
STATUTORY INSTRUMENTS

1986 No. 595

The Mental Health (Northern Ireland) Order 1986

PART II

COMPULSORY ADMISSION TO HOSPITAL AND GUARDIANSHIP

Guardianship

Reception of patients into guardianship

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

(2) A guardianship application may be made in respect of a patient on the grounds that—

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

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

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

(4) A guardianship application shall—

- (a) be made in the prescribed form; and
- (b) be forwarded to the responsible^[F1] authority].

(5) The person named as guardian in a guardianship application may be either the responsible^[F1] 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^[F1] authority] is named as guardian—

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- (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^{F1} 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.

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Person who may make guardianship application

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

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

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

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

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

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

(5) Where the nearest relative of a patient notifies an approved social worker or the responsible^{F2} authority] that he objects to a guardianship application being made in respect of the patient, then—

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

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

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General provisions as to medical recommendations

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

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

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

Rectification of guardianship applications and recommendations

21.—(1) Where within the period of 14 days beginning with the day on which a guardianship application has been accepted by the responsible^[F3] 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^[F3] 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^[F3] authority] that one of the recommendations on which the guardianship application is founded is insufficient to warrant reception into guardianship in pursuance of the application, it may, within that period, give notice in writing to that effect to the applicant; and where any such notice is given in respect of a recommendation that recommendation shall be disregarded, but the application shall be, and shall be deemed always to have been, sufficient if—

- (a) a fresh recommendation complying with the relevant provisions of this Part (other than, in the case of a medical recommendation, the provisions relating to the time of signature and the interval between medical examinations) is furnished to the^[F3] 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^[F3] authority] shall immediately inform the Commission of any amendment made under paragraph (1) and shall immediately forward to the Commission a copy of any fresh recommendation furnished to the^[F3] authority] under paragraph (2)(a).

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Effect of guardianship application

22.—(1) Where a guardianship application, duly made in accordance with the provisions of this Part and forwarded to the responsible^[F4] authority] within the period allowed by paragraph (2), is accepted by that^[F4] authority], the application shall, subject to regulations, confer on the^[F4] Board, authorised HSS trust] or person named in the application as guardian, to the exclusion of any other person—

- (a) the power to require the patient to reside at a place specified by the^[F4] Board, authorised HSS trust] or person named as guardian;
- (b) the power to require the patient to attend at places and times so specified for the purpose of medical treatment, occupation, education or training;
- (c) the power to require access to the patient to be given at any place where the patient is residing to any medical practitioner, approved social worker or other person so specified.

(2) The period within which a guardianship application is required for the purposes of this Article to be forwarded to the responsible^[F4] 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^[F4] authority] shall immediately forward to the Commission a copy of the guardianship application and of the medical recommendations and the recommendation by an approved social worker on which it is founded.

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Renewal of authority for guardianship

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

- (a) from the expiration of the period referred to in Article 22(3), for a further period of 6 months;
- (b) from the expiration of any period of renewal under sub-paragraph (a), for a further period of one year,

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

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

- (a) the responsible medical officer shall examine the patient or obtain from another medical practitioner a report on the condition of the patient; and, if it appears to him that the ground set out in Article 18(2)(a) continues to apply in relation to the patient, he shall furnish to such approved social worker as the responsible^{F5} 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^{F5} 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^{F5} 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^{F5} authority], it shall, unless it discharges the patient—

- (a) cause him, his nearest relative and his guardian to be informed;
- (b) forward to the Commission a copy of the report and of the report or reports referred to in paragraph (2)(a).

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

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Discharge of patient from guardianship

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

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

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

(4) An order under paragraph (1) in respect of a patient subject to guardianship under this Part shall not be made by his nearest relative except after giving not less than 72 hours' notice in writing to the responsible^{F6} authority]; and if, within 72 hours after such notice has been given—

- (a) the responsible medical officer furnishes to the responsible^{F6} 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^{F6} authority] a report in writing that the ground set out in Article 18(2)(b) continues to apply in relation to the patient,

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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 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^[F6] authority shall immediately—

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

(8) Where a patient is discharged from guardianship under this Article the responsible^[F6] authority shall immediately inform the Commission and, in the case of a person subject to the guardianship of a person other than the^[F6] 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^[F6] authority].

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

25.—(1) If any person^[F7] (other than a Board or an authorised HSS trust)] having the guardianship of a patient received into guardianship under this Part—

- (a) dies; or
- (b) gives notice in writing to the responsible^[F7] authority] that he desires to relinquish the functions of guardian,

the guardianship of the patient shall thereupon vest in the responsible^[F7] 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^[F7] authority] or by any other person approved for the purpose by that^[F7] authority].

(3) If it appears to a county court, upon application made by an officer of the responsible^[F7] authority], that any person^[F7] (other than a Board or an authorised HSS trust)] having the guardianship of a patient received into guardianship under this Part has performed his functions negligently or in a manner contrary to the interests of the welfare of the patient, the court may order that the guardianship of the patient be transferred to the responsible^[F7] authority] or to any other person approved for the purpose by that^[F7] authority].

(4) Where the guardianship of a patient is transferred to^{F7} 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^{F7} authority] or person by virtue of that Article.

(5) The responsible^{F7} authority] shall immediately notify the Commission of the transfer of guardianship of a patient by or under this Article.

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Regulations as to guardianship

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

- (a) for regulating the exercise by the guardians of patients received into guardianship under this Part of their powers as guardians; and
- (b) for imposing on those guardians and upon Boards^{F8} and HSS trusts] such duties as the Department considers necessary or expedient in the interests of the patients; and
- (c) requiring the patients to be visited, on such occasions or at such intervals as may be prescribed.

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