<table>
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<th><strong>This is an official Northern Trust policy and should not be edited in any way</strong></th>
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| **Guardianship under the Mental Health (Northern Ireland) Order 1986**  
**A Model for Operation** |
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| NHSCT/10/315 |
| **Target audience:** |
| Social Work Staff |
| **Sources of advice in relation to this document:** |
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| **NHSCT Mission Statement** |
| To provide for all the quality of services we would expect for our families and ourselves |
Guardianship under the Mental Health (Northern Ireland) Order 1986

A model for operation

March 2010
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The equality and human rights implications were considered during the development of this policy. The draft of this policy was offered for public consultation during December 2007 and January 2008 and amended in light of the feedback received.
1. The legislative background
1. **The legislative background**

1.1 **Introduction**

Mental health law poses a number of potentially conflicting interests and principles. The opportunity to use services on a voluntary basis (Article 127) and the focus on the least restrictive alternative for providing for the patient’s care and protection sit alongside the powers to compulsory admit to hospital and in some circumstances to treat patients against their will. Guardianship too is the exercise of compulsory powers and to a degree limits the freedom of the individual. However, if it is to work to full advantage a high degree of co-operation is required from the patient.

The limiting of a person’s civil liberties permitted by the appropriate exercise of the powers within the Order should be balanced by the view that the Order is a vehicle to secure the most appropriate form of treatment or care for a vulnerable person at the time of their, and possibly their carer’s, greatest need.

Article 133 offers protection for staff in relation to the performance of their duties under the Order provided that they have acted in good faith and with reasonable care.

In carrying out their responsibilities under the Order, staff should have regard to the provision of The Human Rights Act 1998 and the equality obligations of Section 75 of the Northern Ireland Act 1998.

Most patients are received into guardianship under Part II of the Mental Health (Northern Ireland) Order 1986. The model of operation set out is offered to staff for guidance in the discharge of their statutory duties. While every effort has been made to make sure of the accuracy and reliability of the information in these pages, they are not intended to be relied upon as an authoritative statement of the law. Consequently, the guidance should not be used as a substitute for legal advice which should be taken on the particular aspects of any individual case where there is any doubt.

1.2 **The purpose of guardianship**

The purpose of guardianship is primarily to ensure the welfare (rather than the medical treatment) of a patient in a community setting where this cannot be achieved without the use of some or all of the powers vested by guardianship. It provides a less restrictive means of offering assistance to a person than, and should be considered as an alternative to, detention in hospital. It enables the establishment of an authoritative framework for working with a patient with a minimum of constraint to help the patient to achieve as independent a life as possible within the community. Arrangements for giving
effect to guardianship should be as straightforward as possible. The objective should be simply to make sure that guardianship is used properly and in a positive and flexible manner.

Where guardianship is used it should be part of an agreed comprehensive care plan drawn up by the professionals who are or who could be involved in the patient's care, and, where appropriate, the patient, the patient's nearest relative or other informal carer. The care plan should indicate which of the powers given by guardianship are necessary for the care objectives to be achieved. If none of the powers given by guardianship are considered necessary for securing the patient's welfare, guardianship is inappropriate.

Where an adult is assessed as requiring residential care, but due to mental incapacity is unable to make a decision as to whether they wish to be placed in residential care, those responsible for their care should consider the applicability and appropriateness of guardianship for providing a framework within which decisions about how current and future care can be planned. **Full consideration must be given to the individual’s and family members’ Human Rights in this decision making process. For further explanation refer to Paragraph 1.5.** Guardianship does not, however, confer powers to compel the admission of an unwilling person into residential care.

[Code of Practice, Page 27, para 3.1 & para 3.3 and Page 34, para 3.24]

1.3 Components of effective guardianship

The Code of Practice suggests that the following components are necessary for guardianship to be effective:

- a willingness by the guardian to "advocate" on behalf of the patient in relation to those agencies whose services are needed to carry out the care plan;
- readily available support from the Trust for the guardian;
- an appropriate place of residence taking into account the patient's needs for support, care, treatment and protection;
- access to necessary day care, education and training facilities as appropriate; and
- effective co-operation and communication between all persons concerned in implementing the care plan.

**Note:** Where the patient is **capable** of understanding, it is also necessary that there should be recognition by the patient of the "authority" of the guardian. There must be a willingness on the part of both parties to work together within the terms of the authority, which is vested in the guardian by the Order.

[Code of Practice, Page 28, paragraph 3.4]
The Guide states "... there is little point considering guardianship if there is a likelihood that the patient will be unwilling to co-operate or abide by the conditions imposed by the Order. In each case it is for the approved social worker, in the exercise of their professional judgement to determine whether guardianship is justified in the light of the benefit the patient may derive from the limited supervisory powers of the guardian." [DHSC Guide, Page 22, paragraph 72]

1.4 Principles

Trust staff will discharge their responsibilities under the Mental Health (Northern Ireland) Order 1986 based on the following principles.

- A patient and carer-centred approach.
- Patients and carers must be accorded respect at all times.
- Help provided appropriately reflects the needs of carers in their caring role as well as the needs of those cared for.

Also, the principles of confidentiality, anti-discrimination and acceptance of the individual's right to live out their chosen lifestyle (provided this does not put themselves or others at unacceptable risk) must be upheld having regard to the Trust's equality obligations under Section 75 of the Northern Ireland Act 1998. **Due regard must also be given to the principles underpinning the Human Rights Act 1998.**

Responsibilities will be discharged in line with the broad principles set out in the Code of Practice, that people suffering from mental disorder should:

- be treated and cared for in such a way as to maintain their dignity;
- receive respect for and consideration of their individual qualities and background - social, cultural, and religious;
- have their needs taken fully into account notwithstanding the fact that, within available resources, it may not always be practicable to meet them;
- receive any necessary treatment or care with the least degree of control and segregation consistent with their safety and the safety of others;
- be discharged from any form of constraint or control to which they are subject under the Order immediately this is no longer necessary;
- be treated or cared for in such a way as to promote their self-determination and encourage personal responsibility to the greatest possible degree consistent with their needs, wishes and abilities.

This means, in particular, that all individuals should be as fully involved as practicable, consistent with their needs and wishes, in the formulation and delivery of their care and treatment. Where difficulties such as physical or
sensory impairment, literacy problems, or language barriers impede such involvement, reasonable steps should be taken to attempt to overcome them. It means that patients should have their legal rights drawn to their attention, consistent with their capacity to understand them. Where they cannot understand, their rights should be explained to their carers, relatives or friends as appropriate. Finally, it means that, when treatment or care is provided in conditions of security, patients should be subject only to the level of security appropriate to their individual needs and only for so long as it is required.

[The Code, Page 3, paragraph 1.8 and 1.9]

1.5 Human rights legislation

The Human Rights Act, which came into force on 2 October 2000, is one of the most significant pieces of constitutional legislation enacted in the United Kingdom. The Act requires public bodies to comply with the European Convention on Human Rights. The Act also applies to ‘private’ organisations providing public functions, for example a voluntary organisation providing health or social care services.

It is recommended that the Human Rights list is considered as part of each case discussion and that the relevant articles are highlighted in case records.

The Convention guarantees the following rights and freedoms (although all Articles should be considered those in italic may have particular relevance to Mental Health):

Article 2 - The right to life.

Article 3 - The right to freedom from torture and inhuman or degrading treatment or punishment.

Article 4 - The right to freedom from slavery, servitude and forced or compulsory labour.

Article 5 - The right to liberty and security of person (subject to a UK derogation).

Article 6 - The right to a fair and public hearing within a reasonable time.

Article 7 - The right to freedom to retrospective criminal law and no punishment without law.

Article 8 - The right to respect for private and family life, home and correspondence.

Article 9 - The right to freedom of thought, conscience and religion.

Article 10 - The right to freedom of expression.
Article 11 - The right to freedom of assembly and association.

Article 12 - The right to marry and found a family.

Article 14 - The prohibition of discrimination in the enjoyment of the Convention Rights.

Article 1 of Protocol 1 - The right to peaceful enjoyment of possessions and protection of property.

Article 2 of Protocol 1 - The right of access to education (subject to a UK reservation).

Article 3 of Protocol 1 - The right of free elections.

Article 1 and 2 of Protocol 6 - The right not to be subjected to the death penalty.

1.6 Equality obligations

The statutory equality obligations of Section 75 of the Northern Ireland Act 1998 require the Trust, in carrying out its functions, to have due regard to the need to promote equality of opportunity between:

- people of different religious belief, political opinion, racial group, age, marital status or sexual orientation;
- men and women generally;
- persons with a disability and persons without; and
- persons with dependants and persons without.

Without prejudice to these obligations, the Trust is also required to have regard to the desirability of promoting good relations between people of different religious belief, political opinion or racial group.

Within Section 75 ‘disability’ has the same meaning as in the Disability Discrimination Act 1995, that is an adult or child is disabled if they have a physical or mental impairment which has a substantial and long term effect on their ability to carry out normal day-to-day activities. This could include individuals with a mental illness or severe mental handicap of a nature or degree which warrants reception into guardianship.

The Trust is committed to promoting equality of opportunity and good relations in all aspects of its work.

1.7 References

1. The Mental Health (Northern Ireland) Order 1986 (the Order)

The Order makes provision with respect to the detention, guardianship, care and treatment of patients suffering from mental disorder.
2. The Mental Health (Nurses, Guardianship, Consent to treatment and Prescribed forms) Regulations (Northern Ireland) 1986 (the Regulations)

These are regulations (also known as statutory rules) made under powers given in the Order, and amended in 1992.


This guide to the Order was published by the Department in 1986.

4. Code of Practice for the Mental Health (Northern Ireland) Order 1986 (the Code)

Article 111 of the Order requires the publication and periodic revision of a Code of Practice. First published in 1992, the scope of the Code is prescribed by Article 111. The Code does not purport to be all-embracing. Its intention is to provide guidance in straightforward language on matters of day-to-day practice. It offers advice on what is generally agreed to be good professional practice. The Order does not impose a legal duty to comply with the Code but the fact that the Code has not been followed could be referred to in evidence in legal proceedings.

1.8 Reception of patients into guardianship - Article 18

Full consideration must be given to the individual’s and family members’ Human Rights.

1. Guardianship under the Mental Health (Northern Ireland) Order 1986 is not available for anyone under the age of 16.

   [Article 18(1)]

2. An application for guardianship may be made on the grounds that the person concerned:

   ▪ is suffering from mental illness or severe mental handicap of a nature or degree which warrants their reception into guardianship (the medical ground);
   and
   ▪ it is necessary in the interests of the welfare of the patient that they should be so received (the welfare ground).

   [Article 18(2)]

3. The application must be founded on and accompanied by:

   ▪ two medical recommendations (Form 15 or two Form 16); and
   ▪ a recommendation by an approved social worker (Form 17).

   [Article 18(3)]
4. The application and recommendations must be made on the appropriate prescribed Forms to the responsible Trust.

[Article 18(4)]

Note: Care must be taken to make sure that the Forms are completed correctly.

5. The guardian may be the Trust or any other person so willing to act, including the applicant. If the latter; additional documentation is required about willingness to act and must be endorsed in the role by the Trust. Form Gu3 is available for this purpose and must accompany the application.

[Article 18(5) and (6)]

Note: The Trust has to be satisfied that private guardians understand and carry out their statutory powers and duties, including those prescribed in Regulation 4 (page 16) before accepting the application. A guardian should be a person who can appreciate the needs of the individual subject to guardianship. The guardian should:

- be ready to make sure that the patient is looked after in an appropriate and sympathetic way;
- display an interest in promoting the patient’s physical and mental health;
- seek to provide for the patient's occupation, training, employment, recreation and general welfare in a suitable way.

The Trust will seek to support private guardians in the discharge of their statutory powers and duties.

6. As the two forms of mental disorder are not mutually exclusive, it is possible for the medical recommendation to state that the patient is suffering from both mental illness and severe mental handicap. However, the doctors must agree in specifying at least one form of mental disorder in common, particularly where two Form 16 are used.

[Article 18(7)]

1.9 Person who may make application - Article 19

1. A guardianship application may be made by:

- the nearest relative of the patient (Form 13); or
- an approved social worker (Form 14); or
- a person appointed by a County Court to act as the nearest relative (Article 36).
Note: The nearest relative of a patient within the meaning of the Order is determined by Articles 32 and 36 of the Order. In most cases it should be quite clear who is entitled to carry out the functions of the nearest relative. Notes of guidance are set out in on page 23.

2. The applicant must have seen the person not more than 14 days before the date on which the application is made.

3. The approved social worker (ASW), as applicant, must consult with the nearest relative unless this is not reasonably practicable or would involve unreasonable delay.

4. The ASW making the welfare recommendation (Form 17) may not make the application.

5. Where the nearest relative objects the ASW, as applicant, if over-ruling the objection, must consult another ASW.

Note: This cannot be the ASW providing the welfare recommendation. This means that in some cases three ASWs must be involved. If over-ruling the nearest relative's objection the ASW must record the relative's objection on the application for guardianship.

6. If not previously consulted, the nearest relative must be advised as soon as reasonably practicable.

1.10 General provisions as to medical recommendations - Article 20

1. Must be in the prescribed form (jointly in Form 15 or separately in two Form 16); and

- given and signed by a doctor who has personally examined the patient not more than two days before the date on which the form is signed; and

- if the doctors examine the patients separately not more than seven days must elapse between the days on which the examinations took place; and

- one recommendation must be given by a Part II doctor, the other if practicable by the patient's doctor or by a doctor who knows the patient; and
neither recommendation may be given by a person named as guardian or by someone described in Schedule 1 to the Order. See page 25. [Article 20(1) and (2)]

1.11 Rectification of applications and recommendations - Article 21

Article 21 contains provisions which allow guardianship applications and supporting recommendations to be rectified within 14 days of the application being accepted by the Trust. Although an insufficient recommendation may normally be substituted by a fresh one, new medical recommendations may not be substituted where the application has been invalidated under Article 18(7) because the two doctors do not agree as to the form of the patient's mental disorder.

Faults which may be capable of amendment under this Article include the leaving of blank spaces on the Form which should have been filled in (other than the signature), or failure to delete one or more alternatives in places where only one can be correct. The patient's forenames and surname should agree in all places where they appear in the application, the supporting medical and approved social worker recommendations and medical and social reports. If dates do not conform with time limits they should be checked with the person who signed them. If it is found that interviews and examinations actually did take place within the specified time limits then the error may be corrected. If the time limits have not been complied with, the application is invalid unless the error is capable of being rectified by the substitution of new Forms.

A document with errors of this sort will be returned to the person who signed it for amendment. The amended document will be scrutinized again on its return to the Trust. This process must be completed within 14 days. The RQIA must be informed of any alterations made and sent a copy of any substitution furnished. [Article 21]

1.12 Effect of guardianship application - Article 22

1. The Trust, its nominee guardian or the person named as guardian has three specific powers conferred by guardianship. These are:

(a) The power to require the patient to reside at a place specified by the Trust or guardian.

Note: The patient may be taken to the specified place in furtherance of this requirement if they willingly comply or offer no resistance. However, this power does not provide the legal authority to detain a patient physically in such a place, nor does it authorise the removal of a patient against their will. If the patient is absent without leave from the specified place, they may be returned to it within 28 days by those authorised to do so under Article 29(2) and (3) of the Order.

(b) The power to require the patient to attend for medical treatment,
occupation, education or training.

**Note:** If the patient refuses to attend, the guardian is not authorised to use force to secure such attendance, nor does the Order enable medical treatment to be administered in the absence of the patient's consent.

(c) The power to require access to the patient to be given to any doctor, ASW or other specified person.

