

*Status: Point in time view as at 02/12/2019.*

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## STATUTORY INSTRUMENTS

# 1986 No. 595

## The Mental Health (Northern Ireland) Order 1986

### PART I

#### INTRODUCTORY

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

- C1** Pt. I applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2012 \(S.R. 2012/403\)](#), regs. 1, **3(2)**, 4
- C2** Pt. I applied (31.3.2013) by [Mental Health \(Private Hospitals\) Regulations \(Northern Ireland\) 2013 \(S.R. 2013/22\)](#), regs. 1, **3(2)**, 4

##### ***Title and commencement***

1.—(1) This Order may be cited as the Mental Health (Northern Ireland) Order 1986.

(2) This Order shall come into operation on such day or days as the Head of the Department may by order appoint<sup>F1</sup>.

(3) An order under paragraph (2) may also appoint a day for the coming into operation of any provision of the Mental Health (Northern Ireland Consequential Amendments) Order 1986 which appears to the Head of the Department to be consequential on any provision of this Order brought into operation by the order.

**F1** partly exercised by SR 1986/107, 330; 1988/216; 1990/161

##### *[<sup>F2</sup>Interpretation of Order]*

**F2** Art. 2 cross-heading inserted (2.12.2019) by [Mental Capacity Act \(Northern Ireland\) 2016 \(c. 18\)](#), s. 307(2), **Sch. 8 para. 2** (with ss. 285-287); S.R. 2019/163, art. 2(2), **Sch. Pt. 2** (with art. 3) (as amended by S.R. 2019/190, art. 2)

##### ***Interpretation***

2.—(1) The Interpretation Act (Northern Ireland) 1954 shall apply to Article 1 and the following provisions of this Order as it applies to a Measure of the Northern Ireland Assembly.

(2) In this Order—

“absent without leave” has the meaning assigned to it by Article 29(5);

[<sup>F3</sup>“the 2016 Act” means the Mental Capacity Act (Northern Ireland) 2016;]

“application for assessment” has the meaning assigned to it by Article 4(1);

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“the applicant”, in relation to an application for assessment, has the meaning assigned to it by Article 5(1) and, in relation to a guardianship application, has the meaning assigned to it by Article 19(1);

[<sup>F4</sup>“approved social worker” means an officer of a Board or an authorised [<sup>F5</sup>HSC trust] appointed to act as an approved social worker for the purposes of this Order;]

[<sup>F3</sup>“best interests”: any determination of what would be in the best interests of a patient who is under 16 is to be made in accordance with Article 3B;]

“Board” means a Health and Social Services Board established under Article 16 of the Health and Personal Social Services (Northern Ireland) Order 1972;

<sup>F6</sup> . . . . .

“date of admission” has the meaning assigned to it by Article 9(3);

“the Department” means the Department of Health and Social Services;

“detained for treatment” has the meaning assigned to it by Article 12(5);

“guardianship application” has the meaning assigned to it by Article 18(1);

[<sup>F4</sup>“hospital”, subject to paragraph (2A), means any hospital, institution or special accommodation vested in the Department or in an authorised [<sup>F5</sup>HSC trust];]

“hospital order” and “guardianship order” have the meanings respectively assigned by Article 44(1)(a) and (b);

*Definition rep. by 1992 NI 20*

[<sup>F4</sup>“ [<sup>F5</sup>HSC trust]” means a [<sup>F7</sup>Health and Social Care trust] established under the Health and Personal Social Services (Northern Ireland) Order 1991 and “authorised [<sup>F5</sup>HSC trust]” shall be construed in accordance with paragraph (2B);]

[<sup>F3</sup>“independent advocate” has the same meaning as in Article 3C;]

“interim hospital order” has the meaning assigned to it by Article 45(1);

“medical practitioner” means a fully registered person within the meaning of the Medical Act 1983;

“medical treatment” includes nursing, and also includes care and training under medical supervision;

“nearest relative”, in relation to a patient, has the meaning assigned to it in Part II;

“nursing home” has the meaning assigned to it by [<sup>F8</sup> Article 11 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003];

“patient” (except in Part VIII) means a person suffering or appearing to be suffering from mental disorder;

“prescribed” means prescribed by regulations;

“private hospital” has the meaning assigned to it by Article 90(2);

