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STATUTORY INSTRUMENTS

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**2003 No. 431**

**The Health and Personal Social Services (Quality,  
Improvement and Regulation) (Northern Ireland) Order 2003**

**PART VI**

**MISCELLANEOUS**

**Statements of minimum standards**

**38.**—(1) The Department may prepare and publish statements of minimum standards.

(2) The Department shall keep the standards set out in the statements under review and may publish amended statements whenever it considers it appropriate to do so.

(3) Before issuing a statement, or an amended statement which in the opinion of the Department effects a substantial change in the standards, the Department shall consult any persons it considers appropriate.

(4) The standards shall be taken into account—

- (a) in the making of any decision by the Regulation and Improvement Authority under Part III;
- (b) in any proceedings for the making of an order under Article 21;
- (c) in any proceedings on an appeal against such a decision or order; and
- (d) in any proceedings for an offence under regulations under Part III.

**Improvement notices**

**39.**—(1) The Regulation and Improvement Authority may serve a notice (an “improvement notice”) on a person registered under Part III or on a Health and Social Services Board, [F1HSC trust] or special agency if the Authority believes that that person, Board, trust or agency is failing to comply with any statement of minimum standards under Article 38.

(2) An improvement notice shall specify—

- (a) in what respect there is a failure to comply with a statement of minimum standards under Article 38; and
- (b) what improvements the Regulation and Improvement Authority considers necessary.

**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. 1\(1\)\(d\)](#) (with Sch. 6 para. 1(3)); S.R. 2009/114, [art. 2](#)

**Power to require information from establishments and agencies and power of entry and inspection**

**40.**—(1) The Regulation and Improvement Authority may at any time require a person who carries on or manages an establishment or agency to provide it with any information relating to the

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establishment or agency which the Regulation and Improvement Authority considers it necessary or expedient to have for the purposes of its functions.

(2) A person authorised by the Regulation and Improvement Authority may at any time enter and inspect premises which are used, or which he has reasonable cause to believe to be used, as an establishment or for the purposes of an agency.

(3) A person authorised by virtue of this Article to enter and inspect premises may—

- (a) make any examination into the state and management of the premises and treatment of patients or persons accommodated or cared for there which he thinks appropriate;
- (b) inspect and take copies of any documents or records required to be kept in accordance with regulations under Part III, Article 10 of the Adoption (Northern Ireland) Order 1987 (NI 22), Article 27(2)(a) or 75(2) of the Children (Northern Ireland) Order 1995 (NI 2) or section 1(3) of the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001 (c. 11);
- (c) interview in private the manager or the person carrying on the establishment or agency;
- (d) interview in private any person employed there;
- (e) interview in private any patient or person accommodated or cared for there who consents to be interviewed.

(4) The powers under paragraph (3)(b) include—

- (a) power to require the manager or the person carrying on the establishment or agency to produce any documents or records, wherever kept, for inspection on the premises; and
- (b) in relation to records which are kept by means of a computer, power to require the records to be produced in a form in which they are legible and can be taken away.

(5) Paragraph (6) applies where the premises in question are used as an establishment and the person so authorised—

- (a) is a medical practitioner or registered nurse; and
- (b) has reasonable cause to believe that a patient or person accommodated or cared for there is not receiving proper care.

(6) The person so authorised may, with the consent of the person mentioned in paragraph (5)(b), examine him in private and inspect any records relating to his care or treatment in the establishment. The powers conferred by this paragraph may be exercised in relation to a person who is incapable of giving consent without that person's consent.

(7) The Department may by regulations require the Regulation and Improvement Authority to arrange for premises which are used as an establishment or for the purposes of an agency to be inspected on such occasions or at such intervals as may be prescribed.

