustive and there are many potential situations in addition to those listed above where the question of bias may arise. If a Lay Magistrate becomes aware of any issue which could affect his/her ability to hear a particular case impartially, he/she should withdraw from it. If there is any doubt as to whether bias or apparent bias might arise it is better to withdraw so as to guarantee impartiality. If he/she wishes, a Lay Magistrate may discuss the matter with the Resident Magistrate who is chairing the court to seek guidance or if the Lay Magistrate is due to be sitting on his/her own he/she may speak to the clerk of the court. However, if there is any doubt, it is best that the Lay Magistrate should withdraw to guarantee that public confidence is maintained in the integrity of the administration of justice, to ensure that the court's decision in the case does not have to be set aside and to protect the Lay Magistrate's own reputation as an impartial judicial officer.

Prejudices

1.24 In addition, Lay Magistrates must be aware that everyone is, to a certain degree, affected by prejudices. In hearing any case a Lay Magistrate must not be influenced by his/her dislike of certain groups (*e.g.* motorcyclists or teenagers) or indeed his/her sympathy for other groups (such as young children or the elderly). When hearing any case a Lay Magistrate must always remember that it is the legal and factual issues which must be decided without regard to sympathy, charity or personal morality. Also, it should be noted that it is easier to appear truthful when making an allegation than when denying

one. An accused or a defendant must wait until those who accuse him/her have told their story to the magistrates before he/she is able to start making denials or to give his/her version of events. A Lay Magistrate must therefore guard against forming an opinion until he/she has heard all the evidence. This relates again to the presumption of innocence (mentioned in greater detail at paragraph 3.15 below) which holds that in a criminal trial an accused is presumed to be innocent of the crime unless proven guilty.

1.25 d) **Article 8** states that **everyone has the right to respect for their private and family life, home and correspondence**. This will be significant particularly in the Family Proceedings Court where due regard must be had to the right to family life and, in particular, the right of parents to take responsibility for and make decisions regarding the upbringing of their children. There had been a number of cases in the late 1980's where the European Court of Human Rights held that United Kingdom courts in dealing with cases regarding the welfare of children were in breach of Article 8 of the convention and indeed the Children (Northern Ireland) Order 1995 – which largely governs the work of the Family Proceedings Court (see below at Chapter 2) – has since made provision for parents to have all questions of contact with children who have been placed in local authority care examined by a court in which they will have the right to put their case. Lay Magistrates should remember that there should be no interference with Article 8 rights unless the law permits it on the grounds of some legally established overriding interest such as national security or the protection of the rights and freedoms of others. One of the general principles governing the work of the Family

Proceedings Court is that wherever possible children should be brought up and cared for in their own families. Accordingly a Health & Social Services Trust will have to produce persuasive evidence to justify any alleged need to remove a child from his family. This is a principle which is consistent with Article 8.

1.26 e) **Article 14** declares that **the enjoyment of the rights and freedoms set forth in the Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status**. This article prohibits any discrimination in relation to the rights and freedoms – liberty of the person, fair trial *etc.* – which are guaranteed by the other articles of the convention. Thus to grant bail to an accused person from a particular ethnic background while refusing it to another accused from a different ethnic background when the background facts for each accused are essentially the same would be a possible example of discrimination under Article 14.

1.27 The full texts of the convention articles discussed above may be accessed in Appendix 4 to this manual. Additionally, extracted Articles from the *United Nations Convention on the Rights of the Child* are set out in Appendix 5 together with a note about the Convention on the Rights of the Child.

Equal Treatment

1.28 The equal treatment of all people before the courts must be a foundation principle for Lay Magistrates and indeed all members of the judiciary. While

Article 14 of the European Convention on Human Rights limits its anti-discrimination provisions to the securing of Convention rights there is, in addition, a wider requirement that everyone who comes before the courts regardless of sex, race, colour, language, religion, disability, political or other opinion, national or social origin, association with a national minority, property, birth or other status, is treated with equal respect by the court.

1.29 An individual coming before the court – whether they are a party to proceedings or not – who, for whatever reason, is unable to cope with the language, procedures or facilities of the court is as entitled to justice as those who know how to use the legal system to their advantage. The primary responsibility for ensuring equality of treatment will fall upon the Resident Magistrate who is chairing proceedings whenever Lay Magistrates are sitting in court. This does not, however, relieve Lay Magistrates of the responsibility of ensuring equality of treatment for all those who come before the court and Lay Magistrates should assist the Resident Magistrate in this regard and, where necessary, draw anything to their attention which may give rise to an issue of equal treatment.

1.30 Additionally, Lay Magistrates will be dealing with certain matters on their own and regardless of the fact that in many of these circumstances, though not invariably, the person with whom they are dealing will be a police officer or social worker they should continue to have regard to the ongoing requirement for equality of treatment. Very detailed and comprehensive guidance on equal treatment is set out in the *Equal Treatment Bench Book*

produced by the Judicial Studies Board of England and Wales. Lay Magistrates can access this guidance by contacting the Judicial Studies Board for Northern Ireland. Copies of this publication are also available in each courthouse and on-line at the following web address:

www.jsboard.co.uk/etad/index.htm

The Composition and Proceedings of the Juvenile Court

1.31 The juvenile court is the type of court which sits in both the Youth Court and Family Proceedings Court. It is part of the Magistrates' Court system which, in turn, forms part of the Northern Ireland judicial scheme (see the chart in Appendix 1 to this manual). Accordingly, Lay Magistrates should be aware that the court may sometimes be referred to as a *Magistrates' Court* or, perhaps more rarely, a *court of summary jurisdiction*. Also, since the sittings of the juvenile court for both Family Proceedings Court and Youth Court matters are fixed by direction of the Lord Chancellor, it may be spoken of as sitting *in Petty Sessions*. However, it will be simplest to think of the juvenile court in terms of the Family Proceedings Court when hearing family matters and the Youth Court when dealing with criminal youth justice matters. The court will normally be made up of three judicial officers as follows:

a) A Resident Magistrate with an appropriate expertise in either Youth Justice or Children Order work who shall be the Chairman of the court, *and*,

b) Two persons selected from the panel of Lay Magistrates for the relevant County Court Division in which the Youth Court or Family Proceedings Court sits or from the equivalent panel in an adjoining County Court Division. At least one of the Lay Magistrates must be a woman. (It is therefore possible to have a court composed of three female magistrates but not three male magistrates.)

1.32 The decision of the court is made by a majority vote of its members – each of the three members having an equal vote – and normally the Chairman (Resident Magistrate) will pronounce the decision (*i.e.* state the decision in open court). However, the Chairman may ask one of the Lay Magistrates to pronounce the decision. This is likely to be very rare indeed and where it does happen will probably be because of the Resident Magistrate's incapacity (*e.g.* through laryngitis) to pronounce the decision. The decision will often be given in written form also but this will be the responsibility of the Resident Magistrate.

1.33 Provided the Resident Magistrate, who is chairing the proceedings, is present the court may proceed to hear cases in the absence of one or even both of the Lay Magistrates. The court is properly constituted as long as both Lay Magistrates have been notified irrespective of whether either or both fail to turn up on the day. A Lay Magistrate who agrees to sit and subsequently finds

that he or she is unable to do so should notify the Clerk in time for the court office to attempt to find a substitute. Lay Magistrates should also be aware that in accepting to sit on a particular day they are agreeing to sit for the full day's court and should remain for the whole sitting unless circumstances arise which make it impossible for them to do so. It should not be assumed that the court will finish early and that Lay Magistrates may make other arrangements for the afternoon on that basis. It is therefore wise always to assume a full day's sitting.

1.34 When the Chairman and one Lay Magistrate only are present and are in disagreement as to the decision to be reached, the decision of the Chairman becomes the decision of the Court and he/she shall pronounce it. The Chief Clerk in each County Court Division decides the question of where and when Lay Magistrates sit to hear cases.

1.35 The remainder of this manual provides guidance as to the specific functions of Lay Magistrates in the Family Proceedings Court, the Youth Court and when exercising the criminal justice powers previously exercised by Justices of the Peace.

2. THE FAMILY PROCEEDINGS COURT

The Children (Northern Ireland) Order 1995

2.1 Prior to the above Order (hereafter known as "The Children Order") coming into effect (which happened in November 1996) there was a distinct lack of any unified court structure to deal specifically with the welfare and interests of children in Northern Ireland. Rather, issues concerning children tended to be dealt with the on the back of cases more directly concerned with other issues such as financial maintenance or domestic violence. The Children Order, which deals in considerable detail with the **care, upbringing and protection of children,** went some way to providing that unified structure and to reorganising the courts which were to put the principles and rules of The Children Order into effect. The Children Order defines a "child" as a person under the age of 18. Another term which may be used from time to time with this definition is "minor".

2.2 The Magistrates' Court when sitting to deal with matters arising under The Children Order is known as a "Family Proceedings Court". There are also courts at County Court level and High Court level which deal with family proceedings matters. In the County Court they are known as Family Care Centres and in the High Court it is the Family Division of that court which deals with these matters. All three levels have the same powers under The Children Order (except that the Family Proceedings Court may not deal with property or guardianship) and there is a uniform system of law applying in all

these courts – the same principles and the same orders. (The Domestic Proceedings Court – a court of summary jurisdiction dealing with matrimonial matters – may also impact on the care, upbringing and protection of children.) As a general rule most of the proceedings which may be brought under The Children Order must be commenced (begun) in the Family Proceedings Court. However they may be commenced in the Family Care Centre or the High Court if there are other family proceedings already being dealt with in either of those courts. There is also provision to transfer certain proceedings from the Family Proceedings Court to either the Family Care Centre (because of the gravity, importance or complexity of the proceedings) or the High Court (if other proceedings which may affect or are connected with the child have already begun there). Consequently the large majority of Children Order cases are dealt with by the Family Proceedings Courts. There are seven Family Proceedings Courts corresponding to the seven County Court divisions in Northern Ireland. These Courts normally – but not invariably – sit at the following locations:

- **Londonderry**
- **Ballymena**
- **Craigavon**
- **Newry**
- **Newtownards**
- **Belfast**
- **Dungannon**

The details regarding the composition and proceedings of Family Proceedings Courts, which are constituted as juvenile courts, are given at paragraph 1.31 above in the Introduction.

Conference Style

2.3 The Family Proceedings Court is designed to have a conference style. Most of the other courts of law adopt an adversarial or accusatorial system of determining justice. Briefly, that is where each side argues its case, with one side seeking to prove an allegation and the other attempting to disprove it. In that system responsibility for gathering and presenting the evidence rests with the party who seeks to rely on that evidence. The Family Proceedings Court, by contrast, adopts an **inquisitorial** approach to justice. This involves the court taking a certain initiative to determine what the relevant facts are and deciding what evidence and what witnesses need to be called. The hearing is much more in the nature of an inquiry or fact-finding exercise, taking all relevant evidence into account, rather than a contest or argument between two or more parties (although it must be acknowledged that sometimes the parties themselves will turn it into a contest). It is for this reason that Directions Hearings (see paragraph 2.9 below) are held in the Family Proceedings Court.

Sitting as a Lay Magistrate in the Family Proceedings Court

2.4 Apart from when Lay Magistrates are called upon to sit "out of hours" to hear an application for an Emergency Protection Order (see paragraph 2.43

below), they will sit to hear Children Order matters in a designated courtroom together, usually, with a Lay Magistrate colleague and always with a legally qualified Resident Magistrate who has Children Order expertise. Family Proceedings Courts normally sit from 10.30 in the morning. Occasionally, a particular case or cases may be listed for hearing at an earlier time (*e.g.* 9.30 *a.m.*) and in these circumstances the Lay Magistrates will be notified by the relevant court of the earlier time.

Preparation

2.5 Each case which comes before the Family Proceedings Court will have a file of papers relating to it. The file is created by the court office and should contain copies of all the relevant papers. These will include the pleadings (see paragraph 2.7 below) and other materials such as medical reports, welfare reports, Guardian ad Litem reports (see paragraph 2.37 below for a description of the Guardian ad Litem), criminal records, General Practitioner notes and records and birth certificates. Three copies of this file should be available – one for the Resident Magistrate and one each for the Lay Magistrates. Practice may vary somewhat from court to court but normally the bundle of files for a scheduled sitting of the court will be available to the Lay Magistrate several days in advance and may be collected from the court office. Suitable arrangements may be made with the appropriate court office for these purposes. **These files often contain very sensitive and confidential material and it is extremely important that their contents are not disclosed to anyone else.** Care should be taken not to leave the files or documentation from them sitting out or accessible to others in the home or elsewhere. Lay

Magistrates should ensure that they have read through the files in advance of the court sitting and are familiar with the facts and issues in each case. Lay Magistrates may find it helpful to ask themselves a series of basic questions when they first read the file to clarify the facts and issues. The following are examples of the questions which might be posed:

a) What Order/Orders is/are being sought?
b) Is this a public law or a private law case (see below at paragraph 2.16 for an explanation of this distinction)?
c) Who is making the application?
d) Who is/are the respondent(s) or other parties who have registered an interest in the case?
e) What are the main areas of dispute between the parties?

2.6 It will assist to have these matters clarified before proceeding to decide what further steps are required to allow for a full, informed and proper hearing of the issues. **Note taking while reading files is permissible – and indeed is strongly to be recommended – provided the contents of the notes remain totally confidential.**

2.7 The file of papers relating to a given case will contain a number of documents collectively known as the pleadings. For the purposes of this chapter the **pleadings** in the case will mean those printed documents completed by one of the parties and lodged with the court and/or served upon other parties in the course of the proceedings.

The main documents which are likely to be contained within the pleadings are as follows:

Form C1

This is the form of document by which an application is made for any of the court orders available under the Children Order, *e.g.* Residence, Supervision *etc.* The same form is used in both Public and Private law cases (see paragraph 2.16 below for an explanation of this distinction). This sets out details of the applicant and the child who is the subject of the application. It should contain details of any other legal proceedings, past or present, which concern the child in question. It will give details of the respondent(s) (the person or persons, apart from the child, who will be affected in some way by the order. This will usually include the child's parent(s) or those with parental responsibility for the child). The names and addresses of others who are entitled to notice of the application (*i.e.* entitled to be informed of the intended application in advance of any hearing) will also be given. The remainder of the Form C1 will set out details of the child's current circumstances and paragraph 12 will give the reasons why the application is being made. A Form C1 is a useful document as it provides the basic facts which the court requires to allow it to begin considering the issues in the case. It is usually also accompanied by a supplementary form with further useful information which is specific to the type of court order which is

being sought. Thus, *e.g.*, Form C12 is the supplementary form when applying for contact with a child in care.

Form C4

This document is known as the Acknowledgement and it is completed by the Respondent(s) and copies are served on the Applicant and other parties entitled to notice and a copy of it is also lodged with the court office. The Acknowledgement gives the Respondent's details and normally identifies his/her solicitor. Paragraph 5 will state whether or not the Respondent intends to oppose the application and paragraph 6 will state whether the Respondent, in response to the proceedings, wishes to apply for any order from the court.

Form C2

This document is for applications for one or other of the following:

a) Leave (permission) to commence proceedings. This is required in situations where the applicant does not have an automatic right to come before the court to seek an order.
b) For an order or directions in existing family proceedings
c) To be joined as, or cease to be, a party in existing family proceedings

Form C3

This is the document which tells the parties to the proceedings of the time and date of the Directions Hearing or Appointment (see paragraph 2.8 below).

Form C5

This document is used for any party to give a confidential address who does not wish to reveal their private residence or that of any child. It is important that Lay Magistrates do not refer to that address in the course of the proceedings.

Most of the remaining forms are supplementary forms to be completed depending upon the precise order which is being applied for.

Lastly, the pleadings will also contain copies of orders already given in the course of the proceedings such as an Emergency Protection Order (Form C20), Secure Accommodation Order (Form C23), and Order/Direction (Form C18). Any directions which may have been given earlier by the court will be contained on a Form C18 within the file.

Timetabling and Directions

2.8 It is an important principle of The Children Order that proceedings should be dealt with as quickly as possible so as not to prejudice the interests of the child. The inquisitorial nature of the Family Proceedings Court also requires

the Magistrates sitting in it, Resident and Lay, to be proactive as to the evidence which needs to be made available to the court to allow for a proper hearing of the issues involved.

2.9 For this reason The Children Order provides for directions to be given by the court at an early stage in proceedings. Accordingly Directions Hearings are often held at a preliminary stage in Children Order cases. Their purpose is not to decide the major issues in the case. Rather, Directions Hearings are held in order to allow the court to decide how best to manage the case and the court can make the necessary directions to facilitate this. Some family proceedings courts – for instance the Family Proceedings Court for Belfast – will have separate days when the court sits specifically to deal with directions hearings (sometimes known as "Directions Days"). Other family proceedings courts may operate with a mixed list where, on a given day, the court will give directions in some cases *and* make final decisions on the substance of the case in others. Directions hearings will deal with the following matters:

a. The timetable for the hearing, or
b. The timescale for certain acts to be done,
c. The attendance of the child who is the subject of the case,
d. The appointment of a Guardian ad Litem or of a solicitor (see below),
e. The exchange of documents between the parties,
f. The release of documents to medical or other experts,
g. The calling of evidence, including *e.g.* medical reports,

h. The submission of a welfare report (sometimes known as an "Article 4" report), or

i. The transfer of the case to another court.

2.10 The following is a checklist of relevant directions to be considered by the family proceedings court at a directions hearing. It is taken from *Best Practice Guidance* (2003), a document created by the Children Order Advisory Committee under the Chairmanship of Mr Justice Gillen, Judge of the Family Division of the High Court.

DIRECTIONS HEARING CHECKLIST

- Has each party identified the issues in the case?
- Are there any features requiring particular urgency?
- Identify whether there is to be a contested hearing of any application for an interim care order and if so, when such hearings should take place.
- What assessments and reports are required, when and in what disciplines? Is it necessary to direct the filing of a Schedule of Assessments?
- Is a split hearing necessary? (see glossary at the back of the manual for definition). Should a Statement of Facts to Threshold Criteria be directed?
- Has appropriate consideration been given to expert medical witnesses? Has the expert been identified, the discipline which he is to address been identified, his availability been ascertained and appropriate information assembled for the purposes of Legal Aid?
- Has a timetable through to final disposal including fixing the dates of future hearings, (including all direction and other interlocutory hearings and the final hearing in any split hearings) together with the appropriate venue been considered?
- Has disclosure been addressed? Has the attendance of the child been addressed? Has separate representation been addressed?

- Is domestic violence an issue? If so, consider drafting a schedule of domestic violence incidents which should include the victim's/parties' views of the damage caused to the child(ren) as a result.
- Are directions sought as to the format of future directions in other hearings (including where appropriate the giving of directions on paper applications without the attendance of the parties)?
- Who is to attend future direction or other hearings? What arrangements have been made for assembling and updating a trial bundle?
- What directions need to be made for the filing by each of the respondents of statements, evidence and a response to the Trust's proposed threshold findings?
- Has a statement of core issues been filed by the parties?
- Has a bundle of documents with skeleton arguments appended been directed?
- Are the witnesses available for the date fixed for hearing?
- What provision has been made for communicating the decision of the court to the child?

Obviously, the specific needs of each case will depend on its own facts and the above checklist has been provided purely for guidance as to what issues may need to be addressed. There is no requirement to stick rigidly to it when considering what is required at a direction hearing.

2.11 There may well be a number of hearings before proceedings are brought to a proper conclusion. The timetabling of cases through to final disposal is part of an approach which is designed to ensure that a conclusion is reached in the case as speedily and efficiently as possible. Lay Magistrates, in considering what directions the court should make and in deciding upon a timetable for future hearings and the preparation of reports *etc.*, should continually be aware of the need to avoid unnecessary delay in Children Order proceedings.

