

*Status: Point in time view as at 15/05/2008.*

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## STATUTORY INSTRUMENTS

# 1986 No. 595 (N.I. 4)

## The Mental Health (Northern Ireland) Order 1986

- - - - - 26th March 1986

### Modifications etc. (not altering text)

- C1** Order: functions of Secretary of State transferred (12.4.2010) to Department of Justice by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 4(1)(2), Sch. 1 para. 11 (with arts. 28-31); S.I. 2010/977, **art. 1(2)**
- C2** Order: functions of Lord Chancellor transferred (12.4.2010) to Department of Justice by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), 15(1), Sch. 17 para. 39 (with arts. 15(6), 28-31); S.I. 2010/977, **art. 1(2)**

## PART I

### INTRODUCTORY

#### *Title and commencement*

1.—(1) This Order may be cited as the Mental Health (Northern Ireland) Order 1986.

(2) This Order shall come into operation on such day or days as the Head of the Department may by order appoint<sup>F1</sup>.

(3) An order under paragraph (2) may also appoint a day for the coming into operation of any provision of the Mental Health (Northern Ireland Consequential Amendments) Order 1986 which appears to the Head of the Department to be consequential on any provision of this Order brought into operation by the order.

**F1** partly exercised by SR 1986/107, 330; 1988/216; 1990/161

#### *Interpretation*

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“absent without leave” has the meaning assigned to it by Article 29(5);

“application for assessment” has the meaning assigned to it by Article 4(1);

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“the applicant”, in relation to an application for assessment, has the meaning assigned to it by Article 5(1) and, in relation to a guardianship application, has the meaning assigned to it by Article 19(1);

[<sup>F2</sup>“approved social worker” means an officer of a Board or an authorised HSS trust appointed to act as an approved social worker for the purposes of this Order;]

“Board” means a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972;

“the Commission” means the Mental Health Commission for Northern Ireland;

“date of admission” has the meaning assigned to it by Article 9(3);

“the Department” means the Department of Health and Social Services;

“detained for treatment” has the meaning assigned to it by Article 12(5);

“guardianship application” has the meaning assigned to it by Article 18(1);

[<sup>F2</sup>“hospital”, subject to paragraph (2A), means any hospital, institution or special accommodation vested in the Department or in an authorised HSS trust;]

“hospital order” and “guardianship order” have the meanings respectively assigned by Article 44(1)(a) and (b);

*Definition rep. by 1992 NI 20*

[<sup>F2</sup>“HSS trust” means a Health and Social Services trust established under the Health and Personal Social Services (Northern Ireland) Order 1991 and “authorised HSS trust” shall be construed in accordance with paragraph (2B);]

“interim hospital order” has the meaning assigned to it by Article 45(1);

“medical practitioner” means a fully registered person within the meaning of the Medical Act 1983;

“medical treatment” includes nursing, and also includes care and training under medical supervision;

“nearest relative”, in relation to a patient, has the meaning assigned to it in Part II;

“nursing home” has the meaning assigned to it by [<sup>F3</sup> Article 11 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003];

“patient” (except in Part VIII) means a person suffering or appearing to be suffering from mental disorder;

“prescribed” means prescribed by regulations;

“private hospital” has the meaning assigned to it by Article 90(2);

“regulations” means regulations made by the Department;

[<sup>F3</sup>“residential care home” has the meaning assigned to it by Article 10 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;]

[<sup>F2</sup>“responsible authority” means—

- (a) in relation to a patient whose admission to a hospital is being sought or who is in, or is liable to be detained in, a hospital—
  - (i) where the hospital is vested in an authorised HSS trust, that trust;
  - (ii) in any other case, the Board managing that hospital;
- (b) in relation to a patient who is the subject of a guardianship application or is subject to guardianship under this Order—

- (i) where that patient resides in the area of an authorised HSS trust, that trust;
- (ii) in any other case, the Board for the area in which that patient resides;]

“responsible medical officer” means—

- (a) in relation to a patient liable to be detained in hospital under this Order, the medical practitioner appointed for the purposes of Part II by the Commission who is in charge of the assessment or treatment of the patient;
- (b) in relation to a patient subject to guardianship under this Order, any medical practitioner appointed for the purposes of Part II by the Commission who may be authorised to act (either generally or in any particular case or class of case or for any particular purpose) as the responsible medical officer by the responsible<sup>[F2]</sup> authority];
- (c) in relation to any other patient, the medical practitioner appointed for the purposes of Part II by the Commission who is in charge of the treatment of the patient;

“restriction direction” has the meaning assigned to it by Article 55(2);

“restriction order” has the meaning assigned to it by Article 47(1);

“the Review Tribunal” means the Mental Health Review Tribunal for Northern Ireland;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“special accommodation” has the meaning assigned to it by Article 110;

“transfer direction” has the meaning assigned to it by Article 53(2).

<sup>[F2]</sup>(2A) In Articles 7A,<sup>[F4]</sup> 29,] 107(1B), 113, 116, 121, 123(1) and 129(7) “hospital” includes any hospital or institution vested in an HSS trust other than an authorised HSS trust.

(2B) A reference in any provision of this Order to an “authorised HSS trust” is a reference to an HSS trust by which functions under that provision are exercisable by virtue of an authorisation for the time being in operation under Article 3(1) of the Health and Personal Social Services (Northern Ireland) Order 1994.

(2C) A reference in this Order to the area of an authorised HSS trust is a reference to the operational area of that trust as defined in Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972.]

(3) In relation to a person who is liable to be detained or subject to guardianship by virtue of an order or direction under Part III, any reference in this Order to any provision contained in Part II or in Article 71, 72 or 73 shall be construed as a reference to that provision as it applies to that person by virtue of Part III or Article 74(1).

(4) In determining for the purposes of this Order whether the failure to detain a patient or the discharge of a patient would create a substantial likelihood of serious physical harm—

(a) to himself, regard shall be had only to evidence—

- (i) that the patient has inflicted, or threatened or attempted to inflict, serious physical harm on himself; or
- (ii) that the patient's judgment is so affected that he is, or would soon be, unable to protect himself against serious physical harm and that reasonable provision for his protection is not available in the community;

(b) to other persons, regard shall be had only to evidence—

- (i) that the patient has behaved violently towards other persons; or
- (ii) that the patient has so behaved himself that other persons were placed in reasonable fear of serious physical harm to themselves.

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**F2** 1994 NI 2  
**F3** 2003 NI 9  
**F4** SR 1994/66

### **Definition of “mental disorder” and related expressions**

3.—(1) In this Order—

“mental disorder” means mental illness, mental handicap and any other disorder or disability of mind;

“mental illness” means a state of mind which affects a person's thinking, perceiving, emotion or judgment to the extent that he requires care or medical treatment in his own interests or the interests of other persons;

“mental handicap” means a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning;

“severe mental handicap” means a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning;

“severe mental impairment” means a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned.

(2) No person shall be treated under this Order as suffering from mental disorder, or from any form of mental disorder, by reason only of personality disorder, promiscuity or other immoral conduct, sexual deviancy or dependence on alcohol or drugs.

## PART II

### COMPULSORY ADMISSION TO HOSPITAL AND GUARDIANSHIP

#### *Admission to hospital for assessment*

#### **Admission for assessment**

4.—(1) A patient may be admitted to a hospital for assessment and there detained for the period allowed by Article 9, in pursuance of an application for admission for assessment (in this Order referred to as “an application for assessment”) made in accordance with this Article.

(2) An application for assessment may be made in respect of a patient on the grounds that—

- (a) he is suffering from mental disorder of a nature or degree which warrants his detention in a hospital for assessment (or for assessment followed by medical treatment); and
- (b) failure to so detain him would create a substantial likelihood of serious physical harm to himself or to other persons.

(3) An application for assessment shall be founded on and accompanied by a medical recommendation given in accordance with Article 6 by a medical practitioner which shall include—

- (a) a statement that, in the opinion of the practitioner, the grounds set out in paragraph (2)(a) and (b) apply to the patient;
- (b) such particulars as may be prescribed of the grounds for that opinion so far as it relates to the ground set out in paragraph (2)(a);

- (c) a statement of the evidence for that opinion so far as it relates to the ground set out in paragraph (2)(b).
- (4) An application for assessment shall—
  - (a) be made in the prescribed form; and
  - (b) be addressed to the responsible<sup>[F5]</sup> authority].

F5 1994 NI 2

### **Person who may make application for assessment**

5.—(1) Subject to the following provisions of this Article, an application for assessment may be made by—

- (a) the nearest relative of the patient; or
- (b) an approved social worker,

and such a person is, in relation to an application for assessment made by him, referred to in this Order as “the applicant”.

(2) An application for assessment shall not be made by a person unless he has personally seen the patient not more than two days before the date on which the application is made.

(3) An application for assessment shall not be made by an approved social worker except after consultation with the person, if any, appearing to be the nearest relative of the patient unless it appears to the approved social worker that in the circumstances such consultation is not reasonably practicable or would involve unreasonable delay.

(4) Where the nearest relative of a patient notifies an approved social worker or the responsible<sup>[F6]</sup> authority] that he objects to an application for assessment being made in respect of the patient then—

- (a) no application for assessment in respect of the patient shall be made by an approved social worker unless he has consulted another approved social worker; and
- (b) if, after such consultation, an approved social worker makes an application for assessment in respect of the patient, he shall record the objection of the nearest relative on the application for assessment.

(5) Where a patient is admitted to a hospital for assessment in pursuance of an application for assessment made by an approved social worker without consulting the person appearing to be the nearest relative of the patient, it shall be the duty of that social worker to inform the nearest relative of the patient to that effect as soon as may be practicable.

(6) Where a patient is admitted to a hospital for assessment in pursuance of an application for assessment made by his nearest relative, the responsible<sup>[F6]</sup> authority] shall as soon as practicable arrange for a social worker to interview the patient and provide the responsible medical officer with a report on his social circumstances.

F6 1994 NI 2

### **General provisions as to medical recommendation**

6. The medical recommendation required for the purposes of an application for assessment shall be in the prescribed form and shall satisfy the following requirements, namely—

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- (a) the recommendation shall be given and signed by a medical practitioner who has personally examined the patient not more than two days before the date on which he signs the recommendation;
- (b) the recommendation shall, if practicable, be given by the patient's medical practitioner or by a medical practitioner who has previous acquaintance with the patient;
- (c) the recommendation shall not, except in a case of urgent necessity, be given by a medical practitioner on the staff of the hospital to which admission is sought;
- (d) the recommendation shall not be given by any of the persons described in Schedule 1.

### **Application for assessment in respect of patient already in hospital**

7.—(1) An application for assessment may be made under this Part notwithstanding that a patient is already an in-patient in a hospital who is not liable to be detained there under this Order; and where an application is so made the patient shall be treated for the purposes of this Part as if he had been admitted to the hospital at the time when that application was received by the responsible<sup>[F7]</sup> authority].

(2) If, where a patient is an in-patient in a hospital, but is not liable to be detained there under this Order, it appears to a medical practitioner on the staff of the hospital that an application for assessment ought to be made in respect of the patient, he may furnish to the responsible<sup>[F7]</sup> authority] a report in the prescribed form to that effect; and where he does so, the patient may be detained in the hospital for a period not exceeding 48 hours from the time when the report is so furnished.

(3) If, where a patient is receiving treatment for mental disorder as an in-patient in a hospital, but is not liable to be detained there under this Order, it appears to a nurse of the prescribed class—

- (a) that an application for assessment ought to be made in respect of the patient; and
- (b) that it is not practicable to secure the immediate attendance of a medical practitioner for the purpose of furnishing a report under paragraph (2),

the nurse may record that fact in the prescribed form; and in that event the patient may be detained in the hospital for a period of 6 hours from the time when that fact is so recorded or until the earlier arrival at the place where the patient is detained of a medical practitioner having power to furnish a report under that paragraph.

(4) A record made under paragraph (3) shall be delivered by the nurse to the responsible<sup>[F7]</sup> authority] as soon as possible after it is made.

(5) Where a record is made under paragraph (3) the period mentioned in paragraph (2) shall begin at the time when it is made.

(6) A patient who has been detained in a hospital under paragraph (2) or paragraph (3) shall not be further detained under the same paragraph immediately after the expiry of that period of detention.

(7) The responsible<sup>[F7]</sup> authority] shall immediately forward to the Commission a copy of any report furnished to the<sup>[F7]</sup> authority] under paragraph (2) and of any record delivered to the<sup>[F7]</sup> authority] under paragraph (4).

**F7** 1994 NI 2

### **[F8] Power to detain in hospital pending admission to another hospital**

7A.—(1) This Article applies to a hospital managed by an HSS trust other than an authorised HSS trust.

(2) If, where a patient is an in-patient in a hospital to which this Article applies, it appears to a medical practitioner on the staff of the hospital that an application for assessment ought to be made in respect of the patient, he may furnish to the HSS trust managing the hospital a report in the prescribed form to that effect; and where he does so, the patient may be detained in the hospital for a period not exceeding 48 hours from the time when the report is so furnished.

(3) A patient who has been detained in a hospital under paragraph (2) shall not be further detained under that paragraph immediately after the expiry of that period of detention.

(4) An HSS trust shall immediately forward to the Commission a copy of any report furnished to the trust under paragraph (2).]

**F8** 1994 NI 2

### ***Effect of application for assessment***

**8.**—(1) An application for assessment duly completed in accordance with this Part shall be sufficient authority for—

- (a) the applicant or a person authorised by the applicant; or
- (b) the responsible<sup>[F9]</sup> authority], if the applicant so requests in a case of difficulty,

to take the patient and convey him to the hospital specified in the application at any time within the period of—

- (i) two days beginning with the date on which the medical recommendation was signed; or
- (ii) such longer period (not exceeding 14 days) as a medical practitioner appointed for the purposes of this Part by the Commission may certify in the prescribed form to be necessary in exceptional circumstances.

(2) Where a patient is admitted within that period to the hospital specified in any such application, or, being within a hospital, is treated by virtue of Article 7 as if he had been so admitted,—

- <sup>[F9]</sup>(a) the application shall be sufficient authority for the responsible authority to detain the patient in the hospital in accordance with Article 9; and]
- (b) the responsible<sup>[F9]</sup> authority] shall immediately forward to the Commission a copy of the application for assessment and of the medical recommendation on which it is founded.

(3) Where a patient who is subject under this Order to the guardianship of a person other than a<sup>[F9]</sup> Board or an authorised HSS trust] is admitted to hospital for assessment, it shall be the duty of the responsible<sup>[F9]</sup> authority] to inform the guardian of the patient to that effect as soon as may be practicable.

**F9** 1994 NI 2

### ***The assessment period***

**9.**—(1) A patient admitted to hospital pursuant to an application for assessment made in accordance with this Part shall be examined immediately after he is admitted thereto by—

- (a) the responsible medical officer;
- (b) a medical practitioner appointed for the purposes of this Part by the Commission; or
- (c) any other medical practitioner on the staff of the hospital.

(2) The examination required by paragraph (1) shall not be carried out by the medical practitioner who gave the medical recommendation on which the application for assessment is founded.

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(3) A medical practitioner carrying out an examination under paragraph (1) shall immediately furnish to the responsible<sup>[F10]</sup> authority] in the prescribed form a report of that examination and the date on which such a report is furnished to the<sup>[F10]</sup> authority] is referred to in this Part as “the date of admission”.

(4) A patient admitted to hospital pursuant to an application for assessment may be detained in hospital for the purpose of enabling an examination to be made and a report to be furnished under the preceding provisions of this Article and where a report so furnished by a medical practitioner states that in his opinion the patient should be detained in hospital for assessment, the patient may be detained in hospital—

- (a) where the report was furnished by the responsible medical officer or by a medical practitioner appointed for the purposes of this Part by the Commission, for a period not exceeding 7 days beginning with the date of admission;
- (b) where the report was furnished by any other medical practitioner, for a period not exceeding 48 hours from the time when the report was furnished;

but shall not be so detained for any longer period unless he has become liable to be detained by virtue of paragraph (7) or (8).

(5) A patient detained by virtue of sub-paragraph (b) of paragraph (4) shall be examined before the expiration of the period referred to in that sub-paragraph by the responsible medical officer.

(6) The responsible medical officer shall immediately furnish to the responsible<sup>[F10]</sup> authority] in the prescribed form a report of the examination carried out under paragraph (5).

(7) Where a report so furnished by the responsible medical officer states that in his opinion the patient should be detained in hospital for assessment for a further period, the patient may be detained in hospital for a period not exceeding 7 days beginning with the date of admission but shall not be so detained for any longer period unless he has become liable to be detained by virtue of paragraph (8).

(8) Where during the period for which a patient is detained by virtue of paragraph (4)(a) or (7) he is examined by the responsible medical officer and the responsible medical officer furnishes to the responsible<sup>[F10]</sup> authority] in the prescribed form a report of the examination stating that in his opinion the patient should be detained in hospital for assessment for a further period, the patient may be detained in hospital for a further period not exceeding 7 days beginning immediately on the expiration of the period for which he is detained by virtue of paragraph (4)(a) or (7) but shall not be detained for any longer period unless he has become liable to be detained for treatment by virtue of Article 12.

(9) If it is not practicable for an examination under paragraph (5) or (8) to be carried out by the responsible medical officer, it may instead be carried out by a medical practitioner appointed for the purposes of this Part by the Commission and in such a case references in paragraphs (5) to (8) to the responsible medical officer shall be construed as including references to a medical practitioner so appointed.

(10) The responsible<sup>[F10]</sup> authority] shall immediately forward to the Commission a copy of any report furnished to the<sup>[F10]</sup> authority] under paragraph (3), (6) or (8).

**F10** [1994 NI 2](#)

### ***Disregard of assessment period for certain purposes***

**10.—**(1) This Article applies to any person who—

- (a) is admitted to hospital for assessment and detained there by virtue of Article 9 for any period (in this Article referred to as “the assessment period”); and



- (b) at the end of the assessment period does not become liable to be detained for treatment by virtue of Article 12.
- (2) Where a question seeking information with respect to the previous health or circumstances of any person to whom this Article applies is put to him or to any other person, otherwise than in judicial proceedings—
- (a) the question shall be treated as not relating to the assessment period and the answer thereto may be framed accordingly; and
- (b) the person questioned shall not be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose the assessment period in his answer to the question.
- (3) Any obligation imposed on any person by any rule of law or by the provisions of any agreement or arrangement to disclose any matters to any other person shall not extend to requiring him to disclose—
- (a) the assessment period for which he was detained, if he is a person to whom this Article applies; or
- (b) the assessment period for which any other person to whom this Article applies was detained.
- (4) The fact that a person to whom this Article applies has been detained in hospital for assessment or any failure to disclose that fact shall not be a proper ground for dismissing or excluding that person from any office, profession, occupation or employment, or for prejudicing him in any way in any occupation or employment.
- (5) Any disqualification, disability, prohibition or other penalty which by virtue of any rule of law or statutory provision other than this Order attaches to or is imposed on any person by reason of the fact that he has been liable to be detained under this Part of this Order shall not attach to or be imposed on a person to whom this Article applies.
- (6) In paragraph (2) “judicial proceedings” includes, in addition to proceedings before any of the ordinary courts of law, proceedings before any tribunal, body or person having power—
- (a) by virtue of any statutory provision, law, custom or practice;
- (b) under the rules governing any association, institution, profession, occupation or employment; or
- (c) under any provision of an agreement providing for arbitration with respect to questions arising thereunder,
- to determine any question affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of any such question.

### ***Rectification of applications, recommendations and reports***

**11.**—(1) Where within the period of 14 days beginning with the date of admission, the application for assessment, the medical recommendation or any report given under Article 9 is found to be in any respect incorrect or defective, the application, recommendation or report may, within that period and with the consent of the responsible<sup>[F11]</sup> authority, be amended by the person by whom it was signed; and where any such amendment is made the application, recommendation or report shall have effect and shall be deemed always to have had effect as if it had been originally made as so amended.

(2) Without prejudice to paragraph (1), where within the period mentioned in that paragraph it appears to the responsible<sup>[F11]</sup> authority that a medical recommendation or a report under Article 9 is insufficient to warrant the detention of a patient under this Part, it may, within that period, give notice in writing to that effect to the applicant; and where any such notice is given in respect of

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a medical recommendation or report, that recommendation or report shall be disregarded, but the application for assessment shall be, and shall be deemed always to have been, sufficient if—

- (a) a fresh medical recommendation or report complying with the relevant provisions of this Part (other than those relating to the time at which a recommendation must be signed or a report furnished) is furnished to the responsible<sup>[F11]</sup> authority] within that period; and
- (b) that recommendation or report complies with those provisions.

(3) The responsible<sup>[F11]</sup> authority] shall immediately inform the Commission of any amendment made under paragraph (1) and shall immediately forward to the Commission a copy of any fresh medical recommendation or report furnished to the<sup>[F11]</sup> authority] under paragraph (2)(a).

**F11** 1994 NI 2

### *Detention in hospital for treatment*

#### ***Detention for treatment***

**12.**—(1) Where, during the period for which a patient is detained for assessment by virtue of Article 9(8), he is examined by a medical practitioner appointed for the purposes of this Part by the Commission and that medical practitioner furnishes to the responsible<sup>[F12]</sup> authority] in the prescribed form a report of the examination stating—

- (a) that, in his opinion, the patient 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) that, in his opinion, failure to so detain the patient would create a substantial likelihood of serious physical harm to himself or to other persons; and
- (c) such particulars as may be prescribed of the grounds for his opinion so far as it relates to the matters set out in sub-paragraph (a); and
- (d) the evidence for his opinion so far as it relates to the matters set out in sub-paragraph (b), specifying whether other methods of dealing with the patient are available and, if so, why they are not appropriate,

that report shall be<sup>[F12]</sup> sufficient authority for the responsible authority to detain the patient] in the hospital for medical treatment and the patient may, subject to the provisions of this Order, be so detained for a period not exceeding 6 months beginning with the date of admission, but shall not be so detained for any longer period unless the authority for his detention is renewed under Article 13.

(2) A report under paragraph (1) shall not be given by—

- (a) the medical practitioner who gave the medical recommendation on which the application for assessment is founded; or
- (b) any of the persons described in Schedule 1.

(3) Where a patient is detained in a hospital for treatment by virtue of a report under paragraph (1), any previous application under this Part by virtue of which he was subject to guardianship shall cease to have effect.

(4) The responsible<sup>[F12]</sup> authority] shall immediately forward to the Commission a copy of any report furnished to the<sup>[F12]</sup> authority] under paragraph (1).

(5) In this Order “detained for treatment”, in relation to a patient, means detained in a hospital for medical treatment by virtue of a report under paragraph (1) or by virtue of a report under Article 13(2), (3) or (5).

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### **Renewal of authority for detention**

13.—(1) Authority for the detention of a patient for treatment may, unless the patient has previously been discharged, be renewed under this Article—

- (a) from the expiration of the period referred to in Article 12(1), for a further period of 6 months if the provisions of paragraph (2) are complied with;
- (b) from the expiration of any period of renewal under sub-paragraph (a), for a further period of one year if the provisions of paragraphs (3) and (4) are complied with;
- (c) from the expiration of any period of renewal under sub-paragraph (b) for a further period of one year if the provisions of paragraph (5) are complied with, and so on for periods of one year at a time if the provisions of paragraph (5) are complied with in each case.

(2) Within the period of one month ending with the day on which a patient who is liable to be detained for treatment would cease under Article 12(1) to be so liable in default of the renewal of the authority for his detention, the responsible medical officer shall examine the patient and where that medical officer furnishes to the responsible<sup>[F13]</sup> authority] in the prescribed form a report of the examination stating the opinions, particulars and evidence referred to in Article 12(1)(a), (b), (c) and (d), the authority for the detention of the patient shall, by virtue of the report, be renewed for the further period mentioned in paragraph (1)(a).

(3) Within the period of two months ending with the day on which a patient who is liable to be detained by virtue of an authority renewed under paragraph (2) would cease to be so liable in default of the further renewal of that authority, the responsible<sup>[F13]</sup> authority] shall arrange for the examination of the patient by two medical practitioners in accordance with paragraph (4) and where those practitioners furnish to the responsible<sup>[F13]</sup> authority] in the prescribed form a report of the examination stating the opinions, particulars and evidence referred to in Article 12(1)(a), (b), (c) and (d), the authority for the detention of the patient shall, by virtue of the report, be renewed for the further period mentioned in paragraph (1)(b).