**Note:** A refusal without reasonable cause to permit an authorised person to have access to the patient is an offence under Article 125 of the Order. Neither the guardian nor any authorised person can use force to secure entry under guardianship itself. However, proceedings under Article 129 (Warrant to search for and remove patients) should be considered, if appropriate. It is also an offence to assist patients to absent themselves without leave (Article 124).

[Article 22(1)]

The Code of Practice points out:

"If the patient consistently resists the exercise of the guardian's powers, it can be concluded that guardianship is not the most appropriate form of care for that person and guardianship should be discharged". (The Code, page 34, paragraph 3.21)

Hoggett* suggests that "in practice the lack of sanctions is probably not a problem, for most people are prepared to obey those who have a clear right to command them".


2. All Forms properly completed must be forwarded to the Trust within seven days, beginning on the date of the last medical examination.

[Article 22(2)]

3. When a patient is received into guardianship from detention, they cease to be liable to be detained.

[Article 22(4)]

4. Once the application has been accepted by the Trust, the powers of guardianship take effect immediately.
Note: While the Order does not specify a time frame within which the Trust must decide to accept or reject an application for guardianship, the Code of Practice indicates that the arrangements for receiving, considering and scrutinising applications "should ensure that applications are adequately, but speedily, considered".

1.13 Renewal of authority for guardianship - Article 23

Full consideration must be given to the individual’s and family members’ Human Rights in this decision making process.

1. The time periods related to guardianship are:
   - Initially for six months [Article 22(3)]
   - Thereafter for six months [Article 23(1)(a)]
   - Thereafter for one year [Article 23(1)(b)]
   - And so on for periods of one year at a time [Article 23(1)]

2. The responsible medical officer (RMO) must, within the period of two months before the expiry of the authority for guardianship, either examine the patient in person or obtain a report on the condition of the patient from another doctor. (The DHSC Guide suggests that "this is most likely to be the patient's own general practitioner").

[Article 23(2)]

3. If the RMO is satisfied that the medical ground continues to apply, they must give the approved social worker a report on the prescribed Form (Form 18), together with the other doctor's report (Form Gu 8), if they have obtained one.

[Article 23(2)(a)]

4. The ASW must then consider if the welfare ground continues to apply. If so, they must provide a report in the prescribed form (Form 19) and send all the documentation to the named officer of the Trust.

[Article 23(2)(b)]

5. The Trust then accepts or rejects the renewal application and advises all the parties involved.

[Article 23(4)]

6. If the form of mental disorder specified at renewal is different from that specified in the guardianship application, the application will still have effect as if the other form of mental disorder were specified in it.

[Article 23(5)]

Note: This is recognition that the two forms of mental disorder are not mutually exclusive.
The medical and welfare grounds for renewal are the same as those required for making an application.

The procedure for renewal remains the same regardless of the duration of the authority sought.
1.14 **Discharge from guardianship**

**Full consideration must be given to the individual’s and family members’ Human Rights in this decision making process**

1. The nearest relative may make application for the patient to be discharged from guardianship.

   **[Article 24(1)]**

   **Note:** Form Gu 12 is available for this purpose though in practice any letter, which should include the time and date the notice is given, is sufficient.

2. The nearest relative **must** give at least 72 hours notice of their intention to discharge the patient from guardianship. Where any part of the 72 hour period falls on a Sunday the period of notice is automatically extended to 96 hours.

   **[Article 24(4) & (5)]**

   **Note:** If during the period of notice given by the nearest relative the responsible medical officer provides a written report to the Trust stating that the medical ground for guardianship continues to apply and an authorised social worker reports to the Trust in writing that the welfare ground still applies, the discharge will not be allowed. Form Gu 13 is available for this purpose. Where such a discharge from guardianship has been barred, the nearest relative may not make another order for discharge for six months from the date of the later of the two reports by the responsible medical officer and the authorised social worker [Article 24(4)]. The nearest relative does, however, have the right of appeal to the Mental Health Review Tribunal within 28 days of being informed that their order for discharge was barred. An 'authorised social worker' is an approved social worker authorised by the Trust for this purpose.

   **Note:** If a report from the RMO/ASW (Form Gu13) is not received within the stipulated period then the nearest relative should complete Form Gu12a to effect the discharge of the patient from guardianship.

   **Note:** Where the Order requires notice to be given in writing by the person identified as nearest relative or guardian, if other than the Trust, staff should make sure that people with literacy problems, a physical or sensory impairment, or communication difficulties or who do not have English as a language are facilitated in discharging their statutory responsibilities by the use of interpreters/facilitators. Be aware that asking a patient's relative to interpret may have disadvantages.

3. Guardianship must be discharged by RMO if the medical ground is no longer met.

   **[Article 24(2)]**
4. Guardianship must be discharged by an **authorised** social worker if the welfare ground is no longer met.

   **[Article 24(3)]**

5. Guardianship may be discharged at the discretion of the Mental Health Review Tribunal (the Tribunal).

   **[Article 77(3)]**

6. Guardianship must be discharged by the Tribunal if it is satisfied that one or more of the criteria for remaining in guardianship no longer applies.

   **[Article 77(3)]**

   **Note:** The patient, and in certain circumstances their nearest relative, has the right to apply to the Tribunal (Article 71). The Trust is required to refer cases to the Tribunal if a period of two years has elapsed since the case was last considered by the Tribunal (Article 73).

   Under Article 72 patients subject to guardianship may be referred to the Tribunal at any time by the Attorney General, the Department or, on the direction of the High Court, by the Master (Care and Protection). The RQIA too may refer, at any time, the case of any person who is subject to guardianship [Article 86(3)(a)].

   **Note:** If a patient subject to guardianship is detained in a hospital for treatment under Article 12 then the guardianship ceases to have effect [Article 12(3)]. If guardianship is considered appropriate following a period of detention for treatment, then a transfer into guardianship or a fresh application for guardianship should be considered.

   **Note:** If a patient remains absent without leave for 28 days they cannot be retaken and cease to be subject to guardianship [Article 29(3)]. If guardianship remains appropriate a fresh application has to be made.

### 1.15 Transfer of guardianship on death, incapacity etc of guardian - Article 25

1. Article 25 and Article 28(5)(a) provides for the transfer of a patient from the guardianship of one person to another without a break in the authority for guardianship and without the need for a fresh application. The RQIA must be informed immediately of any such transfer.

2. Article 25 applies if any person (other than the Trust) having the guardianship of a patient:

   (a) dies;
   (b) gives notice in writing to the Trust that they wish to relinquish the functions of guardian;
   (c) becomes incapacitated (transfer may be for the period of the incapacity);
or
(d) is found to be performing their functions negligently (by application to a county court).

3. Where a guardian (if other than the Trust) dies or gives notice in writing that they are no longer willing to act as guardian, the guardianship of the patient will immediately vest in the Trust. The Trust then has the option of acting as guardian itself or transferring the guardianship of the patient to another person willing to act [Article 28(5)(a)].

4. Article 28(5)(a) provides for the transfer of a patient who is subject to guardianship from the guardianship of one person to the guardianship of any other person.

5. The patient's nearest relative, and the guardian must, if practicable be informed before any transfer under Article 28(5)(a) takes place.

1.16 Regulations as to guardianship - Article 26

Article 26 permits the Department to make regulations in relation to:

- regulating the powers of guardians;
- imposing duties on guardians, and on the Trust in the interests of patients; and
- specifying the occasions and intervals on which the patient must be visited.

Regulations 4 and 5 of The Mental Health (Nurses, Guardianship, Consent to Treatment and Prescribed Forms) Regulations (Northern Ireland) 1986 govern the exercise by guardians of their powers under the Order and imposes duties on guardians and on the Trust in the interests of patients.

1. Regulation 4 requires a private guardian:

- to comply with such directions as the Trust may give in relation to their exercise of the powers and duties conferred or imposed upon them by guardianship;
- to furnish the Trust with all such reports or other information with regard to the patient that it may from time to time require;
- to notify the Trust in writing of:
  - the name and address of the patient's general practitioner; and
  - any permanent change in their own address or in the address of the patient before or not later than seven days after the change takes place;
- to inform the Trust as soon as practicable:
- in the event of the death of the patient; and/or
- if the patient is absent without leave or if they return or are returned following such absence.

2. Regulation 5 requires the Trust:

- to exercise general supervision over every patient received into guardianship under the Order. This duty commences with the choice of a suitable person to act as guardian;
- to make sure that every patient subject to guardianship is visited at such intervals as the Trust may determine but at intervals of not more than three months. At least one such visit in every year should be made by a Part II doctor (consultant psychiatrist);
- as soon as practicable to notify the Commission in writing:
  - of any permanent change of address of a guardian or of a patient subject to guardianship;
  - if a patient subject to guardianship dies or otherwise ceases to be subject to guardianship, or if such patient is absent without leave or is returned following such an absence.

1.17 Duty to give information to patient and to nearest relative - Article 27

This would include basic information on Human Rights.

1. The Trust must take such steps as are practicable to make sure that the patient understands:

- under which provision of the Order they are subject to guardianship and the effect of this provision; and
- their right to apply for discharge, where appropriate.

[Article 27(1)]

Note: Interpreters/facilitators should be used, as needed.

2. Information must be communicated orally and in writing in a format that is suited to the needs of the patient.

[Article 27(3)]

Note: The information should be given to the patient verbally by the professional officer named as guardian. Confirmation in writing will be issued from Trust Headquarters. Form Gu19 and Form Gu19a should be used as appropriate, adapted to the needs of the patient where necessary.
3. The patient, nearest relative and guardian should be advised of the patient's discharge from guardianship.

[Article 27(4)]

4. A copy of the information given to the patient should be given in writing to the nearest relative unless the patient specifically requests otherwise.

[Article 27(5)]

**Note:** Written confirmation to the nearest relative will be issued from Trust Headquarters unless otherwise notified. The patient may request that information is not sent to the nearest relative. Form Gu20 is available for this purpose.

5. The relevant information must be given at each renewal of, or discharge from, guardianship.

1.18 Transfer into guardianship - Article 28

Full consideration must be given to the individual’s and family members’ Human Rights in this decision making process.

It is suggested that this process begin with a case discussion chaired by a social worker of at least assistant principal grade or equivalent.

1. A patient may be transferred from detention in hospital for treatment into guardianship.

[Article 28(5)(b), (6) and (7)]

2. Where a transfer from detention for treatment to guardianship is to be effected the responsible medical officer should provide a copy of:

- Forms and reports in relation to the admission for assessment; and
- where appropriate, Forms and reports in relation to any subsequent renewal of authority to detain; and
- an updated medical opinion including the basis of the recommendation for guardianship.

3. An approved social worker should provide a social work report. **Refer to page 31 for guidance as to recommended content of social work report.**

**Note:** The nearest relative must, if practicable, be informed before any transfer takes place. If the transfer is to another Trust's area, that Trust's agreement should be sought in writing. The date of reception into guardianship is considered to run from the date on which the application for assessment was accepted by the hospital. In some cases this may mean the
transfer request should be accompanied by the application for renewal in the prescribed form. Remember the requirement to begin the process of renewal within the period of two months before the expiry of the authority for detention/guardianship [Article 23(2)].

Note: The Mental Health Review Tribunal may recommend the transfer of a detained patient into guardianship [Article 77(2)(a)].

Note: A patient transferred from detention into guardianship ceases to be liable to be detained [Article 22(4)].

4. The RQIA must be informed of any transfer from detention into guardianship.

1.19 Return and readmission of patients absent without leave - Article 29

1. A person subject to guardianship who goes absent without the leave of their guardian may be taken into custody and returned to their place of residence by any constable, or approved social worker, or by any person authorised in writing by the guardian or by the Trust.

[Article 29(2)]

2. A person subject to guardianship who remains absent without leave for 28 days, including the first day of absence, ceases to be subject to guardianship.

[Article 29(3)]

Note: Article 29 should be read in conjunction with Article 30.

3. The RQIA must be notified of the absence without leave/return of a patient subject to guardianship.

[Regulation 5]

1.20 Special provisions as to patients absent without leave - Article 30

1. If a patient absent without leave returns/is returned and less than seven days are left before the authority for guardianship expires, Article 30 allows for the guardianship to be extended by seven days beginning on the day of the patient's return.

[Article 30(1)]

2. This allows for the RMO and ASW to interview the patient and to decide whether or not the process for the renewal of the authority for guardianship is to be initiated.

[Article 30(2)]

3. Where the renewal of authority for guardianship is effected under the provisions of Article 30, the renewal takes effect from the date on which the
authority would otherwise have expired.

[Article 30(3)]

1.21 Retaking of patients escaping from custody - Article 132

1. Article 132 provides for the retaking of persons who have escaped from legal custody while subject to guardianship.

2. Return to the place of residence must be effected within 28 days.

Note: It is an offence under Article 124 for any person to induce or knowingly assist any other person who is subject to guardianship to absent themselves without leave. It is also an offence to harbour or prevent the return of a person subject to guardianship. A person convicted of an offence under Article 124 may be liable to imprisonment, a fine, or both.

Similarly, it is an offence under Article 125 for anyone who, without reasonable cause, to obstruct a person in the exercise of their functions under the Order. A person convicted on such an offence may be liable to imprisonment, a fine or both.
1.22 Assignment of functions by nearest relative - Article 35

1. The nearest relative of any patient who is subject to guardianship under Part II of the Order may assign the functions of nearest relative under the Order to any person (other than the patient) who indicates in writing their willingness to exercise those functions.

[Article 35(1)]

2. Notice of the assignment of the functions as nearest relative must be made to the Trust in the prescribed form (Form 20).

[Article 35(2)]

1.23 Part III guardianship order - Article 44

1. Article 44 empowers courts to make a guardianship order in respect of certain categories of offender. (DHSC Guide p38/99 paragraph 136 refers).

2. The power to make a guardianship order may be exercised if:

(a) the court is satisfied on the oral evidence of a Part II doctor (consultant psychiatrist) and on the written or oral evidence of one other medical practitioner that the offender is suffering from mental illness or severe mental handicap which warrants their reception into guardianship;

(b) the court is satisfied, on written evidence of an approved social worker, that it is in the interests of the welfare of the offender that they should be received into guardianship;

(c) the offender has attained the age of 16 years; and

(d) the court is of the 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 them, that a guardianship order is the most suitable method of dealing with the case.

3. The powers and duties conferred on the Trust or private guardian and the provisions as to duration, renewal and discharge are those which apply to a reception into guardianship under Part II of the Order except that the power to discharge is not available to the nearest relative.

[DHSC Guide pages 38-40, paragraphs 138-140 and Code of Practice page 47/48, paragraphs 4.33 and 4.44 refer]

1.24 Patients removed to or from Northern Ireland - Article 134

The authority to move individuals subject to guardianship between Northern Ireland and England and Wales or Scotland is contained in Part VI of the Mental Health Act 1983 or Part VII of the Mental Health (Scotland) Act 1984
respectively as amended by the Mental Health (Northern Ireland Consequential Amendments) Order 1986. Patients being moved under these provisions remain under guardianship while being moved and become subject to the provisions of the mental health legislation of the receiving country as soon as they arrive there.

The RQIA must be notified of any movement of persons subject to guardianship between England, Wales or Scotland and Northern Ireland.

1.25 Duty of approved social worker to make application for guardianship - Article 40

1. An approved social worker is personally liable for their actions whilst carrying out functions under the Order. The ASW should therefore exercise their own professional judgement and not act merely at the behest of others.

2. The duty to make an application for guardianship only arises if the ASW is satisfied that such an application ought to be made. This decision must give full consideration to the patient and family’s Human Rights.

3. The ASW should have regard to the wishes of relatives or any other relevant circumstances.

4. The ASW should be willing to accept the responsibility for making the application, particularly if the nearest relative is unable or unwilling to do so.

