

Status: This version of this part contains provisions that are prospective.
Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, PART 10 is up to date with all changes known to be in force on or before 11 March 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

PROSPECTIVE

PART 10

CRIMINAL JUSTICE

CHAPTER 1

REMAND TO HOSPITAL

Remand to hospital

162.—(1) Where—

- (a) the Crown Court or a court of summary jurisdiction has power to remand an accused person (“A”) in custody,
- (b) the court considers that it would remand A in custody if it did not remand A under this section, and
- (c) either or both of the conditions for remand to hospital are met,

the court may, instead of remanding A in custody, remand A to a hospital specified by the court.

(2) In this section “the conditions for remand to hospital” means—

- (a) the medical report condition (see section 164(1));
- (b) the treatment condition (see section 165(1)).

(3) The court may remand an accused person under this section only if it is satisfied, on the written or oral evidence of a person representing the managing authority of the hospital, that arrangements have been made for the accused person's detention in the hospital in pursuance of the remand.

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(4) Where a court has remanded an accused person (“A”) under this section, it may further remand A under this section if it considers that—

- (a) it would remand A in custody if it did not make the further remand under this section; and
- (b) either or both of the conditions for remand to hospital are met.

(5) A person may not be remanded or further remanded under this section for more than 28 days at a time or for more than 12 weeks in total.

(6) For the meaning of “an accused person” see section 163.

Section 162: meaning of “an accused person”

163.—(1) In section 162 “an accused person” has the following meaning.

(2) In relation to the Crown Court, “an accused person” means—

- (a) a person who is awaiting trial before the court for an offence punishable with imprisonment, or
- (b) a person who has been arraigned before the court for an offence punishable with imprisonment and has not yet been sentenced or otherwise dealt with for that offence,

but does not include a person who has been convicted before the Crown Court of an offence for which the sentence is fixed by law.

(3) In relation to a court of summary jurisdiction, “an accused person” means—

- (a) a person who has been convicted by the court of an offence punishable on summary conviction with imprisonment; or
- (b) a person charged with such an offence if the court is satisfied that the person did the act or made the omission charged.

Section 162: the medical report condition

164.—(1) For the purposes of section 162 “the medical report condition” is that—

- (a) the court is satisfied on the required medical evidence that A has, or there is reason to suspect that A has, a disorder;
- (b) the court considers that a report ought to be made as to A's mental or physical condition;
- (c) it appears to the court that a proper assessment of A's condition for the purposes of the report will be impracticable if A is remanded in custody; and

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(d) it appears to the court, having regard in particular to the matter mentioned in subsection (2), that such an assessment will be practicable if A is remanded to hospital.

(2) The matter mentioned in subsection (1)(d) is how likely it is, as regards any examination that may be necessary for the assessment—

(a) that consent will be given by A or by a person with authority to give consent on behalf of A; or

(b) that the examination will be capable of being carried out by virtue of Part 2 of this Act (or, if A is under 16, under the Mental Health Order).

(3) In subsection (1)(a) “the required medical evidence” means (subject to subsection (4)) the oral evidence of—

(a) if the disorder is mental disorder, an approved medical practitioner;

(b) otherwise, a medical practitioner who appears to the court to have special experience in the diagnosis or treatment of the disorder.

(4) Where this section applies for the purposes of section 162(4) (further remands), in subsection (1)(a) “the required medical evidence” means the written or oral evidence of the medical practitioner who is in charge of A's care in the hospital.

Section 162: the treatment condition

165.—(1) For the purposes of section 162 “the treatment condition” is that—

(a) the court is satisfied on the required medical evidence—

(i) that A has a disorder requiring treatment; and

(ii) that failure to provide treatment to A as an in-patient in a hospital would be more likely than not to result in serious physical or psychological harm to A or serious physical harm to other persons; and

(b) it appears to the court, having regard in particular to the matters mentioned in subsection (2), that remanding A to hospital is likely to result in significantly better clinical outcomes for A than if A were remanded in custody.

(2) The matters mentioned in subsection (1)(b) are—

(a) the ways in which A might become an in-patient in a hospital if remanded in custody;

(b) whether treatment for the disorder is available in the hospital to which A would be remanded if A were remanded to hospital; and

(c) how likely it is, as regards such treatment—

(i) that consent will be given by A or by a person with authority to give consent on behalf of A; or

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(ii) that the treatment will be capable of being given to A by virtue of Part 2 of this Act (or, if A is under 16, under the Mental Health Order).

(3) In subsection (1)(a) “the required medical evidence” means, subject to subsection (4), the written or oral evidence of at least two medical practitioners, including—

- (a) if the disorder is mental disorder, the oral evidence of an approved medical practitioner;
- (b) otherwise, the oral evidence of a medical practitioner who appears to the court to have special experience in the diagnosis or treatment of the disorder.

(4) Where this section applies for the purposes of section 162(4) (further remands), in subsection (1)(a) “the required medical evidence” means the written or oral evidence of the medical practitioner who is in charge of A's care in the hospital.

Effect of remand to hospital

166.—(1) Where a person is remanded under section 162—

- (a) a constable or any other person directed to do so by the court must take the person to the hospital specified by the court;
- (b) the managing authority of that hospital must—
 - (i) admit the person; and
 - (ii) subject to the following provisions of this section, detain him or her for the period of the remand; and
- (c) any question whether the person may be given any treatment while detained in pursuance of the remand is (subject to section 243) to be determined in the same way as if the person were not so detained.

(2) The court which remanded the person may at any time terminate the remand if it appears to the court that it is appropriate to do so.

(3) A person remanded under section 162 may obtain at his or her own expense, from a medical practitioner chosen by the person, an independent report as to the person's mental or physical condition and apply to the court on the basis of that report for the remand to be terminated under subsection (2).

(4) If a person remanded under section 162 absconds from the hospital, or while being taken to or from the hospital—

- (a) the person may be arrested without warrant by any constable;
- (b) after being arrested, the person must be brought as soon as practicable before the court that remanded him or her; and

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(c) on the person's being brought before it, the court may terminate the remand and deal with the person in any way in which it would have dealt with the person if the person had not been remanded under section 162.

(5) The power of further remanding a person under section 162 may be exercised by the court without the person's being brought before the court if the person is represented by counsel, or a solicitor, who is given an opportunity of being heard.

(6) References in subsections (1) to (4) to a remand under section 162 include a further remand under that section; and subsection (1) applies in relation to the further remand to a hospital of a person who has been admitted to the hospital and is not brought before the court as if paragraphs (a) and (b) (i) were omitted.

CHAPTER 2

POWERS OF COURT ON CONVICTION

Public protection orders with and without restrictions

Public protection orders with and without restrictions

167.—(1) This section applies where—

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

(2) The court may—

- (a) if the detention conditions are met, make a public protection order without restrictions;
- (b) if the detention conditions and the restriction condition are met, make a public protection order with restrictions.

For the meaning of “the detention conditions” and “the restriction condition” see sections 168 and 169.