(4) Where the<sup>[F13]</sup> responsible authority] arranges for the examination of the patient under paragraph (3)—

- (a) it shall give the patient and his nearest relative not less than 14 days' notice in writing of the date of the examination;
- (b) the two medical practitioners who carry out the examination shall be appointed for the purposes of this Part by the Commission;
- (c) one of the medical practitioners who carry out the examination shall be a person who is not on the staff of the 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);
- (d) the report of the examination shall consist of a joint report signed by both medical practitioners.

(5) Within the period of two months ending with the day on which a patient who is liable to be detained by virtue of an authority for detention renewed under paragraph (3) or this paragraph would cease to be so liable in default of the further renewal of that authority, the responsible medical officer shall examine the patient and where that medical officer furnishes to the responsible<sup>[F13]</sup> authority] in the prescribed form a report of the examination stating the opinions, particulars and evidence referred to in Article 12(1)(a), (b), (c) and (d), the authority for the detention of the patient shall, by virtue of the report, be renewed for the further period mentioned in paragraph (1)(c).

**Status:** Point in time view as at 15/05/2008.

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(6) Where a report under paragraph (2), (3) or (5) is furnished to the responsible<sup>F13</sup> authority], it shall, unless it discharges the patient—

- (a) cause him and his nearest relative to be informed;
- (b) forward to the Commission a copy of the report.

**F13** 1994 NI 2

### ***Discharge of patient from detention***

**14.**—(1) Subject to the following provisions of this Article, a patient who is for the time being liable to be detained under this Part shall cease to be so liable if an order in writing discharging him from detention is made in respect of him by the responsible medical officer, the responsible<sup>F14</sup> authority] or his nearest relative.

(2) The responsible medical officer shall make an order under paragraph (1) in respect of a patient liable to be detained under this Part where he is satisfied—

- (a) that the patient is no longer suffering from mental illness or severe mental impairment of a nature or degree which warrants his detention in hospital for medical treatment; or
- (b) that, having regard to the care which would be available for the patient if he were discharged, the discharge would not create a substantial likelihood of serious physical harm to himself or to other persons.

(3) The responsible medical officer shall not make an order under paragraph (1) in respect of a patient detained in any special accommodation unless the responsible<sup>F14</sup> authority] consents to the discharge of the patient.

(4) An order under paragraph (1) in respect of a patient who is liable to be detained under this Part shall not be made by his nearest relative except after giving not less than 72 hours' notice in writing to the responsible<sup>F14</sup> authority]; and if, within 72 hours after such notice has been given, the responsible medical officer furnishes to that<sup>F14</sup> authority] a report in writing certifying—

- (a) that, in the opinion of that officer, the patient is suffering from mental illness or severe mental impairment of a nature or degree which warrants his detention in hospital for medical treatment and that the discharge of the patient would create a substantial likelihood of serious physical harm to himself or to other persons; or
- (b) that that officer is not satisfied that the patient, if discharged, would receive proper care;

then—

- (i) any order under paragraph (1) made by that relative in pursuance of the notice shall be of no effect; and
- (ii) a further order for the discharge of the patient shall not be made by that relative during the period of 6 months beginning with the date of the report.

(5) Where, but for this paragraph, a Sunday or any part thereof would be reckoned in the period of 72 hours referred to in paragraph (4), for the references in that paragraph to 72 hours there shall be substituted references to 96 hours.

(6) For the purpose of advising as to the exercise by the nearest relative of a patient who is liable to be detained under this Part of any power to order his discharge, any medical practitioner authorised by or on behalf of the nearest relative may—

- (a) at any reasonable time visit the patient and examine him in private; and
- (b) require the production of and inspect any records relating to the detention or treatment of the patient in any hospital.

(7) Where a report is furnished under paragraph (4) in respect of a patient, the responsible<sup>F14</sup> authority] shall immediately—

- (a) inform the nearest relative of the patient; and
- (b) forward a copy of the report to the Commission.

(8) Where a patient is discharged from detention under this Article the responsible<sup>F14</sup> authority] shall immediately inform the Commission to that effect.

**F14** 1994 NI 2

### ***Leave of absence from hospital***

**15.**—(1) The responsible medical officer may grant to any patient who is for the time being liable to be detained in a hospital under this Part leave to be absent from the hospital subject to such conditions, if any, as that officer considers necessary in the interests of the patient or for the protection of other persons.

(2) Leave of absence may be granted to a patient under this Article either on specified occasions or for any specified period; and where leave is so granted for a specified period, that period may be extended by further leave granted in the absence of the patient.

(3) Where it appears to the responsible medical officer that it is necessary to do so in the interests of the patient or for the protection of other persons, he may, upon granting leave of absence under this Article, direct that the patient remain in custody during his absence; and where leave of absence is so granted the patient may be kept in the custody of any officer of the responsible<sup>F15</sup> authority], or of any other person authorised in writing by that<sup>F15</sup> authority].

(4) Where leave of absence is granted to a patient under this Article or where a period of leave is extended by further leave and the leave or the extension is for a period of more than 28 days, it shall be the duty of the responsible<sup>F15</sup> authority] to inform the Commission within 14 days of the granting of leave or of the extension, as the case may be, of the address at which the patient is residing and, on the return of the patient, to notify the Commission thereof within 14 days.

(5) Where—

- (a) a patient is absent from a hospital in pursuance of leave of absence granted under this Article; and
- (b) it appears to the responsible medical officer that it is necessary to do so in the interests of the patient's health or safety or for the protection of other persons or because the patient is not receiving proper care;

that officer may, subject to paragraph (6), by notice in writing given to the patient or to the person for the time being in charge of the patient, revoke the leave of absence and recall the patient to the hospital.

(6) A patient to whom leave of absence is granted under this Article shall not be recalled under paragraph (5) after he has ceased to be liable to be detained under this Part.

**F15** 1994 NI 2

### ***Correspondence of detained patients***

**16.**—(1) A postal packet addressed to any person— by a patient detained in a hospital under this Part and delivered by him for dispatch may be withheld from<sup>F16</sup> the postal operator concerned]

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- (a) if that person has requested that communications addressed to him by the patient should be withheld; or
- (b) subject to paragraph (3), if the patient is detained in special accommodation and the responsible<sup>[F17]</sup> authority] considers that the postal packet is likely—
  - (i) to cause distress to the person to whom it is addressed or to any other person (not being a person on the staff of the special accommodation); or
  - (ii) to cause danger to any person,

and any request for the purposes of sub-paragraph (a) shall be made by a notice in writing given to the responsible<sup>[F17]</sup> authority] or the responsible medical officer.

(2) Subject to paragraph (3), a postal packet addressed to a patient detained in special accommodation under this Part may be withheld from the patient if, in the opinion of the responsible<sup>[F17]</sup> authority], it is necessary to do so in the interests of the safety of the patient or for the protection of other persons.

(3) Paragraphs (1)(b) and (2) do not apply to any postal packet addressed by a patient to, or sent to a patient by or on behalf of—

- (a) any Northern Ireland department or department of the government of the United Kingdom;
- (b) any Minister of the Crown<sup>[F18]</sup>, the Scottish Ministers], any member of either House of Parliament<sup>[F18]</sup>, any member of the Scottish Parliament] or member of the Assembly;
- (c) the Master (Care and Protection), any of the Lord Chief Justice's Visitors or any officer of the Office of Care and Protection;
- (d) the Commission, any Commissioner thereof or any person appointed by the Commission under Article 87(1)(b) or (c);
- (e) the Review Tribunal;
- <sup>[F17]</sup>(f) any Board or HSS trust;]
- (g) the Parliamentary Commissioner for Administration, the Northern Ireland Parliamentary Commissioner for Administration or the Northern Ireland Commissioner for Complaints;
- (h) any legally qualified person instructed by the patient to act as his legal adviser; or
- (i) the European Commission on Human Rights or the European Court of Human Rights.

(4) The responsible<sup>[F17]</sup> authority] may open and inspect any postal packet for the purpose of determining whether it is one to which paragraph (1) or (2) applies and, if so, whether or not it should be withheld under that paragraph; and the power to withhold a postal packet under either of those paragraphs includes power to withhold anything contained in it.

(5) Where a postal packet or anything contained in it is withheld under paragraph (1) or (2) the responsible<sup>[F17]</sup> authority] shall record that fact in writing.

(6) Where a postal packet or anything contained in it is withheld under paragraph (1)(b) or (2) the responsible<sup>[F17]</sup> authority] shall within 7 days give notice of that fact to the patient and, in a case under paragraph (2) to the person (if known) by whom the postal packet was sent; and any such notice shall be in writing and shall contain a statement of the effect of Article 17.

(7) The Department may make regulations with respect to the exercise of the powers conferred by this Article.

(8) In this Article and in Article 17<sup>[F16]</sup> “postal packet” and “postal operator” have] the same meaning as in<sup>[F16]</sup> the Postal Services Act 2000<sup>];<sup>F16</sup> . . .</sup>

**F17** 1994 NI 2  
**F18** SI 1999/1820

### ***Review of decision to withhold postal packet***

**17.**—(1) The Commission shall review any decision to withhold a postal packet or anything contained in it under paragraph (1)(b) or (2) of Article 16 if an application in that behalf is made—

- (a) in a case under the said paragraph (1)(b), by the patient; or
- (b) in a case under the said paragraph (2), either by the patient or by the person by whom the postal packet was sent;

and any such application shall be made within 6 months of the receipt by the applicant of the notice referred to in paragraph (6) of that Article.

(2) On an application under paragraph (1) the Commission may direct that the postal packet or anything contained in it which is the subject of the application shall not be withheld and the responsible<sup>F19</sup> authority] shall comply with any such direction.

(3) The Department may by regulations make provision with respect to the making and determination of applications under paragraph (1), including provision for the production to the Commission of any postal packet which is the subject of such an application.

**F19** 1994 NI 2

## *Guardianship*

### ***Reception of patients into guardianship***

**18.**—(1) A patient who has attained the age of 16 years may be received into guardianship, for the period allowed by the following provisions of this Part, in pursuance of an application (in this Order referred to as “a guardianship application”) made in accordance with this Article.

- (2) A guardianship application may be made in respect of a patient on the grounds that—
- (a) he is suffering from mental illness or severe mental handicap of a nature or degree which warrants his reception into guardianship under this Article; and
  - (b) it is necessary in the interests of the welfare of the patient that he should be so received.

(3) A guardianship application shall be founded on and accompanied by two medical recommendations and a recommendation by an approved social worker and—

- (a) each medical recommendation shall be given in accordance with Article 20 by a medical practitioner and shall include—
  - (i) a statement that, in his opinion, the ground set out in paragraph (2)(a) applies in relation to the patient; and
  - (ii) such particulars as may be prescribed of the grounds for that opinion;
- (b) the recommendation by the approved social worker shall be in the prescribed form and shall include—
  - (i) a statement that, in his opinion, the ground set out in paragraph (2)(b) applies in relation to the patient;
  - (ii) the reasons for that opinion; and
  - (iii) a statement as to whether he is related to the patient and of any pecuniary interest that he may have in the reception of the patient into guardianship.

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(4) A guardianship application shall—

- (a) be made in the prescribed form; and
- (b) be forwarded to the responsible<sup>[F20]</sup> authority].

(5) The person named as guardian in a guardianship application may be either the responsible<sup>[F20]</sup> authority] or, subject to paragraph (6), any other person (including the applicant himself).

(6) A guardianship application in which a person other than the responsible<sup>[F20]</sup> authority] is named as guardian—

- (a) shall be accompanied by a statement in writing by that person that he is willing to act as guardian; and
- (b) shall be of no effect unless it is accepted on behalf of that person by the responsible<sup>[F20]</sup> authority].

(7) A guardianship application and any medical recommendation given for the purposes of such an application may describe the patient as suffering from mental illness or severe mental handicap or in both those ways, but the application shall not be of any effect unless each of the medical recommendations describes the patient as suffering from the same form of mental disorder, whether or not either describes the patient as also suffering from another form.

**F20** 1994 NI 2

### ***Person who may make guardianship application***

**19.**—(1) Subject to the following provisions of this Article, a guardianship application may be made by—

- (a) the nearest relative of the patient; or
- (b) an approved social worker,

and such a person is, in relation to a guardianship application made by him, referred to in this Order as “the applicant”.

(2) A guardianship application shall not be made by a person unless he has personally seen the patient not more than 14 days before the date on which the application is made.

(3) A guardianship application shall not be made by an approved social worker except after consultation with the person, if any, appearing to be the nearest relative of the patient unless it appears to the approved social worker that in the circumstances such consultation is not reasonably practicable or would involve unreasonable delay.

(4) A guardianship application shall not be made by an approved social worker if he gave the recommendation under Article 18(3)(b) on which the application is founded.

(5) Where the nearest relative of a patient notifies an approved social worker or the responsible<sup>[F21]</sup> authority] that he objects to a guardianship application being made in respect of the patient, then—

- (a) no guardianship application in respect of the patient shall be made by an approved social worker unless he has consulted another approved social worker (not being the social worker who gave the recommendation under Article 18(3)(b) on which the application is founded); and
- (b) if, after such consultation, an approved social worker makes a guardianship application in respect of the patient, he shall record the objection of the nearest relative on the guardianship application.

(6) Where a patient is received into guardianship in pursuance of a guardianship application made by an approved social worker without consulting the person appearing to be the nearest relative of



the patient, it shall be the duty of that social worker to inform the nearest relative of the patient to that effect as soon as may be practicable.

F21 1994 NI 2

### **General provisions as to medical recommendations**

**20.**—(1) The medical recommendations required for the purposes of a guardianship application shall be in the prescribed form and shall satisfy the following requirements, namely—

- (a) each recommendation shall be given and signed by a medical practitioner who has personally examined the patient not more than two days before the date on which he signs the recommendation;
- (b) where the medical practitioners have examined the patient separately, not more than 7 days must have elapsed between the days on which the separate examinations took place;
- (c) one recommendation shall be given by a medical practitioner appointed by the Commission for the purposes of this Part, and the other shall, if practicable, be given by the patient's medical practitioner or by a medical practitioner who has previous acquaintance with the patient;
- (d) neither recommendation shall be given by—
  - (i) the person named as guardian in the guardianship application; or
  - (ii) any of the persons described in Schedule 1.

(2) A guardianship application shall be sufficient if the medical recommendations on which it is founded are given either as separate recommendations, each signed by a medical practitioner, or as a joint recommendation signed by two medical practitioners.

### **Rectification of guardianship applications and recommendations**

**21.**—(1) Where within the period of 14 days beginning with the day on which a guardianship application has been accepted by the responsible<sup>[F22]</sup> authority] the application, or any recommendation given for the purposes of the application, is found to be in any respect incorrect or defective, the application or recommendation may, within that period and with the consent of that<sup>[F22]</sup> authority], be amended by the person by whom it was signed; and where any such amendment is made the application or recommendation shall have effect and shall be deemed always to have had effect as if it had been originally made as so amended.

(2) Without prejudice to paragraph (1), where within the period mentioned in that paragraph it appears to the responsible<sup>[F22]</sup> authority] that one of the recommendations on which the guardianship application is founded is insufficient to warrant reception into guardianship in pursuance of the application, it may, within that period, give notice in writing to that effect to the applicant; and where any such notice is given in respect of a recommendation that recommendation shall be disregarded, but the application shall be, and shall be deemed always to have been, sufficient if—

- (a) a fresh recommendation complying with the relevant provisions of this Part (other than, in the case of a medical recommendation, the provisions relating to the time of signature and the interval between medical examinations) is furnished to the<sup>[F22]</sup> authority] within that period; and
- (b) that recommendation and the other recommendations on which the application is founded together comply with those provisions.

(3) Where the medical recommendations upon which an application under this Part is founded are, taken together, insufficient to warrant reception into guardianship in pursuance of the application,

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a notice under paragraph (2) may be given in respect of either of those recommendations; but this paragraph shall not apply in a case where the application is of no effect by virtue of Article 18(7).

(4) The responsible<sup>[F22]</sup> authority] shall immediately inform the Commission of any amendment made under paragraph (1) and shall immediately forward to the Commission a copy of any fresh recommendation furnished to the<sup>[F22]</sup> authority] under paragraph (2)(a).

**F22** 1994 NI 2

### ***Effect of guardianship application***

**22.**—(1) Where a guardianship application, duly made in accordance with the provisions of this Part and forwarded to the responsible<sup>[F23]</sup> authority] within the period allowed by paragraph (2), is accepted by that<sup>[F23]</sup> authority], the application shall, subject to regulations, confer on the<sup>[F23]</sup> Board, authorised HSS trust] or person named in the application as guardian, to the exclusion of any other person—

- (a) the power to require the patient to reside at a place specified by the<sup>[F23]</sup> Board, authorised HSS trust] or person named as guardian;
- (b) the power to require the patient to attend at places and times so specified for the purpose of medical treatment, occupation, education or training;
- (c) the power to require access to the patient to be given at any place where the patient is residing to any medical practitioner, approved social worker or other person so specified.

(2) The period within which a guardianship application is required for the purposes of this Article to be forwarded to the responsible<sup>[F23]</sup> authority] is the period of 7 days beginning with the date on which the patient was last examined by a medical practitioner before giving a medical recommendation for the purposes of the application.

(3) A patient received into guardianship in pursuance of a guardianship application may, subject to the provisions of this Order, be kept under guardianship for a period not exceeding 6 months beginning with the day on which the guardianship application was accepted, but shall not be so kept for any longer period unless the authority for his guardianship is renewed under Article 23.

- (4) Where a patient is received into guardianship in pursuance of a guardianship application—
- (a) any previous application under this Part by virtue of which he was subject to guardianship shall cease to have effect;
  - (b) if he was previously liable to be detained for assessment or for treatment under this Part, he shall cease to be so liable.

(5) Where a patient is received into guardianship in pursuance of a guardianship application the responsible<sup>[F23]</sup> authority] shall immediately forward to the Commission a copy of the guardianship application and of the medical recommendations and the recommendation by an approved social worker on which it is founded.

**F23** 1994 NI 2

### ***Renewal of authority for guardianship***

**23.**—(1) Authority for the guardianship of a patient may, unless the patient has previously been discharged, be renewed under this Article—

- (a) from the expiration of the period referred to in Article 22(3), for a further period of 6 months;

(b) from the expiration of any period of renewal under sub-paragraph (a), for a further period of one year,

and so on for periods of one year at a time.

(2) Within the period of 2 months ending with the day on which a patient who is subject to guardianship under this Part would cease under Article 22(3) or this Article to be so liable in default of the renewal of the authority for his guardianship—

(a) the responsible medical officer shall examine the patient or obtain from another medical practitioner a report on the condition of the patient; and, if it appears to him that the ground set out in Article 18(2)(a) continues to apply in relation to the patient, he shall furnish to such approved social worker as the responsible<sup>F24</sup> authority] may direct a report to that effect in the prescribed form along with the report first mentioned if such a report has been obtained; and

(b) that approved social worker shall consider whether the ground set out in Article 18(2)(b) continues to apply in relation to the patient; and if it appears to him that it does continue so to apply, he shall furnish to the responsible<sup>F24</sup> authority] a report to that effect in the prescribed form along with the report or reports furnished to him under sub-paragraph (a).

(3) Where a report is duly furnished to the responsible<sup>F24</sup> authority] under paragraph (2)(b), the authority for the guardianship of the patient shall be thereby renewed for the period prescribed in that case by paragraph (1).

(4) Where a report under paragraph (2)(b) is furnished to the responsible<sup>F24</sup> authority], it shall, unless it discharges the patient—

(a) cause him, his nearest relative and his guardian to be informed;

(b) forward to the Commission a copy of the report and of the report or reports referred to in paragraph (2)(a).

(5) Where the form of mental disorder specified in a report furnished under paragraph (2)(a) is a form of disorder other than that specified in the guardianship application, that application shall have effect as if that other form of mental disorder were specified in it.

F24 1994 NI 2

### ***Discharge of patient from guardianship***

**24.**—(1) Subject to the following provisions of this Article, a patient who is for the time being subject to guardianship under this Part shall cease to be so subject if an order in writing discharging him from guardianship is made in respect of him by the responsible medical officer, an authorised social worker or his nearest relative.

(2) The responsible medical officer shall make an order under paragraph (1) in respect of a patient subject to guardianship under this Part where he is satisfied that the patient is not suffering from mental illness or severe mental handicap of a nature or degree which warrants his remaining under guardianship.

(3) An authorised social worker shall make an order under paragraph (1) in respect of a patient subject to guardianship under this Part where he is satisfied that it is not necessary in the interests of the welfare of the patient that he should remain under guardianship.

(4) An order under paragraph (1) in respect of a patient subject to guardianship under this Part shall not be made by his nearest relative except after giving not less than 72 hours' notice in writing to the responsible<sup>F25</sup> authority]; and if, within 72 hours after such notice has been given—

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- (a) the responsible medical officer furnishes to the responsible<sup>F25</sup> authority] a report in writing that the ground set out in Article 18(2)(a) continues to apply in relation to the patient; and
- (b) an authorised social worker furnishes to the responsible<sup>F25</sup> authority] a report in writing that the ground set out in Article 18(2)(b) continues to apply in relation to the patient,

then—

- (i) any order under paragraph (1) made by that relative in pursuance of the notice shall be of no effect; and
- (ii) a further order for the discharge of the patient shall not be made by that relative during the period of 6 months beginning with the date of the later of the two reports.

(5) Where, but for this paragraph, a Sunday or any part thereof would be reckoned in the period of 72 hours referred to in paragraph (4), for the references in that paragraph to 72 hours there shall be substituted references to 96 hours.

(6) For the purpose of advising as to the exercise by the nearest relative of a patient who is subject to guardianship under this Part of any power to order his discharge, any medical practitioner authorised by or on behalf of the nearest relative of the patient may at any reasonable time visit the patient and examine him in private.

(7) Where reports are furnished under both sub-paragraph (a) and sub-paragraph (b) of paragraph (4) in respect of a patient, the responsible<sup>F25</sup> authority] shall immediately—

- (a) inform the nearest relative of the patient; and
- (b) forward a copy of each report to the Commission.

(8) Where a patient is discharged from guardianship under this Article the responsible<sup>F25</sup> authority] shall immediately inform the Commission and, in the case of a person subject to the guardianship of a person other than the<sup>F25</sup> authority], the guardian to that effect.

(9) In this Article “authorised social worker” means an approved social worker authorised for the purposes of this Article by the responsible<sup>F25</sup> authority].

**F25** 1994 NI 2

### ***Transfer of guardianship on death, incapacity, etc. of guardian***

**25.**—(1) If any person<sup>F26</sup> (other than a Board or an authorised HSS trust) having the guardianship of a patient received into guardianship under this Part—

- (a) dies; or
- (b) gives notice in writing to the responsible<sup>F26</sup> authority] that he desires to relinquish the functions of guardian,

the guardianship of the patient shall thereupon vest in the responsible<sup>F26</sup> authority], but without prejudice to any power to transfer the patient into the guardianship of another person by virtue of Article 28.

(2) If any such person, not having given notice under paragraph (1)(b), is incapacitated by illness or any other cause from performing the functions of guardian of the patient, those functions may, during his incapacity, be performed on his behalf by the responsible<sup>F26</sup> authority] or by any other person approved for the purpose by that<sup>F26</sup> authority].

(3) If it appears to a county court, upon application made by an officer of the responsible<sup>F26</sup> authority], that any person<sup>F26</sup> (other than a Board or an authorised HSS trust) having the guardianship of a patient received into guardianship under this Part has performed his functions

negligently or in a manner contrary to the interests of the welfare of the patient, the court may order that the guardianship of the patient be transferred to the responsible<sup>[F26]</sup> authority] or to any other person approved for the purpose by that<sup>[F26]</sup> authority].

(4) Where the guardianship of a patient is transferred to<sup>[F26]</sup> the responsible authority or any] other person by or under this Article, Article 28(6) shall apply as if the patient had been transferred into the guardianship of that<sup>[F26]</sup> authority] or person by virtue of that Article.

(5) The responsible<sup>[F26]</sup> authority] shall immediately notify the Commission of the transfer of guardianship of a patient by or under this Article.

F26 1994 NI 2

### **Regulations as to guardianship**

26. Subject to the provisions of this Part, the Department may make regulations—

- (a) for regulating the exercise by the guardians of patients received into guardianship under this Part of their powers as guardians; and
- (b) for imposing on those guardians and upon Boards<sup>[F27]</sup> and HSS trusts] such duties as the Department considers necessary or expedient in the interests of the patients; and
- (c) requiring the patients to be visited, on such occasions or at such intervals as may be prescribed.

