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## STATUTORY INSTRUMENTS

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# 1986 No. 595

## The Mental Health (Northern Ireland) Order 1986

### PART XI

#### MISCELLANEOUS AND SUPPLEMENTARY

##### *Miscellaneous*

##### *Voluntary use of services*

**127.**—(1) Nothing in this Order shall be construed as preventing a patient who requires treatment for mental disorder from being admitted to any hospital or private hospital for that treatment in pursuance of arrangements made in that behalf and without an application, order or direction rendering him liable to be detained under this Order, or from remaining in any hospital or private hospital in pursuance of such arrangements after he has ceased to be so liable to be detained.

(2) Where a minor who has attained the age of 16 years is capable of expressing his own wishes, any such arrangements as are mentioned in paragraph (1) may be made, carried out and determined<sup>F1</sup> even though there are one or more persons who have parental responsibility for him (within the meaning of the Children (Northern Ireland) Order 1995).

**F1** 1995 NI 2

##### *Pay, pensions, etc. of patients*

**128.**—(1) Subject to paragraph (2), where any payment falls to be made to any person by way of pay or pension or otherwise in connection with the service or employment of that or any other person, and the payment falls to be made—

- (a) directly out of moneys appropriated by Measure or the Consolidated Fund;
- (b) directly out of moneys provided by Parliament or the Consolidated Fund of the United Kingdom;
- (c) directly out of other moneys administered by or under the control or supervision of a Northern Ireland Department or a Department of the Government of the United Kingdom; or
- (d) by a district council,

the authority by whom the sum in question is payable, if satisfied after considering medical evidence that the person to whom it is payable (in this Article referred to as “the patient”) is incapable by reason of mental disorder of managing and administering his property and affairs, may, instead of paying the sum to the patient apply it in accordance with paragraph (3).

(2) Paragraph (1) shall not apply where a controller has been appointed in Northern Ireland in relation to the property and affairs of the patient.

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(3) The authority may pay the sum or such part thereof as it thinks fit to the institution or person having the care of the patient, to be applied for his benefit and may pay the remainder, if any, or such part of the remainder as it thinks fit—

- (a) to or for the benefit of persons who appear to the authority to be members of the patient's family or other persons for whom the patient might be expected to provide if he were not mentally disordered; or
- (b) in reimbursement, with 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 such persons as are mentioned in sub-paragraph (a).

### ***Warrant to search for and remove patients***

**129.**—(1) If it appears to a justice of the peace, on complaint on oath made by an officer <sup>F2</sup>...<sup>F3</sup> of an authorised [<sup>F4</sup>HSC trust]] or a constable, that there is reasonable cause to suspect that a person believed to be suffering from mental disorder—

- (a) has been, or is being, ill-treated, neglected or kept otherwise than under proper control; or
- (b) being unable to care for himself, is living alone,

the justice may issue a warrant authorising any constable<sup>F5</sup>. . . , accompanied by a medical practitioner, to enter, if need be by force, any premises specified in the warrant in which that person is believed to be, and, if thought fit, to remove him to a place of safety with a view to the making of an application under Part II in respect of him, or of other arrangements for his care or treatment.

(2) If it appears to a justice of the peace, on complaint on oath made by an officer <sup>F6</sup>...<sup>F3</sup> of an authorised [<sup>F4</sup>HSC trust]] or a constable—

- (a) that there is reasonable cause to believe that a patient who, under this Order, is liable to be taken to any place, or to be taken into custody or to be retaken, is to be found on any premises; and
- (b) that admission to the premises has been refused or that a refusal of such admission is apprehended,

the justice may issue a warrant authorising any constable<sup>F5</sup>. . . accompanied by a medical practitioner, to enter the premises, if need be by force, and remove the patient.

(3) If it appears to a justice of the peace, on complaint on oath made by any person authorised by or under section 88 of the Mental Health Act 1983 or<sup>F7</sup> article 8 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005] to take into custody in Northern Ireland any person who may be so taken—

- (a) that there is reasonable cause to believe that a person who may be taken into custody by virtue of either of the aforesaid enactments, is to be found on any premises; and
- (b) that admission to the premises has been refused or that a refusal of such admission is apprehended,

the justice may issue a warrant authorising any constable<sup>F5</sup>. . . , accompanied by a medical practitioner, to enter the premises, if need be by force, and remove the person liable to be taken as aforesaid.

