



GUIDELINES AND AUDIT
IMPLEMENTATION NETWORK

GUIDELINES ON THE USE OF THE MENTAL HEALTH (NORTHERN IRELAND) ORDER 1986

October 2011

FOREWORD

This new GAIN Mental Health (NI) Order 1986 Guideline also offers a practical, accessible, available e-learning package for all the agencies involved in mental health care. These include the NI Ambulance Service (NIAS), Department of Health, Social Services and Public Safety (DHSSPS), Health & Social Care Board, (HSCB), Health & Social Care Trusts (HSCT), Police Service of NI (PSNI), Professional Bodies, NI Medical & Dental Training Agency (NIMDTA) and service users and carers.

All of these agencies have significant powers to intervene in people's lives yet there has been no recent guidance taking into account changes over the past 25 years which include, changes in the Order and its interpretation, related legislation, political and organisational change, changes in service delivery and changes in the expectations of service users. The Guideline takes account of developments in legislation, practice and services as far as possible and is further supported by a list of resources which are available for download at <http://www.gain-ni.org>

The new Guideline therefore fills a longstanding gap for those charged with operating the Mental Health (NI) Order 1986 and we hope it will also provide a pathway for the introduction of planned new developments in mental health legislation.

This guideline addresses the needs of an important and vulnerable group in society and its aim is to enable a wide range of professionals who have been given responsibilities under the "Order" to use them in an informed way, taking a principled and a human rights perspective.

At the beginning of the process no one anticipated the amount of work and commitment which would be involved. GAIN would like to thank the agencies, professionals, carers and service users in the project team who freely gave their time, expertise and experience in the development of this guideline and its innovative e-learning package.



Professor Robin Davidson

Chairman of GAIN Operational Committee



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INTRODUCTION TO THE GUIDELINES

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INTRODUCTION

What is the Mental Health (Northern Ireland) Order 1986?

The Mental Health (Northern Ireland) Order 1986 is an important law in relation to the care, treatment and protection of people who experience mental disorder.

[LINK TO The Mental Health \(Northern Ireland\) Order 1986](#)

What is Mental Disorder?

Mental Disorder is a generic term that is used throughout the Order to refer to everyone to whom the Order as a whole applies. It is defined in the legislation as “mental illness, mental handicap*, and any other disorder or disability of mind”.

(Article 3 Para 1)

What is the purpose of the Order?

In most situations people will choose whether or not to seek help for their mental disorder and will do so voluntarily. They will have the right to accept or decline care and treatments, to choose to be treated in hospital or in the community, to leave hospital at any time and to live independently and without interference in the community.

The Order provides a framework for the care, treatment and protection of all persons with a mental disorder and establishes systems through which the statutory rights of individuals and their relatives are protected and the duties, responsibilities and powers of professionals regulated.

The powers and protections set out in this legislation apply to all persons with a mental disorder in Northern Ireland, adults and children, regardless of whether they are a resident in the jurisdiction or not.

* The term mental handicap is used throughout the legislation to refer to the group of people now referred to as having a learning disability.



The Order also contains provisions in relation to some individuals who may, because of the nature and degree of their mental disorder, place themselves and or/others at risk. When this occurs, and when the individual is deemed to be unable or unwilling to accept care and treatment, the law places a responsibility on certain health and social care professionals and others to intervene.

What provisions are contained within the Order?

The first part of the Order (Part 1) is concerned with definitions and these can be found in the Glossary section of this guidance document.

- **Part II** of the Order is specifically concerned with providing a legal framework for the compulsory admission for assessment and detention in hospital for treatment of mental disorder and with Reception into Guardianship.
- **Part III** contains separate provisions for those persons with a mental disorder concerned in criminal proceedings or under sentence by a court.
- **Part IV** sets out the law on consent to treatment for mental disorder.
- **Parts V and Part VI** of the Order are primarily concerned with protections for persons with a mental disorder.

Part V sets out the role of the Mental Health Review Tribunal in protecting against unjustified detention or Guardianship.

Part VI established the Mental Health Commission with a broad remit to oversee the care, treatment and protection of all individuals with a mental disorder. This function has since been transferred to the Regulation and Quality Improvement Authority (RQIA).

- **Part VII** is concerned with the Registration of Private Hospitals.
- **Part VIII** is concerned with the Management of Property and Affairs of Patients.
- **Part IX** Sets out the Miscellaneous Functions of the Department and Boards/Trusts, including the statutory duty on Trusts to appoint a sufficient number of approved Social Workers for the purposes of discharging the functions conferred on them in the Order.

- **Part X** is concerned with Offences.
- **Part XI** addresses Miscellaneous and Supplementary matters.

There are also a number of Schedules within the legislation.

What guidance was given with the legislation?

Two guidance documents were produced in 1986 and 1992:

- **A Guide** (*published 1986*) Department of Health and Social Services (NI)
[LINK TO Mental Health \(NI\) Order 1986: A Guide](#) and
- **Code of Practice** (*published 1992*) - Department of Health and Social Services
[LINK TO Mental Health \(NI\) Order 1986 Code of Practice](#)

While the Mental Health (Northern Ireland) Order 1986 sets out statutory rights, powers and responsibilities, the Guide and the Code of Practice to the Mental Health (Northern Ireland) Order 1986 contain guidance for medical practitioners, Health and Social Care Trusts, hospital staff, approved social workers and others in relation to the admission of patients to hospitals and treatment of persons with a mental disorder and the reception of individuals into Guardianship.

It is important that all those who are involved in providing care and treatment for persons with a mental disorder comply as fully as possible with the guidelines for practice contained in the Code.

1.2 of the Code states:

“The Order does not impose a legal duty to comply with the Code but the fact that the Code had not been followed could be referred to in evidence in legal proceedings”.

This GAIN Guideline supplements and updates these documents on areas of practice and law. It relies heavily upon them and should be used in conjunction with them.



What other legislation and policy needs to be taken into consideration to guide practice?

A number of pieces of legislation and policy documents should also be considered when carrying out duties and responsibilities under the Order. These include:

- **LINK TO Human Rights Act 1998**

The Human Rights Act 1998 came into effect on 2nd October 2000. This important piece of legislation underpins the safeguards and rights of all individuals, including those with a mental disorder. All public authorities, including mental health professionals and others tasked to carry out functions under the Mental Health (Northern Ireland) Order 1986 are now required under domestic law to:

- Interpret the Order, as far as is possible to do so, in a way that is compatible with the European Convention of Human Rights (ECHR).
- Ensure that practice is guided by and compatible with the Human Rights Act 1998.
- Take account of relevant domestic and European case law in relation to these matters in their practice.

The individual rights and freedoms enshrined in the European Convention of Human Rights are now part of domestic law and enforceable in courts throughout the UK including NI courts.

These rights include the Right to:

Article 2	Life
Article 3	Freedom from torture and inhuman or degrading treatment or punishment
Article 4	Freedom from slavery, servitude and forced or compulsory labour
Article 5	Liberty and security of the Person
Article 6	A fair and public trial
Article 7	No punishment without law

Article 8	Respect for private and family life, home and correspondence
Article 9	Freedom of thought, conscience and religion
Article 10	Freedom of expression
Article 11	Freedom of assembly and association
Article 12	Marry and found a family
Article 14	Not be discriminated against in the enjoyment of any of these rights.

While some of these rights, for example **Article 3**, are considered absolute (i.e. they cannot be interfered with) others, such as **Article 5** and **8**, are limited or qualified meaning that interference can be justified in certain circumstances.

Those tasked to carry out duties and functions under the Order should consider the following list of considerations before proceeding with any action:

1. Is there a necessity to act?
2. Does the decision to act involve any protected rights under the Human Rights Act 1998?
3. Is there any legal basis upon which to act? Is there a statutory/discretionary power available to you? (i.e. Mental Health (Northern Ireland) Order 1986)
4. Is the proposed action proportionate?
5. Is there any other way in which you could pursue your aim which would have less impact on the protected right?

OTHER LEGISLATION WHICH MUST BE TAKEN INTO CONSIDERATION:

- **LINK TO Children Order (Northern Ireland) Order 1995 and amendments**
- **LINK TO Personal Health and Social Services Order (Northern Ireland) 1972 – and amendments**
- **LINK TO Health and Personal Social Services Provision of Health Services to Persons not Ordinarily Resident Regulations (Northern Ireland) 2005**



- **LINK TO Northern Ireland Act 1998**
- **LINK TO The Race Relations (Northern Ireland) Order 1997**
- **LINK TO Sexual Offences (Northern Ireland) Order 2009**

GUIDANCE WHICH MUST BE CONSIDERED INCLUDES:

- **DHSSPSNI – Promoting Quality Care. Good Practice Guidance on the Assessment and Management of Risk in Mental Health and Learning Disability Services** (as revised 2010)
LINK TO Promoting Quality Care Good Practice Guidance Mental Health and Learning Disability Services
LINK TO Preventing Harm to Children from Parents with Mental Health Needs HSC (SQSD) 02-10
- **DHSSPSNI Carer and Discharge Guidance.** Circular HSS (ECCU) 3/2010 - Carers & Discharge Guidance (PDF 347 KB) pdf
LINK TO DHSSPSNI Carer and Discharge Guidance. Circular HSS (ECCU) 3/2010
- **DHSSPSNI (NI) Safeguarding Vulnerable Adults.** Regional Protection Policy and Procedural Guidance **LINK TO Safeguarding Vulnerable Adults Regional Adult Protection Policy and Procedural Guidelines. September 2006 PDF**
LINK TO Adult Abuse Guidance for Staff
- **PPANI – Public Protection Arrangements for Northern Ireland**
Guidance to agencies on public protection arrangements (PPANI) **Article 50**, Criminal Justice (Northern Ireland) Order 2008 pdf
LINK TO PPANI – Public Protection Arrangements for Northern Ireland
- **MARAC - Multi-Agency Risk Assessment Conference.**
Guidance in relation to MARC arrangements in Northern Ireland can be found on the following website:
LINK TO MARAC - Multi-Agency Risk Assessment Conference

- **DEPRIVATION OF LIBERTY SAFEGUARDS (DOLS) – Interim Guidance.**
LINK TO Circular Revised Deprivation of Liberty Safeguards
Ref: HSC/MHDP – MHU 1 /10 -

Reference will be made to these and other legislation and policy throughout these Guidelines.

Are there Principles to guide practice?

Not in the legislation itself, but the Code of Practice contains the following principles in relation to those people with a mental disorder who require care and treatment.

They 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 be always 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.



In addition the Code contains a list of specific principles in relation to treatment. **5.3** of the Code of Practice states that all treatment should:

- **Be primarily for the benefit of the patient.** Where possible the patient's willing participation should be obtained. The main aims should be, so far as possible, to improve health and reduce handicap including social handicap;
- **Protect the safety of the patient and other people.** In the course of treatment or in the interests of safety, restriction of liberty may be necessary but should never be used as a punishment and should only be used as a last resort to the minimum extent necessary;
- **Respect the patient's dignity and rights.** No treatment should deprive a patient of food, shelter, water, warmth, a comfortable environment or confidentiality;
- **Respect the patient's rights to privacy and freedom of choice.** Forms of treatment, such as psychological treatment techniques, group therapy and behaviour modification programmes, which may intrude on the patient's normal right to privacy and freedom of action, should be carefully planned and conducted by experienced and appropriately trained staff and should be kept under review;
- **Respect the patient's rights to information.** Patients are entitled to information and explanation about their condition, and treatment which is proposed, and their rights. This information should be conveyed at a suitable time and in a form which takes account of the patient's capacity to understand.

These principles apply to the treatment of all mentally disordered patients whether or not they are in hospital. In hospital practice they apply to both voluntary and detained patients including those admitted under Part III of the Order.

What does this mean for the person with a mental disorder?

“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.

They should be informed about the nature, purpose and likely outcome of any proposed treatment.

This applies equally to young patients and to patients who are receiving care or treatment on a compulsory basis.

Where physical difficulties such as hearing impairment 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.”

Code 1.9



Does the Code contain any additional and specific principles in relation to children and young people under the age of 18 years?

Yes. The Code states that practice for this age group should be guided by the following principles:

- Young people should be kept as fully informed as possible about their care and treatment; their views and wishes must always be taken into account;
- Unless statute specifically overrides, young people should be regarded as having the right to make their own decisions (and in particular treatment decisions) when they have sufficient “understanding and intelligence”;
- Any intervention in the life of the young person considered necessary by reason of their mental disorder, should be the least restrictive possible and result in the least possible segregation from family, friends, community and school.

These principles should be considered for children and young people regardless of whether they are in hospital on a voluntary basis or are detained.

Within this document, and in line with the Mental Health (NI) Order 1986 and the Code of Practice, reference to one gender includes all, unless the context requires otherwise.

ASSESSMENT AND COMPULSORY ADMISSION TO HOSPITAL (PART II)

INTRODUCTION TO PATHWAYS FOR COMPULSORY
ADMISSION TO HOSPITAL FOR ASSESSMENT AND
TREATMENT (PART II)

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INTRODUCTION TO PATHWAYS FOR COMPULSORY ADMISSION TO HOSPITAL FOR ASSESSMENT AND TREATMENT (PART II)

Part II of the **Mental Health (Northern Ireland) Order 1986 (the Order)** sets out the processes through which a person may be compulsory admitted to and detained in hospital for assessment and treatment. Part II also sets out provisions for reception into guardianship and will be addressed in a separate chapter.

This chapter begins with an overview of the key provisions in relation to compulsory admission to and detention in hospital for assessment and treatment. The process is then set out following the person/patient pathway from;

- **The Community** – including an Accident and Emergency Department (A&E)
- **A General Hospital**
- **A Psychiatric or Learning Disability Hospital**
with reference to three flow charts which follow the patient's journey.

1. PERSONS WHO MAY BE DETAINED.

How may a person be detained in hospital for assessment?

The Order states that a person may be detained in hospital for assessment of their mental disorder if an application, founded on a medical recommendation, has been made. The application will only be made if the person meets the criteria for admission set out in the Order and if there is no alternative to detention in hospital.

At what age can a person be compulsory admitted to and detained in hospital under the Order?

Anyone, regardless of age, can be admitted to hospital under the Order if they meet the criteria set out in the Order.



Do these provisions also apply to children and young people (aged 17 and under)?

Yes. The same criteria and provisions apply regardless of age.

The Children (Northern Ireland) Order 1995 also has provision for a court to direct a parent or guardian to bring a child or young person to hospital for assessment of their mental disorder and, if necessary, for treatment.

Can a person who is not a resident of Northern Ireland be admitted to and detained in hospital for assessment and treatment?

Yes. Non-residents including visitors, migrant workers, refugees and those who may be considered illegal immigrants can all be admitted to hospital for assessment and treatment if the criteria have been met.

In such circumstances anyone who is not a resident of Northern Ireland can receive compulsory assessment and treatment in hospital or care under guardianship without charge. These provisions are set out in the Health and Personal Social Services Statutory Rules – **Provisions of Health Services to Persons who are not Ordinarily Resident Regulations (Northern Ireland) 2005**.¹

LINK TO Health and Personal Social Services Provision of Health Services to Persons not Ordinarily Resident Regulations (Northern Ireland) 2005

What if the person does not speak English as a first or competently as a second language?

All Health and Social Care professionals/staff have a legal duty to provide an interpreter in such circumstances under The **Northern Ireland Act 1998, Race Relations (Northern Ireland) Order 1997** and **Human Rights Act 1998**.

¹ Health and Personal Social Services Statutory Rules – Provisions of Health Services to Persons who are not Ordinarily Resident Regulations (Northern Ireland) 2005

What if the person has communication difficulties i.e. sensory impairment or learning difficulties?

Again all health and social care professionals have a duty under the above pieces of legislation to assist the person involved and their family/carers if also required.

Do these provisions apply where arrangements are being made for the care and treatment of persons who may lack capacity to give consent to arrangements that could be considered as a deprivation of liberty?

The Order does not specifically address issues of capacity in relation to admission and treatment. However all those involved in the admission, care and treatment of a person who lacks mental capacity to consent to these arrangements, because of their mental disorder, should be guided by the interim guidance provided by the DHSSPSNI in relation to such matters.

LINK TO Circular Revised Deprivation of Liberty Safeguards

This guidance was circulated in October 2010 following an important judgment by the European Court of Human Rights (HL v UK 45508/99 (2004) ECHR 471.

2. THE CRITERIA FOR DETENTION IN HOSPITAL

What are the criteria for Admission to Hospital for Assessment?

The criteria for admission to hospital for assessment are set out in **Article 4** of the Order which states that an application for assessment may be made in respect of a patient on the grounds that the person is:

- Suffering from mental disorder of a nature or degree which warrants his detention in hospital for assessment (or for assessment followed by medical treatment); and
- Failure to so detain him would create a substantial likelihood of serious physical harm to himself or to other persons.



What are the criteria for Detention in Hospital for Treatment?

The criteria for detention in hospital for treatment are set out in **Article 12** as:

- The patient is suffering from mental illness or severe mental impairment of a nature or degree which warrants his detention in hospital for medical treatment; and
- Failure to so detain the patient would create a substantial likelihood of serious physical harm to himself or to other persons.

What do the terms nature and degree mean?

The word “nature” refers to the particular mental disorder that the person is thought to be suffering from, its chronicity, prognosis and the person’s previous response to receiving treatment for the disorder. The word “degree” refers to the current severity of the person’s mental disorder.

What is a Mental Disorder?

Article 3 of the Mental Health (Northern Ireland) Order 1986 states that in relation to admission for assessment the definition of mental disorder includes:

- Mental illness, defined as a state of mind which affects a person’s thinking, perceiving, emotion or judgement to an extent that he requires care or medical treatment in his own interests or the interests of other persons.
- Mental handicap, defined as a state of arrested or incomplete development of mind which includes significant impairment of intelligence and social functioning and
- Any other disorder or disability of mind.

The criteria for detention for treatment include mental illness as defined above and severe mental impairment:

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

(The legislation contains 1 additional definition in relation to severe mental handicap which is one of the criteria for guardianship. This will be defined in the Guardianship Chapter of this document)

What is not considered a Mental Disorder within the meaning of the Order?