(3) In this Part (except paragraph (b)) “public protection order without restrictions” means an order which—

- (a) requires that the offender be admitted to and detained in an appropriate establishment which is specified in the order; and
- (b) provides that the order is to be treated as a public protection order without restrictions.

(4) In this Part (except paragraph (b)) “public protection order with restrictions” means an order which—

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- (a) requires that the offender be admitted to and detained in an appropriate establishment which is specified in the order; and
- (b) either—
 - (i) provides (with no time limit) that the order is to be treated as a public protection order with restrictions; or
 - (ii) provides that for a specified period the order is to be treated as a public protection order with restrictions.

(5) For the effect of public protection orders without restrictions and public protection orders with restrictions see—

- (a) section 171 (effect of public protection orders with and without restrictions);
- (b) Chapter 3 (detention under public protection orders without restrictions); and
- (c) Chapter 4 (detention under public protection orders with restrictions: restrictions on discharge etc).

(6) In this Part “appropriate establishment” means—

- (a) a hospital; or
- (b) a care home—
 - (i) in which care is provided for people who have an impairment of, or a disturbance in the functioning of, the mind or brain; and
 - (ii) which is designated by the Department of Justice for the purposes of this paragraph.

(7) In this Part “public protection order” (without more) means a public protection order without restrictions or a public protection order with restrictions.

Section 167: the detention conditions

168.—(1) For the purposes of section 167 “the detention conditions” are—

- (a) that the court is satisfied, on the required medical evidence, of the matters mentioned in subsection (2);
- (b) that, having regard to all the circumstances and in particular to the matters mentioned in subsection (3), the court considers that making an order for the offender to be detained in an appropriate establishment is the most suitable way of dealing with the case; and
- (c) that the court is satisfied, on the written or oral evidence of a person representing the managing authority of the appropriate establishment specified in the order (“the establishment”), that arrangements have been made for the offender's detention there in pursuance of the order.

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- (2) The matters referred to in subsection (1)(a) are—
- (a) that there is an impairment of, or a disturbance in the functioning of, the offender's mind or brain;
 - (b) that appropriate care or treatment is available for the offender in the establishment;
 - (c) that dealing with the offender in any way not involving his or her detention would create a risk, linked to the impairment or disturbance, of serious physical or psychological harm to other persons; and
 - (d) that detaining the offender in the establishment in circumstances amounting to a deprivation of liberty would be a proportionate response to—
 - (i) the likelihood of the harm concerned; and
 - (ii) the seriousness of that harm.
- (3) The matters referred to in subsection (1)(b) are—
- (a) the other available ways of dealing with the offender;
 - (b) the nature of the offence;
 - (c) the past history of the offender;
 - (d) the risk of physical or psychological harm to other persons if the offender were set at large.
- (4) In considering for any purpose of this section whether it would be appropriate to deal with the offender in a way not involving detention, or what risk would be created by dealing with the offender in that way, the court—
- (a) must in particular consider whether if it dealt with the offender in that way it could also make a sexual offences prevention order or violent offences prevention order in respect of the offender; and
 - (b) if it could make such an order, must take into account that fact and the effect of such an order.
- (5) In this section “the required medical evidence” means the written or oral evidence of at least two medical practitioners, including the oral evidence of an approved medical practitioner.
- (6) In this section—
- “sexual offences prevention order” means an order under section 106 of the Sexual Offences Act 2003;
- “violent offences prevention order” has the same meaning as in Part 8 of the Justice Act (Northern Ireland) 2015 (see section 76(1)).

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Section 167: the restriction condition

169.—(1) For the purposes of section 167 “the restriction condition” is that the court, having regard to all the circumstances and in particular to the matters mentioned in subsection (2), considers that making a public protection order with restrictions (rather than a public protection order without restrictions) is necessary for the protection of the public from serious physical or psychological harm.

(2) The matters are—

- (a) the nature of the offence;
- (b) the past history of the offender;
- (c) the risk of physical or psychological harm to other persons if the offender were set at large.

Further provision about making of public protection orders

170.—(1) Nothing in a provision mentioned in subsection (2) prevents a court from making a public protection order in respect of an offence the sentence for which would otherwise fall to be imposed under that provision.

(2) The provisions referred to in subsection (1) are—

- (a) Article 70(2) of the Firearms (Northern Ireland) Order 2004;
- (b) paragraph 2(4) or (5) of Schedule 2 to the Violent Crime Reduction Act 2006;
- (c) Article 13 or 14 of the Criminal Justice (Northern Ireland) Order 2008;
- (d) section 7 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

(3) Any reference in this section to a sentence falling to be imposed under a provision mentioned in subsection (2) is to be read in accordance with Article 4(2) of the Criminal Justice (Northern Ireland) Order 2008.

(4) Where a public protection order is made in respect of an offence, the court—

- (a) may not pass a custodial sentence or impose a fine or make a probation order in respect of the offence; but
- (b) may make any other order which the court has power to make.

Effect of public protection orders

171.—(1) Where a court makes a public protection order in respect of a person—

- (a) a constable or any other person directed to do so by the court must take the person to the establishment specified in the order;

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- (b) the managing authority of that establishment must—
 - (i) admit the person; and
 - (ii) detain him or her in accordance with the relevant provisions; and
 - (c) any question whether the person may be given any treatment while detained in pursuance of the order is (subject to section 243) to be determined in the same way as if the person were not so detained.
- (2) In this section “the relevant provisions” means—
- (a) in relation to a public protection order without restrictions, Chapter 3;
 - (b) in relation to a public protection order with restrictions, Chapter 4 (but see sections 172 and 173).

Power to direct the ending of restrictions under a public protection order

- 172.**—(1) This section applies if—
- (a) a public protection order with restrictions is in force in respect of a person; and
 - (b) the Department of Justice is satisfied that it is no longer necessary for the protection of the public from serious physical or psychological harm that the person be subject to a public protection order with restrictions.
- (2) The Department of Justice may direct that, with effect from a date specified in the direction, the public protection order is to have effect as a public protection order without restrictions (see further section 173).

Effect of ending of restrictions under a public protection order

- 173.**—(1) This section applies where a court has made a public protection order with restrictions in respect of a person and—
- (a) a direction is made under section 172 (ending of restrictions) in respect of the order; or
 - (b) the order provides that for a specified period the order is to be treated as a public protection order with restrictions, and that period ends at a time when the order is still in force and when no direction has been made under section 172.
- (2) From the end of the restricted period—
- (a) Chapter 4 ceases to apply;
 - (b) the order has effect as if it were a public protection order without restrictions requiring the person to be detained in the establishment concerned; and
 - (c) Chapter 3 applies in relation to the person as if the order had been made (as a public protection order without restrictions) on the last day of the

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restricted period and as if the person had then been admitted to the establishment concerned in pursuance of the order.

(3) If when the restricted period ends the person is absent with permission given under section 195, the permission, and any accompanying direction under section 195(4), have effect from the end of the restricted period as if given under section 187.

