

## STATUTORY INSTRUMENTS

# 1986 No. 595

## The Mental Health (Northern Ireland) Order 1986

### PART II **N.I.**

#### COMPULSORY ADMISSION TO HOSPITAL AND GUARDIANSHIP

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

- C1** Pt. 2 modified (temp.) (2.4.2020) by [Coronavirus Act 2020 \(c. 7\)](#), s. 87(2), [Sch. 10 para. 3\(2\)\(a\)](#) (with ss. 88-90, [Sch. 10 para. 2](#)); [S.R. 2020/58](#), art. 2(c)

#### *Admission to hospital for assessment*

##### **Admission for assessment** **N.I.**

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—
- 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
  - 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 statement that, in the opinion of the practitioner, the grounds set out in paragraph (2)(a) and (b) apply to the patient;
  - 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);
  - 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—
- be made in the prescribed form; and
  - be addressed to the responsible<sup>F1</sup> authority].

**F1** [1994 NI 2](#)

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

- C2** [Art. 4](#) applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/403\)](#), regs. 1, [3\(3\)\(a\)](#), 4

**Status:** Point in time view as at 02/04/2020.

**Changes to legislation:** The Mental Health (Northern Ireland) Order 1986, PART II is up to date with all changes known to be in force on or before 10 July 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)

**C3** Art. 4 applied (31.3.2013) by Mental Health (Private Hospitals) Regulations (Northern Ireland) 2013 (S.R. 2013/22), regs. 1, **3(3)(a)**, 4

**Person who may make application for assessment** **N.I.**

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 [<sup>F2</sup>two days][<sup>F2</sup>five 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>F3</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>F3</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.

**F2** Words in art. 5(2) substituted (temp.) (2.4.2020) by virtue of [Coronavirus Act 2020 \(c. 7\)](#), s. 87(2),

[Sch. 10 para. 3\(4\)](#) (with ss. 88-90, [Sch. 10 para. 2](#)); S.R. 2020/58, art. 2(c)

**F3** 1994 NI 2

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

**C4** Art. 5 applied (31.3.2013) by Mental Health (Private Hospitals) Regulations (Northern Ireland) 2013 (S.R. 2013/22), regs. 1, **3(3)(b)**, 4

**C5** Art. 5 applied (31.3.2013) by Mental Health (Private Hospitals) Regulations (Northern Ireland) 2012 (S.R. 2012/403), regs. 1, **3(3)(b)**, 4

**C6** Art. 5 restricted (temp.) (2.4.2020) by [Coronavirus Act 2020 \(c. 7\)](#), s. 87(2), [Sch. 10 para. 3\(8\)](#) (with ss. 88-90, [Sch. 10 para. 2](#)); S.R. 2020/58, art. 2(c)

### **General provisions as to medical recommendation** **N.I.**

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—

- (a) the recommendation shall be given and signed by a medical practitioner who has personally examined the patient not more than [<sup>F4</sup>two days][<sup>F4</sup>five 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.

**F4** Words in art. 6(a) substituted (temp.) (2.4.2020) by virtue of [Coronavirus Act 2020 \(c. 7\), s. 87\(2\), Sch. 10 para. 4](#) (with ss. 88-90, Sch. 10 para. 2); S.R. 2020/58, art. 2(c)

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

**C7** Art. 6 applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/403\)](#), regs. 1, **3(3)(c)**, 4

**C8** Art. 6 applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/22\)](#), regs. 1, **3(3)(c)**, 4

### **Application for assessment in respect of patient already in hospital** **N.I.**

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>F5</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>F5</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 [<sup>F6</sup>48 hours][<sup>F6</sup>120 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 [<sup>F7</sup>6 hours][<sup>F7</sup>12 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>F5</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.

**Status:** Point in time view as at 02/04/2020.

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(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 [F5 authority] shall immediately forward to [F8 RQIA] a copy of any report furnished to the [F5 authority] under paragraph (2) and of any record delivered to the [F5 authority] under paragraph (4).