The Order states “No person shall be treated under this Order as suffering from mental disorder, or from any form of mental disorder, by reason only of personality disorder, promiscuity or other immoral conduct, sexual deviancy or dependence on alcohol or drugs”. **Article 3 (2)**

This means that a person who is considered to have a personality disorder, is dependant on alcohol or drugs, or is a person exhibiting any of the behaviours listed above, can only be detained if he is also considered to be suffering from a co-existing mental disorder.

What does “*substantial likelihood of serious physical harm*” mean?

This refers to situations where:

- A person has caused serious physical harm to himself or has threatened or attempted to do so and/or
- Where the person’s judgement is so affected by his mental disorder that he is unable to protect himself against serious physical harm and
- Reasonable provision for the person’s protection is not available in the community.



In relation to others, substantial likelihood of serious physical harm refers to situations where:

- The person has behaved violently towards others.
- Has behaved in such a way that others were placed in reasonable fear of serious physical harm to themselves.

Article 2 (4)

What other factors should be considered?

The Code states that the assessment of a person whose detention in hospital is being considered can legitimately involve consideration of any prognosis of future deterioration of their mental health and the known history of their mental disorder. Examples of what may be considered in assessing the nature of the serious physical harm are:

- Uncontrolled over-activity likely to lead to exhaustion;
- Gross neglect of hygiene and personal safety which would create a hazard to the patient or others;
- Serious and protracted neglect of diet which would lead to malnutrition;
- Dis-inhibited behaviour likely eventually to lead to serious physical harm to the patient, his family or other persons.

Code of Practice 2.22

3. MAKING AN APPLICATION AND RECOMMENDATION.

What must happen before a person may be detained in hospital for assessment?

Article 4 (3) of the Order sets out the formal procedures that must be followed before a person may be admitted to hospital for assessment against their will. Admission requires the making of a **Medical Recommendation** followed by an **Application "founded"** on this recommendation.

Who can make the medical recommendation?

Article 6 of the Order states that the medical recommendation for admission for assessment should be given and made on the prescribed form (**Form 3**) by:

- The patient's medical practitioner or by a medical practitioner who has previous acquaintance with the person whose admission to hospital is being recommended.
- A medical practitioner on the staff of the hospital to which admission is sought **should not** make the recommendation except in cases of urgent necessity.

The Medical recommendation must not be made by:

- The applicant or a partner of, or person employed as an assistant by, the applicant or
- A person who receives, or has an interest in the receipt of, any payments made on account of the maintenance of the patient or
- The spouse (civil partner), parent, father-in-law, mother-in-law, child, son-in-law, daughter-in-law, brother, brother-in-law, sister or sister-in-law of the patient.

What if the person is not registered with a General Practitioner?

The assistance of a doctor **must** be sought as the application cannot proceed until a medical recommendation has been made. Some Trusts may have arrangements in place to deal with such eventualities. In situations where the assistance of a doctor is required as a matter of urgency this should be sought from the nearest GP practice to where the person, for whom there is concern is, at that time.



What must the medical practitioner do before making the medical recommendation?

The medical practitioner must:

- Examine the patient not more than **two days** before the date he/she signs the recommendation and
- Address the legal criteria for admission before making their recommendation.
- The medical recommendation must be made using the prescribed form (**Form 3**) and given to the applicant.

When can an Application for Assessment be made?

An application for admission for assessment can only be made after the Medical Recommendation for admission for assessment has been made.

Who can make the Application for Admission for Assessment?

Article 5 states that an application can be made by:

- The nearest relative of the patient (**Form 1**); or
- An approved social worker (ASW) (**Form 2**).

The term “applicant” is used in the Order in relation to the person who has made the application regardless of whether this is the ASW or nearest relative. However in most situations the application will be made by an Approved Social Worker (ASW).

What is an Approved Social Worker?

An approved social worker (ASW) is a social worker who has been appointed by a Health and Social Care Trust to carry out specific duties and responsibilities under the Order.

Trusts have a responsibility under **Article 115** of the Order to ensure that ASWs are competent to carry out duties and responsibilities. See Role of ASW

Who is the Nearest Relative?

This is a legal term and is defined in **Article 32** of the Order. **See Role of Nearest Relative.**

What must the applicant do before making the Application for admission to hospital for assessment?

An application for assessment cannot be made unless the Applicant has:

- Personally seen the person for whom the medical recommendation has been made not more than 2 days before the date the application is made and; in the case of an ASW.
- The ASW has consulted with the person, if any, appearing to be the nearest relative unless it appears to the ASW that in the circumstances such consultation is not **reasonably practicable or would involve unreasonable delay**.²

² Following a judgment, *R (E) v Bristol City Council* (2005) EWHC 74 (Admin) in which the Judge involved, Bennet J., considered the duty of the ASW to consult with the nearest relative and the rights of a patient under Section 3(1) of the Human Rights Act 1998, ASWs can interpret the words “practicable” and “reasonable delay” in a way that takes into account the person/patient’s “wishes, health and well being”.



In addition:

If the application is to be made by an ASW then that person must:

- Interview the person whose admission for assessment is being considered in a suitable manner.
- Consider the wishes of relatives of the person and any other relevant circumstances.
- Be satisfied that the application ought to be made and that detention in a hospital is in all the circumstances of the case the most appropriate way of providing the care and medical treatment that the patient needs.

Article 40

Where might the interview with the medical practitioner and applicant take place?

An initial assessment in relation to whether or not detention for assessment should be sought could take place in:

- **Any community setting** i.e. in someone's home. *See community flow chart and narrative*
- **Any Hospital setting** – where a person is an in-patient. The Order allows for patients in all general, psychiatric or learning disability hospitals, not already subject to detention under the Order, to be prevented from leaving that hospital, using a "holding power" if there is concern that they are mentally disordered and may be at risk of physical harm to themselves and/or others. The same process in relation to consideration of a medical recommendation and application will then be followed. *See general hospital and psychiatric and learning disability flow charts and narratives*
- **An A&E department, Health Centre or out-patient facility** – these facilities are also considered community settings within the Order. The holding powers described in the previous paragraph cannot be used in these settings and are only applicable to a person who is an "in-patient" at that time. *See community flow chart and narrative*

- A “place of safety”³ i.e. where a person has been brought under **Article 129** or **Article 130** of the Order. **See Community Flow Chart and Narrative**

In what circumstances should the PSNI be asked to attend during the medical practitioner and ASW’s assessment?

The PSNI should **not** be routinely asked to attend situations where a person is being assessed with a view to their detention in hospital for assessment. However the PSNI may already be involved as a consequence of the need to use their powers under **Article 129** and **130** of the Order (see below). **LINK TO PSNI ROLE**

What if the medical practitioner and/or the applicant cannot gain access to premises in the community to carry out the assessment?

If all attempts to persuade the person for whom assessment is sought are denied, either by that person or others, entry can be legally forced by the PSNI under **Article 129**. This action should only be taken when an officer of the Health and Social Care Trust or a police constable have sufficient concerns that the person has a serious mental disorder and as a consequence is at risk of serious physical harm from themselves or to or from others and when other attempts to gain access by other means have failed. **See Community Flow Chart and Narrative**

What happens if the person is in a public place?

Interviewing a person in a public place with a view to detaining them to hospital for assessment is not advised. All attempts should be made to persuade the person to go to a more private setting. However if the person is unwilling to accompany the professionals, who are seeking to carry out the initial assessment, to a more private place the police may be asked to assist.

3 Article 129 of the Order defines a “place of safety” “place of safety” means any hospital (see appendix section for list of designated hospitals) of which the managing Board or HSS trust is willing temporarily to receive persons who may be taken there under this Order, any police station, or any other suitable place the occupier of which is willing temporarily to receive such persons. The Guide states that persons should be kept in places of safety for as short a time as possible while other arrangements are made for their care. This is particularly so in the case of a police station which should **only** be used as a place of safety when no other suitable place is available.



Article 130 allows a police officer to remove a person found in a public place, and who appears to be suffering from a mental disorder, to a place of safety (see definition above). If this power is used the person may only be detained in that place of safety for a maximum of **48 hours** and during this period they must be examined by a medical practitioner and interviewed by an approved social worker to allow for any necessary arrangements for care and treatment to be made. **See community flow chart and narrative**

What happens after an Application for admission for assessment is made?

Once the application for assessment is made the Order states the approved social worker or the nearest relative has the legal authority to arrange for the person to be taken to hospital and to be detained there until a medical examination is carried out and **Form 7** is completed. This must be done within 2 days starting from the date that the medical recommendation was signed. **Article 8**

Can the person refuse to go to or remain in hospital?

No. The Applicant has a legal duty and right to ensure that the person is conveyed to hospital once **Forms 1 or 2 and 3** are completed. However once the person has been detained in hospital for assessment he or she has the right to appeal against their continuing detention through application to the Mental Health Review Tribunal.

What hospital will the person whose admission for assessment is sought be taken to?

This will usually be a hospital in the Trust in which the person resides. However if this is not possible due to lack of availability, a bed will be sought in another Trust area with a view to transferring that person as soon as one becomes available in his or her own area.

What if the person is not a resident of the Trust or the jurisdiction?

In this situation the person should be conveyed to the nearest hospital where arrangements can be made, following admission for assessment, for the person's transfer to a facility in their own Trust area. Where the person is not a resident of Northern Ireland they should be offered the same level of assessment, care and treatment to that afforded to any resident of Northern Ireland who is subject to provisions of the Order and, where possible, consultation should take place regarding the suitability of the person's transfer to the jurisdiction in which they normally reside.

How should the person be conveyed to hospital?

The Code states that it will often be best to convey the person by ambulance. The Code also states that the ASW has responsibility for ensuring that the person, whose detention is sought, is safely conveyed to hospital. The ASW must ensure that the most humane and least threatening mode of transport consistent with the safety of the person and others is chosen. **Code 2.40 - 2.44. [LINK TO COMMUNITY FLOW CHART](#)**

Should the PSNI (Police Service of Northern Ireland) be asked to assist in conveying the person to hospital?

The PSNI should **not** be routinely asked to assist in the conveyance of a person to hospital. **The Guide** states that where there is likely to be, or is, exceptional difficulty because of resistance on the part of the person who is being detained or relatives it may be appropriate to seek the co-operation of the police in securing the person's removal. Any request for assistance must be based on an assessment of the level of risk of physical harm to the person and/or others during the conveyance process. This initial assessment will usually be undertaken by the ASW in consultation with the GP/medical practitioner.

See flow chart narratives.



4. DETENTION IN HOSPITAL FOR ASSESSMENT

Arrival at Hospital

What should happen when the person arrives at the hospital to which the application has been made?

The person is received by the nurse in charge and the forms (medical recommendation and application) are delivered. The person should be medically examined **immediately** on arrival at hospital by the RMO or Part II doctor or a doctor on the staff of the hospital.

What happens following the medical examination?

Following the examination a decision will be made by the examining doctor that the person will be:

1. Detained in hospital for assessment or
2. Allowed to remain in hospital as a voluntary patient or
3. Should not remain in hospital.

The examining doctor will report his opinion to the Health and Social Care Trust.

How long may the person be detained for assessment?

The patient can be detained for a maximum period of 14 days. This period cannot be extended.

There is a statutory duty to review the grounds for detention at:

- 48 hours (if the admitting doctor was not the RMO or a Part II doctor)
- 7 days
- Before the end of the 14 day period.

When should the person be discharged from detention for assessment?

The person must be discharged as soon as it is clear that the person does not meet the criteria for assessment, this may be prior to the end of the maximum 14 day assessment period. Discharge from detention does not mean that the patient should be discharged from hospital and if appropriate the patient should be allowed to remain in hospital as a “voluntary” patient.

5. DETENTION IN HOSPITAL FOR TREATMENT

What should happen at the end of this two-week assessment period?

The person must be formally re-examined by the responsible medical officer or a Part II doctor.

Depending upon the outcome of this examination, the person will then either be:

1. Detained for treatment of their mental disorder
2. Re-graded to voluntary status (and stay in hospital for treatment)
3. Discharged from the psychiatric hospital

Are the grounds for detention for treatment different to the grounds for admission to hospital?

The grounds for detention for treatment, to be clearly stated on the **Form 10**, are more stringent than the grounds for admission. The general diagnosis of mental disorder is no longer sufficient.

It must be clearly stated that the patient suffers from mental illness, severe mental impairment, or from both.



Severe mental impairment is where severe mental handicap is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned. **Article 12**

What should happen during the detention for treatment period?

During the assessment period a multi-disciplinary assessment will have been carried out and an initial treatment and care plan to address the patient's needs agreed. Detention for treatment therefore gives the multi-disciplinary team the opportunity to implement this or the revised treatment and care plan.

Can detention for assessment or treatment in hospital be appealed?

Yes. Patients and nearest relatives have a right to appeal against their detention during both the detention for assessment and treatment periods. ***Further information regarding when and how this may be done is contained in the Mental Health Review Tribunal Chapter of this Guidance.***

The patient must be advised on a regular basis throughout the period of detention for assessment and for treatment of his right to apply to the Mental Health Review Tribunal (once within the first 6 months, once during the second 6 months and once during each subsequent 1 year period of detention) and a record kept of this. Staff advising them must ensure that repeated offers are made to explain this right, especially when the patient's illness affects his understanding.

Most mental health and learning disability services have advocates who will also do this informally.

The detaining Health and Social Care Trust also has a statutory responsibility to refer the case of a patient who has not appealed during the previous 2 year period.

Can a patient be transferred to a hospital in another legal jurisdiction?

Yes, the Order provides for a patient, detained under Part II or Part III, to be transferred to jurisdictions in Britain (i.e. England, Scotland and Wales) in situations where specialist services are not available in Northern Ireland. Transfers may also occur when high levels of security not available in Northern Ireland are required for Part III patients.

Transfers between Northern Ireland hospitals and Scottish hospitals, including the State Hospital, Carstairs, are carried out under **Article 6** of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005. Transfers between Northern Ireland hospitals and hospitals in England are carried out under sections 81 and 82 of the Mental Health Act 1983.

There is no provision in the Order for the transfer of detained patients to or from the Republic of Ireland.

Guidance on the transfer of patients detained under the Order to and from a hospital in Northern Ireland have been revised by DHSSPSNI to comply with the findings of a recent Judicial Review (Ref JR 49). **LINK TO Guidance on the transfer of mentally disordered patients detained under the Mental Health (NI) Order 1986 to and from Hospitals in Great Britain. August 2011**

Does a patient , who has been transferred to another jurisdiction, have the same rights of access to the Mental Health Review Tribunal?

Yes. The patient and the nearest relatives have the same rights to request a review of detention by the Mental Health Review Tribunal.



When should the person be discharged from detention?

While being treated in hospital the patient's progress should be continually reviewed. The patient **must** be discharged from detention as their condition improves and as soon as the criteria for detention are no longer met. Discharge from detention does not mean that the patient should be discharged from hospital and if appropriate the patient should be allowed to remain in hospital as a "voluntary" patient.

Has a person who has been detained for assessment and/or for treatment for mental disorder a duty to declare this?

Article 10 states that any periods for which a patient has been detained for **assessment** and which have not immediately been followed by a period of detention for treatment can be disregarded for certain purposes i.e. these periods of detention for assessment can be regarded as if they had never occurred.

This means that except in the case of judicial proceedings⁴ the person has **no legal duty** to declare that they have been detained for assessment under the Order. This provision is unique to Northern Ireland.

It should be noted that this provision relates to periods of assessment **only** and does not extend to periods of detention for treatment which must be declared if required.

Guide paragraph 45.

