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STATUTORY INSTRUMENTS

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**1986 No. 595**

**The Mental Health (Northern Ireland) Order 1986**

**PART III**

**PATIENTS CONCERNED IN CRIMINAL  
PROCEEDINGS OR UNDER SENTENCE**

*Remands to hospital*

***Remand to hospital for report on accused's mental condition***

**42.**—(1) Subject to the provisions of this Article, the Crown Court or a court of summary jurisdiction may remand an accused person into the care of the Department for admission to hospital for a report on his mental condition.

(2) For the purposes of this Article an accused person is—

- (a) in relation to the Crown Court, any person who is awaiting trial before the court for an offence punishable with imprisonment or who has been arraigned before the court for such an offence and has not yet been sentenced or otherwise dealt with for the offence on which he has been arraigned;
- (b) in relation to a court of summary jurisdiction, any person who has been convicted by the court of an offence punishable on summary conviction with imprisonment and any person charged with such an offence if the court is satisfied that he did the act or made the omission charged or if he has consented to the exercise by the court of the powers conferred by this Article.

(3) Subject to paragraph (4), the powers conferred by this Article may be exercised if—

- (a) the court is satisfied, on the oral evidence of a medical practitioner appointed for the purposes of Part II by the Commission, that there is reason to suspect that the accused person is suffering from mental illness or severe mental impairment; and
- (b) the court is of the opinion that it would be impracticable for a report on his mental condition to be made if he were remanded on bail;

but those powers shall not be exercised by the Crown Court in respect of a person who has been convicted before the court if the sentence for the offence of which he has been convicted is fixed by law.

(4) The court shall not remand an accused person under this Article unless an opportunity has been given to the Department to make representations to the court concerning the remand.

(5) Where a court has remanded an accused person under this Article, it may further remand him if it appears to the court, on the written or oral evidence of the medical practitioner responsible for making the report, that a further remand is necessary for completing the assessment of the accused person's mental condition.

*Status: Point in time view as at 01/01/2006.*

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(6) The power of further remanding an accused person under this Article may be exercised by the court without his being brought before the court if he is represented by counsel or a solicitor and his counsel or solicitor is given an opportunity of being heard.

(7) An accused person shall not be remanded or further remanded under this Article for more than 28 days at a time or for more than 12 weeks in all; and the court may at any time terminate the remand if it appears to the court that it is appropriate to do so.

(8) An accused person remanded under this Article shall be entitled to obtain at his own expense an independent report on his mental condition from a medical practitioner chosen by him and to apply to the court on the basis of it for his remand to be terminated under paragraph (7).

(9) Where an accused person is remanded under this Article—

- (a) it shall be the duty of the Department to designate the hospital to which the accused person is to be admitted;
- (b) the court may, pending his admission to hospital, give directions for his conveyance to and detention in a place of safety;
- (c) a constable or any other person directed to do so by the court shall convey the accused person to the hospital designated by the Department within the period of 7 days beginning with the date of the remand; and
- (d) [<sup>F1</sup>the Board or the authorised HSS trust managing that hospital] shall admit him within that period and thereafter detain him in accordance with the provisions of this Article.

(10) If an accused person absconds from a hospital to which he has been remanded under this Article, or while being conveyed to or from that hospital, he may be arrested without warrant by any constable and shall, after being arrested, be brought as soon as practicable before the court that remanded him; and the court may thereupon terminate the remand and deal with him in any way in which it would have dealt with him if he had not been remanded under this Article.

**F1** 1994 NI 2

### ***Remand to hospital for treatment***

**43.**—(1) Subject to the provisions of this Article, the Crown Court may, instead of remanding an accused person in custody, remand him into the care of the Department for admission to hospital if satisfied, on the oral evidence of a medical practitioner appointed for the purposes of Part II by the Commission and on the written or oral evidence of one other medical practitioner, that he is suffering from mental illness or severe mental impairment of a nature or degree which warrants his detention in hospital for medical treatment.

(2) For the purposes of this Article an accused person is any person who is in custody awaiting trial before the Crown Court for an offence punishable with imprisonment other than an offence the sentence for which is fixed by law, or who at any time before sentence is in custody in the course of a trial before that court for such an offence.

(3) The court shall not remand an accused person under this Article unless an opportunity has been given to the Department to make representations to the court concerning the remand.

(4) Where a court has remanded an accused person under this Article, it may further remand him if it appears to the court, on the written or oral evidence of the responsible medical officer, that a further remand is warranted.

(5) Paragraphs (6) to (10) of Article 42 shall have effect in relation to a remand under this Article as they have effect in relation to a remand under that Article.

## *Hospital and guardianship orders*

### ***Powers of courts to order hospital admission or guardianship***

**44.**—(1) Where a person is convicted before the Crown Court of an offence punishable with imprisonment other than an offence the sentence for which is fixed by law, or is convicted by a court of summary jurisdiction of an offence punishable on summary conviction with imprisonment, then—

- (a) if the conditions mentioned in paragraph (2) are satisfied, the court may by order (in this Order referred to as a “hospital order”) commit him to the care of the Department for admission to hospital; or
- (b) if the conditions mentioned in paragraph (3) are satisfied, the court may by order (in this Order referred to as a “guardianship order”) place him under the guardianship of a Board<sup>[F2]</sup> or an authorised HSS trust<sup>[F2]</sup> or of such other person approved by a Board<sup>[F2]</sup> or an authorised HSS trust<sup>[F2]</sup> as may be specified in the order.