- F5** 1994 NI 2
- F6** Words in art. 7(2) substituted (temp.) (2.4.2020) by virtue of [Coronavirus Act 2020 \(c. 7\)](#), s. 87(2), [Sch. 10 para. 5\(1\)](#) (with ss. 88-90, [Sch. 10 paras. 2, 16](#)); S.R. 2020/58, art. 2(c)
- F7** Words in art. 7(3) substituted (temp.) (2.4.2020) by virtue of [Coronavirus Act 2020 \(c. 7\)](#), s. 87(2), [Sch. 10 para. 5\(2\)](#) (with ss. 88-90, [Sch. 10 paras. 2, 16](#)); S.R. 2020/58, art. 2(c)
- F8** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), [Sch. 6 para. 8\(1\)](#) (subject to [Sch. 6 para. 8\(2\)-\(4\)](#)); S.R. 2009/114, [art. 2](#)

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

- C9** Art. 7 applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/22\)](#), regs. 1, [3\(3\)\(d\)](#), 4
- C10** Art. 7 applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/403\)](#), regs. 1, [3\(3\)\(d\)](#), 4

**[F9 Power to detain in hospital pending admission to another hospital N.I.]**

**7A.—(1)** This Article applies to a hospital managed by an [F10 HSC trust] other than an authorised [F10 HSC 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 [F10 HSC 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 [F10 HSC trust] shall immediately forward to [F11 RQIA] a copy of any report furnished to the trust under paragraph (2).]

- F9** 1994 NI 2
- F10** 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](#)
- F11** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), [Sch. 6 para. 8\(1\)](#) (subject to [Sch. 6 para. 8\(2\)-\(4\)](#)); S.R. 2009/114, [art. 2](#)

**Effect of application for assessment N.I.]**

**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 [F12 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 [F13 RQIA] 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,—
- [F12(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[F12 authority] shall immediately forward to [F13RQIA] 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[F12 Board or an authorised [F14HSC trust]] is admitted to hospital for assessment, it shall be the duty of the responsible[F12 authority] to inform the guardian of the patient to that effect as soon as may be practicable.

**F12** 1994 NI 2

**F13** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 8\(1\)](#) (subject to Sch. 6 para. 8(2)-(4)); S.R. 2009/114, [art. 2](#)

**F14** 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](#)

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

**C11** [Art. 8](#) applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/403\), regs. 1, 3\(3\)\(e\), 4](#)

**C12** [Art. 8](#) applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/22\), regs. 1, 3\(3\)\(e\), 4](#)

**The assessment period** **N.I.**

9.—(1) A patient admitted to hospital pursuant to an application for assessment made in accordance with this Part shall be examined [F15: immediately after][F15: as soon as practicable and not later than 12 hours after] he is admitted thereto by—

- (a) the responsible medical officer;
- (b) a medical practitioner appointed for the purposes of this Part by [F16RQIA ]; 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.

(3) A medical practitioner carrying out an examination under paragraph (1) shall immediately furnish to the responsible [F17authority] in the prescribed form a report of that examination and the date on which such a report is furnished to the [F17authority] 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—

*Status: Point in time view as at 02/04/2020.*

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- (a) where the report was furnished by the responsible medical officer or by a medical practitioner appointed for the purposes of this Part by <sup>F16</sup>RQIA, for a period not exceeding 7 days beginning with the date of admission;
- <sup>F18</sup>(aa) where the report was furnished by any other medical practitioner, and the conditions in paragraph (4A) were satisfied, for a period not exceeding 120 hours from the time when the report was furnished;
- (b) where the report was furnished by any other medical practitioner, and any of the conditions in paragraph (4A) was not satisfied, for a period not exceeding 48 hours from 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).

<sup>F19</sup>(4A) The conditions are that the medical practitioner—

- (a) had (at the date on which the examination of the patient in accordance with paragraph (1) was carried out) at least 5 years' experience of working with mental health patients within the 10 years immediately preceding that date;
- (b) considered that it was impractical for the responsible medical practitioner or a medical practitioner appointed for the purposes of this Part by RQIA to carry out the examination under paragraph (1) before the end of the period of 48 hours from the date on which the report was furnished; and
- (c) furnished together with the report a written statement specifying that the practitioner—
  - (i) had the experience referred to in sub-paragraph (a); and
  - (ii) was of the opinion referred to in sub-paragraph (b).

(4B) The 5 years' experience referred to in sub-paragraph (4A)(a) need not be a single period, or continuous periods, of such experience.]