(4) In this section—

“the establishment concerned” means the establishment in which, immediately before the end of the restricted period, the person was liable to be detained under the public protection order with restrictions;

“the restricted period” means—

- (a) where subsection (1)(a) applies, the period beginning with the actual making of the public protection order and ending immediately before the date specified in the direction under section 172;
- (b) where subsection (1)(b) applies, the period that was specified in the order as the period for which the order should be treated as a public protection order with restrictions.

Hospital directions

Hospital direction when passing custodial sentence

174.—(1) This section applies where—

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

(2) If—

- (a) the court, having considered the other available ways of dealing with the offender, decides to impose a custodial sentence (as defined by section 253) in respect of the offence, and
- (b) the conditions in section 175 are met,

the court may when it passes the custodial sentence direct that, instead of being removed to and detained in a prison, the offender is to be removed to and detained in a hospital specified in the direction.

(3) A direction under this section given in relation to an offender has effect not only as regards the custodial sentence mentioned in subsection (2) but also (so far as applicable) as regards any other custodial sentence imposed on the same or a previous occasion.

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(4) Where the custodial sentence imposed by the court is not a sentence of imprisonment, any reference in this section to a “prison” is to a place in which the person would be liable to be detained under the sentence but for the direction under this section.

(5) In this Part a “hospital direction” means a direction under this section.

Conditions for giving hospital direction

175.—(1) The conditions referred to in section 174(2) are—

- (a) that the court is satisfied, on the required medical evidence, of the matters mentioned in subsection (2);
- (b) that, having regard to all the circumstances and in particular to the matters mentioned in subsection (3), the court considers that giving a hospital direction is appropriate; and
- (c) that the court is satisfied on the written or oral evidence of a person representing the managing authority of the hospital specified in the direction (“the hospital”) that arrangements have been made for the offender's detention in the hospital in pursuance of the direction.

(2) The matters referred to in subsection (1)(a) are—

- (a) that the offender has a disorder requiring treatment;
- (b) that failure to provide treatment to the offender as an in-patient in a hospital would be more likely than not to result in serious physical or psychological harm to the offender or serious physical harm to other persons; and
- (c) that treatment appropriate to the offender's case is available for the offender in the hospital.

(3) The matters referred to in subsection (1)(b) are—

- (a) the effect of section 198 (transfer from hospital to prison);
- (b) the ways in which the offender might become an in-patient in a hospital if the court passed a custodial sentence without giving a hospital direction; and
- (c) how likely it is that, if a hospital direction is given and the offender is detained in hospital under the direction—
 - (i) consent to treatment will be given by the offender, or by a person with authority to give consent on behalf of the offender; or
 - (ii) treatment will be capable of being given to the offender by virtue of Part 2 of this Act (or, if the offender is under 16, under the Mental Health Order).

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(4) In subsection (1)(a) “the required medical evidence” means the written or oral evidence of at least two medical practitioners, including the oral evidence of—

- (a) if the disorder is mental disorder, an approved medical practitioner;
- (b) otherwise, a medical practitioner who appears to the court to have special experience in the diagnosis or treatment of the disorder.

Effect of hospital directions

176 Where a court gives a hospital direction in respect of a person—

- (a) a constable or any other person directed to do so by the court must take the person to the hospital specified in the direction;
- (b) the managing authority of that hospital must—
 - (i) admit the person; and
 - (ii) detain him or her in accordance with Chapter 5; and
- (c) any question whether the person may be given any treatment while detained in a hospital in pursuance of the direction is (subject to section 243) to be determined in the same way as if the person were not so detained.

Interim detention orders

Interim detention orders

177.—(1) This section applies where—

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

(2) If the conditions in subsection (3) are met the court may, before—

- (a) making a public protection order,
- (b) passing a custodial sentence with a hospital direction, or
- (c) dealing with the offender in some other way,

make an order which requires that the offender be admitted to a hospital specified in the order and detained there in accordance with section 178.

(3) The conditions are—

- (a) that the court is satisfied on the required medical evidence—
 - (i) that there is an impairment of, or disturbance in the functioning of, the offender's mind or brain; and

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- (ii) that appropriate care or treatment is available for the offender in the hospital;
- (b) that there is reason to suppose that the most suitable way of dealing with the case may be—
 - (i) to make a public protection order; or
 - (ii) to pass a custodial sentence and give a hospital direction;
- (c) that the court is satisfied on the written or oral evidence of a person representing the managing authority of the hospital that arrangements have been made for the offender's detention in the hospital in pursuance of the order.
- (4) The court may regard the condition in subsection (3)(b) as met only if—
 - (a) it considers that a custodial sentence is not, or may not be, appropriate but is satisfied on the required medical evidence that there is reason to suppose that the conditions in section 168(2)(c) and (d) may be met; or
 - (b) it considers that a custodial sentence is appropriate and is satisfied on the required medical evidence that there is reason to suppose that the condition in section 175(2)(b) may be met.
- (5) In this section “the required medical evidence” means the written or oral evidence of at least two medical practitioners, including the oral evidence of an approved medical practitioner.
- (6) In this Part “interim detention order” means an order under this section.

Effect of interim detention orders

- 178.**—(1) Where a court makes an interim detention order in respect of a person—
- (a) a constable or any other person directed to do so by the court must take the person to the hospital specified in the order;
 - (b) the managing authority of the hospital must—
 - (i) admit the person; and
 - (ii) detain him or her in accordance with this section; and
 - (c) any question whether the person may be given any treatment while detained in pursuance of the order is (subject to section 243) to be determined in the same way as if the person were not so detained.
- (2) An interim detention order—
- (a) has effect for such period, not exceeding 12 weeks, as the court may specify when making the order; but
 - (b) subject to subsection (3), may be renewed for further periods of not more than 28 days at a time if it appears to the court on the written or oral

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evidence of the responsible medical practitioner that the continuation of the order is justified.

(3) An interim detention order may not continue in force for more than 6 months in total.

(4) Where an interim detention order has been made, the court must terminate the order if it—

- (a) makes a public protection order in respect of the offender;
- (b) passes a custodial sentence and gives a hospital direction in respect of the offender; or
- (c) decides, after considering the written or oral evidence of the responsible medical practitioner, to pass a custodial sentence without a hospital direction or to deal with the offender in some other way.

(5) The power of renewing an interim detention order may be exercised without the offender's being brought before the court if the offender is represented by counsel, or a solicitor, who is given an opportunity of being heard.

(6) In the case of an offender who is subject to an interim detention order, the court may make a public protection order without the offender's being brought before the court if the offender is represented by counsel, or a solicitor, who is given an opportunity of being heard.

(7) If an offender absconds from a hospital in which he or she is liable to be detained under an interim detention order, or while being taken to or from such a hospital—

- (a) the offender may be arrested without warrant by any constable;
- (b) after being arrested, the offender must be brought as soon as practicable before the court that made the order; and
- (c) on the offender's being brought before it, the court may terminate the interim detention order and deal with the offender in any way in which it could have done if no such order had been made.