(2) The conditions referred to in paragraph (1)(a) are that—

- (a) the court is satisfied on the oral evidence of a medical practitioner appointed for the purposes of Part II by the Commission and on the written or oral evidence of one other medical practitioner that the offender is suffering from mental illness or severe mental impairment of a nature or degree which warrants his detention in hospital for medical treatment; and
- (b) the court is of opinion, having regard to all the circumstances, including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with him, that the most suitable means of dealing with the case is by means of a hospital order.

(3) The conditions referred to in paragraph (1)(b) are that—

- (a) the offender has attained the age of 16 years;
- (b) the court is satisfied on the oral evidence of a medical practitioner appointed for the purposes of Part II by the Commission and on the written or oral evidence of one other medical practitioner that the offender is suffering from mental illness or severe mental handicap of a nature or degree which warrants his reception into guardianship;
- (c) the court is satisfied on the written or oral evidence of an approved social worker that it is necessary in the interests of the welfare of the patient that he should be received into guardianship; and
- (d) the court is of opinion, having regard to all the circumstances, including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with him, that the most suitable means of dealing with the case is by means of a guardianship order.

(4) Where a person is charged before a court of summary jurisdiction with any act or omission as an offence and the court would have power, on convicting him of that offence, to make an order under paragraph (1) then, if the court is satisfied that the accused did the act or made the omission charged, the court may, if it thinks fit, make such an order without convicting him.

(5) A hospital order shall not be made under this Article by a court unless an opportunity has been given to the Department to make representations to the court concerning the making of such an order.

(6) A guardianship order placing a patient under the guardianship of any person shall not be made under this Article unless the court is satisfied that that person is willing to receive the patient into guardianship.

(7) A hospital order or guardianship order shall specify the form or forms of mental disorder referred to in sub-paragraph (a) of paragraph (2) or sub-paragraph (b) of paragraph (3) from which,

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upon the evidence taken into account under that sub-paragraph, the offender is found by the court to be suffering; and no such order shall be made unless the offender is described by each of the practitioners whose evidence is taken into account under that sub-paragraph as suffering from the same form of mental disorder, whether or not he is also described by either of them as suffering from another form.

(8) Where an order is made under this Article, the court shall not pass sentence of imprisonment or impose a fine or make a probation order in respect of the offence, but may make any other order which the court has power to make apart from this Article; and for the purposes of this paragraph “sentence of imprisonment” includes any sentence or order for detention,<sup>F3</sup> including an order under<sup>F4</sup> Article 39 of the Criminal Justice (Children) (Northern Ireland) Order 1998 sending a child under the age of 17 to a juvenile justice centre.]

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| <b>F2</b> | 1994 NI 2                   |
| <b>F3</b> | prosp. subst. by 2002 c. 26 |
| <b>F4</b> | 1998 NI 9                   |

### ***Interim hospital orders***

**45.—**(1) Where a person is convicted before the Crown Court of an offence punishable with imprisonment other than an offence the sentence for which is fixed by law, or is convicted by a court of summary jurisdiction of an offence punishable on summary conviction with imprisonment, and the court before or by which he is convicted is satisfied, on the oral evidence of a medical practitioner appointed for the purposes of Part II by the Commission and on the written or oral evidence of one other medical practitioner—

- (a) that the offender is suffering from mental illness or severe mental impairment; and
- (b) that there is reason to suppose that the mental disorder from which the offender is suffering is such that it may warrant a hospital order being made in his case,

the court may, before making a hospital order or dealing with him in some other way, make an order (in this Order referred to as “an interim hospital order”) committing him to the care of the Department for admission to hospital and detention there in accordance with this Article.

(2) In the case of an offender who is subject to an interim hospital order the court may make a hospital order without his being brought before the court if he is represented by counsel or a solicitor and his counsel or solicitor is given an opportunity of being heard.

(3) An interim hospital order shall not be made under this Article by a court unless an opportunity has been given to the Department to make representations to the court concerning the making of such an order.

(4) An interim hospital order—

- (a) shall be in force for such period, not exceeding 12 weeks, as the court may specify when making the order; but
- (b) may be renewed for further periods of not more than 28 days at a time if it appears to the court, on the written or oral evidence of the responsible medical officer, that the continuation of the order is warranted;

but no such order shall continue in force for more than 6 months in all and the court shall terminate the order if it makes a hospital order in respect of the offender or decides after considering the written or oral evidence of the responsible medical officer to deal with the offender in some other way.

(5) The power of renewing an interim hospital order may be exercised without the offender being brought before the court if he is represented by counsel or a solicitor and his counsel or solicitor is given an opportunity of being heard.

(6) If an offender absconds from a hospital in which he is detained in pursuance of an interim hospital order, or while being conveyed to or from such a hospital, he may be arrested without warrant by a constable and shall, after being arrested, be brought as soon as practicable before the court that made the order; and the court may thereupon terminate the order and deal with him in any way in which it could have dealt with him if no such order had been made.