#### **Commencement Information**

- II** [Art. 40](#) wholly in operation at 29.10.2010; [art. 40](#) not in operation at date of making see [art. 1\(3\)](#); [art. 40](#) in operation for certain purposes at 1.3.2005 by [S.R. 2005/44](#), [art. 2](#), [Sch. 2](#) (subject to [arts. 4-13](#)); [art. 40\(1\)\(2\)\(3\)\(a\)\(c\)-\(e\)\(4\)-\(7\)](#) in operation at 1.4.2005 in so far as not already in operation by [S.R. 2005/44](#), [art. 3](#), [Sch. 1](#); [art. 40\(3\)\(b\)](#) in operation for certain purposes at 1.4.2005 by [S.R. 2005/44](#), [art. 3](#), [Sch. 1](#); [art. 40\(3\)\(b\)](#) in operation at 29.10.2010 in so far as not already in operation by [S.R. 2010/288](#), [art. 3](#), [Sch. 1](#)

## **Power to require information from inspections relating to Boards and [F2HSC trusts], etc. and powers of entry and inspection**

**41.**—(1) The Regulation and Improvement Authority may at any time require a Health and Social Services Board, [F3HSC trust] or special agency (in this Article referred to as an “HSS body”) or service provider to provide it with any information which the Regulation and Improvement Authority considers it necessary or expedient to have for the purposes of its functions.

(2) Subject to paragraph (3), a person authorised by the Regulation and Improvement Authority may at any time—

- (a) enter and inspect premises which are used by an HSS body or service provider; and
- (b) inspect and take copies of any documents or records.

(3) If the person is authorised only for the purposes of functions under Article 35(1)(a), (c) or (e) (reviews etc.), he shall enter the premises only—

- (a) after giving reasonable notice to the HSS body or service provider;
- (b) at a reasonable time; and
- (c) if the premises are wholly or partly used as residential accommodation by persons employed by the HSS body or service provider, after obtaining the consent of those persons.

(4) A person authorised by virtue of this Article to enter and inspect premises may—

- (a) make any examination into the state and management of the premises and treatment of patients or persons accommodated or cared for there which he thinks appropriate;
- (b) interview in private any person employed by an HSS body or service provider;
- (c) interview in private any person employed to provide services to an HSS body;
- (d) interview in private any patient or person accommodated or cared for there who consents to be interviewed.

(5) The powers under paragraph (2)(b) include—

- (a) power to require an HSS body or service provider to produce any documents or records, wherever kept, for inspection on the premises; and
- (b) in relation to records which are kept by means of a computer, power to require the records to be produced in a form in which they are legible and can be taken away.

(6) Paragraph (7) applies where a person authorised by the Regulation and Improvement Authority—

- (a) is a medical practitioner or registered nurse; and
- (b) has reasonable cause to believe that a patient or person accommodated or cared for on premises used by an HSS body or service provider is not receiving proper care or treatment.

(7) The person so authorised may, with the consent of the person mentioned in paragraph (6)(b), examine him in private and inspect any records relating to his care or treatment there.

The powers conferred by this paragraph may be exercised in relation to a person who is incapable of giving consent without that person's consent.

(8) The Department may by regulations require the Regulation and Improvement Authority to arrange for premises which are used by an HSS body or service provider to be inspected on such occasions or at such intervals as may be prescribed.

**F2** 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](#)

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**F3** Words in Order substituted (1.4.2009) by [Health and Social Care \(Reform\) Act \(Northern Ireland\) 2009 \(c. 1\)](#), ss. 32, 34(3), [Sch. 6 para. 1\(1\)\(d\)](#) (with [Sch. 6 para. 1\(3\)](#)); S.R. 2009/114, [art. 2](#)

### **Inspections: provisions supplementary to Articles 40 and 41**

**42.**—(1) A person who proposes to exercise any power of entry or inspection conferred by Article 40 or 41 shall if so required produce some duly authenticated document showing his authority to exercise the power.

(2) Any person who—

- (a) intentionally obstructs the exercise of any power conferred by Article 40 or 41 or this Article; or
- (b) fails without a reasonable excuse to comply with any requirement under Article 40 or 41 or this Article,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) A person authorised by virtue of Article 40 or 41 to enter and inspect any premises may seize and remove any document or other material or thing found there which he has reasonable grounds to believe may be evidence of a failure to comply with any condition or requirement imposed by or under this Order.