General Principles of the Children Order

2.12 There are key guiding principles which govern how The Children Order is put into effect and **it is important that Lay Magistrates are aware of these principles and seek to apply them when sitting in Family Proceedings matters.** These are listed below for ease of reference together with a comment, where appropriate, on the application of the principle in question:

a) **The welfare of the child is the paramount (or overriding) consideration** in court proceedings to do with the child's upbringing. This means that the proceedings should be primarily child-focussed rather than being preoccupied with the rights or feelings of the child's parents or guardians. There is a checklist of factors to be taken into account when considering the child's welfare – sometimes known as the "Welfare Checklist" – which is set out below at paragraph 2.13.

b) **Wherever possible children should be brought up and cared for in their own families**. This clearly accords with Article 8 of the European Convention on Human Rights which holds that everyone has the right to respect for his/her private and family life *etc.* A Health & Social Services Trust will therefore have to provide strong justification to the court (see "Threshold Criteria" at paragraph 2.31 below) for interfering with family life.

c) **Children should be safe and be protected by effective intervention if they are in any danger but such intervention should be open to challenge.** This means that the various trusts and similar bodies in Northern Ireland have the right to bring applications to the Court to deal with the needs of children

perceived to be in danger. Parents also have a right to challenge such an application by way of legal representation at court. This accords with Article 6 of the European Convention on Human Rights allowing for a fair and public hearing of the issues before an impartial tribunal.

d) **Courts should ensure that delay is avoided.** Delay in bringing the proceedings to a suitable conclusion is clearly not in the best interests of the child. The nature of Children Order proceedings is such that some delay is inevitable. Because of the need to gather in all relevant evidence it will frequently be necessary for the court to order an adjournment (where the hearing of the case is put back to a later date). However such causes of delay should be kept to a minimum and avoided, where possible. This also means that judgement in a case should be given as quickly as possible – ideally on the day when the court has finally taken all the evidence. It is also possible to transfer proceedings to a less busy family proceedings court for another county court jurisdiction, on the consent of that court, if this will significantly speed up the process of decision-making. This possibility should be remembered at the directions stage.

e) **Courts should observe the "No order" principle.** This important principle holds that in considering whether to make any orders under The Children Order the court shall not make the order unless it considers that to do so is better for the child than not making any orders at all. This allows for the possibility of the parties to proceedings agreeing their own arrangements for a child's upbringing, in which case the job of the court is to scrutinise the proposed arrangements to ensure that the child's best interests are served.

f) **Children should be kept informed and participate when decisions are made about their future.** It is for these reasons that a Guardian ad litem (see paragraph 2.37 below) is appointed to look after the child's best interests in Public Law proceedings involving a Board/Trust such as applications for care or supervision orders (see paragraphs 2.35 and 2.36 below).

g) **Parents continue to have parental responsibility even when their children no longer live with them.** They too should therefore be kept informed about their children and should participate in decisions made about their children's future. Not all parents have parental responsibility (see below at paragraph 2.17).

h) **Parents with children in need should be helped to bring up their children themselves.** Therefore if it is at all possible for such children to remain in the care of their parents with whatever help the court determines can be made available to them, this is the course that should be followed.

i) **Health & Social Services Boards, Trusts and other agencies engaged in providing services for children and their families should pursue a partnership approach.** It is almost a self-evident principle of The Children Order that all parties should be cooperating fully in the interests of the children involved and the Lay Magistrates should encourage this as much as possible.

j) Lastly, it should be noted that under The Children Order that **the Court may direct that a named person may not, in future, apply for a specified order with respect to the child concerned without the leave (or permission) of the court.** This is a useful power at the court's disposal which allows it to prevent further unnecessary litigation on a question which has already been dealt with fully by the court.

SUMMARY OF THE CHILDREN ORDER PRINCIPLES:

- **THE CHILD'S WELFARE IS PARAMOUNT**
- **WHERE POSSIBLE, THE CHILD SHOULD BE CARED FOR BY ITS OWN FAMILY**
- **CHILDREN SHOULD BE SAFE**
- **COURTS MUST ENSURE THAT DELAY IS AVOIDED**
- **NO ORDER TO BE MADE UNLESS NECESSARY**
- **CHILDREN SHOULD BE KEPT INFORMED AND SHOULD PARTICIPATE IN DECISIONS ABOUT THEIR FUTURE**
- **PARENTS CONTINUE TO HAVE PARENTAL RESPONSIBILITY**
- **PARENTS WITH CHILDREN IN NEED SHOULD BE HELPED TO BRING UP THE CHILDREN THEMSELVES**
- **ALL RELEVANT AGENCIES TO TAKE A PARTNERSHIP APPROACH**
- **THE COURT MAY LIMIT LITIGATION**

Welfare of the Child: Checklist

2.13 When seeking to ensure that the child's welfare is kept as the overriding concern in Family Proceedings it is important that Lay Magistrates should have particular regard to the following checklist of considerations which is set out in The Children Order:

WELFARE CHECKLIST

- **The ascertainable wishes and feelings of the child concerned (considered in the light of his/her age and understanding).**
- **The child's physical, emotional and educational needs.**

- **The likely effect on the child of any change in his/her circumstances.**
- **The child's age, sex, background and any characteristics which the court considers relevant.**
- **Any harm which the child has suffered or is at risk of suffering.**
- **How capable of meeting his/her needs is each parent and any other person in relation to whom the court considers the question to be relevant?**
- **The range of powers available to the court under this Order in the proceedings in question.**

2.14 Lay Magistrates should go through the items on this checklist each time it is necessary to address issues to do with the child's welfare to ensure that all relevant considerations have been taken into account.

- **The ascertainable wishes and feelings of the child concerned (considered in the light of his/her age and understanding).** This gives the child the right to be heard by the court and even, where appropriate, to be given the status of a separate and distinct party to the proceedings able to represent his/her own interests. Much will depend on the age and maturity of the child in relation to how well he/she can give voice to his/her own wishes and feelings. It remains a possibility that what a child wants, where he can put his/her wishes into words, may not ultimately be in his/her best interests. A child's wishes can however affect the court's decision in a case which is finely balanced.

- **The child's physical, emotional and educational needs.** It is a basic legal duty of a guardian to address the physical and educational needs

of a child and it is therefore important for the court to keep these in mind - along with the emotional needs - in deciding where and with whom the child should be cared for. Emotionally, a child's siblings (brothers and sisters) may be important in addition to the parental relationship.

- **The likely effect on the child of any change in his/her circumstances.** The damaging effects of a child being removed from a place of security and comfort should be avoided, where possible.

- **The child's age, sex, background and any characteristics which the court considers relevant.** All of these considerations must be taken into account in deciding where a child should be placed. Background and other relevant characteristics would include religious denomination and race. A court may determine that other characteristics are relevant in particular cases and Lay Magistrates should therefore be conscious of any other characteristics which should be taken into account in a given case in deciding his/her future care arrangements. A good example of this would be the question of how well adapted is the proposed place of residence for a child with physical or other disability.

- **Any harm which the child has suffered or is at risk of suffering.** Harm in this context means "ill-treatment or impairment of health or development" and ill-treatment includes sexual abuse as well as forms

of abuse which are not physical, such as emotional distress and neglect. Development means physical, intellectual, emotional, social or behavioural development. In nearly all cases Lay Magistrates will have the opinion of expert witnesses available to assist them in arriving at a decision as to whether the conditions under which the child lives cause or are likely to cause harm.

- **How capable of meeting his his/her needs is each parent and any other person in relation to whom the court considers the question to be relevant?** Parental capability for the responsibility of child-rearing, rather than *e.g.* sexual orientation, age, race or religious beliefs has to be the most important question to be addressed when considering the suitability of a parent or other person for looking after the child. Including "any other person" within the remit of this consideration affords protection in situations where the relationship to a parent may be endangered by the presence in the home of the parent's cohabitee.

- **The range of powers available to the court under this Order in the proceedings in question.** The Children Order allows the Family Proceedings Court to look beyond the wishes of the parties, where necessary, and to determine what order to make in light of the proceedings – even where that order has not been specifically applied for by any of the parties. However, certain orders, *e.g.* an order granting parental responsibility, cannot be made purely on the court's

initiative. Lay Magistrates should note that making an order which hasn't been specifically applied for should only be done when this course is understood and broadly acceptable to the parties. Otherwise it is unlikely to achieve the desired effect.

2.15 This last consideration brings us on to address the question of what orders the Family Proceedings Court is empowered by The Children Order to make. Lay Magistrates should seek to familiarise themselves with the various orders which are available to the court so that they will know what the effect of each is before they have to use them.

Court Orders available to the Family Proceedings Court

2.16 The type of order normally sought/granted in a Family Proceedings Court will usually (though not quite always) depend upon whether the proceedings before the court are **Private Law proceedings** or **Public Law proceedings** and this is an important distinction for Lay Magistrates to be aware of.

Private Law cases are proceedings involving two or more private individuals, usually - though not necessarily always - the father and mother of the child or children in question. None of the public bodies is a party to these proceedings (although it is possible for the court, in considering the exercise of its powers under The Children Order, to make a Public Law order in a Private Law case).

Public Law cases are proceedings where a Trust or Board or some other public authority or agency is a party to the proceedings. These are cases where the public body has felt it necessary to intervene in the upbringing of a child because of a perceived problem in the circumstances of that upbringing.

Orders in Private Law Cases

Summary of Private Law Orders:

- **Parental Responsibility Order**
- **Residence Order**
- **Contact Order**
- **Prohibited Steps Order**
- **Specific Issue Order**
- **Family Assistance Order**

Parental Responsibility Order

2.17 "Parental responsibility" is a key concept in the scheme created by The Children Order. It means "all the rights, duties, powers, responsibilities and authority which by law a parent of a child has in relation to the child and his property." Before the intervention of a court is sought, parental responsibility is something which belongs, in normal circumstances, exclusively to the father and mother of a child who were married at the time of the child's birth or who have later married. Each of them will have parental responsibility and may act independently in meeting it. Where the child's parents have not married only the mother has parental responsibility unless the father jointly registers the

child's birth with the mother. Article 7 of The Children Order allows an unmarried father to apply to the court for an order that he has parental responsibility for the child. Following on from the "No order" principle, such an order should only be made when it appears to the court that it is not possible for the father to acquire parental responsibility by making a voluntary agreement with the mother. For assistance in arriving at a decision as to whether it is in the child's best interests to grant a parental responsibility order Lay Magistrates should consider the following:

a. the degree of commitment shown by the father to the child;
b. the degree of attachment which existed between them; and
c. the father's reasons for applying for the order.

The court will also make a parental responsibility order in favour of the father if he is granted a residence order (see paragraph 2.21 below).

2.18 Where there is a dispute regarding whether or not the applicant for a parental responsibility order is indeed the child's father and a determination as to paternity becomes necessary, the court has power to order that tests be carried out on the man. This will take the form of DNA testing.

2.19 A step-parent may also be granted a parental responsibility order by the court in relation to a child of his or her spouse. This is done on application to the court by the step-parent. The same considerations will apply as above.

Principles Applying

The welfare principle applies – see welfare checklist

The "no order" and "no delay" principles apply

Article 8 Orders

2.20 Article 8 of The Children Order creates four private law orders which are known collectively as "Article 8 Orders". Remember that the court may in any proceedings before it make any Article 8 order on its own motion, *i.e.* without a specific application being made by any party. The Article 8 Orders are as follows:

Residence Order

2.21 As its name suggests a Residence Order deals with the question: With whom is the child to live? Any parent or guardian has the right to apply for such an order. Anyone else, including the child, must seek the leave (or permission) of the court to make an application for residence. Remember that the child's welfare, not the perceived rights of the applicant, is the court's paramount or overriding consideration.

2.22 All those with parental responsibility for the child (see paragraph 2.17 above) must be given at least fourteen days' notice of the application. This is to allow them to attend court and be heard on the application.

2.23 The court may make a residence order in *any* family proceedings – even where the child is in Trust care. The residence order will specify with whom the child is to live and that person is automatically given parental

responsibility for the child. (Remember that this does not remove parental responsibility from anyone who already has it.) The court also has the power to make a shared residence order specifying the times when the child will reside at the different households.

2.24 Along with the order the court may impose conditions or directions as to how the order is to be carried out. Often the court will initially grant a residence order for a specified period, particularly during the course of proceedings, until the final order is made which will normally last until the child reaches sixteen years of age.

Principles Applying

The welfare principle applies – see welfare checklist

The "no order" and "no delay" principles apply

Contact Order

2.25 A Contact order requires the person with whom the child is living to allow the child to visit or stay with the person named in the contact order or to have other contact with them. **This order is therefore about whom the child may have contact with NOT who may have contact with the child.** Any parent or guardian or other person who has a residence order in respect of the child has the right to apply for such an order. (A person with a residence order may apply to have contact defined or varied.) Anyone else, including the child, must seek the leave (or permission) of the court to make an application in relation to contact. Remember that the court may in any proceedings before it

make a contact order on its own motion, *i.e.* without a specific application for contact being made, although this is unusual.

2.26 The Court may impose conditions or directions as to how the contact is to be carried out. This will deal with things such as times of picking up and dropping off, where contact is to take place, times and dates of contact, who may or may not be present, and holiday arrangements. There are a number of neutral venues in Northern Ireland, known as contact centres, where contact may take place with children. It is useful for Lay Magistrates to be aware of these contact centres and a list of them is given in Appendix 6 at the back of this manual. Often the court will initially grant a contact order for a specified period (generally known as an interim contact order), particularly during the course of the proceedings, until the final order is made, which is normally intended to last until the child reaches 16 years of age. It is not unusual, however, for the matter to be brought back to court before the child attains 16.

Principles Applying

The welfare principle applies – see welfare checklist

The "no order" and "no delay" principles apply

Prohibited Steps Order

2.27 This order is intended to prevent anyone with parental responsibility from exercising a particular aspect of that parental responsibility without the leave or permission of the court, *e.g.* prohibiting the parent with whom the child

does not reside from removing the child from the jurisdiction of Northern Ireland. Any parent or guardian or someone with a residence order in respect of the child has the right to apply for such an order. Anyone else, including the child, must seek the leave (or permission) of the court to make an application in relation to contact. Remember that the court may in any proceedings before it make a Prohibited Steps Order on its own motion, *i.e.* without a specific application for such an order being made. The Court may impose conditions or directions as to how the order is to be carried out.

Principles Applying

The welfare principle applies – see welfare checklist

The "no order" and "no delay" principles apply

Specific Issue Order

2.28 The purpose of this order is to allow a parent or other person to bring before the court a particular question relating to the exercise of parental responsibility such as where a child is to be educated. Whereas the prohibited steps order *prevents* certain things being done this order *requires* them to be done. Any parent or guardian or someone with a residence order in respect of the child has the right to apply for such an order. Anyone else, including the child, must seek the leave (or permission) of the court to make an application in relation to a specific issue. Again, the court may in any proceedings before it make a specific issue order on its own motion, *i.e.* without a specific application for such an order being made. The Court may impose conditions or directions as to how the order is to be carried out.

Principles Applying

The welfare principle applies – see welfare checklist

The "no order" and "no delay" principles apply

There is one further private law order which Lay Magistrates should be aware of:

Family Assistance Order

2.29 This is an order of the court requiring the Health & Social Services Trust to make available a suitably qualified person, such as a social worker, to "advise, assist and (where appropriate) befriend" the person named in the order. The purpose of this order is normally to provide short term help for a family working through separation or divorce or coping with some other difficulty making child rearing more difficult. The order will last for six months unless a shorter period is specified. The person named in the order can be a parent or guardian of the child, any person with whom the child resides or in respect of whom there is a contact order or the child himself. The court may only make a family assistance order if it is satisfied that (a) the circumstances of the case are exceptional; and (b) it has obtained the consent of every person to be named in the order other than the child. This order may only be made on the court's own motion. It cannot be applied for. The order may include a requirement that the person named in it is to take certain action to ensure that the officer knows the address of the named person and to facilitate visits.

Experience in the Family Proceedings Court to date would tend to suggest that this order is rarely used.

Principles Applying

The welfare principle applies – but the welfare checklist does not

The "no order" and "no delay" principles apply

Orders in Public Law Cases

2.30 There are two principal types of order, available under Article 50 of The Children Order, which are sought by public bodies in the Family Proceedings Court. These are known as **Care Orders** and **Supervision Orders**. They may occasionally be referred to as Article 50 or Part V (five) orders.

Threshold Criteria

2.31 The Family Proceedings Court may only consider making one or other of these orders, which will have implications for the child's family life, if certain criteria (or conditions) exist. These are known as the "Threshold Criteria". It is important that Lay Magistrates develop a reasonable understanding of these criteria as how they are applied by the court will have a significant impact on the child. Remember that Article 8 of the European Convention on Human Rights forbids interference by a public body with the exercise of the right to private and family life except in accordance with the law and where there are good reasons why it is necessary to do so. Under Article 50 of The Children Order the following conditions must be in place before a court considers whether to grant a Supervision or Care Order:

a) the child concerned is suffering, or is likely to suffer, significant harm; and

b) the harm, or likelihood of harm, is attributable to—

(i) the care given to the child, or likely to be given to him if the order were not made, not being what it would be reasonable to expect a parent to give to him; or

(ii) the child's being beyond parental control.

2.32 Some definitions of the words used will be helpful here but it should be noted that this is an area where there has been a number of decisions made by judges concerning the precise interpretation of the wording of the Threshold Criteria and Lay Magistrates should seek legal guidance from the presiding Resident Magistrate in each case. In many cases Lay Magistrates will also have the opinion of medical and other experts to assist them in reaching their conclusions.

Definitions:

"HARM" means ill-treatment or the impairment of health or development. The question of whether harm is significant shall be determined in accordance with below.

"DEVELOPMENT" means physical, intellectual, emotional, social or behavioural development;

"HEALTH" means physical or mental health;

"ILL TREATMENT" includes sexual abuse and forms of ill-treatment which are not physical (this would include emotional abuse);

"SIGNIFICANT" Where the question of whether harm suffered by a child is significant turns on the child's health or development, his health or development shall be compared with that which could reasonably be expected of a similar child. This in effect means that significant harm is determined by comparing the health and development of the child in question with the health and development which could be expected of a similar child.

Interim measures which may be taken by the Court pending final hearing of the issues.

2.33 Since gathering all the relevant evidence is likely to take some time – and remember that the person alleged to be the cause of the harm must be allowed to put his/her case to the court – the court is entitled to take interim steps to protect the child prior to the final hearing of all the issues. Thus the court may make either an interim care or supervision order when adjourning (putting back to a later date) an application for a care or supervision order or when giving directions at a directions hearing to have the child's circumstances investigated.

2.34 Whereas for a **final** order the court **must establish that the child is suffering or is likely to suffer significant harm *etc.*,** the court may grant an **interim** care or supervision order if it **has reasonable grounds to believe that the child is suffering or is likely to suffer significant harm *etc.*** These orders

may be made to last for a period of eight weeks initially. Further interim orders after that are usually up to four weeks in duration. If – and only if – the court establishes that significant harm has happened or is likely to happen *etc.*, it then must decide whether it is necessary to make either a care order or a supervision order.

Care Order

2.35 This type of order places a child in the care of a designated Trust which, in turn, may place the child in a children's home or with other members of the child's family. The order lasts until the child's eighteenth birthday unless it is brought to an end earlier. The Trust, in being ordered to take a child into its care, is also granted parental responsibility, which is shared with the parents. Before making a final Care Order the court must first consider the arrangements that the Trust has made or proposes to make for contact between the child and any person and invite the parties to the proceedings to comment on those arrangements. It is also essential before the granting of a care order that the Trust prepares, and the Court approves, a care plan for the future of the child in its care. Lay Magistrates should note that where an interim care order is made the court will have no control, for the duration of the interim order, over where the child will reside. Rather, the Trust will decide this in consultation with those having parental responsibility.

Principles Applying

The welfare principle applies – see welfare checklist

The "no order" and "no delay" principles apply

Supervision Order

2.36 This is less far-reaching than a care order. It places the child under the supervision of a Trust but does not grant the Trust parental responsibility, which will remain with the parent or other person to whom it had been granted prior to the application. The Trust, as supervisor, is under a duty to advise, assist and befriend the supervised child and to take the necessary steps to put the order into effect. The court can include directions in the supervision order requiring the child and the responsible person to act in a certain way. The supervision order will last for up to one year and may be extended by the court to a maximum of three years on an application to the court by the supervisor.

Principles Applying

The welfare principle applies – see welfare checklist

The "no order" and "no delay" principles apply

As regards the question of care or supervision there is, in addition to the no order principle, a further principle which states that the court must favour the appropriate order which is least interventionist.

The Guardian ad Litem

2.37 In all public law applications the court must appoint a Guardian ad Litem for the child concerned unless it considers that it is not necessary to do so in order to safeguard the child's interests. The role of the Guardian ad Litem is to

represent the interests of the child. This is done by conducting an investigation into the child's interests and preparing a report for the court which the court may (rather than must) take account of. If the court wishes to disregard the report it must give reasons for doing so. The Guardian ad Litem must appoint a solicitor on behalf of the child if one has not already been appointed and give that solicitor instructions on behalf of the child. The Law Society of Northern Ireland maintains a list of experienced family law solicitors, known as the Children Order Panel, any of whom the Guardian ad Litem may instruct on behalf of the child. It is also possible in some cases that the child will have engaged the services of a solicitor independently of the Guardian ad Litem. In such a situation the Guardian ad Litem looks after the *child's best interests* (and could instruct a solicitor for these purposes) while the independently appointed solicitor will serve *the child's wishes* – subject to the limitations imposed upon him/her by virtue of being an officer of the court and member of the Law Society of Northern Ireland.