### ***Effect of hospital orders, guardianship orders and interim hospital orders***

**46.**—(1) Where a court makes a hospital order in respect of a patient, it shall be the duty of the Department to give effect to the order by designating a hospital for the purposes of paragraph (2) (a);<sup>[F5]</sup> and the Board or the authorised HSS trust managing that hospital shall receive the patient accordingly.]

(2) A hospital order shall be sufficient authority—

- (a) for a constable, an approved social worker or any other person directed to do so by the court to convey the patient within the period of 28 days beginning with the date of the order to such hospital as the Department may designate; and
- (b) <sup>[F5]</sup>for the Board or the authorised HSS trust managing the hospital] to admit him at any time within that period and thereafter detain him in accordance with the provisions of this Order.

(3) Where an interim hospital order is made in respect of an offender—

- (a) it shall be the duty of the Department to give effect to the order by designating the hospital to which the offender is to be admitted;
- (b) a constable or any other person directed to do so by the court shall convey the offender to the hospital designated by the Department within the period of 28 days beginning with the date of the order; and
- (c) <sup>[F5]</sup>the Board or the authorised HSS trust managing that hospital] shall admit him within that period and thereafter detain him in accordance with the provisions of Article 45.

(4) The court by which a hospital order or an interim hospital order is made may give such directions as it thinks fit for the conveyance of the patient to a place of safety and his detention therein pending his admission to hospital within the period of 28 days referred to in paragraph (2) (a) or, as the case may be, paragraph (3)(b).

(5) A guardianship order shall confer on the Board<sup>[F5]</sup>, authorised HSS trust] or person therein named as guardian the same powers as a guardianship application made and accepted under Part II.

(6) A patient who is—

- (a) admitted to a hospital in pursuance of a hospital order shall be treated for the purposes of the provisions of Part II mentioned in Part I of Schedule 2 as if he were detained for treatment and his date of admission were the date of the order, but subject to any modifications of those provisions specified in that Part of Schedule 2;
- (b) placed under guardianship by a guardianship order shall be treated for the purposes of the provisions of Part II mentioned in Part I of Schedule 2 as if he had been received into guardianship on the date of the order in pursuance of a guardianship application duly made under Part II, but subject to any modifications of those provisions specified in that Part of Schedule 2.

(7) Where a patient is admitted to a hospital in pursuance of a hospital order, or placed under guardianship by a guardianship order, any previous application, medical report, hospital order or guardianship order by virtue of which he was liable to be detained in a hospital or subject to guardianship shall cease to have effect, but if either of the first-mentioned orders, or the conviction to which it relates, is quashed on appeal, this paragraph shall not apply and Article 31 shall have effect

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as if, during any period for which the patient was liable to be detained or subject to guardianship under the order, he had been detained in custody as mentioned in that Article.

F5 1994 NI 2

### *Restriction orders*

#### ***Powers of court to restrict discharge from hospital***

47.—(1) Where—

- (a) a court makes a hospital order in respect of any person; and
- (b) it appears to the court, having regard to the nature of the offence, the antecedents of the person and the risk of his committing further offences if set at large, that it is necessary for the protection of the public from serious harm to do so,

the court may, subject to paragraphs (2) to (5), further order that the person shall be subject to the special restrictions set out in this Article, either without limit of time or during such period as may be specified in the order; and an order under this Article shall be known as “a restriction order”.

(2) The special restrictions applicable to a patient in respect of whom a restriction order is in force are as follows, that is to say—

- (a) none of the provisions of Part II relating to the duration, renewal and expiration of authority for the detention of patients shall apply, and the patient shall continue to be liable to be detained by virtue of the relevant hospital order until he is absolutely discharged under Article 48, 78, 79 or 80;
- (b) no application or reference shall be made to the Review Tribunal in respect of the patient under Articles 71 to 74;
- (c) the following powers shall be exercisable only with the consent of the Secretary of State, namely—
  - (i) power to grant leave of absence to the patient under Article 15;
  - (ii) power to transfer the patient under Article 28;

and if leave of absence is granted under Article 15 the power to recall the patient shall be vested in the Secretary of State as well as in the responsible medical officer;

(d) the power of the Secretary of State to recall the patient under Article 15 and the power to take the patient into custody and return him under Article 29 may be exercised at any time; and in relation to any such patient Article 46(6)(a) shall have effect as if it referred to Part II of Schedule 2 instead of Part I of that Schedule.

(3) A hospital order shall not cease to have effect under Article 46(7) if a restriction order in respect of the patient is in force at the material time.

(4) Where a restriction order in respect of a patient ceases to have effect while the relevant hospital order continues in force, Article 46 and Part I of Schedule 2 shall apply to the patient as if he had been admitted to the hospital in which he is then liable to be detained in pursuance of a hospital order (without a restriction order) made on the date on which the restriction order ceased to have effect.

(5) While a person is subject to a restriction order the responsible medical officer shall at such intervals (not exceeding one year) as the Secretary of State may direct examine and report to the Secretary of State on that person; and every report shall contain such particulars as the Secretary of State may require.