(4) If it appears to a justice of the peace, on complaint on oath made by a person who has made an application for assessment in relation to a patient—

- (a) that the application has been duly completed in accordance with Part II;
- (b) that there is reasonable cause to believe that the patient is to be found on any premises;

(c) that it is not reasonably practicable for the patient to be taken and conveyed to the hospital specified in the application by the applicant or a person authorised by him; and

(d) that the responsible<sup>F3</sup> authority] has been requested to do so but has failed to do so, the justice may issue a warrant authorising any constable<sup>F5</sup>. . . , accompanied by a medical practitioner, to enter, if need be by force, the premises and to take and convey the patient to the hospital specified in the application.

(5) A patient who is removed to a place of safety in the execution of a warrant issued under this Article may be detained there for a period not exceeding 48 hours.

(6) It shall not be necessary in any complaint or warrant under paragraph (1) to name the person concerned.

(7) In this Article “place of safety” means any hospital, of which the<sup>F3</sup> managing <sup>F8</sup>...<sup>F4</sup>HSC trust]] is willing temporarily to receive persons who may be taken there under this Order, any police station, or any other suitable place the occupier of which is willing temporarily to receive such persons.

<b>F2</b>	Words in art. 129(1) omitted (1.4.2022) by virtue of <a href="#">Health and Social Care Act (Northern Ireland) 2022 (c. 3)</a> , s. 8(1)(b), <b>Sch. 1 para. 98(2)</b> ; S.R. 2022/102, art. 2(b)
<b>F3</b>	1994 NI 2
<b>F4</b>	Words in Order substituted (1.4.2009) by <a href="#">Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1)</a> , ss. 32, 34(3), <b>Sch. 6 para. 1(1)(d)</b> (with Sch. 6 para. 1(3)); S.R. 2009/114, <b>art. 2</b>
<b>F5</b>	1989 NI 12
<b>F6</b>	Words in art. 129(2) omitted (1.4.2022) by virtue of <a href="#">Health and Social Care Act (Northern Ireland) 2022 (c. 3)</a> , s. 8(1)(b), <b>Sch. 1 para. 98(2)</b> ; S.R. 2022/102, art. 2(b)
<b>F7</b>	SI 2005/2078
<b>F8</b>	Words in art. 129(7) omitted (1.4.2022) by virtue of <a href="#">Health and Social Care Act (Northern Ireland) 2022 (c. 3)</a> , s. 8(1)(b), <b>Sch. 1 para. 98(3)</b> ; S.R. 2022/102, art. 2(b)

### ***Mentally disordered persons found in public places***

**130.**—(1) If a constable finds in a place to which the public have access a person who appears to him to be suffering from mental disorder and to be in immediate need of care or control, the constable may, if he thinks it necessary to do so in the interests of that person or for the protection of other persons, remove that person to a place of safety within the meaning of Article 129.

(2) A person removed to a place of safety under this Article may be detained there for a period not exceeding 48 hours for the purpose of enabling him to be examined by a medical practitioner and to be interviewed by an approved social worker and of making any necessary arrangements for his care or treatment.

(3) Where a person is removed as aforesaid, it shall, where practicable, be the duty of the constable who has so removed him without delay to inform some responsible person residing with that person and the nearest relative of that person of that removal.

### ***Provisions as to custody, conveyance and detention***

**131.**—(1) Any person required or authorised by or by virtue of this Order to be conveyed to any place or to be kept in custody or detained in a place of safety or at any place to which he is taken under Article 48(5) shall, while being so conveyed, kept or detained, as the case may be, be deemed to be in legal custody.

(2) A constable or any other person required or authorised by or by virtue of this Order, to take any person into custody, or to convey or detain any person shall, for the purposes of taking him into

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custody or conveying or detaining him, have all the powers, authorities, protection and privileges which a constable has within the area for which he acts as constable.

(3) In this Article “convey” includes any other expression denoting removal from one place to another.

### ***Retaking of patients escaping from custody***

**132.**—(1) If any person being in legal custody by virtue of Article 131 escapes, he may, subject to paragraphs (2) to (6), be retaken—

- (a) in any case, by the person who had his custody immediately before the escape, or by any constable or approved social worker;
- (b) if at the time of the escape he was liable to be detained in a hospital or subject to guardianship under this Order, by any other person who could take him into custody under Article 29 if he had absented himself without leave.

(2) A person who escapes as aforesaid when liable to be detained or subject to guardianship as mentioned in paragraph (1)(b) (not being a person subject to a restriction order or an order or direction having the same effect as such an order) shall not be retaken under this Article after the expiration of the period within which he could be retaken under Article 29 if he had absented himself without leave on the day of the escape; and Article 29(3) shall apply with the necessary modifications accordingly.