(4) A person so authorised—

- (a) may require any person to afford him such facilities and assistance with respect to matters within the person's control as are necessary to enable him to exercise his powers under Article 40 or 41 or this Article;
- (b) may take such measurements and photographs and make such recordings as he considers necessary to enable him to exercise those powers.

(5) A person authorised by virtue of Article 40 or 41 to inspect any records shall be entitled to have access to, and to check the operation of, any computer and any associated apparatus which is or has been in use in connection with the records in question.

(6) The references in Article 40 to the person carrying on the establishment or agency include, in the case of an establishment or agency which is carried on by a company, a reference to any director, manager, secretary or other similar officer of the company.

(7) Where any premises which are used as an establishment or for the purposes of an agency have been inspected under Article 40 the Regulation and Improvement Authority—

- (a) shall prepare a report on the matters inspected; and
- (b) shall without delay send a copy of the report to each person who is registered in respect of the establishment or agency.

### **Restrictions on disclosure of information under Article 40 or 41**

**43.**—(1) Subject to subsection (2), a person shall not be required under Article 40 or 41 to provide confidential information which relates to and identifies a living individual unless—

- (a) the information is disclosed in a form in which the identity of the individual cannot be ascertained;
- (b) the individual consents to the information being disclosed; or
- (c) the individual cannot be traced despite the taking of all reasonable steps.

(2) A person may be required to provide confidential information which relates to and identifies a living individual if—

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- (a) it is not practicable to disclose the information in a form in which the identity of the individual cannot be ascertained;
  - (b) the Regulation and Improvement Authority considers that there is a serious risk to the health or safety of any person; and
  - (c) having regard to that risk and the urgency of the exercise of those functions, the Regulation and Improvement Authority considers that the information should be disclosed without the consent of the individual.
- (3) A person shall not be required under Article 40 or 41 to provide information the disclosure of which is prohibited under another statutory provision unless—
- (a) the prohibition on the disclosure of information operates by reason of the fact that the information is capable of identifying an individual; and
  - (b) the information in question is in a form in which the identity of the individual cannot be ascertained.
- (4) In a case where—
- (a) the disclosure of information is prohibited under this Article; and
  - (b) the prohibition operates by reason of the fact that the information is capable of identifying an individual,

the Regulation and Improvement Authority or a person authorised by it under Article 40 or 41 may require the person holding the information to put the information in a form in which the identity of the individual concerned cannot be identified, in order that the information may be disclosed.

(5) In this Article “confidential information” means information which is held subject to a duty of confidence, and includes information contained in an accessible record within the meaning of section 68 of the Data Protection Act 1998 (c. 29).

### **The Care Tribunal**

**44.**—(1) There shall be a tribunal (“the Care Tribunal”) which shall exercise the jurisdiction conferred on it by this Order or any other statutory provision.

(2) The Department may by regulations make provision about the proceedings of the Care Tribunal.

- (3) The regulations may, in particular, include provision—
- (a) as to the manner in which appeals are to be instituted or applications for determinations are to be made;
  - (b) as to the period within which appeals are to be instituted;
  - (c) as to the circumstances in which applications for leave may be made;
  - (d) for enabling any functions which relate to applications for leave or other matters preliminary or incidental to an appeal or determination to be performed by the chairman;
  - (e) for the holding of hearings in private in prescribed circumstances;
  - (f) for imposing reporting restrictions in prescribed circumstances;
  - (g) as to the persons who may appear on behalf of the parties;
  - (h) for granting any person such discovery or inspection of documents or right to further particulars as might be granted by a county court;
  - (i) for obtaining a medical report in a case where the decision appealed against was made on medical grounds;
  - (j) for requiring persons to attend to give evidence and produce documents;