CHAPTER 3

DETENTION UNDER A PUBLIC PROTECTION ORDER WITHOUT RESTRICTIONS

Detention and discharge

Detention under a public protection order without restrictions

179.—(1) This section applies where—

- (a) a public protection order without restrictions is made in respect of a person under section 167; and

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(b) the person is admitted in pursuance of the order to the establishment specified in the order.

(2) The person may be detained in that establishment for a period not exceeding 6 months beginning with the date of the order.

(3) Subsection (2) is subject to (in particular)—

- (a) section 180 (discharge by responsible medical officer);
- (b) sections 181 to 186 (extension of period for which person liable to be detained);
- (c) section 231 (powers of Tribunal).

Discharge from detention by responsible medical practitioner

180.—(1) A person who is for the time being liable to be detained under a public protection order without restrictions ceases to be so liable if the responsible medical practitioner (as defined by section 253) makes an order in writing discharging the person from being liable to be detained under the public protection order.

(2) Where—

- (a) a person is liable to be detained under a public protection order without restrictions, and
- (b) the responsible medical practitioner is satisfied that releasing the person from detention in an appropriate establishment would not create a substantial risk to others,

the responsible practitioner must make an order under subsection (1).

(3) For the purposes of subsection (2)(b) releasing the person from detention in an appropriate establishment would create a “substantial risk to others” if—

- (a) it would create a risk, linked to an impairment of or disturbance in the functioning of the person's mind or brain, of serious physical or psychological harm to other persons; and
- (b) the likelihood and seriousness of the harm concerned are such that detaining the person in an appropriate establishment in circumstances amounting to a deprivation of liberty is a proportionate response.

(4) A discharge of a person under this section does not prevent the person from being detained in circumstances amounting to a deprivation of liberty by virtue of Part 2 of this Act (or, if the person is under 16, Part 2 of the Mental Health Order), if the criteria that apply to such detention are met.

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, PART 10 is up to date with all changes known to be in force on or before 11 March 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

Extension of the period of an order

First extension of period of order

181.—(1) This section applies where—

- (a) a person is liable to be detained under a public protection order without restrictions; and
- (b) the initial period of the order has not ended.

(2) The period of the order may be extended for a period of 6 months, beginning immediately after the end of the initial period, by the making of an extension report (see section 183).

(3) In this Chapter “the initial period” of a public protection order without restrictions means the period of 6 months beginning with the date of the order.

(4) In this Part “the period” of a public protection order without restrictions means the period for which the person to whom the order relates is liable to be detained under the order.

Subsequent extensions

182.—(1) This section applies where—

- (a) the period of a public protection order without restrictions has been extended for a period (“the current extension period”) under a relevant provision; and
- (b) the person to whom the order relates remains liable to be detained under the order.

(2) The period of the order may be further extended, for a period of one year beginning immediately after the end of the current extension period, by the making of an extension report (see section 183).

(3) In subsection (1)(a) “relevant provision” means—

- (a) section 181 (first extension);
- (b) this section; or
- (c) paragraph 8 of Schedule 6 (procedure for extension where responsible social worker not of the requisite opinion).

Sections 181 and 182: extension reports

183.—(1) This section applies for the purposes of sections 181 and 182.

(2) An “extension report”, in relation to a public protection order without restrictions made in respect of a person, is a report in the prescribed form which—

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- (a) is made, within the reporting period, by an appropriate medical practitioner who has examined the person within the reporting period and made the report as soon as practicable after that examination;
 - (b) states that in the appropriate medical practitioner's opinion the criteria for continuation are met (see section 185);
 - (c) includes a statement in the prescribed form, by the responsible social worker, that in the social worker's opinion the criteria for continuation are met; and
 - (d) includes any prescribed information.
- (3) In this section—

“appropriate medical practitioner” means a medical practitioner who is unconnected with the person and is permitted by regulations under section 300 to make the report;

“the reporting period” means—

- (a) in the case of an extension under section 181, the last month of the initial period;
- (b) in the case of an extension under section 182, the last two months of the current extension period (within the meaning of that section).

“the responsible social worker” means the approved social worker who is in charge of the person's case.

Extension of period where responsible person not of the requisite opinion

184 Schedule 6 provides a procedure for cases where it is proposed to make an extension under section 181 or 182 but the responsible social worker is not of the opinion that the criteria for continuation are met.

The criteria for continuation

185.—(1) In this Chapter “the criteria for continuation”, in relation to a public protection order without restrictions made in respect of a person, has the meaning given by subsection (2).

- (2) The criteria for continuation are—
- (a) that there is an impairment of, or disturbance in the functioning of, the mind or brain of the person;
 - (b) that appropriate care or treatment is available for the person in the establishment concerned;
 - (c) that failure to detain the person in circumstances amounting to a deprivation of liberty in an appropriate establishment in which appropriate care or treatment is available for the person would create

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a risk, linked to the impairment or disturbance, of serious physical or psychological harm to other persons; and

- (d) that detaining the person in the establishment concerned, in circumstances amounting to a deprivation of liberty, would be a proportionate response to—
- (i) the likelihood of the harm concerned; and
 - (ii) the seriousness of that harm.

(3) In this section “the establishment concerned” means the establishment in which the person would be liable to be detained if the period of the order were extended.

Extension reports: further provision

186.—(1) This section contains further provisions about extension reports (as defined by section 183).

(2) For the purposes of that section an extension report is made when the completed report is signed by the medical practitioner making it.

(3) A medical practitioner who makes an extension report must give it to the relevant trust as soon as practicable.

(4) Where an extension report is given to the relevant trust, that trust must as soon as practicable—

- (a) give prescribed information to the person to whom the public protection order relates and any prescribed person; and
- (b) give RQIA a copy of the report.

(5) In this section “the relevant trust” means the HSC trust in whose area the establishment in which the person is liable to be detained under the public protection order is situated.

Permission for absence and transfers

Permission for absence

187.—(1) Where a person is liable to be detained under a public protection order without restrictions, the responsible medical practitioner may—

- (a) give the person permission to be absent from the establishment in which the person is liable to be detained; and
- (b) impose in relation to that permission any conditions that the responsible medical practitioner considers necessary for the health or safety of the person or the protection of other persons.

(2) The permission may be for a specified occasion or a specified period.

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(3) Where permission is given for a specified period, the period may be extended by further permission given in the person's absence.

(4) The responsible medical practitioner may, on giving permission, direct that the person is to remain in custody during his or her absence; but such a direction may be given only if it appears to that practitioner that the direction is necessary for the health or safety of the person or the protection of other persons.

(5) Where such a direction is given, the person may be kept in the custody of—

- (a) a person on the staff of the establishment; or
- (b) any other person authorised in writing by the managing authority of the establishment.

(6) Where permission to be absent for more than 28 days is given to a person under this section, or a period for which a person is permitted to be absent is extended for more than 28 days, the managing authority of the establishment must—

- (a) within the period of 14 days beginning with the day the permission is given or the day the period is extended (as the case may be), inform RQIA of the address at which the person is staying; and
- (b) notify RQIA of the person's return within the period of 14 days beginning with the day of the return.