2.38 The Guardian ad Litem is also obliged to attend all hearings - including directions hearings - on behalf of the child in relation to the proceedings and to serve and accept service of documents on behalf of the child. The essence of the role of the Guardian ad Litem is that he/she is independent of the Trust, the parent or other person granted parental responsibility and the court and seeks to act purely in the best interests of the child. The Guardian ad Litem's role on behalf of a child ceases to be exercised as soon as the proceedings for which he/she has been appointed come to an end. The court will almost always appoint a Guardian ad Litem but occasionally the members of the court may

feel it is unnecessary because, *e.g.* others have already done everything that a Guardian ad Litem could have done.

2.39 A panel of Guardians ad Litem is maintained by the Northern Ireland Guardian ad Litem Agency (NIGALA), which is an agency within the DHSS, and when the court directs the appointment of a Guardian ad Litem it is the agency which actually nominates a specific individual from the panel to act in the case.

2.40 It should be noted that where a Guardian ad Litem is not appointed by the court (which, in practice, is very unusual) and the child is not legally represented, the court may appoint a solicitor to represent the child. A solicitor must be appointed in an application for a Secure Accommodation Order (see paragraph 2.63 below).

Other Public Law Orders

There are additional public law orders which Lay Magistrates need to know about:

Education Supervision Order

2.41 This is an order placing the child under the supervision of the relevant Education and Library Board. Only Education and Library Boards may apply. Before making the order the court must be satisfied that the child is:

a. of compulsory school age and

b. not being properly educated.

If the child is in care an Education Supervision Order may not be made. The supervisor will be under a duty to advise, assist and befriend the supervised child and his parents for the purposes of securing a proper education for the child. The supervisor is also empowered by the order to give directions.

2.42 The court may order that the supervisor should make arrangements to visit the child at his/her home address and the court may require the child/parent to keep the supervisor informed of any change of address. An Education Supervision Order lasts for one year which may later be extended by the court for a period of up to three years, on the application of the Education and Library Board.

Principles Applying

The welfare principle applies – see welfare checklist

The "no order" and "no delay" principles apply

Emergency Protection Order

2.43 This is, as its name suggests, an emergency order given for the purposes of protecting a child who is considered to be in urgent need of protection by ensuring his/her immediate removal to a secure place, or by the removal from the child's place of residence of the person presenting the risk to the child. It is essential for Lay Magistrates to be very familiar with the procedures for

Emergency Protection Orders as it is likely that they will be called upon at some stage to hear an application for an Emergency Protection Order "out of hours" and therefore on their own. On these occasions they will be without the benefit of a Resident Magistrate or court clerk being present for guidance on law and procedure – although a court clerk should be available by telephone during the hearing of the application to give the Lay Magistrate advice on procedure. At their induction training Lay Magistrates will have received their own copy of the *Emergency Protection Order Pack* produced by the Judicial Studies Board for Northern Ireland. It is important that Lay Magistrates become familiar with the contents of that pack to enable them to meet the requirements of an out of hours Emergency Protection Order application.

Article 8 of the European Convention on Human Rights

2.44 Remember that Article 8 of the European Convention on Human Rights requires that there shall be no interference by a public authority with the exercise of the right to family life except such as is in accordance with the law and is necessary in a democratic society for the protection of health and morals, or the protection of the rights and freedoms of others. The court will be required to show that interference with family life is justified in the above terms and that the decision making process has taken into account the rights of other family members. (See Appendix 4 on the European Convention Human Rights which sets out the issues which should be addressed when considering the human rights implications of a particular course of action.)

Applicant

2.45 Any person, including a Trust or the NSPCC, may apply for an Emergency Protection Order. Almost always it will in fact be a Trust social worker who makes the application.

2.46 The application may be made **"without notice**". There is no obligation to give notice of the application to the affected parties. Because the application is considered to be urgent, there simply is no time to give notice. In these circumstances the application is heard *ex parte*, *i.e.* where the only party appearing at the court or other venue is the person applying for the order.

Grounds

2.47 The court may make an Emergency Protection Order if, but only if, it is satisfied that:

(a) where the applicant is any person and there is reasonable cause to believe that the child is likely to suffer significant harm if -

(i) he is not removed to accommodation provided by or on behalf of the applicant; or

(ii) he does not remain in the place in which he is then being accommodated; or

(b) where the applicant is a Trust -

(i) inquiries are being made with respect to the child under Article 66(1)(b); and

(ii) those inquiries are being frustrated by access to the child being unreasonably refused to a person authorised to seek access and the applicant has reasonable cause to believe that access to the child is required as a matter of urgency; or

(c) where the applicant is an authorised person *i.e.* NSPCC

(i) the applicant has reasonable cause to suspect that a child is suffering, or is likely to suffer, significant harm;

(ii) the applicant is making inquiries with respect to the child's welfare; and

(iii) those inquiries are being frustrated by access to the child being unreasonably refused to a person authorised to seek access and the applicant has reasonable cause to believe that access to the child is required as a matter of urgency.

Powers and Duties under an Emergency Protection Order

2.48 The order requires any person who is in a position to do so to produce the child if requested. It authorizes:

1. removal of the child to accommodation provided for by the applicant where necessary in order to safeguard the welfare of the child; or,
2. removal of a person from the child's place of residence who is deemed to be presenting a risk to the child; or,

3. prevention of the removal of the child from a hospital or other place in which he/she was being accommodated immediately before the making of the order; and,
4. the applicant to have parental responsibility for the child.

Removing a child from or keeping them in a safe place is the main, protective, purpose of the order.

Duration

2.49 The order can be made for a period of up to eight days and a further extension of up to seven days may be sought on notice from the court on the grounds that the court has reasonable grounds to believe that the child concerned is likely to suffer significant harm if the order is not extended. Regardless of these time periods the child must be returned as soon as it is safe to do so. This is to comply with Article 8 of the European Convention on Human Rights (see paragraph 1.25 above).

Discharging or Varying an Emergency Protection Order

2.50 The following may apply for an Emergency Protection Order to be discharged (set aside): the child; his/her parents; a person with parental responsibility; and a person with whom the child was living immediately before the order was made. No such application can be made within the first 72 hours (3 days) of the Emergency Protection Order. There is no right of appeal to a higher court against any matter relating to an Emergency Protection Order.

Principles Applying

The welfare principle applies – but the welfare checklist does not

The "no order" and "no delay" principles apply

Child Assessment Order

2.51 This order is used when it is necessary to investigate aspects of a child's health and development. It allows a court to determine the manner in which a Trust may establish whether or not a child is suffering or is likely to suffer significant harm. The order empowers the applicant to bring a child to a named assessor and to ensure that the assessment is carried out in accordance with the directions of the court. The assessment usually takes the form of a psychiatric or other medical examination.

Applicant

2.52 The Trust or the NSPCC may apply. The applicant must take such "steps as are reasonably practicable" to ensure that notice of the application is given to the child, to all those with parental responsibility for the child and to all those with whom the child resides or has contact. There may, of course, be emergency situations where the giving of such notice is not reasonably practicable.

Grounds

2.53 The court can make a Child Assessment Order if it is satisfied that:

1. the applicant has reasonable cause to suspect the child is suffering, or is likely to suffer, significant harm; **and**
2. an assessment is required to enable the applicant to determine whether or not the child is suffering, or is likely to suffer, significant harm; **and**
3. it is unlikely that such an assessment will be made or be satisfactory in the absence of an order.

2.54 If, in proceedings for a Child Assessment Order, the court is satisfied that the evidence gives grounds for making an Emergency Protection Order (see above), it must make such an order rather than a Child Assessment Order. It is also a possibility that the court will have to make both orders. In the case of alleged sexual abuse the child could be removed to a place of safety immediately but could not be sent for a medical examination without a Child Assessment Order.

Powers and Duties under a Child Assessment Order

2.55 The order requires any person who can produce the child:

a) to produce him to such person as be named in the order; and
b) to comply with such directions relating to the assessment of the child as the court thinks fit to specify in the order.

2.56 The child may only be kept away from home in accordance with the court's directions and for whatever period(s) the court has specified in the order as being necessary for the purposes of the assessment. If the child is

sufficiently mature (the Children Order says "of sufficient understanding to make an informed decision") he/she can refuse to submit to an assessment.

Duration

2.57 The order can be made for a period of up to seven days from a date specified in the order and no further application may be made for another such order within six months without the leave (or permission) of the court. Anyone entitled to notice may apply to vary the order (change its terms) or to have the order discharged (or set aside).

Principles Applying

The welfare principle applies – but the welfare checklist does not

The "no order" and "no delay" principles apply

Recovery Order

2.58 This order gives authority for recovering a child who is the subject of a Care Order; an Emergency Protection Order or police protection and who has departed or has been removed or is missing from the care of a responsible person.

Applicant

2.59 Only a designated officer of the Police Service of Northern Ireland or a person vested with parental responsibility under an Emergency Protection Order or a Care Order may apply for this order. Often an Emergency

Protection Order and a Recovery Order will be made at the same time so that police may assist the social workers in recovering the child to allow him/her to be taken to a place of safety.

Notice

2.60 The hearing may be *ex parte* (without notice) or on one day's notice and a Lay Magistrate is authorised to hear an application for a Recovery Order sitting alone. The child and all those with parental responsibility for the child are entitled to notice. Clearly, there should be no requirement for notice to be given if this would have the effect of giving advance warning to the party seeking to avoid handing the child over.

Grounds

2.61 The court may make a Recovery Order where it has reason to believe that the child:

1. has been unlawfully taken or kept away from the responsible person named in an Emergency Protection Order or Care Order or from police protection.
2. has run away or is staying away from the responsible person.
3. is missing

Powers and duties under a recovery Order

2.62 The order –

a) operates as a direction to any person who is in a position to do so to produce the child on request to any authorised person;

b) authorises the removal of the child by the authorised person;

c) requires any person who has information as to the child's whereabouts to disclose that information, if asked to do so, to a constable or an officer of the court;

d) authorises a constable to enter any premises specified in the order and search for the child, using reasonable force if necessary.

Recovery Orders are also dealt with in the *Emergency Protection Order Pack* mentioned at paragraph 2.43 above.

Principles Applying

The welfare principle applies – but the welfare checklist does not

The "no order" and "no delay" principles apply

Secure Accommodation Order

2.63 "Secure accommodation" means accommodation provided for the purpose of restricting (the child's) liberty. Essentially this is an order which locks up a child (in an establishment called The Lakewood Centre, Rathgael near Bangor) for his/her own protection even though he/she has not committed any criminal offence. It is by its nature a rather drastic measure and should only be taken when the court is satisfied that the grounds for doing so are properly met. It is also very necessary for Human Rights purposes that the child is legally represented at the hearing *or* has been informed of his/her right and has been given the opportunity to apply for legal aid and has failed or refused to do so.

The Role of the Trust

2.64 A Trust may in fact take the decision to place a child in secure accommodation in the first instance for a period of 72 hours (3 days) without seeking the authority of the Family Proceedings Court or other family court. In deciding to take this action it must be satisfied that the conditions for doing so, which are the same conditions by which the court must be satisfied (see paragraph 2.66 below) are in place. If the Trust feels that it is necessary to keep the child in secure accommodation for a period longer than 72 hours it must make application to the court.

Who can be placed in secure accommodation?

2.65 The following may be placed in secure accommodation:

- A child aged thirteen and over can be placed in secure accommodation.

- Children under thirteen years may not be placed in secure accommodation without the prior approval of the Department of Health & Social Services.

- A child who is a ward of court may not be placed in secure accommodation without the approval of the High Court. (A child is made a ward of court when the High Court exercises its wardship jurisdiction to vest the custody of the child in itself while care and control of the child are entrusted to some individual or a Trust)

Grounds

2.66 A child may not be placed or kept in secure accommodation unless it appears:

a) that –

i. he has a history of absconding or is likely to abscond from any other description of accommodation; *and*

ii. if he absconds he is likely to suffer significant harm; *or*

b) that if he is kept in any other description of accommodation he is likely to injure himself or other persons

2.67 If the Court is satisfied that these conditions are met it is obliged to make a Secure Accommodation order. But these are the sole grounds for making the order. Secure accommodation is never justified as a form of punishment and should not be used simply because there does not appear to be an alternative solution. The court should require the applicant Trust to present evidence to demonstrate that secure accommodation is being sought as a last resort.

2.68 No application for a secure accommodation order can be made unless there is a place available for the child in a secure unit. If inquiries have not been made about availability the court should direct the necessary inquiries to be made. A court cannot make a secure accommodation order of its own motion.

Duration

2.69 Unless a child has been remanded to Trust accommodation in connection with criminal proceedings he/she may only be kept in secure accommodation for up to a maximum of three months when secure accommodation is first applied for. This period rises to a maximum of six months for any subsequent application. The court is empowered to make interim secure accommodation orders where the application is adjourned pending final resolution of the case and this allows the members of the court to be reassured that a satisfactory treatment programme and exit strategy have been put in place before they consider making a final order.

Principles Applying

The welfare principle in this situation

The "no order" and "no delay" principles apply

3. THE YOUTH COURT

The youth justice system

Function

3.1 The Youth Court is a specialist Court which has been created for the specific purpose of hearing any criminal charge brought against a child (there are also some limited civil law functions, serving its criminal justice role, noted below). Its powers come largely from 1) the Children and Young Persons Act (Northern Ireland) 1968 and 2) the Criminal Justice (Children) (Northern Ireland) Order 1998. The details regarding the composition and proceedings of the Youth Court, which is constituted as a juvenile court, are given above at paragraph 1.31 and following in the Introductory Chapter. The youth court is therefore normally made up of one Resident Magistrate, who chairs the court, and two Lay Magistrates. The Resident Magistrate will decide all issues of law and the Resident Magistrate and Lay Magistrates together decide all issues of fact by a majority vote.

Children coming before the Youth Court

3.2 There is a presumption in law that no child under the age of 10 can be guilty of an offence. 10 is regarded as being "the age of criminal responsibility". Accordingly, the youth courts deal with children aged 10 and upwards. The Justice (Northern Ireland) Act 2002 extends the youth justice system to include 17 year olds whereas previously the youth court has had power to deal with children aged 10-16. The extension of youth justice to

include 17 year olds is not operational at the time of preparation of this manual but it is expected that it shall be by the time that Lay Magistrates begin their functions. The youth court should take steps to satisfy itself that the person before it is of an age to be dealt with by the court. However any mistake as to age will not affect the validity of the proceedings. Where a child passes the upper age limit before the conclusion of proceedings the court may continue to deal with the case in the usual way.

Sittings of the Youth Court

3.3 Each of the seven county court divisions within Northern Ireland is further divided into districts known as "petty sessions districts". There are 21 such petty sessions districts. As with the adult Magistrates Court, there is a Youth Court corresponding to each of these districts and there are 20 court venues where the youth court for the relevant district will normally sit. The following is a list of the petty sessions districts (the place noted in brackets after each district is the location of the relevant courthouse):

Northern Circuit

a) County Court for the Division of Londonderry

Petty Sessions Districts:	1)	Londonderry (Londonderry)
	2)	Limavady (Limavady)
	3)	Magherafelt (Magherafelt)

b) County Court for the Division of Antrim

Petty Sessions Districts:	4)	North Antrim (Coleraine)
	5)	Ballymena (Ballymena)
	6)	Antrim (Antrim)
	7)	Larne (Larne)

Eastern Circuit

c) County Court for the Division of Ards

Petty Sessions Districts:	8)	Ards (Newtownards)
	9)	Down (Downpatrick)
	10)	North Down (Bangor)
	11)	Castlereagh (Newtownards)

d) County Court for the Division of Craigavon

Petty Sessions Districts -	12)	Lisburn (Lisburn)
	13)	Craigavon (Craigavon

Belfast Circuit

e) County Court for the Division of Belfast

Petty Sessions District:	14)	Belfast & Newtownabbey (Belfast)

Southern Circuit

f) County Court for the Division of Armagh & South Down

Petty Sessions Districts:	15)	Banbridge (Banbridge)
	16)	Newry & Mourne (Newry)
	17)	Armagh (Armagh)

g) County Court for the Division of Fermanagh & Tyrone

Petty Sessions Districts:	18)	East Tyrone (Dungannon)
	19)	Omagh (Omagh)
	20)	Fermanagh (Enniskillen)
	21)	Strabane (Strabane)

3.4 The youth courts sit on particular days by direction of the Lord Chancellor. The volume of criminal charges regularly brought against children in each district will determine how frequently the court will need to sit. In many districts this will mean one youth court sitting per month. In Belfast there are two youth court sittings every week.

Aim of the Youth Court

3.5 According to the Justice (Northern Ireland) Act 2002 (this is the same Act which created the office of Lay Magistrate) the principal aim of the youth justice system is:

"to protect the public by preventing offending by children."

Lay Magistrates, together with their Resident Magistrate colleagues, must have regard to that principal aim when exercising their functions, particularly with a view to encouraging children to recognise the effects of crime and to take responsibility for their actions.

The Welfare of Children

3.6 While the primary aim is the public's protection, the welfare of children coming before the youth court remains an important principle for the court. The Justice (Northern Ireland) Act 2002 reinforces this together with the "no delay" principle in language which is consistent with the Children Order (see paragraph 2.12 above) and with the provisions of the Human Rights Act (1998) (see paragraph 1.22 above and Appendix 4). Magistrates sitting in the Youth Court:

"must also have regard to the welfare of children affected by the exercise of their functions (and to the general principle that any delay in dealing with children is likely to prejudice their welfare), with a view (in particular) to furthering their personal, social and educational development."

Child Friendly Courts

3.7 Certain aspects of the youth court are specifically designed to take into account the fact that it is dealing with the needs of children. Generally, youth courts will take place on days when other courts are not in operation to avoid children coming into contact with adults who are before the courts. Efforts are also made to provide a separate waiting room to ensure that children attending court are not exposed to intimidation, offensive language or abuse. A Child Witness Support Scheme to help children attending youth courts as victims/witnesses will eventually be made available in all youth courts. Closed-circuit television, video recording and screens may be used to protect children while giving evidence. A video link system may also be operated whereby young people in detention awaiting trial may be further remanded (see paragraph 3.79 below) by means of a video link appearance rather than physically having to attend the court. If possible, the courtrooms for the youth court should be laid out in such a way that everyone involved is on the same, or almost the same, physical level. Children, lawyers and court officials may stay seated throughout with the agreement of the Resident Magistrate. Resident Magistrates should not wear gowns and barristers should not wear wigs and gowns unless the child requests it or the court orders it for some good reason. There should be no visible police presence in the courtroom. Police prosecutors and witnesses and those escorting a child in custody should not be uniformed. A child will be allowed to sit with members of his/her family (which also helps to include parents in the process) in a place where they can easily communicate with their legal representatives. The court may

also require the attendance of parents or guardians by issuing a summons or warrant for that purpose.

Oath

3.8 Children under 14 give their evidence to the youth court unsworn (*i.e.* they do not take an oath) and the court shall receive their evidence unless a child is incapable of giving intelligible evidence. For children over 14 and adults giving evidence before the youth court the oath to be taken is "I promise before Almighty God *etc.*" rather than the usual "I swear by Almighty God *etc.*" This also applies in the Family Proceedings Court. (See also the more detailed comments about oaths and affirmations at paragraph 4.38 and following above.)

Understanding the Proceedings

3.9 It is important that the child understands the proceedings and in the early stages of a case magistrates should introduce themselves and others in the courtroom and ensure that everyone understands what is happening. The court should:

- explain the course of proceedings to a child in terms he or she can understand;
- remind those representing a child of their continuing duty to explain each step of the trial to him or her; and
- make sure that, as far as possible, the trial is carried out in language the child can understand

3.10 The court, in meeting these obligations, should use plain language and take account of the child's education, maturity and understanding. Regular breaks may be appropriate to take account of a child's inability to concentrate for long periods. It is also important to ensure that the child can hear everything that is being said in the court. While the Resident Magistrate who is chairing the court will have primary responsibility for this, it is important that Lay Magistrates also have regard to these requirements and give whatever input they can from their own experience to assist the court in achieving its aims.

Reporting Restrictions

3.11 Where a child is concerned in any criminal proceedings (whether as witness, victim or accused) in a youth court:

(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,

unless the court or the Secretary of State for Northern Ireland is satisfied that it is in the interests of justice to do so.

Terms used in Court

3.12 It is a particular feature of the Youth Court that the words "conviction" and "sentence" are not to be used, as these words are considered likely to

stigmatise a child unnecessarily. Instead the court should talk of "a finding of guilt" rather than "conviction" and "an order made upon a finding of guilt" rather than "sentence".

