



Joint Policy

Diverting Children and Young People away from the Criminal Justice System

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Introduction

The principal aim of the youth justice system in the Falkland Islands is to prevent offending by youths and re-offending by young offenders. All persons and bodies performing functions in relation to the youth justice system must have regard to this aim¹.

The Royal Falkland Islands Police, the Probation Service, the Social Services Department and the Prosecution Service are committed to working in effective partnership to secure outcomes that prevent offending by youths.

An important part of achieving the principal aim of the youth justice system is the diversion of children and young people away from being prosecuted in court and towards supportive measures that will help prevent offending.

Criminalising children and young people can have a significant impact on their wellbeing, development and education and employment opportunities. This in turn can increase the risk of re-offending later in life. It is in the best interests of children, young people and wider society to divert children and young people away from this outcome by providing intervention and support services. There is strong evidence to suggest that diversion from prosecution reduces reoffending, lowers costs, and leads to better outcomes for children, young people and society as a whole².



¹ s.720 Criminal Procedure and Evidence Ordinance 2014

² see, for example: Wilson, D, Brennan, I, Olaghere. (2018). 'Police-initiated diversion for youth to prevent future delinquent behaviour'. Campbell Systematic Reviews; Wilson H, Hoge R (2013). The Effect of Youth Diversion Programs on Recidivism: A Meta-Analytic Review. Criminal Justice and Behavior, 40(5), 497-518; and McAra, L, McVie, S (2010). 'Youth Crime and Justice: Key Messages from the Edinburgh Study of Youth Transitions and Crime'. Criminology and Criminal Justice 10(2): 179-209.

Terminology

The terms 'child', 'young person' and 'youth' have specific meanings in law³ and are defined as follows:

'youth'	means a person aged below 18 years, whether a child or a young person
'young person'	means a person who has attained the age of 14 years and is under the age of 18 years
'child'	means a person under the age of 14 years

³ see section 2 of the Criminal Procedure and Evidence Ordinance 2014

The Youth Diversion Scheme

The Youth Diversion Scheme is operated by the Probation Service and aims to provide children and young people with early intervention to prevent harm and reduce the risk of offending. It provides a robust alternative to prosecution through the criminal justice system.

The Youth Diversion Scheme is available to children and young people above the age of criminal responsibility. The age of criminal responsibility is ten years old. The law provides that a child under the age of ten cannot commit a criminal offence⁴. Safeguarding and support services for children under the age of ten are provided by the Social Services Department.

The Youth Diversion Scheme is available to children and young people who are at risk of offending. A child or young person is at risk of offending where they display behaviours that could lead to the commission of a criminal offence or they have engaged in behaviour which is criminal.

All children and young people are different and successful intervention requires a tailored approach that takes into account the child or young person's particular circumstances and focuses on the specific identifiable causes of the offending related behaviour.

The causes of offending related behaviour in children and young people are varied and can be a complex combination of several different factors. These factors include, but are not limited to:

- (a) Difficulties related to education;
- (b) Economic hardship;
- (c) Being the victim of abuse;
- (d) Difficult family or social relationships;
- (e) Lack of boundaries and supervision;
- (f) Exposure to criminal offending or pro-criminal attitudes;
- (g) Drug and alcohol misuse; and
- (h) Mental health issues.

When a child or young person is referred to the Youth Diversion Scheme a tailored diversion programme of work, intervention and support will be developed to meet the specific identifiable needs of each child or young person.

⁴ see section 3 of the Crimes Ordinance 2014

The following principles will be followed when developing a tailored diversion programme:

- (a) The diversion programme will identify the behaviour of concern and aim to prevent an escalation or repetition of the behaviour.
- (b) The diversion programme will identify the strengths of the child or young person and focus on developing those strengths.
- (c) The diversion programme will identify the needs of the child or young person and focus on meeting those needs.
- (d) The diversion programme will take into account the age and developmental age of the child or young person.
- (e) The diversion programme should aim to promote maturation, responsibility taking and the development of thinking skills.
- (f) The diversion programme should include collaboration with the child or young person's parents, guardian or family members.
- (g) The diversion programme should commence as soon as possible on the basis that the earlier the intervention the more likely it is to be successful.
- (h) The diversion programme will avoid labelling the child or young person and will treat the child or young person as an individual.
- (i) The diversion programme will be supported by pro-active engagement and joint working between services and departments of the Falkland Islands Government.

The diversion programme should consider including a restorative justice element. The benefit of a restorative justice element is that it allows the child or young person to hear first-hand about the impact of their behaviour on the people directly affected. This approach also gives those affected an opportunity to be heard and provides an opportunity for all parties to move forward positively. The following principles will be followed when considering the inclusion of a restorative justice element in a diversion programme:

- (a) Restorative justice is an effective diversion tool and should be considered as an element in each diversion programme.
- (b) Restorative justice will not be suitable in every case. The more serious the conduct of the child or young person and the greater the harm caused the less appropriate restorative justice is likely to be. However, all cases are different and restorative justice may be appropriate even in more serious cases.