### ***Powers of Secretary of State in respect of patients subject to restriction orders***

**48.**—(1) If the Secretary of State is satisfied that in the case of any patient a restriction order is no longer required for the protection of the public from serious harm he may direct that the patient shall cease to be subject to the special restrictions set out in Article 47(2); and where the Secretary of State so directs, the restriction order shall cease to have effect, and Article 47(4) shall have effect accordingly.

(2) At any time while a restriction order is in force in respect of a patient, the Secretary of State may, if he thinks fit, by warrant discharge the patient from hospital, either absolutely or subject to conditions; and where a patient is absolutely discharged under this paragraph, he shall thereupon cease to be liable to be detained by virtue of the relevant hospital order, and accordingly the restriction order shall cease to have effect.

(3) The Secretary of State may at any time during the continuance in force of a restriction order in respect of a patient who has been conditionally discharged under paragraph (2) by warrant recall the patient to such hospital as may be specified in the warrant; and thereupon—

- (a) if the hospital so specified is not the hospital from which the patient was conditionally discharged, sub-paragraph (b) of paragraph (2) of Article 46 shall have effect as if the hospital specified in the warrant were substituted for the hospital designated by the Department under sub-paragraph (a) of that paragraph; and
- (b) in any case, the patient shall be treated for the purposes of Article 29 as if he had absented himself without leave from the hospital specified in the warrant, and if the restriction order was made for a specified period, that period shall in any event be deemed not to have expired until the patient returns to hospital or is returned to hospital under that Article.

(4) If a restriction order in respect of a patient ceases to have effect after the patient has been conditionally discharged under paragraph (2), the patient shall, unless previously recalled under paragraph (3), be deemed to be absolutely discharged on the date when the order ceases to have effect, and accordingly shall cease to be liable to be detained by virtue of the relevant hospital order.

(5) The Secretary of State may, if satisfied that the attendance at any place in Northern Ireland of a patient who is subject to a restriction order is desirable in the interests of justice or for the purposes of any public inquiry, direct him to be taken to that place; and where a patient is directed under this paragraph to be taken to any place he shall, unless the Secretary of State otherwise directs, be kept in custody while being so taken, while at that place and while being taken back to the hospital in which he is liable to be detained.

### *Procedure during trial on indictment*

#### ***Procedure in relation to unfitness to be tried***

**49.**—(1) The following provisions of this Article apply where, on the trial of a person charged on indictment with the commission of an offence, the question arises (at the instance of the defence or otherwise) whether the accused is unfit to be tried (in this Article referred to as “the question of fitness to be tried”).

(2) Subject to paragraph (3), the question of fitness to be tried shall be determined as soon as it arises.

(3) If, having regard to the nature of the supposed mental condition of the accused, the court is of opinion that it is expedient so to do and in the interests of the accused, the court may—

- (a) postpone consideration of the question of fitness to be tried until any time up to the opening of the case for the defence; and

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(b) if, before the said question falls to be determined, the jury returns a verdict of acquittal on the count or each of the counts on which the accused is being tried, that question shall not be determined.

(4) The question of fitness to be tried shall be determined<sup>[F6]</sup> by the court without a jury].

<sup>[F7]</sup>(4A) <sup>[F6]</sup>The court] shall not make a determination under paragraph (4) except on the oral evidence of a medical practitioner appointed for the purposes of Part II by the Commission and on the written or oral evidence of one other medical practitioner.]

*Paras. (5)#(8) rep. by 1996 NI 24*

(9) In this Article and<sup>[F7]</sup> Articles 49A, 50A and 51(6)] “unfit to be tried” includes unfit to plead.

**F6** 2004 c. 28

**F7** 1996 NI 24

### **<sup>[F8]</sup>Finding that the accused did the act or made the omission charged against him**

**49A.**—(1) This Article applies where in accordance with Article 49(4) it is determined by a<sup>[F9]</sup> court] that the accused is unfit to be tried.

(2) The trial shall not proceed or further proceed but it shall be determined by a jury—

(a) on the evidence (if any) already given in the trial; and

(b) on such evidence as may be adduced or further adduced by the prosecution, or adduced by a person appointed by the court under this Article to put the case for the defence,

whether it is satisfied, as respects the count or each of the counts on which the accused was to be or was being tried, that he did the act or made the omission charged against him as the offence.

(3) If as respects that count or any of those counts the jury is satisfied as mentioned in paragraph (2), it shall make a finding that the accused did the act or made the omission charged against him.

(4) If as respects that count or any of those counts the jury is not so satisfied, it shall return a verdict of acquittal as if on the count in question the trial had proceeded to a conclusion.

[<sup>F9</sup>(5) Where the question of fitness to be tried was determined after arraignment of the accused, the determination under paragraph (2) is to be made by the jury by whom he was being tried.]]