(7) Where a person (“A”) is absent in pursuance of permission given under this section, the responsible medical practitioner may, by notice in writing given to A or to the person for the time being in charge of A, revoke the permission and recall A to the establishment if it appears to that practitioner that it is necessary to do so—

- (a) for the health or safety of A;
- (b) for the protection of other persons; or
- (c) because A is not receiving proper care.

(8) But a person may not be recalled under subsection (7) after the person has ceased to be liable to be detained under the order mentioned in subsection (1).

Transfers between hospitals etc

188.—(1) Where a person is liable to be detained under a public protection order without restrictions, the managing authority of the establishment in which the person is liable to be detained may arrange for the transfer of the person from that establishment to another suitable establishment.

(2) Where a person is transferred under this section, section 171(1)(b) applies as if the establishment referred to there were the establishment to which the person has been transferred.

Status: This version of this part contains provisions that are prospective.

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(3) Before a managing authority arranges for the transfer of a person (“A”) under this section, it must if practicable inform—

- (a) if A is 16 or over, any person who is A's nominated person;
- (b) if A is under 16, a person with parental responsibility for A.

(4) Where a person is transferred under this section, the managing authority which arranged the transfer must immediately notify RQIA of the transfer.

(5) The power of a managing authority under this section to arrange for the transfer of a person from one establishment to another is subject to any prescribed conditions.

(6) In this section “suitable establishment” means an appropriate establishment (as defined by section 167) in which appropriate care or treatment is available for the person.

Effect of custodial sentence

Effect of custodial sentence

189.—(1) This section applies where a person who is liable to be detained under a public protection order without restrictions is detained in custody in pursuance of any sentence or order passed or made by a court in the United Kingdom (including an order committing or remanding the person in custody).

(2) If the person is detained in custody for a period exceeding 6 months, or for successive periods exceeding 6 months in total, the person ceases at the end of the period of 6 months beginning with the first day of the detention in custody to be liable to be detained under the public protection order.

(3) Subsection (4) applies where—

- (a) subsection (2) does not apply; and
- (b) at the time of the person's discharge from custody, the person is liable to be detained under the public protection order.

(4) Section 244 (power to return to hospital etc a person who is absent without permission) applies in relation to the person as if on the day of the discharge from custody the person had absented himself or herself without permission given under section 187 from the establishment where the person is liable to be detained under the public protection order.

CHAPTER 4

DETENTION UNDER A PUBLIC PROTECTION ORDER WITH RESTRICTIONS

Detention under a public protection order with restrictions

190.—(1) This section applies where a person is liable to be detained under a public protection order with restrictions made under section 167.

Status: This version of this part contains provisions that are prospective.

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(2) The person continues to be liable to be detained under the order until discharged absolutely under section 191 or Chapter 8.

Discharge from detention by Department of Justice

191.—(1) At any time while a public protection order with restrictions is in force in respect of a person the Department of Justice may, if it considers it appropriate to do so, by warrant—

- (a) discharge the person absolutely (that is, discharge the person from being liable to be detained under the order); or
- (b) discharge the person from the establishment concerned subject to conditions (see further section 192).

(2) The power under subsection (1) to discharge a person absolutely includes power to do so at a time when the person has been conditionally discharged under this section or section 232 and has not been recalled under section 192.

(3) If—

- (a) a public protection order with restrictions provides that the order is to be treated as a public protection order with restrictions for a specified period (“the restricted period”), and
- (b) that period ends at a time when the person has been conditionally discharged under subsection (1) and has not been recalled under section 192,

the person is to be treated as absolutely discharged when the restricted period ends (and accordingly ceases at that time to be liable to be detained under the public protection order).

(4) A discharge of a person under this section does not prevent the person from being detained in circumstances amounting to a deprivation of liberty by virtue of Part 2 of this Act (or, if the person is under 16, Part 2 of the Mental Health Order) if the criteria that apply to such detention are met.

(5) In this section “the establishment concerned” means the establishment in which, immediately before the discharge under subsection (1), the person is liable to be detained under the public protection order.

Power to recall person who has been conditionally discharged

192.—(1) This section applies where a public protection order with restrictions is in force in respect of a person who has been conditionally discharged under section 191.

(2) The Department of Justice may by warrant recall the person to an appropriate establishment specified in the warrant (“the specified establishment”) if it appears to the Department that—

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- (a) failure to recall the person would create a risk, linked to an impairment of or disturbance in the functioning of the person's mind or brain, of serious physical or psychological harm to other persons; and
 - (b) the likelihood and seriousness of the harm concerned are such that recalling the person is a proportionate response.
- (3) On a recall under this section—
- (a) if the specified establishment is not the one from which the person was conditionally discharged, section 171(1)(b) applies as if the establishment referred to there were the specified establishment;
 - (b) in any case, the person is to be treated for the purposes of section 244 (power to return to hospital etc a person who is absent without permission) as if the person had absented himself or herself, without permission given under section 195, from the specified establishment; and
 - (c) if the public protection order provides that the order is to be treated as a public protection order with restrictions for a specified period, that period is treated as not ending until the person returns to the specified establishment or is returned there under section 244.

Reports by responsible medical practitioner

193.—(1) While a public protection order with restrictions is in force in respect of a person, the responsible medical practitioner must at such intervals (not exceeding one year) as the Department of Justice may direct examine and report to the Department of Justice on that person.

- (2) A report under this section must contain any prescribed information.

Direction for person to attend for purposes of justice etc

194.—(1) Where—

- (a) a person is liable to be detained under a public protection order with restrictions, and
- (b) the Department of Justice is satisfied that the person's attendance at any place in Northern Ireland is desirable in the interests of justice or for the purposes of any public inquiry,

the Department of Justice may direct the person to be taken to that place.

(2) Where a person is directed under this section to be taken to any place, the person is, unless the Department of Justice otherwise directs, to be kept in custody—

- (a) while being taken to that place;
- (b) while at that place; and

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- (c) while being taken back to the establishment in which he or she is liable to be detained under the public protection order.

Permission for absence

195.—(1) Where a person (“A”) is liable to be detained under a public protection order with restrictions, the responsible medical practitioner may with the consent of the Department of Justice—

- (a) give A permission to be absent from the establishment in which A is liable to be detained (“the establishment”); and
- (b) impose in relation to that permission any conditions the responsible medical practitioner considers necessary for the health or safety of A or the protection of other persons.

(2) The permission may be for a specified occasion or a specified period.

(3) Where permission is given for a specified period, the period may be extended by further permission given in the person's absence.

(4) The responsible medical practitioner may, on giving permission, direct that the person is to remain in custody during his or her absence; but such a direction may be given only if it appears to that practitioner that the direction is necessary for the health or safety of the person or the protection of other persons.

(5) Where such a direction is given, the person may be kept in the custody of—

- (a) a person on the staff of the establishment; or
- (b) any other person authorised in writing by the managing authority of the establishment.

(6) Where permission to be absent for more than 28 days is given to a person under this section, or a period for which a person is permitted to be absent is extended for more than 28 days, the managing authority of the establishment must—

- (a) within the period of 14 days beginning with the day the permission is given or the day the period is extended (as the case may be), inform RQIA of the address at which the person is staying; and
- (b) notify RQIA of the person's return within the period of 14 days beginning with the day of the return.