4 Judicial proceedings includes, in addition to proceedings before any of the ordinary courts of law, proceedings before any Tribunal, body or person having power – (a) by virtue of any statutory provision, law, custom or practice; (b) under the rules governing any association, institution, profession, occupation or employment; or (c) under any provision of an agreement providing for arbitration with respect to questions arising there under, to determine any questions affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of any such question. Article 10 (6)

ASSESSMENT AND COMPULSORY ADMISSION TO HOSPITAL (PART II)

PATHWAY FOR COMPULSORY ADMISSION TO HOSPITAL
FOR ASSESSMENT AND TREATMENT UNDER THE MENTAL
HEALTH (NORTHERN IRELAND) ORDER 1986

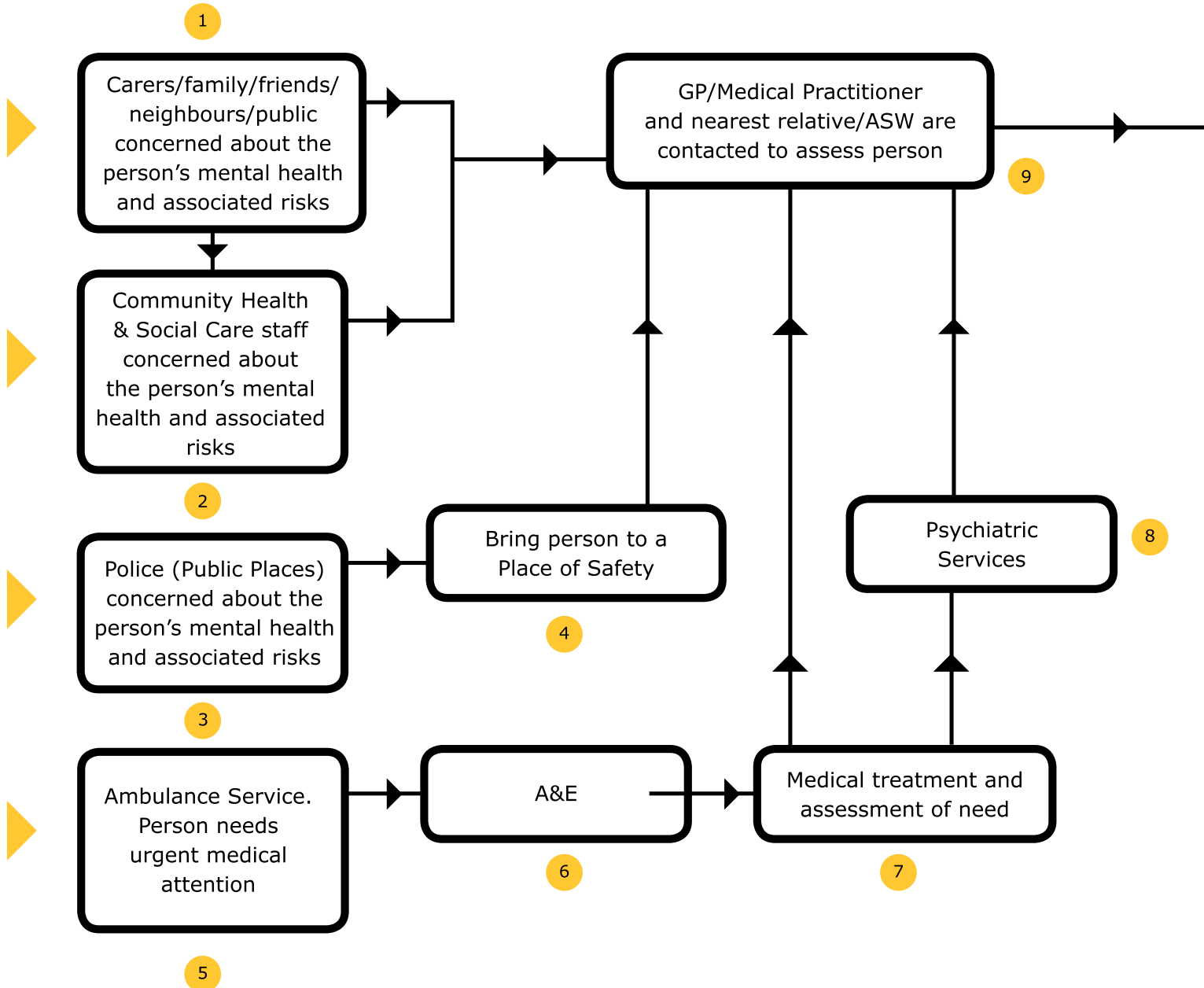
**PRESENTATION IN A COMMUNITY SETTING
(INCLUDING AN A&E DEPARTMENT)**

Flow Chart 36 - 40

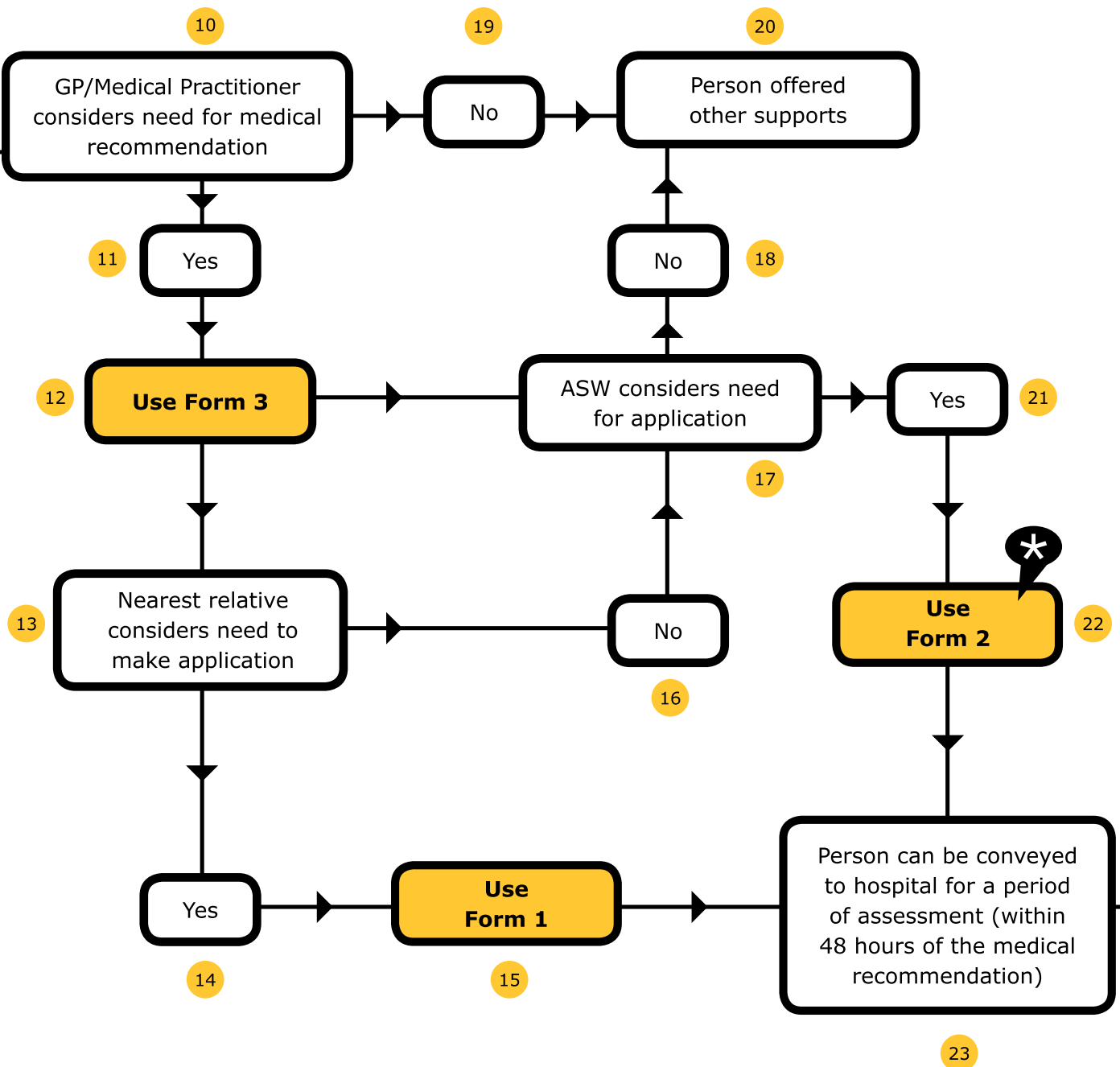
The Flow Chart in Greater Detail 43 - 108

PATHWAY FOR COMPULSORY ADMISSION AND DETENTION IN HOSPITAL FOR ASSESSMENT AND TREATMENT UNDER THE MENTAL HEALTH (N.I.) ORDER 1986

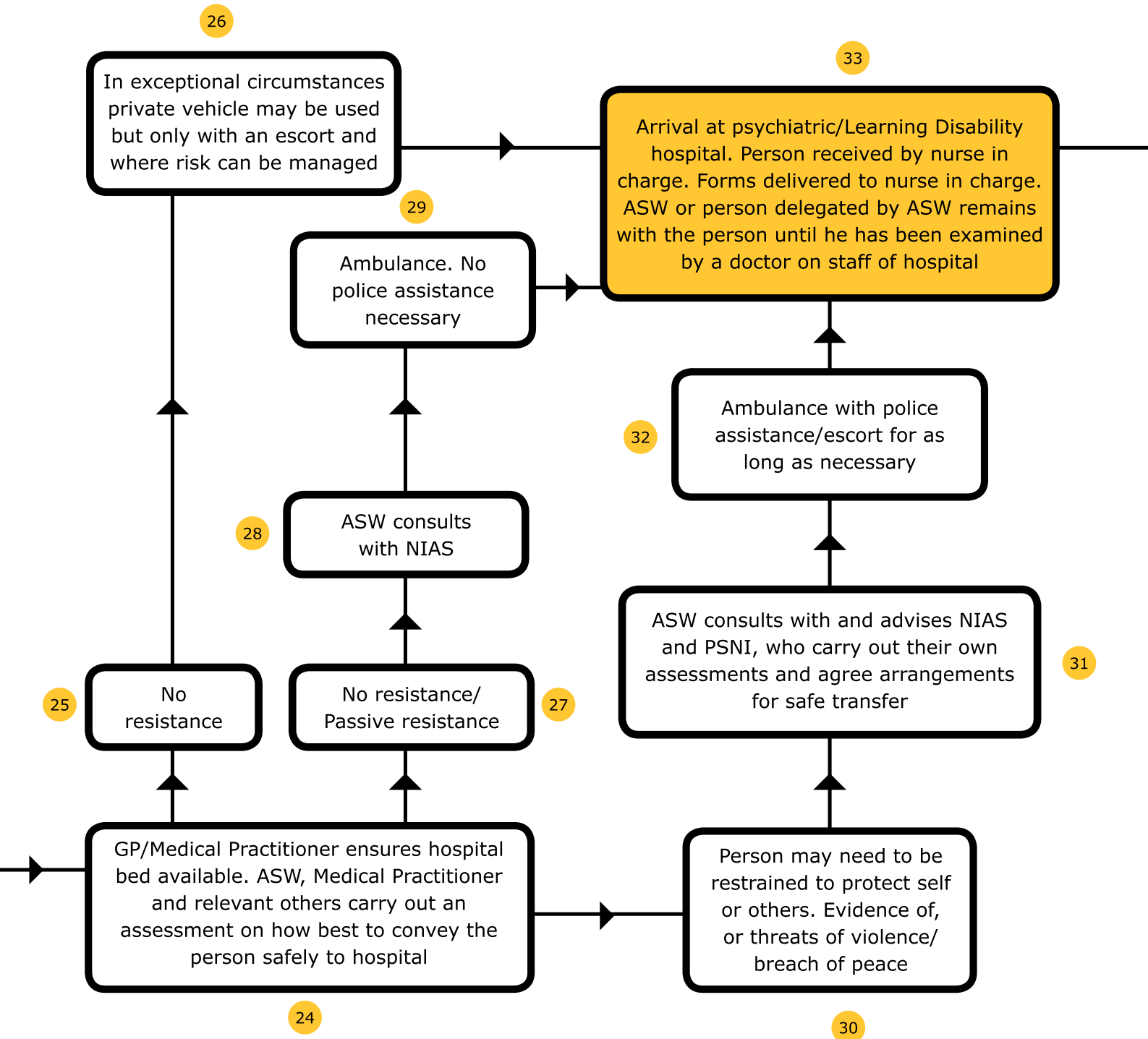
PRESENTATION IN A COMMUNITY SETTING (INCLUDING AN A&E DEPARTMENT)



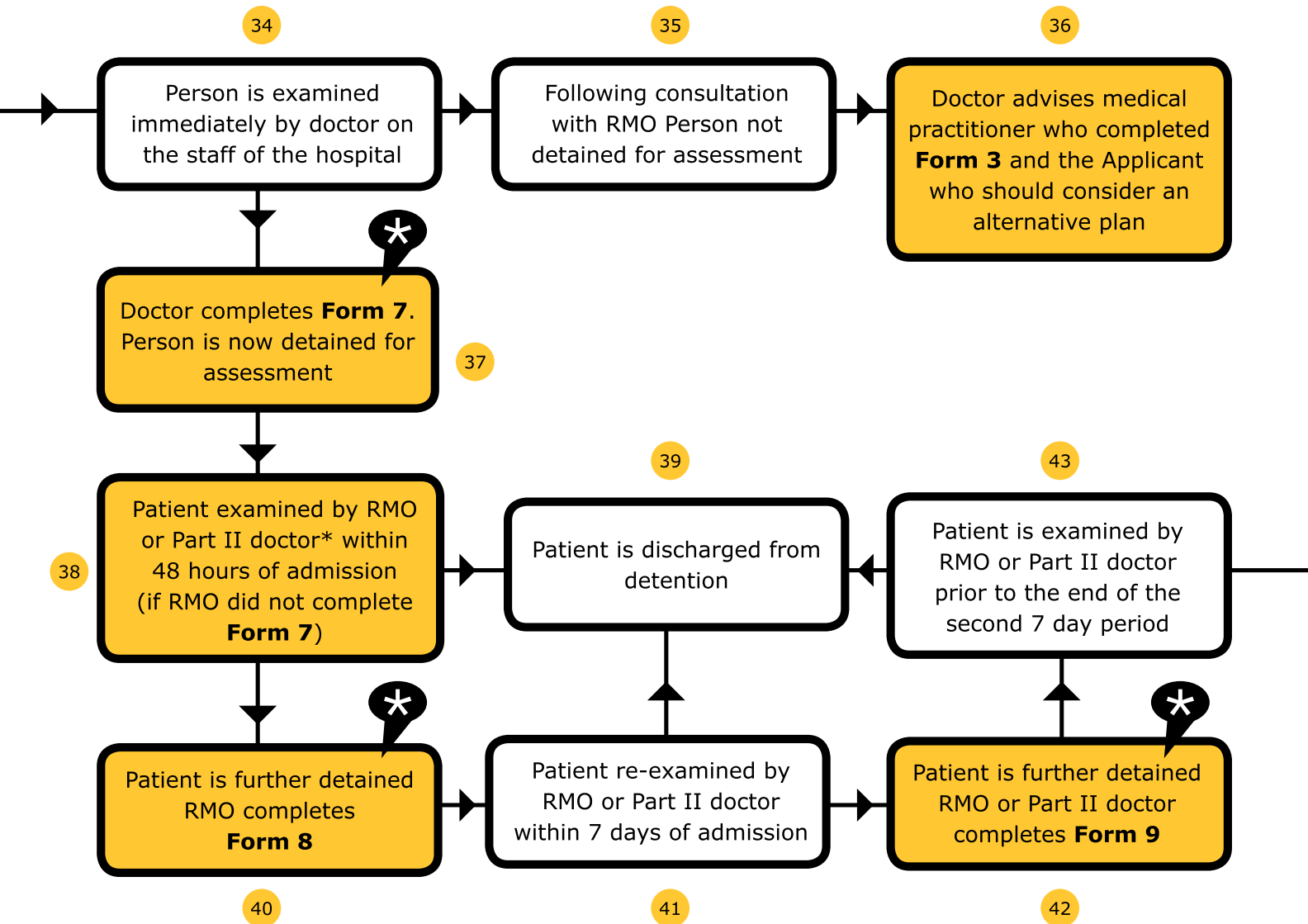
APPLICATION



SAFE CONVEYANCE TO A PSYCHIATRIC OR LEARNING DISABILITY HOSPITAL

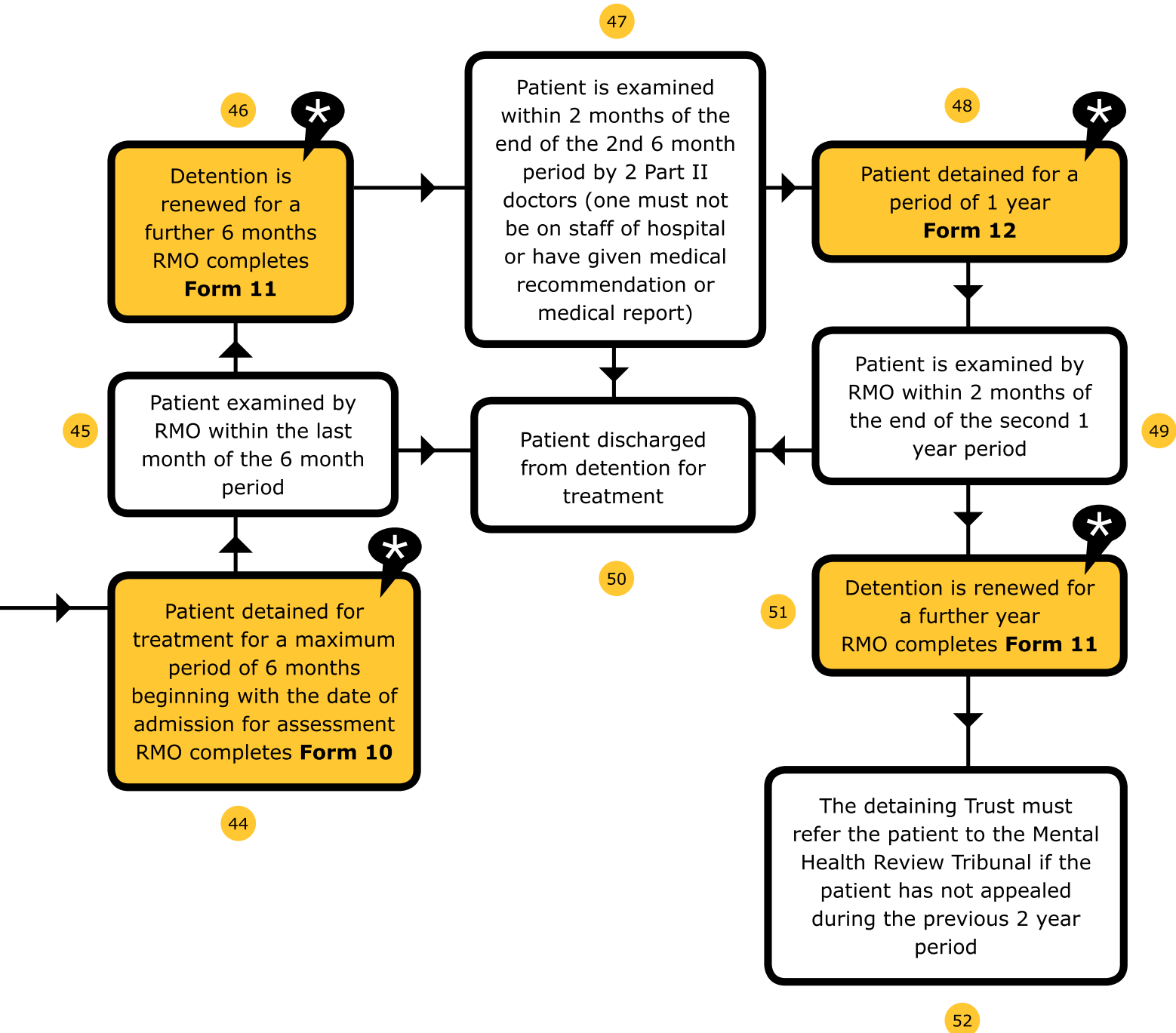


COMPULSORY ADMISSION AND DETENTION IN HOSPITAL FOR ASSESSMENT



Patient is advised of his Rights including the right to appeal to the Mental Health Review Tribunal