(5) A patient detained by virtue of <sup>F20</sup>sub-paragraph (b) of paragraph (4)]<sup>F20</sup>sub-paragraph (aa) or (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>F17</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>F17</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 <sup>F21</sup>7 days]]<sup>F21</sup>21 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 <sup>F16</sup>RQIA] 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.

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(10) The responsible<sup>[F17]</sup> authority] shall immediately forward to <sup>[F16]</sup>RQIA] a copy of any report furnished to the <sup>[F17]</sup> authority] under paragraph (3), (6) or (8).]

- F15** Words in art. 9(1) substituted (temp.) (2.4.2020) by virtue of Coronavirus Act 2020 (c. 7), s. 87(2), **Sch. 10 para. 6(1)** (with ss. 88-90, Sch. 10 paras. 2, 16); S.R. 2020/58, art. 2(c)
- F16** Words in Order substituted (1.4.2009) by Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1), ss. 32, 34(3), **Sch. 6 para. 8(1)** (subject to Sch. 6 para. 8(2)-(4)); S.R. 2009/114, **art. 2**
- F17** 1994 NI 2
- F18** Art. 9(4)(aa)(b) substituted for art. 9(4)(b) (temp.) (2.4.2020) by virtue of Coronavirus Act 2020 (c. 7), s. 87(2), **Sch. 10 para. 6(2)(a)** (with ss. 88-90, Sch. 10 paras. 2, 16); S.R. 2020/58, art. 2(c)
- F19** Art. 9(4A)(4B) inserted (temp.) (2.4.2020) by virtue of Coronavirus Act 2020 (c. 7), s. 87(2), **Sch. 10 para. 6(2)(b)** (with ss. 88-90, Sch. 10 paras. 2, 16); S.R. 2020/58, art. 2(c)
- F20** Words in art. 9(5) substituted (temp.) (2.4.2020) by virtue of Coronavirus Act 2020 (c. 7), s. 87(2), **Sch. 10 para. 6(3)** (with ss. 88-90, Sch. 10 paras. 2, 16); S.R. 2020/58, art. 2(c)
- F21** Words in art. 9(8) substituted (temp.) (2.4.2020) by virtue of Coronavirus Act 2020 (c. 7), s. 87(2), **Sch. 10 para. 6(4)** (with ss. 88-90, Sch. 10 paras. 2, 16); S.R. 2020/58, art. 2(c)

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

- C13** Art. 9 applied (31.3.2013) by Mental Health (Private Hospitals) Regulations (Northern Ireland) 2012 (S.R. 2012/403), regs. 1, **3(3)(f)**, 4
- C14** Art. 9 applied (31.3.2013) by Mental Health (Private Hospitals) Regulations (Northern Ireland) 2013 (S.R. 2013/22), regs. 1, **3(3)(f)**, 4

**Disregard of assessment period for certain purposes** **N.I.**

**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.

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(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.

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

**C15** Art. 10 applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/403\)](#), regs. 1, **3(3)(g)**, 4

**C16** Art. 10 applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/22\)](#), regs. 1, **3(3)(g)**, 4

**Rectification of applications, recommendations and reports** **N.I.**

**11.**—(1) Where within the period of [<sup>F22</sup>14 days][<sup>F22</sup>28 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>F23</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>F23</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 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>F23</sup> authority] within that period; and
- (b) that recommendation or report complies with those provisions.

(3) The responsible [<sup>F23</sup> authority] shall immediately inform [<sup>F24</sup>RQIA] of any amendment made under paragraph (1) and shall immediately forward to [<sup>F24</sup>RQIA] a copy of any fresh medical recommendation or report furnished to the [<sup>F23</sup> authority] under paragraph (2)(a).

**F22** Words in art. 11(1) substituted (temp.) (2.4.2020) by virtue of [Coronavirus Act 2020 \(c. 7\)](#), s. 87(2), [Sch. 10 para. 7](#) (with ss. 88-90, Sch. 10 paras. 2, 16); S.R. 2020/58, art. 2(c)

**F23** 1994 NI 2



**F24** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 8\(1\)](#) (subject to [Sch. 6 para. 8\(2\)-\(4\)](#)); S.R. 2009/114, [art. 2](#)

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

**C17** Art. 11 applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/403\), regs. 1, 3\(3\)\(h\), 4](#)

**C18** Art. 11 applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/22\), regs. 1, 3\(3\)\(h\), 4](#)

*Detention in hospital for treatment*

**Detention for treatment** **N.I.**

**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 [<sup>F25</sup>RQIA] and that medical practitioner furnishes to the responsible [<sup>F26</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>F26</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>F26</sup> authority] shall immediately forward to [<sup>F25</sup>RQIA] a copy of any report furnished to the [<sup>F26</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).

