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Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, CHAPTER 9 is up to date with all changes known to be in force on or before 19 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*



2016 CHAPTER 18

PART 10

CRIMINAL JUSTICE

PROSPECTIVE

CHAPTER 9

SUPPLEMENTARY

Provision of information

Provision of information

241.—(1) Regulations may make provision requiring a prescribed person to give prescribed information to prescribed persons—

- (a) where a public protection order is made;
- (b) where a hospital direction or hospital transfer direction is given; or
- (c) in such other circumstances where a person is, or has been, detained by virtue of this Part as may be prescribed.

(2) The regulations may include provision as to when the information must be given.

(3) The information that may be prescribed by regulations made under this section, or by regulations made under any other provision of this Part which requires prescribed information to be given to a person, includes a copy of a prescribed document.

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(4) Regulations under this section must, in particular, include provision for the purposes of ensuring—

- (a) that, where a person is detained by virtue of this Part, the person is made aware as soon as practicable of—
 - (i) the provisions of this Part by virtue of which he or she is detained, and the effect of those provisions; and
 - (ii) what rights are available under Chapter 8 (review by the Tribunal);
- (b) that, where a person who has been detained by virtue of this Part is discharged from being liable to be so detained, the person is informed in writing of that discharge.

Ways in which information must be provided

242.—(1) Regulations may make provision about the way in which relevant information must be given to prescribed persons.

(2) In this section “relevant information” means information which is—

- (a) required to be given by any provision of this Part or of regulations made under this Part; and
- (b) specified by the regulations under this section.

(3) Regulations under this section may in particular require information to be given orally as well as in writing.

Detention under Part 10: further provision

Section 20 may apply to person detained under Part 10

243.—(1) This section applies in relation to any provision of this Part which provides that the question whether a person may be given any treatment while detained in pursuance of a remand, order or direction under this Part is to be determined in the same way as if the person were not so detained.

(2) The provision—

- (a) does not prevent the person from falling within the reference in section 23 to a person detained by virtue of this Act in circumstances amounting to a deprivation of liberty; and
- (b) accordingly, does not prevent section 20 (authorisation needed for treatment with serious consequences where person lacks capacity and is detained etc) from applying in relation to the person.

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Absence without permission

244.—(1) This section applies where a person liable to be detained under a public protection order, or liable to be detained in a hospital under a hospital direction or hospital transfer direction—

- (a) absents himself or herself from the establishment concerned, without permission given under the relevant section;
- (b) fails to return to the establishment concerned at the end of an occasion or period for which he or she was given permission under the relevant section to be absent, or on being recalled under that section; or
- (c) absents himself or herself, without permission, from any place where he or she is required to be by conditions imposed on the grant of a permission under the relevant section.

(2) The person may be taken into custody and returned to that establishment or place by—

- (a) any person on the staff of the establishment concerned;
- (b) any constable;
- (c) any approved social worker; or
- (d) any person authorised in writing by the managing authority of the establishment concerned.

(3) In this section—

“the relevant section” means—

- (a) in relation to a person liable to be detained under a public protection order without restrictions, section 187;
- (b) in relation to a person liable to be detained under a public protection order with restrictions or liable to be detained in a hospital under a hospital direction or hospital transfer direction, section 195;

“the establishment concerned” means the hospital or other establishment where the person is liable to be detained under the order or direction.

Effect of court order or direction on previous authority for hospital detention

245.—(1) Where a person is admitted to a hospital or other establishment in pursuance of a public protection order or hospital direction, any previous relevant authority by virtue of which the person was liable to be detained ceases to have effect.

(2) Each of the following is a “relevant authority” for the purposes of subsection (1)—

- (a) a public protection order;

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(b) an authorisation under Part 2.

(3) But if the public protection order or hospital direction mentioned in subsection (1), or any conviction to which it relates, is quashed on appeal—

(a) that subsection does not apply; and

(b) where the previous relevant authority was a public protection order without restrictions, section 189 (effect of custodial sentence) has effect as if, during any period for which the person was liable to be detained under the quashed order or direction, the person had been detained in custody.

(4) Where the person mentioned in subsection (1) is under 16—

(a) the reference in subsection (1) to a relevant authority includes an application or medical report under the Mental Health Order; and

(b) in subsection (3)—

(i) the reference to a public protection order without restrictions includes a reference to such an application or medical report; and

(ii) the reference to section 189 includes a reference to Article 31 of that Order.

Appeals

Appeals: general

246.—(1) This section applies where any of the following is made by a court in respect of a person—

(a) a public protection order;

(b) a hospital direction;

(c) a supervision and assessment order.

(2) Where the person appeals to any court against the order or direction, that court has the same powers as if the appeal were also against any further order made in respect of the person by the court mentioned in subsection (1).

(3) Where the person is a child, any appeal (whether in respect of the order or direction or any finding upon which it was made) may be brought—

(a) by the child; or

(b) on behalf of the child, by anyone with parental responsibility for the child or any guardian.

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Appeals against orders made on finding of unfitness to be tried etc

247.—(1) This section applies where, by virtue of Chapter 6 (unfitness to be tried etc), a court makes a public protection order or supervision and assessment order in respect of a person.

(2) The person has the same right of appeal as if the order had been made on the person's conviction, and accordingly—

- (a) for the purposes of section 8 of the Criminal Appeal (Northern Ireland) Act 1980 and Article 140 of the Magistrates' Courts (Northern Ireland) Order 1981, the order is treated as if it were an order made on conviction;
- (b) for the purposes of Article 146 of that Order, the order is a determination of the proceedings in which the order was made.