- (c) Engagement in restorative justice is voluntary for the child or young person. Specific consent should be obtained before a restorative justice element is included in a diversion programme. A child or young person may be willing to engage in a diversion programme but not in a restorative justice element. An unwillingness to engage in restorative justice does not necessarily mean that a child or young person is unwilling to recognise the impact of their behaviour. Meeting people affected by their behaviour can be very difficult for children and young people and nervousness, embarrassment and shame can all be factors contributing to a refusal to engage in a restorative justice element.
- (d) Engagement in restorative justice is voluntary for the people affected by the behaviour of the child or young person. There are many reasons why a person may not wish to engage in restorative justice and people should not feel pressured to do so. A person's unwillingness to engage in restorative justice does not prevent other work from being undertaken to assist the child or young person to understand the consequences of their behaviour.
- (e) Care should be taken to assess both the child or young person and the person affected by the behaviour to establish their motivation for engaging in restorative justice and to ensure that a restorative justice element will not lead to harm being caused to either party. Restorative justice is an effective diversion tool but only where both parties can engage in an appropriate manner.
- (f) A restorative justice element will not be appropriate if the child or young person does not accept responsibility for their behaviour. Restorative justice should be kept under review because a child or young person who initially does not accept responsibility may do so at a later stage. A restorative justice element could then be added to the diversion programme if appropriate.
- (g) Where a restorative justice element is appropriate it will be tailored to the individual needs of the child or young person and the person or people affected by the behaviour. Restorative justice could be conducted face to face or undertaken indirectly through an exchange of letters or messages. Relevant professionals will manage a restorative justice element to ensure that all participants are safe and that contact is supervised and appropriate.

The Probation Service will make a written record of the diversion programme and provide a copy to the child or young person, their parent(s) or guardian(s), the Social Services Department and the Royal Falkland Islands Police.

This will ensure that the child or young person and those involved with delivering the diversion programme will have a clear record of what is expected.

Eligibility

Engagement with the Youth Diversion Scheme is voluntary and a child or young person cannot be compelled to engage with a diversion programme.

The Youth Diversion Scheme is available to all children and young people irrespective of race, gender, disability, belief or immigration status.

Prior to a decision being made to refer the child or young person to the Youth Diversion Scheme the Social Services Department or the Royal Falkland Islands Police should explain the Youth Diversion Scheme to the child or young person and ascertain whether they are willing to engage with the scheme. Parental or guardian consent should also be obtained and the outcome of these conversations should be recorded.

Where a child or young person is said to have committed a criminal offence the child or young person will need to have accepted the behaviour which constitutes the offence before they are eligible for referral to the Youth Diversion Scheme. Children and young people are entitled to have their right to the presumption of innocence respected. In many cases where the child or young person denies the offence this will be coupled with the child or young person not being willing to engage with the Youth Diversion Scheme.

There will be cases, however, where the child or young person accepts behaviour which may lead to criminal offending without accepting that they have committed an alleged offence. For example, a child or young person may accept being out late at night and consuming alcohol but may deny their involvement in alleged public order offences linked to that behaviour.

It may also be the case that the child or young person accepts some of the behaviour alleged as criminal but does not accept other aspects of the allegation. For example, a child or young person may accept having encouraged an alleged offence of criminal damage but deny causing the damage themselves.

It is not necessary for the child or young person to accept all the behaviour alleged against them or the commission of a criminal offence where there is some acceptance of behaviour that may lead to offending. Where the child or young person accepts some behaviour which makes them eligible to be considered for referral to the Youth Diversion Scheme then a referral can still be made.

A pragmatic approach is to be adopted that achieves the overall objective of referring eligible children and young people to the Youth Diversion Scheme.

Diversion Process

The process to be followed is different depending on whether the child or young person is at risk of offending or whether they are said to have committed a criminal offence and are under police investigation.

Children and young people at risk of offending

Where a child or young person is at risk of offending, rather than under active police investigation in relation to an alleged offence, the case will first be referred to the Social Services Department.

In cases where there is a risk of offending a referral to the Social Services Department may come from a number of different sources, such as the Education Department, Health Department, Royal Falkland Islands Police or from an individual. The referral is likely to disclose information about the behaviour or circumstances of the child or young person that requires a review to decide whether further action is required.

In accordance with child safeguarding procedures the Social Services Department and appropriate partner agencies will decide whether the referral discloses information that reaches the threshold required for a strategy meeting to be held.

If a strategy meeting takes place, the Social Services Department and appropriate partner agencies will decide whether there is information that establishes that the child or young person is displaying behaviours that could lead to the commission of a criminal offence. If the conclusion is reached that the child or young person is displaying such behaviour then the child or young person should be referred to the Youth Diversion Scheme. Where it is anticipated that such a referral may be made a Probation Officer should be invited to attend the strategy meeting.

In addition to a referral to the Youth Diversion Scheme the strategy meeting may also result in other safeguarding steps being taken. The Youth Diversion Scheme can run alongside other safeguarding interventions and often forms one part of a wider safeguarding response.