**F25** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 8\(1\)](#) (subject to [Sch. 6 para. 8\(2\)-\(4\)](#)); S.R. 2009/114, [art. 2](#)

**F26** 1994 NI 2

**Status:** Point in time view as at 02/04/2020.

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

- C19** Art. 12 applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2013](#) (S.R. 2013/22), regs. 1, **3(3)(i)**, 4
- C20** Art. 12 applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2012](#) (S.R. 2012/403), regs. 1, **3(3)(i)**, 4
- C21** Art. 12(1) applied (with modifications) (temp.) (2.4.2020) by [Coronavirus Act 2020](#) (c. 7), s. 87(2), [Sch. 10 para. 8\(2\)\(3\)](#) (with ss. 88-90, [Sch. 10 para. 2](#)); S.R. 2020/58, art. 2(c)
- C22** Art. 12(2) applied (temp.) (2.4.2020) by [Coronavirus Act 2020](#) (c. 7), s. 87(2), **Sch. 10 para. 8(4)** (with ss. 88-90, [Sch. 10 para. 2](#)); S.R. 2020/58, art. 2(c)

#### **Renewal of authority for detention** **N.I.**

**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>[F27]</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>[F27]</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>[F27]</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>[F27]</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 <sup>[F28]</sup>RQIA ;
- (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.

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(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>[F27]</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).

(6) Where a report under paragraph (2), (3) or (5) is furnished to the responsible<sup>[F27]</sup> authority], it shall, unless it discharges the patient—

- (a) cause him and his nearest relative to be informed;
- (b) forward to <sup>[F28]</sup>RQIA] a copy of the report.

**F27** 1994 NI 2

**F28** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), **Sch. 6 para. 8(1)** (subject to [Sch. 6 para. 8\(2\)-\(4\)](#)); S.R. 2009/114, **art. 2**

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

**C23** [Art. 13](#) applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/403\)](#), regs. 1, **3(3)(j)**, 4

**C24** [Art. 13](#) applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/22\)](#), regs. 1, **3(3)(j)**, 4

**Discharge of patient from detention** **N.I.**

**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>[F29]</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>[F29]</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>[F29]</sup> authority]; and if, within 72 hours after such notice has been given, the responsible medical officer furnishes to that<sup>[F29]</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;

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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>[F29]</sup> authority] shall immediately—

- (a) inform the nearest relative of the patient; and
- (b) forward a copy of the report to <sup>[F30]</sup>RQIA] .

(8) Where a patient is discharged from detention under this Article the responsible<sup>[F29]</sup> authority] shall immediately inform <sup>[F30]</sup>RQIA] to that effect.

**F29** 1994 NI 2

**F30** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), **Sch. 6 para. 8(1)** (subject to [Sch. 6 para. 8\(2\)-\(4\)](#)); S.R. 2009/114, **art. 2**

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

**C25** [Art. 14](#) applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/403\)](#), regs. 1, **3(3)(k)**, 4

**C26** [Art. 14](#) applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/22\)](#), regs. 1, **3(3)(k)**, 4

**Leave of absence from hospital** **N.I.**

**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>[F31]</sup> authority], or of any other person authorised in writing by that<sup>[F31]</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

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shall be the duty of the responsible<sup>[F31]</sup> authority] to inform <sup>[F32]</sup>RQIA] 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 <sup>[F32]</sup>RQIA] 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.