F27 1994 NI 2

### *Provisions relating to patients subject to detention or guardianship*

### **Duty of <sup>[F28]</sup> authority] to give information to patients and nearest relatives**

27.—(1) The responsible<sup>[F28]</sup> authority] shall, in relation to a patient detained in a hospital or subject to guardianship under this Part, take such steps as are practicable to ensure that the patient understands—

- (a) under which of the provisions of this Order he is for the time being detained or subject to guardianship and the effect of that provision; and
- (b) what rights of applying to the Review Tribunal are available to him in respect of his detention or guardianship under that provision;

and those steps shall be taken as soon as practicable after the commencement of the patient's detention under the provision in question or the commencement or renewal of the authority for his guardianship.

(2) The responsible<sup>[F28]</sup> authority] shall also take such steps as are practicable to ensure—

- (a) that a patient detained in a hospital or subject to guardianship under this Part understands—
  - (i) the effect, so far as relevant in his case, of Articles 14, 24 and 71(4); and
  - (ii) that he may make representations to the Commission;
- (b) that a patient detained in a hospital under this Part understands the effect, so far as relevant in his case, of Articles 16, 17 and 111 and Part IV;
- (c) that the nearest relative of a patient detained in a hospital or subject to guardianship under this Part is furnished with a written statement of his rights and powers under this Order;

**Status:** Point in time view as at 15/05/2008.

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and those steps shall be taken as soon as practicable after the commencement of the patient's detention or his reception into guardianship.

(3) The steps to be taken under paragraphs (1) and (2)(a) and (b) shall include giving the requisite information both orally and in writing.

(4) The responsible<sup>[F28]</sup> authority shall take such steps as are practicable to ensure that where a patient ceases to be liable to be detained in hospital or subject to guardianship under this Part the patient, his nearest relative and, in the case of a patient subject under this Part to the guardianship of a person other than<sup>[F28]</sup> the responsible authority, the guardian of the patient are informed of that fact as soon as practicable after he so ceases.

(5) The responsible<sup>[F28]</sup> authority shall, except where the patient otherwise requests, take such steps as are practicable to furnish his nearest relative with a copy of any information given to the patient in writing under paragraphs (1) and (2); and those steps shall be taken when the information is given to the patient or within a reasonable time thereafter.

**F28** 1994 NI 2

### ***Transfer of patients***

**28.**—(1) A<sup>[F29]</sup> Board or authorised HSS trust] may arrange for the transfer from one hospital to another hospital of a patient who is liable to be detained in hospital under this Part.

(2) Where a patient is transferred to another hospital by virtue of paragraph (1), the provisions of this Part shall apply to him as if—

- (a) the application for assessment by virtue of which he was admitted to hospital had specified the hospital to which he is transferred;
- (b) he had been admitted to that hospital at the time when he was originally admitted in pursuance of the application; and
- (c) any report furnished in respect of him under Article 9, 12(1) or 13 had been furnished in that hospital.

(3) Where an application for assessment, duly completed in accordance with this Part, is made in respect of any patient, the Department may by order in writing direct that that patient shall be admitted to any hospital specified in the order.

(4) Where the Department issues an order under paragraph (3)—

- (a) paragraph (2) shall apply in relation to the patient as if he had been transferred to the hospital specified in the order by virtue of paragraph (1); and
- (b) it shall be the duty of the<sup>[F29]</sup> Board or the authorised HSS trust managing] the hospital specified in the order to admit the patient to that hospital.

(5) A<sup>[F29]</sup> Board or authorised HSS trust] may arrange for the transfer—

- (a) of a patient who is subject to guardianship under this Part, from the guardianship of any person into the guardianship of any other person;
- (b) of a patient who is liable to be detained in hospital for treatment, into the guardianship of any person.

(6) Where a patient is transferred into the guardianship of another person by virtue of paragraph (5)(a), the provisions of this Part shall apply to him as if the guardianship application by virtue of which he is subject to guardianship under this Part were for his reception into the guardianship of that person and had been accepted at the time when it was originally accepted.

(7) Where a patient is transferred into the guardianship of any person by virtue of paragraph (5) (b), the provisions of this Part shall apply to him as if the application for assessment by virtue of which he was admitted to hospital were a guardianship application duly accepted at the time when he was originally admitted to hospital in pursuance of the application.

(8) Arrangements for the transfer of a patient under this Article may be made subject to such conditions as may be prescribed.

(9) The responsible<sup>[F29]</sup> authority] before arranging for the transfer of any patient under this Article shall, if practicable, inform the nearest relative of the patient and, in the case of a person subject to the guardianship of a person other than the<sup>[F29]</sup> authority], the guardian of the patient of the intended transfer.

(10) The responsible<sup>[F29]</sup> authority] shall immediately notify the Commission of the transfer of any patient under this Article.

**F29** 1994 NI 2

### ***Return and readmission of patients absent without leave***

**29.**—(1) Where a patient who is for the time being liable to be detained under this Part in a hospital—

- (a) absents himself from the hospital without leave granted under Article 15; or
- (b) fails to return to the hospital on any occasion on which, or at the expiration of any period for which, leave of absence was granted to him under that Article, or upon being recalled thereunder; or
- (c) absents himself without permission from any place where he is required to reside in accordance with conditions imposed on the grant of leave of absence under that Article;

he may, subject to paragraphs (3) and (4), be taken into custody and returned to the hospital or place by any officer on the staff of the hospital, by any constable or approved social worker or by any person authorised in writing by the responsible<sup>[F30]</sup> authority].

(2) Where a patient who is for the time being subject to guardianship under this Part absents himself without the leave of his guardian from the place at which he is required by the guardian to reside, he may, subject to paragraph (3), be taken into custody and returned to that place by any constable or approved social worker or by any person authorised in writing by the guardian or by the responsible<sup>[F30]</sup> authority].

(3) A patient shall not be taken into custody under this Article after the expiration of the period of 28 days beginning with the first day of his absence without leave; and a patient who has not returned or been taken into custody under this Article within that period shall cease to be liable to be detained or subject to guardianship, as the case may be, at the expiration of that period.

(4) A patient shall not be taken into custody under this Article if the period for which he is liable to be detained is that specified in Article 7(2) or (3)<sup>[F31]</sup>, 7A(2)] or Article 9(4), (7) or (8) and that period has expired.

(5) In this Order “absent without leave” means absent from any hospital or other place and liable to be taken into custody and returned under this Article.

**F30** 1994 NI 2  
**F31** SR 1994/66

**Status:** Point in time view as at 15/05/2008.

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### ***Special provisions as to patients absent without leave***

**30.**—(1) If on the day on which, apart from this Article, a patient would cease to be liable to be detained or subject to guardianship under this Part or within the period of 7 days ending with that day, the patient is absent without leave, he shall not cease to be so liable or subject—

- (a) in any case, until the expiration of the period during which he can be taken into custody under Article 29, or the day on which he returns or is returned to the hospital or place where he ought to be, whichever is the earlier; and
- (b) if he returns or is returned as aforesaid within the period during which he can be taken into custody under Article 29, until the expiration of the period of 7 days beginning with the day on which he returns or is returned as aforesaid.

(2) Where the period for which a patient is liable to be detained or subject to guardianship is extended by virtue of this Article, any examination to be made, or report to be furnished, under Article 9, 12, 13 or 23 may be made or furnished within that period as so extended.

(3) Where the authority for detention or guardianship of a patient is renewed by virtue of this Article after the day on which, apart from this Article, that authority would have expired under this Part, the renewal shall take effect as from that day.

### ***Special provisions as to patients sentenced to imprisonment, etc.***

**31.**—(1) Where a patient who is liable to be detained for treatment or subject to guardianship under this Part—

- (a) is detained in custody in pursuance of any sentence or order passed or made by a court in the United Kingdom (including an order committing or remanding him in custody); and
- (b) is so detained in custody for a period exceeding, or for successive periods exceeding in the aggregate, 6 months;

he shall cease to be so liable or subject at the expiration of that period.

(2) Where any such patient is detained in custody as mentioned in paragraph (1)(a) but does not cease under that paragraph to be liable to be detained for treatment or subject to guardianship under this Part, then—

- (a) if apart from this paragraph he would have ceased to be liable to be detained for treatment or subject to guardianship under this Part on or before the day on which he is discharged from custody, he shall not cease and shall be deemed not to have ceased to be so liable or subject until the end of that day; and
- (b) in any case, Articles 29 and 30 shall apply in relation to him as if he had absented himself without leave on that day.

### *Functions of nearest relative of patient*

#### ***Definition of “nearest relative”***

**32.**—(1) For the purposes of this Order “relative” means any of the following, that is to say—

- (a) spouse;
- (b) child;
- (c) parent;
- (d) brother or sister;
- (e) grandparent;
- (f) grandchild;



- (g) uncle or aunt;
- (h) nephew or niece.

(2) In deducing relationships for the purposes of this Article, any relationship of the half-blood shall be treated as a relationship of the whole blood and an illegitimate person shall be treated as the legitimate child of

- [<sup>F32</sup>(a) his mother, and
- (b) if his father has parental responsibility for him within the meaning of the Children (Northern Ireland) Order 1995, his father.]

(3) In this Order, subject to the provisions of this Article and to the following provisions of this Part, the “nearest relative” means the person first listed in paragraph (1) who is caring for the patient, or was so caring immediately before the admission of the patient to a hospital or his reception into guardianship, failing whom the person first so listed who is for the time being surviving, relatives of the whole blood being preferred to relatives of the same description of the half-blood, and the elder or eldest of two or more relatives listed in any sub-paragraph of that paragraph being preferred to the other or others of those relatives, regardless of sex.

- (4) Where the person who, under paragraph (3), would be the nearest relative of a patient—
  - (a) in the case of a patient ordinarily resident in the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland, is not so resident; or
  - (b) being the spouse of the patient, is permanently separated from the patient, either by agreement or under an order of a court, or has deserted or has been deserted by the patient for a period which has not come to an end; or
  - (c) not being the spouse or parent of the patient, is for the time being under 18 years of age;<sup>F32</sup> . . .

*Sub#para. (d) rep. by 1995 NI 2*

the nearest relative of the patient shall be ascertained without regard to that person.

(5) In this Article “spouse” includes a person who is living with the patient as if he or she were the spouse of the patient (or, if the patient is for the time being an in-patient in a hospital, was so living until the patient was admitted), and has been or had been so living for a period of not less than 6 months; but a person shall not be treated by virtue of this paragraph as the nearest relative of a married patient unless the spouse of the patient is disregarded by virtue of paragraph (4)(b).

(6) A person, other than a relative, with whom the patient ordinarily resides (or, if the patient is for the time being an in-patient in a hospital, last ordinarily resided before he was admitted), and with whom he has or had been ordinarily residing for a period of not less than 5 years, shall be treated for the purposes of this Order as if he were a relative but—

- (a) shall be treated for the purposes of paragraph (3) as if mentioned last in paragraph (1); and
- (b) shall not be treated by virtue of this paragraph as the nearest relative of a married patient unless the spouse of the patient is disregarded by virtue of paragraph (4)(b).

(7) References to the nearest relative of a patient in any provision of this Order requiring the responsible<sup>F33</sup> authority] to inform the nearest relative of a patient of any matter or furnish the nearest relative of a patient with any document shall be construed as references to the person (if any) appearing to the responsible<sup>F33</sup> authority] to be the nearest relative of the patient.

**F32** 1995 NI 2

**F33** 1994 NI 2

**Status:** Point in time view as at 15/05/2008.

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### **<sup>F34</sup>Children and young persons in care**

**33.** Where a patient who is a child or young person is in the care of a Board or HSS trust by virtue of a care order within the meaning of the Children (Northern Ireland) Order 1995, the Board or trust shall be deemed to be the nearest relative of the patient in preference to any person except the patient's husband or wife (if any).]

**F34** 1995 NI 2

### **Minors under guardianship, etc.**

**34.**—<sup>F35</sup>(1) Where—

- (a) a guardian has been appointed for a person who has not attained the age of 18 years; or
- (b) a residence order (as defined by Article 8 of the Children (Northern Ireland) Order 1995) is in force with respect to such a person,

the guardian (or guardians, where there is more than one) or the person named in the residence order shall, to the exclusion of any other person, be deemed to be his nearest relative.]

(2) Article 32(4) shall apply in relation to a person who is, or who is one of the persons, deemed to be the nearest relative of a patient by virtue of this Article, as it applies in relation to a person who would be the nearest relative under paragraph (3) of that Article.

<sup>F35</sup>(3) In this Article "guardian" does not include a guardian under this Part.]

*Para. (4) rep. by 1995 NI 2*

**F35** 1995 NI 2

### **Assignment of functions by nearest relative**

**35.**—(1) The nearest relative of any patient who is liable to be detained or subject to guardianship under this Part may assign his functions as such under this Order to any person (other than the patient) who indicates in writing his willingness to exercise those functions.

(2) Any person who wishes to assign, under this Article, his functions as nearest relative under this Order shall give notice of the assignment in the prescribed form to the responsible<sup>F36</sup> authority].

(3) On the receipt by the responsible<sup>F36</sup> authority] of the notice referred to in paragraph (2), the provisions of this Order shall, subject to Article 36(5), apply in relation to the patient as if for any reference to the nearest relative of the patient there were substituted a reference to the person to whom the nearest relative has assigned his functions under this Order and (without prejudice to Articles 36 and 37) shall so apply notwithstanding that the person who was the patient's nearest relative at the time of the assignment is no longer his nearest relative.

**F36** 1994 NI 2

### **Appointment by county court of acting nearest relative**

**36.**—(1) The county court may, upon application made in accordance with this Article in respect of a patient, by order direct that the functions under this Order of the nearest relative of the patient shall, during the continuance in force of the order, be exercisable by the applicant, or by any other person specified in the application, being a person who, in the opinion of the court, is a proper person to act as the patient's nearest relative and is willing to do so.

- (2) An order under this Article may be made on the application of—
- (a) any relative of the patient;
  - (b) any other person with whom the patient is residing (or, if the patient is then an in-patient in a hospital, was last residing before he was admitted); or
  - (c) an approved social worker,

but in relation to an application made by an approved social worker paragraph (1) shall have effect as if for the words “the applicant” there were substituted the words “the responsible [<sup>F37</sup>authority]”.

(3) An application for an order under this Article may be made upon any of the following grounds—

- (a) that the patient has no nearest relative within the meaning of this Order, or that it is not reasonably practicable to ascertain whether he has such a relative, or who that relative is;
- (b) that the nearest relative of the patient is incapable of acting as such by reason of mental disorder or other illness;
- (c) that the nearest relative of the patient unreasonably objects to the making of an application for assessment or a guardianship application in respect of the patient; or
- (d) that the nearest relative of the patient has exercised without due regard to the welfare of the patient or the interests of the public his power to discharge the patient from hospital or guardianship under this Part, or is likely to do so.

(4) An order made on the ground specified in paragraph (3)(a) or (b) may specify a period for which it is to continue in force unless previously discharged under Article 37.

(5) While an order made under this Article is in force, the provisions of this Order (other than this Article, Article 37 and Article 71(5)) shall apply in relation to the patient as if for any reference to the nearest relative of the patient there were substituted a reference to the person having the functions of that relative and (without prejudice to Article 37) shall so apply notwithstanding that the person who was the patient's nearest relative when the order was made is no longer his nearest relative.

**F37** 1994 NI 2

### ***Discharge and variation of orders under Article 36***

**37.**—(1) An order made under Article 36 in respect of a patient may be discharged by the county court upon application made—

- (a) by the person having the functions of the nearest relative of the patient by virtue of the order;
- (b) where the order was made on the ground specified in paragraph (3)(a) or (b) of that Article, or where the person who was the nearest relative of the patient when the order was made has ceased to be his nearest relative, by the nearest relative of the patient.

(2) An order made under Article 36 in respect of a patient may be varied by the county court, on the application of the person having the functions of the nearest relative by virtue of the order or on the application of an approved social worker, by substituting for the first-mentioned person any person who, in the opinion of the court, is a proper person to exercise those functions, being a person who is willing to do so.

(3) If the person having the functions of the nearest relative of a patient by virtue of an order under Article 36 dies, paragraphs (1) and (2) shall apply as if for any reference to that person there were substituted a reference to any relative of the patient, and until the order is discharged or varied under those paragraphs the functions of the nearest relative under this Order shall not be exercisable by any person.

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(4) An order under Article 36 shall, unless previously discharged, cease to have effect at the expiration of the period, if any, specified under paragraph (4) of that Article or where no such period is specified—

- (a) if the patient was on the date of the order liable to be detained for treatment or subject to guardianship under this Part, or becomes so liable or subject within the period of 3 months beginning with that date, when he ceases to be so liable or subject (otherwise than on being transferred by virtue of Article 28);
- (b) if the patient was not on the date of the order, and has not within the said period of 3 months become, so liable or subject, at the expiration of that period.

(5) The discharge or variation under this Article of an order under Article 36 shall not affect the validity of anything previously done in pursuance of the order.

#### ***Procedure on application to county court***

**38.** County court rules which relate to applications authorised by this Part to be made to a county court may make provision—

- (a) for the hearing and determination of such applications otherwise than in open court;
- (b) for the admission on the hearing of such applications of evidence of such descriptions as may be specified in the rules notwithstanding anything to the contrary in any statutory provision or rule of law relating to the admissibility of evidence;
- (c) for the visiting and interviewing of patients in private by or under the directions of the court.

#### *Miscellaneous*

#### ***Special provisions as to wards of court***

**39.**—(1) An application for assessment in respect of a minor who is a ward of court may be made under this Part with the leave of the court; and Article 5(3) to (5) shall not apply in relation to an application so made.

(2) Where a minor being a ward of court is liable to be detained in hospital under this Part, any power exercisable under this Order in relation to the patient by his nearest relative shall be exercisable by or with the leave of the court.

(3) Nothing in this Part shall be construed as authorising the making of a guardianship application in respect of a minor who is a ward of court, or the transfer into guardianship of any such minor.

#### ***Duty of approved social worker to make application for assessment or guardianship***

**40.**—(1) It shall be the duty of an approved social worker to make an application for assessment or a guardianship application in respect of a patient within the area of the<sup>F38</sup> Board or authorised HSS trust] by which that officer is appointed in any case where—

- (a) he is satisfied that such an application ought to be made; and
- (b) he is of opinion, having regard to any wishes expressed by relatives of the patient or any other relevant circumstances, that it is necessary or proper for the application to be made by him.

(2) Before making an application under paragraph (1) in respect of a patient, an approved social worker shall interview the patient in a suitable manner and satisfy himself that detention in a hospital or guardianship (as the case may be) is in all the circumstances of the case the most appropriate way of providing the care and medical treatment of which the patient stands in need.

(3) An application under paragraph (1) by an approved social worker may be made outside the area of the<sup>F38</sup> Board or authorised HSS trust] by which he is appointed.

(4) It shall be the duty of a<sup>F38</sup> Board or authorised HSS trust], if so required by the nearest relative of a patient residing in its area, to direct an approved social worker as soon as practicable to take the patient's case into consideration under paragraph (1) with a view to making an application under that paragraph in respect of him; and if in any such case that approved social worker decides not to make an application he shall inform the nearest relative of his reasons in writing.

(5) Nothing in this Article shall be construed as authorising or requiring an application to be made by an approved social worker in contravention of Article 5(3) to (5) or Article 19(3) to (6) or as restricting the power of an approved social worker to make any application under this Order.

<sup>F39</sup>(6) For the purposes of this Article a person shall not be taken to be within, or to be residing in, the area of a Board if he is within, or, as the case may be, residing in, the area of an authorised HSS trust.]

**F38** 1994 NI 2

**F39** 1994 NI 2

### ***Applications, recommendations and reports under Part II***

**41.** Any application for assessment, guardianship application, recommendation or report which appears to be duly made under this Part may be acted upon without further proof of the signature or qualification of the person by whom the application, recommendation or report is made or given, or of any matter of fact or opinion stated therein.

## **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—

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- (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.

(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>F40</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.

**F40** 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>[F41]</sup> or an authorised HSS trust] or of such other person approved by a Board<sup>[F41]</sup> or an authorised HSS trust] as may be specified in the order.

<sup>[F42]</sup>(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 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 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

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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, 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, including an order under<sup>F43</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.]

**F41** 1994 NI 2

**F42** 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)

**F43** 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>[F44]</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>F44</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—

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- (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>F44</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>F44</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 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.

F44 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

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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
- (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>[F45]</sup> by the court without a jury].

<sup>[F46]</sup>(4A) <sup>[F45]</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>[F46]</sup> Articles 49A, 50A and 51(6)] “unfit to be tried” includes unfit to plead.

**F45** 2004 c. 28  
**F46** 1996 NI 24

#### **<sup>[F47]</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>[F48]</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.

[  
F48(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.]]

F47 1996 NI 24

F48 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) [F49oral 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.

F49 1996 NI 24

### *Appeals*

### **[F50Powers 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;

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- (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;]

<sup>F51</sup>(d)

<sup>F52</sup>and on his arrival at the Crown Court, prison, remand centre<sup>F53</sup> or [<sup>F51</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.]

**F50** 1996 NI 24

**F51** 1998 NI 9

**F52** prosp. inserted by 2002 c. 26

**F53** 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>F54</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>F54</sup> supervision and treatment order]

or guardianship order, as well as against the hospital order<sup>F54</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>F54</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>F54</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.

**F54** 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.

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(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 sub-paragraph (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>F55</sup> including an order under<sup>F56</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.

**F55** prosp. subst. by 2002 c. 26

**F56** 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
- (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>F57</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.

**F57** 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>[F58]</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>[F59]</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>[F59]</sup> juvenile justice centre] 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>[F59]</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>[F58]</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 <sup>[F60]</sup>Parole Commissioners for Northern Ireland] 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.

**F58** 2003 c. 44

**F59** 1998 NI 9

**F60** Words in art. 56(3) substituted (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(2)**; S.R. 2008/217, **art. 2**, Sch. paras. 16, 18(c) (subject to art. 3)

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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,

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>F61</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.

**F61** mod. by 2002 c. 41

**Status:** Point in time view as at 15/05/2008.

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## 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>F62</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.

**F62** 1998 NI 9

### Interpretation of Part III

**61.**—<sup>F63</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>F64</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>F65</sup>.]

<sup>F65</sup>(2) In this Part “place of safety”, in relation to a person not being a child<sup>F66</sup>. . . , means any Royal Ulster Constabulary station or any prison or any hospital of which the<sup>F66</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>F63</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>F63</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.]

**F63** 1998 NI 9

**F64** prosp. subst. by 2002 c. 26

**F65** prosp. inserted by 2002 c. 26

**F66** 1994 NI 2

## PART IV

### CONSENT TO TREATMENT

#### *Patients to whom the provisions of this Part apply*

**62.**—(1) Article 63 and, so far as relevant to that Article, Articles 65, 66 and 68 apply to all patients.

(2) The other provisions of this Part apply to any patient liable to be detained under this Order except—

- (a) a patient who is liable to be detained by virtue of Article 7(2) or (3)<sup>F67</sup>, 7A(2)], 42, 129 or 130 or by virtue of directions under Article 46(4); and
- (b) a patient who has been conditionally discharged under Article 48(2), 78 or 79 and has not been recalled to hospital.

**F67** SR 1994/66

#### *Treatment requiring consent and a second opinion*

**63.**—(1) This Article applies to the following forms of medical treatment for mental disorder—

- (a) any surgical operation for destroying brain tissue or for destroying the functioning of brain tissue; and
- (b) such other forms of treatment as may be prescribed for the purposes of this Article.

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(2) Subject to Article 68, a patient shall not be given any form of treatment to which this Article applies unless he has consented to it and—

- (a) a medical practitioner appointed for the purposes of this Part by the Commission (not being the responsible medical officer) and two other persons appointed for the purposes of this sub-paragraph by the Commission (not being medical practitioners) have certified in the prescribed form that the patient is capable of understanding the nature, purpose and likely effects of the treatment in question and has consented to it; and
- (b) the medical practitioner referred to in sub-paragraph (a) has certified in the prescribed form that, having regard to the likelihood of the treatment alleviating or preventing a deterioration of the patient's condition, the treatment should be given.

(3) Before giving a certificate under paragraph (2)(b) the medical practitioner concerned shall consult such person or persons as appear to him to be principally concerned with the patient's medical treatment.