DETENTION FOR TREATMENT IN HOSPITAL



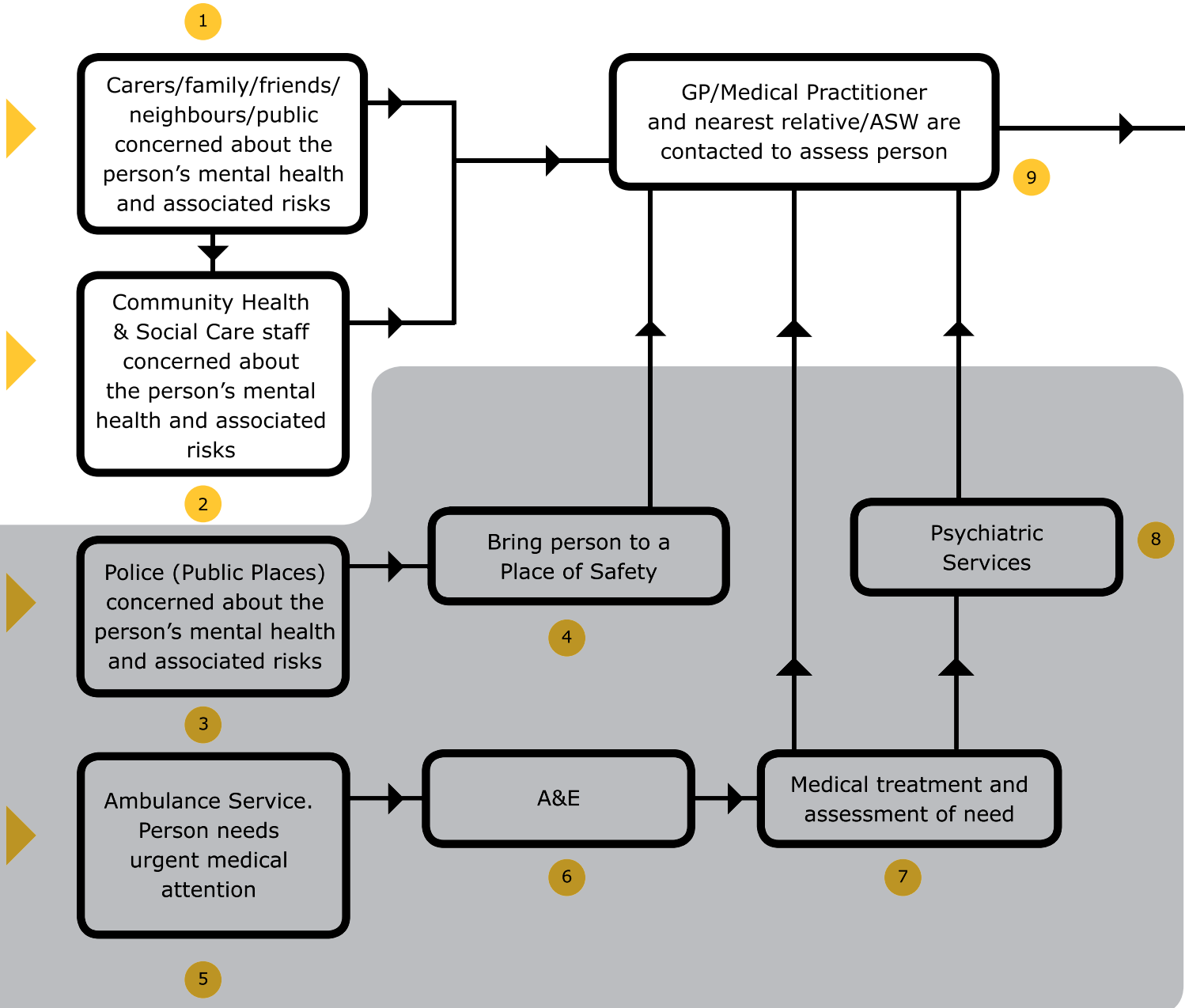
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PRESENTATION IN A COMMUNITY SETTING

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PATHWAY FOR COMPULSORY ADMISSION AND DETENTION IN HOSPITAL FOR ASSESSMENT AND TREATMENT UNDER THE MENTAL HEALTH (N.I.) ORDER 1986

PRESENTATION IN A COMMUNITY SETTING (INCLUDING AN A&E DEPARTMENT)



PATHWAY FOR COMPULSORY ADMISSION TO HOSPITAL FOR ASSESSMENT AND TREATMENT UNDER THE MENTAL HEALTH (NORTHERN IRELAND) ORDER 1986

THE FLOW CHART IN GREATER DETAIL

PRESENTATION IN A COMMUNITY SETTING

- 1 Carers/Family/friend/s/neighbours/public may be concerned that a person may have become a risk to himself or others as a direct result of his mental ill health and may contact the person's GP to request that the doctor consider the person's needs.
- 2 Community Health and social care staff may become concerned that a person has become a risk to himself or others because of mental ill health and may request medical assistance.
- 9 The person's GP's surgery should be contacted and concerns relayed. The GP should interview the person, assess his needs and consider a number of care and treatment options including referral to the local community mental health/learning disability team, crisis and home treatment services, before considering the need to make a recommendation that the person be detained under the Order.

The ASW may also be contacted at this stage. Arrangements are in place in each Trust area to facilitate 24 hour access to an ASW. It is good practice for the assessment to be conducted when both the GP and ASW involved are present. **LINK TO ASW Contacts List**

What if the person is not registered with a GP?

In this circumstance the assistance of a medical practitioner should be sought through local emergency primary care arrangements.

What if the GP/medical practitioner and ASW cannot gain access to the person for whom concerns have been raised?

In circumstances where despite persistent attempts, persuasion and requests for assistance from others, it is not possible to gain access to premises to carry out an assessment of the person's needs, the GP/medical practitioner, ASW and others involved should consider the need to apply for a warrant under **Article 129 (1)** [LINK TO WARRANTS APPENDIX](#)

What if access is required as a matter of urgency?

In situations where immediate access is required and seeking a warrant under **Article 129 (1)** would cause unreasonable delay, those involved should seek the immediate assistance of police. The PSNI can, where there is a real and immediate threat to life and risk to others, gain entry by other means as outlined in **Article 19 of the Police and Criminal Evidence (Northern Ireland) Order 1989**.

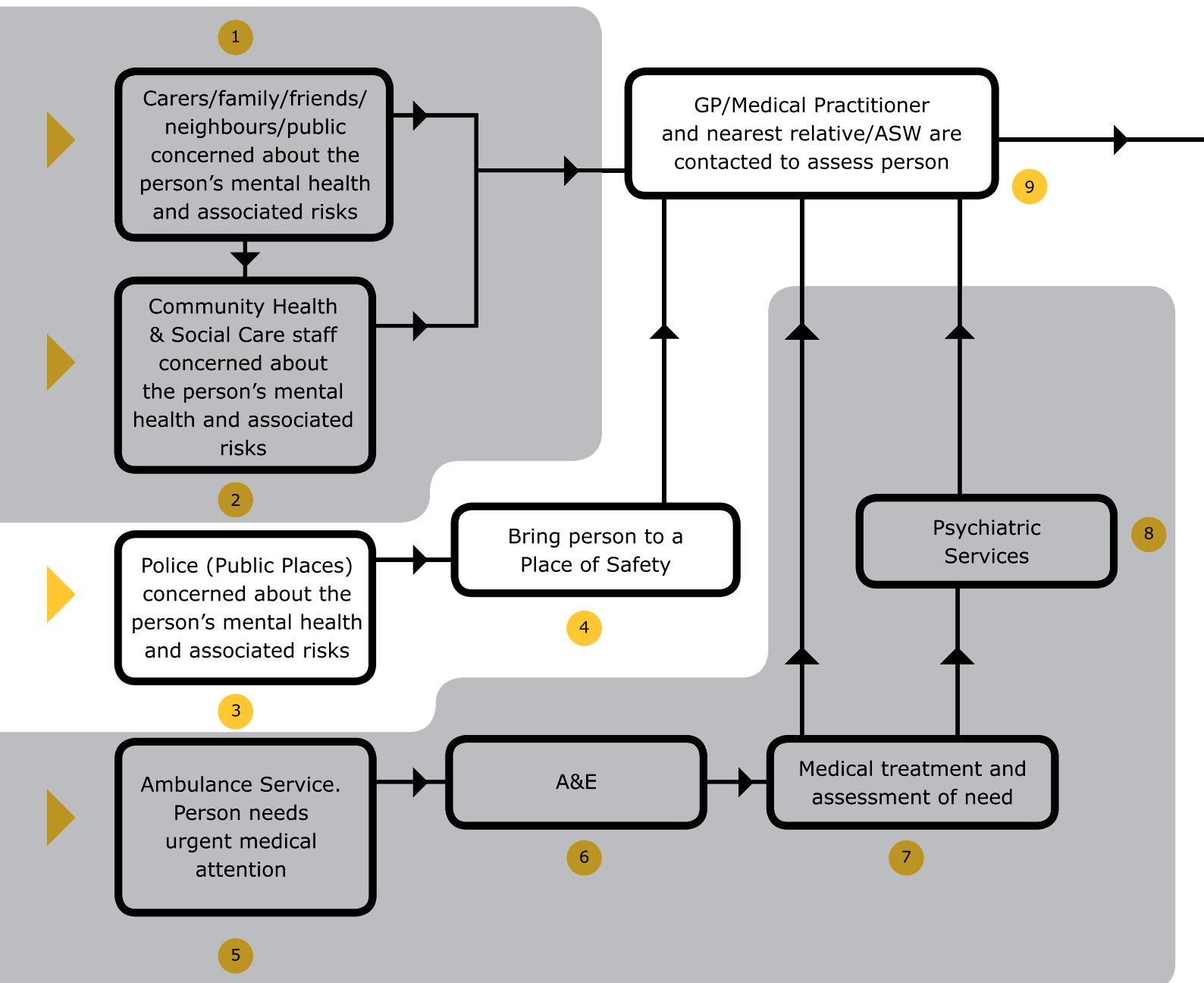
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PRESENTATION IN A COMMUNITY SETTING - POLICE (PUBLIC PLACES)

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PATHWAY FOR COMPULSORY ADMISSION AND DETENTION IN HOSPITAL FOR ASSESSMENT AND TREATMENT UNDER THE MENTAL HEALTH (N.I.) ORDER 1986

PRESENTATION IN A COMMUNITY SETTING - Police (Public Places)



PATHWAY FOR COMPULSORY ADMISSION TO HOSPITAL FOR ASSESSMENT AND TREATMENT UNDER THE MENTAL HEALTH (NORTHERN IRELAND) ORDER 1986

THE FLOW CHART IN GREATER DETAIL

PRESENTATION IN A COMMUNITY SETTING

Police (Public Places):

- 3 The Police Service of Northern Ireland (**PSNI**) may be concerned that a person, in a public place ("a place to which the public have access"), appears to be mentally disordered. The Police (PSNI) have powers under **Article 130** of the Order to detain and if necessary to allow a police officer to remove a person who appears to be suffering from a mental disorder from a public place to "**a place of safety**", if necessary to do so in the best interests of that person.

If the person is to be transported to a hospital as a place of safety, an ambulance or other NIAS vehicle should be used. However Police should travel in the ambulance with the person, as police are unable to delegate the authority to convey. A person should only be transported in a police vehicle in exceptional circumstances. On the rare occasions that this occurs, the police vehicle should be accompanied by an ambulance vehicle so that assistance can be provided if a medical emergency arises. **LINK TO ROLE OF PSNI**

- 4 The Order states that a place of safety, in this instance, may be a "hospital of which the managing Board or HSC Trust is willing temporarily to receive persons who may be taken there under this Order, any police station or any other suitable place the occupier is willing temporarily to receive such persons".

The Guide contains a list of hospitals that could be used as a place of safety. However this list is now out of date and local guidance in relation to which hospitals can now be used to fulfil this function should be sought from each Health and Social Care Trust. A GP surgery or health and social care premises could potentially be used as a Place of Safety. The most appropriate and available place of safety should be carefully considered by the police officer/s involved and should take account of any risks to the person and to others.

The officer should ensure that the person's GP or another medical practitioner and an ASW are contacted immediately so that the person is detained **no longer than is necessary** in the place of safety. The person must be medically examined by the GP/medical practitioner and interviewed by the ASW to allow for any necessary arrangements for his care and treatment to be made.

The person may only be detained in a place of safety for a maximum of 48 hours.

A police station should only be used as a place of safety in exceptional circumstances and for the minimum length of time necessary. In those circumstances where the person has been brought to a police station, the officer may wish to discuss that person's immediate care with an appropriate healthcare professional. **LINK TO ROLE OF PSNI**

Who must the PSNI officer inform that the person has been removed from a public place?

In addition to the GP/medical practitioner and ASW the PSNI officer has a duty under **Article 130 (3)** to inform, where practicable, the nearest relative and a responsible person residing with the removed person.

Article 129 provides that the PSNI may, by virtue of warrant, remove a mentally disordered person from private premises and to convey that person to a Place of Safety under **Article 129 (1)** of the Order.

9

The person's GP's surgery should be contacted and concerns relayed. The GP should interview the person, assess his needs and consider a number of care and treatment options including referral to the local community mental health/learning disability team, crisis and home treatment services, before considering the need to make a recommendation that the person be detained under the Order.

The ASW may also be contacted at this stage. Arrangements are in place in each Trust area to facilitate 24 hour access to an ASW. It is good practice for the assessment to be conducted when both the GP/medical practitioner and ASW involved are present. **LINK TO ASW CONTACTS LIST**

What if the person is not registered with a GP?

In this circumstance the assistance of a medical practitioner should be sought through local emergency primary care arrangements.

What if the GP/medical practitioner and ASW cannot gain access to the person for whom concerns have been raised?

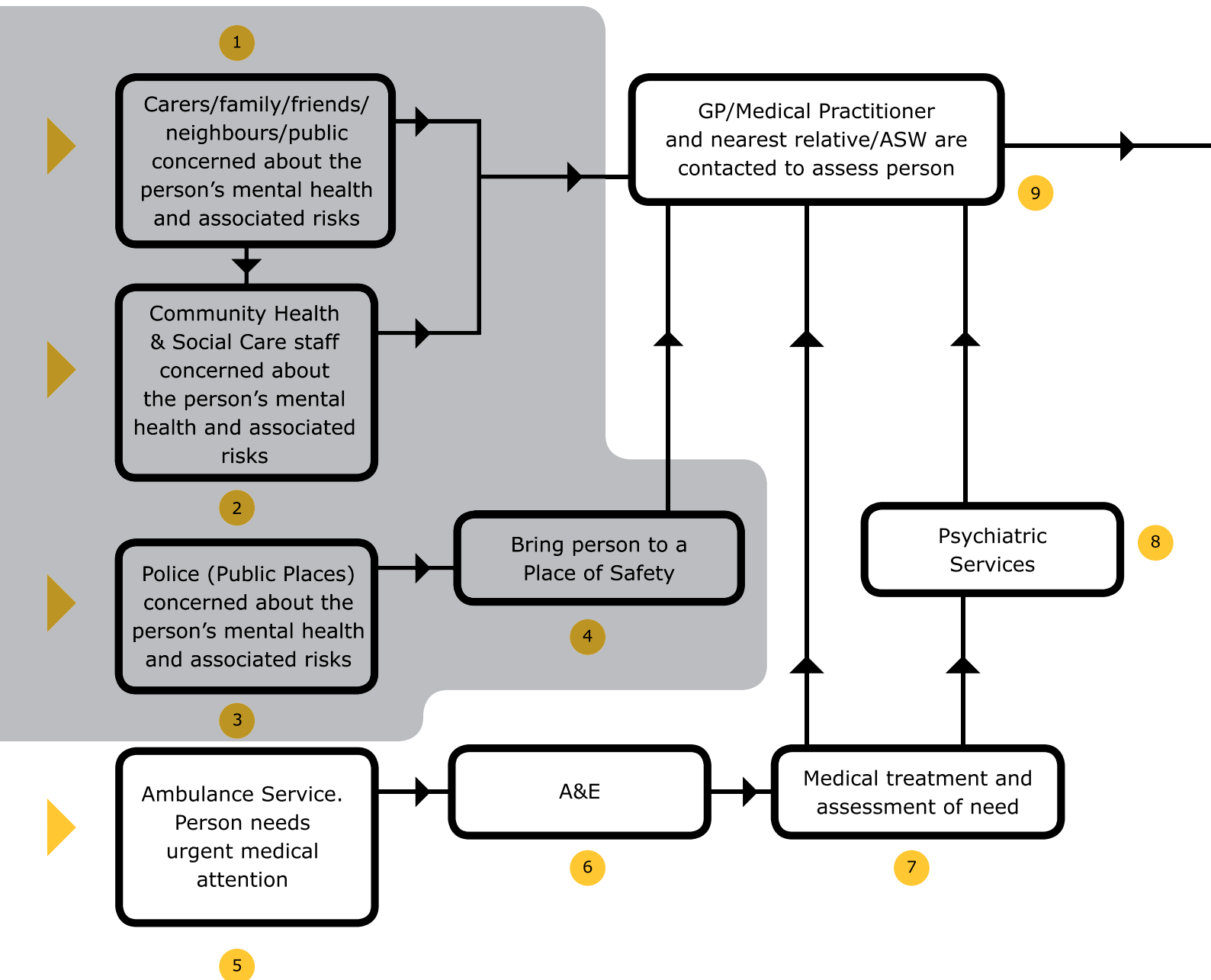
In circumstances where despite persistent attempts, persuasion and requests for assistance from others it is not possible to gain access to premises to carry out an assessment of the person's needs, the medical practitioner, ASW and others involved should consider the need to apply for a warrant under **Article 129 (1)** **LINK TO WARRANTS APPENDIX**

What if access is required as a matter of urgency?

In situations where immediate access is required and seeking a warrant under **Article 129 (1)** would cause unreasonable delay those involved should seek the immediate assistance of police. The PSNI can, where there is a real and immediate threat to life and risk to others, gain entry by other means as outlined in **Article 19 of the Police and Criminal Evidence (Northern Ireland) Order 1989**.