Preparation

3.13 Unlike the arrangements which are in place for the family proceedings court, there are no files of papers made up in advance by the court office for collection by Lay Magistrates prior to the day on which they are sitting. The first opportunity that Lay Magistrates will have to prepare for the hearings listed for a given day is when they arrive at the courthouse that morning. (One exception to this is that in Belfast youth conference reports are available for collection from the court 2 days in advance of the hearing.) On the morning of the court, all pre-sentence reports, youth conference reports, welfare reports and medical reports which have been prepared for the court in relation to each listed case will be placed in the retiring room for Lay Magistrates to read over (In each case the summons/warrant together with the charge sheet, which sets out the details of the offences with which the accused has been charged, shall be before the court when it sits to hear the case). It is therefore advisable for Lay Magistrates to arrive in sufficient time on the morning of the youth court to afford themselves the opportunity to read the relevant documents and familiarize themselves with their contents. Most youth courts begin, by direction of the Lord Chancellor, at 10.30 in the morning but some may begin earlier. The court office will inform Lay Magistrates of the time of the court and it can also provide details of when the courthouse will be open.

The Criminal Trial

The Main Issues for the Court

3.14 In a criminal trial the youth court normally has to decide 2 basic questions:

1) Is the accused child guilty of any of the offences with which he/she has been charged? And,
2) If guilty, what order should the court make

The second question therefore only has to be answered where there has been a finding of guilt.

The Presumption of Innocence

3.15 It is a bedrock principle of the criminal courts that anyone accused of a crime is presumed to be innocent until proven guilty according to law. This is known as the presumption of innocence. This principle has been reinforced by Article 6(2) for the European Convention on Human Rights (see Appendix 4 for the wording of this provision). The presumption of innocence means that it is up to the prosecuting authority to prove guilt on the part of the accused child. This duty on the prosecution's part to prove guilt has been described as "the golden thread of the criminal law". The child is not required to prove his/her innocence. The **burden of proof** therefore rests with the **prosecution**. There may be some statutes creating criminal offences which seek to "shift" the burden of proof onto the defendant but these are exceptional

and the Resident Magistrate should be in a position to advise his/her Lay Magistrate colleagues when these statutes might be applicable.

The Plea

3.16 When the accused child comes before the court he/she will have the charge(s) read to him/her and the substance of the charge(s) should then be explained to the child in simple language suitable to the child's age and understanding. The child will then be given the opportunity to indicate his/her plea. The plea will either be "guilty" or "not guilty".

3.17 If he/she pleads guilty, the court may proceed to determine what order to make in respect of the accused child (see paragraph 3.25 and following). At this stage also the child may ask the court to take into consideration other offences committed by him/her for which he/she has not already been found guilty. This gives the child the opportunity to make a "clean breast" of all his/her previous offences and to have them dealt with all together.

3.18 However, if the court is not satisfied that the accused child understands the nature and effect of the plea, or that the plea is being made freely and unequivocally without any pressure from other parties, the plea is deemed to be null and void. The court may then proceed as if a plea of "not guilty" had been made.

3.19 If the plea is "not guilty" the court will proceed to hear the prosecution case against the accused child. In this regard it is frequently the case that on

the first occasion when the accused child comes to the court (known as the first appearance) the prosecution will not yet be in a position to present all its evidence to the court because of the need to arrange for the attendance of witnesses. The court should remember the no-delay principle and ensure that the presentation of the prosecution case against the accused child takes place as quickly as possible so as not to prejudice the child's welfare.

The Hearing

3.20 The hearing of the prosecution case against the accused will take place when it is in a position to present all the available evidence against the child.

3.21 The prosecuting authority presenting the evidence will normally either be a lawyer from the Office of the Director of Public Prosecutions or a senior police officer (Inspector or above) from the Police Service of Northern Ireland. That is the position at the time of preparation of this manual. Part 2 of the Justice (Northern Ireland) Act 2002 means that in due course the Office of the Director of Public Prosecutions will be re-named as the Public Prosecution Service for Northern Ireland, which will continue to be run by the Director of Public Prosecutions. This new body shall be responsible for all criminal prosecutions instituted on behalf of the police. Occasionally, there may be a private prosecution by a public body such as a local council or Northern Ireland Railways.

3.22 The accused child will almost always be represented by a lawyer - either a barrister or a solicitor - and will almost certainly be entitled to Legal Aid.

Where the child is not legally represented the court should inform him/her of his/her entitlement to apply for Legal Aid and give him/her the opportunity to do so before proceeding further. If the child is not represented by a lawyer his/her parent or guardian is permitted to assist him/her in the conduct of the defence. This includes cross-examining the prosecution's witnesses.

Proof

3.23 The requirement imposed upon the prosecuting authority of proving an accused child's guilt, known as the **burden of proof**, must be met or discharged to a certain level of proof, known as the **standard of proof**. A fact is said to be proved when the court is satisfied that it is true. The evidence required for this purpose is known as the proof. Whereas in civil proceedings - such as applications in the family proceedings courts - the standard or level of proof required is that the court has to be satisfied of the truth of something "on the balance of probabilities" (*i.e.* it is more likely to be true than not true), the standard of proof in criminal proceedings means that the court has to be satisfied **beyond reasonable doubt**. Put another way, this means that if the court has a reasonable doubt about whether the accused child is guilty then it must find him/her not guilty. If there is no reasonable doubt – which is not the same as "certainty" – then the accused child should be found guilty. This does not mean proof beyond a shadow of a doubt. If the evidence is so strong against an accused person as to leave only a remote possibility in his favour, which can be dismissed with the sentence "of course it is possible but not in the least probable", the case is proved beyond reasonable doubt. If Lay Magistrates are unclear about these issues in a given case, further clarification

as to how to interpret the standard of proof may be sought from the Resident Magistrate who is chairing the court. However, Lay Magistrates should not seek a direction from the Resident Magistrate as to what final decision they reach. Whether or not the case has been proven beyond reasonable doubt is a matter of opinion for each of the three magistrates to decide upon. The court's decision will be that of the majority.

The Structure of the hearing

3.24 The hearing of the case against the accused child will follow a particular pattern under the supervision of the Resident Magistrate who is chairing the court. After the preliminary matters, such as introductions and (where appropriate) the taking of the accused child's plea, have been dealt with the basic outline is as follows:

1. The Prosecution presents its case:

    a. The prosecuting lawyer/police officer will call the evidence of the witnesses on behalf of the prosecution. Before the witnesses are called he/she may give a summary of the case to the court.
    b. Each witness will take the oath for the youth court (see above), unless aged under 14, prior to giving their oral evidence.
    c. Each witness in turn will be asked questions by the prosecuting lawyer/police officer. This is known as examination in chief. Occasionally if the Defence is not challenging certain evidence that evidence can be submitted to the court in the form of a written statement.

d. The Defence lawyer/representative has the right to ask questions of each witness in turn. This is known as cross-examination. The categories of questions which can be asked in both examination in chief and cross-examination are governed by the quite detailed rules of evidence and the Resident Magistrate should ensure that these rules are observed.

e. The prosecution case is concluded when all its evidence has been called.

2. The Defence presents its case:

a. If, before the Defence case needs to be put, the Defence lawyer feels that the quality of the prosecution evidence is such that it could not support a guilty finding by the youth court he/she may make an application to the court asking it to direct that the Accused child has "no case to answer". This will be a matter of law for the Resident Magistrate to determine. If the Resident Magistrate directs that there is no case to answer in respect of one or more charges the case in respect of those charges fails. If there is no such direction the case proceeds.

b. The Defence lawyer will call the evidence of the witnesses on behalf of the Defence.

c. Each witness will take the oath for the youth court (see paragraph 3.8 above), unless aged under 14, prior to giving their oral evidence.

d. Each witness will be asked questions by the Defence Lawyer (examination-in-chief) seeking to rebut or disprove the prosecution evidence.
e. The Prosecution may cross-examine these witnesses.
f. The Defence case is concluded when all its evidence has been called.

N.B. Apart from the calling of evidence the order of proceedings is informal and flexible. The order is largely a matter for the Resident Magistrate's discretion. Also, the court may allow submissions from either party on a point of law at any stage as well as a reply to those submissions by the other party.

3. The Prosecution may call rebuttal evidence

a. The prosecution may seek the leave (permission) of the court to call further evidence to rebut or disprove some piece of evidence introduced in the Defence case.

4. At the close of the evidence:

a. Both parties have an opportunity to address the court on the legal and factual issues arising from the evidence in the case and to make whatever closing arguments they feel are appropriate. Any legal points will be dealt with solely by the Resident Magistrate.
b. The Defence always has the final say in this process. The prosecution has no right to a closing speech.

c. The Resident Magistrate and Lay Magistrates will then consider the evidence. Depending on the nature of the case and the complexity of the issues involved this might be done quickly on the bench or it may require some considerable time to arrive at a decision and the magistrates may agree to reserve their judgement (*i.e.* to put back giving their decision to a later date) to allow for further thought and discussion.

d. The Resident Magistrate will normally give the decision of the court. Human Rights requirements mean that the court should explain to the parties the reason for its decision. This may be done orally or in writing and again, depending on the nature of the case, the explanation may be short or long.

Upon a finding of guilt

3.25 If the youth court finds the accused child not guilty the trial is at an end. There are three possible ways in which there can be a finding of guilt:

a. where the Defendant pleads guilty at the start of proceedings or at any time later in those proceedings.
b. where, after a contested trial the Defendant is found guilty by the youth court.
c. where the Defendant has been found guilty in the Crown Court and the case has now been remitted or sent to the youth court for sentencing.

3.26 If there is a finding of guilt the youth court must decide how to deal with the offender. This part of the trial is usually known as sentencing even though the word "sentence" may not be used when referring to the order which the youth court makes upon a finding of guilt. There is a range of possible orders which the youth court may make in a given case. These are known as the disposal options and details of these are given below. Before the youth court considers how to deal with the offender – and particularly where it might be considering a custodial sentence (where the offender's freedom would be substantially restricted) – it will normally request and consider a pre-sentence report prepared by the Probation Service. This report will deal with matters such as the offender's family background and circumstances, his/her criminal record (*i.e.* details of any previous offences), his/her attitude to the offence – whether they feel remorse or regret for what they have done and so on. It will also contain a recommendation from the probation officer preparing the report as to how the offender should be dealt with. This is a recommendation only and while it may be persuasive the court is not necessarily obliged to follow it.

3.27 There may also be a separate welfare report from a welfare officer and/or a medical report from a doctor. Normally an adjournment of the matter for a number of weeks will be necessary to ensure that the youth court has all the information which it needs to decide how to deal with the offender. If the child or his/her parent or guardian disputes anything contained in the substance of the reports which is likely to have a bearing on sentencing, the court may adjourn proceedings further to allow additional evidence to be called and the author of the report may be called to give evidence. While the court staff will

make efforts to ensure that the same Lay Magistrates who heard the evidence as to guilt in the case will also sit to deal with the sentencing aspect, this is not always possible. Because of this - and the remittal of offenders from the Crown Court - Lay Magistrates may from time to time find that they are called upon to deal with an offender whose case they haven't heard.

3.28 Before making its order the youth court should ordinarily inform the parent/guardian of the child and /or any legal representative of the child how it proposes to deal with the case. Any of these individuals will then be allowed to make representations before the court finally makes its order. The Defence is entitled to make a speech "in mitigation" in which any factors favourable to the offender may be brought to the attention of the court. The offender is also entitled to give evidence and call witnesses as to character. Often written character references are presented to the court on behalf of the offender. Again it is normal for the Resident Magistrate to pronounce the order on behalf of the youth court. In making the order the court should normally explain the general nature and effect of it, unless this would be undesirable in the circumstances.

Youth Conferencing

3.29 All of the procedure set out above will be very much subject to the phasing in of a new system known as **"youth conferencing"** which at the time of preparation of this manual is being piloted in some county court divisions in Northern Ireland. Some Lay Magistrates will therefore be operating this system as soon as they take up office. It is intended that the system will eventually be fully introduced to all the county court divisions – subject to a

thorough and independent evaluation of the youth conference process in the piloted areas. This evaluation is currently underway and the findings shall be reported on in due course. However, it is important at this stage that Lay Magistrates develop a good working knowledge of the youth conference process, as it is highly likely to be a very important and prevalent feature of youth courts in the future. Youth conferencing (the main features of which have been successfully operated under a different name in New Zealand since 1989) is seen as an innovative approach to youth offending. Influenced by the principles of restorative justice, it seeks to engage victim, offender and community and to encourage young people to recognise the effects of their crime and take responsibility for their actions.

3.30 There are two principal types of youth conference:

a. Diversionary youth conferences.

b. Court-ordered youth conferences

3.31 Both forms of conference take place with a view to a youth conference co-ordinator providing a recommendation to the Prosecutor or court on how the young person should be dealt with for their offence.

3.32 Diversionary Youth Conferences are youth conferences where the Director of Public Prosecutions chooses to refer the young offender to a youth conference rather than initiating a prosecution against him/her. The primary purpose is therefore to divert children away from the courts where it is possible to deal satisfactorily with their offending without having recourse to

the judicial process. Diversionary youth conferences are not intended for minor, first time offenders. Such offenders, depending on the seriousness of the offence, will usually be dealt with by the police and given an informal warning with a 'restorative theme' or a restorative caution. Rather, diversionary conferences will often be initiated as a 'follow-up' intervention to curb offending, particularly where there has been previous contact with the criminal justice system. Two preconditions must be in place for a diversionary conference to occur:

- first the young person must consent to the process, and
- secondly they must admit that they have committed the offence.

Where these conditions are not met the case will be referred to the Public Prosecution Service for a decision on whether to prosecute and, if so, the child will be dealt with through the normal youth court process.

3.33 The main features of court-ordered youth conferences, which will be directly applicable to Lay Magistrates, are set out below:

Court-ordered youth conferences

3.34 The Justice (Northern Ireland) Act 2002 provided for a system of youth conferencing within the youth court system in Northern Ireland as part of the move towards a more restorative form of justice. This introduced a new layer into the judicial process for dealing with child offenders upon a finding of guilt. Importantly, where provision has been made for youth conferences in the area where the child resides or will reside, the youth court **must** order a youth

conference for any child who has been found guilty of an offence unless, exceptionally, the offence is:

a. an offence for which the sentence in the case of an adult is fixed by law as life imprisonment, or
b. an offence which in the case of an adult could only be tried on indictment (*i.e.* in the Crown Court), or
c. an offence which is scheduled for the purposes of Part 7 of the Terrorism Act 2000

3.35 Even where an offence falls within categories b and c above, the court may exercise its discretion to order a youth conference. This means that the vast majority of child offenders coming before the youth court will in due course be referred by the court to a youth conference, thereby underlining the centrality to youth justice of this new system.

The offender's consent is necessary

3.36 Where the child does not agree to participate in a youth conference the conference does not take place and the child will be dealt with in the normal way.

What is a youth conference?

3.37 A youth conference is a meeting or a series of meetings for considering how a child offender ought to be dealt with for the offence which he/she has committed. The following must attend the youth conference:

a. The youth conference coordinator (who will chair the meeting(s)).
b. The child.
c. A police officer.
d. An appropriate adult. (This will usually be the parent or guardian. But if they are unable or unwilling to participate a social worker or a legal representative may attend, failing which any responsible adult not in the employ of the police service. If the child is in care the social worker from the authority shall act as the appropriate adult.)

3.38 A legal representative of the child may attend the conference in his/her capacity as a lawyer, rather than as an appropriate adult, but he/she may not speak on behalf of the child.

3.39 The victim of the crime is given the choice whether or not to attend. His or her representative may attend. Alternatively video links and other indirect forms of participation in the conference may be facilitated for the victim. He or she can explain to the offender how the offence has affected him or her as an individual. Thus the conference seeks to give the offender the chance to understand their crime in terms of its impact, particularly on the victim. It further seeks to afford the victim the opportunity to separate the offender from the offence.

3.40 Following group dialogue on the harm caused by the young person's actions a 'conference plan' will be devised. This conference plan will take the form of a negotiated 'contract', with implications if the young person does not

follow through with what is required of him or her. Agreement is a key factor in devising the 'contract', and the young person must consent to its terms. Again, if he or she does not consent, the matter will be dealt with according to the court's normal procedures. Ideally, the 'contract' will ultimately have some form of restorative outcome, addressing the needs of the victim, the offender and wider community.

Youth conference plans

3.41 A youth conference plan will require the child to do one or more of the following:

a. apologise to the victim of the offence or any person otherwise affected by it;
b. make reparation for the offence to the victim or any such person or to the community at large; (see paragraph 3.66 below for reparation orders)
c. make a payment to the victim of the offence not exceeding the cost of replacing or repairing any property taken, destroyed or damaged by the child in committing the offence;
d. submit himself/herself to the supervision of an adult;
e. perform unpaid work or service in or for the community, if aged 16 or over (see paragraph 3.62 below for community service orders);
f. participate in activities (such as activities designed to address offending behaviour, offering education or training or assisting with the rehabilitation of persons dependent on, or having a propensity to misuse, alcohol or drugs);
g. submit himself/herself to restrictions on his/her conduct or whereabouts

(including remaining at a particular place for particular periods); and

h. submit himself/herself to treatment for a mental condition or for a dependency on alcohol or drugs.

The plan must specify the start date. The period during which the child has to comply with the plan's requirements must not be more than a year.

Recommendations to the court

3.42 The youth conference coordinator will make one of the following recommendations to the court:

a. that the court exercise its powers to deal with the child for the offence other than by means of a youth conference order (this means that the court makes one of the orders available to it under the disposal options listed below); or
b. that the child be subject to a youth conference plan in respect of the offence; or
c. that the court exercise its powers to deal with the offence by imposing a custodial order *and* that the child be subject to a youth conference plan in respect of the offence.

3.43 The court must consider – but is not obliged to follow – the recommendation of the youth conference coordinator before proceeding to deal with the child for the offence. Unless the youth conference coordinator has specifically recommended it, the court cannot make any other order in respect

of the offender when it makes a youth conference order. If a youth conference plan is accepted by the court (and assuming that the offender still consents to it) it becomes a youth conference order. This order effectively requires the offender to comply with the requirements specified in the plan.

3.44 The court is obliged to state that the offence or offences are serious enough to warrant a youth conference order and it must give reasons in ordinary language as to why it is making the order as well as explaining the effect of the order and the consequences if it is not complied with. Failure to comply allows the court to revoke, amend or extend the order - depending upon the nature and extent of non-compliance. Where the youth conference order is revoked the court may deal with the offender, for the offence in respect of which it was made, in any way in which it could deal with him if he had just been found guilty of the offence by the court.

3.45 The court may later vary the order provided that it has first consulted with the youth conference coordinator.

Deferment of sentencing

3.46 Rather than proceeding at the time of trial to deal with the question of sentencing the court may choose to defer or put back a decision on sentencing for a period of up to six months. The offender's consent must be obtained for a deferment. Where this option is chosen the offender is not under the control of the court for the deferment period and the purpose of the deferment is to assess the offender's conduct over this period. Such conduct may include reparation

to a party affected by the crime (see paragraph 3.66 below for reparation orders). The court may request a report for these purposes from the Probation Service. If the report confirms that the offender has maintained a consistent pattern of good behaviour during the period of deferment there is an expectation that a custodial order will not be made.

3.47 If the offender's behaviour has improved but hasn't quite met its target, a less severe penalty may be imposed. If the offender is found guilty of any further offence during the period of deferment, the court which deals with the offender for that offence may make the order which the youth court was considering when the offender was found guilty of the earlier offence.

Disposal Options

Fines, costs etc. and recognizances

3.48 The youth court may fine offending children for any offence apart from murder. However there are limits on the amount by which a child may be fined. The maximum fine for children under 14 is £200 and the maximum fine for other child offenders is £1,000. Where a child is under 16 the fine must be imposed on the parent or guardian of the child. Where the child is over 16 the fine may either be imposed on the parent/guardian or child. The youth court may also order payment of legal costs, damages or compensation by the parent/guardian or child subject to the same restrictions as for fines. The court must have regard to the ability of the child or his/her parent/guardian to pay when fixing the amount of the fine.

3.49 The youth court may also order the parent or guardian to enter into a recognizance as security for the child's good behaviour. Also, where the court makes an Attendance Centre Order (see paragraph 3.60 below) it may order the parent or guardian to enter into a recognizance as security for the child's compliance with the terms of that order. A recognizance is a bond or a promise recorded by the court together with an undertaking to pay over an amount of money if the promised behaviour is not performed. In either case the parent/guardian has the right to be heard by the court before the making of such an order unless they have been ordered by the court to attend and have failed to do so.

3.50 Fines, costs, damages, compensation payments and recognizances may all be imposed in addition to any other order which the youth court has the power to make.