5. The ASW should, as far as they are able, ensure compliance with the requirements of the Order in relation to the recommendations and the application for guardianship.

6. When the ASW has decided whether or not to make the application for guardianship, the patient, the patient’s nearest relative, and the ASW/doctors making the recommendation should be advised, giving the reason.

Note: Article 40(4) empowers the nearest relative to request the Trust to direct an approved social worker to consider a patient's case with a view to making an application for guardianship. Staff should use professional judgement to differentiate between this power of the nearest relative and a 'normal' referral seeking help.
Nearest relative ~ notes of guidance

(These notes are for guidance only and do not constitute an exact statement of the provisions of the Order).

1. The nearest relative of a patient within the meaning of the Order is determined by the provisions of Articles 32 to 36 of the Order. In most cases it should be quite clear who is entitled to carry out the functions of the nearest relative. However, if, after reading these notes, you are still in doubt, you should take legal advice.

2. The Order defines "relative" as any of the following:

(a) spouse   (e) grandfather
(b) child    (f) grandchild
(c) father or mother (g) uncle or aunt
(d) brother or sister (h) nephew or niece

The "nearest relative" for the purposes of the Order is then defined as the first person listed who is caring for the patient, or, if the patient is already in hospital, was caring for the patient before admission. For example, if a patient is being cared for by a grandchild, that grandchild would be the nearest relative within the meaning of the Order even though a son or daughter was still alive. The following additional points should be noted:

(i) if the patient has relatives but none is or was caring for them, then, the "nearest relative" is simply the first person listed;

(ii) where there are two or more persons in one category, the elder or eldest is preferred;

(iii) an illegitimate child is treated as a legitimate child of his mother;

(iv) to determine relationship a half-blood is treated as a whole-blood but within the same category of relative, a whole-blood is preferred to a half-blood;

(v) where the person who would otherwise be the nearest relative of a patient is under 18 years of age, that person is disregarded unless they are the husband, wife, father or mother of the patient;

(vi) where a marriage is broken up, and the person who would otherwise be the nearest relative of the patient by virtue of being their spouse, is no longer living with the patient, that person is disregarded;

(vii) where a person who would otherwise be the nearest relative ordinarily lives outside the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland, that person is disregarded unless the patient also ordinarily lives abroad;
(viii) for the purposes of the Order, the term "spouse" includes a person who is living with the patient as though they were married, or, if the patient is already in hospital, had been so living with them before admission, and has been or had been so living for not less than six months. If such a person is making the application, they should state the relationship with the patient as "spouse" and should add the words "by virtue of Article 32(5) of the Order";

(ix) a person with whom the patient ordinarily resides and has been so resident for at least five years but who is not a relative and cannot be regarded as a "spouse" in the terms of the previous paragraph, is treated as the nearest relative within the meaning of the Order if they are caring for the patient. If such a person is making the application, they should state the relationship within the patient as "friend with whom the patient has resided in terms of Article 32(6) of the Order".

3. Article 33 deals with cases where children are taken into care, and provides that the Health and Social Services responsible authority or the person exercising parental rights in such a case is deemed to be the nearest relative within the meaning of the Order.

4. Article 34 deals with cases where children are under guardianship or in the custody of one parent, and provides that the person having the guardianship or custody of the patient shall be deemed to be the nearest relative for the purposes of the Order.

5. Article 35 allows the nearest relative of a patient to delegate their functions under the Order to a person willing to assume them. In this situation prescribed Form 20 must be completed.

6. Article 36 enables a county court to appoint an acting nearest relative in any case where an application is made to it in accordance with the provisions of that Article.
Persons by whom a medical recommendation or medical report under Article 12 may NOT be given

1. The applicant or a partner of, or person employed as an assistant by, the applicant.

2. A person who receives, or has an interest in the receipt of, any payments made on account of the maintenance of the patient.


4. A person who is living with the patient as if they were the spouse of the patient (or, if the patient is for the time being an in-patient in a hospital, was so living until the patient was admitted) and has been or had been so living for a period of not less than six months.

5. A person with whom the patient ordinarily resides (or, if the patient is for the time being an in-patient in a hospital, last ordinarily resided before they were admitted) and with whom they have or had been ordinarily residing for a period of not less than five years.
2. The process
2. The process

2.1 Introduction

Full consideration must be given to the individual’s and family members’ Human Rights in this decision making process.

Clear and accurate assessment is central to the guardianship process. Particular attention needs to be paid to the communication needs of people who do not speak English, or who have other communication difficulties.

Interpreters/facilitators should be used to make sure that the patient and carers understand and are as fully involved in the process as they can be. Be aware that asking a patient’s relative to interpret may have disadvantages.

There are three routes for the reception of patients into guardianship. These are:

- by application under Article 18;
- by transfer from detention under Article 28; and
- in relation to certain convicted persons, by court order under Article 44.

In each circumstance the grounds for guardianship and the powers conferred by it, on acceptance by the Trust, are the same. Also the process followed is broadly similar.

Article 18(2) establishes two grounds for guardianship: the medical ground and the welfare ground. A guardianship application may be made on the grounds that:

(a) a person is suffering from mental illness or severe mental handicap of a nature or degree which warrants their reception into guardianship; [the medical ground - Article 18(2)(a)].

and

(b) It is necessary, in the interests of the welfare of the patient that they should be so received [the welfare ground - Article 28(2)(b)].

Article 18(3) states that an application for guardianship shall be "founded on and accompanied by two medical recommendations and a recommendation by an approved social worker".

Article 18(4) requires a guardianship application to be made in the prescribed form and to be forwarded to the responsible Trust.
The prescribed form for the medical recommendation is:

- **either** one Form 15 in respect of a joint medical recommendation; or
- two Form 16 in respect of separate recommendations by the responsible medical officer and by the patient's GP or by a medical practitioner who has previous acquaintance with the patient (where practicable).

The prescribed form for the approved social worker recommendation is Form 17. It should be forwarded to the applicant on completion and should be accompanied by a social report setting out the background to the case and the management strategies, which have culminated in the application for guardianship. The report should also indicate which of the powers of guardianship are considered necessary for securing the welfare of the patient.

Article 19 indicates that an application for guardianship may be made by the nearest relative (Form 13) or by an approved social worker (Form 14).

Article 28(5)(b) of the Order permits the transfer of a patient from detention to guardianship. The medical report, which provided the authority for detention with an updated medical opinion, including the basis for the recommendation for guardianship, is sufficient to provide the medical ground. At the same time an approved social worker should provide a short social report establishing the welfare ground. This report should indicate which of the powers of guardianship are considered necessary for securing the welfare of the patient. Article 28(7) establishes the effective date of admission to guardianship under Article 28(5)(b) as the date on which the application for assessment was accepted by the hospital. This date sets the timetable for the renewal of the authority for guardianship. So, in some circumstances, the recommendation for transfer to guardianship will have to be accompanied by an application for renewal.

**Refer to page 31 for guidance as to recommended content of social work report.**

**Note:** The Mental Health Review Tribunal may recommend the transfer of a detained patient into guardianship [Article 77(2)(a)]. When a detained patient is transferred into guardianship they cease to be liable to be detained [Article 22(4)].

Article 40(2) requires the ASW to interview the patient "in a suitable manner" before making an application for guardianship. The Code of Practice indicates that good communication with the patient is essential. In particular, consider the following:

- If the patient has communication difficulties, the assistance of interpreters or facilitators should be considered.
- Asking a patient's relative to interpret may have disadvantages.
- If the patient is unwilling or unable to communicate adequately, the decision to proceed should be based on whatever information can be obtained from other courses.

- The patient should not be interviewed through a closed door or window unless this is necessary to avoid serious risk. Where there is no immediate risk, powers in the Order to secure access (Article 129) should be considered.

- Where the patient is under the effects of sedative medication, or the short-term effects of drugs or alcohol, you should consider postponing the interview. If it is not realistic to wait because of the patient’s disturbed behaviour or condition, the decision to proceed should be based on whatever information can be obtained from all reliable sources.

- The patient should be interviewed in private but, if there is a risk of physical violence, the doctor and the applicant can insist on another person being present. If the patient would like another person (for example a friend) to be present, this should be arranged. (The Code, page 7, paragraph 2.6).

Article 44 empowers Courts to make guardianship orders where the prescribed criteria are met and the Court, having regard to all the circumstances, considers reception into the guardianship of the Trust, or of any other person, appropriate. The Court's decision will be based on oral evidence from a Part II doctor, written or oral evidence from another medical practitioner and written or oral evidence from an approved social worker. Before making such an order the Court has to be satisfied that the Trust or other person is willing to act as guardian.

The provisions as to duration, renewal and discharge are those which apply to Part II guardianship applications except that the power to discharge is not available to the nearest relative.

The Code of Practice suggests that "guardianship orders may be particularly suitable in helping to meet the needs of some offenders who could benefit from occupation, training and education in the community". [Code of Practice, Page 48, paragraph 4.33]

**Note:** Children under the age of 16 can no longer be received into guardianship. They should be dealt with under child care legislation.

Most patients are received into guardianship under Part II of the Order and this model of operation is offered to staff for guidance in the discharge of their statutory duties. The guidance should not be used as a substitute for legal advice which should be taken on the particular aspects of any individual case where there is any doubt.
2.2 The application process

The process for reception into guardianship is such that its implementation owes more to a planned, rather than an emergency, "reception into care". It should, however, always be considered where the criteria for reception is satisfied. And where the patient is likely to benefit from the exercise of the powers of guardian, the co-operation or otherwise of the patient should also be considered.

Given the need to co-ordinate the provision of two medical recommendations, an approved social worker recommendation and the application, all of which comply with the prescribed criteria and which meet statutory time limits, it is suggested that the process begin with a case discussion. (See appendices 1 & 2).

Chaired by a social worker of at least 8a grade, or equivalent, the purpose of the case discussion is to:

- facilitate the sharing of information
- consider alternatives to guardianship;
- consider which of the powers conferred by guardianship are necessary to secure the welfare of the patient;
- clarify the roles and responsibilities of each participant in the guardianship process;
- make sure that all parties know to whom completed recommendations and reports are to be sent to; and
- set out the timetable for action (bearing in mind the statutory time limits).
- the patient’s and nearest relatives views should be recorded as part of the case discussion, particularly where they have been unable to attend.
- It is recommended that written reports be presented which contain the patient’s views.

It is recommended that the Human Rights list is considered as part of each case discussion and that the relevant articles are highlighted in case records.
The case discussion should, where possible, involve:

- the patient, where appropriate;
- the nearest relative/carer(s), where appropriate;
- the key worker; who will present a background report including
  - current situation
  - family composition
  - family background
  - childhood
  - education
  - employment
  - marital history
  - past psychiatric history
  - physical health
  - forensic history
  - social supports/leisure activities
  - summary
- an approved social worker, if not the key worker;
- a Part II doctor, preferably the responsible medical officer, ie the consultant psychiatrist in charge of the assessment or treatment of the patient;
- the patient's general practitioner;
- the nominee guardian representing the Trust or the prospective guardian if other than the Trust.

The Chairperson should take responsibility for ensuring that the outcome of the discussion is communicated to patient and carers, where they are absent. This should include reference to any possible infringement of Human Rights. That communication should be recorded.

The Applicant’s Report should be completed by the ASW making the application and should cover the following areas:-

- an assessment of the patient’s needs and associated risks
- a clear statement of medical grounds
- a clear statement of welfare grounds
- a clear and explicit consideration of all alternatives
- an indication as to which of the powers are considered necessary for securing the welfare of the patient and how these will be enacted
- a clear care plan of any possible exit strategy
- patient, family members and medical practitioner members point of view
- clear consideration of human rights
- Identification of guardian (refer to Trust’s Applicant Report format)

Where a case discussion is not possible clear lines of communication should be established between the key worker, the medical practitioners, the nearest relative and the patient.
A decision as to whether the application should be made by the nearest relative (Form 13) or an approved social worker (Form 14) should be made. The appropriate sequence for completion of prescribed forms with regard to an application for guardianship follows.

**The recommendation by an approved social worker (Form 17)**

The approved social worker who is to provide the approved social worker's recommendation (Form 17) should personally interview the patient and review all the circumstances of the case. Form 17 should be accompanied by a social report setting out the background to the case and the management strategies which have culminated in the application for guardianship. The report should also indicate which of the powers of guardianship are considered necessary for securing the welfare of the patient. **Reference to consideration of the patient’s and family’s Human Rights should be included in this report.** The recommendation and report should be forwarded to the applicant on completion.

**The medical recommendation (Form 15 or two Form 16)**

The Part II doctor and the doctor providing the second medical recommendation (Form 15 or two Form 16) should liaise to make sure that there is agreement on at least one form of the mental disorder to be specified and to make sure all time limits in relation to the medical recommendation are complied with. The recommendation should be forwarded to the applicant on completion.

**Application by nearest relative (Form 13)**

An approved social worker [not the one who is to provide the social work recommendation (Form 17)] should be identified to the nearest relative to offer guidance and to make sure that all the necessary documents are properly completed in accordance with the criteria and time limits set down. It is important that the communication needs, if any, of the patient and nearest relative are properly addressed in this process. **Guidance should include reference to patient’s and family’s Human Rights.**

**Note:** Article 40(4) empowers the nearest relative to require the Trust to direct an approved social worker to consider a patient’s case with a view to making a guardianship application. Staff should use professional judgement to differentiate between this power of the nearest relative and a "normal" referral seeking help.

In the event of the exercise of this power by the nearest relative, the approved social worker decides not to make an application they must inform the nearest relative of the reasons in writing (Form Gu 1 is available for this purpose, as appropriate).

**Note:** If the role of guardian is to be undertaken by anyone other than the
Trust, then Form Gu3 must accompany the application.

**Application by an approved social worker (Form 14)**

*Full consideration must be given to the individual’s and family members’ Human Rights in this decision making process.*

The approved social worker who is to make the application should be identified as the person to make sure that all requirements are met.

If an objection from the nearest relative is likely to be forthcoming the case discussion should help decide the most appropriate way to deal with this.

The options are:

(a) to consider an application to the county court for an order under Article 36 transferring the functions of the nearest relative to another person; or

(b) to proceed, if all the other criteria are met, following consultation with a second approved social worker.

The second approved social worker should interview the patient and take into account any wishes expressed to them, as well as the views of the nearest relative and any other relevant circumstances as part of the consultation process. The second approved social worker should maintain a record of the discussion with all concerned and its outcome (Form Gu 2).

If the nearest relative was not consulted prior to the ASW's application for guardianship, they must be advised about the application as soon as reasonably practicable (Form Gu4 is available for this purpose).

**Note:** If the role of guardian is to be undertaken by anyone other than the Trust, then Form Gu3 must accompany the application.

As the application is “founded on and accompanied by the recommendations and reports” it is important that the applicant checks that the Forms are properly completed and that the information recorded is consistent throughout. The schedule of names and address at 3.2 (pages 42) is recommended for use to achieve consistency in the names and addresses of all the parties involved.

**Care Plan**

A detailed care plan reflective of the DHSCP (1999) Quality Standards: Assessment and Care Planning, should accompany the application. Best practice would dictate that the person who knows the patient best and is responsible for monitoring the care provision co-ordinates the care plan. A recommended format can be found on papers P35-39.

