

Regulations laid before the Assembly under Article 95 of the Mental Health (Northern Ireland) Order 1986, and subject to affirmative resolution procedure of the Assembly

STATUTORY RULES OF NORTHERN IRELAND

2012 No. 403

**MENTAL HEALTH SERVICES
PRIVATE HOSPITALS**

**Mental Health (Private Hospitals)
Regulations (Northern Ireland) 2012**

Made - - - - 13th November 2012

Coming into operation 31st March 2013

The Department of Health, Social Services and Public Safety⁽¹⁾ makes the following Regulations in exercise of the powers conferred on it by Article 95 of the Mental Health (Northern Ireland) Order 1986⁽²⁾.

Citation and commencement

1. These Regulations may be cited as the Mental Health (Private Hospitals) Regulations (Northern Ireland) 2012 and shall come into operation on 31st March 2013.

Interpretation

2. In these Regulations:—

“the Order” means the Mental Health (Northern Ireland) Order 1986;

“a HSC Trust” means a Health and Social Care Trust established by Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991⁽³⁾ and renamed by Article 1(3) of the Health and Social Care (Reform) Act (Northern Ireland) 2009⁽⁴⁾.

Application and modification of the Order

3.—(1) The following provisions of the Order apply to private hospitals:—

(2) Part I (Introductory);

(1) S.I. 1999/283 (N.I.1) Article 3(6)

(2) S.I. 1986/595 (N.I.4)

(3) S.I. 1991/194 (N.I. 1)

(4) 2009 c. 1 (N.I.)

- (3) In Part II (Compulsory admission to hospital and guardianship):—
- (a) Article 4 (Admission for assessment);
 - (b) Article 5 (Person who may make application for assessment);
 - (c) Article 6 (General provisions as to medical recommendation);
 - (d) Article 7 (Application for assessment in respect of patient already in hospital);
 - (e) Article 8 (Effect of application for assessment);
 - (f) Article 9 (The assessment period);
 - (g) Article 10 (Disregard of assessment period for certain purposes);
 - (h) Article 11 (Rectification of applications, recommendations and reports);
 - (i) Article 12 (Detention for treatment);
 - (j) Article 13 (Renewal of authority for detention);
 - (k) Article 14 (Discharge of patient from detention);
 - (l) Article 15 (Leave of absence from hospital);
 - (m) Article 16 (Correspondence of detained patients);
 - (n) Article 17 (Review of decision to withhold postal packet);
 - (o) Article 27 (Duty of authority to give information to patients and nearest relatives), subject to the following modifications:—
 - (p) as if, in paragraph (1), the words, “or subject to guardianship”, where they first appear, were omitted;
 - (q) as if, in subparagraph (a) of paragraph (1), the words, “or subject to guardianship”, were omitted;
 - (r) as if, in subparagraph (b) of paragraph (1), the words, “or guardianship”, were omitted;
 - (s) as if, in the full out of paragraph (1), the words, “or the commencement or renewal of the authority for his guardianship”, were omitted;
 - (t) as if, in subparagraph (a) of paragraph (2), the words, “or subject to guardianship”, were omitted;
 - (u) as if, in head (i) of paragraph (2)(a), the number, “24”, were omitted;
 - (v) as if, in subparagraph (c) of paragraph (2), the words, “or subject to guardianship”, were omitted;
 - (w) as if, in the full out of paragraph (2), the words, “or his reception into guardianship”, were omitted; and
 - (x) as if, in paragraph (4), the words, “or subject to guardianship” and “and, in the case of a patient subject under this Part to the guardianship of a person other than the responsible authority, the guardian of the patient”, were omitted;
 - (y) Article 28 (Transfer of patients), subject to the following modifications:—
 - (i) as if subparagraph (5)(a) were omitted;
 - (ii) as if paragraph (6) were omitted; and
 - (iii) as if paragraph (7) were omitted;
 - (z) Article 29 (Return and readmission of patients absent without leave), subject to the following modifications:—
 - (i) as if paragraph (2) were omitted;