**F8** 1996 NI 24

**F9** 2004 c. 28

### ***Procedure in relation to finding of insanity***

**50.**—(1) Where upon the trial on indictment of any person charged with the commission of an offence—

(a) <sup>[F10]</sup>oral evidence of a medical practitioner appointed for the purposes of Part II by the Commission and on the written or oral evidence of one other medical practitioner] is given that the person charged was an insane person at the time the offence was committed; and

(b) the jury finds that although the person charged did the act or made the omission charged, he was an insane person at that time,

the court shall direct a finding to be recorded to the effect that the person is not guilty of the offence charged on the ground of insanity.



*Paras. (2), (3) rep by 1996 NI 24*

(4) In this Article “insane person” and “insanity” have the meanings assigned by section 1 of the Criminal Justice Act (Northern Ireland) 1966.

**F10** 1996 NI 24

### *Appeals*

#### **[<sup>F11</sup>Powers to deal with persons not guilty by reason of insanity or unfit to be tried, etc.**

**50A.**—(1) This Article applies where—

- (a) a finding is recorded that the accused is not guilty by reason of insanity; or
- (b) findings are recorded that the accused is unfit to be tried and that he did the act or made the omission charged against him.

(2) Subject to paragraphs (3) to (5), the court shall either—

- (a) make an order that the accused be admitted to hospital; or
- (b) make in respect of the accused such one of the following orders as the court thinks most suitable in all the circumstances of the case, namely—
  - (i) a guardianship order;
  - (ii) subject to and in accordance with Part II of Schedule 2A, a supervision and treatment order within the meaning of that Schedule; and
  - (iii) an order for his absolute discharge.

(3) A person who is admitted to a hospital in pursuance of an order under paragraph (2)(a) shall be treated for the purposes of this Order—

- (a) as if he had been so admitted in pursuance of a hospital order made on the date on which the order under paragraph (2)(a) was made; and
- (b) if the court so directs, as if a restriction order had been made, either without limit of time or during such period as may be specified in the direction.

(4) An order shall not be made under paragraph (2)(a) by a court unless an opportunity has been given to the Department to make representations to the court concerning the making of such an order.

(5) A guardianship order placing a patient under the guardianship of any person shall not be made under paragraph (2)(b)(i) unless the court is satisfied that that person is willing to receive the patient into guardianship.

(6) Where the offence to which the findings relate is an offence the sentence for which is fixed by law—

- (a) paragraphs (2)(b), (4) and (5) shall not apply; and
- (b) the court shall give a direction under paragraph (3)(b) without specifying any period.

(7) Where the Secretary of State is notified by the responsible medical officer that a person detained in a hospital in pursuance of an order made by virtue of paragraph (1)(b) no longer requires treatment for mental disorder, the Secretary of State may remit that person for trial—

- (a) to the Crown Court at the place where, but for the order, he would have been tried; or
- (b) to a prison; or
- (c) to a remand centre; or
  - [ to a juvenile justice centre;]

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<sup>F12</sup>(d)

<sup>F13</sup>and on his arrival at the Crown Court, prison, remand centre<sup>F14</sup> or<sup>F12</sup> [juvenile justice centre] the order shall cease to have effect.

(8) The provisions of Schedule 2A shall have effect with respect to supervision and treatment orders.]

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| <b>F11</b> | 1996 NI 24                    |
| <b>F12</b> | 1998 NI 9                     |
| <b>F13</b> | prosp. inserted by 2002 c. 26 |
| <b>F14</b> | prosp. subst. by 2002 c. 26   |

### Appeals

**51.**—(1) On any appeal to any court by a person against a restriction order, the court shall have the like powers as if the appeal were against the hospital order in respect of him as well as against the restriction order.

(2) On any appeal to any court by a person against a hospital order<sup>F15</sup>, a supervision and treatment order] or a guardianship order, the court shall have the like powers as if the appeal were against any further order made by the court which made the hospital order<sup>F15</sup> supervision and treatment order] or guardianship order, as well as against the hospital order<sup>F15</sup> supervision and treatment order] or guardianship order.

(3) An appeal by a child or young person in respect of whom a hospital order<sup>F15</sup>, supervision and treatment order] or guardianship order has been made, whether the appeal is against the order or against the finding upon which the order was made, may be brought by him or by his parent or guardian on his behalf.

(4) Where a hospital order<sup>F15</sup>, supervision and treatment order], guardianship order or restriction order has been made by a court in respect of a person charged before it without convicting him, he shall have the same right of appeal against that order as if it had been made on his conviction and accordingly any such order shall—

- (a) for the purposes of section 8 of the Criminal Appeal (Northern Ireland) Act 1980 and Article 140 of the Magistrates' Courts (Northern Ireland) Order 1981 be treated as if it were an order made on conviction;
- (b) be a determination of the proceedings in which the order was made for the purposes of Article 146 of that Order.

(5) On any such appeal as is referred to in paragraph (4), the Court of Appeal or the county court shall have the same powers as if the appeal had been against both conviction and sentence.

(6) The Criminal Appeal (Northern Ireland) Act 1980 shall have effect subject to the amendments set out in Part I of Schedule 5, being amendments for the purpose of—

- (a) conferring a right of appeal to the Court of Appeal against a finding that a person charged on indictment with the commission of an offence is unfit to be tried;
- (b) conferring on the Secretary of State a power to refer to the Court of Appeal the case of any person so charged who has been found unfit to be tried;
- (c) empowering the Court of Appeal to make a hospital order where on an appeal the Court is of opinion that the appellant should have been found unfit to be tried; and
- (d) otherwise amending that Act in consequence of the provisions of this Order.