The section following sets out guidance notes for the completion of Forms. For sequence for prescribed reports and forms see pages 31 & 43.
**Note:** All Forms and supporting reports must be forwarded to the named officer of the Trust at Trust Headquarters within seven days beginning on the date of the last medical examination. The notes of the case discussion, if held, should also be forwarded.
CARE PLAN

NAME:

DOB:

ADDRESS:

RELIGIOUS DENOMINATION:

CLERGYMAN:

TEL NO:

NAMED WORKER:
(TO BE CONTACTED IF PROBLEMS ARISE):

ADDRESS:

TEL NO:

NEAREST RELATIVE (MHO)
(OR PERSON TO BE CONTACTED
IN AN EMERGENCY):

ADDRESS:

TEL NO:

OUT OF HOURS CONTACT NO:

GP:

OVERALL OBJECTIVE OF CARE PLAN:

TEL NO:

REVIEW DATE:
Guardianship renewal date:
(starts from date of admission for assessment under MHO when person transferred into guardianship)

DATE CARE PLAN COMPLETED:
# Monitoring Arrangements

<table>
<thead>
<tr>
<th>Identified strengths / Needs</th>
<th>Objectives</th>
<th>Action needed to meet objectives</th>
<th>Who is responsible for action</th>
<th>Time of Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>Social</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Family Relationships</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Spiritual</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Identified strengths / Needs</td>
<td>Objectives</td>
<td>Action needed to meet objectives</td>
<td>Who is responsible for action</td>
<td>Time of Action</td>
</tr>
<tr>
<td>-----------------------------</td>
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<td>----------------------------------</td>
<td>-----------------------------</td>
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</tr>
<tr>
<td>Human Rights</td>
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<tr>
<td>Employment / Daytime Activity/Education</td>
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<tr>
<td>Emotional</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Identified strengths / Needs</td>
<td>Objectives</td>
<td>Action needed to meet objectives</td>
<td>Who is responsible for action</td>
<td>Time of Action</td>
</tr>
<tr>
<td>------------------------------</td>
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</tr>
<tr>
<td>Financial</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Physical Health</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Mental Health</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Which powers given by Guardianship are necessary to achieve plan?

- eg Powers to reside in __________
- To attend day care
- Access
Highlight any unmet needs, which have been identified and how these are being managed in the interim, also include any points of difference between parties involved.

This care plan has been discussed with me and reflects my views

Signed: _______________________________________________ User/Advocate

Signed: _______________________________________________ Guardian

Signed: _______________________________________________ Named Worker

<table>
<thead>
<tr>
<th>Copy provided</th>
<th>Date</th>
<th>Requested not to have copy</th>
<th>Who contributed</th>
</tr>
</thead>
<tbody>
<tr>
<td>User</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Carer</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GP</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
3. Guidance notes for the completion of Forms

3.1 General

1. There is a requirement for the ASW to interview the patient "in a suitable manner" before making an application for guardianship [Article 40(2)]. The Code of Practice, page 7, paragraph 2.6 indicates that good communication with the patient is essential. In particular, consider the following:

   - If the patient has communication difficulties, the assistance of interpreters or facilitators should be considered.

   - Asking a patient's relative to interpret may have disadvantages.

   - If the patient is unwilling or unable to communicate adequately, the decision to proceed should be based on whatever information can be obtained from other courses.

   - The patient should not be interviewed through a closed door or window unless this is necessary to avoid serious risk. Where there is no immediate risk, powers in the Order to secure access (Article 129) should be considered.

   - Where the patient is under the effects of sedative medication, or the short-term effects of drugs or alcohol, you should consider postponing the interview. If it is not realistic to wait because of the patient's disturbed behaviour or condition, the decision to proceed should be based on whatever information can be obtained from all reliable sources.

   - The patient should be interviewed in private but, if there is a risk of physical violence, the doctor and the applicant can insist on another person being present. If the patient would like another person (for example a friend) to be present, this should be arranged. (The Code, page 7, paragraph 2.6).

2. Assessments and recommendations should be based on the most up to date information and wherever possible given by individuals who know the patient.

3. All specified time limits must be adhered to.

4. The patient's full name and address should be the same on all Forms.

5. A social report should be forwarded to the named officer of the Trust along with relevant prescribed Forms. This report should indicate which of the powers of guardianship are considered necessary for securing the welfare of the patient.

6. If the named guardian changes, the named officer of the Trust must be advised.
7. The named officer of the Trust must be advised of any permanent change in the address of a patient subject to guardianship.

8. The named officer of the Trust must be advised if the patient goes on leave of absence or goes absent without leave (AWOL).

9. The named officer of the Trust must be advised, as soon as is practicable, of the death of a patient subject to guardianship.

10. Patients can be transferred from detention to guardianship under Article 28 (5)(b) of the Order. There is no need for new application forms, but an updated medical opinion and social report should be provided indicating why guardianship is needed. A copy of the Forms providing the authority for detention should also be forwarded).

   **Note:** If a patient is transferred under Article 28, the effective date of reception into guardianship is the date on which the application for admission was accepted by the hospital. Consequently, such a transfer may also have to be accompanied by an application for renewal of guardianship in the prescribed Form.

11. The named officer of Trust will be responsible for accepting or rejecting all applications for guardianship, for notifying, in writing, all of the parties involved and for communication with the RQIA.
### 3.2 Schedule of names and addresses

(To be used to achieve consistency in Form filling. Should be completed and accompany the Forms and supporting reports to Trust Headquarters)

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Full name of patient:</strong></td>
<td><strong>Date of birth:</strong></td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Usual address:</strong> (include postcode, where possible)</td>
<td><strong>Present address:</strong> (include postcode, where possible)</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Nearest relative (full name):</strong></td>
<td><strong>Full address:</strong> (include postcode, where possible)</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Social Worker (full name):</strong></td>
<td><strong>Full office address:</strong> (include postcode, where possible)</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Responsible medical officer (full name):</strong></td>
<td><strong>Full professional address:</strong> (include postcode, where possible)</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>General Practitioner (full name):</strong></td>
<td><strong>Full professional address:</strong> (include postcode, where possible)</td>
</tr>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td>Doctor providing second recommendation, if different from GP (full name):</td>
<td>Full professional address: (include postcode, where possible)</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td>Nominated Guardian:</td>
<td>Full address: (include postcode, where possible)</td>
</tr>
<tr>
<td>Applicant:</td>
<td>Full address: (include postcode, where possible)</td>
</tr>
<tr>
<td>ASW who recommended reception into/renewal of Guardianship:</td>
<td>Full office address: (include postcode, where possible)</td>
</tr>
<tr>
<td>In relation to transfers from detention to guardianship, enter date of admission for assessment accepted by the hospital:</td>
<td>Review Date:</td>
</tr>
</tbody>
</table>
### Sequence for completion of prescribed forms with regard to reception into guardianship

#### COMPLETE

<table>
<thead>
<tr>
<th>Recommendation by an Approved Social Worker for reception into guardianship (FORM 17)</th>
<th>NOT MORE THAN 14 DAYS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FORM 17: RECOMMENDATION BY AN APPROVED SOCIAL WORKER</strong></td>
<td></td>
</tr>
<tr>
<td>• Complete not more than 14 days before date on which application (Form 13 or Form 14) is signed.</td>
<td>□</td>
</tr>
<tr>
<td>• ASW should have personally interviewed the patient not more than 2 days before Form 17 is signed.</td>
<td>□</td>
</tr>
</tbody>
</table>

**AND**

#### EITHER Joint medical recommendation for reception into guardianship (FORM 15)

<table>
<thead>
<tr>
<th><strong>FORM 15: JOINT MEDICAL RECOMMENDATION</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Part II doctor must have examined the patient not more than 2 days before the date on which they sign Form 15</td>
<td>□</td>
</tr>
<tr>
<td>• The second doctor must have examined the patient not more than 2 days on which they sign Form 15</td>
<td>□</td>
</tr>
<tr>
<td>• The dates of the two medical examinations must be within 7 days of each other</td>
<td>□</td>
</tr>
</tbody>
</table>

#### OR Separate medical recommendation for reception into guardianship (FORM 16)

<table>
<thead>
<tr>
<th><strong>FORM 16: SEPARATE MEDICAL RECOMMENDATION – 2 NEEDED</strong></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>• Doctor must have examined the patient not more than 2 days before the date on which they sign Form 16</td>
<td>□</td>
</tr>
<tr>
<td>• The dates of the two medical examinations must be within 7 days of each other</td>
<td>□</td>
</tr>
</tbody>
</table>

**AND COMPLETE**

<table>
<thead>
<tr>
<th><strong>EITHER Guardianship application by nearest relative (FORM 13)</strong></th>
<th>NOT MORE THAN 7 DAYS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>FORM 13: APPLICATION BY NEAREST RELATIVE</strong></td>
<td></td>
</tr>
<tr>
<td>• The nearest relative must have seen the patient not more than 14 days before the date on which they sign Form 13.</td>
<td>□</td>
</tr>
</tbody>
</table>
FORM 14: APPLICATION BY APPROVED SOCIAL WORKER

- The ASW must have seen the patient not more than 14 days before the date on which they sign Form 14.

Completed forms forwarded to the named officer of the Trust.

NOTE All forms and supporting documents must be forwarded to the named officer of the Trust within 7 days of the date on which the later of the two medical examinations take place.

PLEASE MAKE SURE THAT ALL STATUTORY TIME LIMITS ARE OBSERVED,
GUARDIANSHIP RENEWAL PROCESS

At least 2 months prior to the date Guardianship is due to expire:

- Multidisciplinary Review Meeting.
- RMO makes medical recommendation.
  - If G.P not doing (Form 18 within 2 days of examination).
  - If G.P completing (Form Gu 8)
- Consultation with: - Nearest relative.
  - Patient
- Social Report.
- Update Care Plan.
- ASW completes Form 19 (within 2 days of receipt of Forms 18 or Gu 8).
- All forms received at Trust HQ (at least 5 working days).
- Renewal accepted or rejected.

The above process should be followed in accordance with the renewal process, i.e.

First Renewal – 6 months
Second Renewal – 6 months
Thereafter - yearly
3.4 **Form 17 - Approved social worker's recommendation**

1. The Form must be completed by an approved social worker. Full name, ie all forenames and surname, and office address, including postcode, if possible, should be given.

2. The full name and address of the patient should be given, ie all forenames, surname, and number of house, street and town, including postcode, if possible.

3. The name of the Trust should be shown, ie Northern Health and Social Care Trust.

4. The reasons for the opinion that the welfare ground is met must be given.

5. Delete either (a) or (b) regarding whether or not the applicant is related to the patient.

6. If (a) deleted, the relationship to the patient should be stated.

7. Delete either (c) or (d) in relation to a pecuniary interest, and state the nature and extent of the pecuniary interest under (d), if appropriate.

8. Form **must** be signed and dated. The Order does not specify when Form 17 should be signed. However, the DHSC Guide states that "it is essential that this is done before the date of the application, and within - at most - two weeks prior to that date" [DHSC Guide, Page 24, paragraph 78(iii)].

   It is suggested that, in keeping with the medical recommendations, the ASW making the recommendation should have **personally interviewed** the patient not more than two days before the recommendation is signed.

**Note:** The approved social worker's recommendation should be forwarded to the applicant on completion. It should be accompanied by a social report setting out the background to the case and the management strategies which have culminated in the application for guardianship. The report should also indicate which of the powers of guardianship are considered necessary for securing the welfare of the patient.
RECOMMENDATION BY AN APPROVED SOCIAL WORKER FOR RECEPTION INTO GUARDIANSHIP

1 full name and office address of approved social worker

2 full name and address of patient

3 (name of Board or HSCTrust)

4 (Give reasons for opinion)

5

6 (state relationship)

FORM 17
Mental Health (Northern Ireland) Order 1986 Article 18

I __________________________________________
____________________________________________
____________________________________________
I __________________________________________
____________________________________________
____________________________________________

be received into guardianship in accordance with Part II of the Mental Health (Northern Ireland) Order 1986

I am an officer of ______________________________ appointed to act as an approved social worker for the purposes of the Order.

In my opinion it is necessary in the interests of the welfare of the patient that he/she should be received into guardianship. My reasons for this opinion are as follows:

Delet e either (a) or (b) AND either (c) or (d) as Appropriate

a)I am not related to the patient
OR
b) I am related to the patient being his/her

(c) I have pecuniary interest in the reception of the patient into guardianship
OR

(d) I have a pecuniary interest in the reception of the patient into guardianship. The nature and extent of that interest is (state nature and extent of interest).

Signed _______________________ Date ________________
3.5 **Form 15 - Joint medical recommendation**

1,2. The full name and professional address of both medical practitioners should be given, ie all forenames, surname and address of the hospital or practice, including postcode, if possible, as appropriate.

**Note:** One doctor must be a Part II doctor, preferably the consultant psychiatrist in charge of the patient's assessment and treatment. The other doctor, if practicable, should be the patient's general practitioner or a doctor who knows the patient. Close relatives, business partners and others specified in Schedule 1 to the Order are not permitted to give the medical recommendation. The sequence of the Form suggests that the Part II doctor's name and details are entered first.

3. The full name and address of patient should be given, ie all forenames and surname, and number of house, street and town, including postcode, if possible.

4. The name of the first doctor (consistent with 1, 2 above) should be given. They must be a current Part II doctor (ie a consultant psychiatrist appointed by the RQIA for the purposes of Part II of the Order) and preferably should be the consultant psychiatrist in charge of the patient's treatment.

5. Enter the date when the Part II doctor last examined the patient. The date of examination must not be more than two days before the date on which Part II doctor signs the Form.

6. Enter name (consistent with 1, 2 above) of the second doctor.

7. Enter the date of the second examination. The date of examination must not be more than two days before the second doctor signs the Form. The two medical examinations must be within seven days of each other.

8. Delete option(s) regarding the second doctor's status. In some circumstances both options may be deleted, ie where the doctor is not the patient's general practitioner and did not have a previous acquaintance with the patient. The applicant is required to explain why a doctor who did know the patient was not available.

9. Delete whichever option is not applicable. **Note**: As the two forms of mental disorder are not necessarily mutually exclusive, it is possible for the medical recommendation to state that the patient is suffering from both mental illness and severe mental handicap. The doctors should agree on the form of mental disorder specified.

10. A clinical description must be given and provide detail on the type of illness, behaviour, etc.

11. The Form must be signed and dated by both doctors. Each doctor must have personally examined the patient not more than two days before signing the Form. And the two medical examinations must be within seven days of each other.
**Note:** The medical recommendation should be forwarded to the applicant on completion.
JOINT MEDICAL RECOMMENDATION FOR RECEPTION INTO GUARDIANSHIP

1. (full name and professional address of both medical practitioners)

We________________________________________________

________________________________________________

________________________________________________

________________________________________________

2. (full name and address of patient)

________________________________________________

________________________________________________

________________________________________________

be received into guardianship in accordance with Part II of the Mental Health (Northern Ireland) Order 1986.

4. (name of first medical practitioner)

I________________________________________________

last examined this patient on_________________________

5. (date)

I am a medical practitioner appointed by the Mental Health Commission for the purpose of Part II of the Order.

6. (name of second medical practitioner)

I________________________________________________

last examined this patient on_________________________

7. (date)

8. *Delete if not applicable

*I am this patient’s medical practitioner.

OR

*I had previous acquaintance with this patient before I conducted that examination.

9. ** Delete if not applicable

In our opinion this patient is suffering from
applicable **mental illness**
**severe mental handicap**
of a nature of degree which warrants his/her reception into
guardianship under Article 18 of the Mental Health
(Northern Ireland) Order 1986. This opinion is based on the
following grounds:-

10

(Give a clinical description of the patient’s mental condition)

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

_________________________________________________________________

Signed________________________________Date_____________________

Signed________________________________Date_____________________

53
3.6 Form 16 - Medical recommendation

1. The full name and professional address of the doctor should be given, ie all forenames, surname and address of hospital or surgery, including postcode, if possible.

