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*Status: Point in time view as at 01/04/2016.*

*Changes to legislation: The Mental Health (Northern Ireland) Order 1986, Cross Heading: Transfer to hospital of prisoners, etc. is up to date with all changes known to be in force on or before 13 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)*

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## STATUTORY INSTRUMENTS

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# 1986 No. 595

## The Mental Health (Northern Ireland) Order 1986

### PART III

#### PATIENTS CONCERNED IN CRIMINAL PROCEEDINGS OR UNDER SENTENCE

*Transfer to hospital of prisoners, etc.*

#### ***Removal to hospital of persons serving sentences of imprisonment, etc.***

**53.**—(1) If in the case of a person serving a sentence of imprisonment, the Secretary of State is satisfied by written reports from at least two medical practitioners, one of whom is a medical practitioner appointed for the purposes of Part II by [F1RQIA] ,—

- (a) that the person is suffering from mental illness or severe mental impairment; and
- (b) that the mental disorder from which the person is suffering is of a nature or degree which warrants his detention in hospital for medical treatment;

the Secretary of State may, if he is of opinion, having regard to the public interest and all the circumstances, that it is expedient to do so, by warrant direct that that person be admitted to hospital.

(2) A direction under this Article (in this Order referred to as a “transfer direction”) shall cease to have effect at the expiration of the period of 14 days beginning with the date on which it is given, unless within that period the person with respect to whom it was given has been received into hospital.

(3) A transfer direction with respect to any person shall have the same effect as a hospital order made in his case.

(4) A transfer direction shall specify the form or forms of mental disorder referred to in subparagraph (a) of paragraph (1) from which, upon the reports taken into account under that paragraph, the patient is found by the Secretary of State to be suffering; and no such direction shall be given unless the patient is described in each of those reports as suffering from the same form of mental disorder, whether or not he is also described in either of them as suffering from another form.

(5) References in this Part to a person serving a sentence of imprisonment include references—

- (a) to a person detained in pursuance of any sentence or order for detention made by a court in criminal proceedings, including an order under [F2 Article 39 of the Criminal Justice (Children) (Northern Ireland) Order 1998 sending a child to a juvenile justice centre] but not including an order under any statutory provision to which Article 52 applies;
- (b) to a person committed to custody for failure to comply with an order to enter into a recognizance to keep the peace or to be of good behaviour or both; and
- (c) to a person committed by a court to a prison in default of payment of any sum adjudged to be paid on his conviction.

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- F1** 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](#)
- F2** 1998 NI 9

### ***Removal to hospital of other prisoners***

**54.**—(1) If in the case of a person to whom this Article applies the Secretary of State is satisfied by the same reports as are required for the purposes of Article 53—

- (a) that the person is suffering from mental illness or severe mental impairment; and
- (b) that the mental disorder from which the person is suffering is of a nature or degree which warrants his detention in hospital for medical treatment; and
- (c) that the person is in urgent need of such treatment,

the Secretary of State shall have the same power of giving a transfer direction in respect of him under that Article as if he were serving a sentence of imprisonment.

(2) This Article applies to the following persons—

- (a) persons detained in a prison or remand centre, not being persons serving a sentence of imprisonment or persons falling within the following sub-paragraphs of this paragraph;
- (b) persons remanded in custody by a magistrates' court;
- (c) civil prisoners, that is to say, persons committed by a court to prison for a limited term who are not persons falling to be dealt with under Article 53;
- (d) persons detained under the Immigration Act 1971<sup>F3</sup> or under section 62 of the Nationality, Immigration and Asylum Act 2002 (detention by Secretary of State)].

(3) Paragraphs (2) to (4) of Article 53 shall apply for the purposes of this Article and of any transfer direction given by virtue of this Article as they apply for the purposes of that Article and of any transfer direction given thereunder.

- F3** 2002 c. 41

### ***Restriction on discharge of prisoners removed to hospital***

**55.**—(1) Where a transfer direction is given in respect of any person, the Secretary of State may, if he thinks fit, by warrant further direct that that person shall be subject to the special restrictions set out in Article 47; and where the Secretary of State gives a transfer direction in respect of any such person as is mentioned in sub-paragraph (a) or (b) of Article 54(2), he shall also give a direction under this Article applying those restrictions to him.

