
STATUTORY INSTRUMENTS

1986 No. 595

The Mental Health (Northern Ireland) Order 1986

PART II

COMPULSORY ADMISSION TO HOSPITAL AND GUARDIANSHIP

Miscellaneous

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 [^{F1F2}... authorised [^{F3}HSC 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 [^{F1F4}... authorised [^{F3}HSC trust]] by which he is appointed.

(4) It shall be the duty of [^{F1}[^{F5}an] authorised [^{F3}HSC 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.

^{F6}(6)

F1	1994 NI 2
F2	Words in art. 40(1) omitted (1.4.2022) by virtue of Health and Social Care Act (Northern Ireland) 2022 (c. 3) , s. 8(1)(b), Sch. 1 para. 76(2) ; S.R. 2022/102, art. 2(b)
F3	Words in Order substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1) , ss. 32, 34(3), Sch. 6 para. 1(1)(d) (with Sch. 6 para. 1(3)); S.R. 2009/114, art. 2
F4	Words in art. 40(3) omitted (1.4.2022) by virtue of Health and Social Care Act (Northern Ireland) 2022 (c. 3) , s. 8(1)(b), Sch. 1 para. 76(2) ; S.R. 2022/102, art. 2(b)

Changes to legislation: *The Mental Health (Northern Ireland) Order 1986, Section 40 is up to date with all changes known to be in force on or before 14 May 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) View outstanding changes*

- F5** Word in art. 40(4) substituted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 76(3)**; S.R. 2022/102, art. 2(b)
- F6** Art. 40(6) omitted (1.4.2022) by virtue of Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 76(4)**; S.R. 2022/102, art. 2(b)

Modifications etc. (not altering text)

- C1** Art. 40 applied (with modifications) (31.3.2013) by Mental Health (Private Hospitals) Regulations (Northern Ireland) 2012 (S.R. 2012/403), regs. 1, **3(3)(jj)(i)(ii)**, 4
- C2** Art. 40 applied (with modifications.) (31.3.2013) by Mental Health (Private Hospitals) Regulations (Northern Ireland) 2013 (S.R. 2013/22), regs. 1, **3(3)(aa)**, 4

Changes to legislation:

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Changes and effects yet to be applied to :

- art. 40(1) words repealed by [2016 c. 18 \(N.I.\) Sch. 8 para. 25\(b\)](#)[Sch. 11](#)
- art. 40(2) words repealed by [2016 c. 18 \(N.I.\) Sch. 8 para. 25\(c\)](#)[Sch. 11](#)
- art. 40(5) words repealed by [2016 c. 18 \(N.I.\) Sch. 8 para. 25\(d\)](#)[Sch. 11](#)

Changes and effects yet to be applied to the whole Order associated Parts and Chapters:

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- Sch. 5 Pt. 2 repealed in part by [S.I. 2003/435 \(N.I.\) Sch. 5](#) (text not available on [Legislation.gov.uk](#))
- Sch.05 Pt. 1 rev. in pt. by [1995 c. 35 s. 29\(2\)](#)[Sch. 3](#)
- Sch. 5 Pt. 2 rev. in pt. by [1998 c. 47 s. 100\(2\)](#)[Sch. 15](#)
- art. 14A inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 10](#)
- art. 36(2)(za) inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 22\(3\)](#)
- art. 36(3)(e) and word inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 22\(4\)\(d\)](#)
- art. 37(1)(za) inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 23\(2\)\(a\)](#)
- art. 37(1A) inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 23\(3\)](#)
- art. 52 rev. by [1996 c. 46 s. 35\(2\)](#)[Sch.7 Pt. 3](#)
- art.52 rev. (DrosD,) by [1996 c. 46 s. 35\(2\)](#)[Sch.7 Pt.III](#)
- art. 63A63B inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 31](#)
- art. 67(2A) inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 35\(4\)](#)
- art. 83(4A) inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 48\(4\)](#)
- art. 120(4) inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 59\(4\)](#)
- art. 133(2A) inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 68\(4\)](#)