Absolute discharge and conditional discharge

3.51 The youth court may grant an absolute discharge – where no penalty is imposed upon the offender – in situations where, although an offence has been committed, there were exceptional or unusual circumstances which mean that there is very little blame on the offender. This may be because the nature of the offence was trifling, because of factors relating to the offender or because the decision to prosecute was unnecessarily harsh.

3.52 A conditional discharge is where the court will impose no penalty on condition that the offender does not re-offend within a period of time fixed by the court (no longer than 3 years). If he/she does re-offend the matter may be brought back to the court and an alternative penalty imposed.

Custodial Orders

3.53 Children are not sent to adult prison. There are however a number of custodial disposal options which are open to the youth court upon a finding of guilt. These are orders which involve detaining the offender in custody. There are some important principles to be remembered when considering whether to make a custodial order:

a. The court cannot impose a custodial order where the child offender is not legally represented unless he/she has been informed of his/her right to apply for Legal Aid and has been given the opportunity to do so but has failed or refused to take it.
b. The court cannot impose a custodial order unless it is of the opinion that the offence is so serious that only a custodial sentence can be justified.
c. The court cannot impose a custodial order unless the offence is of a violent or sexual nature and the court is of the opinion that only a custodial sentence would protect the public from serious harm.
d. If the offender refuses to consent to a non-custodial disposal option, where that option requires the offender's consent, *e.g.* probation (see paragraph 3.61 below), the court may impose a custodial sentence.

e. Court disposals should have regard to the best interests of the child with custody being used to the minimum possible extent.

f. The court must have regard to the most recent pre-sentence report before imposing a custodial order on an offender found guilty of an offence *unless* that offence is one which in the case of an adult may only be tried in the Crown Court.

The reasons for making a custodial order must be clearly stated.

Detention in a Young Offenders' Centre

3.54 This particular disposal is **only available in the case of persons aged at least sixteen**. Young Offenders' Centres ordinarily accommodate offenders between the ages of 16 and 21 and they are a means of keeping younger offenders away from the potentially more corrupting influence of adult prison. If the offence is *not* one which in the case of an adult would be punishable with fourteen years imprisonment or more, or five years if it is a scheduled offence (see above), the maximum period of detention allowed in a Young Offenders' Centre is four years.

3.55 The term of detention at a Young Offenders' Centre cannot exceed the period of imprisonment which might be imposed on an adult charged with the same offence(s). The term of detention may be suspended. This is where the court orders a term of detention but the detention is not activated immediately. Rather a period of suspension (of up to 3 years) may be ordered. If the offender does not re-offend during the period of suspension his/her sentence is

regarded as having been served. However, if the offender commits a further offence during this period which is punishable by detention the offender will be liable to serve the term of detention which was suspended together with any further detention ordered in consequence of the later offence.

Juvenile Justice Centre Order

3.56 Normally these orders will have a duration of 6 months but they may be made up to a maximum period of 2 years. The period ordered by the court should be decided upon with regard to:

a. the offence in question;
b. the maximum sentence which an adult offender might serve for the same offence(s);
c. the personal circumstances of the child.

The order is evenly split between a period at the Juvenile Justice Centre and a period of probation supervision. Breach of the supervision requirements allows the court to impose a further custodial penalty of up to 30 days.

Custody Care Order

3.57 The Custody Care Order, which is a more recently enacted disposal option, is designed as a more suitable way of dealing with younger child offenders. As a result a child aged under 14 should, in future, no longer be the subject of a Juvenile Justice Centre Order.

3.58 At the time of preparation of this manual the statutory provision allowing the youth court to exercise this option has not yet been brought into force but it is anticipated that it will be by the time, or soon after, Lay Magistrates take up their posts. Where an offender is **under 14** and the offence is punishable in the case of an adult with imprisonment but where a life sentence is not fixed by law, the court may make this order which has the effect of placing the child in secure accommodation by the appropriate authority (the local Health and Social Services Trust) followed by a period of supervision by the authority. As with the Juvenile Justice Centre Order the periods of accommodation and supervision are evenly divided and the normal duration of an order will be 6 months rising to a maximum of 2 years. This effectively places these younger child offenders in the child care system. There is something of an overlap here with the Children Order provisions (see generally above under Chapter 2) and the Order will apply in certain respects as if it were a care order made under Article 50 of The Children Order. Thus, for instance, the Trust keeping the child in secure accommodation, which shall have parental responsibility for the child during the period of the secure accommodation, must comply with a number of the Children Order provisions for children in care.

Community Orders

3.59 The following orders, normally reserved for more serious offences, are community-based orders involving some restriction of the offender's liberty but falling short of a custodial penalty. It should be noted that the court must obtain a pre-sentence report before it imposes one of these community orders on an offender.

Attendance Centre Order

3.60 Again, this is an order which is specific to children. It exists as an alternative to a custodial order and it requires the offender to attend at a designated Attendance Centre which is reasonably accessible to him/her for a certain number of hours (between 12 and 24 hours) fixed by the court. Where the child is aged under 14 the court may impose fewer hours if it considers twelve to be excessive. Attendance must not interfere with the child's schooling or conflict with his/her religious beliefs. Attendance, which involves physical education and other forms of training and instruction, is therefore often on Saturdays. The length of any one period of attendance cannot be more than 3 hours. The court will specify the arrangements for the first attendance and the officer in charge will make the arrangements for the subsequent attendances.

Probation Order

3.61 This order is not specific to children but has been widely used in the youth court. It may be made in respect of any offender found guilty of any offence except murder and it requires the consent of the offender. The purpose of a probation order is to require an offender to cooperate and maintain regular contact with the probation service in order to help in improving his/her behaviour. An allocated probation officer, suitably trained for the purpose, is required to supervise, and to advise, assist and befriend the offender, helping him/her to cope with background difficulties which may have led to his/her offending. The order may be made for between 6 months and 3 years. The

offender may additionally be required to attend a course to help deal with a given problem such as drink driving, drug addiction and such like. If the offender is in breach of the terms of the probation order the probation service will bring him/her back to court and a different order may be made. If the offender is progressing well, the court can revoke the probation order without putting any further order in its place. An order of conditional discharge may subsequently be made where it appears to the court no longer appropriate to continue with the probation order. The period of the conditional discharge will be the time that was left before the original probation order would have expired.

Community Service Order

3.62 This order is available for offenders who are aged 16 or older and it requires an offender to undertake a given type of service for a specified number of hours (between 40 and 240 hours). Again the court must consider whether the seriousness of the offence justifies this order given the restriction of freedom which it involves. The consent of the offender to the order is required. Additionally, the court must be satisfied that suitable work is available to facilitate the order and that the offender is physically capable of performing that work. If the community service is not carried out by the offender to the satisfaction of the supervising officer the matter will be referred back to the court and a different order may be made.

Combination Order

3.63 Community service orders and probation orders may be combined subject to certain conditions and requirements. Unlike the probation order this combination order can only be made where the offence for which the offender has been found guilty would be punishable in the case of an adult with imprisonment.

3.64 Where an offender is found to be in breach of one of these community orders the breach may be punished separately while leaving the original order in place OR the original order may be revoked and a new order made in its place. The breach may be dealt with by a fine subject to the restrictions on fines noted above at paragraph 3.48, community service for over 16's, or an Attendance Centre order.

Restorative Justice Orders

3.65 Under the legislation which introduced youth conferencing (The Justice (Northern Ireland) Act 2002) two new orders which are restorative in nature were made available to the youth court to deal with offending 10-17 year olds. These are set out below:

Reparation Order

3.66 This is an order requiring the offender to make reparation – other than by paying compensation – to either the victim (or other person affected by the offence) or to the community at large. It can be imposed for any offence other than one where the sentence in the case of an adult is fixed by law as life

imprisonment. A report from either a probation officer or social worker must first be obtained indicating the appropriate requirements. It is necessary to secure the consent of the offender to the making of the order and the person for the benefit of whom reparation is ordered must also consent for the court to be able to make the order.

3.67 The order can require the offender to make reparation for up to 24 hours. The requirements of the order should avoid any conflict with the offender's religious beliefs and should not interfere with his/her schooling. The offender will be under the supervision of a responsible officer (normally a probation officer or social worker), who may refer the offender back to the court for non-compliance with the order. The obligations under the order should be performed within 6 months. A reparation order may not be combined with a custodial order, a community service order, a community responsibility order or a combination order. It can however, be combined with any other type of order such as probation or a fine.

Community Responsibility Order

3.68 This order requires the offender to do two things:

a. attend a course of relevant instruction in citizenship (this must be for at least half of the overall duration of the order), and
b. carry out for a specified number of hours practical activities which are considered by the responsible officer to be appropriate in light of the instruction given.

Again, as with the reparation order, it can be imposed for any offence other than one where the sentence in the case of an adult is fixed by law as life imprisonment. The order must be for a total of between 20 and 40 hours. The offender's consent alone is required for this order. The order cannot be made if the court proposes to deal with the offender in any other way. The obligations under the order should be completed within 6 months. The responsible officer may refer the offender back to the court for non-compliance with the order.

Other Disposals

Anti-social Behaviour Orders (ASBOs)

3.69 While the jurisdiction of the youth court is essentially criminal it has been empowered, in common with other types of magistrates' court, by very recent legislation to make this newly introduced type of order in respect of those aged under 18, which is a civil remedy rather than a criminal justice penalty. It is available in respect of any person aged 10 or over.

3.70 The aim of Anti-social Behaviour Orders is **to protect the public from behaviour that causes or is likely to cause harassment, alarm or distress**. The order itself prohibits the person named in it from doing anything specified in the order. Prohibitions must be reasonable, proportionate to the behaviour complained of, realistic and practical. The conditions to be imposed are intended to be specific, *e.g.* as to time of day. Thus someone might be prohibited in the order from visiting certain areas at certain times of day.

Prohibitions should also cover acts which may be pre-cursors to criminal acts, such as entering a shopping centre, and situations where the Defendant might incite others to anti-social behaviour. The duration of such an order will be at least 2 years. The Defendant may later apply to the court to have the order discharged before its completion but this may only be done with the agreement of the original applicant. The court may make an interim Anti-social Behaviour Order for a fixed period where the main application has not yet been determined. Anti-social Behaviour Orders may be made by the courts in one of two ways as follows:

a. On application by a district council, the Northern Ireland Housing Executive or the Chief Constable of the Police Service of Northern Ireland.
b. Following a finding of guilt for an offence.

a. **Not following a finding of guilt**. Where a person aged 10 or over has acted in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself/herself, a district council, the Northern Ireland Housing Executive or the Chief Constable of the Police Service of Northern Ireland may apply for an Anti-social Behaviour Order. This remedy has been available since late August 2004 and is therefore operational only very recently. **Applications for this particular type of Anti-social Behaviour Order will not be heard by the youth court but rather by a Resident Magistrate sitting alone.** However, a breach of the order by any 10-17 year old would amount to an offence punishable by the youth court.

b. **Following a finding of guilt**. Exactly the same type of Anti-social Behaviour Order can be made as described above where a child has been convicted of an offence following the usual criminal process. **The youth court is empowered to make this type of order.** Again, the order here is still a civil, not a criminal, remedy and it does not replace whatever penalty the court might wish to impose – even if this amounts to something like conditional discharge. The court must be satisfied from the evidence taken in the criminal trial that the offender has acted in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself/herself. Further it must be satisfied that an Anti-social Behaviour Order is necessary to protect people within Northern Ireland from further anti-social acts by him/her. The order can be made by the court on the application of the prosecution or of its own motion (*i.e.* where the court chooses to make the order on its own initiative). At the time of preparation of this manual the provisions allowing for the making of an Anti-social Behaviour Order upon conviction for an offence have not come into operation. However, it is anticipated that they will be operational by the time Lay Magistrates begin their functions.

Penalties for driving offences

3.71 The inclusion within the youth justice system of 17 year olds means that there are likely to be a larger number of motoring offences coming before the youth court. The main penalties associated with motoring offences are

disqualification, the imposition of penalty points on the offender's licence and fines. Certain offences, such as drink driving offences and dangerous driving, must result in a period of disqualification. In other cases the road traffic law allows the court discretion as to whether or not to impose disqualification. If a young person who is found guilty of a motoring offence does not yet hold a driving licence, he/she will be subject to one or other of the disposal options available to the youth court in respect of the offence. Where a youth court exercises its discretion to disqualify the young person it may disqualify him/her until the date on which he/she passes his/her driving test rather than for a fixed period. The young person is still allowed to apply for a provisional licence at 17 and provided he/she drives in accordance with the conditions of that licence he/she will remain within the law. If the conditions on the provisional licence are not adhered to he/she will again be guilty of driving whilst disqualified.

Appeals from the Youth Court

3.72 Where a youth court makes a finding of guilt in respect of a child he/she has an automatic right of appeal to the County Court for the county court division in which the relevant petty sessions district is located. The appeal will give rise to a re-hearing of the case in the County Court. Where the appeal is against a finding of guilt all the evidence is presented to the court in much the same way as it will have been presented to the youth court. The County Court will then determine the question of guilt without regard to the finding of the youth court.

3.73 If the appeal is solely against an order upon a finding of guilt the Court will hear a summary of the facts from the prosecution and a plea in mitigation on behalf of the Appellant (this is what the offender is called when he/she appeals). The county court judge has the same sentencing powers as the youth court. He/she therefore has the power to make a different order or to make the same order with different terms and, significantly, he/she may impose a more severe penalty on appeal than that which was imposed by the youth court. Only the defendant (and not the prosecution) has the right of appeal to the county court.

3.74 If the appeal is against an order which is made other than upon conviction (such as an anti-social behaviour order) there is likely to be a re-hearing of the original application to establish afresh whether the facts alleged by the applicant can be proved.

The role of Lay Magistrates in appeals to the county court

3.75 When sitting to hear appeals from the youth court the county court judge is assisted by two Lay Magistrates who sit as assessors. **The role of Lay Magistrates in appeals is not judicial but advisory.** This means that, unlike in the youth court, Lay Magistrates do not have a vote when it comes to the decision in the case. In practice, however, Lay Magistrates may well find that county court judges seek to include their views within the decision-making process as much as they can on the substantive issues. County court judges

will normally remove their wigs and gowns when hearing appeals from child offenders.

3.76 As regards preparation for sitting as an assessor in county court appeals, the court staff will seek to ensure that the appeal papers are made available in a suitable room at the courthouse by 9.30 on the morning of the appeal hearing. If the appeal is against a finding of guilt Lay Magistrates should be careful to avoid documents in the court papers such as pre-sentencing reports, criminal records or other documents containing information which might be prejudicial to the appeal. These documents may be read only after the county court judge has decided the issue of guilt. If Lay Magistrates are unclear as to whether a document within the court papers might be prejudicial to the appellant he/she should seek clarification from the county court judge or the clerk before looking at its contents.

Appeal on a point of law

3.77 Either party can challenge a finding of law (as opposed to a finding of fact) by asking for an appeal to the Court of Appeal by way of something called "case stated". In this situation the Resident Magistrate will set out in writing the facts of the case as determined by the magistrates' court together with what he/she determined was the relevant law and how that law was applied. This will be sent to the Court of Appeal for a ruling on the law and its application. The Court of Appeal will consider the Resident Magistrate's findings of law and his/her application of them. Depending upon the Court of Appeal's ruling it may either affirm the decision of the court or send the case

back to the youth court for the purposes of a re-hearing on some or all of the issues.

Other functions exercised by the youth court

3.78 The youth court will also deal with other matters such as remands and committals which form part of the examining process which takes place before a prosecution proceeds to a full hearing. Details of these are set out below:

Remands

3.79 A remand is the act of:

a) Adjourning (*i.e.* putting back to a later date) the hearing of a criminal prosecution, **and**
b) Sending the person who has been arrested and charged with an offence (*i.e.* the accused) back into custody, **or**
c) Placing him/her on bail to a later date to await trial.

3.80 Whether he/she is remanded in custody or on bail the accused will be required to appear before the court again on the date to which the case has been adjourned.

Why is a remand necessary?

3.81 Remands are necessary to allow the prosecution more time to carry out further investigations and to gather in evidence about the offence with which the accused is charged. Usually a number of additional remand hearings will be required before the matter is brought to trial.

What is the purpose of the first remand?

3.82 The first remand hearing takes place because a person suspected of an offence and detained by the police must be charged with that offence and brought before a Court within a specified period failing which the police are obliged to release him/her. This is to ensure that he/she is detained in accordance with due process of law and not simply at the whim of a police officer.

3.83 Before remanding an accused person in custody a court must be satisfied of two things:

a) That the accused person was properly arrested.
b) That it is justified to remand the accused (either in custody or on bail) while further police investigation takes place.

Question 1: Was the arrest lawful?

3.84 This issue is determined in relation to the procedural requirements governing the arrest and detention of persons suspected of criminal offences. The arresting police officer must also give sworn evidence to the court that he/she believes that he/she can connect the accused to the offence(s). For the arrest and detention of an accused person to be lawful there must be a reasonable suspicion justifying the arrest; a proper basis for charging him/her with the offence on which his/her remand is sought; and procedural due process.

Question 2: Remand in Custody or on Bail?

3.85 Rather than being remanded in custody an accused may be remanded and released on bail which means he/she is given freedom again subject to certain conditions which are laid down by the court to ensure that he/she will attend at court on the day to which the case has been adjourned.

3.86 When the youth court remands a child it must release him/her on bail unless one of the exceptions below apply:

a. The court considers that to protect the public it is necessary to remand him/her in custody; and
b. The offence charged is a violent or sexual offence; or is one where in the case of an adult similarly charged he/she would be liable on conviction on indictment (*i.e.* in the Crown Court) to imprisonment for 14 years or more.
c. Additionally, the court may also refuse bail where the arrestable offence charged took place while the accused was on bail for an earlier matter or

the arrestable offence took place within two years of an earlier arrestable offence of which the accused was found guilty.

However, even in these cases the court can exercise its discretion as to whether or not to grant bail.

3.87 There is one further exception. Where an accused over 14 is charged with a scheduled offence (*i.e.* an offence contained in a list as set out in the Terrorism Act 2000), unless the Director of Public Prosecutions has certified the offence as suitable for trial before a magistrate's court, the youth court remanding the accused cannot grant bail but must remand him/her in custody. At the same time it must inform the accused of his/her right to apply to the High Court for bail – which can usually been done within a day or two of the remand. Children remanded in custody are normally held at a juvenile justice centre or, if the accused is aged over 15 and a danger to himself/herself or others, at a young offenders centre.

3.88 The purpose of bail is to ensure the attendance of the accused at the adjourned hearing. In exercising its discretion the youth court should take into consideration, the seriousness of the charge, the evidence produced, the character of the Defendant. The court might consider refusal if there is likelihood of an offence being committed or witnesses being interfered with.

3.89 To ensure the Defendant's appearance at the time and place required, the court may impose conditions on the bail which it believes to be necessary in the interests of justice or for the prevention of crime – for instance that the

accused reports at a police station at regular intervals and times or that he/she remains in his home between certain hours.

3.90 The amount of bail demanded (recognizance) should not be excessive but should be an amount that appears to the court sufficient to ensure the performance of its conditions. The court may require the accused in addition to his own bail to provide a surety or sureties (another person to guarantee an amount of money to ensure that the Defendant will appear at the adjourned hearing). Alternatively the court may authorise the acceptance of a sum of money or other valuable security in lieu of sureties.

Committals

3.91 Serious criminal offences which are eventually tried on indictment (*i.e.* in the Crown Court) must first pass through the Magistrates' Court in the form of a committal hearing. The purpose of such a hearing is for the court to examine the evidence and to determine whether it is sufficient to justify the accused being committed for trial to the Crown Court.

3.92 The youth court, being a form of magistrates' court, is empowered to deal with committal hearings for accused children. However, it is extremely unlikely that any offences other than murder would be tried by the Crown Court. A recent decision of the European Court of Human Rights appears to mean that a Crown Court setting does not guarantee a trial procedure which sufficiently takes account of the needs of a child defendant so as to ensure its fairness (under Article 6 of the European Convention on Human Rights). This

means that the number of committal hearings held in the youth court is very limited and the likelihood of most Lay Magistrates ever having to sit in a committal hearing is relatively small.

3.93 Where a child is charged with any offence which in the case of an adult can only be tried on indictment (*i.e.* before the Crown Court) apart from murder, the youth court has the power to try the accused itself by its own procedures (outlined above), where it considers it expedient to do so, rather than sending the matter to the Crown Court. This is on condition that the child or his/her parent/guardian has been informed of the right to be tried in the Crown Court and consents to the youth court trying the child. The prosecution must also consent. These consents are almost invariably forthcoming.

3.94 Where an offence alleged to have been committed by a child must by law be tried on indictment by the Crown Court or where, exceptionally, the accused does not consent to being tried by the youth court, committal proceedings in the youth court will be necessary.