**F15** 1996 NI 24

Art. 52 rep. by 1996 c. 46

*Transfer to hospital of prisoners, etc.*

**Removal to hospital of persons serving sentences of imprisonment, etc.**

**53.**—(1) If in the case of a person serving a sentence of imprisonment, the Secretary of State is satisfied by written reports from at least two medical practitioners, one of whom is a medical practitioner appointed for the purposes of Part II by the Commission,—

- (a) that the person is suffering from mental illness or severe mental impairment; and
- (b) that the mental disorder from which the person is suffering is of a nature or degree which warrants his detention in hospital for medical treatment;

the Secretary of State may, if he is of opinion, having regard to the public interest and all the circumstances, that it is expedient to do so, by warrant direct that that person be admitted to hospital.

(2) A direction under this Article (in this Order referred to as a “transfer direction”) shall cease to have effect at the expiration of the period of 14 days beginning with the date on which it is given, unless within that period the person with respect to whom it was given has been received into hospital.

(3) A transfer direction with respect to any person shall have the same effect as a hospital order made in his case.

(4) A transfer direction shall specify the form or forms of mental disorder referred to in subparagraph (a) of paragraph (1) from which, upon the reports taken into account under that paragraph, the patient is found by the Secretary of State to be suffering; and no such direction shall be given unless the patient is described in each of those reports as suffering from the same form of mental disorder, whether or not he is also described in either of them as suffering from another form.

(5) References in this Part to a person serving a sentence of imprisonment include references—

- (a) to a person detained in pursuance of any sentence or order for detention made by a court in criminal proceedings,<sup>F16</sup> including an order under<sup>F17</sup> Article 39 of the Criminal Justice (Children) (Northern Ireland) Order 1998 sending a child to a juvenile justice centre] but not including an order under any statutory provision to which Article 52 applies;
- (b) to a person committed to custody for failure to comply with an order to enter into a recognizance to keep the peace or to be of good behaviour or both; and
- (c) to a person committed by a court to a prison in default of payment of any sum adjudged to be paid on his conviction.

**F16** prosp. subst. by 2002 c. 26

**F17** 1998 NI 9

**Removal to hospital of other prisoners**

**54.**—(1) If in the case of a person to whom this Article applies the Secretary of State is satisfied by the same reports as are required for the purposes of Article 53—

- (a) that the person is suffering from mental illness or severe mental impairment; and
- (b) that the mental disorder from which the person is suffering is of a nature or degree which warrants his detention in hospital for medical treatment; and

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(c) that the person is in urgent need of such treatment,  
the Secretary of State shall have the same power of giving a transfer direction in respect of him under that Article as if he were serving a sentence of imprisonment.

(2) This Article applies to the following persons—

- (a) persons detained in a prison or remand centre, not being persons serving a sentence of imprisonment or persons falling within the following sub-paragraphs of this paragraph;
- (b) persons remanded in custody by a magistrates' court;
- (c) civil prisoners, that is to say, persons committed by a court to prison for a limited term who are not persons falling to be dealt with under Article 53;
- (d) persons detained under the Immigration Act 1971<sup>[F18]</sup> or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State)].

(3) Paragraphs (2) to (4) of Article 53 shall apply for the purposes of this Article and of any transfer direction given by virtue of this Article as they apply for the purposes of that Article and of any transfer direction given thereunder.

**F18** 2002 c. 41

#### ***Restriction on discharge of prisoners removed to hospital***

**55.**—(1) Where a transfer direction is given in respect of any person, the Secretary of State may, if he thinks fit, by warrant further direct that that person shall be subject to the special restrictions set out in Article 47; and where the Secretary of State gives a transfer direction in respect of any such person as is mentioned in sub-paragraph (a) or (b) of Article 54(2), he shall also give a direction under this Article applying those restrictions to him.

(2) A direction under this Article (in this Order referred to as a “restriction direction”) shall have the same effect as a restriction order made under Article 47.

#### ***Further provisions as to prisoners under sentence***

**56.**—(1) Where a transfer direction and a restriction direction have been given in respect of a person serving a sentence of imprisonment and before<sup>[F19]</sup> his release date] the Secretary of State is notified by the responsible medical officer, the Review Tribunal or any medical practitioner appointed for the purposes of Part II by the Commission that that person no longer requires treatment in hospital for mental disorder or that no effective treatment for his disorder can be given in the hospital to which he has been removed, the Secretary of State may—

- (a) by warrant direct that he be remitted to any prison,<sup>F20</sup>[<sup>F21</sup> or juvenile justice centre] in which he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed; or
- (b) exercise, or authorise the managers of any<sup>[F21]</sup> juvenile justice centre<sup>[F22]</sup> to which he might have been remitted to exercise, any power of releasing him on licence or discharging him under supervision which would have been exercisable if he had been remitted as aforesaid;

and on his arrival in the prison,<sup>F20</sup>[<sup>F21</sup> or juvenile justice centre], or, as the case may be, his release or discharge as aforesaid, the transfer direction and the restriction direction shall cease to have effect.