PATHWAY FOR COMPULSORY ADMISSION AND DETENTION IN HOSPITAL FOR ASSESSMENT AND TREATMENT UNDER THE MENTAL HEALTH (N.I.) ORDER 1986

PRESENTATION IN A COMMUNITY SETTING (Including an A&E Department)



PATHWAY FOR COMPULSORY ADMISSION TO HOSPITAL FOR ASSESSMENT AND TREATMENT UNDER THE MENTAL HEALTH (NORTHERN IRELAND) ORDER 1986

THE FLOW CHART IN GREATER DETAIL

PRESENTATION IN A COMMUNITY SETTING

(Including an A&E Department):

- 5 Northern Ireland Ambulance Service (**NIAS**) may be called to situations where a person, who appears to be medically unwell, has suffered a physical injury (including as a result of self harm) and may need to be medically assessed or where there is serious concern that the person is mentally disordered.

If the person is willing to be conveyed to an **Accident and Emergency Department** (A&E) the person can be conveyed to that unit without assistance. However if it appears to NIAS staff that the person may lack capacity in relation to his conveyance for medical assistance they must act in his best interests.

If the person is resisting his conveyance and is in a public place the assistance of the police should be considered. (See box 3 above).

If the person is in a private place the assistance of the person's GP or other medical practitioner should be sought, and he will assess the need for further action. In addition an officer of the relevant Health and Social Care Trust or a police officer can be contacted to consider the need to seek a warrant to enter the premises under **Article 129 (1)** of the Order. **LINK TO WARRANTS APPENDIX**

- 6 NIAS have, following an assessment of need, a duty of care to a person requiring medical assistance in emergency situations and to convey him, if necessary, to an **Accident and Emergency Department (A&E)**. On arrival at the hospital the person must be delivered into the care of A&E staff.

7

A&E staff should undertake an assessment of the person's medical and psychological needs and provide any necessary medical treatment and mental health care.

If a person has been brought to A&E by the police, under powers conveyed by **Article 130**, A&E staff should ensure that the person is **seen as a matter of urgency**. Police are required to remain with the detained person until he has been medically examined by the person's GP or other medical practitioner and an ASW and any necessary arrangements have been made for the person's care and treatment. For this reason police should not be unnecessarily delayed in A&E. **LINK TO Patients with Mental Health Needs in the Acute Sector - Learning Lessons**

In other situations a person with similar needs will present or be brought to an A&E without the assistance of NIAS.

When the person is deemed medically fit A&E staff may make a referral to psychiatric services. Staff should follow the local agreed protocol in relation to their initial assessment of the person's mental health needs and referral processes.

However, if the doctor in A&E believes that the person is in immediate need of admission to hospital for assessment before psychiatric services can attend, the person's GP/medical practitioner and the ASW/nearest relative should be contacted and a request made for their urgent attendance at A&E to consider the need for compulsory admission to hospital.

In cases of urgent necessity only, a doctor on the staff of the A&E Emergency Department can make the medical recommendation but **only** if it has not been possible to contact the person's own GP or another doctor in the practice or it is not practicable for either doctor to attend.

It is important to note that **Form 5** can not be used in this situation as the person is not an inpatient.

What happens if the person insists on leaving A&E before a medical recommendation and application can be made?

Where A&E staff are concerned that a person is mentally disordered and may be at risk of causing serious physical harm to himself and/or others, consideration should be given to preventing that person from leaving in his “best interests” until the appropriate assessment can be carried out. This may require the assistance of security staff within the hospital or in exceptional circumstances, the PSNI.

The order does not permit the use of **Form 5** to prevent a person leaving an A&E Dept.

All action must be both necessary and proportionate.

- 8 Psychiatric Services may, following assessment of the person’s needs, offer services/supports or may request that the person’s GP/medical practitioner and an ASW or the person’s nearest relative examine and interview the person with a view to making application for their compulsory admission to hospital. **LINK TO DHSSPS Circular HSC (MHDP_MHU) 1/10 Guidance Principles for the Delivery of Mental Health Crisis Interventions**
- 9 The person’s GP’s surgery should be contacted and concerns relayed. The GP should interview the person, assess his needs and consider a number of care and treatment options including referral to the local community mental health/learning disability team, crisis and home treatment services, before considering the need to make a recommendation that the person be detained under the Order.



The ASW may also be contacted at this stage. Arrangements are in place in each Trust area to facilitate 24 hour access to an ASW. It is good practice for the assessment to be conducted when both the GP/medical practitioner and ASW involved are present. **LINK TO ASW CONTACTS LIST**

What if the person is not registered with a GP?

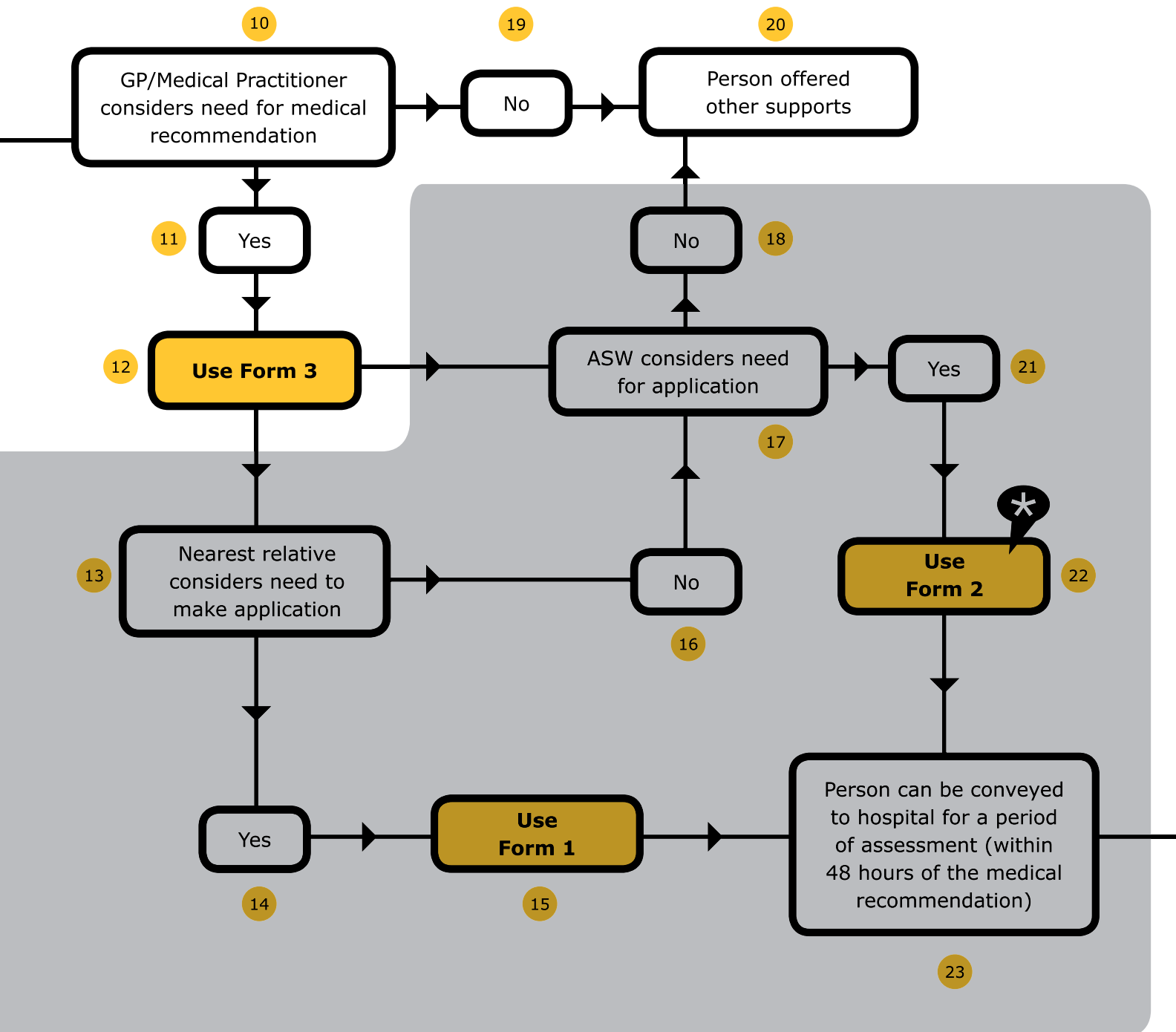
In this circumstance the assistance of a medical practitioner should be sought through local emergency primary care arrangements.

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APPLICATION - MEDICAL RECOMMENDATION

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APPLICATION - Medical Recommendation



APPLICATION

Medical Recommendation:

- 10 The GP/medical practitioner must interview the person as soon as possible and consider whether or not a medical recommendation should be made on the grounds that the person appears to meet the criteria for admission for assessment as set out in **Article 4** of the Order. **LINK TO ROLE OF GP/ MEDICAL PRACTITIONER**

Who should carry out this assessment and if necessary make the medical recommendation that the person be admitted to hospital for assessment?

The Order (Article 6) states that the medical recommendation for admission for assessment should be given, if practicable, by the patient's own GP. If this is not possible, a medical practitioner who has previous acquaintance with the person can make the recommendation. However a doctor on the staff of the admitting psychiatric or learning disability hospital should only do so in cases of urgent necessity.

Any doctor, who is not the person's GP and who is examining the person with a view to making a medical recommendation should make all efforts to consult with the GP or access the person's relevant medical records.

What if the person is not registered with a GP?

In this circumstance the assistance of a medical practitioner should be sought through local emergency primary care arrangements.

What are the criteria for admission for assessment?

The grounds or criteria for admission to hospital for assessment are that the person is:

- Suffering from “mental disorder of a nature or degree which warrants detention in hospital” for assessment (or for assessment followed by medical treatment) and
- Failure to so detain the person would create a substantial likelihood of serious physical harm to the person or to other persons.

The GP/medical practitioner should consider the evidence that can be used in determining that there is a substantial likelihood of serious physical harm to the person or others as set out in **Article 2 (4)** and **paragraphs 23 and 24 of the Guide**.

The GP/medical practitioner should consider alternatives to admission including assistance from the mental health home treatment team or other community health and social care services as he will be required to state in the Medical Recommendation **Form 3** that “reasonable provision for his/her safety is not available in the community”. **LINK TO FORM 3**

If the nearest relative has declined to make the application or it has not been possible to contact or identify the nearest relative, the ASW should be asked to undertake an assessment in relation to an application for detention for assessment.

The GP/medical practitioner and ASW should consider whether a separate or joint interview with the person should be conducted. This should take account of the patient’s wishes and any other concerns in the assessment situation.

The Code, 2.5 states that “it is good practice for the professionals involved in the application for admission to be present at the same time (although it may be advantageous for each to interview the patient separately”.

What other factors need to be considered when interviewing the patient?

In addition to ensuring that the interview takes account of the Principles contained in the **Code of Practice 1.8**, the following good practice guidelines should be considered.

- If the person who is being assessed does not speak English as a first or competently as a second language, the professionals must seek assistance from an interpreter through arrangements set out by the Regional Interpreting Service. All health and social care professionals/staff have a legal duty to provide an interpreter in these circumstances under the Northern Ireland Act 1998, Race Relations (Northern Ireland) Order 1997 and Human Rights Act 1998. This duty will also apply in relation to the communication needs of the nearest relative.
- A professional interpreter can be accessed 24 hours a day, 7 days of the week through the Northern Ireland Health and Social Services Regional Interpreting Service, **Telephone 028 9056 3794**. Their Code of Practice contains additional guidance including how to contact an interpreter in an emergency situation. **LINK TO Code of Practice and Guidelines on Booking Interpreters for HSC Staff and Practitioners**

What if the person has other communication difficulties?

If the patient has difficulty either in hearing or speaking, the assistance of interpreters or staff with specialist skills should be sought.

Friends, relatives or other persons **should not** be used as interpreters unless in for very routine administration tasks such as setting up an appointment.



What additional factors need to be considered?

Where the person is still unable or unwilling to communicate adequately (despite assistance from interpreters) the decision to proceed will have to be based on whatever information can be obtained from other sources.

The person should not be interviewed through a closed door or window except where this is necessary to avoid serious risk to other people.

Where there is no immediate risk of physical danger to the person or to others, consideration should be given to seeking a warrant under **Article 129 (1)** of the Order. **LINK TO WARRANTS APPENDIX**

The person should not be interviewed when under the effects of sedative medication, short-term effects of drugs or alcohol unless it is not possible to delay because of the person's disturbed behaviour and the urgency of his needs. If these particular concerns exist the interview should be postponed.

The person should be interviewed in private except if there is a risk of physical violence. In this event the GP/medical practitioner and ASW or Nearest Relative can insist on another person being present.

If the person would like another person e.g. a friend, family member or advocate present during the interview and any subsequent action, the professionals involved should assist in securing the person's attendance unless the urgency of the case or some other proper reason makes it inappropriate to do so. **Code 2.6**

What if there is a risk of serious physical harm in the assessment situation?

In situations where initial information gathered indicates that there may be a risk of violence in the assessment situation against the professionals involved in the assessment process or other persons, the Code advises that those involved “should consider calling for police assistance and should know how to use that assistance to minimise the risk of violence”.

Code 2.5

This risk may not be immediately apparent and the need for such assistance should be continually assessed by the professional involved.

Similarly, if it becomes apparent that the assistance of police is not necessary the police should also be advised as soon as possible.

Any request for assistance should follow an assessment by the applicant (ASW or nearest relative) and the GP/medical practitioner of the risks that do or potentially could exist and should be both proportionate and necessary.

However the PSNI should **not be routinely** asked to attend situations where a person is being assessed for possible admission for assessment in hospital.

The PSNI will not attend in cases involving a difficult, but non-violent person whose past history and present diagnosis gives no rise for concern for the safety of other agencies in the assessment situation.

The PSNI may already be involved as a consequence of the need to use their powers under **Article 129 and 130** of the Order. **LINK TO ROLE OF PSNI**



- 11 The GP/medical practitioner may, following an assessment of the person's mental state and consideration of any substantial risks of serious physical harm to the person or others that might exist, conclude that a medical recommendation should be made.

The GP/medical practitioner may wish to consult with the ASW or nearest relative before making a final decision in relation to the medical recommendation. As stated previously the Code states that it is good practice for the professionals involved in the application for admission to be present at the same time, although it may be advantageous for each to interview the person separately. **Code 2.5**

Where possible the GP or other medical practitioner should consult with and advise the person's carer/s or family or any health and social care staff who may have been involved in requesting the doctor's assistance of the outcome of the medical examination and decision to complete **Form 3**.

- 12 If satisfied that the person meets the criteria for detention in hospital for assessment the medical recommendation should be made to the relevant authority* using the prescribed form (**Form 3**) and should include;
- (a) a statement that, in the opinion of the recommending doctor, the grounds set out in **Article 4 (a) and (b)** apply;
 - (b) the grounds, including a clinical description of the mental condition, for his opinion that the detention is warranted; and
 - (c) the evidence for his opinion that failure to detain the patient would create a substantial likelihood of serious physical harm.

Code 2.22

The GP/medical practitioner must have examined the person no more than 2 days before the date the medical recommendation is signed.

The GP/medical practitioner should then recommend that an application under the Order be considered. **LINK TO FORM 3**

*** LINK TO List of Trust Headquarters Addresses**

Who can make the application?

The application can be made by –

- (a) The nearest relative of the patient **LINK TO ROLE OF NEAREST RELATIVE**; or
- (b) An approved social worker. **LINK TO ROLE OF ASW**.

Although in most situations it is the ASW who will make the application, the nearest relative also has the right to do so.

If the nearest relative indicates that he wishes to exercise this right, the GP/medical practitioner should discuss the difficulties that this action might cause in the relationship with the person whose detention in hospital is being considered. The nearest relative should also be advised that an ASW can be contacted and asked to consider making the application.

What must the Trust do if the nearest relative requests that an ASW make the application?

Article 40 states that It shall be the duty of a Board or authorised HSC Trust, if so required by the nearest relative of a patient residing in its area, to direct an ASW as soon as practicable to take a person's case into consideration with a view to making an application for that person to be admitted to hospital for assessment under the Order.

19

The GP/medical practitioner may choose not to proceed with the process of admission to hospital under the Order if he concludes that the person does not meet the criteria set down in the Order or the person's needs can be met without admission to hospital or the person is willing to be admitted to hospital as a voluntary patient and is likely to remain in hospital without detention. As stated in Box 10, the GP/medical practitioner should consider alternatives to admission.



20

If the ASW and GP/medical practitioner agree that the criteria are not met or if the ASW considers that the application ought not be made, both professionals should consider, if possible in consultation with the individual, their family/carers and other professionals, other supports/interventions that could be put in place to meet the person's needs.