**F31** 1994 NI 2

**F32** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 8\(1\)](#) (subject to [Sch. 6 para. 8\(2\)-\(4\)](#)); S.R. 2009/114, [art. 2](#)

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

**C27** [Art. 15](#) applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/22\)](#), regs. 1, [3\(3\)\(1\)](#), 4

**C28** [Art. 15](#) applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/403\)](#), regs. 1, [3\(3\)\(1\)](#), 4

**Correspondence of detained patients** **N.I.**

**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>[F33]</sup> the postal operator concerned]

- (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>[F34]</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>[F34]</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>[F34]</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;

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- (b) any Minister of the Crown<sup>[F35]</sup>, the Scottish Ministers], any member of either House of Parliament<sup>[F35]</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) [<sup>F36</sup>RQIA]<sup>F37</sup>. . . or any person appointed by [<sup>F36</sup>RQIA] under Article 87(1)(b) or (c);
  - (e) the Review Tribunal;
  - <sup>F34</sup>(f) any Board or [<sup>F38</sup>HSC trust] ;]
  - (g) the Parliamentary Commissioner for Administration [<sup>F39</sup>or the Northern Ireland Public Services Ombudsman] ;
  - (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>[F34]</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>[F34]</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>[F34]</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>[F33]</sup> “postal packet” and “postal operator” have] the same meaning as in<sup>[F40]</sup>the Postal Services Act 2011<sup>]</sup>,<sup>F33</sup>. . .

**F33** SI 2001/1149

**F34** 1994 NI 2

**F35** SI 1999/1820

**F36** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009](#) (c. 1), ss. 32, 34(3), **Sch. 6 para. 8(1)** (subject to Sch. 6 para. 8(2)-(4)); S.R. 2009/114, **art. 2**

**F37** Words in art. 16(3)(d) repealed (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009](#) (c. 1), ss. 32, 33, 34(3), **Sch. 6 para. 8(3)**, **Sch. 7**; S.R. 2009/114, **art. 2**

**F38** 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**

**F39** Words in art. 16(3)(g) substituted (1.4.2016) by [Public Services Ombudsman Act \(Northern Ireland\) 2016](#) (c. 4), s. 64(1), **Sch. 8 para. 2** (with ss. 23, 50(3))

**F40** Words in art. 16(8) substituted (1.10.2011) by [Postal Services Act 2011 \(Consequential Modifications and Amendments\) Order 2011](#) (S.I. 2011/2085), art. 5(1), **Sch. 1 para. 19**

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

**C29** Art. 16 applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2012](#) (S.R. 2012/403), regs. 1, **3(3)(m)**, 4

**C30** Art. 16 applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2013](#) (S.R. 2013/22), regs. 1, **3(3)(m)**, 4

### **Review of decision to withhold postal packet** **N.I.**

17.—(1) [F41RQIA] 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) [F41RQIA] 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[F42 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 [F41RQIA] of any postal packet which is the subject of such an application.

- F41** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 8\(1\)](#) (subject to [Sch. 6 para. 8\(2\)-\(4\)](#)); [S.R. 2009/114, art. 2](#)
- F42** [1994 NI 2](#)

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

- C31** [Art. 17](#) applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/403\), regs. 1, 3\(3\)\(n\), 4](#)
- C32** [Art. 17](#) applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/22\), regs. 1, 3\(3\)\(n\), 4](#)

## *Guardianship*

### **Reception of patients into guardianship** **N.I.**

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—

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- (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.
- (4) A guardianship application shall—
- (a) be made in the prescribed form; and
  - (b) be forwarded to the responsible<sup>[F43]</sup> authority].
- (5) The person named as guardian in a guardianship application may be either the responsible<sup>[F43]</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>[F43]</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>[F43]</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.

F43 1994 NI 2

### **Person who may make guardianship application** **N.I.**

**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>[F44]</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



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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.

F44 1994 NI 2

### **General provisions as to medical recommendations** **N.I.**

**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 [F45RQIA] 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.

F45 Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 8\(1\)](#) (subject to [Sch. 6 para. 8\(2\)-\(4\)](#)); S.R. 2009/114, [art. 2](#)

### **Rectification of guardianship applications and recommendations** **N.I.**

**21.**—(1) Where within the period of 14 days beginning with the day on which a guardianship application has been accepted by the responsible[F46 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[F46 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[F46 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

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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>F46</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, 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>F46</sup> authority] shall immediately inform <sup>F47</sup>RQIA] of any amendment made under paragraph (1) and shall immediately forward to <sup>F47</sup>RQIA] a copy of any fresh recommendation furnished to the<sup>F46</sup> authority] under paragraph (2)(a).