(4) A medical practitioner or other person appointed as is mentioned in paragraph (2)(a) may, for the purpose of exercising his functions under this Part or (as the case may be) paragraph (2)(a), at any reasonable time—

- (a) in private visit and interview any patient; and
- (b) in the case of a medical practitioner, examine any patient and require the production of and inspect any records relating to the treatment of the patient.

(5) Where any person has given a certificate under paragraph (2)(a) or (b) he shall immediately forward a copy thereof to the Commission.

(6) Before making any regulations for the purpose of this Article the Department shall consult such bodies as appear to it to be concerned.

#### ***Treatment requiring consent or a second opinion***

**64.**—(1) This Article applies to the following forms of medical treatment for mental disorder—

- (a) such forms of treatment as may be prescribed for the purposes of this Article; and
- (b) the administration of medicine to a patient by any means (not being a form of treatment prescribed under sub-paragraph (a) or Article 63) at any time during a period for which he is liable to be detained as a patient to whom this Article applies if three months or more have elapsed since the first occasion in that period when medicine was administered to him by any means for his mental disorder.

(2) The Department may by order vary the length of the period mentioned in paragraph (1)(b).

(3) Subject to Article 68, a patient shall not be given any form of treatment to which this Article applies unless—

- (a) he has consented to that treatment and either the responsible medical officer or a medical practitioner appointed for the purposes of this Part by the Commission has certified in the prescribed form that the patient is capable of understanding its nature, purpose and likely effects and has consented to it; or
- (b) subject to paragraph (4), a medical practitioner appointed as aforesaid (not being the responsible medical officer) has certified in the prescribed form that the patient is not capable of understanding the nature, purpose and likely effects of that treatment or has not consented to it but that, having regard to the likelihood of its alleviating or preventing a deterioration of his condition, the treatment should be given.

(4) In relation to any form of treatment mentioned in paragraph (1)(b), a certificate under paragraph (3)(b) may also be given by a medical practitioner appointed by the Commission for the purposes of Part II (not being the responsible medical officer).

(5) Before giving a certificate under paragraph (3)(b) the medical practitioner concerned shall consult such person or persons as appear to him to be principally concerned with the patient's medical treatment.

(6) Where any person has given a certificate under paragraph (3)(a) or (b) he shall immediately forward a copy thereof to the Commission.

(7) Before making any regulations for the purposes of this Article the Department shall consult such bodies as appear to it to be concerned.

### ***Plans of treatment***

**65.** Any consent or certificate under Article 63 or 64 may relate to a plan of treatment under which the patient is to be given (whether within a specified period or otherwise) one or more of the forms of treatment to which that Article applies.

### ***Withdrawal of consent***

**66.—**(1) Where the consent of a patient to any treatment has been given for the purposes of Article 63 or 64, the patient may, subject to Article 68, at any time before the completion of treatment withdraw his consent, and those Articles shall then apply as if the remainder of the treatment were a separate form of treatment.

(2) Without prejudice to the application of paragraph (1) to any treatment given under a plan of treatment to which a patient has consented, a patient who has consented to such a plan may, subject to Article 68, at any time withdraw his consent to further treatment, or to further treatment of any description, under the plan.

### ***Review of treatment***

**67.—**(1) Where a patient is given treatment in accordance with Article 63(2) or 64(3)(b) a report on the treatment and the patient's condition shall be given by the responsible medical officer to the Commission—

- (a) on the next occasion on which a report is furnished in respect of the patient under Article 13(2), (3) or (5); and
- (b) at any other time if so required by the Commission.

(2) In relation to a patient who is subject to a restriction order or restriction direction paragraph (1) shall have effect as if sub-paragraph (a) required the report to be made—

- (a) in the case of treatment in the period of six months beginning with the date of the order or direction, at the end of that period;
- (b) in the case of treatment at any subsequent time, on the next occasion on which the responsible medical officer makes a report in respect of the patient under Article 47(5).

(3) The Commission may at any time give notice to the responsible medical officer directing that, subject to Article 68, a certificate given in respect of a patient under Article 63(2) or 64(3)(b) shall not apply to treatment given to him after a date specified in the notice and Articles 63 and 64 shall then apply to any such treatment as if that certificate had not been given.

### ***Urgent treatment***

**68.—**(1) Articles 63 and 64 shall not apply to any treatment—

- (a) which is immediately necessary to save the patient's life; or
- (b) which (not being irreversible) is immediately necessary to prevent a serious deterioration of his condition; or

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- (c) which (not being irreversible or hazardous) is immediately necessary to alleviate serious suffering by the patient; or
- (d) which (not being irreversible or hazardous) is immediately necessary and represents the minimum interference necessary to prevent the patient from behaving violently or being a danger to himself or to others.

(2) Articles 66 and 67(3) shall not preclude the continuation of any treatment or of treatment under any plan pending compliance with Article 63 or 64 if the responsible medical officer considers that the discontinuance of the treatment or of treatment under the plan would cause serious suffering to the patient.

(3) For the purposes of this Article treatment is irreversible if it has unfavourable irreversible physical or psychological consequences and hazardous if it entails significant physical hazard.

(4) Where a patient is given treatment under this Article the responsible medical officer shall immediately notify the Commission as to—

- (a) the nature of the treatment given to the patient; and
- (b) where treatment is given under paragraph (1), which of sub-paragraphs (a) to (d) of that paragraph applied in relation to the patient.

#### ***Treatment not requiring consent***

**69.** The consent of a patient shall not be required for any medical treatment given to him for the mental disorder from which he is suffering, not being treatment falling within Article 63 or 64, if the treatment is given by or under the direction of the responsible medical officer.

## PART V

### THE MENTAL HEALTH REVIEW TRIBUNAL FOR NORTHERN IRELAND

#### *Constitution*

#### ***Constitution of the Review Tribunal***

**70.**—(1) The Mental Health Review Tribunal for Northern Ireland shall be constituted in accordance with Schedule 3.

(2) The Department may pay to the members of the Review Tribunal such remuneration and allowances as the Department, with the approval of the Department of Finance and Personnel, may determine, and defray the expenses of the tribunal to such amount as the Department, with the approval of the Department of Finance and Personnel, may determine, and may provide for the tribunal such officers and servants, and such accommodation, as the tribunal may require.

#### **Modifications etc. (not altering text)**

- C3** [Art. 70\(2\)](#): functions transferred from Department of Health, Social Services and Public Safety to Department of Justice (1.4.2011) by [Departments \(Transfer of Functions\) Order \(Northern Ireland\) 2011 \(S.R. 2011/44\)](#), arts. 1(2), **6(b)** (with art. 8(2))



### *Applications and references concerning Part II patients*

#### ***Applications to the tribunal under Part II***

**71.**—(1) Where a patient is detained in a hospital by virtue of any report under Article 9 or 12(1), he may apply to the Review Tribunal within the period of 6 months beginning with the date of admission.

(2) Where a patient is received into guardianship in pursuance of a guardianship application, he may apply to the Review Tribunal within the period of 6 months beginning with the day on which the application is accepted.

(3) Where the authority for the detention of a patient is renewed under Article 13 or the authority for the guardianship of a patient is renewed under Article 23, the patient may apply to the Review Tribunal at any time before the expiration of the period for which the authority is so renewed.

(4) Where—

(a) a report is furnished under Article 14(4) in respect of a patient; or

(b) reports are furnished under both sub-paragraph (a) and sub-paragraph (b) of paragraph (4) of Article 24 in respect of a patient,

the nearest relative of the patient may apply to the Review Tribunal in respect of the patient within the period of 28 days beginning with the day on which he is informed of that fact under Article 14(7) or, as the case may be, Article 24(7).

(5) Where an order is made under Article 36 in respect of a patient who is or subsequently becomes liable to be detained or subject to guardianship under Part II, the nearest relative of the patient may apply to the Review Tribunal in respect of the patient within the period of 12 months beginning with the date of the order and in any subsequent period of 12 months during which the order continues in force.

#### ***References of cases of Part II patients to the tribunal***

**72.**—(1) The Attorney General, the Department or, on the direction of the High Court, the Master (Care and Protection) may at any time refer to the Review Tribunal the case of any patient who is liable to be detained or subject to guardianship under Part II.

(2) For the purpose of furnishing information for the purposes of a reference under paragraph (1) any medical practitioner authorised by or on behalf of the patient may at any reasonable time visit the patient and examine him in private and require the production of and inspect any records relating to the detention or treatment of the patient in any hospital.

#### ***Duty on Boards to refer cases to the tribunal***

**73.**—(1) If the authority for the detention of a patient in a hospital or his guardianship under Part II is renewed under Article 13 or 23 and a period of 2 years (or, if the patient has not attained the age of 16 years, one year) has elapsed since his case was last considered by the Review Tribunal, whether on his own application or otherwise, the responsible<sup>F68</sup> authority] shall refer his case to the tribunal.

(2) For the purpose of furnishing information for the purposes of any reference under this Article, any medical practitioner authorised by or on behalf of the patient may at any reasonable time visit the patient and examine him in private and require the production of and inspect any records relating to the detention or treatment of the patient in any hospital.

(3) The Department may by order vary the length of the periods mentioned in paragraph (1).

**F68** 1994 NI 2

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### *Applications and references concerning Part III patients*

#### ***Applications and references to the tribunal concerning patients subject to hospital and guardianship orders, other than restricted patients***

74.—(1) Articles 71(3), 72 and 73 shall apply in relation to a patient admitted to a hospital in pursuance of a hospital order or placed under guardianship by a guardianship order as they apply to a patient detained in hospital or subject to guardianship under Part II.

(2) Without prejudice to paragraph (1), an application to the Review Tribunal may also be made in respect of a patient admitted to a hospital in pursuance of a hospital order or placed under guardianship by a guardianship order, as follows, that is to say—

- (a) by the patient, within the period of 6 months beginning with the date of the order; and
- (b) by the nearest relative of the patient, within the period of 12 months beginning with the date of the order and in any subsequent period of 12 months.

(3) In this Article any reference to a hospital order or guardianship order shall include a reference to any order or direction under Part III or any other statutory provision having the same effect as such an order.

(4) This Article does not apply in the case of a patient who is a restricted patient within the meaning of Article 84.

#### ***Applications to the tribunal concerning restricted patients***

75. A patient who is a restricted patient within the meaning of Article 84 and is detained in a hospital may apply to the Review Tribunal—

- (a) within the period of 6 months beginning with the date of the relevant hospital order or transfer direction;
- (b) within the period between the expiration of 6 months and the expiration of 12 months beginning with the date of the relevant hospital order or transfer direction; and
- (c) within any subsequent period of 12 months.

#### ***References by Secretary of State concerning restricted patients***

76.—(1) The Secretary of State may at any time refer the case of a restricted patient to the Review Tribunal.

(2) The Secretary of State shall refer to the Review Tribunal the case of any restricted patient detained in a hospital whose case has not been considered by the tribunal, whether on his own application or otherwise, within the last 2 years.

(3) The Secretary of State may by order vary the length of the period mentioned in paragraph (2).

### *Discharge of patients*

#### ***Power to discharge patients other than restricted patients***

77.—<sup>F69</sup>(1) Where application is made to the Review Tribunal by or in respect of a patient who is liable to be detained under this Order, the tribunal may in any case direct that the patient be discharged, and shall so direct if—

- (a) the tribunal is not satisfied that he is then suffering from mental illness or severe mental impairment or from either of those forms of mental disorder of a nature or degree which warrants his detention in hospital for medical treatment; or

- (b) the tribunal is not satisfied that his discharge would create a substantial likelihood of serious physical harm to himself or to other persons; or
  - (c) in the case of an application by virtue of Article 71(4)(a) in respect of a report furnished under Article 14(4)(b), the tribunal is satisfied that he would, if discharged, receive proper care.]
- (2) A tribunal may under paragraph (1) direct the discharge of a patient on a future date specified in the direction; and where the tribunal does not direct the discharge of a patient under that paragraph the tribunal may—
- (a) with a view to facilitating his discharge on a future date, recommend that he be granted leave of absence or transferred to another hospital or into guardianship; and
  - (b) further consider his case in the event of any such recommendation not being complied with.
- (3) Where application is made to the Review Tribunal by or in respect of a patient who is subject to guardianship under this Order, the tribunal may in any case direct that the patient be discharged, and shall so direct if it is satisfied—
- (a) that he is not then suffering from mental illness or severe mental handicap or from either of those forms of mental disorder of a nature or degree which warrants his remaining under guardianship; or
  - (b) that it is not necessary in the interests of the welfare of the patient that he should remain under guardianship.
- (4) Paragraphs (1) to (3) apply in relation to references to the Review Tribunal as they apply in relation to applications made to the tribunal by or in respect of a patient.
- (5) Paragraph (1) shall not apply in the case of a restricted patient except as provided in Articles 78 and 79.

F69 2004 NI 8

***Power to discharge restricted patients subject to restriction orders***

- 78.**—<sup>F70</sup>(1) Where an application to the Review Tribunal is made by a restricted patient who is subject to a restriction order, or where the case of such a patient is referred to the tribunal, the tribunal shall direct the absolute discharge of the patient if—
- (a) the tribunal is not satisfied as mentioned in paragraph (1)(a) or (b) of Article 77; and
  - (b) the tribunal is satisfied that it is not appropriate for the patient to remain liable to be recalled to hospital for further treatment.
- (2) Where in the case of any such patient as is mentioned in paragraph (1)—
- (a) sub-paragraph (a) of that paragraph applies; but
  - (b) sub-paragraph (b) of that paragraph does not apply,
- the tribunal shall direct the conditional discharge of the patient.]
- (3) Where a patient is absolutely discharged under this Article he shall thereupon cease to be liable to be detained by virtue of the relevant hospital order, and the restriction order shall cease to have effect accordingly.
- (4) Where a patient is conditionally discharged under this Article—
- (a) he may be recalled by the Secretary of State under paragraph (3) of Article 48 as if he had been conditionally discharged under paragraph (2) of that Article; and

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- (b) the patient shall comply with such conditions (if any) as may be imposed at the time of discharge by the tribunal or at any subsequent time by the Secretary of State.
- (5) The Secretary of State may from time to time vary any condition imposed (whether by the tribunal or by him) under paragraph (4).
- (6) Where a restriction order in respect of a patient ceases to have effect after he has been conditionally discharged under this Article the patient shall, unless previously recalled, be deemed to be absolutely discharged on the date when the order ceases to have effect and shall cease to be liable to be detained by virtue of the relevant hospital order.
- (7) The tribunal may defer a direction for the conditional discharge of a patient until such arrangements as appear to the tribunal to be necessary for that purpose have been made to its satisfaction; and where by virtue of any such deferment no direction has been given on an application or reference before the time when the patient's case comes before the tribunal on a subsequent application or reference, the previous application or reference shall be treated as one on which no direction under this Article can be given.
- (8) This Article is without prejudice to Article 48.

F70 2004 NI 8

#### ***Powers in relation to restricted patients subject to restriction directions***

**79.**—(1) Where an application to the Review Tribunal is made by a restricted patient who is subject to a restriction direction, or where the case of such a patient is referred to the tribunal, the tribunal—

- (a) shall notify the Secretary of State whether, in its opinion, the patient would, if subject to a restriction order, be entitled to be absolutely or conditionally discharged under Article 78; and
- (b) if it notifies him that the patient would be entitled to be conditionally discharged, may recommend that in the event of his not being discharged under this Article he should continue to be detained in hospital.
- (2) If in the case of a patient not falling within paragraph (4)—
- (a) the tribunal notifies the Secretary of State that the patient would be entitled to be absolutely or conditionally discharged; and
- (b) within the period of 90 days beginning with the date of that notification the Secretary of State gives notice to the tribunal that the patient may be so discharged,

the tribunal shall direct the absolute or, as the case may be, the conditional discharge of the patient.

(3) Where a patient continues to be liable to be detained in a hospital at the end of the period referred to in paragraph (2)(b) because the Secretary of State has not given the notice there mentioned, the responsible<sup>F71</sup> authority shall, unless the tribunal has made a recommendation under paragraph (1)(b), transfer the patient to a prison or other institution 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.

(4) If, in the case of a patient who is subject to a transfer direction under Article 54, the tribunal notifies the Secretary of State that the patient would be entitled to be absolutely or conditionally discharged, the Secretary of State shall, unless the tribunal has made a recommendation under paragraph (1)(b), by warrant direct that the patient be remitted to a prison or other institution 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.

(5) Where a patient is transferred or remitted under paragraph (3) or (4) the relevant transfer direction and the restriction direction shall cease to have effect on his arrival in the prison or other institution.

[<sup>F72</sup>(5A) Where the tribunal have made a recommendation under paragraph (1)(b) in the case of a patient who is subject to a restriction direction—

- (a) the fact that the restriction direction remains in force does not prevent—
  - (i) the making of any application or reference to the [<sup>F73</sup>Parole Commissioners for Northern Ireland] by or in respect of him or the exercise by him of any power to require the Secretary of State to refer his case to those Commissioners, or
  - (ii) the making of any application by him to the Sentence Review Commissioners, and
- (b) if—
  - (i) the [<sup>F74</sup>Parole Commissioners for Northern Ireland] give a direction by virtue of which the patient would become 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, or
  - (ii) the Sentence Review Commissioners grant a declaration by virtue of which he would become so entitled,

the restriction direction shall cease to have effect at the time at which he would become so entitled.]

(6) Paragraphs (3) to (8) of Article 78 shall have effect in relation to this Article as they have effect in relation to that Article, taking references to the relevant hospital order and the restriction order as references to the transfer direction and the restriction direction.

(7) This Article is without prejudice to Articles 56 to 59 in their application to patients who are not discharged under this Article.

**F71** 1994 NI 2

**F72** 2003 c. 44

**F73** Words in art. 79(5A) substituted (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(2)**; S.R. 2008/217, **art. 2**, Sch. paras. 16, 18(c) (subject to art. 3)

**F74** Words in art. 79(5A) substituted (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(2)**; S.R. 2008/217, **art. 2**, Sch. paras. 16, 18(c) (subject to art. 3)

### ***Applications and references concerning conditionally discharged restricted patients***

**80.**—(1) Where a restricted patient has been conditionally discharged under Article 48(2), 78 or 79 and is subsequently recalled to hospital—

- (a) the Secretary of State shall, within one month of the day on which the patient returns or is returned to hospital, refer his case to the Review Tribunal; and
- (b) Article 75 shall apply to the patient as if the relevant hospital order or transfer direction had been made on that day.

(2) Where a restricted patient has been conditionally discharged as aforesaid but has not been recalled to hospital he may apply to the Review Tribunal—

- (a) within the period of 12 months beginning with the date on which he was conditionally discharged; and
- (b) in any subsequent period of 12 months.

**Status:** Point in time view as at 15/05/2008.

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(3) Articles 78 and 79 shall not apply to an application under paragraph (2) but on any such application the tribunal may—

- (a) vary any condition to which the patient is subject in connection with his discharge or impose any condition which might have been imposed in connection therewith; or
- (b) direct that the restriction order or restriction direction to which he is subject shall cease to have effect;

and if the tribunal gives a direction under sub-paragraph (b) the patient shall cease to be liable to be detained by virtue of the relevant hospital order or transfer direction.

### *General*

#### ***Visiting and examination of patients***

**81.** For the purpose of advising whether an application to the Review Tribunal should be made by or in respect of a patient who is liable to be detained or subject to guardianship under this Order or of furnishing information as to the condition of a patient for the purposes of such an application, any medical practitioner authorised by or on behalf of the patient or other person who is entitled to make or has made the application—

- (a) may at any reasonable time visit the patient and examine him in private, and
- (b) may require the production of and inspect any records relating to the detention or treatment of the patient in any hospital.

#### ***Applications to the tribunal***

**82.—**(1) No application shall be made to the Review Tribunal by or in respect of a patient except in such cases and at such times as are expressly provided by this Order.

(2) Where under this Order any person is authorised to make an application to the Review Tribunal within a specified period, not more than one such application shall be made by that person within that period but for that purpose there shall be disregarded any application which is withdrawn in accordance with rules made under Article 83.

(3) An application to the Review Tribunal authorised to be made by or in respect of a patient under this Order shall be made by notice in writing addressed to the tribunal.

#### ***Procedure of tribunal***

**83.—**(1) The Lord Chancellor may<sup>[F75]</sup>, after consultation with the Lord Chief Justice,] make rules with respect to the making of applications to the Review Tribunal and with respect to the proceedings of the tribunal and matters incidental to or consequential on such proceedings.

<sup>[F76]</sup>(1A) The Lord Chief Justice may nominate any of the following to exercise his functions under paragraph (1)—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
  - (b) a Lord Justice of Appeal (as defined in section 88 of that Act).]
- (2) Rules made under this Article may in particular make provision—

- (a) for enabling the tribunal, or the chairman of the tribunal, to postpone the consideration of any application by or in respect of a patient, or of any such application of any specified class, until the expiration of such period (not exceeding 12 months) as may be specified in the rules from the date on which an application by or in respect of the same patient was last considered and determined by the tribunal under this Order;

- (b) for restricting the persons qualified to serve as members of the tribunal for the consideration of any application, or of an application of any specified class;
  - (c) for enabling the tribunal to dispose of an application without a formal hearing where such a hearing is not requested by the applicant, where the proceedings are of a specified class or where it appears to the tribunal that such a hearing would be detrimental to the health of the patient;
  - (d) for enabling the tribunal to exclude members of the public, or any specified class of members of the public, from any proceedings of the tribunal, or to prohibit the publication of reports of any such proceedings or the names of any persons concerned in such proceedings;
  - (e) for regulating the circumstances in which, and the persons by whom, applicants and patients in respect of whom applications are made to the tribunal may, if not desiring to conduct their own case, be represented for the purposes of those applications;
  - (f) for regulating the methods by which information relevant to an application may be obtained by or furnished to the tribunal, and in particular for authorising the members of the tribunal, or any one or more of them, to visit and interview in private any patient by or in respect of whom an application has been made;
  - (g) for making available to any applicant, and to any patient in respect of whom an application is made to the tribunal, copies of any documents obtained by or furnished to the tribunal in connection with the application, and a statement of the substance of any oral information so obtained or furnished except where the tribunal considers it undesirable in the interests of the patient or for other special reasons;
  - (h) for requiring the tribunal, if so requested in accordance with the rules, to furnish such statements of the reasons for any decision given by the tribunal as may be prescribed by the rules, subject to any provision made by the rules for withholding such a statement from a patient or any other person in cases where the tribunal considers that furnishing it would be undesirable in the interests of the patient or for other special reasons;
  - (i) for conferring on the tribunal such ancillary powers as the Lord Chancellor thinks necessary for the purposes of the exercise of its functions under this Order.
- (3) Paragraphs (1) and (2) apply in relation to references to the Review Tribunal as they apply in relation to applications to the tribunal by or in respect of patients.
- (4) Rules under this Article may make provision as to the procedure to be adopted in cases concerning restricted patients and, in particular, for restricting the persons qualified to serve as president of the tribunal for the consideration of an application or reference relating to a restricted patient.
- (5) Any functions conferred on the chairman of the Review Tribunal by this Order or by rules under this Article may, if for any reason he is unable to act, be exercised by the deputy chairman.
- (6) The Review Tribunal may pay allowances in respect of travelling expenses, subsistence and loss of earnings to any person attending the tribunal as an applicant or witness, to the patient who is the subject of the proceedings if he attends otherwise than as the applicant or a witness and to any person (other than counsel or a solicitor) who attends as the representative of an applicant.
- (7) The Review Tribunal may, and if so required by the Court of Appeal shall, state in the form of a special case for determination by the Court of Appeal any question of law which may arise before it and the decision of the Court of Appeal shall be final.
- (8) [F77Part I of the Arbitration Act 1996] shall not apply to any proceedings before the Review Tribunal except so far as any provisions of that Act may be applied, with or without modifications, by rules made under this Article.