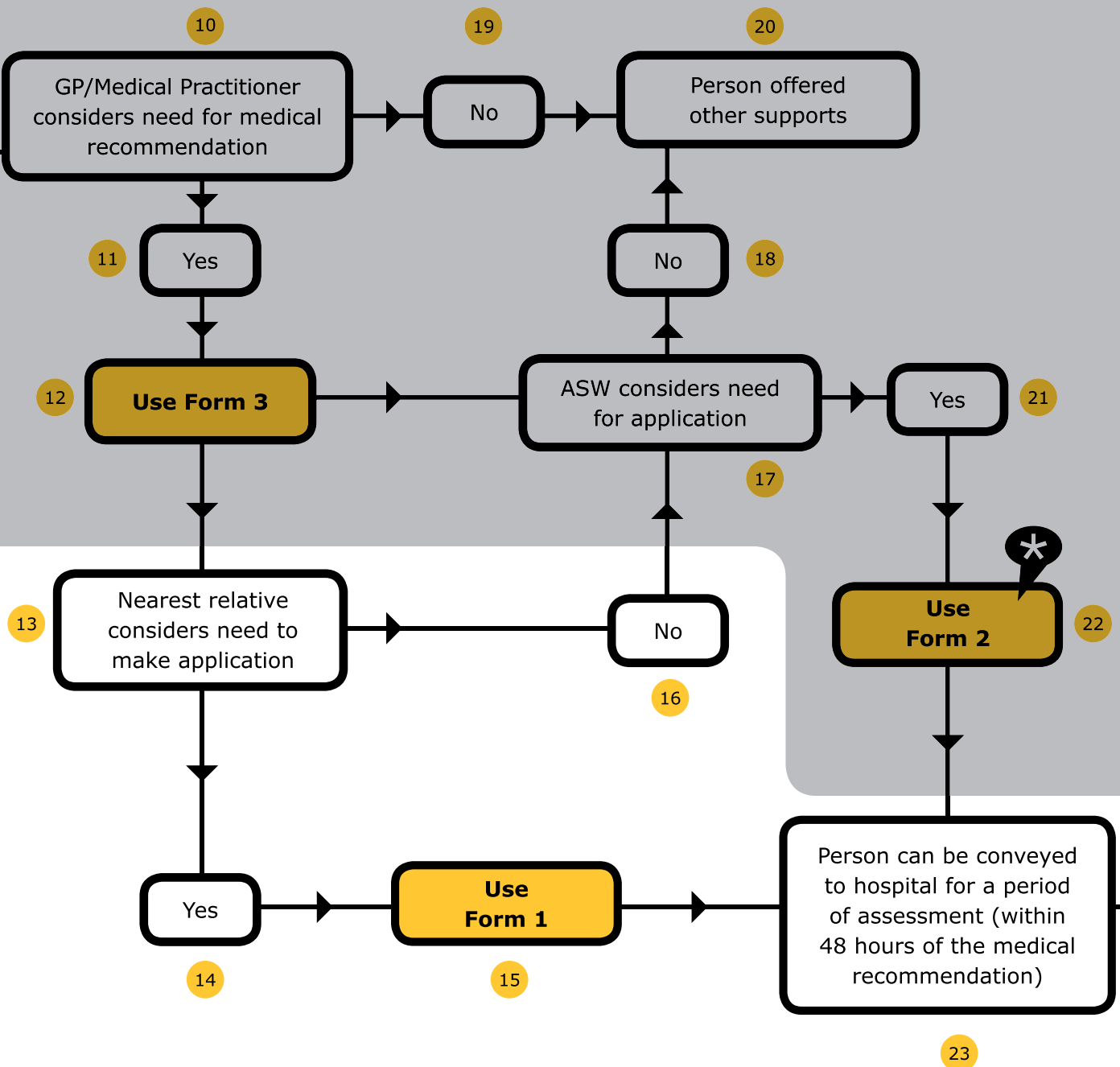
The Code 2.28 advises that any alternative plan should identify a named professional who will have responsibility for ensuring its implementation. It should be recorded in writing and copies made available to all those who need them, subject to the needs of confidentiality.

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APPLICATION - NEAREST RELATIVE

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APPLICATION - Nearest Relative



APPLICATION

Nearest Relative:

- 13 The nearest relative should consider the criteria for application for detention. The person's "nearest relative" is defined in **Article 32** and that person, if any, should be identified and advised of their right to make an application for the person's detention in hospital for assessment. **LINK TO ROLE OF NEAREST RELATIVE**

The nearest relative must be advised that they **do not** have to make the application and that an ASW can be asked to do so or can provide advice and assistance in the situation.

What if the person has no nearest relative within the meaning of Article 32 of the Order?

In this event the approved social worker may proceed with the assessment and make an application if necessary.

- 14 If the nearest relative chooses to make the application he must do so using the prescribed form (**Form 1**). **LINK TO FORM 1** The application must be made to the relevant authority. **LINK TO List of Trust Headquarters Addresses**

The nearest relative must have seen the person whose detention is sought within 2 days prior to the completion of their application.

The nearest relative should be offered assistance and advice from the GP/medical practitioner and other professionals involved.

The GP/medical practitioner should advise that the advice and assistance of an ASW is available 24 hours each day in relation to both the application and conveyance arrangements.

15 The GP/medical practitioner who has made the medical recommendation should ensure that the nearest relative has or can access the Application form – **Form 1**, and should provide assistance in the completion of this. The nearest relative should again be advised that he can request assistance from an ASW.

23 The person, whose detention in hospital is sought, may be taken to hospital once an Application for assessment has been properly completed. This Application (**Form 1 or 2**), founded on a properly completed Medical Recommendation (**Form 3**), together constitute sufficient authority for the compulsory removal and conveyance of the person to the hospital.

Article 8 (1)

The ASW must ensure that both the medical recommendation and application have been properly completed. Care must be taken that the person's name and address and those of the nearest relative are correct, that both forms are properly dated and signed and that the application and medical recommendation has been made to the appropriate Health and Social Care Trust with correct full address of that Trust on both forms and that the name of the hospital is clearly identified in the application. **See Appendix list of HSCTs.**

Can the person refuse to go to hospital?

No. Once the application is made the person is in the legal custody of the applicant, or a person delegated by him. The detained person will have a right to appeal to the Mental Health Review Tribunal against his detention in hospital once he is admitted.

What if the person has no “fixed abode”, is not a resident of the Trust or the jurisdiction?

In situations where the person is of no fixed abode or is not a resident of the jurisdiction a bed should be sought in and an application made to the nearest hospital.

In situations where the person is a resident of another Trust area a bed should be sought in and an application made to that Health and Social Care Trust and the appropriate hospital identified.

When must the person be conveyed to hospital?

The Order states that the person must be admitted to hospital within 2 days beginning with the date on which the medical recommendation was made.

Can this period be extended?

Yes, in exceptional circumstances this period can be extended up to 14 days. A Part II doctor must complete **Form 4**, setting out the exceptional circumstances that make the extension necessary. **Article 8 (1) (ii)**

How and in what circumstances can this period be extended?

Article 8 (1) (ii) states that in exceptional circumstances the period for the conveyance and admission to hospital can be extended from 2 days to a period of no more than 14 days from the date of the medical recommendation. Exceptional circumstances could include problems in locating the person or difficulty in accessing the assistance necessary to transport the person safely to hospital.

In this circumstance the applicant (ASW or nearest relative) must get a certificate in the prescribed form, **Form 4**, from a Part II doctor stipulating the number of days to which it can be extended and giving reasons for the extension. **LINK TO FORM 4**



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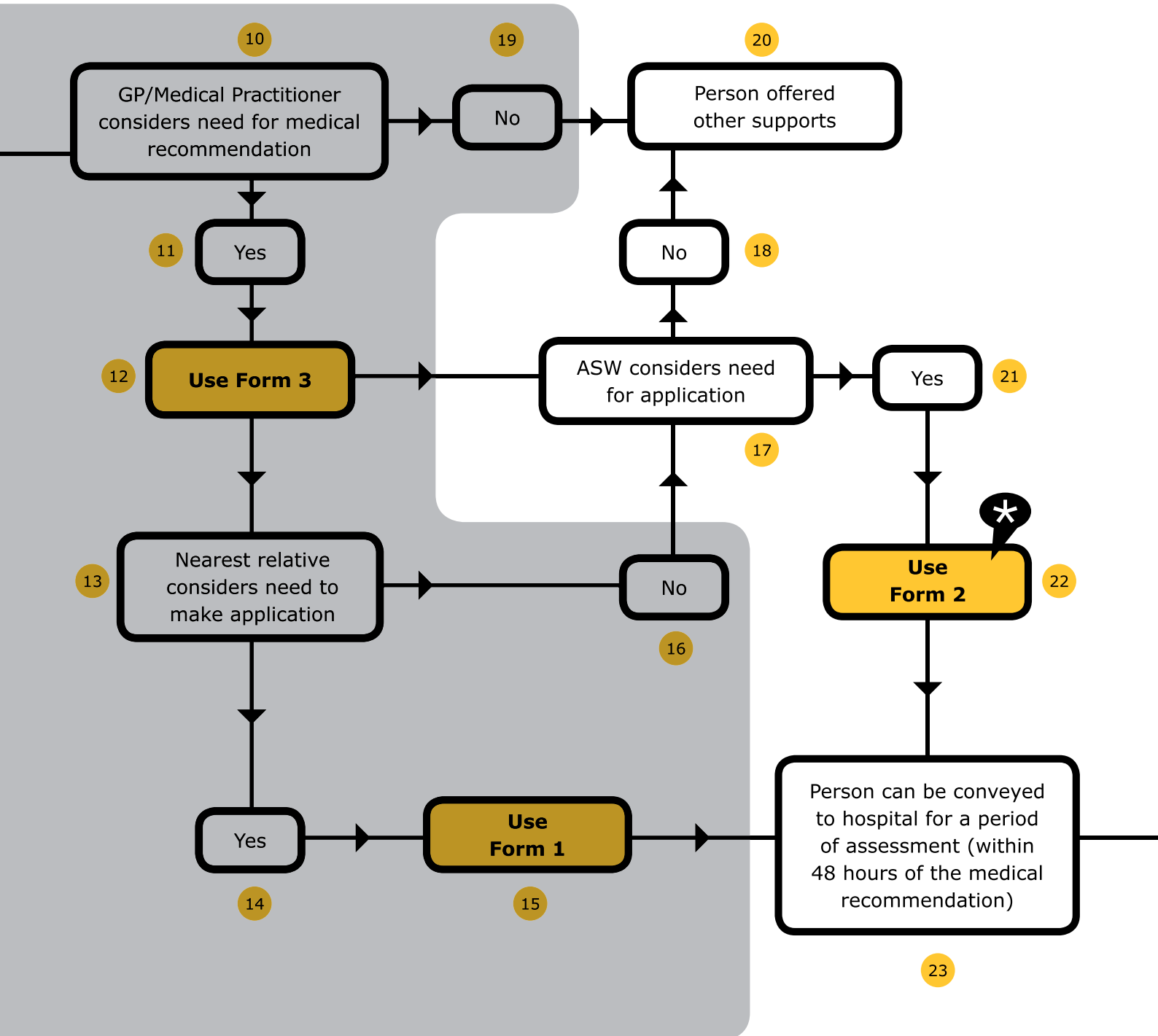
If the nearest relative declines to make the application or objects to the application being made, the GP/medical practitioner should contact and request the duty ASW attend with a view to making the application. The medical practitioner should advise the nearest relative of their rights, including the right to consultation with the ASW and a right to object should the ASW choose to proceed with the application.

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APPLICATION - APPROVED SOCIAL WORKER:

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APPLICATION - Approved Social Worker



APPLICATION

Approved Social Worker:

- 17 The ASW should consider the need to make an application.

In most situations the GP/medical practitioner will have consulted with the ASW at an early stage and in most cases the ASW will act as the applicant, as the Code encourages.

However if:

- The nearest relative has chosen not to exercise his legal right to make the application and has requested that an ASW consider making the application or
- The nearest relative has refused and objects to an application being made for the person's compulsory admission to hospital for assessment

the GP/medical practitioner should contact the ASW and request that an application for the person to be admitted to hospital for assessment be considered.

As stated previously it is good practice for both professionals involved in the assessment process to be present at the same time. **The Code, 2.19** also states that the ASW should consult with the GP/medical practitioner who is making or has made the medical recommendation and whenever possible other professionals who have been involved with the person's care, including for example home care staff, community psychiatric nurses (CPNs) or community nurses for people with a learning disability (CNLDs).

What statutory duties does the ASW have in this situation?

Article 40 of the Order places a duty on the ASW to make an application where he is satisfied that **an application ought to be made** and that it is **necessary or proper** for the application to be made by him. [LINK TO ROLE OF ASW](#).

The **Code 2.14** states that:

To satisfy himself that it is necessary and proper to do so the ASW must interview the patient in person. The Guide and Code both provide general requirements and guidance in relation to how the interview should be conducted.

The ASW is required to have seen the person whose detention is sought within the 2 days prior to making the application.

The ASW is required to identify the patient's nearest relative and ensure that his statutory duties to the nearest relative are fulfilled. These include consulting with the nearest relative prior to making the application or, if this is not practicable, as soon as possible following the patient's detention for assessment. If the nearest relative objects the ASW has a statutory duty to consult with a second ASW before proceeding. [LINK TO ROLE OF NEAREST RELATIVE](#)

In addition the Code states that the ASW should:

- Ascertain the nearest relative's views about the patient's needs and his (the relative's) own needs in relation to the patient and inform the nearest relative of the reasons for considering an application for admission under the Order and the effects of making an application.
- Take account of any wishes expressed by other relatives of the patient and any close friends or any other relevant circumstances when deciding whether or not to make the application.
- Consult with the doctor who made the medical recommendation and other health and social care professionals and others who have been involved in the patient's care. **Code 2.16-2.19**

- 18 The ASW should not make the application if he is not satisfied that such an application is the most appropriate way of meeting the person's needs.

The Code 2.29 states that the ASW must advise and discuss the reasons for not making the application with the GP/medical practitioner who has completed **Form 3** and the nearest relative. The ASW should also advise the nearest relative of his right to apply and suggest that he consults with the medical practitioner if he wishes to consider this alternative.

The ASW is required under **Article 40 (4)** to provide the nearest relative with a written statement of the reasons for not applying for the patient's admission if the ASW has been acting on the request of the nearest relative.

This statement should contain sufficient details to enable the nearest relative to understand the decision whilst at the same time preserving the patient's right to confidentiality.

- 20 If the ASW and GP/medical practitioner agree that the criteria are not met or if the ASW considers that the application ought not be made, both professionals should consider, if possible in consultation with the individual, their family/carers and other professionals, other supports/interventions that could be put in place to meet the person's needs.

The Code 2.29 advises that any alternative plan should identify a named professional who will have responsibility for ensuring its implementation. It should be recorded in writing and copies made available to all those who need them, subject to the needs of confidentiality.

- 21 The ASW considers that the application should be made.
- 22 If the ASW considers that admission to and detention in hospital is the most appropriate way of meeting the person's needs and that no alternative to admission is available in the community he must complete **Form 2**. **LINK TO FORM 2** The application must be made to the relevant authority. **LINK TO List of Trust Headquarters Addresses**

If it is not practicable for the ASW to consult with the nearest relative prior to making the application the ASW must make all efforts, if reasonably practicable, to advise the nearest relative as soon as possible following this action.

If **Form 3** was not completed by the person's own GP or a medical practitioner with previous acquaintance with the person, the ASW must record the reasons why on **Form 2**.

Has the ASW "a duty" to make the application?

Yes. **Article 40** states that the ASW has a duty to "make an application for assessment in respect of a patient within the area of the Trust by which that officer is appointed in any case where –

- (a) He is satisfied that an application ought to be made; and
- (b) He is of the opinion, having regards to any wishes expressed by relatives of the patient or any other relevant circumstances, that it is necessary or proper for the application to be made by him"

When should the person whose detention is being sought and the nearest relative be advised of their rights?

The patient and his nearest relative must be advised of the process of assessment and if necessary application for admission for assessment, including their rights, at all times during the assessment process. **LINK TO Patient Information Leaflet** and **LINK TO Nearest Relative Information Leaflet** (Example Belfast Health and Social Care Trust leaflet)

23

The person, whose detention in hospital is sought, may be taken to hospital once an Application for assessment has been properly completed. This Application (**Form 1 or 2**), founded on a properly completed Medical Recommendation (**Form 3**), together constitute sufficient authority for the compulsory removal and conveyance of the person to the hospital.

Article 8 (1)

The ASW must ensure that both the medical recommendation and application have been properly completed. Care must be taken that the person's name and address and those of the nearest relative are correct, that both forms are properly dated and signed and that the application and medical recommendation has been made to the appropriate Health and Social Care Trust with correct full address of that Trust on both forms and that the name of the hospital is clearly identified in the application. **See Appendix list of HSCs.**

Can the person refuse to go to hospital?

No. Once the application is made the person is in the legal custody of the applicant, or a person delegated by him. The detained person will have a right to appeal to the Mental Health Review Tribunal against his detention in hospital once he is admitted.

What if the person has no "fixed abode", is not a resident of the Trust or the jurisdiction?

In situations where the person is of no fixed abode or is not a resident of the jurisdiction a bed should be sought in and an application made to the nearest hospital.

In situations where the person is a resident of another Trust area a bed should be sought in and an application made to that Health and Social Care Trust and the appropriate hospital identified.

When must the person be conveyed to hospital?

The Order states that the person must be admitted to hospital within 2 days beginning with the date on which the medical recommendation was made.

Can this period be extended?

Yes, in exceptional circumstances this period can be extended up to 14 days. A Part II doctor must complete **Form 4**, setting out the exceptional circumstances that make the extension necessary. **Article 8 (1) (ii)**

How and in what circumstances can this period be extended?

Article 8 (ii) states that in exceptional circumstances the period for the conveyance and admission to hospital can be extended from 2 days to a period of no more than 14 days from the date of the medical recommendation. Exceptional circumstances could include problems in locating the person or difficulty in accessing the assistance necessary to transport the person safely to hospital.