2. The full name and address of the patient should be given, ie all forenames, surname, and number of house, street and town, including postcode, if possible.

3. Enter the date when the doctor last examined the patient. The date should not be more than two days before the Form is signed.

4. Check the status of the doctor(s). One doctor must be a Part II doctor, preferably the consultant psychiatrist in charge of the patient's treatment; the other doctor, if practicable, should be the patient's general practitioner or a doctor who has had a previous acquaintance with the patient. If (a) applies, both parts of (b) should be deleted; if the first part of (b) applies, (a) and the second part of (b) should be deleted; if the second part of (b) applies, (a) and the first part of (b) should be deleted.

Note: In some circumstances both options at (b) should be deleted, ie where the second doctor is not the patient's general practitioner and did not have a previous acquaintance with the patient. The applicant is required to explain why a doctor who did know the patient was not available.

5. Delete whichever option is not applicable. Note: As the two forms of mental disorder are not necessarily mutually exclusive, it is possible for either of the medical recommendations to state that the patient is suffering from both mental illness and severe mental handicap. However, unless both medical recommendations agree in specifying at least one form of mental disorder in common, a guardianship application will be of no effect.

6. A clinical description must be given and provide detail on the type of illness, behaviour, etc.

7. Forms must be signed and dated. The date of signing must not be more than two days before the date on which the doctors carried out their respective examinations.

Note: A separate Form 16 should be completed by each of the two doctors. And the two medical examinations must be within seven days of each other. The medical recommendations should be forwarded to the applicant on completion.
MEDICAL RECOMMENDATION FOR RECEPTION INTO GUARDIANSHIP

1 (full name and professional address of medical practitioner)

I, ________________________________, a medical practitioner, recommend that ________________________________ be received into guardianship in accordance with Part II of the Mental Health (Northern Ireland) Order 1986.

I last examined this patient on ________________________________.

Delete either (a) OR (b)

(a) I am a medical practitioner appointed by the Mental Health Commission for the purpose of Part II of the Order.

(b) * I am this patient’s medical practitioner.

OR

*I had previous acquaintance with this patient before I conducted that examination.

In my opinion this patient is suffering from

*mental illness

**severe mental handicap

of a nature or degree which warrants his/her reception into guardianship under Article 18 of the Mental Health (Northern Ireland) Order 1986.

This opinion is based on the following grounds:

(Give a clinical description of the patient’s mental condition)
3.7 Form 13 - Application by nearest relative

1. The Form must be addressed to the correct responsible authority, ie Northern Health and Social Care Trust, The Cottage, 5 Greenmount Avenue, Ballymena, BT43 6DA.

2. The full name and address of the applicant should be given, ie all forenames and surname, number of house, street and town (postcode if possible). **Note** the applicant must either be the nearest relative as defined by Article 32 of the Order, or be the person appointed by the county court under Article 36 to exercise the functions of the nearest relative.

3. The full name and address of patient should be given, ie all forenames, surname, and house number, street and town (postcode, if possible).

4. The full name and address of proposed guardian should be given. If the guardian is the responsible authority, the name and address to be used is: Northern Health and Social Care Trust, The Cottage, 5 Greenmount Avenue, Ballymena, BT43 6DA.

5. Option (a) or (b), regarding the nearest relative should be deleted and the relationship stated.

6. Option (i) or (ii) should be deleted in relation to the patient's age.

7. Enter date when the applicant last saw the patient. The date should not be more than 14 days before the Form is signed.

8. If neither of the doctors who completed the medical recommendation knew the patient, an explanation should be given.

9. The Form must be signed and dated. The date should be within 14 days of the applicant last having seen the patient.

10. Part II of the Form only needs to be completed if the proposed guardian is not the Trust, ie a relative or other person.

**Note:** The application must be founded on and accompanied by two medical recommendations (Form 15, or two Form 16) and an approved social worker recommendation (Form 17). It should therefore be completed after Form 17 and the Form 15 (or two Form 16).
PART 1
(Before completing this form please read the notes attached)

1 (name and address of responsible authority)

To________________________________________________________
___________________________________________________________
___________________________________________________________

I __________________________________________________________
___________________________________________________________
___________________________________________________________

2 (full name and address of applicant)

___________________________________________________________
___________________________________________________________

hereby apply for the reception of

___________________________________________________________

3 (full name and address of patient)

___________________________________________________________

Into the guardianship of_______________________________________
___________________________________________________________

4 (full name and address of proposed guardian)

in accordance with Part II of the Mental Health (Northern Ireland) Order 1986.

Delete (a) OR (b)

(a) To the best of my knowledge and belief I am the patient’s nearest relative within the meaning of the Order. I am the patient’s


(b) I have been authorized by a county court to exercise the functions under the Order of the patient’s nearest relative. A copy of the court order is attached to this application.

Delete (i) or (ii)
(i) The patient’s date of birth is________________________________

OR

(ii) The patient’s date of birth is________________________________

OR
(ii) I believe the patient is aged 16 or over

I last saw the patient on ________________________________

This application is founded on and accompanied by two medical recommendations and a recommendation by an approved social worker in the prescribed form.

If neither of the medical practitioners knew the patient before making their Recommendations, please explain why you could not get a recommendation from a medical practitioner who did not know the patient.

____________________________________________________________
____________________________________________________________
____________________________________________________________

Signed ____________________________ Date ____________________

PART II

(To be completed by the *proposed guardian)

I ___________________________________________________________________
_____________________________________________________________________
_____________________________________________________________________

am willing to act as the guardian of

_____________________________________________________________________
_____________________________________________________________________

in accordance with Part II of the Mental Health (Northern Ireland) Order 1986.

Signed ____________________________ Date ____________________
3.8 Form 14 - Application by approved social worker

1. The Form must be addressed to the correct responsible authority, ie, Northern Health and Social Care Trust, The Cottage, 5 Greenmount Avenue, Ballymena, BT43 6DA.

2. The full name, ie all forenames and surname should be given. Full office address, including postcode, if possible, should be given. Note the applicant must be an approved social worker.

3. The full name and address of the patient should be given, ie forenames, surname, and house number, street and town (postcode, if possible).

4. The full name and address of the proposed guardian should be given. If the guardian is the responsible authority, the name and address to be used is: Northern Health and Social Care Trust, The Cottage, 5 Greenmount Avenue, Ballymena, BT43 6DA.

5. Enter name of the Trust, ie Northern Health and Social Care Trust.

Note: The section covered by points 6, 7, 8 and 9 should be completed as follows if the nearest relative is consulted. If it has not been possible to consult the nearest relative, it should be deleted. The person consulted must either be the nearest relative as defined by Article 32 of the Order, or be the person appointed under Article 36 by the county court to exercise the functions of the nearest relative.

6. Delete either (a) or (b) in relation to the nearest relative. Name and address of the nearest relative should be given, including postcode, if possible.

7. Delete either (c) or (d) in relation to whether or not the nearest relative objects to the application.

8. If the nearest relative objects to the application, a second approved social worker should be consulted - name and office address should be given - see 2 above.

9. Enter name of Trust, ie Northern Health and Social Care Trust.

Note: The section covered by points 10, 11 and 12 should be completed as follows if the nearest relative has not been consulted. Otherwise it should be deleted.

10. If the nearest relative has not been consulted, (i) or (ii) or (iii) should be deleted as appropriate.

11. Enter name and address of nearest relative if (iii) applies having made the appropriate deletion at (iii).
12. Delete whichever phrase does not apply.

13. Date applicant last saw patient. Date must not be more than 14 days before the Form is signed.

14. (i) or (ii) in relation to patient's age should be deleted, as appropriate.

15. If neither of the doctors who completed the medical recommendation knew the patient, an explanation should be given.

16. Form **must** be signed and dated. **The date of signing must be within 14 days of applicant last having seen the patient.**

17. Part II only needs to be completed if the proposed guardian is not the Trust, ie a relative or other person.
GUARDIANSHIP APPLICATION BY APPROVED SOCIAL WORKER

PART 1

1 (name and address of responsible authority)

To _____________________________________________
________________________________________________

I _______________________________________________
________________________________________________

hereby apply for the reception of ______________________________
_______________________________________________
_______________________________________________

in accordance with Part II to the Mental Health (Northern Ireland) Order 1986

4 (full name and address of proposed guardian)

I am an officer of ______________________________________
________________________________________________

appointed to act as an approved social worker for the purposes of the Order. I did not give the recommendation under Article 108 (3) (b) of the Order on which this application is founded.

The following section should be completed if nearest relative is consulted

Delete either (a) or (b) AND either (c) or (d) as appropriate

6 (name and address)

(a) I have consulted ______________________________
________________________________________________

who to the best of my knowledge and belief, is the patient’s nearest relative within the meaning of the Order.

(name & address)

OR

(b) I have consulted ______________________________
________________________________________________
who I understand has been authorised by a county court to exercise the functions under the Order of the patient’s nearest relative.

AND

7

(c) That person has not notified me or the responsible authority

OR

*(Delete whichever does not apply)

(d) That person has notified *me______________________________________________

*the responsible authority that he/she objects to this application being made and I have consulted

8 (name and address of approved Social Worker)

____________________________________________________

9 (name of Board or HSC Trust)

an officer of_________________________________________________

appointed to act as an approved social worker for the purposes of the Order.

The following section should be completed if nearest Relative not consulted

Delete (1), (ii) or (iii) as appropriate

(i) I have been unable to ascertain who is the patient's nearest relative within the meaning of the Order.

OR

(ii) To the best of my knowledge and belief the patient has no nearest relative within the meaning of the Order.

OR

*(Delete the

(iii) In my opinion it *is not reasonably practicable
*would involve unreasonable delay
to consult

11 (name and address)

who is *the patient’s nearest relative
authorized to exercise the functions of the patient’s nearest relative
before making this application

12
I last saw the patient on ____________________________

13 (date)
I have interviewed the patient and I am satisfied that Guardianship is in all the circumstances of the case the most Appropriate way of providing the care and medical treatment Of which the patient stands in need.

14 (date)
(i) The patient’s date of birth is ________________________

(ii) I believe the patient’s age is 16 years or over.

This application is founded on and accompanied by two medical recommendations and a recommendation by an approved social worker in the prescribed form.

If neither of the medical practitioners knew the patient before making the recommendations, please explain why you could not get a recommendation from a medical practitioner who did know the patient:--

_________________________________________________

_________________________________________________

_________________________________________________

16
Signed _____________________ Date ____________________
PART II
(To be completed by the * proposed guardian)

17 (full name and address of guardian)

I

________________________________________________

________________________________________________

(name of patient)

am willing to act as the guardian of

________________________________________________

________________________________________________

in accordance with Part II of the Mental Health (Northern Ireland) Order 1986.

Signed ______________________ Date _______________

*(Complete only if proposed guardian is not the responsible authority)*
NOTES Re Nearest Relative

(These notes are for guidance only and do not constitute an exact statement of the provisions of the Order)

The nearest relative of a patient within the meaning of the Order is determined by the provisions of Articles 32 to 36 of the Order. In most cases it should be quite clear who is entitled to carry out the functions of the nearest relative. However, if, after reading these notes, you are still in doubt, you should consult a solicitor.

The Order defines “relative” as any of the following:-

a) spouse  e) grandparent
b) child    f) grandchild
c) parent   g) uncle or aunt
d) brother or sister  h) nephew or niece

The “nearest relative” for the purposes of the Order is then defined as the first person listed who is caring for the patient, or, if the patient is already in hospital, was caring for the patient before admission. For example, if a patient is being cared for by a grandchild, that grandchild would be the nearest relative within the meaning of the Order even though a son or daughter was still alive. The following additional points should be noted:-

I. if the patient has relatives but none is or was caring for him, then, the “nearest relative” is simply the first person listed;

II. where there are two or more relatives in any one category, the elder or eldest is preferred;

III. an illegitimate person is treated as the legitimate child or his mother;

IV. in deducing relationships, a relative of the half-blood is treated a relative of the whole blood but, in any particular category of relative, a relative of the whole blood is preferred to a relative of the half-blood;

V. where the person who would otherwise be the nearest relative of a patient is under 18 years of age, that person is disregarded unless he or she is the spouse or parent of the patient;

VI. where a marriage is broken up, and the person who would otherwise be the nearest relative of the patient by virtue of being his or her spouse is no longer living with the patient, that person is disregarded;

VII. where a person who would otherwise be the nearest relative ordinarily resides outside the United Kingdom, the Channel Islands, the Isle of Man or the Republic of Ireland, that person is disregarded unless the patient also ordinarily resides outside those countries;

VIII. for the purposes of the Order, the term “spouse” includes a person who is living with the patients as though they were married, or – if the patient is already in hospital – had been so living with him or her before admission, and has been so living for not less than six months. If such a person is making the application, he or she should state the relationship with the patient as “spouse” and should add the words “by virtue of Article 32(5) of the Order”.

66
IX. a person with whom the patient ordinarily resides and has been so resident for at least 5 years, but who is not a relative and cannot be regarded as a “spouse” in the terms of the previous sub-paragraph, is treated as the nearest relative within the meaning of the Order if he or she is caring for the patient or, where the patient is already in hospital, was caring for the patient before admission. If such a person is making the application, he or she should state the relationship with the patient as “friend with whom the patient has resided in terms of Article 32(6) of the Order.

Article 33 deals with cases where children are taken into care, and provides that the Health and Social Service Board, HSC Trust or person exercising parental rights in such a case is deemed to be the nearest relative within the meaning of the Order.

Article 34 deals with cases where children are under guardianship or in the custody of one parent, and provides that the person having the guardianship or custody of the patient shall be deemed to be the nearest relative for the purposes of the Order.

Article 35 allows the nearest relative of a patient who is detained in hospital or subject to guardianship under the Order to assign his or her functions under the Order to a person willing to assume them. In this situation Form 20 must be completed.

Article 36 enables a country court to appoint an acting nearest relative in any case where an application is made to it in accordance with the provisions of that Article.
### 3.9 Renewal of guardianship - sequence for completion of forms

**NOTE**  
Renewal process should begin at least 2 months before the date on which the authority for guardianship is due to expire.

<table>
<thead>
<tr>
<th>Step</th>
<th>Timeframe</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notification from named officer of the Trust to RMO and to ASW reminding of the need to renew authority for guardianship and setting date by which Forms must be completed and returned.</td>
<td>3-2 months</td>
</tr>
<tr>
<td>RMO completes Form 18 if guardianship is to be renewed.</td>
<td>2 months</td>
</tr>
<tr>
<td><strong>FORM 18: REPORT BY RMO FOR RENEWAL OF AUTHORITY FOR GUARDIANSHIP</strong></td>
<td></td>
</tr>
<tr>
<td>▪ RMO must provide report within 2 months before the date on which the authority for guardianship is due to expire.</td>
<td></td>
</tr>
<tr>
<td>▪ It is recommended that Form 18 is signed within 2 days of the examination of the patient.</td>
<td></td>
</tr>
<tr>
<td>The RMO may complete FORM 18 on the basis of a report received from Another doctor on FORM Gu 8. FORM 18 (and where appropriate FORM Gu 8) should be forwarded to the named ASW.</td>
<td></td>
</tr>
<tr>
<td><strong>FORM Gu 8 REPORT BY SECOND MEDICAL PRACTITIONER</strong></td>
<td></td>
</tr>
<tr>
<td>It is recommended that FORM Gu 8 is signed within 2 days of the examination of the patient.</td>
<td></td>
</tr>
<tr>
<td>On receipt of the medical report (FORM 18) with the Form Gu 8, if appropriate, the ASW completes FORM 19 if renewal is to take place and provides an update social work report.</td>
<td></td>
</tr>
<tr>
<td><strong>FORM 19: REPORTS BY ASW</strong></td>
<td></td>
</tr>
<tr>
<td>▪ It is recommended that Form 19 is signed within 2 days of receipt of the medical reports.</td>
<td></td>
</tr>
<tr>
<td>▪ It is recommended that the ASW should have interviewed the patient and significant others not more that 14 days from when FORM 19 is signed.</td>
<td></td>
</tr>
<tr>
<td>All forms and associated reports forwarded to the named officer of the Trust.</td>
<td></td>
</tr>
<tr>
<td><strong>NOTE</strong>  All forms and support documents should be received at Trust Headquarters at least 5 working days before the expiry of authority of guardianship.</td>
<td>2 weeks</td>
</tr>
<tr>
<td><strong>RENEWAL ACCEPTED OR REJECTED</strong></td>
<td></td>
</tr>
<tr>
<td>All parties notified of decision in writing by the named officer of the Trust.</td>
<td></td>
</tr>
</tbody>
</table>
3.10  **Form 18 - Report by responsible medical officer for renewal of authority for guardianship**

1. Check for full name, ie all forenames and surname, and office address of social worker. This must be an approved social worker appointed under Article 115 of the Order.