(7) Where—

- (a) a person is absent in pursuance of permission given under this section, and
- (b) it appears to the responsible medical practitioner or the Department of Justice that it is necessary to do so for the health or safety of the person

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or the protection of other persons or because the person is not receiving proper care,

the responsible medical practitioner or the Department of Justice may by notice in writing, given to the person or to the person for the time being in charge of him or her, revoke the permission and recall the person to the establishment.

(8) But a person may not be recalled under subsection (7) after the person has ceased to be liable to be detained under the order mentioned in subsection (1).

Transfers between hospitals etc

196.—(1) Where a person is liable to be detained under a public protection order with restrictions, the managing authority of the establishment in which the person is liable to be detained may, with the consent of the Department of Justice, arrange for the transfer of the person from that establishment to another suitable establishment.

(2) Where a person is transferred under this section, section 171(1)(b) applies as if the establishment referred to there were the establishment to which the person has been transferred.

(3) Before a managing authority arranges for the transfer of a person (“A”) under this section, it must if practicable inform—

- (a) if A is 16 or over, any person who is A's nominated person;
- (b) if A is under 16, a person with parental responsibility for A.

(4) Where a person is transferred under this section, the managing authority which arranged the transfer must immediately notify RQIA of the transfer.

(5) The power of a managing authority under this section to arrange for the transfer of a person from one establishment to another is subject to any prescribed conditions.

(6) In this section “suitable establishment” means an appropriate establishment (as defined by section 167) in which appropriate care or treatment is available for the person.

CHAPTER 5

DETENTION UNDER A HOSPITAL DIRECTION

Detention under a hospital direction

197.—(1) This section applies where a person is admitted to a hospital under a hospital direction.

(2) The person continues to be liable to be detained in hospital under the hospital direction until the direction ceases to have effect under section 198 or 240.

Status: This version of this part contains provisions that are prospective.

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Termination of hospital directions

198.—(1) A hospital direction in respect of a person (“A”) ceases to have effect, if it has not already done so, on A's release date (see sections 199 and 200).

(2) If before A's release date the Department of Justice receives a relevant notification—

- (a) the Department of Justice must by warrant direct that A be removed to any prison in which A might (but for the hospital direction) be detained, to be dealt with there as if the hospital direction had not been given; and
- (b) the hospital direction ceases to have effect on A's arrival in prison.

(3) But subsection (2) does not apply if (having received a relevant notification) the Department of Justice directs that with effect from a specified date—

- (a) A is to be treated as if he or she had been removed to the hospital under the relevant provision from a prison specified in the direction under this subsection; and
- (b) the hospital direction is to cease to have effect.

(4) In this section a “relevant notification” means a written notification by a suitable medical practitioner that—

- (a) in the practitioner's opinion A does not have, or no longer has, the disorder;
- (b) in the practitioner's opinion it is more likely than not that, if A were transferred under subsection (2), no serious physical or psychological harm to A or serious physical harm to other persons would result from A's ceasing to be provided with treatment for the disorder as an in-patient in hospital; or
- (c) in the practitioner's opinion no effective treatment for the disorder can be given to A in the hospital.

(5) In this section—

- (a) “the disorder” means the disorder in respect of which the hospital direction was given;
- (b) “the hospital” means the hospital where A is detained;
- (c) any reference to “prison” is to be read, where A would (but for the hospital direction) be detained in a place of any other description, as a reference to a place of that other description;
- (d) “the relevant provision” means—
 - (i) section 16(2) of the Prison Act (Northern Ireland) 1953; or

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- (ii) if A would (but for the hospital direction) be detained in a juvenile justice centre, paragraph 3 of Schedule 2 to the Criminal Justice (Children) (Northern Ireland) Order 1998;
- (e) “a suitable medical practitioner” means the responsible medical practitioner or—
 - (i) if the disorder was mental disorder, any approved medical practitioner;
 - (ii) otherwise, any medical practitioner who appears to the Department of Justice to have special experience in the diagnosis or treatment of the disorder.

Section 198: meaning of “release date”

199 For the purposes of section 198, A's “release date” is—

- (a) the day (if any) on which A is entitled to be released by virtue of section 200; or
- (b) if by virtue of section 200 a power to release A before that day is exercised, the day on which A is released under the power.

Duties and powers to release from detention

200.—(1) Where—

- (a) a hospital direction is in force in respect of a person (“A”), and
- (b) a power or duty mentioned in subsection (2) would apply in relation to A if the hospital direction had not been given and A were detained in a prison,

the power or duty applies in relation to A as it would apply if the hospital direction had not been given and A were detained in a prison.

(2) The powers and duties referred to in subsection (1) are—

- (a) any power or duty to release A on licence, or to release A unconditionally;
- (b) any power or duty of the Department of Justice to give a direction under section 5 of the Life Sentences (Northern Ireland) Order 2001 (direction that the release provisions are to apply);
- (c) any power or duty to make a reference to the Parole Commissioners or to require a reference to those Commissioners;
- (d) any power or duty of the Parole Commissioners;
- (e) any power to apply to the Sentence Review Commissioners;
- (f) any power or duty of the Sentence Review Commissioners or the Secretary of State under the Northern Ireland (Sentences) Act 1998.

Status: This version of this part contains provisions that are prospective.

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(3) If A would (but for the hospital direction) be liable to be detained in a place of a description other than a prison, any reference in subsection (1) to a “prison” is to be read as a reference to a place of that description.

(4) If A is detained under—

- (a) a juvenile justice centre order under Article 39 of the Criminal Justice (Children) (Northern Ireland) Order 1998,
- (b) a custody care order under Article 44A of that Order, or
- (c) a custody probation order under Article 24 of the Criminal Justice (Northern Ireland) Order 1996,

the reference in subsection (2)(a) to releasing A unconditionally includes a reference to releasing A at the start of a period of supervision.

(5) For the purposes of section 38(2) of the Prison Act (Northern Ireland) 1953 (discounting from sentences of certain prisoners periods while they are unlawfully at large), a person who—

- (a) is subject to a hospital direction, and
- (b) is at large in circumstances in which the person is liable to be taken into custody under any provision of this Part or section 295 (retaking of persons escaping from legal custody),

is to be treated as unlawfully at large and absent from prison.

(6) In this section “the Parole Commissioners” means the Parole Commissioners for Northern Ireland.

Reports by responsible medical practitioner

201.—(1) While a hospital direction is in force in respect of a person, the responsible medical practitioner must at such intervals (not exceeding one year) as the Department of Justice may direct examine and report to the Department of Justice on that person.

(2) A report under this section must contain any prescribed information.

Permission for absence etc

202.—(1) The provisions mentioned in subsection (2) apply in relation to a person liable to be detained in a hospital under a hospital direction as they apply in relation to a person liable to be detained under a public protection order with restrictions.

(2) Those provisions are—

- section 194 (direction for person to attend for purposes of justice etc);
- section 195 (permission for absence).