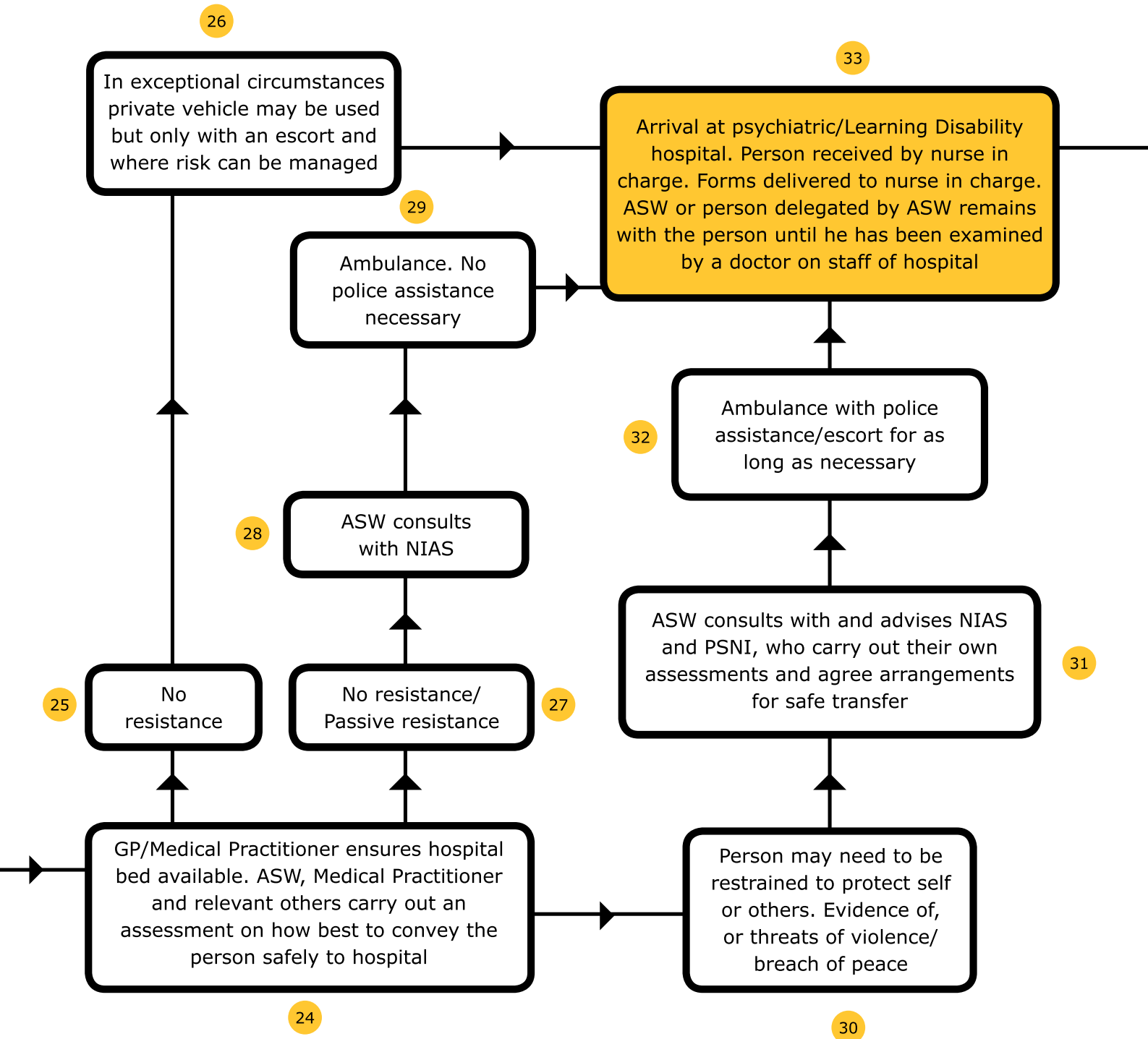
In this circumstance the applicant (ASW or nearest relative) must get a certificate in the prescribed form, **Form 4**, from a Part II doctor stipulating the number of days to which it can be extended and giving reasons for the extension. **LINK TO FORM 4**

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SAFE CONVEYANCE TO A PSYCHIATRIC OR LEARNING DISABILITY HOSPITAL

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SAFE CONVEYANCE TO A PSYCHIATRIC OR LEARNING DISABILITY HOSPITAL



SAFE CONVEYANCE TO A PSYCHIATRIC OR LEARNING DISABILITY HOSPITAL

24

The medical practitioner who has made the medical recommendation should contact the hospital in the Trust area responsible for the person whose detention is sought to secure a bed. If a bed is not available consultation should take place with the person/persons responsible for bed management in that Trust to ensure that a bed is located in another Trust.

An assessment of how best the person can be conveyed to the identified hospital should be carried out by the ASW and the recommending medical practitioner.

Who has responsibility for ensuring that the person is conveyed to hospital?

The applicant has responsibility for ensuring that a person is conveyed to hospital. In most situations the applicant will be the Approved Social Worker.

The ASW has a professional responsibility for ensuring that:

- The person is transported in the **most humane and least threatening** mode of transport consistent with the needs and the safety of the person and any escort/s;
- All the legalities have been observed in relation to the process;
- All necessary arrangements are made for the person's conveyance to hospital and that the Patient is properly admitted to the hospital.

How will the person be conveyed to hospital?

The Code states that the person will normally be conveyed to hospital by ambulance or other vehicle provided by NIAS.

The ASW should carry out an assessment, if possible in consultation with the medical practitioner and others involved, and consider how best the person can be safely conveyed to hospital. The most appropriate means of transport will depend on, and take account of, the person's own individual circumstances, needs and wishes and an assessment of the risks that may exist for both the person and others involved in the process. **LINK TO ROLE OF NIAS**

The outcome of the assessment may be: 25 or 27 or 30

- 25 The person, while not in agreement with the decision that his detention in hospital should be sought is, nevertheless compliant, not actively resisting **and open to persuasion**. The ASW, if acting as the applicant or when asked to assist the nearest relative, is satisfied that the risk can be managed and there is no risk of danger to the person, to the driver or others on the journey. In this situation the ASW/GP/medical practitioner should consult with NIAS regarding the most appropriate means of transport.
- 26 **In exceptional circumstances only** the person can be conveyed by private vehicle. This is not recommended by the Code and should only be considered as a last resort and only if the person is not resisting, the ASW is satisfied that any risks can be managed, when no alternative is available. When this mode of transport is used an escort must always be present and the application and medical recommendation forms must be in the possession of the driver or escort.
- 27 The person **may not be actively resisting his conveyance** to hospital, or may be stating that he will not co-operate but appears to be open to persuasion, or the person has been sedated or there are concerns for his medical needs.

- 28 The ASW should consult with NIAS and advise them of the particular circumstances of the situation and the outcome of the assessment undertaken by the ASW and GP/medical practitioner regarding the conveyance needs of the person and any risks identified.

In most situations the recommending medical practitioner will request that NIAS attend the scene to assist in the conveyance of the person to hospital.

NIAS may before or on arrival at the scene, undertake their own assessment regarding the person's needs in consultation with the ASW and GP/medical practitioner, if present, and agree an appropriate means of transport.

- 29 Agreement is made that the person can be conveyed to hospital in an ambulance or other NIAS vehicle. The ASW should advise and consult with NIAS personnel involved in relation to any resistance and agree how best to proceed. The ASW or other person (where the ASW is satisfied that this will not create or increase the risk of harm to the person or others) may accompany the person in the ambulance to hospital.

However the ASW will only be able to accompany the person to hospital if all other matters in relation to any vulnerable adults or children are addressed or arrangements for the protection of the person's property have been made.

If not travelling with the patient the ASW should ensure that he arrives at the hospital at the same time as the person or as soon as possible afterwards.

As the person is deemed to be in the custody of the applicant or person delegated by the applicant to convey the person to hospital the statutory forms, the medical recommendation and application should be given to NIAS personnel who are conveying the person to hospital.

The Code of Practice 2.49 advises that a nurse, doctor or ambulance person who is sufficiently skilled in resuscitation techniques and the observation of drowsy or comatose patients should always accompany the person if he has been sedated or there are concerns regarding his medical needs.

30

The person **may be actively resisting his conveyance to hospital**, exhibiting self-harming behaviour, engaging in violent behaviour or threatening violence or behaving in a way likely to cause serious physical harm to self and/or others or a breach of the peace has occurred or there is a high risk that this may occur. The ASW should contact NIAS and PSNI to request assistance and should discuss his concerns. The ASW and NIAS should consider the risks that may present during the conveyance of the person to hospital and the need for assistance from PSNI given the level of restraint that has or will be required to convey the person to hospital. **LINK TO ROLE OF PSNI**

In what circumstances should the PSNI be requested to assist in the safe conveyance of a patient to a psychiatric or learning disability hospital?

Such a request should only be made following a comprehensive assessment of the risk involved and when the result of that assessment is that the presence of police is both proportionate and necessary. Police presence may be requested where the ASW or GP/Medical Practitioner identifies a significant risk of:

Violence or the threat of violence being used against those involved in the conveyance of the patient to hospital or to other persons present e.g. family members;

and/or

Self harm by the individual who is being conveyed to hospital.

**In what circumstances should the PSNI be requested to assist in the safe conveyance of a patient to a psychiatric or learning disability hospital?
cont'd**

However the PSNI should **not be routinely** asked to assist in the safe conveyance of a patient to a psychiatric or learning disability hospital.

The PSNI will not attend in cases involving a difficult, but non-violent person whose past history and present diagnosis gives no rise for concern for the safety of other agencies or in the assessment situation.

- 31 NIAS and PSNI should be advised of the relevant circumstances of the situation and the risks that pertain and should undertake their own professional risk assessments regarding the immediate situation and conveyance process.

The ASW, medical practitioner, NIAS and PSNI should then agree arrangements for the safe transfer of the patient to hospital.

The police should only be asked to travel with the person in an ambulance or other vehicle in the exceptional circumstances outlined above.

- 32 The outcome of this assessment and agreement made might be that a police officer/s is required to;
- Follow behind the ambulance or other vehicle so that further assistance is available if and when required;
 - Accompany the person in the ambulance or other vehicle so that the officer/s can restrain the person if necessary and to prevent serious physical harm to the persons or others, including preventing the person from attempting to "escape" from the vehicle.



The **Code (2.44)** states that “although the police may have to exercise their duty to protect persons or property while the person is being conveyed, they should, where this is not inconsistent with their duty, comply with any directions or guidance given by the ASW”.

The person who is being conveyed should be advised of any action and the reason why this has been agreed. At all times the level of restraint used, if any, should be minimal and proportionate to the level of risk involved and necessary to ensure the safety of that person and others during conveyance.

Who should advise staff in the hospital named in the Application that the person is to be conveyed to that hospital?

The medical practitioner who has made the medical recommendation will already have ensured that a bed is available for the person whose detention is sought. The ASW or this medical practitioner should, once the conveyance arrangements have been agreed, advise hospital staff of the approximate time of the person’s arrival.

What if the Applicant is unable to get assistance in conveying the person to hospital?

It is recommended that if this situation does occur the applicant (most likely the ASW) should contact a senior officer in the Trust who will seek to liaise with other senior staff in NIAS and/or PSNI to resolve the difficulty (where the nearest relative is the applicant, he should contact the duty ASW for assistance **Code 2.40.**)

However if this has not been possible and the problem remains unresolved, the Applicant can seek a warrant under **Article 129 (4)** of the Order authorising a PSNI constable, accompanied by a medical practitioner, to enter the premises, if need be by force and to convey the patient to the hospital specified in the application. **LINK TO WARRANTS**
APPENDIX

What if the person “escapes” while being conveyed to hospital?

While being conveyed to hospital the person is deemed to be in legal custody (**Article 131 (1)**). Should the person escape while being conveyed to hospital, he may be retaken and conveyed to the hospital within the time permitted for his admission, by the person who had custody of him immediately before the escape, or any police officer or ASW (**Article 132 (1)**). **Code 2.38**

33

On arrival at the hospital the person, accompanied by the ASW or the person delegated by the ASW, should be introduced to and received by the nurse in charge who should take possession of and scrutinise the Forms.

In addition, in the circumstances described in Box 32 NIAS and/or PSNI may also be required to escort the person to the admission unit.

Who has responsibility for ensuring the necessary Forms are delivered to the hospital where admission for assessment is sought?

The applicant (ASW or nearest relative), or a person delegated by the applicant has a duty to ensure that the Application, **Form 1 or 2** and Medical Recommendation, **Form 3** have been correctly completed. These forms should always be in the possession of the applicant or person delegated by the applicant until they have been delivered to the nurse in charge on arrival at the hospital.



What should happen to these Forms?

The Medical Recommendation, **Form 3** and Application forms, **Form 1 or 2** and any other forms, for example **Form 4**, that have been used in the assessment for admission to hospital process are, and should be treated, as legal documents. These and any reports that follow should be forwarded through arrangements in the receiving Health and Social Care Trust to RQIA. Minor errors may be amended under **Article 11** of the Order during the period of 14 days beginning with the date of admission prior to this.

Medical recommendations or reports which do not provide sufficient evidence to warrant detention in hospital for assessment may be disregarded and replaced during this period. However more serious errors cannot be rectified and may invalidate the entire detention process. These include failure to complete detention forms or reports within the timescales set out in the Order or failure to comply with statutory requirements i.e. failure to interview the patient. **LINK TO Scrutiny and Rectification of Documents Appendix**

What should the ASW do if he has not accompanied the person to hospital?

The ASW, if not travelling in the vehicle with the person should arrive at the receiving hospital at the same time as the person or as soon as possible afterwards. The ASW should ensure that the admission documents have been delivered and that the process of admission, including the medical examination is underway. The ASW should also ensure that all relevant information is passed to appropriate hospital personnel in the hospital.

At what point is the person actually subject to detention in hospital?

The person is subject to detention once the doctor on the staff of the hospital has completed **Form 7**. The person is **not** therefore subject to detention prior to this action. For this reason, the ASW (or a person delegated by the ASW) should remain until the patient has been examined and the process of admission has been completed.



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COMPULSORY ADMISSION AND DETENTION IN HOSPITAL FOR ASSESSMENT

The purpose of the 14 day period of detention in hospital for assessment is to facilitate a comprehensive multi-disciplinary assessment of the person/patient and a decision as to the need for further detention in hospital for treatment.

WHAT INFORMATION SHOULD BE MADE AVAILABLE TO STAFF IN THE ADMITTING HOSPITAL?

In addition to that contained in **Form 3** and **Form 1 or 2**, the Approved Social Worker, if involved in the detention process, will prepare and submit an initial and/or more detailed report outlining the circumstances of his assessment and subsequent decision to make application for the person's detention in hospital for assessment **See ASW Report Pro-forma and Guidance (MHO A and MHO B) Appendix Section.**

These reports will also contribute to the Comprehensive Risk Assessment if indicated. **LINK TO 'Promoting Quality Care – Good Practice Guidance on the Assessment and Management of Risk in Mental Health and Learning Disability Services – May 2010**

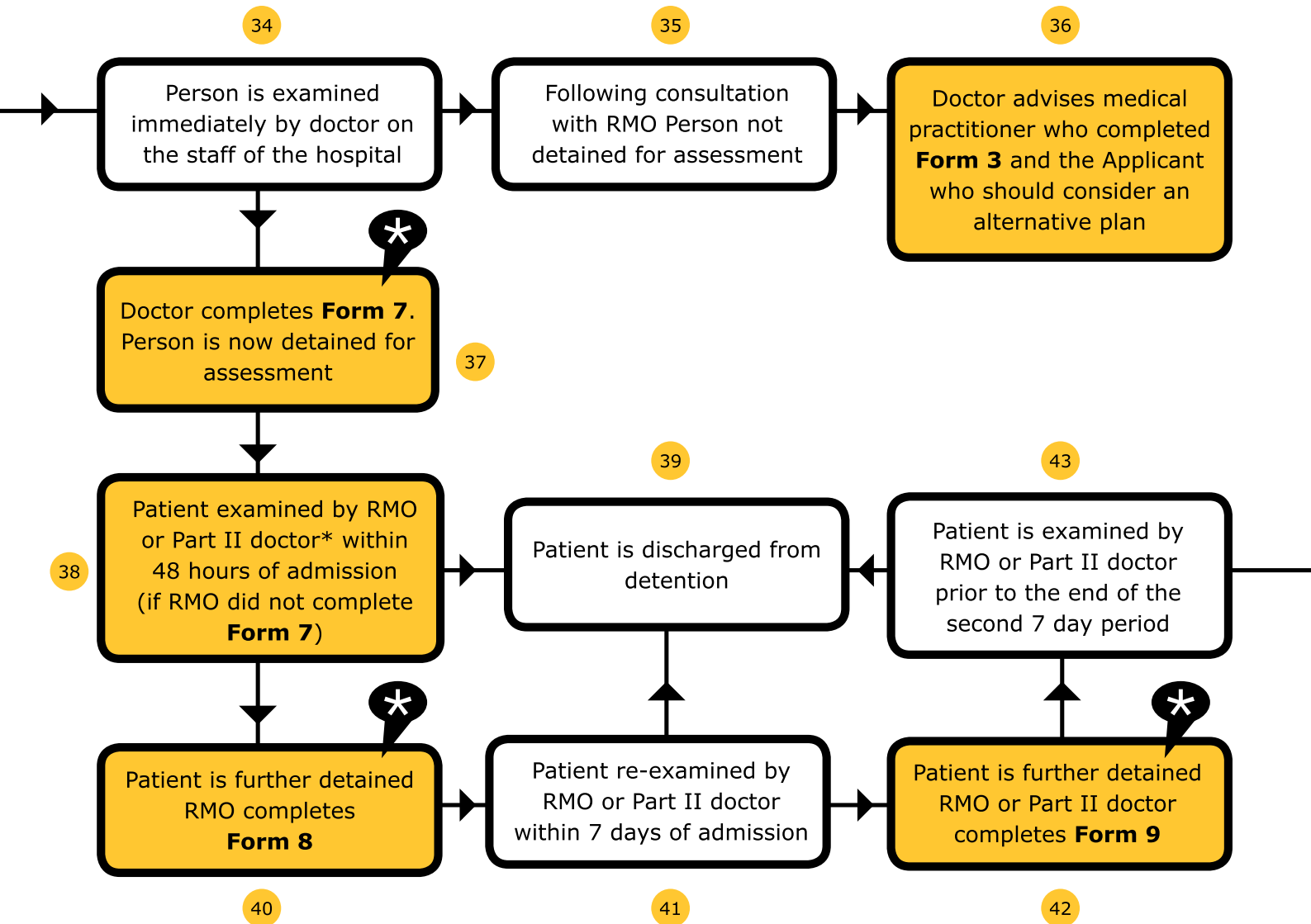
If the nearest relative completed the application for admission (**Form 1**) the responsible Health and Social Care Trust is required under **Article 5 (6)** to direct a social worker to interview the patient and provide the RMO with a report on the patient's social circumstances. This should also be considered as part of the assessment of the patient's needs. **See Pro-forma for Social Circumstances Report (MHO D) and Guidance in Appendix Section**

The outcome of the assessment will be the development of a multi-disciplinary treatment and care plan to address the patient's needs.

The Patient and his nearest relative must be advised of their rights to appeal to the Mental Health Review Tribunal for a hearing, at all key stages of the assessment and detention for treatment process.