2. The full name, ie all forenames and surname, and professional (hospital) address of doctor must be given. Form must be completed by the patient's responsible medical officer as defined by Article 2(2)(b).

3. The full name and address of patient should be given - all forenames, surname, and number of house, street and town, including postcode, if possible.

4. Delete either (a) or (b) in relation to examining the patient. If (a) applies enter the date of the examination. If (b) applies, enter the name and professional (hospital) address of the second doctor.

5. Delete whichever option is not applicable. The doctor must either examine the patient in person or obtain a report on the condition of the patient from another doctor (Form Gu 8). The DHSC Guide suggests that "this is most likely to be the patients own general practitioner".

**Note:** The RMO must provide a report (Form 18), within two months before the expiry of the authority for guardianship. The RMO may complete Form 18 on the basis of a report received from another doctor (Form Gu 8). As the two forms of mental disorder are not mutually exclusive, it is possible for either of the medical reports to state that the patient is suffering from both mental illness and severe mental handicap. However, both medical reports should agree in specifying at least one form of mental disorder in common. The completed medical report(s) should be forwarded to the ASW as soon as practicable.

6. A clinical description of the patient's mental condition should be given, ie type of illness, symptoms, behaviour, etc.

7. The form **must** be signed and dated.

**Note:** While the Order does not specify when Form 18 should be signed it is suggested that, in line with other recommendations, it should be signed not more than two days after the examination of the patient, or the receipt of Form Gu 8, whichever is appropriate.

The procedure for renewal remains the same regardless of the duration of the authority sought.

All Forms and reports associated with the renewal must be received at Trust Headquarters **at least** five working days before the expiry of the authority for guardianship.
REPORT BY RESPONSIBLE MEDICAL OFFICER FOR RENEWAL OF AUTHORITY FOR GUARDIANSHIP

To ______________________________________________
_________________________________________________
_________________________________________________

I ________________________________________________
_________________________________________________
_________________________________________________

am the responsible medical officer for ___________________
_________________________________________________
_________________________________________________

Delete (a) or (b)

a) I examined this patient
(date) on __________________________________________

OR

(b) I have obtained the attached report from another medical practitioner

__________________________________________________
__________________________________________________
__________________________________________________

on the condition of this patient

I am of the opinion that he/she is suffering from
*mental illness
**severe mental handicap
of a nature or degree which warrants his/her continuing to be subject to guardianship.

This opinion is base on the following grounds:-

__________________________________________________
__________________________________________________

Signed _____________________ Date_________________
3.11 Form Gu 8 - Renewal of authority for guardianship - report by second medical practitioner

1. The full name and professional address of the responsible medical officer - usually the consultant in charge of the patient's care.

2. The full name and professional address of the doctor must be given.

3. The full name and address of patient should be given - all forenames, surname, and number of house, street and town, including postcode, if possible.

4. Enter the date of the examination. The date of examination should not be more than two days before the doctor signs the Form.

5. Delete whichever option is not applicable. Note: As the two forms of mental disorder are not necessarily exclusive, it is possible for either of the medical reports to state that the patient is suffering from both mental illness and severe mental handicap. However, both medical reports should agree in specifying at least one form of mental disorder in common.

6. The grounds on which the opinion is based must be given and should include full description of the patient's clinical condition.

7. The Form must be signed and dated. The date of signing should not be more than two days before the date on which the doctor carried out their examination.
Renewal of authority for guardianship - report by Second Medical Practitioner

<table>
<thead>
<tr>
<th>To</th>
<th>(full name and address of responsible medical officer, include postcode, if possible)</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>(full name and professional address of registered medical practitioner, include postcode, if possible)</td>
</tr>
<tr>
<td></td>
<td>(full name and address of patient, include postcode, if possible)</td>
</tr>
<tr>
<td></td>
<td>(date)</td>
</tr>
</tbody>
</table>

I am of the opinion that this patient is suffering from *mental illness/severe mental handicap of a nature or degree which warrants their continuing to be subject to guardianship.

This opinion is founded on the following grounds:

___________________________________________________________________

___________________________________________________________________

___________________________________________________________________

___________________________________________________________________

___________________________________________________________________

Signed: __________________________________________________________

Date: _____________________________________________________________

* Delete if not applicable
3.12 Form 19 - Report by approved social worker for renewal of guardianship

1. Form must be addressed to correct responsible authority - Northern Health and Social Care Trust, The Cottage, 5 Greenmount Avenue, Ballymena, BT43 6DA.

2. The full name, ie all forenames and surname, and office address of social worker should be given. Must be an approved social worker.

3. The name of the Trust should be given, ie Northern Health and Social Care Trust.

4. The name of the responsible medical officer should be given. 

5. Delete singular/plural, as required.

6. The full name and address of patient should be given, ie all forenames, surname, and number of house, street and town, including postcode, if possible.

7. The reasons for the opinion that the welfare ground is met must be given.

8. Form must be signed and dated.

**Note:** While the Order does not specify when Form 19 should be signed, good practice would suggest that it is completed within two days of receipt of the medical report(s). The ASW should have been made aware that renewal is being considered and should have reviewed the case, interviewing the patient and making contact with the nearest relative, or significant others, where possible, not more than 14 days before the date on which the form is signed.

This report should be an update to the original applicants’ report and should outline any significant changes. It should indicate how the powers of Guardianship have minimized identified risks and ensured the welfare of the patient. Consideration of the consequences should Guardianship not be renewed should also be documented.

The procedure for renewal remains the same regardless of the duration of the authority sought.

All Forms and reports associated with the renewal should be received at Trust Headquarters **at least** five working days before the expiry of the authority for guardianship.
<p>| | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>1</strong> (name and address of responsible authority)</td>
<td>To ____________________________________________</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>____________________________________________</td>
</tr>
<tr>
<td></td>
<td></td>
<td>____________________________________________</td>
</tr>
<tr>
<td><strong>2</strong> (full name and office address of approved social worker)</td>
<td>I ____________________________________________</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>____________________________________________</td>
</tr>
<tr>
<td></td>
<td></td>
<td>____________________________________________</td>
</tr>
<tr>
<td><strong>3</strong> (name of Board or HSC Trust)</td>
<td>am an officer of ____________________________________________</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>____________________________________________</td>
</tr>
<tr>
<td></td>
<td></td>
<td>____________________________________________</td>
</tr>
<tr>
<td></td>
<td></td>
<td>appointed to act as an approved social worker for the purposes of the Mental Health (Northern Ireland) Order 1986.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>I have received from ____________________________________________</td>
</tr>
<tr>
<td><strong>4</strong> (name of responsible medical officer)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>____________________________________________</td>
</tr>
<tr>
<td><strong>5</strong> <em>(delete whichever does not apply)</em></td>
<td>the attached *report/reports on ____________________________________________</td>
<td></td>
</tr>
<tr>
<td><strong>6</strong> (full name and address of patient)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>____________________________________________</td>
</tr>
<tr>
<td></td>
<td></td>
<td>____________________________________________</td>
</tr>
<tr>
<td></td>
<td>* (Delete whichever does not apply)</td>
<td>I have considered *that report/those reports and am of the opinion that it is necessary in the interests of the welfare of the patient that he/she could continue to be subject to Guardianship.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>My reasons for the opinion are as follows:-</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(Give reasons for opinion)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>____________________________________________</td>
</tr>
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<td>____________________________________________</td>
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<td>____________________________________________</td>
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<tr>
<td></td>
<td></td>
<td>____________________________________________</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Signed ______________________ Date ________________</td>
</tr>
</tbody>
</table>
3.13 **Form 20 - Assignment of functions by nearest relative**

1. The Form must be addressed to the correct responsible authority, ie Northern Health and Social Care Trust, The Cottage, 5 Greenmount Avenue, Ballymena, BT43 6DA.

2. The full name and address of the nearest relative should be given, ie all forenames and surname, number of house, street and town (postcode if possible).

   **Note:** The applicant must either be the nearest relative as defined by Article 32 of the Order, or be the person appointed by the county court under Article 36 to exercise the functions of the nearest relative.

3. The full name of the patient should be given, ie all forenames and surname.

4. Delete the phrase which does not apply.

5. Where the patient is subject to guardianship the full name and address of the guardian should be given. Where the Trust is guardian, enter the full name, ie all forenames and surname and full office address, including postcode if possible of the professional nominated as guardian.

6. The full name and address of the person who is to assume the functions of nearest relative should be given, ie all forenames and surname, number of house, street and town (postcode if possible).

7. Make appropriate deletion at "his/her".

8. Form **must** be signed and dated by nearest relative.

9. Form **must** be signed and dated by the person who is to assume the functions of nearest relative.
ASSIGNMENT OF FUNCTIONS BY NEAREST RELATIVE

1 (name and address of responsible authority)

To ____________________________________________
______________________________________________
______________________________________________

2 (full name and address of nearest relative)

I ____________________________________________
______________________________________________
______________________________________________

am the nearest relative of

3 (full name of patient)

__________________________________ who is

4 (*Delete the phrase which does not apply)

*detained in
*under guardianship of

5 (name and address of hospital/
full name and address of guardian)

______________________________________________
______________________________________________
______________________________________________

6 (full name and address of assignee)

I hereby give notice that I have assigned my functions as nearest relative to

______________________________________________
______________________________________________
______________________________________________

Signed _____________________Date _______________

SAMPLE FORM ONLY
4. Transfer into and discharge from guardianship
### 4.1 Transfer from detention into guardianship (Article 28)

<table>
<thead>
<tr>
<th>The 'medical' ground</th>
<th>The 'welfare' ground</th>
</tr>
</thead>
<tbody>
<tr>
<td>RMO provides a copy of:</td>
<td>ASW provides a social work report.</td>
</tr>
<tr>
<td>- Forms and reports in relation to the admission for assessment; (where appropriate)</td>
<td>The report should indicate:</td>
</tr>
<tr>
<td>and</td>
<td>- what the patient's needs are;</td>
</tr>
<tr>
<td>- Forms and reports in relation to any subsequent renewal of authority to detain; and</td>
<td>- the reasons why the welfare ground is met; and</td>
</tr>
<tr>
<td>- an updated medical opinion including the basis of the recommendation for guardianship.</td>
<td>- which of the powers of guardianship are considered necessary for securing the welfare of the patient.</td>
</tr>
</tbody>
</table>

1. The nearest relative should be advised, if practicable, of the transfer before it takes place.

2. Trust accepts or rejects transfer. All parties notified of decision in writing from Trust Headquarters.

**Note**: The effective date of guardianship is the date on which the application for assessment was accepted by the hospital.

3. In some cases the transfer request will have to be accompanied by an application for renewal in the prescribed form. **Remember** the requirement to begin the process of renewal within the period of two months before the expiry of the authority for guardianship.
4.2 Guidance for transfer from detention to guardianship

1. Under Article 28(5)(b), a Trust may arrange for the transfer of a patient from detention to guardianship.

2. Where a decision is made to transfer a patient from detention to guardianship, and the transfer is accepted by the Trust, the effective date of reception into guardianship is the date on which the application for assessment was accepted by the hospital. Consequently, such a transfer may also have to be accompanied by an application for renewal of guardianship in the prescribed form [Article 28(7)].

3. The nearest relative may be consulted at an early stage and, in any event, they should be informed, if practicable, before a transfer takes place [Article 28(9)].

4. A pro-forma letter (Form Gu18a) has been prepared to advise transferred patients of their rights and responsibilities under guardianship. It will be issued from Trust Headquarters.

5. The date on which the authority for detention was due to have been renewed will become the date on which the authority for guardianship is to be renewed.

6. An approved social worker should advise on the patient's suitability for guardianship in relation to the welfare ground and should provide a social report. The report should indicate the patient's needs and which of the powers of guardianship are considered necessary for securing the welfare of the patient.

7. The medical report provided for the making of the detention order with an updated medical opinion including the basis for the recommendation for guardianship, is sufficient to provide the medical ground for transfer to guardianship.

8. If the transfer is to the area of another Trust, the agreement of that Trust should be obtained in writing before the transfer can take place.
4.3 Discharge of patient from guardianship

1. A patient ceases to be liable to guardianship if the authority is not renewed (a positive decision to discharge from guardianship is the preferred option) or if they remains absent without leave from a place where they are required to live for 28 days.

2. A patient may be discharged from guardianship under Article 24 by:
   - the responsible medical officer (Form Gu 10) or
   - an authorised social worker (Form Gu 11) or
   - the nearest relative (Form Gu 12 and Gu 12a) or
   - the Mental Health Review Tribunal.

3. The RMO must discharge the patient if they are satisfied that the medical ground no longer applies.

4. The authorised social worker must discharge the patient if they are satisfied that the welfare ground no longer applies.

5. The nearest relative must give at least 72 hours notice in writing. Where any part of the 72 hour period falls on a Sunday the period of notice is automatically extended to 96 hours. Form Gu 12 is available for this purpose though in practice any letter expressing their intention to discharge the patient is sufficient.

   **Note:** If, within the 72 hours (96 hours if Sunday is included), the Trust is furnished with a report by the RMO/aSW (Form Gu 13) barring discharge, then the Order of the nearest relative (Form Gu 12a) shall have no effect.

6. If a report from the RMO/aSW (Form Gu13) is not received within the stipulated period than the nearest relative should complete Form Gu12a to effect the discharge of the patient from guardianship.

7. The Tribunal must discharge the patient if they are satisfied that one or more of the criteria for remaining in guardianship no longer applies.

8. All parties, including the RQIA, will be advised by the Trust of any discharge from guardianship or if a report barring discharge by the nearest relative has been received from the RMO/aSW.
5. **Non-prescribed forms (Gu Forms)**

Non-prescribed forms are used to facilitate the operation of functions under the Order. Copies of the forms which are mainly used by staff in relationship to guardianship are attached in Section 5.1.