<sup>[F19]</sup>(2) A restriction direction in the case of a person serving a sentence of imprisonment shall cease to have effect, if it has not previously done so, on his release date.

(3) In this Article, references to a person's release date are to the day (if any) on which he would be entitled to be released (whether unconditionally or on licence) from any prison or juvenile justice

centre in which he might have been detained if the transfer direction had not been given; and in determining that day any powers that would be exercisable by the Sentence Review Commissioners or the Life Sentence Review Commissioners if he were detained in such a prison or juvenile justice centre shall be disregarded.]

(4) For the purposes of section 38(2) of the Prison Act (Northern Ireland) 1953 (which provides for discounting from the sentences of certain prisoners periods while they are unlawfully at large), a patient who, having been transferred in pursuance of a transfer direction from any such institution as is referred to in that section, is at large in circumstances in which he is liable to be taken into custody under any provision of this Order, shall be treated as unlawfully at large and absent from that institution.

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| <p><b>F19</b> 2003 c. 44<br/><b>F20</b> prosp. subst. by 2002 c. 26<br/><b>F21</b> 1998 NI 9<br/><b>F22</b> prosp. inserted by 2002 c. 26</p> |
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#### ***Further provisions as to detained persons***

57.—(1) This Article has effect where a transfer direction has been given in respect of any such person as is described in sub-paragraph (a) of Article 54(2) and that person is in this Article referred to as “the detainee”.

(2) The transfer direction shall cease to have effect when the detainee's case is disposed of by the court having jurisdiction to try or otherwise deal with him, but without prejudice to any power of that court to make a hospital order or other order under this Part in his case.

(3) If the Secretary of State is notified by the responsible medical officer, the Review Tribunal or any medical practitioner appointed for the purposes of Part II by the Commission at any time before the detainee's case is disposed of by that court—

- (a) that the detainee no longer requires treatment in hospital for mental disorder; or
- (b) that no effective treatment for his disorder can be given at the hospital to which he has been removed,

the Secretary of State may by warrant direct that he be remitted to any place where he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed, and on his arrival at the place to which he is so remitted the transfer direction shall cease to have effect.

(4) If (no direction having been given under paragraph (3)) the court having jurisdiction to try or otherwise deal with the detainee is satisfied on the written or oral evidence of the responsible medical officer—

- (a) that the detainee no longer requires treatment in hospital for mental disorder; or
- (b) that no effective treatment for his disorder can be given at the hospital to which he has been removed,

the court may order him to be remitted to any such place as is mentioned in paragraph (3) or released on bail and on his arrival at that place or, as the case may be, his release on bail the transfer direction shall cease to have effect.

(5) If (no direction or order having been given or made under paragraph (3) or (4)) it appears to the court having jurisdiction to try or otherwise deal with the detainee—

- (a) that it is impracticable or inappropriate to bring the detainee before the court; and
- (b) that the conditions set out in paragraph (6) are satisfied,

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the court may make a hospital order (with or without a restriction order) in his case in his absence and, in the case of a person awaiting trial, without convicting him.

- (6) A hospital order may be made in respect of a person under paragraph (5) if the court—
- (a) is satisfied, on the oral evidence of two medical practitioners appointed for the purposes of Part II by the Commission, that the detainee is suffering from mental illness or severe mental impairment of a nature or degree which warrants his detention in hospital for medical treatment; and
  - (b) is of the opinion, after considering any depositions or other documents required to be sent to the proper officer of the court, that it is proper to make such an order.

***Further provisions as to persons remanded by magistrates' courts***

**58.**—(1) This Article has effect where a transfer direction has been given in respect of any such person as is described in sub-paragraph (b) of Article 54(2); and that person is in this Article referred to as “the accused”.

(2) Subject to paragraph (5), the transfer direction shall cease to have effect on the expiration of the period of remand unless the accused is committed in custody to the Crown Court for trial or to be otherwise dealt with.

(3) Subject to paragraph (4), the power of further remanding the accused may be exercised by the magistrates' court without his being brought before the court; and if the court further remands the accused in custody (whether or not he is brought before the court) the period of remand shall, for the purposes of this Article, be deemed not to have expired.

(4) The court shall not under paragraph (3) further remand the accused in his absence unless he has appeared before the court within the previous 6 months.

(5) If the magistrates' court is satisfied, on the written or oral evidence of the responsible medical officer—

- (a) that the accused no longer requires treatment in hospital for mental disorder; or
- (b) that no effective treatment for his disorder can be given in the hospital to which he has been removed,

the court may direct that the transfer direction shall cease to have effect notwithstanding that the period of remand has not expired or that the accused is committed to the Crown Court as mentioned in paragraph (2).

(6) If the accused is committed to the Crown Court as mentioned in paragraph (2) and the transfer direction has not ceased to have effect under paragraph (5), Article 57 shall apply as if the transfer direction given in his case were a direction given in respect of a person falling within that Article.