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- (k) for authorising the administration of oaths to witnesses;
  - (l) for the determination of appeals or issues or applications for leave without a hearing in prescribed circumstances;
  - (m) as to the withdrawal of appeals or applications for determinations;
  - (n) for the award of costs;
  - (o) for taxing or otherwise settling any such costs (and, in particular, for enabling such costs to be taxed in the county court);
  - (p) for the recording and proof of decisions and orders of the Care Tribunal;
  - (q) for enabling the Care Tribunal to review its decisions, or revoke or vary its orders, in such circumstances as may be determined in accordance with the regulations; and
  - (r) for notification of the result of an appeal or determination to be given to such persons as may be prescribed.
- (4) Part I of the Arbitration Act 1996 (c. 23) shall not apply to any proceedings before the Care Tribunal but regulations may make provision corresponding to any provision of that Act.
- (5) Any person who without reasonable excuse fails to comply with—
- (a) any requirement imposed by the regulations by virtue of paragraph (3)(f);
  - (b) any requirement in respect of the discovery or inspection of documents imposed by the regulations by virtue of paragraph (3)(h); or
  - (c) any requirement imposed by the regulations by virtue of paragraph (3)(j),
- is liable on summary conviction to a fine not exceeding level 3 on the standard scale.
- (6) An appeal shall lie to the High Court on a point of law from a decision of the Care Tribunal.
- (7) Schedule 2 shall have effect with respect to the Care Tribunal.

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

- C1** [Art. 44\(2\)](#): functions transferred (1.4.2011) from Department of Health, Social Services and Public Safety to Department of Justice by [Departments \(Transfer of Functions\) Order \(Northern Ireland\) 2011 \(S.R. 2011/44\)](#), arts. 1(2), **6(c)** (with art. 8(2))
- C2** [Art. 44\(3\)](#): functions transferred (1.4.2011) from Department of Health, Social Services and Public Safety to Department of Justice by [Departments \(Transfer of Functions\) Order \(Northern Ireland\) 2011 \(S.R. 2011/44\)](#), arts. 1(2), **6(c)** (with art. 8(2))
- C3** [Art. 44\(4\)](#): functions transferred (1.4.2011) from Department of Health, Social Services and Public Safety to Department of Justice by [Departments \(Transfer of Functions\) Order \(Northern Ireland\) 2011 \(S.R. 2011/44\)](#), arts. 1(2), **6(c)** (with art. 8(2))

#### **Arrangements for provision of accommodation outside Northern Ireland**

**45.** In Article 36 of the Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14) (arrangements under Article 15 for provision of accommodation), for paragraphs (1) and (2) there shall be substituted the following paragraphs—

“(1) Subject to paragraph (2), arrangements must not be made under Article 15 for the provision of accommodation together with nursing or personal care for persons such as are mentioned in Article 10(1) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 (residential care homes) unless—

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- (a) the accommodation is to be provided, under the arrangements, in a residential care home or nursing home (within the meaning of that Order); and
- (b) a person carrying on or managing the home is registered in respect of it under that Order.

(2) The Department may by regulations make provision for or in connection with the making of arrangements under Article 15 for the provision of accommodation in Great Britain, the Channel Islands or the Isle of Man.” .

### **Rules regarding courses for persons who are or wish to become social workers**

**46.** In section 10 of the Health and Personal Social Services Act (Northern Ireland) 2001 (c. 3) (approval of courses in relevant social work), in subsection (3) (rules) for paragraph (a) there shall be substituted the following paragraph—

- “(a) about the provision of courses, including their content and methods of completing them;” .

### **Arrangements for provision of pharmaceutical services by pharmacists**

**47.** In Article 63 of the Health and Personal Social Services (Northern Ireland) Order 1972 (NI 14) (arrangements for pharmaceutical services), in paragraph (1)(bb) (provision of listed drugs and medicines and listed appliances by registered nurse, midwife or health visitor), after the word “by” there shall be inserted the words “ a pharmacist or ”.

### **Regulations, orders and directions**

**48.**—(1) Regulations under this Order shall be subject to negative resolution.

(2) Regulations and orders under this Order may contain—

- (a) any supplementary, incidental or consequential provision;
- (b) any transitory, transitional or saving provision,

which the Department considers necessary or expedient.

(3) Section 17(2) of the Interpretation Act (Northern Ireland) 1954 (c. 33) shall apply to a direction given by the Department under this Order as if the direction were a statutory instrument.

### **Transitional provisions and savings**

**49.** The transitional provisions and savings set out in Schedule 3 shall have effect.

*Article 50—Amendments and repeals*

**Status:**

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**Changes to legislation:**

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