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- F75** Words in art. 83(1) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 74(2); S.I. 2006/1014, art. 2(a), Sch. 1 paras. 10, 12(a)
- F76** Art. 83(1A) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 74(3); S.I. 2006/1014, art. 2(a), Sch. 1 paras. 10, 12(a)
- F77** 1996 c. 23

### ***Interpretation of Part V***

**84.**—(1) In this Part “restricted patient” means a patient who is subject to a restriction order or restriction direction and this Part shall, subject to the provisions of this Article, have effect in relation to any person who—

- (a) is subject to a direction which by virtue of Article 52(3) has the same effect as a hospital order and a restriction order; or
- (b) is subject to an order which by virtue of Article<sup>F78</sup> 50A(3) shall be treated] as a hospital order and a restriction order (including an order made under Article<sup>F78</sup> 50A(2)] by virtue of section 11 or 13(5A) of the Criminal Appeal (Northern Ireland) Act 1980);
- (c) is treated as subject to a hospital order and a restriction order or to a transfer direction and a restriction direction by virtue of section 81(2) of the Mental Health Act 1983 or<sup>F79</sup> article 4(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005],

as it has effect in relation to a restricted patient.

(2) Subject to the following provisions of this Article in this Part “the relevant hospital order” and “the relevant transfer direction”, in relation to a restricted patient, mean the hospital order or transfer direction by virtue of which he is liable to be detained in a hospital.

(3) In the case of a person within paragraph (1)(a), references in this Part to the relevant hospital order or restriction order shall be construed as references to the direction referred to in paragraph (1) (a).

(4) In the case of a person within paragraph (1)(b), references in this Part to the relevant hospital order or restriction order shall be construed as references to the order under the provisions mentioned in paragraph (1)(b).

(5) In the case of a person within paragraph (1)(c), references in this Part to the relevant hospital order, the relevant transfer direction, the restriction order or the restriction direction or to a transfer direction under Article 54 shall be construed as references to the hospital order, transfer direction, restriction order, restriction direction or transfer direction under that Article to which that person is treated as subject by virtue of the provisions mentioned in paragraph (1)(c).

- F78** 1996 NI 24  
**F79** SI 2005/2078

## **PART VI**

### **THE MENTAL HEALTH COMMISSION FOR NORTHERN IRELAND**

#### ***Establishment of Mental Health Commission for Northern Ireland***

**85.**—(1) There shall be established a body to be called the Mental Health Commission for Northern Ireland (in this Order referred to as “the Commission”).



- (2) The Commission shall exercise—
  - (a) the functions conferred on it by this Order; and
  - (b) such other functions relating to or connected with mental health as the Department may by order prescribe.
- (3) Schedule 4 shall have effect in relation to the Commission.

### ***Functions of the Commission***

**86.**—(1) It shall be the duty of the Commission to keep under review the care and treatment of patients, including (without prejudice to the generality of the foregoing) the exercise of the powers and the discharge of the duties conferred or imposed by this Order.

- (2) In the exercise of its functions under paragraph (1) it shall be the duty of the Commission—
  - (a) to make inquiry into any case where it appears to the Commission that there may be ill-treatment, deficiency in care or treatment, or improper detention in hospital or reception into guardianship of any patient, or where the property of any patient may, by reason of his mental disorder, be exposed to loss or damage;
  - (b) as often as the Commission thinks appropriate to visit and interview in private patients who are liable to be detained in hospital under this Order;
  - (c) to bring to the attention of the Department, the Secretary of State,<sup>[F80]</sup> a Board, an HSS trust or the person] carrying on a private hospital,<sup>[F81]</sup> residential care home], voluntary home or nursing home the facts of any case in which in the opinion of the Commission it is desirable for the Department, the Secretary of State,<sup>[F80]</sup> the Board, the HSS trust or that person] to exercise any of their functions to secure the welfare of any patient by—
    - (i) preventing his ill-treatment;
    - (ii) remedying any deficiency in his care or treatment;
    - (iii) terminating his improper detention in hospital or reception into guardianship; or
    - (iv) preventing or redressing loss or damage to his property;
  - (d) to advise the Department, the Secretary of State, a Board<sup>[F80]</sup>, an HSS trust] or any body established under a statutory provision on any matter arising out of this Order which has been referred to the Commission by the Department, the Secretary of State, the Board<sup>[F80]</sup>, the HSS trust] or the body, as the case may be;
  - (e) to bring to the attention of the Department, the Secretary of State, a Board<sup>[F80]</sup>, an HSS trust] or any other body or person any matter concerning the welfare of patients which the Commission considers ought to be brought to their attention.
- (3) In the exercise of its functions under paragraph (1) the Commission may—
  - (a) where it thinks fit, refer to the Review Tribunal the case of any patient who is liable to be detained in hospital or subject to guardianship under this Order;
  - (b) at any reasonable time visit, interview and medically examine in private any patient in a hospital, private hospital,<sup>[F81]</sup> residential care home], voluntary home or nursing home or any person subject to guardianship under this Order;
  - (c) require the production of and inspect any records relating to the detention or treatment of any person who is or has been a patient in a hospital, private hospital,<sup>[F81]</sup> residential care home], voluntary home or nursing home or relating to any person who is or has been subject to guardianship under this Order.
- (4) Schedule 8 to the Health and Personal Social Services (Northern Ireland) Order 1972 shall have effect in relation to any inquiry under paragraph (2)(a) as it has effect in relation to any inquiry

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under Article 54 of that Order, but with the omission of paragraphs 1, 2 and 6 of that Schedule and the substitution for references to the person appointed to hold the inquiry of references to the Commission.

(5) It shall be the duty of any person carrying on a<sup>F81</sup> residential care home], a voluntary home or a nursing home and of the guardian of any person subject to guardianship under this Order to afford the Commission all facilities necessary to enable it to carry out its functions in respect of any patient.

(6) Where in the exercise of its functions under this Article the Commission has advised any body or person on any matter or brought any case or matter to the attention of any body or person, the Commission may by notice in writing addressed to that body or person require that body or person, within such reasonable period as the Commission may specify in the notice, to provide to the Commission such information concerning the steps taken or to be taken by that body or person in relation to that case or matter as the Commission may so specify; and it shall be the duty of every body or person on whom a notice is served under this paragraph to comply with the requirements of that notice.

(7) Paragraph (6) does not apply to the Review Tribunal.

(8) In this Article “voluntary home” has the meaning assigned to it by<sup>F82</sup> Article 74 of the Children (Northern Ireland) Order 1995].

**F80** 1994 NI 2  
**F81** 1992 NI 20  
**F82** 1995 NI 2

### ***Exercise of functions of the Commission***

**87.**—(1) Subject to paragraphs (2) and (3), the Commission may appoint—

- (a) any member of the Commission or any committee of members of the Commission;
- (b) any person, not being a member of the Commission; or
- (c) any committee consisting of members of the Commission and persons who are not members;

to carry out any of the functions of the Commission.

(2) The power medically to examine a patient conferred by Article 86(3)(b) and the power conferred by Article 86(3)(c) shall be exercisable only by—

- (a) a member of the Commission who is a medical practitioner; or
- (b) a medical practitioner appointed by the Commission for that purpose.

(3) Any member of the Commission or committee or person appointed in pursuance of paragraph (1) shall exercise the functions so conferred in accordance with the directions of the Commission.

### ***Financial provisions***

**88.**—(1) There shall, in respect of each financial year, be paid by the Department to the Commission such sums as the Department may determine towards the expenditure incurred by the Commission in the exercise of its functions in that year.

(2) Payments under paragraph (1) shall be made at such times and in such manner and subject to such conditions as to records, certificates or otherwise as the Department may determine.

(3) It shall be the duty of the Commission so to perform its functions as to secure that the expenditure attributable to the performance of its functions in each financial year does not exceed the aggregate of the amounts received by the Commission under paragraph (1) in respect of that year.

(4) The Department may give directions to the Commission with respect to the application of the sums paid to it under paragraph (1), and it shall be the duty of the Commission to comply with any such directions.

### <sup>F83</sup> *Accounts and audit*

**89.**—(1) The Commission shall—

- (a) keep proper accounts and proper records in relation to the accounts; and
- (b) prepare a statement of accounts in respect of each financial year.

(2) The statement of accounts shall—

- (a) be in such form; and
- (b) contain such information,

as the Department may, with the approval of the Department of Finance and Personnel, direct.

(3) The Commission shall, within such period after the end of each financial year as the Department may direct, send copies of the statement of accounts relating to that year to—

- (a) the Department; and
- (b) the Comptroller and Auditor General for Northern Ireland.

(4) The Comptroller and Auditor General shall—

- (a) examine, certify and report on every statement of accounts sent to him by the Commission under this Article; and
- (b) send a copy of his report to the Department.

(5) The Department shall lay a copy of the statement of accounts and of the Comptroller and Auditor General's report before the Assembly.]

**F83** 2003 NI 5

## PART VII

### REGISTRATION OF PRIVATE HOSPITALS

#### *Registration of private hospitals*

**90.**—(1) Every private hospital within the meaning of this Order shall be registered, and the following provisions of this Part shall apply to the registration, conduct and inspection of private hospitals.

(2) In this Order “private hospital” means any premises used or intended to be used for the reception of, and the provision of treatment for, one or more patients subject to detention under this Order (whether or not other persons are received and treated); not being a hospital vested in the<sup>F84</sup> the Department or an HSS trust].

**F84** 1994 NI 2

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### ***Application for, and grant of, certificate of registration***

**91.**—(1) An application for the registration of premises as a private hospital shall be made in writing to the Department by or on behalf of the person proposing to carry on the hospital, and shall be accompanied by a fee of such amount as may be prescribed.

(2) Subject to paragraph (3), the Department may register the premises named in the application and issue to the person proposing to carry on the hospital a certificate of registration.

(3) The Department shall not issue a certificate of registration unless the Department is satisfied—

- (a) that the person proposing to carry on the hospital is a fit person for this purpose, having regard to his age, conduct and any other relevant consideration; and
- (b) that the premises are fit to be used for a private hospital; and
- (c) that the arrangements proposed for patients are suitable and adequate; and
- (d) that the medical and nursing staff proposed is adequate for the hospital and is suitably trained and qualified.

(4) Nothing in the foregoing provisions of this Article shall be construed as requiring the Department to issue a certificate of registration.

### ***Certificates of registration***

**92.**—(1) A certificate of registration shall—

- (a) specify the maximum number of persons who at any one time may receive care or treatment in the hospital to which the certificate relates; and
- (b) contain such conditions as the Department may consider appropriate for regulating the category of patients who may be received into the hospital.

(2) A certificate of registration shall, unless cancelled or surrendered, continue in force for a period of five years from its date of issue, but shall be renewable on a fresh application.

(3) A certificate of registration shall be kept fixed conspicuously in the hospital to which it relates, and if this requirement is not complied with the person carrying on the hospital shall be guilty of an offence under this Part.

### ***Control of private hospitals***

**93.**—(1) It shall be the duty of any person carrying on a private hospital—

- (a) to keep the hospital open to inspection in pursuance of this Article at all reasonable times;
- (b) to keep such registers and records as may be prescribed and to keep those registers and records open to inspection;
- (c) to ensure that any conditions specified in the certificate of registration are complied with;
- (d) to afford to the High Court, the Office of Care and Protection, the Review Tribunal and the Commission all such facilities as are necessary for them to exercise their functions under this Order;
- (e) to furnish to the High Court, the Office of Care and Protection, the Review Tribunal, the Commission and the Department such returns, reports and other information in relation to patients within his care as they may require for the exercise of their functions under this Order;

and any person who fails to comply with any requirement of this paragraph shall be guilty of an offence under this Part.

(2) It shall be the duty of the Department to ensure by regular inspection of any private hospital that that hospital is being properly carried on, and for the purpose of making an inspection

in pursuance of this Article, any person authorised in that behalf by the Department may, after producing, if asked to do so, some duly authenticated document showing that he is so authorised, enter and inspect any premises which are used, or which he reasonably believes to be used, for the purposes of a private hospital.

(3) Any person authorised under paragraph (2) may interview any patient in private.

### ***Cancellation of registration***

**94.**—(1) The Department may at any time cancel a registration of a private hospital—

- (a) on any ground on which the Department might have refused to register that hospital; or
- (b) on the ground that the person carrying on the hospital has been convicted of an offence under this Order.

(2) On the cancellation of a registration, the person who is or was carrying on the hospital shall forthwith deliver up the certificate to the Department, and if that person fails to do so, the holder of the certificate shall be guilty of an offence under this Part.

(3) Where at the time of the cancellation of a registration any patient is liable to be detained on the premises concerned, the registration shall, notwithstanding the cancellation, continue in force until the expiration of a period of 28 days from the date of cancellation or until every such patient has ceased to be so liable, whichever first occurs.

### ***Application of this Order to private hospitals***

**95.** The Department may by regulations made subject to affirmative resolution apply to, or in relation to, private hospitals such of the provisions of this Order (other than this Part) as the Department may think fit, subject to such adaptations and modifications as appear to the Department to be necessary.

### ***Offences under Part VII***

**96.**—(1) Any person who carries on a private hospital which is not registered under this Part shall be guilty of an offence and liable—

- (a) on summary conviction to a fine not exceeding the statutory maximum; or
- (b) on conviction on indictment, to a fine.

(2) Any person guilty of an offence under this Part (other than the offence mentioned in paragraph (1)) shall be liable on summary conviction to a fine not exceeding level 1 on the standard scale.

## **PART VIII**

### **MANAGEMENT OF PROPERTY AND AFFAIRS OF PATIENTS**

#### ***Jurisdiction of High Court in relation to property and affairs of patients***

**97.**—(1) The functions of the High Court (in this Part referred to as “the court”) under this Part shall be exercisable where, after considering medical evidence, the court is satisfied that a person is incapable, by reason of mental disorder, of managing and administering his property and affairs; and a person as to whom the court is so satisfied is referred to in this Part as a patient.

(2) Where it is represented to the court, and the court has reason to believe, that a person may be incapable, by reason of mental disorder, of managing and administering his property and affairs,

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and the court is of the opinion that it is necessary to make immediate provision for any of the matters referred to in Article 98, then pending the determination of the question whether that person is so incapable the court may exercise in relation to the property and affairs of that person any of the powers conferred on the court in relation to the property and affairs of a patient by this Part so far as is requisite for enabling that provision to be made.

### ***General powers of the court with respect to property and affairs of patient***

**98.**—(1) The court may, with respect to the property and affairs of a patient, do or secure the doing of all such things as appear necessary or expedient—

- (a) for the maintenance or other benefit of the patient;
- (b) for the maintenance or other benefit of members of the patient's family;
- (c) for making provision for other persons or purposes for whom or which the patient might be expected to provide if he were not mentally disordered; or
- (d) otherwise for administering the patient's affairs.

(2) In the exercise of the powers conferred by this Article regard shall be had first of all to the requirements of the patient.

(3) Subject to paragraph (2), the court shall, in administering a patient's affairs, have regard to the interests of creditors and also to the desirability of making provision for obligations of the patient notwithstanding that they may not be legally enforceable.

(4) Nothing in this Article shall prejudice the operation of the rules of law which restrict the enforcement by a creditor of rights against property under the control of the court.

### ***Orders, directions, etc of the court as to patient's property and affairs***

**99.**—(1) Without prejudice to the generality of Article 98, the court shall have power to make such orders and give such directions and authorities as it thinks fit for the purposes of that Article, and in particular may for those purposes make orders or give directions or authorities for—

- (a) the control (with or without the transfer or vesting of property or the payment into or lodgement in the Supreme Court of money or securities) and management of any property of the patient;
- (b) the sale, exchange, charging or other disposition of or dealing with any property of the patient;
- (c) the acquisition of any property in the name or on behalf of the patient;
- (d) the settlement of any property of the patient, or the gift of any property of the patient to any such persons or for any such purposes as are mentioned in sub-paragraphs (b) and (c) of Article 98(1);
- (e) the execution for the patient of a will making any provision (whether by way of disposing of property or exercising a power or otherwise) which could be made by a will executed by the patient if he were not mentally disordered;
- (f) the carrying on by a suitable person of any profession, trade or business of the patient;
- (g) the dissolution of a partnership of which the patient is a member;
- (h) the carrying out of any contract entered into by the patient;
- (i) the conduct of legal proceedings in the name of the patient or on his behalf;
- (j) the reimbursement out of the property of the patient, with or without interest, of money applied by any person either in payment of the patient's debts (whether legally enforceable or not) or for the maintenance or other benefit of the patient or members of his family or in

making provision for other persons or purposes for whom or which he might be expected to provide if he were not mentally disordered;

- (k) the exercise of any power (including a power to consent) vested in the patient, whether beneficially, or as guardian or trustee, or otherwise.

(2) If under paragraph (1) provision is made for the settlement of any property of a patient, or the exercise of a power vested in a patient of appointing trustees or retiring from a trust, the court may also make as respects the property settled or trust property such consequential vesting or other orders as the case may require, including (in the case of the exercise of such a power) any order which could have been made in such a case under Part IV of the Trustee Act (Northern Ireland) 1958.

(3) Where under this Article a settlement has been made of any property of a patient, and the court is satisfied, at any time before the death of the patient, that any material fact was not disclosed when the settlement was made, or that there has been any substantial change in circumstances, the court may by order vary the settlement in such manner as it thinks fit, and give any consequential directions.

(4) The power of the court to make or give an order, direction or authority for the execution of a will for a patient—

- (a) shall not be exercisable at any time when the patient is a minor, and
- (b) shall not be exercised unless the court has reason to believe that the patient is incapable of making a valid will for himself.

#### ***Supplementary provisions as to wills executed under Article 99***

**100.**—(1) Where under Article 99(1) the court makes or gives an order, direction or authority requiring or authorising a person (in this Article referred to as “the authorised person”) to execute a will for a patient, any will executed in pursuance of that order, direction or authority shall be expressed to be signed by the patient acting by the authorised person, and shall be—

- (a) signed by the authorised person with the name of the patient, and with his own name, in the presence of two or more witnesses present at the same time, and
- (b) attested and subscribed by those witnesses in the presence of the authorised person, and
- (c) sealed with the official seal of the Office of Care and Protection.

(2) The<sup>F85</sup> Wills and Administration Proceedings (Northern Ireland) Order 1994] shall have effect in relation to any such will as if it were signed by the patient by his own hand, except that in relation to any such will—

- (a) [<sup>F85</sup>Article 5] of [<sup>F85</sup> that Order] (which makes provision as to the signing and attestation of wills) shall not apply, and
- (b) in the subsequent provisions of [<sup>F85</sup> that Order] any reference to execution in the manner required by the previous provisions of [<sup>F85</sup> that Order] shall be construed as a reference to execution in the manner required by paragraph (1).

(3) Subject to paragraph (4), any such will executed in accordance with paragraph (1) shall have the same effect for all purposes as if the patient were capable of making a valid will and the will had been executed by him in the manner required by the<sup>F85</sup> Wills and Administration Proceedings (Northern Ireland) Order 1994].

(4) So much of paragraph (3) as provides for such a will to have effect as if the patient were capable of making a valid will—

- (a) shall not have effect in relation to such a will in so far as it disposes of any immovable property, other than immovable property in Northern Ireland; and

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- (b) where at the time when such a will is executed the patient is domiciled in England and Wales or Scotland or in a country or territory outside the United Kingdom, shall not have effect in relation to that will in so far as it relates to any other property or matter, except any property or matter in respect of which, under the law of his domicile, any question of his testamentary capacity would fall to be determined in accordance with the law of Northern Ireland.

F85 1994 NI 13

### ***Power to appoint controller***

**101.**—(1) The court may by order appoint as controller for a patient a person specified in the order or the holder for the time being of an office so specified.

(2) A person appointed as controller for a patient shall do all such things in relation to the property and affairs of the patient as the court, in the exercise of the powers conferred on it by Articles 98 and 99, orders or directs him to do and may do any such thing in relation to the property and affairs of the patient as the court in the exercise of those powers, authorises him to do.

(3) A controller appointed for any person shall be discharged by order of the court on the court being satisfied that that person has become capable of managing and administering his property and affairs, and may be discharged by order of the court at any time if the court considers it expedient to do so; and a controller shall be discharged (without any order) on the death of the patient.

### ***Transfer of stock held in name of mentally disordered person outside Northern Ireland***

**102.**—(1) Where the court is satisfied—

- (a) that under the law prevailing in a place outside Northern Ireland a person has been appointed to exercise powers with respect to the property or affairs of any other person on the ground (however formulated) that that other person is incapable, by reason of mental disorder, of managing and administering his property and affairs; and
- (b) that having regard to the nature of the appointment and to the circumstances of the case it is expedient that the court should exercise its powers under this Article,

the court may direct any stock standing in the name of the said other person or the right to receive the dividends from the stock to be transferred into the name of the person so appointed or otherwise dealt with as requested by that person, and may give such directions as the court thinks fit for dealing with accrued dividends from the stock.

(2) In this Article “stock” includes shares and also any fund, annuity or security transferable in the books kept by any body corporate or unincorporated company or society, or by an instrument of transfer either alone or accompanied by other formalities, and “dividends” shall be construed accordingly.

### ***Preservation of interests in patient's property***

**103.**—(1) Where any property of a person has been disposed of under this Part, and under his will or his intestacy, or by any gift perfected or nomination taking effect on his death, any other person would have taken an interest in the property but for the disposal—

- (a) he shall take the same interest, if and so far as circumstances allow, in any property belonging to the estate of the deceased which represents the property disposed of; and
- (b) if the property disposed of was real property any property representing it shall so long as it remains part of his estate be treated as if it were real property.



(2) The court, in ordering, directing or authorising under this Part any disposal of property which apart from this Article would result in the conversion of personal property into real property, may direct that the property representing the property disposed of shall, so long as it remains the property of the patient or forms part of his estate, be treated as if it were personal property.

- (3) References in paragraphs (1) and (2) to the disposal of property are references to—
- (a) the sale, exchange, charging or other dealing (otherwise than by will) with property other than money;
  - (b) the removal of property from one place to another;
  - (c) the application of money in acquiring property; or
  - (d) the transfer of money from one account to another;

and references to property representing property disposed of shall be construed accordingly and as including the result of successive disposals.

(4) The court may give such directions as appear to it necessary or expedient for the purpose of facilitating the operation of paragraph (1), including the carrying of money to a separate account and the transfer of property other than money.

(5) Where the court has ordered, directed or authorised the expenditure of money for the carrying out of permanent improvements on, or otherwise for the permanent benefit of, any property of the patient, it may order that the whole or any part of the money expended or to be expended shall be a charge upon the property, whether without interest or with interest at a specified rate; and an order under this paragraph may provide for excluding or restricting the operation of paragraph (1).

(6) A charge under paragraph (5) may be made in favour of such person as may be just, and in particular, where the money charged is paid out of the patient's general estate, may be made in favour of a person as trustee for the patient; but no charge under that paragraph shall confer any right of sale or foreclosure during the lifetime of the patient.

### ***The Lord Chief Justice's Visitors***

**104.**—(1) There shall be the following panels of Lord Chief Justice's Visitors of patients constituted in accordance with this Article, namely—

- (a) a panel of Medical Visitors;
- (b) a panel of Legal Visitors; and
- (c) a panel of General Visitors (being Visitors who are not required by this Article to possess either a medical or legal qualification for appointment).

(2) Each panel shall consist of persons appointed to it by the Lord Chief Justice, the appointment of each person being for such term and subject to such conditions as the Lord Chief Justice may determine.

- (3) A person shall not be qualified to be appointed—
- (a) to the panel of Medical Visitors unless he is a medical practitioner who appears to the Lord Chief Justice to have special knowledge and experience of cases of mental disorder;
  - (b) to the panel of Legal Visitors unless he is a barrister or solicitor of not less than 10 years' standing.

(4) Rules of court may provide, or the court may by order made in any particular case direct, that any remuneration for services of the Lord Chief Justice's Visitors in connection with any patient shall be paid out of his estate.

(5) Without prejudice to paragraph (4), there may be paid to the Lord Chief Justice's Visitors such remuneration and travelling and other allowances upon such conditions and on such scales as

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may be determined by the Lord Chancellor after consultation with the Lord Chief Justice and with the concurrence of the Treasury.

#### Modifications etc. (not altering text)

- C4** [Art. 104\(5\)](#): functions of Treasury or Minister for the Civil Service transferred (12.4.2010) to Department of Finance and Personnel by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010](#) (S.I. 2010/976), arts. 1(2), **15(4)(g)** (with arts. 15(6), 28-31); S.I. 2010/977, **art. 1(2)**

### Functions of Visitors

**105**<sup>F86</sup>.—(1) Patients shall be visited by Lord Chief Justice's Visitors in such circumstances, and in such manner, as may be prescribed by directions of a standing nature given by the Master (Care and Protection) with the concurrence of the Lord Chief Justice.