(2) A direction under this Article (in this Order referred to as a “restriction direction”) shall have the same effect as a restriction order made under Article 47.

### ***Further provisions as to prisoners under sentence***

**56.**—(1) Where a transfer direction and a restriction direction have been given in respect of a person serving a sentence of imprisonment and before<sup>F4</sup> his release date] the Secretary of State is notified by the responsible medical officer, the Review Tribunal or any medical practitioner appointed for the purposes of Part II by <sup>F5</sup>RQIA] that that person no longer requires treatment in hospital for mental disorder or that no effective treatment for his disorder can be given in the hospital to which he has been removed, the Secretary of State may—

- (a) by warrant direct that he be remitted to any prison,<sup>[F6]</sup> or juvenile justice centre] in which he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been so removed; or
- (b) exercise, or authorise the managers of any<sup>[F6]</sup> juvenile justice centre] to which he might have been remitted to exercise, any power of releasing him on licence or discharging him under supervision which would have been exercisable if he had been remitted as aforesaid;

and on his arrival in the prison,<sup>[F6]</sup> or juvenile justice centre], or, as the case may be, his release or discharge as aforesaid, the transfer direction and the restriction direction shall cease to have effect.

<sup>[F4]</sup>(2) A restriction direction in the case of a person serving a sentence of imprisonment shall cease to have effect, if it has not previously done so, on his release date.

(3) In this Article, references to a person's release date are to the day (if any) on which he would be entitled to be released (whether unconditionally or on licence) from any prison or juvenile justice centre in which he might have been detained if the transfer direction had not been given; and in determining that day any powers that would be exercisable by the Sentence Review Commissioners or the <sup>[F7]</sup>Parole Commissioners for Northern Ireland] if he were detained in such a prison or juvenile justice centre shall be disregarded.]

(4) For the purposes of section 38(2) of the Prison Act (Northern Ireland) 1953 (which provides for discounting from the sentences of certain prisoners periods while they are unlawfully at large), a patient who, having been transferred in pursuance of a transfer direction from any such institution as is referred to in that section, is at large in circumstances in which he is liable to be taken into custody under any provision of this Order, shall be treated as unlawfully at large and absent from that institution.

**F4** 2003 c. 44

**F5** 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**

**F6** 1998 NI 9

**F7** Words in art. 56(3) substituted (15.5.2008) by [Criminal Justice \(Northern Ireland\) Order 2008](#) (S.I. 2008/1216 (N.I. 1)), arts. 1(4), 102(1), **Sch. 5 para. 5(2)**; S.R. 2008/217, **art. 2**, Sch. paras. 16, 18(c) (subject to art. 3)

### ***Further provisions as to detained persons***

**57.**—(1) This Article has effect where a transfer direction has been given in respect of any such person as is described in sub-paragraph (a) of Article 54(2) and that person is in this Article referred to as “the detainee”.

(2) The transfer direction shall cease to have effect when the detainee's case is disposed of by the court having jurisdiction to try or otherwise deal with him, but without prejudice to any power of that court to make a hospital order or other order under this Part in his case.

(3) If the Secretary of State is notified by the responsible medical officer, the Review Tribunal or any medical practitioner appointed for the purposes of Part II by <sup>[F8]</sup>RQIA] at any time before the detainee's case is disposed of by that court—

- (a) that the detainee no longer requires treatment in hospital for mental disorder; or
- (b) that no effective treatment for his disorder can be given at the hospital to which he has been removed,

the Secretary of State may by warrant direct that he be remitted to any place where he might have been detained if he had not been removed to hospital, there to be dealt with as if he had not been

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so removed, and on his arrival at the place to which he is so remitted the transfer direction shall cease to have effect.

(4) If (no direction having been given under paragraph (3)) the court having jurisdiction to try or otherwise deal with the detainee is satisfied on the written or oral evidence of the responsible medical officer—

- (a) that the detainee no longer requires treatment in hospital for mental disorder; or
- (b) that no effective treatment for his disorder can be given at the hospital to which he has been removed,

the court may order him to be remitted to any such place as is mentioned in paragraph (3) or released on bail and on his arrival at that place or, as the case may be, his release on bail the transfer direction shall cease to have effect.

