
STATUTORY INSTRUMENTS

1986 No. 595

The Mental Health (Northern Ireland) Order 1986

PART VIII

MANAGEMENT OF PROPERTY AND AFFAIRS OF PATIENTS

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

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

(2) Where it is represented to the court, and the court has reason to believe, that a person may be incapable, by reason of mental disorder, of managing and administering his property and affairs, and the court is of the opinion that it is necessary to make immediate provision for any of the matters referred to in Article 98, then pending the determination of the question whether that person is so incapable the court may exercise in relation to the property and affairs of that person any of the powers conferred on the court in relation to the property and affairs of a patient by this Part so far as is requisite for enabling that provision to be made.

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

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

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

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

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

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

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

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

Status: Point in time view as at 01/10/2009.

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- (a) the control (with or without the transfer or vesting of property or the payment into or lodgement in the [F1 Court of Judicature] of money or securities) and management of any property of the patient;
- (b) the sale, exchange, charging or other disposition of or dealing with any property of the patient;
- (c) the acquisition of any property in the name or on behalf of the patient;
- (d) the settlement of any property of the patient, or the gift of any property of the patient to any such persons or for any such purposes as are mentioned in sub-paragraphs (b) and (c) of Article 98(1);
- (e) the execution for the patient of a will making any provision (whether by way of disposing of property or exercising a power or otherwise) which could be made by a will executed by the patient if he were not mentally disordered;
- (f) the carrying on by a suitable person of any profession, trade or business of the patient;
- (g) the dissolution of a partnership of which the patient is a member;
- (h) the carrying out of any contract entered into by the patient;
- (i) the conduct of legal proceedings in the name of the patient or on his behalf;
- (j) the reimbursement out of the property of the patient, with or without interest, of money applied by any person either in payment of the patient's debts (whether legally enforceable or not) or for the maintenance or other benefit of the patient or members of his family or in making provision for other persons or purposes for whom or which he might be expected to provide if he were not mentally disordered;
- (k) the exercise of any power (including a power to consent) vested in the patient, whether beneficially, or as guardian or trustee, or otherwise.

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

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

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

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

F1 Words in art. 99 substituted (1.10.2009) by [Constitutional Reform Act 2005 \(c. 4\)](#), ss. 59(5), 148(1), Sch. 11 para. 6; S.I. 2009/1604, art. 2(d)

Supplementary provisions as to wills executed under Article 99

100.—(1) Where under Article 99(1) the court makes or gives an order, direction or authority requiring or authorising a person (in this Article referred to as “the authorised person”) to execute

a will for a patient, any will executed in pursuance of that order, direction or authority shall be expressed to be signed by the patient acting by the authorised person, and shall be—

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

(2) The^{F2} Wills and Administration Proceedings (Northern Ireland) Order 1994] shall have effect in relation to any such will as if it were signed by the patient by his own hand, except that in relation to any such will—

- (a) [^{F2}Article 5] of^{F2} that Order] (which makes provision as to the signing and attestation of wills) shall not apply, and
- (b) in the subsequent provisions of^{F2} that Order] any reference to execution in the manner required by the previous provisions of^{F2} that Order] shall be construed as a reference to execution in the manner required by paragraph (1).

(3) Subject to paragraph (4), any such will executed in accordance with paragraph (1) shall have the same effect for all purposes as if the patient were capable of making a valid will and the will had been executed by him in the manner required by the^{F2} Wills and Administration Proceedings (Northern Ireland) Order 1994].

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

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

F2 1994 NI 13

Power to appoint controller

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

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

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

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

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

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

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

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

Preservation of interests in patient's property

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

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

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

(3) References in paragraphs (1) and (2) to the disposal of property are references to—

- (a) the sale, exchange, charging or other dealing (otherwise than by will) with property other than money;
- (b) the removal of property from one place to another;
- (c) the application of money in acquiring property; or
- (d) the transfer of money from one account to another;

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

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

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

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

The Lord Chief Justice's Visitors

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

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

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

(3) A person shall not be qualified to be appointed—

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

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

(5) Without prejudice to paragraph (4), there may be paid to the Lord Chief Justice's Visitors such remuneration and travelling and other allowances upon such conditions and on such scales as may be determined by the Lord Chancellor after consultation with the Lord Chief Justice and with the concurrence of the Treasury.