(7) The magistrates' court may, in the absence of the accused, conduct a preliminary investigation or preliminary inquiry into an offence alleged to have been committed by him and commit him for trial in accordance with Article 37 of the Magistrates' Courts (Northern Ireland) Order 1981 if—

- (a) the court is satisfied on the written or oral evidence of the responsible medical officer, that the accused is unfit to take part in the proceedings; and
- (b) the accused is represented by counsel or a solicitor.

***Further provisions as to civil prisoners and persons detained under the Immigration Act 1971***

**59**<sup>F23</sup>.—(1) Subject to paragraph (2), a transfer direction given in respect of any such person as is described in sub-paragraph (c) or (d) of Article 54(2) shall cease to have effect on the expiration of the period during which he would, but for his removal to hospital, be liable to be detained in the place from which he was removed.

(2) Where a transfer direction and a restriction direction have been given in respect of any such person as is mentioned in paragraph (1), then, if the Secretary of State is notified by the responsible medical officer, the Review Tribunal or any medical practitioner appointed for the purposes of Part II by the Commission at any time before the expiration of the period there mentioned—

- (a) that that person no longer requires treatment in hospital for mental disorder; or
- (b) that no effective treatment for his disorder can be given in the hospital to which he has been removed,

the Secretary of State may by warrant direct that he be remitted to any place where he might have been detained if he had not been removed to hospital, and on his arrival at the place to which he is so remitted the transfer direction and the restriction direction shall cease to have effect.

**F23** mod. by 2002 c. 41

### *Supplementary*

#### **Requirements as to written evidence**

**60.**—(1) For the purposes of any provision of this Part under which a court may act on the written evidence of a medical practitioner or a medical practitioner of any description or an approved social worker, a report in writing purporting to be signed by a medical practitioner or a medical practitioner of such a description or by an approved social worker may, subject to the provisions of this Article, be received in evidence without proof of the signature of the practitioner or approved social worker and without proof that he has the requisite qualifications or is of the requisite description; but the court may require the signatory of any such report to be called to give oral evidence.

(2) Where, in pursuance of a direction of the court, any such report is tendered in evidence otherwise than by or on behalf of the person who is the subject of the report, then—

- (a) if that person is represented by counsel or a solicitor, a copy of the report shall be given to his counsel or solicitor;
- (b) if that person is not so represented, the substance of the report shall be disclosed to him or, where he is a child<sup>F24</sup> . . . , to his parent or guardian if present in court; and
- (c) that person may require the signatory of the report to be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by or on behalf of that person.

**F24** 1998 NI 9

#### **Interpretation of Part III**

**61.**—<sup>F25</sup>(1) In this Part the following words and expressions have the same meaning as in the Criminal Justice (Children) (Northern Ireland) Order 1998, namely—

- (a) child;
- (b) guardian;
- (c) juvenile justice centre.

(1A) In this Part “place of safety” in relation to a child<sup>F26</sup> means any juvenile justice centre, any police station, any hospital or surgery, or any other suitable place, the occupier of which is willing temporarily to receive a child<sup>F27</sup> .]

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<sup>F27</sup>(2) In this Part “place of safety”, in relation to a person not being a child<sup>F28</sup> . . . , means any Royal Ulster Constabulary station or any prison or any hospital of which the<sup>F28</sup> managing Board or authorised HSS trust] is willing temporarily to receive him.

(3) In this Part “prison” has the same meaning as in the Prison Act (Northern Ireland) 1953.

(4) Any reference in this Part to an offence punishable on summary conviction with imprisonment—

- (a) includes a reference to an indictable offence which may be tried summarily; and
- (b) shall be construed without regard to any prohibition or restriction imposed by or under any statutory provision on the imprisonment of children<sup>F25</sup> . . . .

(5) Where a patient who is liable to be detained in a hospital in pursuance of an order or direction under this Part is treated by virtue of any provision of this Order as if he had been admitted to the hospital in pursuance of a subsequent order or direction, he shall be treated as if the subsequent order or direction had described him as suffering from the form or forms of mental disorder specified in the earlier order or direction, or where he is treated as if he had been so admitted by virtue of a direction under Article 48, such form of mental disorder as may be specified in the direction under that Article.

(6) In the following provisions—

Article 46(2), (5), (6) and (7);

Article 47(2) to (5);

Article 48,

any reference to a hospital order, a guardianship order or a restriction order shall be construed as including a reference to any order or direction under this Part or any other statutory provision having the same effect as the first-mentioned order; and the modifications set out in Schedule 2 in respect of the provisions of Part II described in that Schedule accordingly include those which are consequential on this paragraph.

(7) References in this Part to persons serving a sentence of imprisonment shall be construed in accordance with Article 53(5).

(8) Section 174 of the Children and Young Persons Act (Northern Ireland) 1968 (which relates to the presumption and determination of age) shall apply for the purposes of this Part as it applies for the purposes of that Act<sup>F25</sup> and Article 62 of the Criminal Justice (Children) (Northern Ireland) Order 1998 shall apply for the purposes of this Part as it applies for the purposes of that Order.]

**F25** 1998 NI 9

**F26** prosp. subst. by 2002 c. 26

**F27** prosp. inserted by 2002 c. 26

**F28** 1994 NI 2



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