

**Tomas Adell**  
**Head of Adult Mental Health Unit**



To:  
The Attorney General for Northern Ireland  
Chief Executive of each HSC Trust  
Chief Executive of the HSC Board  
Chief Executive of the PHA  
Chief Executive of the RQIA  
Chief Executive of the Patient and Client Council  
Royal College of Psychiatry (NI Division)  
British Association of Social Workers (NI)  
Royal College of Nursing (NI)  
British Medical Association  
Mental Health Champion

Castle Buildings  
Stormont  
Belfast BT4 3SQ  
tomas.adell@health-ni.gov.uk

Our Ref: HSC circular AMHU 2/21

31 January 2021

Dear Colleague,

### **UPDATED GUIDANCE IN RESPECT OF PERSONALLY SEEN AND PERSONALLY EXAMINED IN THE MENTAL HEALTH ORDER**

1. The purpose of this circular is to make you aware of a change in guidance in respect of how to interpret “personally seen” and “personally examined” in the Mental Health (Northern Ireland) Order 1986.
2. On 15 January 2021 the Department issued a circular (HSC circular AMHU 1/21) regarding the reinstatement of Covid-19 pandemic guidance and legislation relevant to mental health services. This circular included advice on how to interpret “personally seen” and “personally examined”, that this can include remote working and noted that the statutory emergency Code of Practice included this interpretation.
3. This circular changes this guidance to note that when there is a requirement to “personally” see or “personally” examine, this requires the physical attendance of the person in question.

### **Changes to the interpretation of “personally seen” and “personally examined”**

4. A recent court case in the High Court in England has considered similar guidance issued by the Department for Health and Social Care ([2021] EWHC 101 (Admin)). The court found that language of “personally seen” and

“personally examined” could not be interpreted to include remote work. The court concluded that:

*For these reasons, we conclude that the phrases “personally seen” in s. 11(5) [of the Mental Health Act 1983] and “personally examined” in s. 12(1) require the physical attendance of the person in question on the patient.*

5. As a consequence this circular removes the previously issued circular (HSC AMHU 1/21) in respect of “personally seen” and “personally examined” and the relevant paragraphs in the emergency Code of Practice have been removed. A new version of the Code of Practice will shortly be uploaded on the Department’s website.
6. Going forward, where the Mental Health Order specifies “personally seen” or “personally examined” remote working is not permissible. The person carrying out the statutory function must be physically present.

### **“Examined” in the Mental Capacity Act (Northern Ireland) 2016**

7. The Mental Capacity Act (Northern Ireland) 2016 includes requirement of a person to be “examined”. However, as the Act does not specify “personally” previous guidance in respect of remote working under the Mental Capacity Act is still in force.

### **Next steps and required actions**

8. The Department is considering whether action is required in relation to existing patients where remote work has been carried out, and will provide further information and guidance when appropriate.
9. HSC Trusts, the HSC Board and others are requested to bring this circular to the immediate attention of relevant staff.

Yours sincerely



**Tomas Adell**  
**Head of Adult Mental Health Unit**