Status: This version of this part contains provisions that are prospective.

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Transfers between hospitals

203.—(1) Where a person is liable to be detained in a hospital under a hospital direction, the managing authority of the hospital may, with the consent of the Department of Justice, arrange for the transfer of the person from that hospital to another hospital in which treatment appropriate to the person's case is available for the person.

(2) Where a person is transferred under this section—

(a) the managing authority of the hospital to which the person is transferred must admit the person and detain him or her in accordance with this Chapter; and

(b) the managing authority of the hospital from which the person was transferred ceases to be under a duty to detain the person.

(3) Before a managing authority arranges for the transfer of a person (“A”) under this section, it must if practicable inform—

(a) if A is 16 or over, any person who is A's nominated person;

(b) if A is under 16, a person with parental responsibility for A.

(4) Where a person is transferred under this section, the managing authority which arranged the transfer must immediately notify RQIA of the transfer.

(5) The power of a managing authority under this section to arrange for the transfer of a person from one hospital to another is subject to any prescribed conditions.

CHAPTER 6

UNFITNESS TO BE TRIED ETC

Procedure during trial on indictment

Procedure where question of fitness to be tried arises

204.—(1) This section applies where, on the trial of a person charged on indictment with the commission of an offence, the question arises (at the instance of the defence or otherwise) whether the accused is unfit to be tried.

(2) In the following provisions of this section that question is referred to as “the question of fitness to be tried”.

(3) The question of fitness to be tried must be determined as soon as it arises; but this is subject to subsections (4) and (5).

(4) The court may postpone consideration of the question of fitness to be tried until any time up to the opening of the case for the defence if, having regard to the nature of the supposed condition of the accused, the court considers that the postponement is appropriate and is in the interests of the accused.

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(5) If, before the question of fitness to be tried falls to be determined, the jury returns a verdict of acquittal on the count or each of the counts on which the accused is being tried, that question must not be determined.

(6) The question of fitness to be tried is to be determined by the court without a jury.

(7) The court may determine that the accused is unfit to be tried only if it is satisfied on the required medical evidence that the accused is unfit to be tried.

(8) In this section “the required medical evidence” means the written or oral evidence of at least two medical practitioners, including the oral evidence of an approved medical practitioner.

Finding that the accused did the act or made the omission charged

205.—(1) This section applies where in accordance with section 204(6) it is determined by a court that the accused is unfit to be tried.

(2) The trial must not proceed or further proceed but it must be determined by a jury—

- (a) on the evidence (if any) already given in the trial, and
- (b) on such evidence as may be adduced or further adduced by the prosecution, or adduced by a person appointed by the court under this section to put the case for the defence,

whether it is satisfied, as respects the count or each of the counts on which the accused was to be or was being tried, that the accused did the act or made the omission charged against the accused as the offence.

(3) If as respects that count or any of those counts the jury is satisfied as mentioned in subsection (2), it must make a finding that the accused did the act or made the omission charged against the accused.

(4) If as respects that count or any of those counts the jury is not so satisfied, it must return a verdict of acquittal as if on the count in question the trial had proceeded to a conclusion.

(5) Where the question of fitness to be tried was determined after arraignment of the accused, the determination under subsection (2) is to be made by the jury by whom the accused was being tried.

Procedure in relation to finding of insanity

206.—(1) This section applies where, on the trial on indictment of any person charged with the commission of an offence—

- (a) the required medical evidence is given that the person charged was an insane person at the time the offence was committed; and

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, PART 10 is up to date with all changes known to be in force on or before 11 March 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

(b) the jury finds that although the person charged did the act or made the omission charged, he or she was an insane person at that time.

(2) The court must direct a finding to be recorded to the effect that the person is not guilty of the offence charged on the ground of insanity.

(3) In this section—

“insane person” and “insanity” have the meanings given by section 1 of the Criminal Justice Act (Northern Ireland) 1966;

“the required medical evidence” means the written or oral evidence of at least two medical practitioners, including the oral evidence of an approved medical practitioner.

Powers to deal with person unfit to be tried or not guilty by reason of insanity

207.—(1) This section applies where—

(a) findings are recorded that the accused is unfit to be tried and that the accused did the act or made the omission charged; or

(b) a finding is recorded that the accused is not guilty by reason of insanity.

(2) Subject to the following provisions of this section, the court must—

(a) make a public protection order without restrictions (see section 167(3));

(b) make a public protection order with restrictions (see section 167(4));

(c) make a supervision and assessment order; or

(d) make an order for the absolute discharge of the accused.

(3) The power to make an order under subsection (2)(a) is exercisable only if the detention conditions are met.

(4) The power to make an order under subsection (2)(b) is exercisable only if the detention conditions and the restriction condition are met.

(5) Sections 168 and 169 (meaning of “the detention conditions” and “the restriction condition”) apply for the purposes of this section (any reference to the offender being read as a reference to the accused, and any reference to the offence being read accordingly).

(6) The power to make an order under subsection (2)(c) is subject to Schedule 7, which makes provision about such orders.

(7) Where the offence to which the finding or findings relate is one for which the sentence is fixed by law—

(a) subsections (2) to (6) do not apply;

(b) the court must make a public protection order with restrictions; and

(c) the order must not include provision to the effect that it is to be treated as a public protection order with restrictions for a specified period only.

Status: This version of this part contains provisions that are prospective.

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(8) Subject to section 208, a public protection order made under this section has the same effect as if it had been made under section 167 (as to that effect, see the provisions mentioned in section 167(5)).

Remission for trial where person no longer unfit to be tried

208.—(1) This section applies where—

- (a) findings mentioned in section 207(1)(a) have been recorded in respect of a person;
- (b) the person is liable to be detained under a public protection order made under section 207 or is subject to a supervision and assessment order made under that section; and
- (c) a suitable medical practitioner notifies the Department of Justice that, in that practitioner's opinion, the person is no longer unfit to be tried.

(2) If the person is liable to be detained under a public protection order—

- (a) the Department of Justice may remit the person to the Crown Court at the relevant place, for trial; and
- (b) where it does so, the order ceases to have effect once the person has arrived at the Crown Court at the relevant place and the Crown Court has made any order relating to the trial.

(3) If the person is subject to a supervision and assessment order—

- (a) the Department of Justice may remit the person's case to the Crown Court at the relevant place, for trial; and
- (b) where it does so, the order ceases to have effect once the person's case has been so remitted and the Crown Court has made any order relating to the trial.

(4) In this section—

“the relevant place” means the place where, but for the findings mentioned in subsection (1)(a), the person would have been tried;

“a suitable medical practitioner” means—

- (a) the responsible medical practitioner; or
- (b) any approved medical practitioner.

Procedure of court of summary jurisdiction

Power to make order where the accused did the act or made the omission charged

209 Where—

Status: This version of this part contains provisions that are prospective.

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- (a) a person is charged before a court of summary jurisdiction with any act or omission as an offence,
- (b) the court would have power on convicting the person of the offence to make an order under section 167 (public protection orders), and
- (c) the court is satisfied that the accused did the act or made the omission charged,

the court may, if it considers it appropriate to do so, make the order under section 167 without convicting the accused.