An index of non-prescribed forms is included in Section 5.2.
### 5.1 Non-prescribed forms mainly used by staff

| Gu1 | Notification to nearest relative of non-application by approved social worker |
| Gu2 | Record of consultation - second approved social worker |
| Gu3 | Notification of guardian, if other than the Trust |
| Gu4 | Notification to nearest relative of guardianship application by an approved social worker |
| Gu8 | Renewal of authority for guardianship - report by second medical practitioner |
| Gu10 | Discharge of patient from guardianship by responsible medical officer |
| Gu11 | Discharge of patient from guardianship by authorised social worker |
| Gu12 | Notification of intention to discharge a patient from guardianship by nearest relative |
| Gu12a | Discharge of a patient from guardianship by nearest relative |
| Gu13 | Report by responsible medical officer/approved social worker barring discharge of patient from guardianship by nearest relative. |
| Gu14 | Notice to nearest relative of refusal of application for discharge of patient from guardianship |
| Gu19 | Confirmation of receipt of information with regard to rights and responsibilities of a patient subject to guardianship. |
| Gu19a | Confirmation of delivery of information leaflet and verbal explanation of rights and responsibilities of a patient subject to guardianship. |
| Gu20 | Request to the Trust from patient that nearest relative is denied information under Article 27. |
Form Gu1
Notification to nearest relative of non-application by Approved Social Worker

To :
Date :
Dear

___________________________________________________ (name of patient)
___________________________________________________________(address)
___________________________________________________________________

I am writing to advise you that I was asked to assess the above named, who I understand is your , with a view to considering the need for an application for guardianship under the Mental Health (NI) Order 1986.

I interviewed and completed an assessment of this patient, and have decided, in all the circumstances of the case, not to make an application for guardianship.

The reason for this decision is :

* the welfare ground necessary for guardianship does not apply
* the medical ground necessary for guardianship does not apply
* alternative provision for the care of your relative is available as follows:

If you require any further information or help with this matter please do not hesitate to contact me.

Yours sincerely

Social Worker

* Delete if not applicable

Name _____________________________________________________
Office address _________________________________________________
Phone _________________________________________________
Record of consultation - second Approved Social Worker

1. Patient's details

<table>
<thead>
<tr>
<th>Date of birth :</th>
<th>Marital status :</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name :</td>
<td></td>
</tr>
<tr>
<td>Address :</td>
<td></td>
</tr>
<tr>
<td>Present whereabouts :</td>
<td></td>
</tr>
<tr>
<td>Previous contact with social services/mental health services :</td>
<td>Yes  No</td>
</tr>
</tbody>
</table>

If yes, give details :

Are they aware of the guardianship application? Yes  No
If no, please explain :

Are the services of an interpreter/facilitator needed? Yes  No
If yes, describe arrangements :

2. Nearest relative (NR)

| Name : |                 |
|-----------------|
| Address : |             |

<table>
<thead>
<tr>
<th>Relationship to patient :</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Is this person available, or contactable?</td>
<td>Yes  No</td>
</tr>
<tr>
<td>If not, why not?</td>
<td></td>
</tr>
</tbody>
</table>

Do they object to the guardianship application? Yes  No
If yes, nature of objection :
3. Assessment

Date of which the patient was interviewed:

Are they aware of why guardianship is considered necessary?

Yes  No

Comments:


Have you reviewed the evidence for the medical and welfare grounds for guardianship?

Yes  No

State reason:


What is your assessment? (Include evidence)


What alternatives have been considered and why not appropriate?


4. Record of advice to social worker


Signed: ____________________________ Date: ______________

Copy to: Approved Social Worker
Notification of guardian, if other than the Trust

<table>
<thead>
<tr>
<th>Name of patient</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of birth</td>
</tr>
<tr>
<td>Address of patient (include postcode, if possible)</td>
</tr>
</tbody>
</table>

Details of guardian, if other than the Trust

<table>
<thead>
<tr>
<th>Name of guardian</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address of guardian (include postcode, if possible)</td>
</tr>
<tr>
<td>Phone number</td>
</tr>
<tr>
<td>Relationship, if any, to patient</td>
</tr>
</tbody>
</table>

Declaration

I have read the information provided and understand the duties and responsibilities of guardian. I am able and willing to discharge the duties and responsibilities of guardian in respect of the above-named.

Signed : _________________________________    Witness : ________________  

ASW

Date : _________________________________    Date : _________________________________
Guardianship under the Mental Health (Northern Ireland) Order 1986

The duties and responsibilities of a private guardian

Introduction

The Mental Health Order encourages the use of mental health services on a voluntary basis as with any other health care service. And the majority of people who need to, use the service on this basis. However, there are occasions when a person may be detained in hospital and in some cases treated against their will so ask to provide the care, protection and treatment they need. The Order sets out the legal requirements for an individuals' freedom to be curtailed in this way.

Guardianship is also about using compulsory powers and to some extent limits the freedom of the individual, so long as this is a means of securing the most appropriate form of care for a person at the time of their, and possibly their carer’s, greatest need.

Article 133, of the Order, offers protection for the guardian and the Trust's staff in relation to performing their duties provided that they have acted in good faith and with reasonable care.

The guardian and staff, in carrying out their responsibilities under the Order, should have regard to the provision of the Human Rights Act 1998 and the equality obligations of Section 75 of the Northern Ireland Act 1998.

What is the purpose of guardianship?

According to the Code of Practice which accompanies the Mental Health Order, the purpose of guardianship is mainly about making sure that an individual's welfare is provided for in the community. It offers an individual assistance in a less restricted way than the alternative of detention in a hospital. It provides a structure to work with an individual, with a minimum of constraint, to achieve as independent a life as possible in the community. The objective should therefore be to make sure guardianship is used properly and in a positive and flexible way.

Where guardianship is used, it will be part of an agreed comprehensive care plan drawn up by the professionals who are involved in the individual's care, and, where appropriate, the individual, their nearest relative or other informal carer. The care plan should indicate which of the powers given by guardianship are necessary for the care objectives to be achieved. If none of the powers given by guardianship are considered necessary for securing the individual's welfare, guardianship is inappropriate.

Where an adult is assessed as requiring residential care, but because of their mental illness or severe mental handicap, is unable to make a decision as to whether they wish to live in a residential setting, those responsible for their care should consider the appropriateness of guardianship for providing a framework within which
decisions about how current and future care can be planned. Guardianship does not, however, give powers to force an unwilling person into residential care.

**When can guardianship be used?**

An individual must be over the age of 16 before guardianship can be considered. Two doctors, one of who is a consultant psychiatrist, must confirm that the individual suffers from a mental illness or severe mental handicap of a nature or degree which warrants their reception into guardianship. And an approved social worker must confirm that guardianship is needed in the interests of the welfare of the individual. Finally, an application must be made, based on these recommendations, by the individual's nearest relative or by an approved social worker (not the approved social worker who made the recommendation).

The Trust then considers all of the circumstances of the situation and agrees to either accept or reject the application for guardianship.

**What are the components of effective guardianship?**

The Code of Practice suggests that the following components are necessary for guardianship to be effective:

- The guardian's willingness to "advocate" on behalf of the individual for services which are needed to carry out the care plan.
- The provision of readily available support for the guardian, from the Trust.
- A home which will provide for the individual's need for support, care, treatment and protection.
- Access to necessary day care, education and training facilities, as appropriate.
- Effective co-operation and communication between everyone involved in implementing the care plan.

**Note:** Where the individual subject to guardianship is capable of understanding, it is also necessary that they recognise the "authority" of the guardian. There must be a willingness by both parties to work together within the terms of the authority which is vested in the guardian by the Order.

**Principles underpinning guardianship**

Guardians and staff in Northern Health and Social Care Trust will discharge their responsibilities under the Mental Health Order:

- having regard to the needs of the individuals and their carer(s);
- in a courteous and respectful way; and
- making sure that the help provided appropriately reflects the needs of carers in their caring role as well as the needs of those cared for.
Also, the principles of confidentiality, anti-discrimination and acceptance of the individual's right to live out their chosen life-style (provided this does not put themselves or others at unacceptable risk) must be upheld having regard to the Trust's equality obligations under Section 75 of the Northern Ireland Act 1998.

Responsibilities will be discharged in line with the broad principles set out in the Code of Practice, that people suffering from mental disorder should:

- be treated and cared for in such a way as to maintain their dignity;
- receive respect for and consideration of their individual qualities and background - social, cultural, and religious;
- have all their needs taken into account recognising, within available resources, it may not always be practicable to meet them;
- receive any necessary treatment or care with the least degree of control and segregation consistent with their safety and the safety of others;
- be discharged from any form of constraint or control to which they are subject under the Order as soon as it is no longer necessary;
- be treated or cared for in a way which promotes their self-determination and encourages personal responsibility as much as possible, consistent with their needs, wishes and abilities.

This means, in particular, that all individuals should be as fully involved as practicable, consistent with their needs and wishes, in the planning and provision of their care and treatment. Where difficulties such as physical or sensory impairment, literacy problems or language barriers impede such involvement, reasonable steps should be taken to attempt to overcome them. It means that persons subject to guardianship should have their legal and civil rights drawn to their attention, consistent with their capacity to understand them. Where they cannot understand, their rights should be explained to their carers, relatives or friends as appropriate. Finally, it means that, when security is required in providing for the individual's treatment or care, this should be appropriate to their needs and only for so long as it is required.

**Who may be a guardian?**

The guardian may be the Trust or any other willing person. However, a guardian should be a person who can understand and carry out their statutory powers and duties. And who can appreciate the needs of the individual subject to guardianship. The guardian should:

- be ready to make sure that the individual is looked after in an appropriate and sympathetic way;
- show an interest in promoting the individual's physical and mental health; and
- want to provide for the individual's occupation, training, employment, recreation
and general welfare in a suitable way.

The Trust will seek to support private guardians in the discharge of their statutory powers and duties. A private guardian may give notice in writing that they are no longer willing to act as guardian. In such circumstances, the guardianship will immediately vest in the Trust.

What are the powers conferred by guardianship?

The Trust, its nominee guardian or the person named as guardian has three specific powers conferred by guardianship.

(a) The power to require the person subject to guardianship to live at a place specified by the Trust or guardian.

   Note: The person may be taken to the specified place if they willingly comply or offer no resistance. However, this power does not provide the legal authority to detain them physically in such a place, nor does it authorise their removal against their will. If the person is absent without leave from the specified place, they may be returned to it within 28 days by those authorised to do so under Article 29(2) and (3) of the Order.

(b) The power to require attendance for medical treatment, occupation, education or training.

   Note: If the person refuses to attend, the guardian is not authorised to use force to secure such attendance, nor does the Order enable medical treatment to be administered in the absence of their consent.

(c) The power to allow any doctor, ASW or other specified person access to the individual.

   Note: A refusal without reasonable cause to permit an authorised person to have access to the person subject to guardianship is an offence under Article 125 of the Order. Neither the guardian nor any authorised person can use force to secure entry under guardianship itself. However, proceedings under Article 129 (Warrant to search for and remove patients) may be considered. It is also an offence to assist individuals subject to guardianship to absent themselves without leave (Article 124).

How long does guardianship last?

Initially guardianship lasts for six months. However, it may be renewed for a further six months and thereafter at intervals of one year.

A person subject to guardianship and their nearest relative can ask for guardianship to be ended. However, provided the requirements of the Order are met such a request may be refused by the Trust.

The individual must be discharged from guardianship as soon as the doctor or an
authorised social worker believe that it is no longer necessary. Also, the need for guardianship is automatically kept under review every two years by the Mental Health Review Tribunal.

In addition the person subject to guardianship or their nearest relative can ask the Mental Health Review Tribunal to review the need for guardianship during each period of guardianship.

What are the regulations in relation to guardianship?

Regulations 4 and 5 of The Mental Health (Nurses, Guardianship, Consent to Treatment and Prescribed Forms) Regulations (Northern Ireland) 1986 govern the exercise by guardians of their powers under the Order and imposes duties on guardians and on the Trust in the interests of individuals subject to guardianship.

1. Regulation 4 requires a private guardian:

- to comply with such directions as the Trust may give in relation to their exercise of the powers and duties conferred or imposed upon them by guardianship;

- to provide the Trust with all such reports or other information regarding the individual that it may from time to time require;

- to notify the Trust in writing of:
  - the name and address of the person's general practitioner; and
  - any permanent change in their own address or in the address of the person before or not later than seven days after the change takes place;

- to inform the Trust as soon as practicable:
  - in the event of the death of the person; and/or
  - if the person is absent without leave or if they return or are returned following such absence.

2. Regulation 5 requires the Trust:

- to supervise every individual received into guardianship under the Order. This duty commences with the choice of a suitable person to act as guardian;

- to make sure that every individual subject to guardianship is visited as often as the Trust requires but at intervals of not more than three months. At least one such visit in every year should be made by a Part II doctor (consultant psychiatrist);

- to notify the Commission in writing as soon as practicable:
  - of any permanent change of address of a guardian or of an individual
subject to guardianship;

- if an individual subject to guardianship dies or is no longer subject to guardianship, or is absent without leave or is returned following such an absence.

References

1. **The Mental Health (Northern Ireland) Order 1986 (the Order)**

   The Order makes provision with respect to the care and treatment of individuals suffering from mental disorder including the use of detention and guardianship.

2. **The Mental Health (Nurses, Guardianship, Consent to treatment and Prescribed Forms) Regulations (Northern Ireland) 1986 (the Regulations)**

   These are regulations (also known as statutory rules) made under powers given in the Order, and amended in 1992.


   This guide to the Order was published by the Department in 1986.

4. **Code of Practice for the Mental Health (Northern Ireland) Order 1986 (the Code)**

   Article 111 of the Order requires the publication and periodic revision of a Code of Practice. First published in 1992, the scope of the Code is prescribed by Article 111. The Code does not purport to be all-embracing. Its intention is to provide guidance in straightforward language on matters of day to day practice. It offers advice on what is generally agreed to be good professional practice. The Order does not impose a legal duty to comply with the Code but the fact that the Code has not been followed could be referred to in evidence in legal proceedings.
Notification to nearest relative of guardianship application by an approved social worker

To :

Date :

Dear

_________________________________________ (name of patient)

_________________________________________ (address)

I am writing to inform you that I was asked to assess the above-named, who I understand is your , with a view to considering the need for an application for guardianship under the Mental Health (NI) Order 1986.

At the time it was not possible to consult with you on this matter. I interviewed and completed an assessment of the patient and having regard to all of the circumstances, the two medical recommendations, and the recommendation of the Approved Social Worker, I subsequently made application for guardianship.

I enclose a copy of the leaflet setting out the rights of a person who has been received into guardianship.

If you require any further information or help with this matter please do not hesitate to contact me.

Yours sincerely

Social Worker

Leaflet 9 enclosed

Name ____________________________________________ _______

Office Address___________________________________ _________

Phone ____________________________________________ _______
Renewal of authority for guardianship - report by Second Medical Practitioner

To: [full name and address of responsible medical officer, include postcode, if possible]

I: [full name and professional address of registered medical practitioner, include postcode, if possible]

examined: [full name and address of patient, include postcode, if possible]

on: [date]

I am of the opinion that this patient is suffering from *mental illness/severe mental handicap of a nature or degree which warrants their continuing to be subject to guardianship.

This opinion is founded on the following grounds:

________________________________________________________________________________________________________________________________________________________

________________________________________________________________________________________________________________________________________________________

________________________________________________________________________________________________________________________________________________________

________________________________________________________________________________________________________________________________________________________

________________________________________________________________________________________________________________________________________________________

________________________________________________________________________________________________________________________________________________________

Signed: ________________________________

Date: ________________________________

* Delete if not applicable
Form Gu10

Discharge of patient from guardianship by Responsible Medical Officer

<table>
<thead>
<tr>
<th></th>
<th>Name of patient</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Date of birth</td>
</tr>
<tr>
<td></td>
<td>Address of patient (include postcode, if possible)</td>
</tr>
</tbody>
</table>

I ____________________________________________ (name of responsible medical officer) am satisfied that this patient is no longer suffering from *mental illness/severe mental handicap of a nature or degree which warrants their remaining under guardianship.

I hereby order the discharge of this patient.