It is not necessary for a strategy meeting to have taken place before a child or young person can be referred to the Youth Diversion Scheme. In some cases the threshold for a strategy meeting will not be met but the Social Services Department and appropriate partner agencies may still consider that the child or young person should be referred to the Youth Diversion Scheme.

Children and young people alleged to have offended

Where a child or young person is alleged to have committed an offence an investigation will be commenced by the Royal Falkland Islands Police. The extent of the police investigation will depend on the nature of the alleged offence and the individual circumstances of the case.

In accordance with child safeguarding procedures the Royal Falkland Islands Police will make a referral to the Social Services Department. The Social Services Department, together with the Royal Falkland Islands Police, will decide whether the circumstances of the case reach the threshold required for a strategy meeting to be held.

Where a child or young person admits the behaviour which constitutes the alleged offence the Social Services Department and the Royal Falkland Islands Police can decide to refer the child or young person to the Youth Diversion Scheme. Where it is anticipated that such a referral may be made a Probation Officer should be invited to attend the strategy meeting.

A child or young person may not admit the behaviour which constitutes the alleged offence but may nonetheless display other behaviours that could lead to the commission of other criminal offences. In this situation a child or young person can still be referred to the Youth Diversion Scheme but care must be taken to ensure that the diversion programme does not contravene the child or young person's right to the presumption of innocence or prejudice an ongoing police investigation.

Where the threshold required for a strategy meeting is not met the child or young person may still be referred to the Youth Diversion Scheme.

In all cases where it is alleged that a child or young person has committed an offence and consideration is being given to the referral of the child or young person to the Youth Diversion Scheme, the Royal Falkland Islands Police should seek advice from the Prosecution Service.

The role of the Prosecution Service is to advise the Royal Falkland Islands Police as to whether a case is suitable for referral to the Youth Diversion Scheme, without the need for further investigative steps to be taken, or whether a file should be submitted to the Prosecution Service for a charging decision to be made. The Prosecution Service will advise as to whether referral to the Youth Diversion Scheme is an appropriate outcome or whether the alleged offending reaches the threshold whereby the Royal Falkland Islands Police should submit a full case file to the Prosecution Service for a charging decision to be made.

It is in the best interests of the child or young person for a decision regarding referral for prosecution to be made swiftly. Early decision making at this stage also allows the Probation Service to develop the diversion programme knowing whether the case is still actively being considered for prosecution. This knowledge will assist in determining the type of work to be undertaken and whether certain types of work are appropriate. For example, a restorative justice element will not be appropriate if a prosecution may take place and people affected by the child or young person's behaviour may be witnesses in the case.

Advice from the Prosecution Service at an early stage enables cases suitable for diversion to be identified and diverted accordingly. It also allows for there to be clearly recorded decision making and avoids unnecessary case file build and delay.

The Royal Falkland Islands Police will use the existing procedure for obtaining advice from the Prosecution Service and should submit a form MG3 which will set out:

- (a) an accurate summary of the nature and circumstances of the alleged offending;
- (b) relevant background information about the personal and family circumstances of the child or young person;
- (c) any views expressed by the alleged victim;
- (d) details of any previous attempts at diversion; and
- (e) the investigating officer's recommendation in relation to diversion.

When advising as to whether a case is suitable for diversion without the preparation of a full case file the Prosecution Service will take the following factors into account:

- (a) the age of the child or young person;
- (b) any information about the developmental age of the child or young person;
- (c) the culpability of the child or young person in the context of their age or developmental age;
- (d) the harm caused by the alleged offending;
- (e) any views expressed by the alleged victim;
- (f) whether a specific person or members of the public more generally require protection through a protective order, such as a restraining order, domestic abuse protection order or sexual harm prevention order; and
- (g) any previous attempts at diversion and the outcome.

The Prosecution Service will issue advice in writing and a copy of the advice should be retained on the police file for future reference.

Where it is advised that diversion is a suitable disposal in the circumstances of the case it will not be necessary for the Royal Falkland Islands Police to prepare and submit a full case file to the Prosecution Service.

Where the Prosecution Service advises that the case reaches the threshold for continued investigation and/or submission of a case file for a charging decision, the Royal Falkland Islands Police should proceed on the basis of the advice provided.

Continued investigation and file submission to the Prosecution Service for a charging decision does not prevent referral to the Youth Diversion Scheme where the child or young person accepts the alleged offending or displays other behaviours that could lead to the commission of other criminal offences.

In these circumstances the Royal Falkland Islands Police and the Prosecution Service will prioritise completion of the charging decision process to avoid unnecessary delay. The Probation Service will liaise with the Royal Falkland Islands Police to ensure that a diversion programme does not interfere with any ongoing police investigation or subsequent proceedings.

Some cases may be sufficiently serious that referral to the Youth Diversion Scheme is not an appropriate outcome. In such cases the child or young person is likely to be subject to conditions of bail pending a charging decision and appropriate support and safeguarding measures will be incorporated into bail conditions and/or provided by the Social Services Department.

Where a case is not suitable for referral to the Youth Diversion Scheme the Prosecution Service will state the reasons for this when advising the Royal Falkland Islands Police.

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