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STATUTORY INSTRUMENTS

1986 No. 595

The Mental Health (Northern Ireland) Order 1986

PART III

PATIENTS CONCERNED IN CRIMINAL PROCEEDINGS OR UNDER SENTENCE

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 [^{F1} or an authorised [^{F2}HSC trust]] or of such other person approved by a Board [^{F1} or an authorised [^{F2}HSC trust]] as may be specified in the order.

[^{F3}(1A) In the case of an offence the sentence for which would otherwise fall to be imposed—

- (a) under Article 70(2) of the Firearms (Northern Ireland) Order 2004 (NI 3),
- (b) under paragraph 2(4) or (5) of Schedule 2 to the Violent Crime Reduction Act 2006 (c. 38), or
- (c) under Article 13 [^{F4}, 13A] or 14 of the Criminal Justice (Northern Ireland) Order 2008,

nothing in those provisions shall prevent a court from making an order under paragraph (1) for the admission of the offender to a hospital

(1B) References in paragraph (1A) to a sentence falling to be imposed under any of the provisions mentioned in that paragraph are to be read in accordance with Article 4(2) of the Criminal Justice (Northern Ireland) Order 2008.]

(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 [^{F5}RQIA] 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.

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- (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 ^{F5}RQIA] 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, 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 ^{F6}described by each of the practitioners]^{F6}described by the practitioner] whose evidence is taken into account under that sub-paragraph as suffering from the same form of mental disorder, ^{F7}whether or not he is also described by either of them]^{F7}whether or not he is also described by the practitioner] 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, including an order under ^{F8} Article 39 of the Criminal Justice (Children) (Northern Ireland) Order 1998 sending a child under the age of 17 to a juvenile justice centre.]

F1 1994 NI 2

F2 Words in Order substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 1(1)(d)** (with Sch. 6 para. 1(3)); S.R. 2009/114, **art. 2**

F3 Art. 44(1A)(1B) inserted (15.5.2008) by Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)), arts. 1(4), 102(1), **Sch. 5 para. 5(1)**; S.R. 2008/217, **art. 2**, Sch. paras. 16, 18(c) (subject to art. 3)

F4 Word in art. 44(1A)(c) inserted (29.6.2021) by Counter-Terrorism and Sentencing Act 2021 (c. 11), s. 50(2)(v), **Sch. 13 para. 63**

F5 Words in Order substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 8(1)** (subject to Sch. 6 para. 8(2)-(4)); S.R. 2009/114, **art. 2**

F6 Words in art. 44(7) substituted (temp.) (2.4.2020) by virtue of Coronavirus Act 2020 (c. 7), s. 87(2), **Sch. 10 para. 10(3)(a)** (with ss. 88-90, Sch. 10 para. 2); S.R. 2020/58, **art. 2(c)**

F7 Words in art. 44(7) substituted (temp.) (2.4.2020) by virtue of [Coronavirus Act 2020 \(c. 7\), s. 87\(2\), Sch. 10 para. 10\(3\)\(b\)](#) (with ss. 88-90, Sch. 10 para. 2); S.R. 2020/58, [art. 2\(c\)](#)

F8 1998 NI 9

Modifications etc. (not altering text)

C1 Art. 44(1)(a)(b) modified (temp.) (2.4.2020) by [Coronavirus Act 2020 \(c. 7\), s. 87\(2\), Sch. 10 para. 10\(1\)\(2\)](#) (with ss. 88-90, Sch. 10 para. 2); S.R. 2020/58, [art. 2\(c\)](#)

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 [^{F9}RQIA] 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.

F9 Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 8\(1\)](#) (subject to Sch. 6 para. 8(2)-(4)); S.R. 2009/114, [art. 2](#)

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Modifications etc. (not altering text)

C2 Art. 45(1) modified (temp.) (2.4.2020) by [Coronavirus Act 2020 \(c. 7\)](#), s. 87(2), Sch. 10 para. 10(1)(2) (with ss. 88-90, Sch. 10 para. 2); S.R. 2020/58, art. 2(c)

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); [^{F10} and the Board or the authorised [^{F11}HSC 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) [^{F10}for the Board or the authorised [^{F11}HSC 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) [^{F10}the Board or the authorised [^{F11}HSC 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 [^{F12}within the period of 28 days referred to in][^{F12}in accordance with] paragraph (2)(a) or, as the case may be, paragraph (3)(b).

(5) A guardianship order shall confer on the Board [^{F10}, authorised [^{F11}HSC 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.

F10 1994 NI 2

F11 Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), **Sch. 6 para. 1(1)(d)** (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, **art. 2**

F12 Words in art. 46(4) substituted (temp.) (2.4.2020) by virtue of [Coronavirus Act 2020 \(c. 7\)](#), s. 87(2), **Sch. 10 para. 13(2)** (with ss. 88-90, [Sch. 10 para. 2](#)); S.R. 2020/58, art. 2(c)

Modifications etc. (not altering text)

C3 Art. 46(2)(3) modified (temp.) (2.4.2020) by [Coronavirus Act 2020 \(c. 7\)](#), s. 87(2), [Sch. 10 paras. 13\(1\)](#), **14(4)(b)** (with ss. 88-90, [Sch. 10 paras. 2, 18](#)); S.R. 2020/58, art. 2(c)

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