
STATUTORY INSTRUMENTS

1986 No. 595

The Mental Health (Northern Ireland) Order 1986

PART III

**PATIENTS CONCERNED IN CRIMINAL
PROCEEDINGS OR UNDER SENTENCE**

Hospital and guardianship orders

Powers of courts to order hospital admission or guardianship

44.—(1) Where a person is convicted before the Crown Court of an offence punishable with imprisonment other than an offence the sentence for which is fixed by law, or is convicted by a court of summary jurisdiction of an offence punishable on summary conviction with imprisonment, then—

- (a) if the conditions mentioned in paragraph (2) are satisfied, the court may by order (in this Order referred to as a “hospital order”) commit him to the care of [^{F1}such authorised HSC trust as it may specify] for admission to hospital; or
- (b) if the conditions mentioned in paragraph (3) are satisfied, the court may by order (in this Order referred to as a “guardianship order”) place him under the guardianship of ^{F2}... [^{F3}an authorised [^{F4}HSC trust]] or of such other person approved by ^{F2}... [^{F3}an authorised [^{F4}HSC trust]] as may be specified in the order.

[^{F5}(1A) In the case of an offence the sentence for which would otherwise fall to be imposed—

- (a) under Article 70(2) of the Firearms (Northern Ireland) Order 2004 (NI 3),
- (b) under paragraph 2(4) or (5) of Schedule 2 to the Violent Crime Reduction Act 2006 (c. 38),
or
- (c) under Article 13 [^{F6}, 13A] or 14 of the Criminal Justice (Northern Ireland) Order 2008,

nothing in those provisions shall prevent a court from making an order under paragraph (1) for the admission of the offender to a hospital

(1B) References in paragraph (1A) to a sentence falling to be imposed under any of the provisions mentioned in that paragraph are to be read in accordance with Article 4(2) of the Criminal Justice (Northern Ireland) Order 2008.]

(2) The conditions referred to in paragraph (1)(a) are that—

- (a) the court is satisfied on the oral evidence of a medical practitioner appointed for the purposes of Part II by [^{F7}RQIA] and on the written or oral evidence of one other medical practitioner that the offender is suffering from mental illness or severe mental impairment of a nature or degree which warrants his detention in hospital for medical treatment; and
- (b) the court is of opinion, having regard to all the circumstances, including the nature of the offence and the character and antecedents of the offender, and to the other available

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methods of dealing with him, that the most suitable means of dealing with the case is by means of a hospital order.

- (3) The conditions referred to in paragraph (1)(b) are that—
- (a) the offender has attained the age of 16 years;
 - (b) the court is satisfied on the oral evidence of a medical practitioner appointed for the purposes of Part II by [F7RQIA] and on the written or oral evidence of one other medical practitioner that the offender is suffering from mental illness or severe mental handicap of a nature or degree which warrants his reception into guardianship;
 - (c) the court is satisfied on the written or oral evidence of an approved social worker that it is necessary in the interests of the welfare of the patient that he should be received into guardianship; and
 - (d) the court is of opinion, having regard to all the circumstances, including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with him, that the most suitable means of dealing with the case is by means of a guardianship order.

(4) Where a person is charged before a court of summary jurisdiction with any act or omission as an offence and the court would have power, on convicting him of that offence, to make an order under paragraph (1) then, if the court is satisfied that the accused did the act or made the omission charged, the court may, if it thinks fit, make such an order without convicting him.

(5) A hospital order shall not be made under this Article by a court unless an opportunity has been given to [F8the trust which it proposes to specify] to make representations to the court concerning the making of such an order.

(6) A guardianship order placing a patient under the guardianship of any person shall not be made under this Article unless the court is satisfied that that person is willing to receive the patient into guardianship.

(7) A hospital order or guardianship order shall specify the form or forms of mental disorder referred to in sub-paragraph (a) of paragraph (2) or sub-paragraph (b) of paragraph (3) from which, upon the evidence taken into account under that sub-paragraph, the offender is found by the court to be suffering; and no such order shall be made unless the offender is [F9described by each of the practitioners][F9described by the practitioner] whose evidence is taken into account under that sub-paragraph as suffering from the same form of mental disorder, [F10whether or not he is also described by either of them][F10whether or not he is also described by the practitioner] as suffering from another form.

(8) Where an order is made under this Article, the court shall not pass sentence of imprisonment or impose a fine or make a probation order in respect of the offence, but may make any other order which the court has power to make apart from this Article; and for the purposes of this paragraph “sentence of imprisonment” includes any sentence or order for detention, including an order under [F11 Article 39 of the Criminal Justice (Children) (Northern Ireland) Order 1998 sending a child under the age of 17 to a juvenile justice centre.]

F1 Words in art. 44(1) substituted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 79(2)(a)**; S.R. 2022/102, art. 2(b)

F2 Words in art. 44(1) omitted (1.4.2022) by virtue of Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 79(2)(b)**; S.R. 2022/102, art. 2(b)

F3 1994 NI 2

F4 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**

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- F5** Art. 44(1A)(1B) inserted (15.5.2008) by Criminal Justice (Northern Ireland) Order 2008 (S.I. 2008/1216 (N.I. 1)), arts. 1(4), 102(1), **Sch. 5 para. 5(1)**; S.R. 2008/217, **art. 2**, Sch. paras. 16, 18(c) (subject to art. 3)
- F6** Word in art. 44(1A)(c) inserted (29.6.2021) by Counter-Terrorism and Sentencing Act 2021 (c. 11), s. 50(2)(v), **Sch. 13 para. 63**
- F7** 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**
- F8** Words in art. 44(5) substituted (1.4.2022) by Health and Social Care Act (Northern Ireland) 2022 (c. 3), s. 8(1)(b), **Sch. 1 para. 79(3)**; S.R. 2022/102, art. 2(b)
- F9** Words in art. 44(7) substituted (temp.) (2.4.2020) by virtue of Coronavirus Act 2020 (c. 7), s. 87(2), **Sch. 10 para. 10(3)(a)** (with ss. 88-90, Sch. 10 para. 2); S.R. 2020/58, **art. 2(c)**
- F10** Words in art. 44(7) substituted (temp.) (2.4.2020) by virtue of Coronavirus Act 2020 (c. 7), s. 87(2), **Sch. 10 para. 10(3)(b)** (with ss. 88-90, Sch. 10 para. 2); S.R. 2020/58, **art. 2(c)**
- F11** 1998 NI 9

Modifications etc. (not altering text)

- C1** Art. 44(1)(a)(b) modified (temp.) (2.4.2020) by Coronavirus Act 2020 (c. 7), s. 87(2), Sch. 10 para. 10(1)(2) (with ss. 88-90, Sch. 10 para. 2); S.R. 2020/58, art. 2(c)
- C2** Art. 44(1)(a)(b) expiry of earlier affecting provision 2020 c. 7, Sch. 10 paras. 3-13 (25.3.2022) by Coronavirus Act 2020 (c. 7), **s. 89** (with s. 90)
- C3** Art. 44(7) expiry of earlier affecting provision 2020 c. 7, Sch. 10 paras. 3-13 (25.3.2022) by Coronavirus Act 2020 (c. 7), **s. 89** (with s. 90)

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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\(4\)](#)