**F46** 1994 NI 2

**F47** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), [Sch. 6 para. 8\(1\)](#) (subject to [Sch. 6 para. 8\(2\)-\(4\)](#)); S.R. 2009/114, [art. 2](#)

### **Effect of guardianship application** **N.I.**

**22.**—(1) Where a guardianship application, duly made in accordance with the provisions of this Part and forwarded to the responsible<sup>F48</sup> authority] within the period allowed by paragraph (2), is accepted by that<sup>F48</sup> authority], the application shall, subject to regulations, confer on the<sup>F48</sup> Board, authorised [<sup>F49</sup>HSC 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>F48</sup> Board, authorised [<sup>F49</sup>HSC 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>F48</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>F48</sup> authority] shall immediately forward to [<sup>F50</sup>RQIA] a copy of the guardianship application and of the medical recommendations and the recommendation by an approved social worker on which it is founded.

**F48** 1994 NI 2

**F49** 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](#)

**F50** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 8\(1\)](#) (subject to Sch. 6 para. 8(2)-(4)); S.R. 2009/114, [art. 2](#)

### **Renewal of authority for guardianship** **N.I.**

**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>F51</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>F51</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>F51</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>F51</sup> authority], it shall, unless it discharges the patient—

- (a) cause him, his nearest relative and his guardian to be informed;
- (b) forward to [<sup>F52</sup>RQIA] 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.

**F51** 1994 NI 2

*Status: Point in time view as at 02/04/2020.*

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**F52** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), [Sch. 6 para. 8\(1\)](#) (subject to [Sch. 6 para. 8\(2\)-\(4\)](#)); S.R. 2009/114, [art. 2](#)

### **Discharge of patient from guardianship** **N.I.**

**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>F53</sup> authority]; and if, within 72 hours after such notice has been given—

- (a) the responsible medical officer furnishes to the responsible<sup>F53</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>F53</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>F53</sup> authority] shall immediately—

- (a) inform the nearest relative of the patient; and
- (b) forward a copy of each report to <sup>F54</sup>RQIA] .

(8) Where a patient is discharged from guardianship under this Article the responsible<sup>F53</sup> authority] shall immediately inform <sup>F54</sup>RQIA] and, in the case of a person subject to the guardianship of a person other than the<sup>F53</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>F53</sup> authority].

**F53** 1994 NI 2

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**F54** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 8\(1\)](#) (subject to [Sch. 6 para. 8\(2\)-\(4\)](#)); S.R. 2009/114, [art. 2](#)

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

**25.—(1)** If any person<sup>[F55]</sup> (other than a Board or an authorised <sup>[F56]</sup>HSC 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>[F55]</sup> authority] that he desires to relinquish the functions of guardian,

the guardianship of the patient shall thereupon vest in the responsible<sup>[F55]</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>[F55]</sup> authority] or by any other person approved for the purpose by that<sup>[F55]</sup> authority].

(3) If it appears to a county court, upon application made by an officer of the responsible<sup>[F55]</sup> authority], that any person<sup>[F55]</sup> (other than a Board or an authorised <sup>[F56]</sup>HSC 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>[F55]</sup> authority] or to any other person approved for the purpose by that<sup>[F55]</sup> authority].

(4) Where the guardianship of a patient is transferred to<sup>[F55]</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>[F55]</sup> authority] or person by virtue of that Article.

(5) The responsible<sup>[F55]</sup> authority] shall immediately notify <sup>[F57]</sup>RQIA] of the transfer of guardianship of a patient by or under this Article.

**F55** [1994 NI 2](#)

**F56** 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](#)

**F57** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 8\(1\)](#) (subject to [Sch. 6 para. 8\(2\)-\(4\)](#)); S.R. 2009/114, [art. 2](#)

### **Regulations as to guardianship** **N.I.**

**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>[F58]</sup> and <sup>[F59]</sup>HSC 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.

**F58** [1994 NI 2](#)

**Status:** Point in time view as at 02/04/2020.

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**F59** Words in Order substituted (1.4.2009) by virtue of [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**

*Provisions relating to patients subject to detention or guardianship*

**Duty of [F60 authority] to give information to patients and nearest relatives** **N.I.**

**27.—(1)** The responsible[F60 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[F60 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 [F61 RQIA] ;
- (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;

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[F60 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[F60 the responsible authority], the guardian of the patient are informed of that fact as soon as practicable after he so ceases.