(2) Where it appears to the court in the case of any patient that a visit by a Lord Chief Justice's Visitor is necessary for the purpose of investigating any particular matter or matters relating to the capacity of the patient to manage and administer his property and affairs, or otherwise relating to the exercise in relation to him of the functions of the court under this Part, the court may order that the patient shall be visited for that purpose.

(3) Every visit falling to be made under paragraph (1) or (2) shall be made by a General Visitor unless, in a case where it appears to the court that it is in the circumstances essential for the visit to be made by a Visitor with medical or legal qualifications, the court directs that the visit shall be made by a Medical or a Legal Visitor.

(4) A Visitor making a visit under this Article shall make such report on the visit as the court may direct.

(5) A Visitor making a visit under this Article may interview the patient in private.

(6) A Medical Visitor making a visit under this Article may carry out in private a medical examination of the patient and may require the production of and inspect any medical records relating to the patient.

(7) The Master (Care and Protection) may visit any patient for the purpose mentioned in paragraph (2) and may interview the patient in private.

(8) A report made by a Visitor under this Article, and information contained in such a report, shall not be disclosed except to the court and any person authorised by the court to receive the disclosure.

(9) If any person discloses any report or information in contravention of paragraph (8), he shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 3 on the standard scale or both.

(10) In this Article references to patients include references to persons alleged to be incapable, by reason of mental disorder, of managing and administering their property and affairs.

**F86** mod. by [1987 NI 16](#)

### Rules of court

**106**<sup>F87</sup>.—(1) Rules of court may make provision as to the conduct of proceedings before the court with respect to persons suffering or alleged to be suffering from mental disorder (in this Article referred to as “proceedings”) including provision as to—

- (a) the carrying out of preliminary or incidental inquiries;

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- (b) the persons by whom and manner in which proceedings may be instituted and carried on;
  - (c) the persons who are to be entitled to be notified of, to attend, or to take part in proceedings;
  - (d) the evidence which may be authorised or required to be given in proceedings and the manner (whether on oath or otherwise and whether orally or in writing) in which it is to be given;
  - (e) the administration of oaths and taking of affidavits for the purposes of proceedings;
  - (f) the enforcement of orders made and directions given in proceedings;
  - (g) the authorising or requiring of the attendance and examination of persons suffering or alleged to be suffering from mental disorder, the furnishing of information and the production of documents;
  - (h) the termination of proceedings, whether on the death or recovery of the person to whom the proceedings relate or otherwise, and the exercise, pending the termination of the proceedings, of powers exercisable under this Part in relation to the property or affairs of a patient;
  - (i) the making of orders for the payment of costs to or by persons attending, as well as persons taking part in, proceedings and the manner in which and funds out of which any such costs are to be paid; and
  - (j) the charging of any fee or percentage payable in connection with proceedings upon the estate of the person to whom the proceedings relate and the payment of fees and percentages within such time after the death of the person to whom the proceedings relate or the termination of the proceedings as may be provided by the rules.
- (2) A charge upon the estate of a person created by virtue of paragraph (1)(j) shall not cause any interest of that person in any property to fail or determine or to be prevented from recommencing.

F87 mod. by 1987 NI 16

### ***Duty to notify Office of Care and Protection***

107.—(1) Where a Board<sup>F88</sup> or authorised HSS trust] is satisfied—

- (a) that any person within its area is incapable, by reason of mental disorder, of managing and administering his property and affairs;
- (b) that any of the powers of the court under Article 98 or 99 ought to be exercised with respect to the property or affairs of that person; and
- (c) that arrangements in that behalf have neither been made nor are being made,

it shall be the duty of the Board<sup>F88</sup> or authorised HSS trust] to notify the Office of Care and Protection of those matters.

<sup>F88</sup>(1A) For the purposes of paragraph (1) a person shall not be taken to be within the area of a Board if he is within the area of an authorised HSS trust.

(1B) Where an HSS trust other than an authorised HSS trust is satisfied—

- (a) that any person in a hospital managed by the trust is incapable, by reason of mental disorder, of managing and administering his property and affairs;
- (b) that any of the powers of the court under Article 98 or 99 ought to be exercised with respect to the property or affairs of that person; and
- (c) that arrangements in that behalf have neither been made nor are being made,

it shall be the duty of the trust to notify the Office of Care and Protection of those matters.]

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(2) Where any person carrying on a nursing home, a<sup>F89</sup> residential care home] or a private hospital is satisfied—

- (a) that any person within his care is incapable, by reason of mental disorder, of managing and administering his property and affairs;
- (b) that any of the powers of the court under Article 98 or 99 ought to be exercised with respect to the property or affairs of that person; and
- (c) that arrangements in that behalf have neither been made nor are being made,

it shall be the duty of that person to notify the Office of Care and Protection of those matters.

(3) Where the Commission is satisfied—

- (a) that any person is incapable, by reason of mental disorder, of managing and administering his property and affairs;
- (b) that any of the powers of the court under Article 98 or 99 ought to be exercised with respect to the property or affairs of that person; and
- (c) that arrangements in that behalf have neither been made nor are being made,

it shall be the duty of the Commission to notify the Office of Care and Protection of those matters.

**F88** 1994 NI 2  
**F89** 1992 NI 20

### ***Procedure for notifications under Article 107***

**108.**—(1) A notification under Article 107 shall be made within such time and in such form as rules of court may prescribe.

(2) Where a notification is made under Article 107 in relation to any person, it shall, where practicable, be the duty of the<sup>F90</sup> body] or person making the notification to inform the nearest relative of that person.

(3) The Office of Care and Protection, on receipt of a notification in respect of any person under Article 107, shall, after making such inquiries as it thinks fit, take that person's case into consideration and may, if it thinks fit, arrange for the institution of proceedings before the court under this Part.

**F90** 1994 NI 2

### ***Interpretation of Part VIII***

**109.** In this Part—

“the court” means the High Court;

“patient” has the meaning assigned to it by Article 97(1);

“property” includes any thing in action, and any interest in real or personal property;

“rules of court” means rules of court made under section 55 of the Judicature (Northern Ireland) Act 1978.

## PART IX

### MISCELLANEOUS FUNCTIONS OF DEPARTMENT AND BOARDS

#### *Provision of special accommodation by Department*

**110.** The Department may provide such accommodation (in this Order referred to as “special accommodation”) as appears to it to be necessary for persons subject to detention under this Order who, in the opinion of the Department, require treatment under conditions of special security on account of their dangerous, violent or criminal propensities.

#### *Code of Practice*

**111.—**(1) The Department shall prepare, and from time to time revise, a code of practice—

- (a) for the guidance of medical practitioners,<sup>[F91]</sup> Boards, authorised HSS trusts,] staff of hospitals and approved social workers in relation to the admission of patients to hospitals and the reception of patients into guardianship under this Order; and
- (b) for the guidance of medical practitioners and members of other professions in relation to the medical treatment of patients suffering from mental disorder.

(2) The code shall, in particular, specify forms of medical treatment in addition to any specified by regulations made for the purposes of Article 63 which in the opinion of the Department give rise to special concern and which should accordingly not be given by a medical practitioner unless the patient has consented to the treatment (or to a plan of treatment including that treatment) and a certificate as to the matters mentioned in paragraphs (2)(a) and (b) of that Article has been given by another medical practitioner, being a practitioner appointed for the purposes of this Article by the Commission; and paragraph (4) of that Article shall apply to a medical practitioner appointed for the purposes of this Article as it applies to a medical practitioner appointed for the purposes of Part IV.

(3) Before preparing the code or making any alteration in it the Department shall consult the Commission and such other bodies as appear to it to be concerned.

(4) The Department shall lay copies of the code and of any alteration in the code before the Assembly; and if within the statutory period the Assembly passes a resolution requiring the code or any alteration in it to be withdrawn the Department shall withdraw the code or alteration and, where it withdraws the code, shall prepare a code in substitution for the one which is withdrawn.

(5) The Department shall publish the code as for the time being in force.

**F91** 1994 NI 2

#### *General duty of Boards*

**112.—**<sup>[F92]</sup>(1) A Board shall, to such extent as may be approved by the Department, make arrangements designed to promote mental health, to secure the prevention of mental disorder and to promote the treatment, welfare and care of persons suffering from mental disorder.

<sup>[F92]</sup>(2) This Article applies to an HSS trust as it applies to a Board.]

**F92** 1994 NI 2

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### ***Miscellaneous powers of Boards***

**113.**—<sup>F93</sup>(1) Without prejudice to the generality of Article 112, a Board may, to such extent as may be prescribed or approved by the Department—

- (a) pay to persons who are receiving treatment as patients (whether liable to be detained or not) in any hospital, private hospital or nursing home such amounts as the Board thinks fit in respect of those persons' occasional personal expenses where it appears to the Board that those persons would otherwise be without resources to meet those expenses;
- (b) provide financial assistance for any person absent from a hospital in pursuance of leave of absence granted under this Order, where the needs of that person are such that such assistance is necessary to give full effect to his treatment or to provide for his settlement or resettlement in the community;
- (c) contribute towards the maintenance of persons who are subject to guardianship under this Order;
- (d) provide, or co-operate in the provision of, suitable training or occupation, whether in premises provided by the Department or elsewhere, for persons suffering from mental disorder.

<sup>F93</sup>(2) This Article applies to an HSS trust as it applies to a Board]

**F93** 1994 NI 2

### ***Payments to medical practitioners by Boards***

**114.**—<sup>F94</sup>(1) There may be paid by a Board to any medical practitioner who gives any recommendation, report or certificate required by or under this Order, such fees as may be determined by the Department, subject to such exceptions and conditions as may be so determined.

<sup>F94</sup>(2) This Article applies to an HSS trust as it applies to a Board.]

**F94** 1994 NI 2

### ***Appointment of approved social workers by Boards***

**115.**—(1) A Board shall appoint a sufficient number of approved social workers for the purpose of discharging the functions conferred on them by this Order.

(2) No person shall be appointed by a Board as an approved social worker unless he is approved by the Board as having appropriate competence in dealing with persons who are suffering from mental disorder.

(3) In approving a person for appointment as an approved social worker a Board shall have regard to such matters as the Department may direct.

<sup>F95</sup>(4) This Article applies to an authorised HSS trust as it applies to a Board]

**F95** 1994 NI 2

### ***Powers of Boards in relation to property of patients***

**116.**—<sup>F96</sup>(1) Subject to paragraphs (4) and (5), where it appears to a Board that any patient in any hospital or in any accommodation managed by it is incapable, by reason of mental disorder, of

managing and administering his property and affairs, the Board may receive and hold money and valuables on behalf of that patient.]

(2) A receipt or discharge given by a Board<sup>F96</sup> . . . for any such money or valuables shall be treated as a valid receipt or discharge given by the patient.

(3) Where a Board<sup>F96</sup> . . . holds money or valuables on behalf of a person in pursuance of paragraph (1), it may expend that money or dispose of those valuables for the benefit of that person and in the exercise of the powers conferred by this paragraph the Board<sup>F96</sup> . . . shall have regard to the sentimental value that any article may have for the patient, or would have but for his mental disorder.

(4) A Board<sup>F96</sup> . . . shall not receive or hold under paragraph (1) on behalf of any one patient without the consent of the Commission money or valuables exceeding in the aggregate such sum as the Department may from time to time determine.

(5) Paragraph (1) shall not apply where a controller has been appointed in Northern Ireland in relation to the property and affairs of the patient.

[<sup>F97</sup>(6) This Article applies to an HSS trust as it applies to a Board.]

**F96** 1994 NI 2

**F97** 1994 NI 2

#### ***Duty of Boards to inform nearest relative of discharge of patient***

**117.**—(1) Where a patient liable to be detained under this Order in a hospital is to be discharged, otherwise than by virtue of an order for discharge under Article 14(1) made by his nearest relative, the responsible<sup>F98</sup> authority] shall, subject to paragraph (2), take such steps as are practicable to inform the nearest relative of the patient; and that information shall, if practicable, be given at least 7 days before the date of discharge.

(2) Paragraph (1) shall not apply if the patient or his nearest relative has requested that information about the patient's discharge should not be given under this Article.

**F98** 1994 NI 2

#### ***Provision of information and affording of facilities to other bodies by Department and Boards***

**118.**—(1) The Department and, in relation to persons within its care, a Board<sup>F99</sup> . . . shall furnish such returns, reports and other information in relation to mentally disordered persons—

- (a) to the High Court and the Office of Care and Protection, as the High Court or that Office may require for the exercise of its functions under Part VIII;
- (b) to the Review Tribunal and the Commission, as the Review Tribunal or the Commission may require for the exercise of its functions under this Order.

(2) A Board<sup>F99</sup> . . . shall afford all such facilities—

- (a) to the High Court and the Office of Care and Protection, as are necessary for them to exercise their functions under Part VIII; and
- (b) to the Review Tribunal and the Commission, as are necessary for them to exercise their functions under this Order.

(3) The Department shall afford all such facilities to the Review Tribunal and the Commission as are necessary for them to exercise their functions under this Order.

(4) Each Board shall—

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- (a) maintain a register in such form as the Department may direct of all persons under the age of 18 years who are for the time being receiving medical treatment for mental disorder as in-patients in hospitals<sup>[F99]</sup> managed by the Board; and]
- (b) at intervals of three months, forward to the Commission a copy of the register as for the time being in force.

<sup>[F100]</sup>(5) This Article applies to an HSS trust as it applies to a Board.]

**F99** 1994 NI 2

**F100** 1994 NI 2

## PART X OFFENCES

### *Forgery, false statements, etc.*

**119.**—(1) Any person who without lawful authority or excuse has in his custody or under his control any document to which this paragraph applies which is, and which he knows or believes to be, false within the meaning of Part I of the Forgery and Counterfeiting Act 1981 shall be guilty of an offence.

(2) Any person who without lawful authority or excuse makes, or has in his custody or under his control, any document so closely resembling a document to which paragraph (1) applies as to be calculated to deceive shall be guilty of an offence.

(3) Paragraph (1) applies to any document purporting to be—

- (a) an application under Part II;
- (b) any recommendation or report under this Order; and
- (c) any other document required or authorised to be made for any of the purposes of this Order.

(4) Any person who—

- (a) wilfully makes a false entry or statement in any application, recommendation, report, record or other document required or authorised to be made for any of the purposes of this Order; or
- (b) with intent to deceive, makes use of any such entry or statement which he knows to be false,

shall be guilty of an offence.

(5) Any person guilty of an offence under this Article shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine of any amount, or to both.

### *Unlawful detention of patients*

**120.**—(1) Any person who knowingly receives and detains otherwise than in accordance with this Order a person suffering from mental disorder shall be guilty of an offence.



(2) Any person who exercises in relation to any patient any power of detention, or any other power conferred on him by or under this Order, after he has knowledge that the power has expired, shall be guilty of an offence.

(3) Any person guilty of an offence under this Article shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine of any amount, or to both.

### ***Ill-treatment of patients***

**121.**—(1) Any person who, being an officer on the staff of or otherwise employed in a hospital, private hospital or nursing home or being a member of the<sup>F101</sup> Board or a director of the HSS trust managing] a hospital, or a person carrying on a private hospital or nursing home—

- (a) ill-treats or wilfully neglects a patient for the time being receiving treatment for mental disorder as an in-patient in that hospital or nursing home; or
- (b) ill-treats or wilfully neglects, on the premises of which the hospital or nursing home forms part, a patient for the time being receiving such treatment there as an out-patient,

shall be guilty of an offence.

(2) Any individual who ill-treats or wilfully neglects a patient who is for the time being subject to his guardianship under this Order or otherwise in his custody or care (whether by virtue of any legal or moral obligation or otherwise) shall be guilty of an offence.

(3) Any person guilty of an offence under this Article shall be liable—

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;
- (b) on conviction on indictment, to imprisonment for a term not exceeding two years, or to a fine of any amount, or to both.

**F101** 1994 NI 2

### ***Protection of women suffering from severe mental handicap***

**122.**—(1) Any person who—

- (a) has unlawful sexual intercourse with a woman suffering from severe mental handicap;
- (b) procures any woman suffering from severe mental handicap to have unlawful sexual intercourse with men or with any particular man;
- (c) causes or encourages the prostitution of any woman suffering from severe mental handicap;
- (d) being the owner or occupier of any premises, or having or acting or assisting in, the management or control of any premises, induces or knowingly suffers any woman suffering from severe mental handicap to resort to, or be in or upon, those premises for the purpose of having unlawful sexual intercourse with men or with any particular man; or
- (e) with intent that any woman suffering from severe mental handicap should have unlawful sexual intercourse with men or with any particular man, takes or causes to be taken that woman out of the possession of and against the will of her parent or other person having<sup>F102</sup> parental responsibility for or care of] her;

**Status:** Point in time view as at 15/05/2008.

**Changes to legislation:** The Mental Health (Northern Ireland) Order 1986 is up to date with all changes known to be in force on or before 21 June 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details)

shall, subject to paragraph (2), be guilty of an offence, and liable on conviction on indictment to imprisonment for a term not exceeding two years.

(2) A person shall not be guilty of an offence under paragraph (1) if he proves that he did not know and had not any reason to suspect that the woman in respect of whom he is charged was suffering from severe mental handicap.

(3) Without prejudice to sections 1 and 2 of the Criminal Law Amendment Act (Northern Ireland) 1923 (which preclude defences of consent and reasonable belief as to age in relation to certain offences against young persons), it shall not be a defence to any proceedings for an indecent assault upon a woman suffering from severe mental handicap to prove the consent of that woman to the act complained of if the accused knew or had reason to suspect that the woman who gave her consent was suffering from severe mental handicap.

(4) Section 10 of the Criminal Law Amendment Act 1885 (which relates to the issue of search warrants) shall have effect in relation to any woman suffering from severe mental handicap as it has effect in relation to any girl under the age of seventeen years.

*Para. (5) rep. by 1989 NI 12*

(6) In this Article “woman” includes a girl.

**F102** 1995 NI 2

### ***Protection of patients***

**123.**—(1) Without prejudice to Article 122, if—

(a) a man who is—

(i) an officer on the staff of, or is otherwise employed in, a hospital, private hospital or nursing home;

(ii) a member of the<sup>F103</sup> Board or a director of the HSS trust managing] a hospital, or

(iii) a person carrying on a private hospital or nursing home,

has unlawful sexual intercourse with a woman who is for the time being receiving treatment for mental disorder in that hospital or nursing home or has such intercourse on the premises of which the hospital or nursing home forms part with a woman who is for the time being receiving such treatment there as an out-patient; or

(b) a man who is—

(i) the guardian under this Order of a woman suffering from mental disorder or otherwise has such a woman in his custody or care under this Order or the Health and Personal Social Services (Northern Ireland) Order 1972; or

(ii) a member of a Board<sup>F103</sup> or a director of an authorised HSS trust] which is the guardian of such a woman under this Order or otherwise has such a woman in its custody or care under this Order or the Order of 1972,

has unlawful sexual intercourse with that woman,

he shall, subject to paragraph (2), be guilty of an offence and liable on conviction on indictment to imprisonment for a term not exceeding two years.

(2) A person shall not be guilty of an offence under paragraph (1) if he proves that he did not know and had not any reason to suspect that the woman in respect of whom he is charged was suffering from mental disorder.

(3) In paragraph (1) any reference to having unlawful sexual intercourse with a woman shall include a reference to committing a homosexual act with or in relation to a man and in paragraph (2) the reference to “woman” shall include reference to “man”.

(4) In this Article—

“woman” includes a girl;

“man” includes a boy;

“homosexual act” means buggery with another man, an act of gross indecency with another man or the act of being a party to the commission by a man of such an act.

**F103** 1994 NI 2

### ***Assisting patients to absent themselves without leave***

**124.**—(1) Any person who induces or knowingly assists any other person—

(a) being liable under this Order to be detained in a hospital, or being subject to guardianship under this Order, to absent himself without leave; or

(b) being in legal custody by virtue of Article 131 to escape from such custody;

shall be guilty of an offence.

(2) Any person who knowingly harbours a patient who is absent without leave or is otherwise at large and liable to be retaken under this Order, or gives him any assistance with intent to prevent, hinder or interfere with his being taken into custody or returned to the hospital or other place where he ought to be, shall be guilty of an offence.

(3) Any person guilty of an offence under this Article shall be liable—

(a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine of any amount, or to both.

### ***Obstruction***

**125.**—(1) Any person who without reasonable cause—

(a) refuses to allow the inspection of any premises by a person authorised in that behalf by or under this Order;

(b) refuses to allow the visiting, interviewing or examination of any person by a person so authorised;

(c) refuses to produce for the inspection of any person so authorised any document or record the production of which is duly required by him; or

(d) otherwise obstructs any such person in the exercise of his functions,

shall be guilty of an offence.

(2) Without prejudice to the generality of paragraph (1), any person who insists on being present when requested to withdraw by a person authorised as aforesaid to interview or examine a person in private, shall be guilty of an offence.

(3) Any person guilty of an offence under this Article shall be liable on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding level 4 on the standard scale, or to both.

### ***Consent for certain prosecutions***

**126.** No proceedings shall be instituted for an offence under Article 120, 121, 122 or 123 except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

*Status: Point in time view as at 15/05/2008.*

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## PART XI

### MISCELLANEOUS AND SUPPLEMENTARY

#### *Miscellaneous*

##### ***Voluntary use of services***

**127.**—(1) Nothing in this Order shall be construed as preventing a patient who requires treatment for mental disorder from being admitted to any hospital or private hospital for that treatment in pursuance of arrangements made in that behalf and without an application, order or direction rendering him liable to be detained under this Order, or from remaining in any hospital or private hospital in pursuance of such arrangements after he has ceased to be so liable to be detained.

(2) Where a minor who has attained the age of 16 years is capable of expressing his own wishes, any such arrangements as are mentioned in paragraph (1) may be made, carried out and determined<sup>F104</sup> even though there are one or more persons who have parental responsibility for him (within the meaning of the Children (Northern Ireland) Order 1995).

**F104** 1995 NI 2

##### ***Pay, pensions, etc. of patients***

**128.**—(1) Subject to paragraph (2), where any payment falls to be made to any person by way of pay or pension or otherwise in connection with the service or employment of that or any other person, and the payment falls to be made—

- (a) directly out of moneys appropriated by Measure or the Consolidated Fund;
- (b) directly out of moneys provided by Parliament or the Consolidated Fund of the United Kingdom;
- (c) directly out of other moneys administered by or under the control or supervision of a Northern Ireland Department or a Department of the Government of the United Kingdom; or
- (d) by a district council,

the authority by whom the sum in question is payable, if satisfied after considering medical evidence that the person to whom it is payable (in this Article referred to as “the patient”) is incapable by reason of mental disorder of managing and administering his property and affairs, may, instead of paying the sum to the patient apply it in accordance with paragraph (3).

(2) Paragraph (1) shall not apply where a controller has been appointed in Northern Ireland in relation to the property and affairs of the patient.

(3) The authority may pay the sum or such part thereof as it thinks fit to the institution or person having the care of the patient, to be applied for his benefit and may pay the remainder, if any, or such part of the remainder as it thinks fit—

- (a) to or for the benefit of persons who appear to the authority to be members of the patient's family or other persons for whom the patient might be expected to provide if he were not mentally disordered; or
- (b) in reimbursement, with interest, of money applied by any person either in payment of the patient's debts (whether legally enforceable or not) or for the maintenance or other benefit of the patient or such persons as are mentioned in sub-paragraph (a).

### **Warrant to search for and remove patients**

**129.**—(1) If it appears to a justice of the peace, on complaint on oath made by an officer of a Board<sup>F105</sup> or of an authorised HSS trust] or a constable, that there is reasonable cause to suspect that a person believed to be suffering from mental disorder—

- (a) has been, or is being, ill-treated, neglected or kept otherwise than under proper control; or
- (b) being unable to care for himself, is living alone,

the justice may issue a warrant authorising any constable<sup>F106</sup> . . . , accompanied by a medical practitioner, to enter, if need be by force, any premises specified in the warrant in which that person is believed to be, and, if thought fit, to remove him to a place of safety with a view to the making of an application under Part II in respect of him, or of other arrangements for his care or treatment.

(2) If it appears to a justice of the peace, on complaint on oath made by an officer of a Board<sup>F105</sup> or of an authorised HSS trust] or a constable—

- (a) that there is reasonable cause to believe that a patient who, under this Order, is liable to be taken to any place, or to be taken into custody or to be retaken, is to be found on any premises; and
- (b) that admission to the premises has been refused or that a refusal of such admission is apprehended,

the justice may issue a warrant authorising any constable<sup>F106</sup> . . . accompanied by a medical practitioner, to enter the premises, if need be by force, and remove the patient.