Signed : __________________________________________

Date : ___________________________________________

* Delete if not applicable
Discharge of patient from guardianship by Authorised Social Worker

<table>
<thead>
<tr>
<th>Name of patient</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of birth</td>
</tr>
<tr>
<td>Address of patient (include postcode, if possible)</td>
</tr>
</tbody>
</table>

I ___________________________________________ (name of authorised social worker)

being an approved social worker authorised for the purposes of Article 24 of the Mental Health (NI) Order 1986 by Northern Health and Social Care Trust, am satisfied that it is no longer necessary in the interests of the welfare of this patient that they should remain under guardianship.

I hereby order the discharge from guardianship of this patient.

Signed : ___________________________________________

Date : ___________________________________________
Notification of intention to discharge a patient from guardianship by the nearest relative

To: Northern Health and Social Care Trust
   The Cottage
   5 Greenmount Avenue
   BALLYMENA
   BT43 6DA

Name of patient:
________________________________________________________________________

Address: __________________________________________________________________

________________________________________________________________________

________________________________________________________________________ Postcode: __________________________

I __________________________ of __________________________

being the nearest relative of the above named patient hereby give 72 hours notice (or if a Sunday be included, 96 hours) of my intention to discharge this patient from guardianship.

I am exercising my right under Article 24 of the Mental Health (NI) Order 1986.

Signed:
________________________________________________________________________

Date: __________________________ Time: __________________________ am/pm*

Relationship to patient: __________________________________________

________________________________________________________________________

* Delete as appropriate
Form Gu12a

Discharge of patient from guardianship by nearest relative

To: Northern Health and Social Care Trust.
The Cottage
5 Greenmount Avenue
Ballymena
BT43 6DA

<table>
<thead>
<tr>
<th>I</th>
<th>Your full name</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Your full address (include postcode, if possible)</td>
</tr>
</tbody>
</table>

having given the specified notice in writing to the Trust of my intention to discharge the patient from guardianship, hereby order the discharge from guardianship of

<table>
<thead>
<tr>
<th>Full name of patient</th>
</tr>
</thead>
<tbody>
<tr>
<td>Date of birth</td>
</tr>
<tr>
<td>Full address of patient (include postcode, if possible)</td>
</tr>
</tbody>
</table>

in accordance with Part II of the Mental Health (Northern Ireland) Order 1986.

Complete Part A or Part B

Part A

To the best of my knowledge and belief I am the patient's nearest relative within the meaning of the Order. I am the patient's (state relationship).

Part B

(i) I have been authorised by a county court to exercise the functions under the Order of the patient's nearest relative. A copy of the court order is attached.

(ii) I have had the functions of nearest relative assigned to me. Form 20 is attached.

Delete (i) or (ii)

Signed: ____________________________________________

Date: ___________________________ Time: ___________________________
Report by Responsible Medical Officer/Authorised Social Worker barring discharge of patient from guardianship by nearest relative

Part I (to be completed by Responsible Medical Officer)

Northern Health and Social Care Trust
The Cottage
5 Greenmount Avenue
BALLYMENA
BT43 6DA

To : Named Officer of the Trust

______________________________________________ (name of nearest relative)
gave notice on __________________________ (date) of their intention to discharge
_____________________________________________________ (name of patient).

In my opinion this patient is still suffering from *mental illness/severe mental
handicap of a nature or degree which warrants their remaining under guardianship.

I base this opinion on the following :
___________________________________________________________________
___________________________________________________________________
___________________________________________________________________

Signed : ___________________________________(Responsible Medical Officer)
Date : _____________________________________

*  Delete if not applicable
Part II (to be completed by an Authorised Social Worker)

In my opinion _________________________(name of patient) should remain under guardianship in the interests of their welfare.

I base this opinion on the following :

___________________________________________________________________
___________________________________________________________________
___________________________________________________________________

Signed : ______________________________________ (Authorised Social Worker)
Date : ______________________________________

Part III (to be completed by the responsible authority)

This report was received on _________________________ (date).

*This patient's nearest relative/the person authorised to exercise the functions of the nearest relative was informed of the views taken by the responsible medical officer and the authorised social worker on _________________________ (date).

A copy of this report was sent to the RQIA on _________________________ (date).

Signed : ____________________________ Position : _____________________
Date : ______________________________

* Delete as appropriate
Notice to nearest relative of refusal of application for discharge of patient from guardianship

(To be completed by the responsible authority - Trust Headquarters)

Dear

Name of patient:

Address:

With reference to your application for the discharge from guardianship by you of this patient, I would advise that the application has been refused because the responsible medical officer and an authorised social worker have provided a report in writing setting out the evidence for their opinions that this patient:

(a) is still suffering from *mental illness/severe mental handicap of a nature or degree which warrants their remaining under guardianship;

and

(b) that it is in the interests of their welfare that they should so remain.

Please take note you will not be able to make an order for the discharge of the patient before ______________________ (date). However, you have a right to appeal to the Mental Health Review Tribunal within 28 days of receipt of this letter. A form for this purpose is available from the social worker.

You should also note that any doctor who is authorised by yourself, or on your behalf, may at any reasonable time visit the patient and perform an examination in private, for the purpose of advising you as to the exercise of your powers to discharge the patient from guardianship.

If you require any help or further information with regard to this matter please contact:

Yours sincerely

Signed: ________________________________ Position: __________________________

Date: ___________________________________________________________________

* Delete if not applicable
## Form Gu19

**Confirmation of receipt of information with regard to rights and responsibilities of a patient subject to guardianship**

<table>
<thead>
<tr>
<th>I</th>
<th>Your full name</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Your full address (include postcode, if possible)</td>
</tr>
</tbody>
</table>

hereby confirm that I have today received written information which sets out my rights and responsibilities as a patient subject to guardianship.

This information has also been explained to me by

<table>
<thead>
<tr>
<th>Name of person providing explanation</th>
<th>Full address (include postcode, if possible)</th>
</tr>
</thead>
</table>

Signed : ________________________________

Dated : ________________________________

To be returned immediately after signed to :

Northern Health and Social Care Trust
The Cottage
5 Greenmount Avenue
Ballymena
BT43 6DA
Confirmation of delivery of information leaflet and verbal explanation of rights and responsibilities of a patient subject to guardianship

I the undersigned hereby confirm that I have today delivered and fully explained a copy of the written information which sets out the rights and responsibilities of a patient subject to guardianship to

<table>
<thead>
<tr>
<th>Full name of patient</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
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</table>

<table>
<thead>
<tr>
<th>Full address of patient (include postcode, if possible)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<tr>
<td></td>
</tr>
<tr>
<td></td>
</tr>
</tbody>
</table>

I was unable to have Form Gu19 completed because:

___________________________________________________________________

___________________________________________________________________

___________________________________________________________________

* Form Gu19 will follow as soon as is practicable.

* It is unlikely that the patient will be able to complete Form Gu19.

Signed: _________________________________________________

Position: _______________________________________________

Dated: _________________________________________________

* Delete as appropriate

To be returned immediately after signed to:

Northern Health and Social Care Trust
The Cottage
5 Greenmount Avenue
Ballymena
BT43 6DA
Request to the Trust from patient that nearest relative is denied information under Article 27

I, ________________, Your full name

Your full address
(include postcode if possible)

I hereby request that you do not give the information specified in Article 27 of the Mental Health (NI) Order to:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
</tr>
</thead>
<tbody>
<tr>
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<td></td>
</tr>
</tbody>
</table>

 who is my nearest relative. I have reached this decision following discussion with

_________________________________________________________________ who is my
_________________________________________________________________ (specify).

Signed: ___________________________ Date: ___________________________

Witness: ___________________________ Date: ___________________________

To: Named Officer of Northern Health and Social Care Trust
Trust Headquarters
The Cottage
5 Greenmount Avenue
BALLYMENA
BT43 6DA
### 5.2 Index of non-prescribed forms

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</tr>
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<td>Gu9b</td>
<td>Notification to guardian (if other than the Trust) of renewal of authority for guardianship</td>
</tr>
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<td>Gu9c</td>
<td>Notification to the RQIA of renewal of authority for guardianship</td>
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<tr>
<td>Gu14</td>
<td>Notice to nearest relative of refusal of an application for discharge of a patient from guardianship</td>
</tr>
<tr>
<td>Gu15</td>
<td>Notification to patient of discharge from guardianship</td>
</tr>
<tr>
<td>Gu15a</td>
<td>Notification to nearest relative of discharge of patient from guardianship</td>
</tr>
<tr>
<td>Gu15b</td>
<td>Notification to the RQIA when a patient is discharged from guardianship</td>
</tr>
<tr>
<td>Gu15c</td>
<td>Notification to guardian (if other than the Trust) of discharge of patient from guardianship</td>
</tr>
<tr>
<td>Gu15d</td>
<td>Notification to Responsible Medical Officer, Approved Social Worker, General Practitioner of discharge of patient from guardianship</td>
</tr>
<tr>
<td>Gu16</td>
<td>Notification to the nearest relative/guardian (if other than the Trust) of transfer of patient between guardians</td>
</tr>
<tr>
<td>Gu16a</td>
<td>Notification to the RQIA of transfer of patient between guardians</td>
</tr>
<tr>
<td>Gu16b</td>
<td>Notification to RQIA of the transfer of guardianship on death, incapacity, etc of guardian</td>
</tr>
<tr>
<td>Gu16c</td>
<td>Notification to the RQIA of a permanent change of address of guardian/patient subject to guardianship</td>
</tr>
<tr>
<td>Gu16d</td>
<td>Notification to the RQIA of death of a patient subject to guardianship</td>
</tr>
<tr>
<td>Gu16e</td>
<td>Notification to the RQIA of absence without leave or return of patient subject to guardianship</td>
</tr>
<tr>
<td>Gu17</td>
<td>Notification to guardian (if other than the Trust) of a patient admitted to hospital for assessment</td>
</tr>
<tr>
<td>Gu18</td>
<td>Notification to nearest relative of detained patient's transfer into guardianship</td>
</tr>
<tr>
<td>Gu18a</td>
<td>Notification to patient transferred from detained status to guardianship</td>
</tr>
<tr>
<td>Gu18b</td>
<td>Notification to RQIA of detained patient's transfer into guardianship</td>
</tr>
<tr>
<td>Gu19</td>
<td>Confirmation of receipt of information with regard to rights of patient subject to guardianship</td>
</tr>
<tr>
<td>Gu19a</td>
<td>Confirmation of delivery of information leaflet and verbal explanation of rights of patient subject to guardianship</td>
</tr>
<tr>
<td>Gu20</td>
<td>Request to responsible authority from patient that nearest relative is denied information under Article 27</td>
</tr>
<tr>
<td>Gu21</td>
<td>Notification to nearest relative of patient's reception into guardianship (Guardianship Order)</td>
</tr>
<tr>
<td>Gu22</td>
<td>Notification to RQIA of a patient admitted to a hospital or received into guardianship in Northern Ireland in pursuance of arrangements under Part VI of 1983 Act or Part VII of the 1984 Act</td>
</tr>
</tbody>
</table>
Glossary of Terms

**Source:** Mental Health (Northern Ireland) Order 1986, Code of Practice, Belfast HMSO, 1992

**Applicant, the**
The patient’s nearest relative or an Approved Social Worker, or a person appointed by the County Court to act as the nearest relative.

**Approved Social Worker (ASW)**
A social worker specially training in dealing with persons suffering mental disorder, and appointed by a Board to act as an ASW for the purposes of the

**Board**
A Health and Social Services Board

**Department, the**
The Department of Health and Social Services

**Forms (numbered)**
The forms which are required to be prescribed under the Order. They are prescribed under the Mental Health (Nurses, Guardianship, Consent to Treatment and Prescribed Forms) Regulations (Northern Ireland) 1986 (SR 1986 No 174) as amended, and are included also in the Guide

**Guide, the**

**Medical treatment**
Medical treatment is broadly defined to include nursing, and also care and training under medical supervision

**Mental disorder**
This is defined in Article 3 of the Order, and discussed in paragraphs 8 to 14 of the Guide

**Regulation and Quality Improvement Authority**
The RQIA has replaced The Mental Health Commission and was established under The Health and Personal Social Services (Quality, Improvement and Regulation) (NI) Order 2003.

**Mental Health Appeal tribunal**
Appeal tribunal constituted in accordance with

**Review Tribunal**
Article 70 of the Order

**Nearest relative**
This is defined in Article 32 of the Order by reference to a list of relationships, a caring relative taking priority over a non-caring relative, whatever his position on the list. The list also reproduced in the notes to the relevant prescribed forms

**Order, the**
The Mental Health (Northern Ireland) Order 1986

**Part II/Part IV Doctor**
A medical practitioner appointed by the RQIA for the purposes of Part VIII of the Order

**Patient**
A person suffering or appearing to be suffering from mental disorder. (NB A different meaning applies for the purposes of Part VIII of the Order

**Trust**
An organisation providing health and social services either in hospital or in the community. Trusts are part of the health and social services but manage their own services

**Responsible Authority**
For a hospital patient, the Trust administering the hospital. For guardianship, the Trust for the area in which the patient resides

**Responsible**
The part ii doctor in charge of the patients

**Medical Officer (RMO)**
Assessment or treatment (or who provides certain medical recommendations required by the Order for the purposes of guardianship)

**Regulations**
A number of regulations (also known as Statutory Rules) have been made under powers given in the Order. The most important, for the purposes of this Code, are the Mental Health (Nurses, Guardianship, Consent to Treatment and Prescribed Forms) Regulations (Northern Ireland) 1986, as amended

*Amended to reflect current structure of health and social services.*

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Guardianship Case Discussion

Agenda & Guidance for Chairperson

1. Welcome, Introductions, Apologies

2. Purpose of Case Discussion
   - Facilitate sharing of information
   - Consider whether grounds for Guardianship are met
   - Consider which powers of guardianship are necessary
   - Ascertain the views of the patient and the nearest relative
   - Consider the level of co-operation from the patient
   - Consider alternatives to Guardianship
   - Other options to manage risk
   - Consider the Human Rights of all parties
   - Agree an Action Plan

3. Background Report – (Key Worker)

4. Grounds for Guardianship – (P 27)
   - Medical
   - Welfare

5. Powers of Guardianship
   - Residence
   - Medical Treatment
   - Allows Access to Patient (Dr, ASW or other)

6. Patient’s Views and Likelihood of Co-operation – (P 3. Section 1.3)

7. Nearest Relatives’ Views
   - Agreement (P 22. Section 1.25 pt. 3)
   - Objection (P33)

8. Alternatives to Guardianship

9. Other Options to Manage Risk

10. Human Rights Considerations - (P 5 & 6)
    - Consider Articles - 2, 3, 5, 6, 8, 10, 12, 14
      1 of Protocol 1
      2 of Protocol 1
11. Action Plan/Roles - Timeline (P 45)

- Proceed with application for Guardianship
  - Yes □
  - No □

- Nominee Guardian

- Medical Recommendation
  - Joint – Form 15 – (P 52)
  - Single – Form 16 – (P 55 & 56)

- Approved Social Work Welfare Recommendation – Form 17 (P48)
  + Social Report (Background Report) – (P 31)

- Applicant – ASW – Form 14 (P 8 & P 60)
  + Applicants Report (P 31)
  + Care Plan (P 35)
  - Nearest Relative – Form 13 (P 8 & P 58)

- Outcome of Discussion Communicated to
  - Patient
  - Nearest Relative
    
    By Whom
Guardianship Case Discussion

Agenda

(Guidance for Minute – Taker)

1. Welcome, Introductions, Apologies
2. Purpose of Case Discussion
3. Background Report
4. Grounds for Guardianship
5. Powers of Guardianship
6. Patient’s Views and Likelihood of Co-operation
7. Nearest Relatives’ Views
8. Alternatives to Guardianship
9. Other Options to Manage Risk
10. Human Rights Considerations
11. Action Plan/Roles