[<sup>F9</sup>“RQIA” means the Health and Social Care Regulation and Quality Improvement Authority;]

“regulations” means regulations made by the Department;

[<sup>F8</sup>“residential care home” has the meaning assigned to it by Article 10 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;]

[<sup>F4</sup>“responsible authority” means—

- (a) in relation to a patient whose admission to a hospital is being sought or who is in, or is liable to be detained in, a hospital—
  - (i) where the hospital is vested in an authorised [<sup>F5</sup>HSC trust] , that trust;
  - (ii) [<sup>F10</sup>in any other case, the Regional Health and Social Care Board;]
- (b) in relation to a patient who is the subject of a guardianship application or is subject to guardianship under this Order—
  - (i) where that patient resides in the area of an authorised [<sup>F5</sup>HSC trust] , that trust;
  - (ii) [<sup>F10</sup>in any other case, the Regional Health and Social Care Board;]

“responsible medical officer” means—

- (a) in relation to a patient liable to be detained in hospital under this Order, the medical practitioner appointed for the purposes of Part II by [<sup>F11</sup>RQIA] who is in charge of the assessment or treatment of the patient;
- (b) in relation to a patient subject to guardianship under this Order, any medical practitioner appointed for the purposes of Part II by [<sup>F11</sup>RQIA] who may be authorised to act (either generally or in any particular case or class of case or for any particular purpose) as the responsible medical officer by the responsible [<sup>F4</sup> authority];
- (c) in relation to any other patient, the medical practitioner appointed for the purposes of Part II by [<sup>F11</sup>RQIA] who is in charge of the treatment of the patient;

“restriction direction” has the meaning assigned to it by Article 55(2);

“restriction order” has the meaning assigned to it by Article 47(1);

“the Review Tribunal” means [<sup>F12</sup>the Review Tribunal constituted under Article 70] ;

“statutory provision” has the meaning assigned to it by section 1(f) of the Interpretation Act (Northern Ireland) 1954;

“special accommodation” has the meaning assigned to it by Article 110;

“transfer direction” has the meaning assigned to it by Article 53(2).

[<sup>F4</sup>(2A) In Articles 7A, [<sup>F13</sup> 29,] 107(1B), 113, 116, 121, 123(1) and 129(7) “hospital” includes any hospital or institution vested in an [<sup>F5</sup>HSC trust] other than an authorised [<sup>F5</sup>HSC trust].

(2B) A reference in any provision of this Order to an “authorised [<sup>F5</sup>HSC trust]” is a reference to an [<sup>F5</sup>HSC trust] by which functions under that provision are exercisable by virtue of an authorisation for the time being in operation under Article 3(1) of the Health and Personal Social Services (Northern Ireland) Order 1994.

(2C) A reference in this Order to the area of an authorised [<sup>F5</sup>HSC trust] is a reference to the operational area of that trust as defined in Article 2(2) of the Health and Personal Social Services (Northern Ireland) Order 1972.]

(3) In relation to a person who is liable to be detained or subject to guardianship by virtue of an order or direction under Part III, any reference in this Order to any provision contained in Part II or in Article 71, 72 or 73 shall be construed as a reference to that provision as it applies to that person by virtue of Part III or Article 74(1).

(4) In determining for the purposes of this Order whether the failure to detain a patient or the discharge of a patient would create a substantial likelihood of serious physical harm—

- (a) to himself, regard shall be had only to evidence—
  - (i) that the patient has inflicted, or threatened or attempted to inflict, serious physical harm on himself; or

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- (ii) that the patient's judgment is so affected that he is, or would soon be, unable to protect himself against serious physical harm and that reasonable provision for his protection is not available in the community;
- (b) to other persons, regard shall be had only to evidence—
  - (i) that the patient has behaved violently towards other persons; or
  - (ii) that the patient has so behaved himself that other persons were placed in reasonable fear of serious physical harm to themselves.