3.95 A committal hearing may either take the form of a preliminary Inquiry (the more usual) or a preliminary Investigation (which is a longer, more expensive, process). The prosecution normally decides in the first instance whether to request the court to hold a preliminary inquiry or preliminary investigation. The court has a discretion whether or not to agree to the request but a preliminary inquiry may not be held where the accused objects.

The prosecution evidence

3.96 In each case the clerk of the court will read the charge(s) or the substance of the charge(s) to the accused. In a **preliminary inquiry** the court may require the prosecution to make an opening statement and will consider evidence contained in written statements handed into the court by the prosecution for the purpose of the hearing. The accused may object on legal grounds to any of the statements and the court, the prosecutor or the accused can require any person, including someone whose statement is before the court, to come and give sworn evidence at court and be cross-examined on behalf of the accused. In a **preliminary investigation** the hearing will begin with evidence as to the arrest of the accused. The charge is then read out to the accused, following which the prosecution will present its case. It may initially address the court. It will then call prosecution witnesses in person to be examined by the prosecution lawyer and cross-examined by the accused or his/her lawyer. The evidence of each witness is taken down, read back to the witness in question and then signed by that witness and by the Resident Magistrate who is presiding at the committal. These records of evidence are known as depositions.

Sufficient evidence

3.97 If having considered all of the prosecution evidence at the end of its case, and before the accused has had a chance to put his/her case, the court feels that there is no substance to the charges (*i.e.* that there is insufficient evidence to substantiate them) the accused should be discharged from the court and the matter ends there. If the court considers that there is sufficient evidence to

substantiate the charges the clerk will inform the accused of his/her right to give evidence on his/her own behalf and to call witnesses and hand in any written witness statements.

The accused's evidence

3.98 It is usual for the accused to reserve any evidence in support of the defence case that he/she makes to the full trial before the Crown Court in due course but if the accused does decide to call evidence the procedure is much the same as for the prosecution. In a preliminary investigation the accused's lawyer may make an opening speech and he/she will then call witnesses to be examined by him/her and cross-examined by the prosecution lawyer. Again, depositions of this evidence are taken. The accused's lawyer may then make a closing speech arguing that there is no case to answer. In a preliminary inquiry the process is similar except that evidence may be handed in in the form of witness statements.

Case to answer/no case to answer

3.99 The Resident Magistrate and the Lay Magistrates together must then decide whether, on the basis of the valid evidence before it and the parties' submissions, there is enough evidence to commit the accused for trial on the charge. The question is not whether or not the guilt of the accused has been conclusively proved according to the standards of a criminal trial. Rather it is whether the accused has "a case to answer". The guidance as to how this is to be determined has been laid down by the Northern Ireland Court of Appeal in the following terms:

3.100 If a reasonable tribunal (or court) might convict on the evidence so far laid before it, there is a case to answer. Thus, if there has been no evidence to prove an essential element in the alleged offence there will be no case to answer. Similarly, when the prosecution evidence has been so discredited in cross-examination or is so manifestly unreliable that no reasonable tribunal (or court) could safely convict on it there will be no case to answer.

3.101 If the court is satisfied that there is no case to answer the accused must be discharged. If it is satisfied that there is a case to answer it must commit the accused to the appropriate crown court and remand him/her in custody or on bail until the trial. The same principles regarding bail apply as are set out above at paragraph 3.85 and following in relation to remands.

Power to notify appropriate authority if child's welfare requires it.

3.102 Finally, in addition to the youth court's criminal law functions and the other limited civil law functions, the Criminal Justice (Children) (Northern Ireland) Order 1998 gives the youth court a wider role for the general welfare of the children coming before it which again connects with the concerns of the Children Order. The legislation gives the youth court the following power:

3.103 Where a child is charged with an offence and a court -

a) finds him not guilty; or

b) finds him guilty but does not pass a custodial sentence or a community sentence,

the court may, if the court considers that his welfare requires it, notify the appropriate authority of such matters as the court thinks fit.

3.104 Thus, where a youth court has welfare concerns about a child coming before it and the child will not otherwise come to the attention of the relevant trust (for suitable investigation into his/her circumstances) the court can, by referral to the trust, ensure that the child's welfare is properly safeguarded. This is an important aspect of the child welfare safety net and serves to connect the work carried out by Lay Magistrates in the youth court with the work which they do in the family proceedings court.

4. OTHER FUNCTIONS OF A LAY MAGISTRATE

Former functions of the Justice of the Peace

4.1 The following functions, previously carried out by Justices of the Peace, have been transferred to Lay Magistrates:

- Issuing summonses and warrants.
- Administering oaths
- Signing affidavits for use in a magistrates' court or county court

4.2 These functions are intended to be carried out by a Lay Magistrate acting on his or her own. Issuing summonses and warrants – and administering the oaths which are taken for that related purpose – are carried out by Lay Magistrates at a police station, The Lay Magistrate's home, a courthouse or any other suitable place agreed between the parties. The signing of affidavits may be done anywhere.

Important: Note taking

4.3 As a matter of good practice Lay Magistrates are recommended to take a careful note of all applications which are made to them "out of court" for summonses and warrants. Such notes should ideally include details of the alleged offence together with the relevant statutory provision, the identity of the applicant and the nature of his/her evidence, the identity of the person/premises who is the subject of the application, the decision reached and

the reasons for the decision. Maintaining a log book for recording such matters, which should be kept safe, may prove useful.

Issuing a Summons

4.4 The purpose of a **Summons to a defendant** is to inform him/her of the charge (offence) that he/she has to meet, and to require him/her to attend at a specified courthouse on a specified day and at a specified time in order to answer to the charge contained on the summons. Summonses are also issued in relation to civil proceedings in the magistrates' court and the same principles largely apply to these.

4.5 The purpose of a **Summons to a witness** is to ensure his/her attendance before a court to give evidence and/or to produce any document or thing which may form part of the evidence in the criminal or civil case.

Preparation of the Summons

4.6 The complainant or, where the summons is a witness summons, the person applying for the issue of the summons, shall be responsible for the preparation of any necessary summons and any copy thereof.

Procedure

4.7 A complaint is the initial step in criminal and civil proceedings. The complaint may be made by the complainant in person or by his/her solicitor or by any other person authorised by the complainant. The complaint may be

made either on oath or not on oath, and either in writing or not as the Lay Magistrate thinks fit. Most police complaints will be in written form and in accordance with Form 1 as set out in the Magistrates' Courts Rules (Northern Ireland) 1984. The complainant or a police officer on behalf of the complainant normally signs this form in the space provided after he/she takes the oath (if required). It should be remembered that a written complaint is not absolutely necessary and the Lay Magistrate may receive the complaint orally if he/she chooses to. It should be noted that where a complainant or a representative of the complainant produces a draft summons to a Lay Magistrate (needing only his/her signature for the summons to issue) with a request to issue, that amounts to the making of a complaint.

4.8 Normally, in the case of a summary offence a complaint must be made within 6 months from the time when the offence was committed or ceased to continue. It is undesirable for the complainant to leave the application for a summons until the last possible moment. When considering a complaint and whether a summons should be issued, the Lay Magistrate should raise a question as to the date if it appears from the date given that the information is being laid outside any time limit. If the query is not satisfactorily resolved, by amendment or other explanation, then it will be appropriate for him/her to refuse to issue the summons. A complaint relating to an indictable offence (triable in the Crown Court) is not subject to the 6 months time limit.

4.9 Where a complaint is made to a Lay Magistrate that a person has or is suspected of having committed an offence within the County Court Division

where the Lay Magistrate sits he/she may issue a summons to that person requiring him/her to appear before a magistrates' court for that division. The Lay Magistrate may not issue a summons requiring a Defendant to appear before a magistrates' court for any other division. In the vast majority of cases an authorised police officer will produce a typed complaint and summons to the Lay Magistrate. The Lay Magistrate should sign the complaint below where the complainant has signed it. The summons will contain the complainant's name and address, the defendant's name and address and the charge (or complaint) alleged against the defendant and the venue, date and time of the Magistrates' Court. The Lay Magistrate must decide whether to receive the complaint orally rather than in writing and whether the complaint is taken without or without oath.

The decision whether or not to issue

4.10 The Lay Magistrate to whom an application is made for the issue of a summons has a discretion as to whether or not to issue the summons. When a complaint has been made, the Lay Magistrate must apply his/her mind to the information, and go through the judicial exercise of deciding whether or not he/she should issue a summons. In relation to a summons to a defendant on a criminal (as opposed to civil) complaint the initial concern should be to ensure the following:

- The complaint discloses an offence known to law (where in doubt confirmation of this should be sought from the complainant).

- The Lay Magistrate has territorial jurisdiction to act (*i.e.* the offence is alleged to have occurred within his/her county court division).
- The date of the alleged offence is within any limitation of time (Again it may be appropriate to clarify with the complainant whether there is a time limit for the offence charged).

4.11 The discretion must be exercised on judicial and proper grounds. A Lay Magistrate has jurisdiction to refuse to issue a summons if, to issue a summons would be vexatious and improper even if there is evidence of the offence. As regards civil complaints, these are likely to be in relation to family or domestic proceedings matters (*e.g.* summons to respondent on an application under the Children Order) and normally it will be the court office which will contact the Lay Magistrate to sign these. They tend to be more straightforward than summonses to answer a criminal charge and, where needed, guidance as to the issue of such summonses should be available from court staff.

Signing the summons

4.12 If the Lay Magistrate decides to issue the summons he/she will sign it and return it to the complainant for service on the defendant. A summons must not be signed in blank but must rather be completed as to the relevant details before receiving the Lay Magistrate's signature. Where there is more than one defendant charged with the same offence a separate summons must be issued in respect of each defendant. A summons may however contain more than one offence where the defendant is charged with a number of offences. A Lay Magistrate may issue a summons to a defendant in England Scotland or Wales.

Also, where the defendant resides outside the United Kingdom, a summons may be issued requiring him/her to appear before a magistrates' court, and the summons may be served outside the United Kingdom in accordance with arrangements made by the Secretary of State.

Witness Summons

4.13 Where a Lay Magistrate is satisfied on hearing evidence that any person is able to give material evidence and/or produce any document or thing before a magistrates' court hearing either a criminal or civil matter, he/she may issue a summons directed to that person requiring him/her to attend before a Magistrates' Court to give evidence (for any party to the proceedings) or to produce such document or thing. There must be sufficient evidence to establish that the proposed witness is likely in fact to be in a position to give evidence which is material to the proceedings in question. Regard must be had to the nature of the proceedings to determine whether the proposed witness is able to give material evidence. Again, the witness summons should not be signed in blank but rather completed as to all relevant details before signature by the Lay Magistrate. Unlike summonses to defendants, the issuing of witness summonses is not confined to a Lay Magistrate's own county court division. Thus a Lay Magistrate for the county court division of Fermanagh and Tyrone could issue a summons requiring someone to appear before a magistrates' court in the county court division of Armagh and South Down.

Warrants to Arrest and Warrants to enter and search

General

4.14 A Lay Magistrate is likely from time to time to be requested to issue one or other of the above warrants. The law recognises that the issuing of either type of warrant is a serious step – one deprives the person arrested of their liberty, while the other interferes with private and family life. Because of this the application for these warrants must be made in writing and upon oath (the applicant must be present before the Lay Magistrate to take the oath) and must contain certain information. It is therefore of the utmost importance that the Lay Magistrate considers whether he/she is satisfied that, in all the circumstances, it is proper to issue warrants such as these, bearing in mind that they impinge on the liberty or privacy of the subject.

4.15 As with summonses the Lay Magistrate has a discretion as to whether or not to issue a warrant. The discretion is a judicial one and must be exercised on judicial and proper grounds. The Lay Magistrate may, and generally should, question a person swearing out a complaint (*i.e.* making a complaint on oath) before him/her. The complainant will frequently be a police officer acting on information received. The Lay Magistrate should not expect a police officer to identify the informant(s); but he is entitled to enquire whether the informant(s) is/are known to the officer, whether it has been possible to make further inquiries in an effort to verify the information provided and, if so, with what result.

Warrant to arrest – Indictable Offence (offence triable by a Crown Court)

4.16 Where a complaint is made in writing and on oath to a Lay Magistrate that a person has, or is suspected of having, committed an indictable offence into which a magistrates' court for the Lay Magistrate's County Court Division has jurisdiction to conduct a preliminary investigation/inquiry (committal proceedings, see paragraph 3.91 above) he/she may issue a warrant for the arrest of that person. Again, the power of the Lay Magistrate to issue an arrest warrant is limited to offences which are to be tried within his/her county court division. The Lay Magistrate should sign the complaint after the complainant or his/her representative has taken the oath and signed it. The warrant, which is addressed to a superintendent of the Police Service of Northern Ireland, will contain the defendant's name and address together with details of the alleged offence and will command that the defendant be arrested and brought to a magistrates' court for the Lay Magistrate's county court division.

Arrest Warrants in relation to extradition

4.17 It is sometimes the case that a person who is suspected of committing a serious crime or who has been convicted of a crime will place himself or herself beyond the immediate jurisdiction of the country in which the crime was committed by residing in another country. For this reason the United Kingdom has entered into reciprocal arrangements with other countries to

provide for the extradition or returning of such persons to the country in which the crime has been committed. Most of these arrangements do not involve Lay Magistrates as they are dealt with by other authorities. However, there are two possible situations where Lay Magistrates may occasionally be called upon to issue warrants for extradition purposes. These warrants are a special type of arrest warrant.

Extradition into the United Kingdom from a Category 1 Country

4.19 Under the provisions of the Extradition Act 2003 a Lay Magistrate has the power to issue a "Part 3" warrant seeking the extradition of a person from a category 1 territory (see paragraph 4.20 below) to the United Kingdom when a police constable (or other person given authority to perform the role by the Secretary of State) makes application for such a warrant. The Lay Magistrate must be satisfied of the following conditions before deciding whether to issue the warrant:

1) A domestic warrant for the arrest of the person has been issued.

2) The Lay Magistrate is satisfied that there are reasonable grounds for believing that:
   a) the person has committed an extradition offence (see paragraph 4.21 below); or
   b) the person is unlawfully at large after conviction for an extradition offence by a court in the United Kingdom.

4.20 Category 1 countries are those European Union countries which have entered into specific arrangements with the United Kingdom for the purposes of stream-lining the process of extradition to and from the participating countries. That process has created the **European Arrest Warrant** which is mutually recognised in the participating countries. The following is a list of category 1 countries:

- Belgium;
- Denmark;
- Finland;
- Ireland;
- Portugal;
- Spain; and
- Sweden.

This list is highly likely be subject to alteration by the Secretary of State for Home Affairs as more European countries ratify the provisions for the European Arrest Warrant.

What is an extradition offence?

4.21 An offence is an **extradition offence** if it occurs within the United Kingdom and is **punishable with 12 months' imprisonment** or more. If the offence is committed outside the United Kingdom it will still amount to an extradition offence if it constitutes an extra-territorial offence (*i.e.* an offence

committed outside the United Kingdom for which a person may nevertheless be convicted by a court within the United Kingdom) and, again, is punishable with 12 months' imprisonment or more.

4.22 However, the definition is different in cases where the person is **unlawfully at large after conviction** and has been sentenced for an offence (including an extra-territorial offence). In this situation the offence will be an extradition offence **where a prison sentence of 4 months or more has been imposed.**

Procedure

4.23 These applications are likely to be made orally – there is no prescribed form of application – but the person applying to the Lay Magistrate should produce to him/her the following documents:

1. the domestic arrest warrant in respect of the person and
2. a completed Part 3 warrant ready for approval and signature by the Lay Magistrate

4.24 This documentation will constitute the written element of the complaint and the Lay Magistrate should receive these on oath. He/she should also ask any other questions which are pertinent and may additionally require the production of other documentation. Again, the Lay Magistrate has a discretion whether or not to issue a Part 3 warrant. This discretion is a judicial one and must be exercised on judicial and proper grounds. Under the legislation the offence for which the Lay Magistrate is entitled to issue a Part 3 warrant does not have to have been committed within that Lay Magistrate's county court

division. It is possible therefore (although unlikely) for *e.g.* a Lay Magistrate in the county court division of Fermanagh and Tyrone to issue a Part 3 warrant for an offence committed in the county court division of Belfast.

4.25 It should be noted that it is entirely possible that a constable may apply for an ordinary domestic arrest warrant and a Part 3 warrant in respect of the same person at the same time. This is because a Part 3 warrant cannot be issued without there having been a domestic warrant issued first. If at the time of the domestic warrant being sought, the police constable knows the suspected offender to have absconded to a category 1 country it is sensible – and procedurally acceptable – for that officer to apply for both warrants at the one visit. Lay Magistrates should therefore not be put off by such a request.

Extradition from the United Kingdom to a Category 2 country

4.26 Category 2 countries are those which do not operate the European Arrest Warrant system but who have nevertheless entered into bi-lateral agreements with the United Kingdom for the purpose of creating mutual extradition arrangements. Normally the functioning of this system of extradition will not impinge upon the work of Lay Magistrates. The appropriate judge for the issuing of an arrest warrant following an extradition request from a Category 2 country will be a judge of the county court or a resident magistrate who has been designated for these purposes by the Lord Chancellor. However, where a request has been made to the Secretary of State for a provisional arrest of a person a police officer may apply to a Lay Magistrate for a provisional arrest

warrant command that the person in question be arrested and brought before the appropriate judge. The warrant is provisional in that if a full extradition request is not subsequently received within 45 days from the date of arrest (or longer if the Secretary of State orders it), the appropriate judge must release the person so arrested. The usual considerations will apply as for the issue of any arrest warrant and the completed but unsigned warrant will be sufficient to constitute a written complaint, which should always be taken on oath. Before signing the warrant the Lay magistrate should satisfy himself/herself of the following (by further questioning of the police officer, if necessary):

a. The person is in, or is on his way to, the United Kingdom;
b. The person is accused of an offence, or is unlawfully at large after conviction for an offence, in a category 2 country;
c. The offence is an extradition offence (see paragraph 4.21 above); and
d. There is evidence which would justify the issue of an arrest warrant.

Warrant to arrest – Witness

4.27 Where a Lay Magistrate is satisfied by evidence on oath and in writing that it is probable that a person in Northern Ireland will not attend to give evidence at a preliminary investigation or preliminary inquiry he/she may, instead of issuing a Witness Summons to such person, issue a warrant for his/her arrest. Given the potential human rights implications (in respect of the

right to liberty and security of person under Article 5 of the convention), it is particularly important that a Lay Magistrate satisfies himself/herself that there is sufficient evidence available from the police officer that the proposed witness is likely in fact to be in a position to give evidence which is material to the investigation.

4.28 Additionally, a Lay Magistrate may issue a warrant for the arrest of any person who fails to attend before a magistrates' court in answer to a Witness Summons provided that:

(*a*) the court is satisfied by evidence on oath that the proposed witness is likely to be able to give material evidence or produce any document or thing likely to be material evidence in the proceedings; and

(*b*) it is proved on oath or by affidavit or in such other manner as may be prescribed that such summons was duly served upon such person or that he is evading service and that he is able to give material evidence; and

(*c*) no just excuse has been shown for such failure to attend

NOTE: This type of arrest warrant is unlikely to be required from a Lay Magistrate as the greater likelihood is that the Resident Magistrate before whom the proposed witness was properly summoned (and failed) to attend will issue the necessary arrest warrant.

Bail on Arrest

4.29 A Lay Magistrate, on issuing a warrant for the arrest of any person may, if he/she thinks fit, endorse on the warrant (*i.e.* write on the back of it) a direction to the effect that the person named in the warrant shall be released on his/her entering into a recognizance (to appear at a Magistrates' Court). A recognizance is a bail bond which a person and his sureties sign binding the person to appear before a certain court. The recognizance states the amount of money which may be forfeited by the person and his/her sureties if he/she fails to appear at the Court. The endorsement should fix the amount of money by which the arrested person and the sureties, if any, are to be bound or the amount of any security permitted to be deposited in lieu of sureties. A warrant which is so endorsed is said to be "backed for bail".

NOTE: Applications to Lay Magistrates for Warrants for arrest are likely to be rare.

Warrant to enter and search

General

4.30 A considerable number of statutes dealing with various subjects provide that where a Lay Magistrate is satisfied by a complaint in writing and on oath that he/she would be justified in doing so he/she may issue a search warrant. (Examples of such statutes are, The Theft Act (NI) 1969 and The Misuse of Drugs Act 1971, which are perhaps the two most common statues under which

search warrants are sought.) The warrant may authorise persons to accompany any constable who is executing it. In most cases the complainant will be a police officer although other authorised officials (*e.g.* from H.M. Customs and Excise) may be involved in certain cases. When a constable is involved the following procedure is laid down for all such warrants.