- (ii) as if, in paragraph (3), the words, “or subject to guardianship, as the case may be,” were omitted; and
- (iii) as if, in paragraph (4), the words, “,7A(2)”, were omitted;
- (aa) Article 30 (Special provisions as to patients without leave), subject to the following modifications:–
 - (i) as if, in paragraph (1), the words, “or subject to guardianship” and “or subject”, were omitted;
 - (ii) as if, in subparagraph (a) of paragraph (1), the words, “or place where he ought to be”, were omitted;
 - (iii) as if, in paragraph (2), the words, “or subject to guardianship” and “or 23” were omitted; and
 - (iv) as if, in paragraph (3), the words, “or guardianship” were omitted;
- (bb) Article 32 (Definition of “nearest relative”), subject to the following modifications:–
 - (i) as if, in paragraph (3), the words, “or his reception into guardianship”, were omitted;
- (cc) Article 33 (Children and young persons in care of Department);
- (dd) Article 34 (Minors under guardianship, etc.);
- (ee) Article 35 (Assignment of functions by nearest relative), subject to the following modifications:–
 - (i) as if, in paragraph (1), the words, “or subject to guardianship”, were omitted;
- (ff) Article 36 (Appointment by county court of acting nearest relative), subject to the following modifications:–
 - (i) as if, in subparagraph (3)(c), the words, “or guardianship application”, were omitted; and
 - (ii) as if, in subparagraph (3)(d), the words, “or guardianship”, were omitted;
- (gg) Article 37 (Discharge and variation of orders under Article 36), subject to the following modifications:–
 - (i) as if, in subparagraph (4)(a), the words, “or subject to guardianship”, were omitted;
- (hh) Article 38 (Procedure on application to county court);
- (ii) Article 39 (Special provisions as to wards of court);
- (jj) Article 40 (Duty of approved social workers to make application for assessment or guardianship), subject to the following modifications:–
 - (i) as if, in paragraph (1), the words, “or subject to a guardianship application”, were omitted; and
 - (ii) as if, in paragraph (2), the words, “or guardianship (as the case may be)”, were omitted;
 - (iii) Article 41 (Applications, recommendations and reports under Part II), subject to the following modifications:–
 - (iv) as if the words, “, guardianship application”, were omitted;
- (4) Part IV (Consent to treatment);
- (5) In Part V (The Mental Health Review Tribunal for Northern Ireland):–
 - (a) Article 71(Applications to the tribunal under Part II), subject to the following modifications:–
 - (i) as if paragraph (2) were omitted;

- (ii) as if, in paragraph (3), the words, “or the authority for the guardianship of a patient is renewed under Article 23”, were omitted;
- (iii) as if, in the full out of paragraph (4), the words, “or, as the case may be, Article 24(7)”, were omitted; and
- (iv) as if, in paragraph (5), the words, “or subject to guardianship”, were omitted;
- (b) Article 72 (References of cases of Part II patients to the tribunal), subject to the following modifications:–
 - (i) as if, in paragraph (1), the words, “or subject to guardianship”, were omitted;
- (c) Article 73 (Duty on boards to refer cases to the tribunal), subject to the following modifications:–
 - (i) as if, in paragraph (1), the words, “or his guardianship” and “or 23”, were omitted;
- (d) Article 77 (Power to discharge patients other than restricted patients);
- (e) Article 81 (Visiting and examination of patients), subject to the following modifications:–
 - (i) as if the words, “or subject to guardianship”, were omitted;
- (f) Article 82 (Applications to the tribunal);
- (6) In Part VI (Duties of RQIA in relation to Mental Health):–
 - (a) Article 86 (Functions of RQIA), subject to the following modifications:–
 - (i) as if, in subparagraph (a) of paragraph (2), the words, “or reception into guardianship”, were omitted; and
 - (ii) as if, in subparagraph (a) of paragraph (3), the words; “or subject to guardianship”, were omitted;
- (7) In Part IX (Miscellaneous functions of Department and Board):–
 - (a) Article 113 (Miscellaneous powers of boards), subject to the following modifications:–
 - (i) as if subparagraph (c) were omitted;
 - (b) Article 116 (Powers of Boards in relation to property of patients);
 - (c) Article 117 (Duty of Boards to inform nearest relative of discharge of patient);
 - (d) Article 118 (Provision of information and affording of facilities to other bodies by Departments and Boards)subject to the following modifications:–
 - (i) as if, in paragraph (4), the words, “Each Board shall”, were substituted with“Any person carrying on a private hospital shall” and the words, “managed by the board” were omitted;
- (8) In Part X (Offences) –
 - (a) Article 124 (Assisting patients to absent themselves without leave), subject to the following modifications:–
 - (i) as if, in sub-paragraph (a) of paragraph (1), the words, “or being subject to guardianship under this Order”, were omitted;
- (9) In Part XI (Miscellaneous and supplementary):–
 - (a) Article 134 (Patients removed to or from Northern Ireland), subject to the following modifications:–
 - (i) as if, in paragraph (1), the words, “or received into guardianship there” and “or reception” were omitted;
 - (ii) as if, in paragraph (2), the words, “or received into guardianship” were omitted;
 - (iii) as if paragraph (3) were omitted;

- (iv) as if, in paragraph (4), the words, “or subject to guardianship”, “, or placed under guardianship,” and “or III (other than Articles 42,43 or 45)” were omitted;
- (v) as if paragraph (5) were omitted; and
- (vi) as if, in paragraph (6), the words, “the Secretary of State or”, where they occur twice, were omitted;

(10) Schedule 1 (Persons by whom a medical recommendation or medical report under Article 12 may not be given).