(3) If it appears to a justice of the peace, on complaint on oath made by any person authorised by or under section 88 of the Mental Health Act 1983 or<sup>F107</sup> article 8 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005] to take into custody in Northern Ireland any person who may be so taken—

- (a) that there is reasonable cause to believe that a person who may be taken into custody by virtue of either of the aforesaid enactments, is to be found on any premises; and
- (b) that admission to the premises has been refused or that a refusal of such admission is apprehended,

the justice may issue a warrant authorising any constable<sup>F106</sup> . . . , accompanied by a medical practitioner, to enter the premises, if need be by force, and remove the person liable to be taken as aforesaid.

(4) If it appears to a justice of the peace, on complaint on oath made by a person who has made an application for assessment in relation to a patient—

- (a) that the application has been duly completed in accordance with Part II;
- (b) that there is reasonable cause to believe that the patient is to be found on any premises;
- (c) that it is not reasonably practicable for the patient to be taken and conveyed to the hospital specified in the application by the applicant or a person authorised by him; and
- (d) that the responsible<sup>F105</sup> authority] has been requested to do so but has failed to do so,

the justice may issue a warrant authorising any constable<sup>F106</sup> . . . , accompanied by a medical practitioner, to enter, if need be by force, the premises and to take and convey the patient to the hospital specified in the application.

(5) A patient who is removed to a place of safety in the execution of a warrant issued under this Article may be detained there for a period not exceeding 48 hours.

(6) It shall not be necessary in any complaint or warrant under paragraph (1) to name the person concerned.

**Status:** Point in time view as at 15/05/2008.

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(7) In this Article “place of safety” means any hospital, of which the<sup>F105</sup> managing Board or HSS trust] is willing temporarily to receive persons who may be taken there under this Order, any police station, or any other suitable place the occupier of which is willing temporarily to receive such persons.

**F105** 1994 NI 2  
**F106** 1989 NI 12  
**F107** SI 2005/2078

### ***Mentally disordered persons found in public places***

**130.**—(1) If a constable finds in a place to which the public have access a person who appears to him to be suffering from mental disorder and to be in immediate need of care or control, the constable may, if he thinks it necessary to do so in the interests of that person or for the protection of other persons, remove that person to a place of safety within the meaning of Article 129.

(2) A person removed to a place of safety under this Article may be detained there for a period not exceeding 48 hours for the purpose of enabling him to be examined by a medical practitioner and to be interviewed by an approved social worker and of making any necessary arrangements for his care or treatment.

(3) Where a person is removed as aforesaid, it shall, where practicable, be the duty of the constable who has so removed him without delay to inform some responsible person residing with that person and the nearest relative of that person of that removal.

### ***Provisions as to custody, conveyance and detention***

**131.**—(1) Any person required or authorised by or by virtue of this Order to be conveyed to any place or to be kept in custody or detained in a place of safety or at any place to which he is taken under Article 48(5) shall, while being so conveyed, kept or detained, as the case may be, be deemed to be in legal custody.

(2) A constable or any other person required or authorised by or by virtue of this Order, to take any person into custody, or to convey or detain any person shall, for the purposes of taking him into custody or conveying or detaining him, have all the powers, authorities, protection and privileges which a constable has within the area for which he acts as constable.

(3) In this Article “convey” includes any other expression denoting removal from one place to another.

### ***Retaking of patients escaping from custody***

**132.**—(1) If any person being in legal custody by virtue of Article 131 escapes, he may, subject to paragraphs (2) to (6), be retaken—

- (a) in any case, by the person who had his custody immediately before the escape, or by any constable or approved social worker;
- (b) if at the time of the escape he was liable to be detained in a hospital or subject to guardianship under this Order, by any other person who could take him into custody under Article 29 if he had absented himself without leave.

(2) A person who escapes as aforesaid when liable to be detained or subject to guardianship as mentioned in paragraph (1)(b) (not being a person subject to a restriction order or an order or direction having the same effect as such an order) shall not be retaken under this Article after the expiration of the period within which he could be retaken under Article 29 if he had absented himself

without leave on the day of the escape; and Article 29(3) shall apply with the necessary modifications accordingly.

(3) A person who escapes while being taken to or detained in a place of safety under Article 129 or Article 130 shall not be retaken under this Article after the expiration of the period of 48 hours beginning with the time when he escapes or the period during which he is liable to be so detained, whichever expires first.

(4) This Article, so far as it relates to the escape of a person liable to be detained in a hospital, shall apply in relation to a person who escapes—

- (a) while being taken to or from a hospital in pursuance of Article 28, or of any order or direction under Part III; or
- (b) while being taken to or detained in a place of safety in pursuance of an order under Part III pending his admission to a hospital;

as if he were liable to be detained in that hospital and, if he had not previously been received therein, as if he had been so received.

(5) This Article, so far as it relates to the escape of a person liable to be detained in a hospital, shall apply in relation to a person who, being in legal custody by virtue of the Mental Health Act 1983 or the<sup>F108</sup> Mental Health (Care and Treatment) (Scotland) Act 2003] escapes while being taken to a hospital in pursuance of any direction or authorisation under Part VI of the Act of 1983 or<sup>F108</sup> being removed to Northern Ireland under regulations made under section 290 of the Act of 2003] as if—

- (a) he were in legal custody by virtue of Article 131; and
- (b) he were liable to be detained in the hospital to which he is being taken and had previously been received therein.

(6) In computing for the purposes of Article 46 the period of 28 days therein mentioned, any time during which the patient is at large and liable to be retaken by virtue of this Article shall be left out of account.

(7) Article 30 shall, with any necessary modifications, apply in relation to a patient who is at large and liable to be retaken by virtue of this Article as it applies in relation to a patient who is absent without leave within the meaning of Article 29, and references therein to Article 29 shall be construed accordingly.

**F108** SI 2005/2078

### ***Protection for acts done in pursuance of this Order***

**133.**—(1) A person shall not be liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which he would have been liable apart from this Article in respect of any act purporting to be done in pursuance of this Order or any regulations or rules thereunder, unless the act was done in bad faith or without reasonable care.

(2) No civil proceedings shall be brought against any person in any court in respect of any such act without the leave of the High Court; and no criminal proceedings shall be brought against any person in any court in respect of any such act except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(3) This Article does not apply to proceedings for an offence under this Order being proceedings which, under any other provision of this Order, can be instituted only by or with the consent of the Director of Public Prosecutions.

(4) This Article does not apply to proceedings against the Department<sup>F109</sup>, a Board or an HSS trust].

**Status:** Point in time view as at 15/05/2008.

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**F109** 1994 NI 2

### ***Patients removed to or from Northern Ireland***

**134.**—(1) Where a patient is admitted to a hospital in Northern Ireland or received into guardianship there in pursuance of arrangements under Part VI of the 1983 Act or<sup>[F110]</sup> admitted to hospital in Northern Ireland under article 4 of the 2005 Order], the responsible medical officer shall, within 28 days of such admission or reception, furnish to the responsible<sup>[F111]</sup> authority] a report in the prescribed form stating the form of mental disorder from which, in the opinion of the responsible medical officer, the patient is suffering; and where a report is so furnished, the patient shall be treated for the purposes of this Order as suffering from such form of mental disorder as may be stated in the report.

(2) Where a patient has been admitted to a hospital or received into guardianship as mentioned in paragraph (1), the responsible<sup>[F111]</sup> authority] shall immediately notify the Commission to that effect and as soon as practicable forward to the Commission a copy of the report relating to the patient made in pursuance of that paragraph.

(3) The power to make regulations under Article 135 includes power to make regulations in respect of the application of this Order to patients removed to Northern Ireland under Part VI of the 1983 Act or<sup>[F110]</sup> regulations made under section 290 of the Mental Health (Care and Treatment) (Scotland) Act 2003].

(4) Subject to paragraph (5), where a patient liable to be detained or subject to guardianship by virtue of an application, report, order or direction under Part II or III (other than Articles 42, 43 or 45) is removed from Northern Ireland in pursuance of arrangements under Part VI of the 1983 Act or<sup>[F110]</sup> article 6 of the 2005 Order], the application, report, order or direction shall cease to have effect when he is duly received into a hospital or other institution, or placed under guardianship<sup>[F110]</sup> or, where he is not received into a hospital but his detention in hospital is authorised by virtue of the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995], in pursuance of those arrangements.

(5) Where the Secretary of State exercises his powers under section 86 of the 1983 Act in respect of a patient who is detained pursuant to a hospital order and in respect of whom a restriction order is in force, those orders shall continue in force so as to apply to the patient if he returns to Northern Ireland at any time before the end of the period for which those orders would have continued in force.

(6) Where the Secretary of State or the Department authorises the removal from Northern Ireland of a patient under Part VI of the 1983 Act or<sup>[F110]</sup> article 6 of the 2005 Order], the Secretary of State or the Department shall send notification of that authorisation to the Commission and to the nearest relative of the patient not less than 7 days before the date of the removal of the patient.

(7) In this Article—

“the 1983 Act” means the Mental Health Act 1983;

*Definition rep. by SI 2005/2078*

<sup>[F110]</sup>“the 2005 Order” means the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005.]

<sup>[F110]</sup>(8) Reference in this Article to a patient whose detention in hospital is authorised by virtue of the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995, shall be read as including references to a patient in respect of whom a certificate under one of the provisions listed in section 290(7)(a) of the Act of 2003 is in operation.]

**F110** SI 2005/2078



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**F111** 1994 NI 2

*Art. 134A rep. by 1994 NI 2*

### *Supplementary*

#### **Regulations and rules**

**135.**—(1) The Department may make regulations for prescribing anything which, under this Order, is required or authorised to be prescribed, and otherwise for carrying this Order into effect.

(2) Regulations and rules made under this Order (other than regulations made under Article 95<sup>F112</sup> . . . ) shall be subject to negative resolution.

(3) Regulations for the purposes of Article 113 shall be subject to the approval of the Department of Finance and Personnel.

**F112** 1994 NI 2

#### **Amendments**

##### *Para. (1)—Amendments*

(2) In any statutory provision for any reference to “idiot”, “imbecile”, “mental defective”, “mental defectiveness”, “mental deficiency” or any other cognate expression there shall be substituted a reference to “ person suffering from mental handicap ” or “ mental handicap ” or such other cognate expression as by virtue of any of the provisions of this Order the context may require.

(3) In any statutory provision for any reference to the committee of the estate of a person suffering from mental disorder there shall be substituted a reference to the controller for such a person appointed under Article 101.

#### **Transitional provisions**

**137.** The transitional provisions set out in Schedule 6 shall have effect.

##### *Art. 138—Repeals*

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## SCHEDULES

### SCHEDULE 1

Articles 6, 12(2) and 20(1).

#### PERSONS BY WHOM A MEDICAL RECOMMENDATION OR MEDICAL REPORT UNDER ARTICLE 12 MAY NOT BE GIVEN

1. The applicant or a partner of, or person employed as an assistant by, the applicant.
2. A person who receives, or has an interest in the receipt of, any payments made on account of the maintenance of the patient.
3. The spouse,<sup>[F113</sup> civil partner,] parent, father-in-law, mother-in-law, child, son-in-law, daughter-in-law, brother, brother-in-law, sister or sister-in-law of the patient.

F113 2004 c. 33

4. A person who is living with the patient as if he or she were the spouse<sup>[F114</sup> or civil partner] of the patient (or, if the patient is for the time being an in-patient in a hospital, was so living until the patient was admitted) and has been or had been so living for a period of not less than 6 months.

F114 2004 c. 33

5. A person with whom the patient ordinarily resides (or, if the patient is for the time being an in-patient in a hospital, last ordinarily resided before he was admitted) and with whom he has or had been ordinarily residing for a period of not less than 5 years.

### SCHEDULE 2

Articles 46(6), 47(2) and (4) and 61(6).

#### APPLICATION OF PART II TO PATIENTS DETAINED OR SUBJECT TO GUARDIANSHIP UNDER PART III

### PART I

#### PATIENTS NOT SUBJECT TO SPECIAL RESTRICTIONS

1. Articles 15, 16, 17, 25, 26, 27, 30, 31, 32, 33, 34, 35 and 38 shall apply in relation to the patient without modification.
2. Articles 12, 13, 14, 22, 23, 24, 28, 29, 36 and 37 shall apply in relation to the patient with the modifications specified in paragraphs 3 to 12.
3. In Article 12—
  - (a) for paragraph (1) there shall be substituted—

“(1) Subject to the provisions of this Order, a patient admitted to hospital in pursuance of an order or direction under Part III may be detained in the hospital for treatment for a

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period not exceeding 6 months beginning with the date of the relevant order or direction under Part III, but shall not be so detained for any longer period unless the authority for his detention is renewed under Article 13.”;

- (b) paragraphs (2) and (3) shall be omitted;
  - (c) in paragraph (4) for the words from “report furnished” to the end there shall be substituted the words “ order or direction under Part III in pursuance of which a patient is admitted to hospital ”;
  - (d) in paragraph (5) the words “a report under” where they first occur shall be omitted.
4. In Article 13—
- (a) in paragraphs (2), (3) and (5) references to Article 12(1)(a), (b), (c) and (d) shall have effect as if paragraph 3(a) of this Part were omitted;
  - (b) in paragraph (4)(c) for the words from “who has not” to the end there shall be substituted the words “ whose evidence has not been taken into account by a court before making an order under Part III in respect of the patient or, as the case may be, whose report has not been taken into account by the Secretary of State before giving a direction in respect of the patient under that Part ”.
5. In Article 14 there shall be omitted—
- (a) in paragraph (1), the reference to the nearest relative;
  - (b) paragraphs (4) to (7).
6. In Article 22—
- (a) paragraphs (1), (2) and (4) shall be omitted;
  - (b) in paragraph (3) for the words “received into guardianship in pursuance of a guardianship application” there shall be substituted the words “ placed under guardianship by a guardianship order ” and for the words “day on which the guardianship application was accepted” there shall be substituted the words “ date of the relevant guardianship order under Part III ”;
  - (c) in paragraph (5) for the words “received into guardianship in pursuance of a guardianship application” there shall be substituted the words “ placed under guardianship by a guardianship order ” and for the words from “the guardianship application” to the end there shall be substituted the words “ the relevant guardianship order under Part III ”.
7. In Article 23—
- (a) in paragraph (2)(a) and (b) for the words “continues to apply” there shall be substituted the word “ applies ”;
  - (b) in paragraph (2)(b) for the words “continue so to apply” there shall be substituted the words “ so apply ”;
  - (c) in paragraph (5) for the words “the guardianship application, that application” there shall be substituted the words “ the relevant guardianship order under Part III, that order ”.
8. In Article 24 there shall be omitted—
- (a) in paragraph (1), the reference to the nearest relative;
  - (b) paragraphs (4) to (7).
9. In Article 28—
- (a) in paragraph (2) for the words from “as if” to the end there shall be substituted the words “ as if the Department had designated under Article 46(2)(a) the hospital to which he is transferred ”;

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- (b) paragraphs (3) and (4) shall be omitted;
  - (c) in paragraph (6) for the words from “guardianship application” to the end there shall be substituted the words “ guardianship order under Part III by virtue of which he was subject to guardianship before being transferred were an order placing him under the guardianship of the person into whose guardianship he is transferred ”;
  - (d) in paragraph (7) for the words from “application for assessment” to the end there shall be substituted the words “ order or direction under Part III by virtue of which he was liable to be detained in hospital before being transferred were an order placing him under the guardianship of the person into whose guardianship he is transferred ”.
10. In Article 29 paragraph (4) shall be omitted.
11. In Article 36(3) sub-paragraphs (c) and (d) shall be omitted.
12. In Article 37(4) for sub-paragraphs (a) and (b) there shall be substituted the words “ when the patient ceases to be liable to be detained or subject to guardianship under this Order (otherwise than on being transferred by virtue of Article 28) ”.

## PART II

### PATIENTS SUBJECT TO SPECIAL RESTRICTIONS

1. Articles 16, 17, 27, 32, 33, 35 and 38 shall apply in relation to the patient without modification.
2. Articles 12(4), 15, 28, 29, 34, 36 and 37 shall apply in relation to the patient with the modifications specified in paragraphs 3 to 9.
3. In Article 12(4) for the words from “report furnished” to the end there shall be substituted the words “ order or direction under Part III in pursuance of which a patient is admitted to hospital ”.
4. In Article 15—
  - (a) in paragraph (1) after the word “may” there shall be inserted the words “ with the consent of the Secretary of State ”;
  - (b) in paragraph (5) after the words “the responsible medical officer” and “that officer” there shall be inserted the words “ or the Secretary of State ”;
  - (c) in paragraph (6) after the word “recalled” there shall be inserted the words “ by the responsible medical officer ” and for the words from “he has ceased” to the end there shall be substituted the words “ the expiration of the period of 6 months beginning with the first day of his absence on leave ”.
5. In Article 28—
  - (a) in paragraph (1) after the word “may” there shall be inserted the words “ with the consent of the Secretary of State ”;
  - (b) in paragraph (2) for the words from “as if” to the end there shall be substituted the words “ as if the Department had designated under Article 46(2)(a) the hospital to which he is transferred ”;
  - (c) paragraphs (3) to (7) shall be omitted.
6. In Article 29 paragraphs (2) and (3) and (4) and the words “subject to paragraphs (3) and (4)” in paragraph (1) shall be omitted.
7. In Article 34 paragraph (3) shall be omitted.
8. In Article 36(3) sub-paragraphs (c) and (d) shall be omitted.

9. In Article 37(4) for sub-paragraphs (a) and (b) there shall be substituted the words “ when the patient ceases to be liable to be detained under this Order ”.

[<sup>F115</sup>SCHEDULE 2A

Article 50A(6).

SUPERVISION AND TREATMENT ORDERS

F115 1996 NI 24

PART I

PRELIMINARY

1.—(1) In this Schedule “supervision and treatment order” means an order requiring the person in respect of whom it is made ( “the supervised person”)—

- (a) to be under the supervision of a social worker or probation officer ( “the supervising officer”) for a period specified in the order of not more than 2 years; and
- (b) to submit, during the whole of that period or such part of it as may be specified in the order, to treatment by or under the direction of a medical practitioner with a view to the improvement of his mental condition.

(2) The Secretary of State may by order direct that sub-paragraph (1) shall be amended by substituting, for the period specified in that sub-paragraph, such period as may be specified in the order.

(3) An order under sub-paragraph (2) may make in paragraph 8(2) any amendment which the Secretary of State thinks necessary in consequence of any substitution made by the order.

(4) The power of the Secretary of State to make orders under sub-paragraph (2) shall be exercisable by statutory instrument which shall be subject to annulment in pursuance of a resolution of either House of Parliament in like manner as a statutory instrument and section 5 of the Statutory Instruments Act 1946 shall apply accordingly.

PART II

MAKING AND EFFECT OF ORDERS

*Circumstances in which orders may be made*

2.—(1) The court shall not make a supervision and treatment order unless it is satisfied—

- (a) that, having regard to all the circumstances of the case, the making of such an order is the most suitable means of dealing with the accused or appellant; and
- (b) 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 mental condition of the accused or appellant—
  - (i) is such as requires and may be susceptible to treatment; but

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- (ii) is not such as to warrant the making of an order under Article 50A(2)(a), or the making of a guardianship order.
- (2) The court shall not make a supervision and treatment order unless it is also satisfied—
- (a) that the supervising officer intended to be specified in the order is willing to undertake the supervision; and
  - (b) that arrangements have been made for the treatment intended to be specified in the order (including arrangements for the reception of the accused or appellant where he is to be required to submit to treatment as a resident patient).

#### *Making of orders and general requirements*

- 3.—(1) A supervision and treatment order shall either—
- (a) specify the Board or an authorised HSS trust for the area in which the supervised person resides or will reside, and require him to be under the supervision of a social worker of that Board or authorised HSS trust; or
  - (b) specify the petty sessions district in which that person resides or will reside, and require him to be under the supervision of a probation officer appointed for or assigned to that district.
- (2) Before making such an order, the court shall explain to the supervised person in ordinary language—
- (a) the effect of the order (including any requirements proposed to be included in the order in accordance with paragraph 5); and
  - (b) that a court of summary jurisdiction has power under paragraphs 6 to 8 to review the order on the application either of the supervised person or of the supervising officer.
- (3) After making such an order, the court shall forthwith give copies of the order to a probation officer assigned to the court, and he shall give a copy—
- (a) to the supervised person;
  - (b) to the supervising officer; and
  - (c) to the Board or authorised HSS trust managing any hospital in which the supervised person is required by the order to reside.
- (4) After making such an order, the court shall also send to the clerk of petty sessions for the petty sessions district in which the supervised person resides or will reside ( “the petty sessions district concerned”)—
- (a) a copy of the order; and
  - (b) such documents and information relating to the case as it considers likely to be of assistance to a court acting for that district in the exercise of its functions in relation to the order.
- (5) Where such an order is made, the supervised person shall keep in touch with the supervising officer in accordance with such instructions as he may from time to time be given by that officer and shall notify him of any change of address.

#### *Obligatory requirements as to medical treatment*

- 4.—(1) A supervision and treatment order shall include a requirement that the supervised person shall submit, during the whole of the period specified in the order or during such part of that period

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as may be so specified, to treatment by or under the direction of a medical practitioner with a view to the improvement of his mental condition.

(2) The treatment required by any such order shall be such one of the following kinds of treatment as may be specified in the order, that is to say—

- (a) treatment as an in-patient in a hospital or nursing home, not being special accommodation within the meaning of Article 110;
- (b) treatment as an out-patient at such hospital as may be specified in the order; and
- (c) treatment by or under the direction of such medical practitioner as may be so specified;

but the nature of the treatment shall not be specified in the order except as mentioned in sub-paragraph (a), (b) or (c).

(3) While the supervised person is under treatment as an in-patient in pursuance of a requirement of a supervision and treatment order, the supervising officer shall carry out the supervision to such extent only as may be necessary for the purpose of the revocation or amendment of the order.

(4) Where the medical practitioner by whom or under whose direction the supervised person is being treated for his mental condition in pursuance of a supervision and treatment order is of the opinion that part of the treatment can be better or more conveniently given in or at a hospital which—

- (a) is not specified in the order; and
- (b) is one in or at which the treatment of the supervised person will be given by or under the direction of a medical practitioner,

he may, with the consent of the supervised person, make arrangements for him to be treated accordingly.

(5) Such arrangements as are mentioned in sub-paragraph (4) may provide for the supervised person to receive part of his treatment as an in-patient in a hospital notwithstanding that the hospital is not one which could have been specified for that purpose in the supervision and treatment order.

(6) Where any such arrangements as are mentioned in sub-paragraph (4) are made for the treatment of a supervised person—

- (a) the medical practitioner by whom the arrangements are made shall give notice in writing to the supervising officer, specifying the hospital in or at which the treatment is to be carried out; and
- (b) the treatment provided for by the arrangements shall be deemed to be treatment to which he is required to submit in pursuance of the supervision and treatment order.

#### *Optional requirements as to residence*

5.—(1) Subject to sub-paragraphs (2) and (3), a supervision and treatment order may include requirements as to the residence of the supervised person.

(2) Before making such an order containing any such requirement, the court shall consider the home surroundings of the supervised person.

(3) Where such an order requires the supervised person to reside in a hospital, the period for which he is so required to reside shall be specified in the order.

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## PART III

### REVOCATION AND AMENDMENT OF ORDERS

#### *Revocation of order in interests of health or welfare*

6. Where a supervision and treatment order is in force in respect of any person and, on the application of the supervised person or the supervising officer, it appears to the court which made the order that, having regard to circumstances which have arisen since the order was made, it would be in the interests of the health or welfare of the supervised person that the order should be revoked, the court may revoke the order.

#### *Amendment of order by reason of change of residence.*

7.—(1) This paragraph applies where, at any time while a supervision and treatment order is in force in respect of any person, a court of summary jurisdiction acting for the petty sessions district concerned is satisfied that the supervised person proposes to change, or has changed, his residence from the district specified in the order to the area of another Board or authorised HSS trust or another petty sessions district.

(2) Subject to sub-paragraph (3), the court may, and on the application of the supervising officer shall, amend the supervision and treatment order by substituting the other area or, as the case may be, district for the area or district specified in the order.