Procedure

4.31 Where a police officer applies for a warrant to enter and search premises it is his/her duty to state:

a) the ground on which the application is made,

b) the statutory provision under which it would be issued,

c) the premises which it is desired to enter and search,

and to identify so far as is practicable, the articles or persons to be sought. The police officer making the application shall answer any question the Lay Magistrate asks him/her.

4.32 A warrant to enter and search can authorise entry on only one occasion and it must specify:

(1) the name of the person who applies for it;

(2) the date on which it is issued;

(3) the statutory provision under which it is issued;

(4) the premises to be searched; and

(5) shall identify, so far as is practicable, the articles or persons to be sought.

4.33 Two copies of the warrant must be made in addition to the original and the Lay Magistrate issuing the warrant must clearly certify them as copies. The copy warrants normally contain words certifying that they are copies and the Lay Magistrate should ensure that his/her signature appears on these copies.

Warrant to Enter and Search – Serious Arrestable Offence Committed

4.34 In addition to the general provisions relating to search warrants mentioned above, specific authority is given to a Lay Magistrate in certain circumstances under Article 10 of the Police and Criminal Evidence (NI) Order 1989.

4.35 These are that where a Lay Magistrate is satisfied on application in writing and on oath by a constable that there are reasonable grounds for believing that:

a) a serious arrestable offence has been committed; and

b) there is material on premises specified in the application which is likely to be of substantial value (whether by itself or together with other material) to the investigation of the offence; and

c) the material is likely to be relevant evidence; and

d) it does not consist of or include items subject to legal privilege, excluded material or special procedure material; he may issue a warrant authorising a constable to enter and search the premises.

4.36 Having established the above to be the case, a Lay Magistrate may issue a search warrant provided the following conditions apply:

(1) it is not practicable to communicate with any person entitled to grant entry to the premises; or

(2) if it is – but it is not practicable to communicate with any person entitled to grant access to the evidence; or

(3) entry to the premises will not be granted unless a warrant is produced; or

(4) the purpose of a search may be frustrated or seriously prejudiced unless a constable arriving at the premises can secure immediate entry to them.

Lay Magistrates should use the above list as a checklist of what needs to be clarified before issuing a search warrant for these purposes.

4.37 Definitions of the following terms mentioned above may be found in Appendix 3:

· Serious Arrestable Offence

· Premises

· Items subject to Legal Privilege

· Excluded material

· Personal Records

· Journalistic Material

· Special Procedure Material

Taking an Oath or Solemn Affirmation

4.38 There will be occasions on which a Lay Magistrate is required to administer an oath to a witness before receiving their evidence (*e.g.* in considering a complaint for a summons, or an arrest warrant or taking evidence in support of an Emergency Protection Order). In court the clerk normally does this. Out of court it will generally be the Lay Magistrate. The manner of administering an oath (laid down by The Oaths Act 1978) is as follows:

4.39 The Lay Magistrate should first establish whether the person about to give evidence prefers to take an oath or make an affirmation. This is done by advising the witness that he/she may make a solemn affirmation (see paragraph 4.44 below) instead of taking the oath. The Lay Magistrate should also ensure that the witness is physically capable of taking an oath. Provided the witness is capable and willing to take the oath, the oath should be

administered in the following way: the person taking the oath shall hold the New Testament, or in the case of a Jew, the Old Testament, in his/her uplifted hand (this is often the right hand, but either hand is acceptable), and shall say or repeat after the Lay Magistrate the following words:

> When the evidence is to be given orally the person taking the oath says:
>
> **"I swear by Almighty God that the evidence I shall give shall be the truth, the whole truth and nothing but the truth".**
>
> When the evidence is contained in a document, *e.g.* a complaint or information:
>
> **"I swear by Almighty God that the evidence which I have given in this (complaint/information) is the truth, the whole truth and nothing but the truth".**

4.40 If any person to whom an oath is administered desires to swear the above oath simply with uplifted hand and without a testament or other holy book (in the form and manner in which the oath is usually administered in Scotland) he/she is permitted to do so.

4.41 In all of the above situations the Lay Magistrate should not merely ask the witness whether he/she "swears by Almighty God *etc*." and wait for an "I

do" or "yes". The witness taking the oath should say the words of the oath either by reading it from a card or piece of paper or by saying the words of the oath after the Lay Magistrate in manageable sections.

4.42 In the case of a person who is neither a Christian nor a Jew, the legislation states that the oath shall be administered "in any lawful manner." The equal treatment approach of the courts does require Lay Magistrates to be sensitive to the belief systems of those to whom they are administering oaths. It is clearly not possible for Lay Magistrates to carry with them copies of all the various holy books which have authority for the adherents of the different religions which may be found in Northern Ireland. The person taking the oath should be comfortable about its form. The Lay Magistrate may have to work out an appropriate form of oath with them. Whether or not the oath is lawful will not depend upon the intricacies of the particular religion adhered to by the person taking it but upon whether the oath appears to the Lay Magistrate to be binding on his/her conscience and whether it is an oath which that person considers to be binding on his/her conscience. It may be that adherents of other religions will be content to make a solemn affirmation in the absence of those things necessary for the taking of an oath according to their religious practices.

4.43 Further guidance on oaths and oath taking may be found in Section 11 of the *Emergency Protection Order Pack* prepared by the Judicial Studies Board for Northern Ireland, a copy of which is given to Lay Magistrates during their induction training. More specific guidance on respecting different belief

systems is contained in Chapter 3 of the *Equal Treatment Bench Book* produced by the Judicial Studies Board of England and Wales. See paragraph 1.30 above regarding access to this publication.

4.44 Any person who chooses may make a *solemn affirmation* instead of taking an oath. This may also be done in relation to a person to whom it is not reasonably practicable without inconvenience or delay to administer an oath in the manner appropriate to his/her religious beliefs – provided that person is happy to proceed in this way and considers the affirmation to be binding on his/her conscience. The solemn affirmation shall be in the following form:

"I, (*Full Name*) do solemnly, sincerely and truly declare and affirm that my evidence shall be the truth, the whole truth and nothing but the truth".

4.45 As a matter of good practice, Lay Magistrates should approach the question of oaths/affirmations with the following points in mind:

- The sensitive question of whether to affirm or swear an oath should be presented to all concerned as a solemn choice between two procedures which are equally valid in legal terms.
- The primary consideration should be what binds the conscience of the individual.
- One should not assume that an individual belonging to a minority community will automatically prefer to swear an oath rather than affirm.

- All faith traditions have differing practices with regard to oath taking and these should be treated with respect and accommodated as far as reasonably possible.

Note: Statutory Declaration

4.46 Statutory Declarations have replaced the need for taking certain Oaths, making solemn affirmations or affidavits in certain situations. A Lay Magistrate may take and receive the [statutory] Declaration of any person voluntarily making the same before him/her. The Provisions allowing for the taking of a Statutory Declaration are contained in various Statutes and Rules (*e.g.* Orders made relating to Electoral Law in Northern Ireland). The wording of the Declaration will be in the following, or similar, format:

"I (*Name of Declarant*) do solemnly and sincerely declare that _____ (Here will be contained the specific wording of the declaration) _____ _____ and I make this Declaration consciously believing it to be true and by virtue of the Provisions of the _____ Act".

Signature of Declarant _____

Signed and declared by the above-named Declarant on _____ day of _____ 20___, before me (the Lay Magistrate should sign here)

Signature of Lay Magistrate for the County Court Division of _____

Signing affidavits for use in a magistrates' court or a county court

4.47 An affidavit is a signed written statement in the name of a person, called the deponent, which is either sworn or affirmed. Affidavits come in a wide variety of forms. Affidavits are often used in the above courts by way of evidence. Many applications to the county court in what are called interlocutory proceedings are supported by affidavit evidence. Affidavits must be sworn before (or in the presence of) a person designated by law (which, here, will include a Lay Magistrate).

4.48 A short memorandum at the end of the affidavit called a "jurat" establishes that they have been so sworn before a Lay Magistrate or other person designated by law. The jurat will state where and on what date the affidavit was sworn followed by the signature and description ("Lay Magistrate") of the person before whom it was sworn.

4.49 The jurat is normally positioned to the right of the page at the end of the affidavit – to allow the deponent (person making the affidavit) to sign in the space on the left of the page – and normally runs along the following lines:

SWORN at 1 Broad Street, Bushmills
in the County of Antrim
this 1st day of January 2004
Before me a Lay Magistrate

_____

4.50 Before witnessing the swearing of the affidavit the Lay Magistrate should be satisfied that the person is who he/she claims to be. If the person says who he/she is, that should be sufficient unless the Lay Magistrate has reason to suspect that the person is pretending to be someone he/she is not.

4.51 The Lay Magistrate should ensure that the deponent first signs the affidavit in his or her presence and then he/she should complete and sign the jurat. It is not appropriate to sign an affidavit which has already been sworn by the deponent and is later brought to the Lay Magistrate by the deponent or his/her representative for signing of the jurat.

4.52 There may also be copy documents referred to in the affidavit which are pinned together with it. These are known as "exhibits". Both the deponent and the person before whom the affidavit is sworn (*i.e.* the Lay Magistrate) normally initial these.

NOTE: In the case of both statutory declarations and affidavits it is not necessary for the Lay Magistrate to have read the content of the declaration or affidavit. The Lay Magistrate is not concerned with the content of these documents, but merely that they are executed in the correct manner.

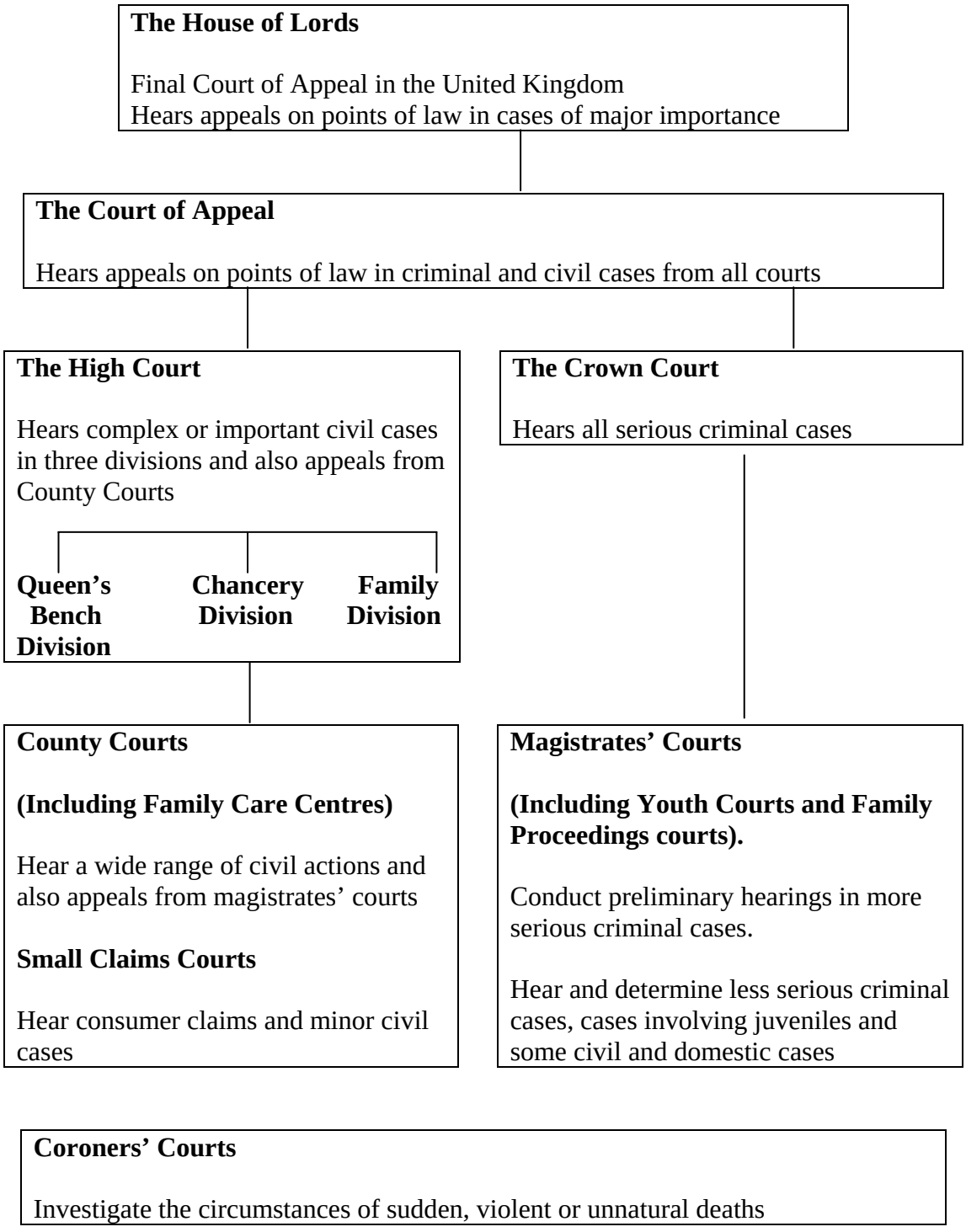
Signing other documents

4.53 While the signing of other documents not mentioned above is not something which Lay Magistrates are required to do as part of their legal

duties, it is nevertheless the case that Lay Magistrates may from time to time be asked to sign various types of document. Often the documents themselves will state the categories of persons who may sign and this might include "judicial office holder" or, more generally, "a person in a position of responsibility in the community" or similar. This can involve all manner of official forms, for example, applications for passports. Persons other than Lay Magistrates will be able to sign them. If he/she agrees to sign, the Lay Magistrate should ensure, by reading whatever instructions are included with the documents in question, that he/she is entitled to sign and that in doing so he/she properly certifies whatever is required, having first satisfied himself/herself that the person requesting his/her signature is who he/she purports to be.

Appendix 1

The Court Structure in Northern Ireland



There are 21 Petty Sessions Districts in Northern Ireland. These are grouped to form seven County Court Divisions, whose boundaries are delineated in the above map. The County Court may sit at more than one venue in each Division. The County Courts in Belfast and Londonderry are known as Recorders' Courts and the presiding County Court Judge in each case is known as the Recorder. The Crown Court has exclusive jurisdiction throughout Northern Ireland to try offences charged on indictment. It normally sits at 12 venues in Northern Ireland. It is presided over by Judges of the Court of Appeal, High Court and County Court depending on the type of case being tried. The High Court usually sits in the Royal Courts of Justice in Belfast, although it may from time to time conduct hearings in other venues. The Court of Appeal sits in the Royal Courts of Justice in Belfast.

Appendix 2

Appeals

There are three methods by which decisions made by a Magistrates' Court may be challenged. These are:

(1) *An Appeal* to the County Court by a person convicted, against conviction and/or sentence, and against orders binding persons over to keep the peace and/or be of good behaviour, or against orders made in respect of civil cases (*e.g.* under the Children Order).

(2) *Case Stated*: Any party to a case (other than a preliminary investigation or preliminary inquiry) dissatisfied with any decision of the Court on any point of law involved in the determination of the proceeding or of any issue as to its jurisdiction may apply to the Court to state a case setting forth the facts and grounds for its determination for the opinion of the Court of Appeal.

(3) *Judicial Review*: Any party to proceedings may apply to the High Court for the Judicial Review of a Magistrates' Court decision. The applicant must obtain the leave of the High Court before proceeding with such an application. This type of application arises where the applicant believes that the Court in question has erroneously exercised its jurisdiction or has exceeded its jurisdiction (Writ of *Certiorari*) or where a person has refused to perform a legal duty (Writ of *Mandamus*).

Appendix 3

Definition of Terms used in Warrant to Search

"Premises": Includes any place and, in particular includes any vehicle, vessel, aircraft or hovercraft, any off-shore installation and any tent or movable structure.

"Serious arrestable offence": This is a complex matter which cannot be defined in a single sentence. What constitutes (or may constitute) a serious arrestable offence is laid down by Article 87 (as amended) of the Police and Criminal Evidence (Northern Ireland) Order 1989 (known as the PACE (NI) Order 1989) together with Schedule 5 to that Order. These are reproduced below to give Lay Magistrates guidance as to the nature of the offence in question when hearing an application for a search warrant.

PACE (NI) Order 1989 Article 87 and Schedule 5

Meaning of "serious arrestable offence"

87. - (1) This Article has effect for determining whether an offence is a serious arrestable offence for the purposes of this Order.
(2) The following arrestable offences are always serious-
(a) an offence (whether at common law or under any statutory provision) specified in Part I of SCHEDULE 5; and
(aa) any offence which is specified in paragraph 1 of Schedule 5 to the Proceeds of Crime Act 2002 (drug trafficking offences);
(ab) any offence under section 327, 328 or 329 of that Act (certain money laundering offences);
(b) an offence under a statutory provision specified in Part II of that Schedule.
(3) Subject to paragraph (4), any other arrestable offence is serious only if its commission-
(a) has led to any of the consequences specified in paragraph (6); or
(b) is intended or is likely to lead to any of those consequences.

(4) An arrestable offence which consists of making a threat is serious if carrying out the threat would be likely to lead to any of the consequences specified in paragraph (6).
(6) The consequences mentioned in paragraphs (3) and (4) are-
(a) serious harm to the safety of the United Kingdom, or any part of it, or to public order;
(b) serious interference with the administration of justice or with the investigation of offences or of a particular offence;
(c) the death of any person;
(d) serious injury to any person;
(e) substantial financial gain to any person; and
(f) serious financial loss to any person.
(7) Loss is serious for the purposes of this Article if, having regard to all the circumstances, it is serious for the person who suffers it.
(8) In this Article "injury" includes any disease and any impairment of a person's physical or mental condition.

SERIOUS ARRESTABLE OFFENCES (Sch.5)

PART I
OFFENCES MENTIONED IN ARTICLE 87(2)(a)
1. Treason.
2. Murder.
3. Manslaughter.
4. Rape.
5. Kidnapping.
6. Incest with a girl under the age of 14.
7. Buggery with a person under the age of 16. [am.2003 NI 13 from 28 July 2003]
8. Indecent assault which constitutes an act of gross indecency.
9. An offence under section 170 of the Customs and Excise Management Act 1979 of being knowingly concerned, in relation to any goods, in any fraudulent evasion or attempt at evasion of a prohibition in force with respect to goods under section 42 of the Customs Consolidation Act 1876 (prohibition on importing indecent or obscene articles).

PART II
OFFENCES MENTIONED IN ARTICLE 87(2)(b)
Explosive Substances Act 1883 (c. 3)
1. Section 2 (causing explosion likely to endanger life or property).
Criminal Law Amendment Act 1885 (c. 69)
2. Section 4 (unlawful carnal knowledge of a girl under the age of 14).
Firearms (Northern Ireland) Order 1981 (1981 NI 2)
4. Article 17 (possession of firearm with intent to injure).
5. Article 18(1) (use of firearm or imitation firearm to resist arrest).
6. Article 19 (carrying firearm or imitation firearm with criminal intent).

Taking of Hostages Act 1982 (c. 28)
7. Section 1 (hostage-taking).
Aviation Security Act 1982 (c. 36)
8. Section 1 (hijacking).
Criminal Justice Act 1988 (c. 33)
9. Section 134 (torture).
Aviation and Maritime Security Act 1990 (c.31)
10. Section 1 (endangering safety at aerodromes)
11. Section 9 (hi-jacking of ships)
12. Section 10 (seizing or exercising control of fixed platforms)
Channel Tunnel (Security) Order 1994 (SI 570)
13. Article 4 (hijacking of channel tunnel trains)
14. Article 5 (seizing or exercising control of the tunnel system)
[Note: the numbering in Schedule 5 has been incorrectly duplicated here]
Protection of Children (Northern Ireland) Order 1978 (NI 17)
13-. Article 3 (indecent photographs or pseudo-photographs of children)
Road Traffic (Northern Ireland) Order 1995
13A. Article 9 (causing death, or grievous bodily injury, by dangerous driving).
14-. Article 14 (causing death, or grievous bodily injury, by careless driving when under influence of drink or drugs).

"Items subject to legal privilege" means:

(1) communications between a lawyer and client or any person representing the client made in connection with the giving of legal advice to the client;

(2) communications between a lawyer, his client or client's representative or between such persons and any other person made in connection with or in contemplation of legal proceedings and for the purposes of such proceedings;

(3) items enclosed with or referred to in the above communications when they are in the possession of a person who is entitled to possession of them.

NOTE: Items held with the intention of furthering a criminal purpose are not items subject to legal privilege.