<b>F3</b>	Words in art. 2(2) inserted (2.12.2019 for specified purposes) (but omit after "(Northern Ireland) 2016") by <a href="#">Mental Capacity Act (Northern Ireland) 2016 (c. 18)</a> , s. 307(2), <a href="#">Sch. 8 para. 3(3)</a> (with ss. 285-287); S.R. 2019/163, art. 2(2), Sch. Pt. 2 (with art. 3) (as amended by S.R. 2019/190, art. 2)
<b>F4</b>	1994 NI 2
<b>F5</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), <a href="#">Sch. 6 para. 1(1)(d)</a> (with Sch. 6 para. 1(3)); S.R. 2009/114, <a href="#">art. 2</a>
<b>F6</b>	Art. 2(2): definition of "the Commission" repealed (1.4.2009) by <a href="#">Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1)</a> , ss. 32, 33, 34(3), Sch. 6 para. 8(2)(a), <a href="#">Sch. 7</a> ; S.R. 2009/114, <a href="#">art. 2</a>
<b>F7</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), <a href="#">Sch. 6 para. 1(1)(c)</a> (with Sch. 6 para. 1(3)); S.R. 2009/114, <a href="#">art. 2</a>
<b>F8</b>	2003 NI 9
<b>F9</b>	Art. 2(2): definition of "RQIA" inserted (1.4.2009) by <a href="#">Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1)</a> , ss. 32, 34(3), <a href="#">Sch. 6 para. 8(2)(c)</a> ; S.R. 2009/114, <a href="#">art. 2</a>
<b>F10</b>	Art. 2(2): words in definition of "responsible authority" substituted (1.4.2009) by <a href="#">Health and Social Care (Reform) Act (Northern Ireland) 2009 (c. 1)</a> , ss. 32, 34(3), <a href="#">Sch. 6 para. 8(2)(b)</a> ; S.R. 2009/114, <a href="#">art. 2</a>
<b>F11</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), <a href="#">Sch. 6 para. 8(1)</a> (subject to Sch. 6 para. 8(2)-(4)); S.R. 2009/114, <a href="#">art. 2</a>
<b>F12</b>	Words in art. 2(2) substituted (2.12.2019) by <a href="#">Mental Capacity Act (Northern Ireland) 2016 (c. 18)</a> , s. 307(2), <a href="#">Sch. 8 para. 3(9)</a> (with ss. 285-287); S.R. 2019/163, art. 2(2), Sch. Pt. 2 (with art. 3) (as amended by S.R. 2019/190, art. 2)
<b>F13</b>	SR 1994/66

### **Definition of “mental disorder” and related expressions**

3.—(1) In this Order—

“mental disorder” means mental illness, mental handicap and any other disorder or disability of mind;

“mental illness” means a state of mind which affects a person's thinking, perceiving, emotion or judgment to the extent that he requires care or medical treatment in his own interests or the interests of other persons;

“mental handicap” means a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning;

“severe mental handicap” means a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning;

“severe mental impairment” means a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning and is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned.

(2) No person shall be treated under this Order as suffering from mental disorder, or from any form of mental disorder, by reason only of personality disorder, promiscuity or other immoral conduct, sexual deviancy or dependence on alcohol or drugs.

## *F<sup>14</sup> General provisions about patients under 16*

**F14** Arts. 3A-3D and cross-heading inserted (2.12.2019 for specified purposes) (but omit until "In-patients under 16: duties of hospital managers") by [Mental Capacity Act \(Northern Ireland\) 2016 \(c. 18\), s. 307\(2\), Sch. 8 para. 4](#) (with ss. 285-287); S.R. 2019/163, art. 2(2), Sch. Pt. 2 (with arts. 3, 4) (as amended by S.R. 2019/190, art. 2)

### **Best interests of patient under 16**

**3A.**—(1) This Article applies to a person responsible for the treatment or care (or both) of a patient under 16.

(2) The person's primary consideration, when making decisions about the patient's treatment or care, must be the patient's best interests.

(3) In this Article—

- (a) “treatment” means any treatment relating to mental disorder;
- (b) “care” means any care given where the patient is being assessed or treated for mental disorder.

(4) In this paragraph references to assessment or treatment are to any assessment or treatment, whether or not under Part 2.

### **Determination of a patient's best interests**

**3B.**—(1) This Article applies where for any purpose of this Order it falls to a person to determine what treatment or care would be in the best interests of a patient (“C”) who is under 16.

(2) In determining what would be in C's best interests, the person must take into account C's age but must not make the determination merely on the basis of—

- (a) C's age or appearance; or
- (b) any other characteristic of C's, including any condition that C has, which might lead others to make unjustified assumptions about what might be in C's best interests.