Modifications etc. (not altering text)

- C1** [Art. 104\(5\)](#): functions of Treasury or Minister for the Civil Service transferred (12.4.2010) to Department of Finance and Personnel by [Northern Ireland Act 1998 \(Devolution of Policing and Justice Functions\) Order 2010 \(S.I. 2010/976\)](#), arts. 1(2), **15(4)(g)** (with arts. 15(6), 28-31); S.I. 2010/977, **art. 1(2)**

Functions of Visitors

105 ^{F3}.—(1) Patients shall be visited by Lord Chief Justice's Visitors in such circumstances, and in such manner, as may be prescribed by directions of a standing nature given by the Master (Care and Protection) with the concurrence of the Lord Chief Justice.

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

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

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

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

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

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

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

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

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

F3 mod. by [1987 NI 16](#)

Rules of court

106^{F4}.—(1) Rules of court may make provision as to the conduct of proceedings before the court with respect to persons suffering or alleged to be suffering from mental disorder (in this Article referred to as “proceedings”) including provision as to—

- (a) the carrying out of preliminary or incidental inquiries;
- (b) the persons by whom and manner in which proceedings may be instituted and carried on;
- (c) the persons who are to be entitled to be notified of, to attend, or to take part in proceedings;
- (d) the evidence which may be authorised or required to be given in proceedings and the manner (whether on oath or otherwise and whether orally or in writing) in which it is to be given;
- (e) the administration of oaths and taking of affidavits for the purposes of proceedings;
- (f) the enforcement of orders made and directions given in proceedings;
- (g) the authorising or requiring of the attendance and examination of persons suffering or alleged to be suffering from mental disorder, the furnishing of information and the production of documents;
- (h) the termination of proceedings, whether on the death or recovery of the person to whom the proceedings relate or otherwise, and the exercise, pending the termination of the proceedings, of powers exercisable under this Part in relation to the property or affairs of a patient;
- (i) the making of orders for the payment of costs to or by persons attending, as well as persons taking part in, proceedings and the manner in which and funds out of which any such costs are to be paid; and
- (j) the charging of any fee or percentage payable in connection with proceedings upon the estate of the person to whom the proceedings relate and the payment of fees and percentages within such time after the death of the person to whom the proceedings relate or the termination of the proceedings as may be provided by the rules.

(2) A charge upon the estate of a person created by virtue of paragraph (1)(j) shall not cause any interest of that person in any property to fail or determine or to be prevented from recommencing.

F4 mod. by [1987 NI 16](#)

Duty to notify Office of Care and Protection

107.—(1) Where a Board^[F5] or authorised ^[F6]HSC trust]] is satisfied—

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

it shall be the duty of the Board^[F5] or authorised ^[F6]HSC trust]] to notify the Office of Care and Protection of those matters.

^[F5](1A) For the purposes of paragraph (1) a person shall not be taken to be within the area of a Board if he is within the area of an authorised ^[F6]HSC trust] .

(1B) Where an ^[F6]HSC trust] other than an authorised ^[F6]HSC trust] is satisfied—

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

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

(2) Where any person carrying on a nursing home, a^[F7] residential care home] or a private hospital is satisfied—

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

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

(3) Where ^[F8]RQIA] is satisfied—

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

it shall be the duty of ^[F8]RQIA] to notify the Office of Care and Protection of those matters.

F5 1994 NI 2

F6 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](#)

F7 1992 NI 20

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](#)

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Procedure for notifications under Article 107

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

(2) Where a notification is made under Article 107 in relation to any person, it shall, where practicable, be the duty of the^[F9] body] or person making the notification to inform the nearest relative of that person.

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

F9 1994 NI 2

Interpretation of Part VIII

109. In this Part—

“the court” means the High Court;

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

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

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

Status:

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