"Excluded Material" means:

(1) personal records which a person has acquired in the course of any trade, business, profession or other occupation, or for the purposes of any paid or unpaid office and which he holds in confidence;

(2) human tissue or tissue fluid which has been taken for the purpose of diagnosis or medical treatment and which a person holds in confidence;

(3) journalistic material which a person holds in confidence and which consists of documents or records.

NOTE: A person holds material under (1) and (2) above in confidence if he holds it subject to an express or implied undertaking to hold it in confidence or to a restriction on disclosure or an obligation of secrecy contained in any statutory provision. A person holds material under (3) above in confidence if it is held subject to such an undertaking, restriction or obligation and it has been continuously so held (by one or more persons) since it was first acquired or created for the purpose of journalism.

"Personal Records" means: Records concerning an individual (living or dead) who can be identified from them and relating to his physical or mental health, spiritual counselling or counselling for his personal welfare by any voluntary organisation or individual who by reason of office, or occupation has responsibilities for his personal welfare or by reason of an order of a court has responsibility for his supervision.

"Journalistic Material" means: Material acquired or created for the purpose of journalism, provided it is in the possession of a person who acquired or created it for the purpose of journalism. A person who receives material from someone who intends that the recipient shall use it for the purposes of journalism is to be taken to have acquired it for those purposes.

"Special procedure material" means:

(1) journalistic material, other than "excluded material";

(2) material, other than items "subject to legal privilege" or "excluded material", in the possession of a person who acquired or created it in a trade, business, or profession or other occupation or for the purpose of any paid or unpaid office and is held subject to an express or implied undertaking to hold it in confidence or statutory requirement to maintain secrecy or restrict disclosure.

Where material is acquired by an employee from his employer and in the course of his employment or by a company from an associated company it is only special procedure material if it was so immediately before the acquisition.

Where material is created by an employee in the course of his employment or by a company on behalf of an associated company it will only be special procedure material if it would have been had the employer or associated company created it.

Appendix 4

The European Convention on Human Rights

The full text of the most relevant articles:

ARTICLE 3

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

ARTICLE 5

1. Everyone has the right to liberty and security of person.

   No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

   (a) the lawful detention of a person after conviction by a competent court;

   (b) the lawful arrest or detention of a person for non-compliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

   (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority of reasonable suspicion of having committed and offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so;

   (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

   (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts, or vagrants;

   (f) the lawful arrest or detention of a person to prevent his effecting an unauthorized entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and the charge against him.
3. Everyone arrested or detained in accordance with the provisions of paragraph 1(c) of this article shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial.

4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.
5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this article shall have an enforceable right to compensation.

ARTICLE 6

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly by the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:

    (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

    (b) to have adequate time and the facilities for the preparation of his defence;

    (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

    (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

    (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

ARTICLE 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

ARTICLE 14

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

NOTE: It will be noted that some of the convention articles are **absolute**, *i.e.* there are no conditions which permit interference with the right (e.g. Article 3 above), and some are qualified or **non absolute**, *i.e.* there are exceptions where the right may be interfered with because of some overriding concern, such as protection of the rights and freedoms of others (*e.g.* Article 8 above).

It is therefore useful to consider the following when considering what order to make in a given case:

a. Has there been or will there be an interference with a convention right?

b. If it is a non absolute right is the interference justified? *i.e.*:

   i. Is it lawful under a clear and accessible statute or principle of common law? (this is a question to be answered by the Resident Magistrate).

   ii. Is it intended to pursue a legitimate aim, typically the rights and freedoms of others?

   iii. Is it necessary in a democratic society (*i.e.* meeting a pressing social need and proportionate)?

   iv. Is it discriminatory?

Whether or not interference with a right is **proportionate** will depend on the following questions:

a. Can the objective be met by less onerous means?

b. Does the measure have an excessive or disproportionate effect on the interests of affected persons?

Appendix 5

The United Nations Convention on the Rights of the Child

The United Kingdom is a signatory to the above convention and has therefore bound itself by the provisions set out in it. The convention does not have force of domestic law in the way that the European Convention on Human Rights does. Some of its more relevant articles are set out below. It will be seen how much of the content of these articles has informed the approach which has been adopted in the Family Proceedings Court and Youth Court.

Extracted Articles

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.

2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.

3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests. 4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the case may be, legal guardians,

have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 37

States Parties shall ensure that:

(a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;

(b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;

(c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;

(d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.
3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.

4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Appendix 6

The following is a list of the various names and addresses of the institutions to which either the family proceedings court or the youth court might refer children and young people.

Child Contact Centres

Knock Child Contact Centre
Knock Presbyterian Church, 53 Kings Road Belfast BT5 6JH
028 9080 6091
Muriel Orr - Coordinator

Central Belfast Child Contact Centre
St Stephen's Church of Ireland Halls, Millfield.
028 9079 3230
Myra Napier – Coordinator

Cloona Child Contact Centre
Cloona House, Colin Road, Dunmurry
028 9062 2653
Anne O'Kelly - Co-ordinator

Mid Ulster Child Contact Centre
Gortalowry House, 94 Church Street, Cookstown BT80 8HX
028 8676 7777
Frances McKenna - Coordinator

Designated Attendance Centres: -

Abbey Project – 54 Abbey Street Bangor BT20 4JB 028 9146 4577

Antrim Adolescent Partnership – 10A Dublin Road Antrim BT41 4EA

028 9448 7556

Armagh & Dungannon Adolescent Partnership – 16 Russell Street Armagh

BT61 9AA 028 3751 5910

Ballymena Adolescent Project – 2 Broadway Avenue Ballymena BT43 7AA

028 2563 8288

Coleraine Adolescent Partnership – 4 Castle Lane Coleraine BT51 3DR

028 7032 9346

Community Services Banbridge – 15 Castlewellan Road Banbridge BT32 4AX

028 4066 0884

Craigbann Adolescent Partnership – Unit 7 Legahory Centre Brownlow Craigavon

BT65 5BE 028 3834 4257

Down Adolescent Partnership – 13A English Street Downpatrick BT30 6AB

028 4461 2817

Enniskillen Adolescent Partnership – 18A Shore Road Enniskillen BT74 7EF

028 6632 0560

Mid Ulster Youth Partnership – 9A Broad Street Magherafelt BT45 6EB

028 7963 4943

Newry Adolescent Partnership – 14A The Mall Newry BT34 1BJ 028 3025 1115

Newtownabbey & Carrickfergus Adolescent Partnership –

The Norah Bain "a" House Whiteabbey Hospital Doagh Road Newtownabbey

BT37 9RH 028 9086 2990

Northside Project – 171 –179 Duncairn Gardens Belfast BT15 2GE 028 9035 1982

Outerwest Project – 2 The Hawthorns Belfast BT10 0NR 028 9030 1611

South Belfast Project – 2 The Hawthorns Belfast BT10 0NR 028 9030 1611

Towers Project – 19 Mill Street Newtownards BT23 4JB 028 9182 0611

West Side Project – 471 Falls Road Belfast BT12 6DD 028 9024 5858

Whitefield East Belfast (WEB) – Unit 8 Library Court
402 Upper Newtownards Road Belfast BT4 3EY 028 9065 2440

Young Offenders Centre

Hydebank Wood
Hospital Road
Belfast
BT8 8NA
028 9025 3666

Secure Accommodation – Juvenile Justice Centre

Juvenile Justice Centre for Northern Ireland
School Avenue
Bangor
BT19 1TB
028 9127 2244

Secure Care Accommodation (Regional Centres) –

Shamrock House and Linden House
Lakewood Centre
167 Rathgael Road
Bangor
028 9127 5900

Residential Homes:

Western Health & Social Services Board

Foyle HSST: -

- Rossneal Assessment Unit 86 Rossdowney Road 02871 214420
- The Cottage Harberton House 106 Irish Street Londonderry BT47 2ND 02871 320983
- 5 Upper Galliagh Road Londonderry 02871 276680
- 103 Chapel Road Waterside Londonderry BT47 2BG 02871 313381
- 23 Racecourse Road Londonderry BT48 7RE 02871 361224
- 23D Scroggy Road Limavady 02877 761950
- 84 Chapel Road Waterside Londonderry 02871 344583

Sperrin Lakeland Health & Social Care Trust: -

- Coneywarren Childrens Home15 Beltany Road Omagh Co Tyrone BT78 5WA 028 8224 7847

Eastern Health & Social Services Board

South & East Belfast HSST: -

- Bawnmore Road Childrens Home 70 Bawnmore Road Belfast BT9 6LD 028 9066 8553
- North Road Childrens Home 60 North Road Belfast BT5 5HN 028 9065 8656
- College Park Avenue Childrens Home 57a College Park Ave Belfast BT7 1LR

Down Lisburn HSST: -

- Appletree House Childrens Home 100 Bridge Street Downpatrick BT30 6HD 028 4461 3363
- Glenmore Childrens Home 1a Glenmore Park Hilden Lisburn BT27 47RT 028 9266 2081
- Lindsay House Childrens Home Laurel Way Seymour Hill Dunmurry Belfast BT17 9PR 028 9043 1072
- Flaxfield Childrens Home Hillsborough Road Lisburn 028 9250 1242
- 70 Hillsborough Road 028 9266 5141

North & West Belfast HSST

- 444 Antrim Road Children's Unit 444 Antrim Road Belfast BT15 5GB 028 9077 9119
- Children's Unit 1 Glandore Avenue Belfast BT15 3FL 028 9077 5459
- Somerton Road Children's Unit 57 Somerton Road Belfast BT15 4DD 028 9037 0701
- 57 Fortwilliam Park Belfast 028 9078 1912

Ulster Community & Hospitals HSST

- Marmion Adolescent Unit, 126 Church Road Holywood BT18 9BY 028 9042 2408
- 1A William Street, Newtownards 028 9151 2019
- Lakewood Centre 167 Rathgael Road Bangor 028 9127 5900

Northern Health & Social Services Board

Causeway HSST: -

- Dhu Varren Adolescent Unit, 45 Dhu Varren Portrush BT56 8LN 028 7082 3278

Homefirst Community HSST

- Adolescent Unit 5a Hollybank Road Ballee Ballymena 028 2564 4220
- Carnview 41 Knockenagh Rathfern Newtownabbey 028 9036 5733
- Princes Gardens 4 Princes Gardens Larne 028 2827 8802
- Whitehaven 17 Edward Road Whitehead 028 9335 3367

Southern Health & Social Services Board: -

Armagh & Dungannon HSST

- Drumglass Lodge 20 Coalisland Road Dungannon 028 8772 6065
- Woodside Ballinahonemore Road Ardmore Armagh 028 3752 7182

Newry & Mourne HSST

- Cedar Grove 3 Windsor Avenue Newry Co Down BT34 1EG 028 3026 8025

Craigavon & Banbridge HSST

- Bocombra Childrens Centre 2 Old Lurgan Road Portadown 028 3833 2479
- Edenvilla Childrens Home 6 Edenderry Road Banbridge 028 4066 2614
- Cherry Grove Childrens Home Sloane Street Lurgan 028 3832 7645

Appendix 7

Glossary of terms *which may be used or heard in the course of a Lay Magistrate's work:*

Acquittal. Discharge from prosecution of a Defendant in a criminal trial on a finding of not guilty.

Adjournment. The putting off of the hearing of a case to a future time or day

Affidavit. A written statement in the name of a person (based on facts within his/her own knowledge) who voluntarily signs it having sworn or affirmed that it is true.

Article 4 Report. A report on a child's welfare, usually prepared by a social worker, which a family proceedings court may request under the provisions of Article 4 of the Children (Northern Ireland) Order 1995. It may be given orally or in writing.

Assessor. A person who assists the court in determining a technical or other question involving a specific area of expertise but who has no voice in the decision.

Charge Sheet. A list of the particular charges, and of the person(s) charged, awaiting a hearing in a magistrates' court.

Civil Law. Civil law is the part of the law which deals with disputes between parties Generally, it involves things like disputes over property, commercial transactions or family matters. Civil law normally leads to some kind of compensation or other remedy for the party seeking the adjudication of the court, whereas criminal law looks to punish and rehabilitate the offender. The Family Proceedings Court has a civil law jurisdiction.

Criminal Law. Criminal law is the part of the law concerned with illegal acts committed against individuals or society as a whole. Criminal law uses the power of the courts to seek punishment for these offences, and is primarily concerned with punishment, deterrence and rehabilitation. The Youth Court has a criminal law jurisdiction.

Deponent. A person who makes (swears or affirms) an affidavit or deposition.

Deposition. The evidence on oath of a witness in a judicial proceeding. The evidence is normally given orally before a magistrate or magistrates and taken down in writing. It is then signed by the witness and one of the magistrates

Discharge. To release a person from an obligation or detention. Thus if a magistrates court does not find sufficient evidence to send an accused person for trial to the Crown Court he/she is released from any further obligation in respect of those proceedings and freed from detention. Discharge also means the setting aside of a court order.

The European Convention on Human Rights. An agreement between the members of the Council of Europe to protect the human rights of its members. It led to the establishment of the European Commission for Human Rights and the European Court of Human Rights.

The European Court of Human Rights. The international court, sitting in Strasbourg, which interprets the European Convention on Human Rights. Only when every legal process has been exhausted in his or her own member country may an individual bring a case to the European Court of Human Rights.

Ex parte*.** Ex parte is a Latin legal term that literally means "on behalf of one side only". It may be used to refer to legal proceedings involving only one party to a dispute – such as an Emergency Protection Order, where normally only the applicant appears before the magistrate and other parties affected by the outcome are not given **notice** of the proceedings. An ***Inter Partes hearing is one where all the parties are involved.

Examination. The questioning of a person on oath. In court the evidence of a witness is normally obtained through oral examination by the party wishing to call that witnesses evidence. This is known as **examination-in-chief**. The opposite party then examines the witness to diminish the effect of the evidence. This is known as **cross-examination**. The party calling him/her may then ask further questions to explain any false impression left by the cross-examination. This is called **re-examination**.

Extradition. Extradition takes place when, at the request of another jurisdiction (country), a person accused or convicted of a serious offence is returned by the United Kingdom to that jurisdiction, or where a person is returned from another jurisdiction, at the United Kingdom's request, to stand trial or serve a custodial sentence. (This is distinct from deportation where the country in which the person is present initiates the removal process.)

Guardian ad Litem. A person, normally a social worker in the Northern Ireland Guardian ad Litem Agency, appointed by the court to protect the interests of a child who is the subject of a public law application in a Children Order case *for the duration of that case*. A guardian ad litem is so called because *ad litem* means "for the suit" or, more loosely, "for the purpose of the proceedings" and serves to distinguish the office from the role of legal guardian whose duty extends to protecting a child generally and is not confined to the lifetime of a set of proceedings.

Indictable Offence. A serious criminal offence which, if committed by an adult, is triable (*i.e.* may be tried) on indictment by a Crown Court. Most common law offences, *e.g.* rape and murder, are considered to be indictable. Criminal offences which may only be dealt with by the magistrates' court are called **summary offences**.

Indictment. The written accusation of one or more persons of a crime or crimes used in Crown Court proceedings. It takes the form of a **bill of indictment** which is delivered to the court.

Jurisdiction. This word has two, related, meanings:

1. The power of a court or judge to hear or entertain a legal action or other proceeding.
2. The districts or limits within which the judgments or orders of a court can be executed.

Lay Magistrate. A magistrate is a judicial officer exercising a summary jurisdiction in criminal and, more recently non-criminal (civil) matters. Whereas **Resident Magistrates** are legally qualified, Lay Magistrates are not so qualified. "Lay" comes from the Greek word *laos* which simply means "people". Thus Lay Magistrates represent the wider community within the justice system. By Schedule 1 of the Justice (Northern Ireland) Act 2002, which is the statute creating the Lay Magistracy; "Lay Magistrate" is listed as a judicial office.

Leave. The permission of the court to do something. Thus *e.g.* the leave of the court is, in certain cases, required before an application may be made under the Children Order.

Legal Aid. Financial assistance in respect of legal costs when taking or defending proceedings at court. The Legal Aid fund is administered by the Legal Services Commission in Northern Ireland.

Litigation. The act of taking legal proceedings against or on behalf of someone or something. The person who begins this legal action is often called the **litigant**. Someone who pursues litigation without the benefit of any legal representation is known as a **personal litigant**.

Lord Chancellor (more fully, Lord High Chancellor). Speaker of the House of Lords and a member of the cabinet with responsibility for the courts and the administration of justice. He is responsible for the appointment of Lay Magistrates, among others, in Northern Ireland.

MacKenzie Friend. A friend or advisor, other than a legal representative, who may, with the permission of the court, sit with a party to proceedings in court to give advice and assistance and to help take notes but who cannot speak in court on behalf of that party. There is a presumption in favour of permitting assistance by a MacKenzie friend in Children Order cases.

Minor. A person under the age of 18 years

Mitigation. See below under "**Plea**."

Notice. Informing other parties in advance – usually in written form – of the hearing of an application before the court.

Plea. The response of an accused person in court after the substance of the charge or the indictment has been read out to him/her, usually at the start of criminal proceedings. Normally the plea will either be "guilty" or "not guilty". A **plea in mitigation** is where the accused pleads guilty and seeks to draw the court's attention to facts which will tend to reduce the severity of the punishment which he/she receives.

Pleadings. Written or printed statements (usually *pro forma*) delivered alternately to one another by the parties to an action prior to the issues in the case being decided by the court. These contain most of the details of the questions in dispute between the parties.

Rebut. To take away the effect of something, disprove a presumption or inference. **Rebuttal evidence** is therefore evidence which has the effect of disproving a presumption or inference raised by the prosecution at a criminal trial.

Recognizance. An undertaking or bond given by a person before a court to observe certain conditions. Also the name given to the sum of money pledged as surety to observe the conditions. Thus the court will normally require a recognizance from an accused person on releasing him/her on bail to ensure that he/she keeps the bail conditions, including appearing in court in due course for the trial.

***Re* L Hearing.** This is a type of hearing in Children Order cases where there has been an allegation of violence made against a party applying for a contact order. Specifically, the allegation is that the violence has affected or involved the child, so that he/she has suffered emotional abuse. The court is strongly encouraged to hold a separate hearing into the allegation of violence, the possible involvement of the child and any steps taken by the abusive parent to address these concerns. It must arrive at a finding of fact regarding these matters before considering whether to grant the order sought by the applicant. (*In re* L (a Child) is the name of a case dealing with contact and domestic violence which was decided in June 2000 by the Court of Appeal in England.)

Remand. The act of adjourning (*i.e.* putting back to a later date) the hearing of a criminal prosecution, and sending the accused back into custody, or placing him/her on bail to a later date to await trial.

Respondent. A person upon whom a summons has been issued. Thus the person in receipt of a Form C1A – which is the usual form of summons in the Family Proceedings Court – is the Respondent to the proceedings. Note, however that "respondent" is also the name given to a party to a case on appeal where the appeal of the case has been initiated by the opposing party.

Service. The legal term often used for the delivery of pleadings and other legal documents by one party on another or on the court. Thus *e.g.* under the rules governing the Family Proceedings Court a Form C1A "shall be **served** on each respondent to the application".

Split Hearing. This is where there is a separate issue of fact to be decided by the court before it may proceed to consider the order applied for. Thus *e.g.* where a public law order is sought under the Children Order on grounds that a child is suffering/ likely to suffer significant harm, a separate hearing will take place as to whether **Threshold Criteria** (see below) are met. A ***Re* L Hearing** (see above) also gives rise to a split hearing situation.

Statute. An Act of Parliament (*e.g.* The Justice (Northern Ireland) Act 2002). This type of law is known as primary legislation. Laws which are made under the powers given by an Act of Parliament and which are therefore secondary legislation are known as **Statutory Instruments**. They are normally identified by the word "Order" in their title (*e.g.* The Children (Northern Ireland) Order 1995). A **statutory provision** may be thought of as a particular section, article or clause in a statute or statutory instrument.

Summons. A document issued from a court office or a judicial authority requiring the person to whom it is addressed to attend before a judge or other officer of the court. A summons may be issued to a person to answer a charge or complaint against him or her or a summons may be issued to require someone to attend the court to give evidence.

Trust. A Health and Social Services trust which exercises its functions under the Health and Personal Social Services (Northern Ireland) Order 1994.

Threshold Criteria. The factual conditions which must be established under Article 50 of the Children Order before a court will consider whether to grant a Care or Supervision Order in favour of a trust.

Vexatious. Designed merely to annoy (used of litigation)

Ward of Court. A minor whose custody is vested in the High Court by order of that court under the exercise of its wardship jurisdiction. A ward of court is usually placed under the care and control of an individual or Trust.

Warrant. A document issued from a judicial authority directing and/or authorizing a specific act, such as the arrest of a person or the search of premises and seizure of things found there.

Welfare Officer. A person, almost invariably a social worker, who prepares a Welfare or "Article 4" Report in Children Order cases.