Further modifications and adaptations of the Order

4.—(1) For the purposes of these Regulations the provisions mentioned in regulation 3 shall apply with the further modifications and adaptations prescribed in paragraphs (2) to (8).

(2) In Article 2(2) :-

- (i) In the definition of “hospital”, as if, after the word “hospital,” there were added “, private hospital”;
- (ii) In the definition of “responsible authority”, as if subparagraph (a)(ii) were substituted by:-
 - “(ii) where the hospital is a private hospital, the HSC Trust with responsibility for the area in which the patient normally resides; and
 - (iii) in any other case, the Regional Health and Social Care Board.”

(3) In Article 9, after paragraph (8), as if there were added:-

“(8A) The medical practitioner who carries out the examination and furnishes the report under paragraph (7) or (8) shall obtain a supporting opinion from a medical practitioner, appointed for the purposes of this Part by RQIA, who is not on the staff of the private hospital in which the patient is to be detained and who has not given the medical recommendation on which the application for assessment in relation to the patient was founded.”

(4) In Article 12:-

- (i) In the full out of paragraph (1), as if, after the words, “that report shall”, there were added, “,subject to paragraph (1A),”.
- (ii) After paragraph (1), as if there were added:-
 - “(1A) The medical practitioner who carries out the examination and furnishes the report shall obtain a supporting opinion from a medical practitioner, appointed for the purposes of this Part by RQIA, who is not on the staff of the private hospital in which the patient is detained and who has not given either the medical recommendation on which the application for assessment in relation to the patient was founded or any medical report in relation to the patient under Article 9.”

(5) In Article 13:-

- (i) In paragraph (2), as if, after the words, “the patient shall,”, there were added, “subject to paragraph (2A),”.
- (ii) After paragraph (2), as if there were added:-
 - “(2A) The medical practitioner who carries out the examination and furnishes the report shall obtain a supporting opinion from a medical practitioner, appointed for the purposes of this Part by RQIA, who is not on the staff of the private hospital in which the patient is detained and who has not given either the medical recommendation on which the application for assessment in relation to the patient was founded or any medical report in relation to the patient under Article 9 or 12(1).”

(iii) In paragraph (5), as if, after the words, “the patient shall,”, there were added, “subject to paragraph (5A),”.

(iv) After paragraph (5), as if there were added:–

“(5A) The medical practitioner who carries out the examination and furnishes the report shall obtain a supporting opinion from a medical practitioner, appointed for the purposes of this Part by RQIA, who is not on the staff of the private hospital in which the patient is detained and who has not given either the medical recommendation on which the application for assessment in relation to the patient was founded or any medical report in relation to the patient under Article 9, 12(1) or paragraph (2).”

(6) In Article 27, as if, for each reference to “responsible authority”, there were substituted, “person carrying on a private hospital”.

(7) In Article 28, as if, in paragraph (4)(b), after the words, “the Board”, there were added, “the person carrying on a private hospital,”.

(8) As if, in Article 73(1) for the words, “responsible authority”, there were substituted, “person carrying on a private hospital”.

Sealed with the Official Seal of the Department of Health, Social Services and Public Safety on 13th November 2012.



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Public Safety

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply certain provisions of the Mental Health (Northern Ireland) Order 1986, “the 1986 Order”, to private hospitals, which do not automatically apply, with modifications and adaptations. In addition to the application of the provisions above, the Department has also adapted certain provisions of the Order to provide extra safeguards to patients detained in private hospitals. The Regulations provide that, in relation to detention for assessment or treatment and renewal of such detention, a supporting opinion is obtained from a medical practitioner, appointed for that purpose by RQIA, and who is not on the staff of the private hospital in which the patient is being detained is obtained.

The Department has not applied the provisions of the Order which relate to guardianship, nor any provision of Part III of the Order which relates to patients concerned in criminal proceedings or under sentence.