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STATUTORY INSTRUMENTS

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**2004 No. 1272 (N.I. 8)**

**NORTHERN IRELAND**

**The Mental Health (Amendment) (Northern Ireland) Order 2004**

<i>Made</i>	- - - -	<i>6th May 2004</i>
<i>Laid before Parliament</i>		<i>10th May 2004</i>
<i>Coming into operation</i>		<i>14th May 2004</i>

At the Court at Buckingham Palace, the 6th day of May 2004  
Present,  
The Queen's Most Excellent Majesty in Council

Whereas the Secretary of State has advised Her Majesty that because of the urgency of the matter it is necessary to make this Order in Council without a draft of it having been approved by resolution of each House of Parliament:

Now, therefore, Her Majesty, in exercise of the powers conferred by paragraph 1(1) of the Schedule to the Northern Ireland Act 2000 (c. 1) and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

**Title and commencement**

1.—(1) This Order may be cited as the Mental Health (Amendment) (Northern Ireland) Order 2004.

(2) This Order shall come into operation on the expiration of one week from the day on which it is made.

**Interpretation**

2.—(1) The Interpretation Act (Northern Ireland) 1954 (c. 33) applies to this Order as it applies to an Act of the Assembly.

(2) In this Order “the principal Order” means the [Mental Health \(Northern Ireland\) Order 1986 \(NI 4\)](#).

### **Amendment of Article 77(1) of the principal Order**

3. In Article 77 of the principal Order (power to discharge patients other than restricted patients) for paragraph (1) there shall be substituted—

“(1) Where application is made to the Review Tribunal by or in respect of a patient who is liable to be detained under this Order, the tribunal may in any case direct that the patient be discharged, and shall so direct if—

- (a) the tribunal is not satisfied that he is then suffering from mental illness or severe mental impairment or from either of those forms of mental disorder of a nature or degree which warrants his detention in hospital for medical treatment; or
- (b) the tribunal is not satisfied that his discharge would create a substantial likelihood of serious physical harm to himself or to other persons; or
- (c) in the case of an application by virtue of Article 71(4)(a) in respect of a report furnished under Article 14(4)(b), the tribunal is satisfied that he would, if discharged, receive proper care.”.

### **Amendment of Article 78 of the principal Order**

4. In Article 78 of the principal Order (power to discharge restricted patients subject to restriction orders) for paragraphs (1) and (2) there shall be substituted—

“(1) Where an application to the Review Tribunal is made by a restricted patient who is subject to a restriction order, or where the case of such a patient is referred to the tribunal, the tribunal shall direct the absolute discharge of the patient if—

- (a) the tribunal is not satisfied as mentioned in paragraph (1)(a) or (b) of Article 77; and
- (b) the tribunal is satisfied that it is not appropriate for the patient to remain liable to be recalled to hospital for further treatment.

(2) Where in the case of any such patient as is mentioned in paragraph (1)—

- (a) sub-paragraph (a) of that paragraph applies; but
- (b) sub-paragraph (b) of that paragraph does not apply,

the tribunal shall direct the conditional discharge of the patient.”.

*A. K. Galloway*  
Clerk of the Privy Council

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends Articles 77 and 78 of the Mental Health (Northern Ireland) Order 1986 to remove the incompatibility of those provisions with Article 5(1) and 5(4) of the European Convention on Human Rights. In England and Wales, in the case of *The Queen on the application of H v Mental Health Review Tribunal North & East London Region (Secretary of State for Health Intervening)* (4 April 2001) the court made a declaration of incompatibility in respect of the corresponding provisions in sections 72(1) and 73(1) of the Mental Health Act 1983.

This Order provides that the Mental Health Review Tribunal for Northern Ireland shall direct the discharge of a patient if it is not satisfied that the criteria justifying his detention in hospital for treatment continue to exist.