**(5)** The responsible[F60 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.

**F60** [1994 NI 2](#)

**F61** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), **Sch. 6 para. 8(1)** (subject to [Sch. 6 para. 8\(2\)-\(4\)](#)); S.R. 2009/114, **art. 2**

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

**C33** [Art. 27](#) applied (with modifications.) (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/22\)](#), regs. 1, **3(3)(o)**, 4

**C34** Art. 27 applied (with modifications) (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/403\)](#), regs. 1, **3(3)(o)-(x)**, 4

### **Transfer of patients** **N.I.**

**28.**—(1) A<sup>F62</sup> Board or authorised [<sup>F63</sup>HSC 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>F62</sup> Board or the authorised [<sup>F63</sup>HSC trust] managing] the hospital specified in the order to admit the patient to that hospital.

(5) A<sup>F62</sup> Board or authorised [<sup>F63</sup>HSC 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>F62</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>F62</sup> authority], the guardian of the patient of the intended transfer.

(10) The responsible<sup>F62</sup> authority] shall immediately notify [<sup>F64</sup>RQIA] of the transfer of any patient under this Article.

**F62** 1994 NI 2

**Status:** Point in time view as at 02/04/2020.

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- F63** 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](#)
- F64** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\), ss. 32, 34\(3\), Sch. 6 para. 8\(1\)](#) (subject to Sch. 6 para. 8(2)-(4)); S.R. 2009/114, [art. 2](#)

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

- C35** [Art. 28](#) applied (with modifications) (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/403\), regs. 1, 3\(3\)\(y\)\(i\)-\(iii\)](#), 4
- C36** [Art. 28](#) applied (with modifications.) (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/22\), regs. 1, 3\(3\)\(p\)](#), 4

**Return and readmission of patients absent without leave** **N.I.**

**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>F65</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>F65</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>F66</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.

- F65** 1994 NI 2  
**F66** SR 1994/66

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

- C37** [Art. 29](#) applied (with modifications) (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/403\), regs. 1, 3\(3\)\(z\)\(i\)-\(iii\)](#), 4
- C38** [Art. 29](#) applied (with modifications.) (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/22\), regs. 1, 3\(3\)\(q\)](#), 4



**Special provisions as to patients absent without leave** **N.I.**

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.

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

- C39 Art. 30 applied (with modifications) (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/403\)](#), regs. 1, **3(3)(aa)(i)-(iv)**, 4
- C40 Art. 30 applied (with modifications.) (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/22\)](#), regs. 1, **3(3)(r)**, 4

**Special provisions as to patients sentenced to imprisonment, etc.** **N.I.**

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”** **N.I.**

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

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- (a) spouse [<sup>F67</sup>or civil partner] ;
- (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>F68</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 [<sup>F69</sup>or civil partner] 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 [<sup>F70</sup>, civil partner] or parent of the patient, is for the time being under 18 years of age,<sup>F68</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 [<sup>F71</sup>or a patient who has a civil partner] unless the spouse [<sup>F72</sup>or civil partner] 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 [<sup>F73</sup>or a patient who has a civil partner] unless the spouse [<sup>F74</sup>or civil partner] of the patient is disregarded by virtue of paragraph (4)(b).

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(7) References to the nearest relative of a patient in any provision of this Order requiring the responsible<sup>F75</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>F75</sup> authority] to be the nearest relative of the patient.

- F67** Words in art. 32(1)(a) inserted (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **140(2)(a)** (with regs. 6-9)
- F68** 1995 NI 2
- F69** Words in art. 32(4)(b) inserted (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **140(2)(b)(i)** (with regs. 6-9)
- F70** Words in art. 32(4)(c) inserted (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **140(2)(b)(ii)** (with regs. 6-9)
- F71** Words in art. 32(5) inserted (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **140(2)(c)(i)** (with regs. 6-9)
- F72** Words in art. 32(5) inserted (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **140(2)(c)(ii)** (with regs. 6-9)
- F73** Words in art. 32(6)(b) inserted (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **140(2)(c)(i)** (with regs. 6-9)
- F74** Words in art. 32(6)(b) inserted (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **140(2)(c)(ii)** (with regs. 6-9)
- F75** 1994 NI 2