(3) On any appeal against the order, the Court of Appeal or county court has the same powers as if the appeal had been against both finding and sentence.

Hospital directions: cases stated by magistrates' courts

248.—(1) This section applies where a magistrates' court makes a hospital direction.

(2) For the purposes of Article 146 of the Magistrates' Courts (Northern Ireland) Order 1981 (cases stated by magistrates' courts), the hospital direction is a determination of the proceedings in which the direction was made.

Other supplementary provision

Requirements as to written evidence

249.—(1) This section applies for the purposes of any provision of this Part under which a court may act on the written evidence of a medical practitioner or a medical practitioner of any description.

(2) A report in writing purporting to be signed by a medical practitioner or a medical practitioner of such a description may, subject to the provisions of this section, be received in evidence—

- (a) without proof of the signature of the practitioner; and
- (b) without proof that he or she has the required qualifications or is of the required description.

(3) But the court may require the signatory of any such report to be called to give oral evidence.

(4) Where in pursuance of a direction of the court any such report is tendered in evidence otherwise than by or on behalf of the person who is the subject of the report, then—

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- (a) if that person is represented by counsel or a solicitor, a copy of the report must be given to that counsel or solicitor;
- (b) if that person is not so represented, the substance of the report must be disclosed to him or her or, where the person is a child, to his or her parent or guardian if present in court; and
- (c) that person may require the signatory of the report to be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by or on behalf of that person.

Interpretation of Part 10: children

250.—(1) In this Part—

“child” has the same meaning as in the Criminal Justice (Children) (Northern Ireland) Order 1998;

“guardian” has the same meaning as in that Order.

(2) Article 62 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (determination of age of a person brought before the court) applies for the purposes of this Part as it applies for the purposes of that Order.

(3) Section 174 of the Children and Young Persons Act (Northern Ireland) 1968 (which also makes provision about determination of age for certain purposes) applies for the purposes of this Part as it applies for the purposes of that Act.

(4) Any reference in this Part to an offence punishable with imprisonment, or to an offence punishable on summary conviction with imprisonment, is to be construed without regard to any prohibition or restriction imposed by or under any statutory provision on the imprisonment of children.

Interpretation of Part 10: impairment of or disturbance in the functioning of the mind or brain

251.—(1) This section applies for the purposes of interpreting any reference in this Part to an impairment of, or disturbance in the functioning of, a person's mind or brain.

(2) For those purposes, it does not matter—

- (a) whether the impairment or disturbance is permanent or temporary;
- (b) what the cause of the impairment or disturbance is.

(3) In particular, it does not matter whether the impairment or disturbance is caused by a disorder or otherwise.

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Interpretation of Part 10: references to disorder

252.—(1) In this Part “disorder” (without more) includes any disorder or disability, whether mental or physical.

(2) For the purposes of this Part a disorder of a person “requires” treatment if it, or any of its symptoms or manifestations, could be alleviated or prevented from worsening by treatment.

(3) Where—

- (a) a hospital direction or hospital transfer direction has been given in respect of a person, and
- (b) the disorder in respect of which the direction was given was mental disorder (of any form),

any reference in this Part to the disorder in respect of which the direction was given is to be read as a reference to mental disorder (and not as a reference to mental disorder of a particular form).

Interpretation of Part 10: general

253.—(1) In this Part—

“appropriate care or treatment”, in relation to a person, means care or treatment which is (or care and treatment which are) appropriate in that person's case;

“appropriate establishment” has the meaning given by section 167;

“approved medical practitioner” means a medical practitioner approved by RQIA for the purposes of this Part;

“custodial sentence” has the same meaning as in Chapter 2 of Part 2 of the Criminal Justice (Northern Ireland) Order 2008 (see Article 4(1) of that Order);

“disorder” has the meaning given by section 252;

“hospital direction” has the meaning given by section 174;

“hospital transfer direction” has the meaning given by section 224;

“interim detention order” has the meaning given by section 177;

“juvenile justice centre” has the meaning given by Article 51(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998;

“the period” of a public protection order without restrictions has the meaning given by section 181;

“prison” has the same meaning as in the Prison Act (Northern Ireland) 1953;

“public protection order” has the meaning given by section 167;

“public protection order with restrictions” has the meaning given by that section;

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“public protection order without restrictions” has the meaning given by that section;

“remand centre” has the meaning given by section 2(b) of the Treatment of Offenders Act (Northern Ireland) 1968;

“the responsible medical practitioner”, in relation to a person liable to be detained in a hospital or other establishment by virtue of this Part, means the medical practitioner who is in charge of the person's care (see also subsection (2));

“supervision and assessment order” has the meaning given by paragraph 1(1) of Schedule 7;

“young offenders centre” has the meaning given by section 2(a) of the Treatment of Offenders Act (Northern Ireland) 1968.

(2) Regulations may provide that the medical practitioner in charge of a person's care may carry out prescribed functions of the responsible medical practitioner under this Part only if—

- (a) the practitioner is an approved medical practitioner; or
- (b) any other prescribed condition is met.

(3) Any reference in this Part to an offence punishable on summary conviction with imprisonment includes a reference to an indictable offence which may be tried summarily.

(4) For the avoidance of doubt, a remand, order or direction of a court under this Part is not to be regarded for the purposes of section 2 or any other purpose of this Act as an act done or decision made for or on behalf of a person.

(5) See also sections 304 to 306 (definitions for purposes of Act).

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 285(2)(a)-(c) substituted for s. 285(2)(a)(b) by [2022 c. 18 \(N.I.\) Sch. 3 para. 77\(b\)](#)