(3) The court shall not amend under this paragraph a supervision and treatment order which contains requirements which in the opinion of the court, cannot be complied with unless the supervised person continues to reside in the area or, as the case may be, district specified in the order unless, in accordance with paragraph 8, it either—

- (a) cancels those requirements; or
- (b) substitutes for those requirements other requirements which can be complied with if the supervised person ceases to reside in that area or district.

#### *Amendment of requirements of order*

8.—(1) Without prejudice to the provisions of paragraph 7, but subject to sub-paragraph (2), a court of summary jurisdiction for the petty sessions district concerned may, on the application of the supervised person or the supervising officer, by order amend a supervision and treatment order—

- (a) by cancelling any of the requirements of the order; or
- (b) by inserting in the order (either in addition to or in substitution for any such requirement) any requirement which the court could include if it were the court by which the order was made and were then making it.

(2) The power of a court of summary jurisdiction under sub-paragraph (1) shall not include power to amend an order by extending the period specified in it beyond the end of 2 years from the date of the original order.



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*Amendment of requirements in pursuance of medical report*

**9.**—(1) Where the medical practitioner by whom or under whose direction the supervised person is being treated for his mental condition in pursuance of any requirement of a supervision and treatment order—

- (a) is of the opinion mentioned in sub-paragraph (2); or
- (b) is for any reason unwilling to continue to treat or direct the treatment of the supervised person,

he shall make a report in writing to that effect to the supervising officer and that officer shall apply under paragraph 8 to a court of summary jurisdiction for the petty sessions district concerned for the variation or cancellation of the requirement.

(2) The opinion referred to in sub-paragraph (1) is—

- (a) that the treatment of the supervised person should be continued beyond the period specified in the supervision and treatment order;
- (b) that the supervised person needs different treatment, being treatment of a kind to which he could be required to submit in pursuance of such an order;
- (c) that the supervised person has failed without reasonable excuse to comply with any of the requirements of the treatment;
- (d) that the supervised person is not susceptible to treatment; or
- (e) that the supervised person does not require further treatment.

*Supplemental*

**10.**—(1) On the making under paragraph 6 of an order revoking a supervision and treatment order, the court shall forthwith give copies of the revoking order to the supervising officer.

(2) A supervising officer to whom in accordance with sub-paragraph (1) copies of a revoking order are given shall give a copy to the supervised person and to the person in charge of any hospital in which the supervised person was required by the order to reside.

**11.**—(1) On the making under paragraph 7 or 8 of an order amending a supervision and treatment order, the clerk of petty sessions shall forthwith—

- (a) if the order amends the supervision and treatment order otherwise than by substituting a new district or a new hospital for the one specified in the supervision and treatment order, give copies of the amending order to the supervising officer;
- (b) if the order amends the supervision and treatment order in the manner excepted by head (a), send to the clerk of petty sessions for the new petty sessions district concerned—
  - (i) copies of the amending order; and
  - (ii) such documents and information relating to the case as he considers likely to be of assistance to a court acting for that district in exercising its functions in relation to the order;

and in a case falling within head (b), the clerk of petty sessions for that district shall give copies of the amending order to the supervising officer.

(2) Where in accordance with sub-paragraph (1) copies of an order are given to the supervising officer, he shall give a copy to the supervised person and to the person in charge of any hospital in which the supervised person is or was required by the order to reside.]

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## SCHEDULE 3

Article 70(1).

### THE MENTAL HEALTH REVIEW TRIBUNAL FOR NORTHERN IRELAND

**1.** The Review Tribunal shall consist of—

- (a) a number of persons (referred to in this Schedule as “the legal members”) appointed by the Lord Chancellor and having such legal experience as the Lord Chancellor considers suitable [F116]after consultation with the Lord Chief Justice];
- (b) a number of persons (referred to in this Schedule as “the medical members”) being medical practitioners appointed by the Lord Chancellor<sup>F117</sup>. . . ; and
- (c) a number of persons appointed by the Lord Chancellor<sup>F118</sup>. . . and having such experience in administration, such knowledge of social services or such other qualifications or experience as the Lord Chancellor considers suitable.

**F116** Words in Sch. 3 para. 1(a) inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 75(2)(a); S.I. 2006/1014, art. 2(a), Sch. 1 paras. 10, 12(a)

**F117** Words in Sch. 3 para. 1(b) repealed (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 146, 148(1), Sch. 5 para. 75(2)(b), Sch. 18 Pt. 3; S.I. 2006/1014, art. 2(a), Sch. 1 paras. 10, 12(a), 29, 30(c)

**F118** Words in Sch. 3 para. 1(c) repealed (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 146, 148(1), Sch. 5 para. 75(2)(b), Sch. 18 Pt. 3; S.I. 2006/1014, art. 2(a), Sch. 1 paras. 10, 12(a), 29, 30(c)

[F119]1A.—(1) The Lord Chief Justice may nominate any of the following to exercise his functions under sub-paragraph 1(a)—

- (a) the holder of one of the offices listed in Schedule 1 to the Justice (Northern Ireland) Act 2002;
- (b) a Lord Justice of Appeal (as defined in section 88 of that Act).

(2) As part of the selection process for an appointment under paragraph 1(b) or (c) the Northern Ireland Judicial Appointments Commission shall consult the Head of the Department.]

**F119** Sch. 3 para. 1A inserted (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 148(1), Sch. 5 para. 75(3); S.I. 2006/1014, art. 2(a), Sch. 1 para. 10, 12(a)

**2.** The members of the Review Tribunal shall hold and vacate office under the terms of the instrument under which they are appointed, but may resign office by notice in writing to the<sup>F120</sup> Lord Chancellor; and any such member who ceases to hold office shall be eligible for re-appointment.

**F120** By Justice (Northern Ireland) Act 2002 (c. 26), ss. 5, 87, Sch. 3 para. 39(3) it is provided that for the words "Lord Chancellor" there shall be substituted (prosp.) "Office of the First Minister and deputy First Minister" in Sch. 3 para. 2. (This amendment does not come into operation before the said amending Sch. 3 is subsequently substituted (12.4.2010) by the Northern Ireland Act 2009 (c. 3), Sch. 3 para. 13; S.I. 2010/812, art. 2. The new Sch. 3 of the Justice (Northern Ireland) Act 2002 (c. 26) does not amend other legislation, therefore this amendment never comes into operation.)

**3.** One of the legal members of the Review Tribunal shall be appointed by the<sup>F121</sup> Lord Chancellor as chairman of the tribunal and another legal member shall be so appointed as deputy chairman.

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**F121** By Justice (Northern Ireland) Act 2002 (c. 26), ss. 5, 87, **Sch. 3 para. 39(4)** it is provided that for the words "Lord Chancellor" there shall be substituted (prosp.) "First Minister and deputy First Minister, acting jointly," in Sch. 3 para. 3. (This amendment does not come into operation before the said amending Sch. 3 is subsequently substituted (12.4.2010) by the Northern Ireland Act 2009 (c. 3), **Sch. 3 para. 13**; S.I. 2010/812, **art. 2**. The new Sch. 3 of the Justice (Northern Ireland) Act 2002 (c. 26) does not amend other legislation, therefore this amendment never comes into operation.)

4.—(1) Subject to sub-paragraph (2) and to rules made by the Lord Chancellor under Article 83(2)(b), the Review Tribunal when sitting for the purposes of any proceedings under this Order shall consist of a legal member, a medical member and a member who is neither a legal nor a medical member.

(2) If the chairman of the tribunal, either in a particular case or class of case or generally, so directs the Review Tribunal—

- (a) may, for the purposes of any proceedings, consist of one or more other members in addition to those referred to in sub-paragraph (1);
- (b) may, for the purposes of any proceedings which are of a preliminary, incidental or interlocutory nature, consist of one member.

5. The chairman of the Review Tribunal shall appoint the members who are to constitute the tribunal for the purpose of any proceedings under this Order.

6. Subject to any rules made by the Lord Chancellor under Article 83(4), where the chairman of the tribunal is included among the persons appointed under paragraph 5, he shall be president of the tribunal; and in any other case the president of the tribunal shall be such one of the members so appointed (being one of the legal members) as the chairman may nominate.

#### SCHEDULE 4

Article 85(3)

#### THE MENTAL HEALTH COMMISSION FOR NORTHERN IRELAND

##### *Status*

1.—(1) The Commission shall be a body corporate to which, subject to the provisions of this Schedule, section 19 of the Interpretation Act (Northern Ireland) 1954 shall apply.

(2) The Commission shall not be regarded as the servant or agent of the Crown or as enjoying any status, privilege or immunity of the Crown.

##### *Membership*

2.—(1) The Commission shall consist of—

- (a) a chairman appointed by the Head of the Department and having such legal experience as the Head of the Department considers suitable; and
- (b) such number of other members appointed by the Head of the Department as he may from time to time determine.

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(2) The members of the Commission shall elect one of their number to be vice-chairman for a period of one year or, where the period of his membership has less than one year to run, for the remainder of such period.

(3) Before making any appointment under sub-paragraph (1) the Head of the Department shall consult such persons and bodies as appear to him to be concerned.

#### *Tenure of office*

3. Every member of the Commission—
- (a) shall hold office for such period, not exceeding four years, as may be specified in the terms of his appointment;
  - (b) may resign office by notice in writing to the Head of the Department; and
  - (c) shall otherwise hold and vacate office in accordance with the terms of his appointment.

#### *Remuneration*

4. The Commission may—
- (a) pay to the members of the Commission such remuneration and expenses;
  - (b) make provision for the payment of such pensions, allowances and gratuities to or in respect of members of the Commission,
- as the Department, with the approval of the Department of Finance and Personnel, may determine.

#### *Disqualification of members of Commission for Northern Ireland Assembly*

5. In Part II of Schedule 1 to the Northern Ireland Assembly Disqualification Act (bodies of which all members are disqualified) there shall be inserted at the appropriate place in alphabetical order—  
“ The Mental Health Commission for Northern Ireland. ”.

#### *Proceedings*

6.—(1) Subject to the provisions of this Schedule, the meetings and proceedings of the Commission, and of any committee thereof, shall be conducted in accordance with standing orders made from time to time by the Commission.

(2) The proceedings of the Commission, or of any committee thereof, shall not be invalidated by any vacancy in the membership of the Commission or any defect in the appointment of any member.

[<sup>F122</sup>(3) Sections 23 to 27 of the Local Government Act (Northern Ireland) 1972 (which provide for public access to meetings of a district council and for the publication of information concerning such meetings) shall, with the modifications set out in sub-paragraph (4), apply in relation to meetings of the Commission as they apply in relation to meetings of a district council.

- (4) The modifications are—
- (a) any reference to a district council shall be read as a reference to the Commission; and
  - (b) any reference to councillors or members of the council shall be read as a reference to members of the Commission.]

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**F122** 2001 c. 3 (NI)

### *Staff and accommodation*

7.—(1) The Commission may—

- (a) appoint officers and servants on such terms as to remuneration and conditions of service; and
  - (b) make provision for the payment of—
    - (i) such remuneration to—
      - (A) any person appointed under Article 87(1)(b) and (c); and
      - (B) any medical practitioner or other person appointed by the Commission for the purposes of any of the provisions of this Order; and
    - (ii) such pensions, allowances, expenses and gratuities to or in respect of any officers, servants, persons and medical practitioners appointed under head (a) or as mentioned in head (b)(i) of this sub-paragraph,
- as the Department, with the approval of the Department of Finance and Personnel, may determine.

(2) Without prejudice to paragraph (1), the Department may provide for the Commission such officers and servants and such accommodation as the Commission may require.

(3) The Commission shall not have power to acquire or hold land.

### *Reports*

8.—(1) The Commission shall publish a report on its activities in such form and at such intervals as the Head of the Department may direct; and copies of each such report shall be submitted by the Commission to the Head of the Department who shall lay copies before the Assembly.

(2) The Commission may publish such other reports relating to the functions of the Commission as it thinks fit.

(3) The Commission shall, if so required in writing by the Department, furnish to the Department such information concerning any of its activities as the Department may require.

### *The seal*

9. The application of the seal of the Commission shall be authenticated by the signature of the chairman or vice-chairman of the Commission and of an officer of the Commission for the time being authorised by the Commission to act for that purpose.

### *Execution of contracts and instruments not under seal*

10. Any contract or instrument which, if entered into or executed by an individual, would not require to be<sup>F123</sup> executed as a deed] may be entered into or executed on behalf of the Commission by any person generally or specially authorised by the Commission to act for that purpose.

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**F123 2005 NI 7**

*Para. 11 rep. by 1996 NI 7*

*Schedule 5—Amendments*

## SCHEDULE 6

Article 137.

### TRANSITIONAL PROVISIONS

1. Where, apart from this paragraph, anything done under or for the purposes of any statutory provision which is repealed by this Order would cease to have effect by virtue of that repeal it shall have effect as if it had been done under or for the purposes of the corresponding provision of this Order.

2. Where any period of time specified in any statutory provision repealed by this Order is current at the appointed day, this Order shall have effect as if the corresponding provision of this Order had been in force when that period began to run.

3.—(1) This paragraph applies where immediately before the appointed day an application for the admission of a patient to hospital has been duly completed in accordance with Part II of the 1961 Act but the patient has not been admitted to hospital.

(2) The patient may be admitted to hospital in pursuance of the application and section 17(1) of the 1961 Act shall continue to apply in relation to the patient.

(3) Where at any time within the period referred to in section 17(1)(a) of the 1961 Act the patient is admitted to a hospital pursuant to an application other than an emergency application, he shall be treated for the purposes of this Order as if he had been admitted to the hospital pursuant to an application for assessment made at that time in accordance with Part II of this Order.

(4) Where at any time within the period referred to in section 17(1)(b) of the 1961 Act the patient is admitted to a hospital pursuant to an emergency application under section 15 of the 1961 Act, he may be detained in hospital for a period not exceeding 7 days beginning with the day on which he was admitted but shall not be detained thereafter unless before the expiration of that period an application for assessment is made in respect of him under Part II of this Order.

(5) References in this paragraph to a person being admitted to hospital include references to him being treated as if admitted to hospital.

4.—(1) This paragraph applies where immediately before the appointed day a patient is detained in hospital under section 16(2) of the 1961 Act.

(2) The patient may be detained in hospital for a period not exceeding 3 days beginning with the day on which he was first detained under section 16(2), but shall not be detained thereafter unless before the expiration of that period an application for assessment is made in respect of him under Part II of this Order.

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**5.—(1)** This paragraph applies where immediately before the appointed day a patient is detained in hospital in pursuance of an application for admission under section 12 of the 1961 Act but a report under section 19 of that Act has not been made in respect of him.

(2) The patient may be detained in hospital for a period not exceeding 21 days beginning with the day on which he was admitted to hospital.

(3) This Order (except Articles 4 to 11) shall apply to the patient as if for the reference in Article 12(1) to the period for which a patient is detained for assessment by virtue of Article 9(8) there were substituted a reference to the period for which the patient is detained by virtue of sub-paragraph (2).

**6.—(1)** This paragraph applies where immediately before the appointed day a patient is detained in hospital in pursuance of an application for admission under section 12 of the 1961 Act and a report under section 19 of that Act has been made in respect of him.

(2) The patient may be detained in hospital for a period not exceeding 6 months beginning with the day on which he was admitted to hospital, but shall not be so detained for any longer period unless the authority for his detention is renewed under Article 13 as applied by sub-paragraph (3).

(3) This Order (except Articles 4 to 11) shall apply to the patient as if he were detained for treatment and as if for the reference in Article 13(1)(a) and the first reference in Article 13(2) to Article 12(1) there were substituted references to sub-paragraph (2).

**7.—(1)** This paragraph applies where immediately before the appointed day a patient is detained in hospital and the authority for his detention has been renewed under section 32 of the 1961 Act for a further period of one year which has not expired.

(2) The patient may be detained in hospital for so much of the period of one year as has not expired, but shall not be so detained for any longer period unless the authority for his detention is renewed under Article 13 as applied by sub-paragraph (3).

(3) This Order (except Articles 4 to 11) shall apply to the patient as if he were detained for treatment and as if—

- (a) in Article 13(1)(b) for the reference to sub-paragraph (a) and in Article 13(3) for the reference to paragraph (2) there were substituted a reference to section 32 of the 1961 Act;
- (b) in Article 13(4)(c) for the references to the application for assessment and any medical report in relation to the patient there shall be substituted references, respectively, to the application for admission and the medical report under section 19 of the 1961 Act in relation to the patient.

**8.—(1)** This paragraph applies where immediately before the appointed day a patient is detained in hospital and the authority for his detention has been renewed under section 32 of the 1961 Act for a further period of two years which has not expired.

(2) The patient may be detained in hospital—

- (a) if on the appointed day one year or more of the period of two years has expired, for so much of the period of two years as has not expired;
- (b) if on the appointed day less than one year of the period of two years has expired, for a period of one year from the date on which the authority was last renewed,

but shall not be so detained for any longer period unless the authority for his detention is renewed under Article 13 as applied by sub-paragraph (3).

(3) This Order (excluding Articles 4 to 11) shall apply to the patient as if he were detained for treatment and as if in Article 13(1)(c) for the reference to sub-paragraph (b) and in Article 13(5) for the reference to paragraph (3) there were substituted a reference to section 32 of the 1961 Act.

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**9.** Where on the appointed day a person who has not attained the age of 16 years is subject to guardianship, the authority for his guardianship shall terminate on that day.

**10.—(1)** This paragraph applies where immediately before the appointed day a patient is subject to guardianship in pursuance of a guardianship application under section 21 of the 1961 Act.

(2) Subject to the following provisions of this paragraph, this Order shall apply to the patient as if he were subject to guardianship in pursuance of a guardianship application duly made in accordance with Part II and accepted by the responsible Board on the date on which the guardianship application in relation to him was accepted under section 22 of the 1961 Act.

(3) Where the authority for the guardianship of the patient has been renewed under section 32 of the 1961 Act for a further period of one year which has not expired on the appointed day, the patient may be kept under guardianship for so much of the period of one year as has not expired but shall not be so kept for any longer period unless the authority for his guardianship is renewed for a further period of one year under Article 23, as applied by sub-paragraph (2).

(4) Where the authority for the guardianship of the patient has been renewed under section 32 of the 1961 Act for a further period of two years which has not expired on the appointed day, the patient may be kept under guardianship—

- (a) if on the appointed day one year or more of the period of two years has expired, for so much of the period of two years as has not expired;
- (b) if on the appointed day less than one year of the period of two years has expired, for a period of one year from the date on which the authority was last renewed,

but shall not be so kept for any longer period unless the authority for his guardianship is renewed for a further period of one year under Article 23, as applied by sub-paragraph (2).

(5) Where the Board named as guardian in the guardianship application is not the responsible Board references in this Order to the responsible Board shall be construed as references to the Board so named.

**11.** Sections 20 and 22(5) of the 1961 Act shall continue to apply in relation to any application made or recommendation or report given before the appointed day.

**12.** In the case of a patient who is detained or subject to guardianship on the appointed day, the steps required by Article 27 shall be taken as soon as practicable after that day.

**13.** Where at any time before the appointed day an application to the Review Tribunal has been made by a person who at that time was the patient's nearest relative and the application has not then been determined and by reason of the coming into force of Article 32 that person ceased to be the patient's nearest relative on that day, that person shall nevertheless be treated for the purposes of the application as continuing to be his nearest relative.

**14.—(1)** Subject to sub-paragraphs (2) and (3), this Order applies to a patient who immediately before the appointed day is, or is treated as if he were, subject to—

- (a) a hospital order;
- (b) a guardianship order;
- (c) an order restricting discharge;
- (d) a transfer direction;
- (e) a direction restricting discharge; or
- (f) an order or direction having the like effect as any of the above,

made or given under any provision of the 1961 Act as if that order or direction had been made or given under the corresponding provision of this Order.



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- (2) Where immediately before the appointed day—
- (a) a patient is subject to a hospital order, guardianship order or transfer direction made or given under the 1961 Act;
  - (b) the authority for his detention or guardianship has been renewed under section 32 of that Act for a further period of two years which has not expired; and
  - (c) less than one year of that period has expired,

the authority for his detention or guardianship under this Order shall expire at the end of the period of one year from the date on which it was last renewed under section 32.

(3) Where apart from this paragraph a transfer direction given before the appointed day would by virtue of Article 56(3) have ceased to have effect before that date it shall cease to have effect on the appointed day.

**15.—**(1) Paragraph (3) of Article 64 shall not apply to any treatment given to a patient in the period of six months beginning with the appointed day if—

- (a) the detention of the patient began before the beginning of that period; and
- (b) that paragraph has not been complied with in respect of any treatment previously given to him in that period.

(2) The Department may by order reduce the length of the period mentioned in sub-paragraph (1).

**16.** A patient—

- (a) who was admitted to hospital in pursuance of an application for admission; or
- (b) in respect of whom a guardianship application was accepted; or
- (c) in respect of whom a hospital order was made,

before the appointed day may make an application to the Review Tribunal within the period of six months beginning with the day on which he attains the age of 16 years if that period is later than that which would otherwise apply to an application in his case.

**17.** Article 73 applies only in relation to a renewal of authority for detention after the appointed day.

**18.** Any reference to the Review Tribunal under section 54(6) of the 1961 Act in respect of a patient shall be treated for the purposes of Article 82(2) as an application made by him.

**19.** <sup>F124</sup> .....

**F124** Sch. 6 para. 19 repealed (3.4.2006) by Constitutional Reform Act 2005 (c. 4), ss. 15(2), 146, 148(1), Sch. 5 para. 76, Sch. 18 Pt. 3; S.I. 2006/1014, art. 2(a), Sch. 1 paras. 10, 12(a), 29, 30(c)

**20.** The responsible Board shall as soon as practicable after the appointed day send to the Commission a copy of any application, recommendation or report held by it which relates to the authority for the detention of any patient referred to in paragraph 5, 6, 7 or 8 or relates to the authority for the guardianship of any patient referred to in paragraph 10.

**21.** Where immediately before the appointed day any person's estate was subject to the jurisdiction of the High Court under the Lunacy Regulation (Ireland) Act 1871, Part VIII shall apply in that person's case as if it had been determined that he was a patient within the meaning of Part VIII.

**22.** Any order or appointment made, direction or authority given, or thing done under the Lunacy Regulation (Ireland) Act 1871 which—

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- (a) had effect immediately before the appointed day with respect to the property or affairs of a person; and
- (b) was such as could have been made, given or done under any provision of Part VIII if that provision had been in force at the material time,

shall continue to have effect as if made, given or done under that provision.

**23.** Any person who immediately before the appointed day was the committee of the estate of a person shall be deemed to be the controller for that person appointed under Article 101 with such functions in relation to that person's property and affairs as were exercisable by him in relation thereto as committee of the estate and references in any document to such a committee shall be construed accordingly.

**24.** Any person who immediately before the appointed day was the committee of the person in relation to any person shall cease to be the committee of the person in relation to that person.

**25.** Article 103(1) shall apply in relation to any disposal of property (within the meaning of that Article) of a person living immediately before the appointed day being a disposal effected under the Lunacy Regulation (Ireland) Act 1871, as it applies in relation to the disposal of the property of a person effected under Part VIII.

**26.** Until the coming into operation of Article 115 for references in this Order and any other statutory provision to an approved social worker there shall be substituted references to an officer of a Board designated by it, with the approval of the Department, to act as social worker for the purposes of this Order.

**27.** References to applications, recommendations, reports and other documents in Article 119 shall include those to which section 98 of the 1961 Act applied immediately before the appointed day.

**28.** References in Article 133 to the acts to which that Article applies shall include those to which section 111 of the 1961 Act applied immediately before the appointed day.

**29.** Article 134(5) shall not apply in relation to a patient removed from Northern Ireland before the appointed day.

**30.** The chairman, deputy chairman and other members of the Review Tribunal appointed under Schedule 3 to the 1961 Act and holding office immediately before the appointed day shall continue to hold such offices as if appointed under Schedule 3 to this Order on the same terms as they held office immediately before that day.

*Para. 31 rep. by 1987 NI 2*

**32.** The Department may by order subject to negative resolution make such other transitional provision as appears to the Department to be necessary or expedient in connection with the coming into operation of any provision of this Order.

**33.** In this Schedule—

“the 1961 Act” means the Mental Health Act (Northern Ireland) 1961;

“the appointed day” in relation to any provision of this Schedule means the date appointed under Article 1(2) for the coming into operation of that provision.

*Schedule 7—Repeals*

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