(3) A person who escapes while being taken to or detained in a place of safety under Article 129 or Article 130 shall not be retaken under this Article after the expiration of the period of 48 hours beginning with the time when he escapes or the period during which he is liable to be so detained, whichever expires first.

(4) This Article, so far as it relates to the escape of a person liable to be detained in a hospital, shall apply in relation to a person who escapes—

- (a) while being taken to or from a hospital in pursuance of Article 28, or of any order or direction under Part III; or
- (b) while being taken to or detained in a place of safety in pursuance of an order under Part III pending his admission to a hospital;

as if he were liable to be detained in that hospital and, if he had not previously been received therein, as if he had been so received.

(5) This Article, so far as it relates to the escape of a person liable to be detained in a hospital, shall apply in relation to a person who, being in legal custody by virtue of the Mental Health Act 1983 or the<sup>[F9]</sup> Mental Health (Care and Treatment) (Scotland) Act 2003] escapes while being taken to a hospital in pursuance of any direction or authorisation under Part VI of the Act of 1983 or<sup>[F9]</sup> being removed to Northern Ireland under regulations made under section 290 of the Act of 2003] as if—

- (a) he were in legal custody by virtue of Article 131; and
- (b) he were liable to be detained in the hospital to which he is being taken and had previously been received therein.

(6) In computing for the purposes of Article 46 the period of 28 days therein mentioned, any time during which the patient is at large and liable to be retaken by virtue of this Article shall be left out of account.

(7) Article 30 shall, with any necessary modifications, apply in relation to a patient who is at large and liable to be retaken by virtue of this Article as it applies in relation to a patient who is absent without leave within the meaning of Article 29, and references therein to Article 29 shall be construed accordingly.

F9 SI 2005/2078

### ***Protection for acts done in pursuance of this Order***

**133.**—(1) A person shall not be liable, whether on the ground of want of jurisdiction or on any other ground, to any civil or criminal proceedings to which he would have been liable apart from this Article in respect of any act purporting to be done in pursuance of this Order or any regulations or rules thereunder, unless the act was done in bad faith or without reasonable care.

(2) No civil proceedings shall be brought against any person in any court in respect of any such act without the leave of the High Court; and no criminal proceedings shall be brought against any person in any court in respect of any such act except by or with the consent of the Director of Public Prosecutions for Northern Ireland.

(3) This Article does not apply to proceedings for an offence under this Order being proceedings which, under any other provision of this Order, can be instituted only by or with the consent of the Director of Public Prosecutions.

(4) This Article does not apply to proceedings against the Department<sup>[F10F11]</sup> ... or an <sup>[F12]</sup>HSC trust]].

**F10** 1994 NI 2

**F11** Words in art. 133(4) omitted (1.4.2022) by virtue of [Health and Social Care Act \(Northern Ireland\) 2022 \(c. 3\)](#), s. 8(1)(b), [Sch. 1 para. 99](#); S.R. 2022/102, art. 2(b)

**F12** 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](#)

### ***Patients removed to or from Northern Ireland***

**134.**—(1) Where a patient is admitted to a hospital in Northern Ireland or received into guardianship there in pursuance of arrangements under Part VI of the 1983 Act or<sup>[F13]</sup> admitted to hospital in Northern Ireland under article 4 of the 2005 Order], the responsible medical officer shall, within 28 days of such admission or reception, furnish to the responsible<sup>[F14]</sup> authority] a report in the prescribed form stating the form of mental disorder from which, in the opinion of the responsible medical officer, the patient is suffering; and where a report is so furnished, the patient shall be treated for the purposes of this Order as suffering from such form of mental disorder as may be stated in the report.

(2) Where a patient has been admitted to a hospital or received into guardianship as mentioned in paragraph (1), the responsible<sup>[F14]</sup> authority] shall immediately notify <sup>[F15]</sup>RQIA] to that effect and as soon as practicable forward to <sup>[F15]</sup>RQIA] a copy of the report relating to the patient made in pursuance of that paragraph.

(3) The power to make regulations under Article 135 includes power to make regulations in respect of the application of this Order to patients removed to Northern Ireland under Part VI of the 1983 Act or<sup>[F13]</sup> regulations made under section 290 of the Mental Health (Care and Treatment) (Scotland) Act 2003].