(5) If (no direction or order having been given or made under paragraph (3) or (4)) it appears to the court having jurisdiction to try or otherwise deal with the detainee—

- (a) that it is impracticable or inappropriate to bring the detainee before the court; and
- (b) that the conditions set out in paragraph (6) are satisfied,

the court may make a hospital order (with or without a restriction order) in his case in his absence and, in the case of a person awaiting trial, without convicting him.

(6) A hospital order may be made in respect of a person under paragraph (5) if the court—

- (a) is satisfied, on the oral evidence of two medical practitioners appointed for the purposes of Part II by [F8RQIA], that the detainee is suffering from mental illness or severe mental impairment of a nature or degree which warrants his detention in hospital for medical treatment; and
- (b) is of the opinion, after considering any depositions or other documents required to be sent to the proper officer of the court, that it is proper to make such an order.

**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](#)

#### ***Further provisions as to persons remanded by magistrates' courts***

**58.**—(1) This Article has effect where a transfer direction has been given in respect of any such person as is described in sub-paragraph (b) of Article 54(2); and that person is in this Article referred to as “the accused”.

(2) Subject to paragraph (5), the transfer direction shall cease to have effect on the expiration of the period of remand unless the accused is committed in custody to the Crown Court for trial or to be otherwise dealt with.

(3) Subject to paragraph (4), the power of further remanding the accused may be exercised by the magistrates' court without his being brought before the court; and if the court further remands the accused in custody (whether or not he is brought before the court) the period of remand shall, for the purposes of this Article, be deemed not to have expired.

(4) The court shall not under paragraph (3) further remand the accused in his absence unless he has appeared before the court within the previous 6 months.

(5) If the magistrates' court is satisfied, on the written or oral evidence of the responsible medical officer—

- (a) that the accused no longer requires treatment in hospital for mental disorder; or

- (b) that no effective treatment for his disorder can be given in the hospital to which he has been removed,

the court may direct that the transfer direction shall cease to have effect notwithstanding that the period of remand has not expired or that the accused is committed to the Crown Court as mentioned in paragraph (2).

(6) If the accused is committed to the Crown Court as mentioned in paragraph (2) and the transfer direction has not ceased to have effect under paragraph (5), Article 57 shall apply as if the transfer direction given in his case were a direction given in respect of a person falling within that Article.

(7) The magistrates' court may, in the absence of the accused, conduct a preliminary investigation or preliminary inquiry into an offence alleged to have been committed by him and commit him for trial in accordance with Article 37 of the Magistrates' Courts (Northern Ireland) Order 1981 if—

- (a) the court is satisfied on the written or oral evidence of the responsible medical officer, that the accused is unfit to take part in the proceedings; and  
(b) the accused is represented by counsel or a solicitor.

***Further provisions as to civil prisoners and persons detained under the Immigration Act 1971***

**59**<sup>F9</sup>.—(1) Subject to paragraph (2), a transfer direction given in respect of any such person as is described in sub-paragraph (c) or (d) of Article 54(2) shall cease to have effect on the expiration of the period during which he would, but for his removal to hospital, be liable to be detained in the place from which he was removed.

(2) Where a transfer direction and a restriction direction have been given in respect of any such person as is mentioned in paragraph (1), then, if the Secretary of State is notified by the responsible medical officer, the Review Tribunal or any medical practitioner appointed for the purposes of Part II by [<sup>F10</sup>RQIA] at any time before the expiration of the period there mentioned—

- (a) that that person no longer requires treatment in hospital for mental disorder; or  
(b) that no effective treatment for his disorder can be given in the hospital to which he has been removed,

the Secretary of State may by warrant direct that he be remitted to any place where he might have been detained if he had not been removed to hospital, and on his arrival at the place to which he is so remitted the transfer direction and the restriction direction shall cease to have effect.

**F9** mod. by 2002 c. 41

**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. 8\(1\)](#) (subject to [Sch. 6 para. 8\(2\)-\(4\)](#)); S.R. 2009/114, [art. 2](#)

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