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

- C41** Art. 32 applied (with modifications) (31.3.2013) by Mental Health (Private Hospitals) Regulations (Northern Ireland) 2012 (S.R. 2012/403), regs. 1, **3(3)(bb)**, 4
- C42** Art. 32 applied (with modifications.) (31.3.2013) by Mental Health (Private Hospitals) Regulations (Northern Ireland) 2013 (S.R. 2013/22), regs. 1, **3(3)(s)**, 4

#### <sup>F76</sup>Children and young persons in care **N.I.**

**33.** Where a patient who is a child or young person is in the care of a Board or [<sup>F77</sup>HSC 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 [<sup>F78</sup>spouse or civil partner] (if any).]

- F76** 1995 NI 2
- F77** 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**
- F78** Words in art. 33 substituted (13.1.2020) by The Marriage (Same-sex Couples) and Civil Partnership (Opposite-sex Couples) (Northern Ireland) Regulations 2019 (S.I. 2019/1514), regs. 1(2), **140(3)** (with regs. 6-9)

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

- C43** Art. 33 applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/403\)](#), regs. 1, **3(3)(cc)**, 4
- C44** Art. 33 applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/22\)](#), regs. 1, **3(3)(t)**, 4

**Minors under guardianship, etc. N.I.**

**34.**—<sup>[F79]</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>[F79]</sup>(3) In this Article "guardian" does not include a guardian under this Part.]

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

**F79** 1995 NI 2

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

- C45** Art. 34 applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/403\)](#), regs. 1, **3(3)(dd)**, 4
- C46** Art. 34 applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/22\)](#), regs. 1, **3(3)(u)**, 4

**Assignment of functions by nearest relative N.I.**

**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>[F80]</sup> authority].

(3) On the receipt by the responsible<sup>[F80]</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.

**F80** 1994 NI 2

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

- C47** Art. 35 applied (with modifications.) (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/22\)](#), regs. 1, **3(3)(v)**, 4

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**C48** Art. 35 applied (with modifications) (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/403\)](#), regs. 1, **3(3)(ee)(i)**, 4

### **Appointment by county court of acting nearest relative** **N.I.**

**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>F81</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.

**F81** 1994 NI 2

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

**C49** Art. 36 applied (with modifications) (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/403\)](#), regs. 1, **3(3)(ff)(i)(ii)**, 4

**C50** Art. 36 applied (with modifications.) (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/22\)](#), regs. 1, **3(3)(w)**, 4

### **Discharge and variation of orders under Article 36** **N.I.**

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

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- (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.

(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.

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

- C51** Art. 37 applied (with modifications) (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/403\)](#), regs., 1 3(3)(gg) 4
- C52** Art. 37 applied (with modifications.) (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/22\)](#), regs. 1, 3(3)(x), 4

**Procedure on application to county court** **N.I.**

**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.

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

- C53** Art. 38 applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/22\)](#), regs. 1, 3(3)(y), 4

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**C54** Art. 38 applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/403\)](#), regs. 1, **3(3)(hh)**, 4

### Miscellaneous

#### **Special provisions as to wards of court** **N.I.**

**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.

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

**C55** Art. 39 applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/403\)](#), regs. 1, **3(3)(ii)**, 4

**C56** Art. 39 applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/22\)](#), regs. 1, **3(3)(z)**, 4

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

**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>F82</sup> Board or authorised<sup>F83</sup> 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<sup>F82</sup> Board or authorised<sup>F83</sup> HSC trust]] by which he is appointed.

(4) It shall be the duty of a<sup>F82</sup> Board or authorised<sup>F83</sup> 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.

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[<sup>F84</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 [<sup>F83</sup>HSC trust] .]

**F82** 1994 NI 2

**F83** 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**

**F84** 1994 NI 2

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

**C57** [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

**C58** [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

**Applications, recommendations and reports under Part II** **N.I.**

**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.

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

**C59** [Art. 41](#) applied (with modifications.) (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/22\)](#), regs. 1, **3(3)(bb)**, 4

**C60** [Art. 41](#) applied (with modifications) (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/403\)](#), regs. 1, **3(3)(jj)(iii)(iv)**, 4



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