(4) Subject to paragraph (5), where a patient liable to be detained or subject to guardianship by virtue of an application, report, order or direction under Part II or III (other than Articles 42, 43 or 45) is removed from Northern Ireland in pursuance of arrangements under Part VI of the 1983 Act or<sup>[F13]</sup> article 6 of the 2005 Order], the application, report, order or direction shall cease to have effect when he is duly received into a hospital or other institution, or placed under guardianship<sup>[F13]</sup> or, where he is not received into a hospital but his detention in hospital is authorised by virtue of

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the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995], in pursuance of those arrangements.

(5) Where the Secretary of State exercises his powers under section 86 of the 1983 Act in respect of a patient who is detained pursuant to a hospital order and in respect of whom a restriction order is in force, those orders shall continue in force so as to apply to the patient if he returns to Northern Ireland at any time before the end of the period for which those orders would have continued in force.

(6) Where the Secretary of State or the Department authorises the removal from Northern Ireland of a patient under Part VI of the 1983 Act or<sup>[F13]</sup> article 6 of the 2005 Order], the Secretary of State or the Department shall send notification of that authorisation to <sup>[F15]</sup>RQIA] and to the nearest relative of the patient not less than 7 days before the date of the removal of the patient.

(7) In this Article—

“the 1983 Act” means the Mental Health Act 1983;

*Definition rep. by SI 2005/2078*

<sup>[F13]</sup>“the 2005 Order” means the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005.]

<sup>[F13]</sup>(8) Reference in this Article to a patient whose detention in hospital is authorised by virtue of the Mental Health (Care and Treatment) (Scotland) Act 2003 or the Criminal Procedure (Scotland) Act 1995, shall be read as including references to a patient in respect of whom a certificate under one of the provisions listed in section 290(7)(a) of the Act of 2003 is in operation.]

**F13** SI 2005/2078

**F14** 1994 NI 2

**F15** 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**

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

**C1** [Art. 134](#) applied (with modifications.) (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/22\)](#), regs. 1, **3(9)**, 4

**C2** [Art. 134](#) applied (with modifications) (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/403\)](#), regs. 1, **3(9)(a)(i)-(vi)**, 4

*Art. 134A rep. by 1994 NI 2*

*Supplementary*

**Regulations and rules**

**135.—(1)** The Department may make regulations for prescribing anything which, under this Order, is required or authorised to be prescribed, and otherwise for carrying this Order into effect.

(2) Regulations and rules made under this Order (other than regulations made under Article 95<sup>F16</sup>. . . ) shall be subject to negative resolution.

(3) Regulations for the purposes of Article 113 shall be subject to the approval of the Department of Finance and Personnel.

**F16** 1994 NI 2

## ***Amendments***

### ***Para. (1)—Amendments***

(2) In any statutory provision for any reference to “idiot”, “imbecile”, “mental defective”, “mental defectiveness”, “mental deficiency” or any other cognate expression there shall be substituted a reference to “ person suffering from mental handicap ” or “ mental handicap ” or such other cognate expression as by virtue of any of the provisions of this Order the context may require.

(3) In any statutory provision for any reference to the committee of the estate of a person suffering from mental disorder there shall be substituted a reference to the controller for such a person appointed under Article 101.

## ***Transitional provisions***

**137.** The transitional provisions set out in Schedule 6 shall have effect.

### ***Art. 138—Repeals***

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**Changes and effects yet to be applied to the whole Order associated Parts and Chapters:**

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- Sch. 5 Pt. 2 repealed in part by [S.I. 2003/435 \(N.I.\) Sch. 5](#) (text not available on [Legislation.gov.uk](#))
- Sch.05 Pt. 1 rev. in pt. by [1995 c. 35 s. 29\(2\)Sch. 3](#)
- Sch. 5 Pt. 2 rev. in pt. by [1998 c. 47 s. 100\(2\)Sch. 15](#)
- art. 14A inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 10](#)
- art. 36(2)(za) inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 22\(3\)](#)
- art. 36(3)(e) and word inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 22\(4\)\(d\)](#)
- art. 37(1)(za) inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 23\(2\)\(a\)](#)
- art. 37(1A) inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 23\(3\)](#)
- art. 52 rev. by [1996 c. 46 s. 35\(2\)Sch.7 Pt. 3](#)
- art.52 rev. (DrosD,) by [1996 c. 46 s. 35\(2\)Sch.7 Pt.III](#)
- art. 63A63B inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 31](#)
- art. 67(2A) inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 35\(4\)](#)
- art. 83(4A) inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 48\(4\)](#)
- art. 120(4) inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 59\(4\)](#)
- art. 133(2A) inserted by [2016 c. 18 \(N.I.\) Sch. 8 para. 68\(4\)](#)