(3) The person—

- (a) must consider all the relevant circumstances (that is, all the circumstances of which the person is aware which it is reasonable to regard as relevant); and
- (b) must in particular take the following steps.

(4) The person—

- (a) must consider whether it is likely that C will, when he or she reaches the age of 16, have capacity in relation to the matter in question; and
- (b) if it appears likely that C will, must consider when C will reach that age.

(5) The person must, so far as reasonably practicable—

- (a) encourage and help C to participate, or to improve C's ability to participate, as fully as possible in any decision about C's treatment or care; and
- (b) in particular, ensure that C is provided in an appropriate way with information and advice about the treatment or care.

(6) The person must have special regard to (so far as they are reasonably ascertainable)—

- (a) C's past and present wishes and feelings (and, in particular, any relevant written statement made by C); and
- (b) C's beliefs and values.

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- (7) The person must—
- (a) so far as it is practicable and appropriate to do so, consult the relevant people about what would be in C's best interests and in particular about the matters mentioned in paragraph (6); and
  - (b) take into account the views of those people (so far as ascertained from that consultation or otherwise) about what would be in C's best interests and in particular about those matters.

For the definition of “the relevant people” see paragraph (9).

(8) The person must, in relation to anything proposed to be done, have regard to whether the same purpose can be as effectively achieved in a way that is less restrictive of C's rights and freedoms of action.

- (9) In paragraph (7) “the relevant people” means—
- (a) every person who has parental responsibility for C;
  - (b) C's nearest relative;
  - (c) if at the time of the determination there is an independent advocate instructed to represent and provide support to C, the independent advocate;
  - (d) any other person named by C as someone to be consulted on the matter in question or on matters of that kind;
  - (e) anyone engaged in caring for C or interested in C's welfare.

### **Independent Advocates**

**3C.—**(1) The Department must make regulations about independent advocates.

(2) An “independent advocate” means a person who has been appointed by an HSC trust, in accordance with the regulations, to be a person to whom the trust may from time to time offer instructions to represent and provide support to a patient who is under 16 in relation to matters specified in the instructions.

- (3) The regulations may in particular—
- (a) require HSC trusts to make arrangements for the purpose of ensuring that independent advocates are available to be instructed;
  - (b) make provision about such arrangements (including provision providing that a person may be appointed as mentioned in paragraph (2) only if the person meets prescribed conditions);
  - (c) make provision for the purpose of securing the independence of independent advocates;
  - (d) make provision in relation to the instruction of independent advocates (including provision permitting or requiring a prescribed person, in prescribed circumstances, to request an HSC trust to instruct an independent advocate);
  - (e) make provision about the functions of independent advocates.

- (4) The conditions that may be prescribed by virtue of paragraph (3)(b) include—
- (a) a condition that the person is approved, or belongs to a description of persons approved, in accordance with the regulations;
  - (b) a condition that the person has prescribed qualifications or skills or has undertaken prescribed training.

(5) The regulations must make provision for the purpose of securing that, except in prescribed circumstances, an independent advocate is instructed—

- (a) where a patient under 16 is admitted to a hospital (whether under Part 2 or otherwise) for the assessment or treatment of mental disorder; or

- (b) where it is proposed to give a patient under 16 a form of medical treatment to which Article 63 or 63B applies.
- (6) The regulations may apply, or make provision corresponding to, any provision within paragraph (7) (with or without modifications).
- (7) The provisions are—
  - (a) any provision of Part 4 of the 2016 Act;
  - (b) any provision of regulations made under that Part;
  - (c) any provision that could be made by regulations under that Part.

### **In-patients under 16: duties of hospital managers**

- 3D.**—(1) This Article applies in relation to a patient who—
- (a) is under 16; and
  - (b) is an in-patient in a hospital for the purposes of the assessment or treatment of mental disorder (whether by virtue of Part 2 or otherwise).
- (2) The responsible authority of the hospital must ensure that (subject to the patient's needs) the patient's environment in the hospital is suitable having regard to his or her age.
- (3) For the purposes of deciding how to fulfil the duty under paragraph (2), the responsible authority must consult a person who appears to that authority to have knowledge or experience which makes that person suitable to be consulted.]

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