COMPULSORY ADMISSION AND DETENTION IN HOSPITAL FOR ASSESSMENT



Patient is advised of his Rights including the right to appeal to the Mental Health Review Tribunal

COMPULSORY ADMISSION AND DETENTION IN HOSPITAL FOR ASSESSMENT

- 34 A doctor on the staff of the hospital should examine the person immediately on arrival. **LINK TO ROLE OF PSYCHIATRIST**

It is important that the examination is carried out as a matter of urgency. Until the person has been formally admitted under **Article 9** he can only be prevented from leaving the hospital by the applicant or person delegated by the applicant on the basis of the powers to “take and convey” conferred on the applicant under **Article 8** of the Order. The doctor should consider information contained in the preliminary ASW report. **See ASW MHO A Pro-forma in Appendix section.**

- 35 The examining doctor may decide **not to proceed** with the admission on the grounds that the person does not meet the criteria for detention in hospital. However the Code states that a decision to reject the application on examination of the patient should not be taken lightly. Such a decision should only be taken on the judgement of a Part II doctor, normally after consultation with, and, if possible the agreement of, the doctor who made the recommendation for admission. If following such consultation this decision remains, **Form 7** should be completed accordingly. The person should be advised of this decision and/or, if appropriate, offered in-patient care as a voluntary patient. **The Code 2.60** states that the examining doctor must also inform the doctor who made the medical recommendation and the applicant of this decision in writing.

- 36 If the person is deemed not to meet the criteria for admission for assessment the doctor should immediately advise the medical practitioner who has made the initial medical recommendation. **Code 2.60**. In this event the doctor who made the medical recommendation for admission should, with the other professionals concerned, decide what action is needed to meet the person’s needs, including the possible provision of other health and social care services, and decide how to implement that action.

37

If the person is considered to meet the criteria for admission for assessment, the admitting doctor must complete **Form 7** accordingly. This must include a clinical description of the person's mental condition which justifies the detention. The doctor should advise the person of this decision. **LINK TO FORM 7**

The person must also be advised of his rights including the right to appeal to a Mental Health Review Tribunal. Nursing staff should provide this information in both verbal and written form and should take account any communication difficulties that might exist. This information may need to be relayed on a number of occasions to ensure that it is sufficiently understood. Advocacy services may also provide support.

Are there any particular considerations that should be made in relation to a child or young person?

The process of assessment, recommendation and application, detention for assessment and treatment and discharge from detention are the same for each individual regardless of age.

However the Code states that it is always preferable for children and young people admitted to hospital to be accommodated with others of their own age group in children's wards or adolescent units, separate from adults.

The Department has issued guidance to Trusts on how best to meet the needs of children and young people who require in-patient assessment and if necessary treatment in relation to mental disorder in those exceptional circumstances where no appropriate children's placement is available.

LINK TO Under 18 Year Olds in Adult Mental Health Facilities (Letter) and LINK TO Under 18 Year Olds in Adult Learning Disability Facilities (Hsc (Mhdp) 01/2008

Are there any particular considerations that should be made in relation to a child or young person? cont'd

The Regional Health and Social Care Board has also directed (August 2010) that the admission of an under 18 year old person to an Adult Mental Health or Learning Disability Facility be considered an "Untoward Event". Staff should follow Trust Guidance in relation to the process which should be followed when this occurs.

RQIA closely monitor and review the in-patient assessment, treatment and care of children and young people in psychiatric and learning disability facilities. **LINK TO RQIA Independent Review of Child and Adolescent Mental Health Services (CAMHS) in Northern Ireland. February 2011**

- 38 The patient (previously referred to as the person) must be examined by the Responsible Medical Officer (RMO) or Part II doctor (if the admitting doctor was not either of these) within 48 hours of admission. The RMO or Part II doctor should, following the examination, consider whether the patient should be further detained or discharged from detention. **LINK TO ROLE OF PSYCHIATRIST**
- 39 If the RMO or Part II doctor considers that the patient no longer meets the criteria for detention he must be discharged from that detention. The patient should be advised as soon as possible that he can leave hospital or, if appropriate, offered in-patient care as a voluntary patient.
- 40 If the RMO or Part II doctor considers that the patient should continue to be detained the **Form 8** should be completed. The patient and the nearest relative must be advised of this detention and of their rights including the right to appeal the detention to the Mental Health Review Tribunal. **LINK TO FORM 8**

- 41 The patient must be formally re-examined by the RMO or Part II doctor within 7 days of the admission to consider whether the criteria continue to be met.

Can the person receive treatment for his mental disorder during the 14 day assessment period?

Yes, if the person gives his consent to the treatment. The Code states that common law, as it relates to consent to treatment, applies to all patients whether voluntary or detained.

Consent is defined in the **Code 5.8** as “the voluntary and continuing permission of the patient for a particular form of treatment to be given, based on an adequate knowledge of its nature, purpose, and likely effects”.

Are there any exceptions to this?

Yes. In certain situations patients may be given medical treatment during the assessment period. **See Consent to Treatment Chapter.**

- 42 If the RMO or Part II doctor considers that the patient should continue to be detained then **Form 9** should be completed. The patient and his nearest relative should again be advised of their rights including the right to appeal the detention to the Mental Health Review Tribunal. **LINK TO FORM 9**
- 43 The patient must be formally re-examined by the RMO or Part II doctor prior to the end of the second 7-day period. The purpose of this examination is to consider whether or not it is necessary to detain the patient for a period of treatment, following the expiry of the 14-day period of assessment. The criteria for detention for treatment therefore need to be considered.

What are the criteria for detention in hospital for treatment?

The criteria for detention in hospital for treatment are set out in **Article 12** of the Order. A person can be detained for treatment if the examining doctor considers that the patient is:

- Suffering from mental illness or severe mental impairment* of a nature or degree which warrants detention in hospital for medical treatment and
- Failure to detain the patient would create a substantial likelihood of serious physical harm to the patient or to other persons.

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



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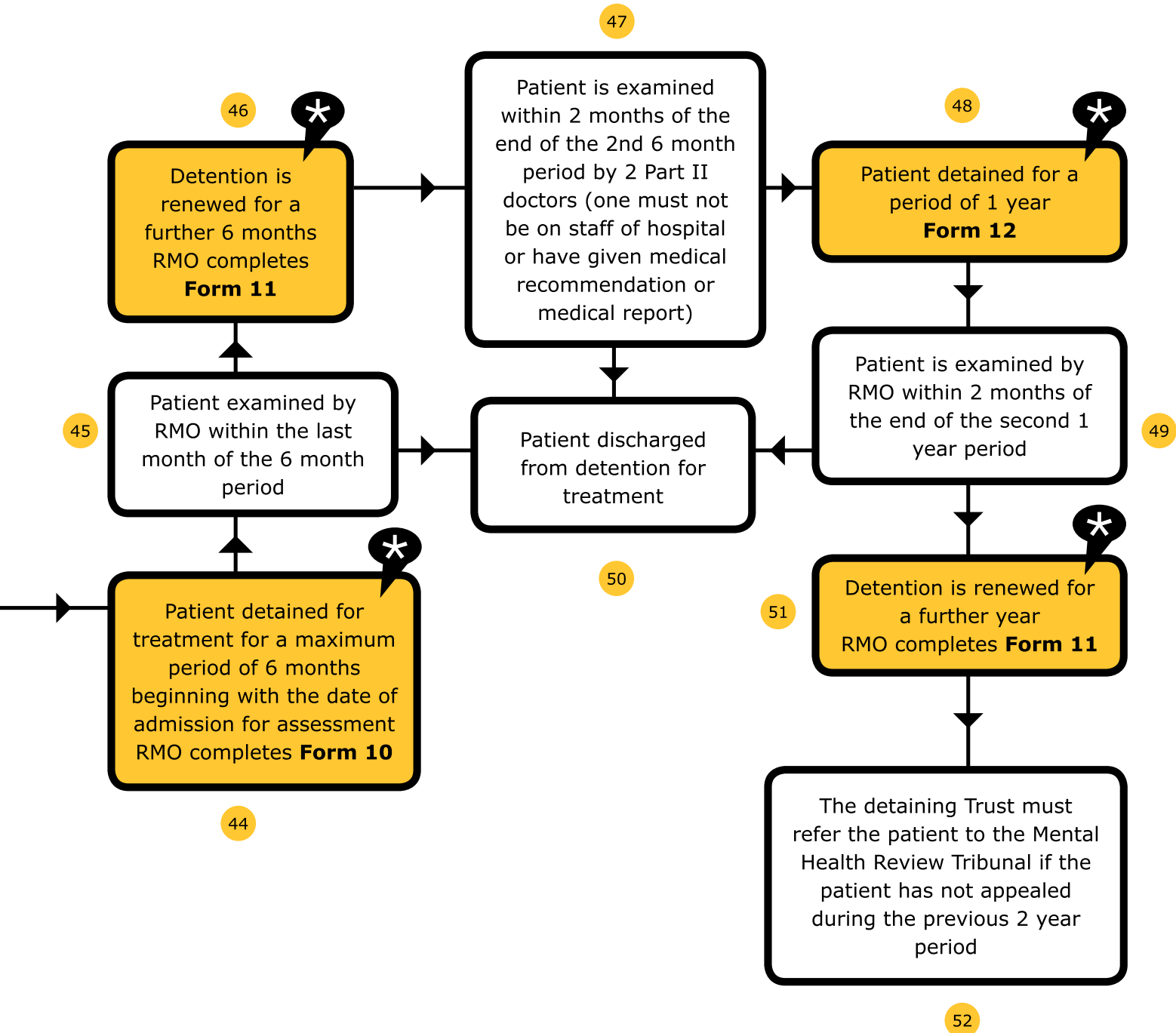
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COMPULSORY ADMISSION AND DETENTION IN HOSPITAL FOR ASSESSMENT

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DETENTION FOR TREATMENT IN HOSPITAL



DETENTION FOR TREATMENT IN HOSPITAL

The purpose of detention for treatment in hospital is to allow for the implementation of the initial treatment and care plan agreed as part of the assessment in hospital process in circumstances where the patient meets the criteria for detention for treatment. SEE CONSENT TO TREATMENT CHAPTER

What is the definition of medical treatment in the Order?

Medical treatment is defined in **Article 2 (2)** of the Order as including “nursing and also includes care and training under medical supervision”. The Code states that this “acknowledges that modern psychiatric care is a team activity involving several disciplines, including psychiatry, clinical psychology, nursing, occupational therapy and social work”.

Since the publication of the Code peer advocates and carers also have a significant and valuable role to play in the overall care and treatment of patients in hospital and in the community.

All those involved in the treatment of patients should ensure that their practice is compatible with the Principles of Treatment contained in the Code of Practice.

- 44 If the RMO, or another Part II doctor in the absence of the RMO considers that the patient should be detained for a period of treatment **Form 10** should be completed before the expiry of the 14-day assessment period. The doctor is required to give a clinical description of the patient’s condition and justify the need for detention. **LINK TO FORM 10**

The patient and nearest relative must be advised accordingly.

Form 10 should not be completed by the same doctor who gave the medical recommendation on which the original application was founded.



How and when is a patient informed of his rights?

The patient must be advised of his rights at each stage of the detention process including the right to appeal to a Mental Health Review Tribunal. Nursing staff should provide this information in both verbal and written form and should take account any communication difficulties that might exist. This information may need to be relayed on a number of occasions to ensure that it is sufficiently understood. Advocacy services may also provide support.

What should happen during the patient's detention in hospital?

While detained in hospital the patient's progress and care plan must be continually reviewed. The patient must be discharged from detention as soon as his condition improves and the criteria for detention are no longer met.

45 The patient must be examined by the RMO within a month of the end of the initial 6-month period of detention.

46 If the decision is made that the patient still meets the criteria for detention for treatment the RMO the patient and nearest relative should be advised accordingly. The RMO should complete **Form 11**. This allows the patient to be further detained for a further period of up to 6 months. **LINK TO FORM 11**

47 As the next detention period is for a further 12 months the Order makes provision for extra safeguards for the patient to ensure that the patient's interests are protected.

Two Part II doctors must examine the patient within the two months of the end of the second 6-month period of detention.

One of these doctors must not be on the staff of the hospital where the patient is being detained and must not previously have been involved in giving any medical recommendation or report on the patient. The other doctor is usually the RMO.

The patient and his nearest relative must be informed that these examinations are to take place, at least 14 days in advance

48

If the decision is made that the patient still meets the criteria for detention for treatment the person and nearest relative should be advised accordingly. In this instance the **two** Part II doctors should jointly complete and sign **Form 12**. This allows the person to be detained for a period of up to 1 year. The patient and his nearest relative should again be advised of their rights including the right to appeal the detention to the Mental Health Review Tribunal. **LINK TO FORM 12**

49

The RMO must examine the patient within 2 months of the expiry of the first 1-year detention period (this will in fact be within 2 years of the total period beginning with the initial date of admission) to consider whether the patient still meets the criteria for detention for treatment.

50

If the patient does not meet the criteria for further detention for treatment the patient and his nearest relative should be advised accordingly. The patient should be discharged from detention and if appropriate, offered in-patient treatment as a voluntary patient.

51

If the decision is made that the patient still meets the criteria for detention for treatment the person and nearest relative should be advised accordingly. The RMO should again complete **Form 11**. This allows the patient to be detained for treatment for an additional period of up to 1 year if necessary. **LINK TO FORM 11**



The same process will follow at every yearly period thereafter i.e. examination by the RMO with 2 months of the expiry and completion of **Form 11** if necessary.

The patient and his nearest relative should again be advised of their rights including the right to appeal the detention to the Mental Health Review Tribunal.

52

Patients and nearest relatives have a right to appeal against the detention during both the detention for assessment and treatment periods. Further information regarding when and how this may be done is contained in the Mental Health Review Tribunal section of this Guidance.

The patient must be advised on a regular basis throughout the period of detention for assessment and for treatment of his right to apply to the **Mental Health Review Tribunal** (once within the first 6 months, once during the second 6 months and once during each subsequent 1 year period of detention) and a record kept of this. Staff advising him must ensure that repeated offers are made to explain this, especially when the patient's illness affects his understanding. Most mental health and learning disability services have advocates who will also do this informally.

The detaining Health and Social Care Trust also has a statutory responsibility to refer the case of a patient who has not appealed during the previous 2 year period.

May patients be granted leave from hospital during the period of detention for treatment?

Leave of absence may be given either for specified occasions or a specified period, often to help prepare the patient for discharge. **Article 15**

It should be considered part of the patient's treatment plan. Leave cannot be granted for more than 27 days at a time without informing RQIA of the patient's address.

The Responsible Medical Officer is responsible for the care and treatment of the detained patient and must ensure that appropriate arrangements are in place for the patient's supervision whilst absent on leave.

The Responsible Medical Officer can impose any conditions on the leave he thinks necessary in the interests of the patient or for the protection of other people and may recall a patient before the end of the period for which he was originally granted leave, if he believes it to be in the interests of the patient or for the protection of other persons. If the patient refuses to return at the appointed time he may be taken into custody and returned to hospital. These processes are set out in **Article 29 and paragraphs 107 and 108 of the Guide**. In a situation where the patient is in a private place and access is denied or prevented a Warrant can be sought to gain entry and remove the patient. **LINK TO WARRANTS APPENDIX**



What should happen if a detained patient leaves hospital without permission?

While a patient is subject to detention in hospital that patient is in the legal custody of the detaining Health and Social Care Trust. **Article 29** provides powers to return a patient who is absent without leave to the hospital where he is required to stay. He may be returned by any officer on the staff of the hospital, any police officer, an approved social worker or any person authorised in writing to do so by the Trust. If necessary a warrant can be sought under **Article 129 (2)** of the Order to gain access to and remove the patient. Any person who assists a patient to leave hospital or obstructs those involved in gaining access to or returning the patient to hospital may be considered to have committed an offence under the Order. **LINK TO OFFENCES SECTION.**

When must the patient be discharged?

The Responsible Medical Officer has a duty to discharge the patient from detention if he is satisfied that the criteria are no longer met.

This will follow consultation with the patient, the multidisciplinary team and the patient's family, including the nearest relative.

In this instance, 'discharge' means discharge from detention. It does not mean that a person must leave hospital.

Article 14 of the Order directs that "a patient who is for the time being liable to be detained under this Part shall cease to be so liable if an order in writing discharging him from detention is made in respect of him by the Responsible Medical Officer (RMO), the responsible authority or his nearest relative".

The RMO should complete **INTERNAL FORM 4** "Order of Discharge of Patient liable to be detained in hospital by RMO".

The patient may also be discharged following an application by the nearest relative or, following a decision by the Mental Health Review Tribunal or in some circumstances by the Trust.

An order to discharge cannot be made before the nearest relative gives notice in writing to the detaining Health and Social Care Trust. **INTERNAL FORM 5**. If the RMO then provides a written report to the Trust within 72 hours of this order in which he objects to the discharge, such a discharge cannot proceed. **INTERNAL FORM 6**



How should risks be managed on discharge from detention in hospital?

Assessment and management of risk begins at first presentation of the person/patient and is an integral part of a person's mental health assessment, treatment and discharge. The same principles apply whether a person is detained under the Order or not. Particular factors must be considered at discharge and local protocols and procedures have been developed in all Health and Social Care Trusts.

The main guidance is **Promoting Quality Care – Good Practice Guidance on the Assessment and Management of Risk in Mental Health and Learning Disability Services May 2010** which can be found at **LINK TO Promoting Quality Care – Good Practice Guidance on the Assessment and Management of Risk in Mental Health and Learning Disability Services May 2010**

- Introduction and purpose
- Good practice principles
- Fundamentals of risk management
- Working with risk as part of everyday practice
- Learning from adverse incidents
- Improving the quality of risk management
- The way forward
- Risk assessment and management tools.

What should be done with all the Prescribed Forms/Reports used in the detention for assessment and treatment in hospital process?

All forms should be carefully completed. These are legal documents and should be treated as such. **Forms 7, 8, 9, 10, 11 and 12**, also referred to as "reports", must be furnished to and accepted by the detaining Health and Social Care Trusts.

All Forms must also be copied and immediately forwarded to RQIA. **LINK TO Scrutiny and Rectification of Documents Appendix**