Restraining orders

Power to make restraining order following finding of unfitness to plead etc

210.—(1) In Article 7 of the Protection from Harassment (Northern Ireland) Order 1997 (restraining orders on conviction) (“the 1997 Order”)—

- (a) in the heading at the end insert “ etc ”;
- (b) for paragraph (7) substitute—

“(7) A court—

- (a) which deals with a person convicted of an offence under this Article, or
- (b) before which a person is acquitted of an offence under this Article,

may vary or discharge the order in question by a further order.

(8) In paragraphs (1) and (7) references to a person convicted of an offence include—

- (a) a person in respect of whom findings that the person is unfit to be tried, and that the person did the act or made the omission charged against him or her in respect of the offence, have been made; and
- (b) a person in respect of whom a public protection order (as defined by section 167 of the Mental Capacity Act (Northern Ireland) 2016) has been made in respect of the offence by virtue of section 209 of that Act.

(9) Where an order under this Article is made in respect of a person by virtue of paragraph (7)(b) or (8), the person has the same right of appeal against the order as if—

- (a) the person had been convicted of the offence in question before the court that made the order; and
- (b) that court had made the order when dealing with the person in respect of that offence.”.

Status: This version of this part contains provisions that are prospective.

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(2) In Article 7A(2) of the 1997 Order (restraining orders on acquittal) after “7” insert “ (and paragraph (8) so far as applying for the purposes of paragraph (7)) ”.

(3) The amendments made by subsections (1) and (2) apply in relation to offences committed (or alleged to have been committed) before (as well as after) the coming into operation of this section.

(4) In Article 7(8)(b) of the 1997 Order (inserted by subsection (1))—

(a) the reference to a public protection order is to be read, until the coming into operation of section 167, as a reference to a hospital order within the meaning of the Mental Health Order; and

(b) the reference to section 209 is to be read, until the coming into operation of that section, as a reference to Article 44(4) of the Mental Health Order.

CHAPTER 7

TRANSFER FROM PRISON ETC TO HOSPITAL

Persons serving custodial sentences etc

Power to transfer person serving custodial sentence etc to hospital

211.—(1) Where—

(a) a person is serving a relevant sentence, and

(b) the conditions for giving a direction under this section are met (see section 212),

the Department of Justice may by warrant direct that the person be removed to a hospital specified in the direction.

(2) For the purposes of this section a person is “serving a relevant sentence” if—

(a) the person is detained under a custodial sentence (defined by section 253);

(b) the person is committed to custody for failure to comply with an order to enter into a recognizance to keep the peace or to be of good behaviour or both; or

(c) the person is committed by a court to a prison in default of payment of any sum adjudged to be paid on the person's conviction.

(3) In subsection (2)(c) “prison” includes a young offenders centre or juvenile justice centre.

Conditions for transfer under section 211

212.—(1) The conditions for giving a direction under section 211 in respect of a person (“A”) are—

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- (a) that the Department of Justice is satisfied, on the required medical reports, of the matters mentioned in subsection (2);
 - (b) that, having regard to the public interest and all the circumstances, and in particular to the matters mentioned in subsection (3), the Department of Justice considers that giving the direction is appropriate; and
 - (c) that the Department is satisfied, on the written report of a person representing the managing authority of the hospital specified in the direction (“the hospital”), that arrangements have been made for the offender's detention in the hospital in pursuance of the direction.
- (2) The matters referred to in subsection (1)(a) are—
- (a) that A has a disorder requiring treatment;
 - (b) that failure to provide treatment to A as an in-patient in a hospital would be more likely than not to result in serious physical or psychological harm to A or serious physical harm to other persons; and
 - (c) that treatment appropriate to A's case is available for A in the hospital.
- (3) The matters referred to in subsection (1)(b) are—
- (a) the ways in which A might become an in-patient in a hospital if no direction under this section were given; and
 - (b) how likely it is that, if such a direction is given and A is detained in hospital under the direction—
 - (i) consent to treatment will be given by A, or by a person with authority to give consent on behalf of A; or
 - (ii) treatment will be capable of being given to A by virtue of Part 2 of this Act (or, if A is under 16, under the Mental Health Order).
- (4) In subsection (1)(a) “the required medical reports” means written reports from at least two medical practitioners, including—
- (a) if the disorder is mental disorder, an approved medical practitioner;
 - (b) otherwise, a medical practitioner who appears to the Department of Justice to have special experience in the diagnosis or treatment of the disorder.

Effect of transfer under section 211

213.—(1) Where a direction is given in respect of a person under section 211 (transfer of person serving custodial sentence etc to hospital), the managing authority of the hospital specified in the direction must—

- (a) admit the person; and
- (b) detain him or her in accordance with Chapter 5.

Status: This version of this part contains provisions that are prospective.

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(2) In Chapter 5 (detention under a hospital direction), any reference to a hospital direction includes a reference to a direction under section 211.

Civil prisoners and immigration detainees

Transfer of civil prisoner or immigration detainee to hospital

214.—(1) Where—

- (a) a person is a civil prisoner or an immigration detainee, and
- (b) the conditions for giving a direction under this section are met (see section 223),

the Department of Justice may by warrant direct that that person be removed to a hospital specified in the direction.

(2) The managing authority of the hospital specified in the direction must—

- (a) admit the person; and
- (b) detain him or her in accordance with section 215.

(3) In this section—

“a civil prisoner” means a person committed by a court to prison for a limited term, other than a person serving a relevant sentence (as defined by section 211);

“an immigration detainee” means a person detained under the Immigration Act 1971 or under section 62 of the Nationality, Immigration and Asylum Act 2002.

Detention in hospital on removal under section 214

215.—(1) Where a person is admitted to a hospital under a direction given under section 214 (transfer of civil prisoners and immigration detainees), the person continues to be liable to be detained in hospital under that direction until that direction ceases to have effect under section 216 or 240.

(2) In sections 201 to 203 (which relate to detention under hospital directions) any reference to a hospital direction includes a reference to a direction under section 214.

Termination of direction under section 214

216.—(1) This section applies where a direction is given in respect of a person (“A”) under section 214 (transfer of civil prisoner or immigration detainee to hospital).

(2) The direction (“the hospital transfer direction”) ceases to have effect, if it has not already done so, at the end of the period of liability to detention.

Status: This version of this part contains provisions that are prospective.

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(3) If before the end of that period the Department of Justice receives a relevant notification—

- (a) the Department of Justice must by warrant direct that A be removed to any place in which A might (but for the hospital transfer direction) be detained, to be dealt with there as if the hospital transfer direction had not been given; and
- (b) the hospital transfer direction ceases to have effect on A's arrival in that place.

(4) But subsection (3) does not apply if (having received a relevant notification) the Department of Justice directs that with effect from a specified date—

- (a) A is to be treated as if he or she had been removed to the hospital under the relevant provision from a place, specified in the direction under this subsection, in which A might (but for the hospital transfer direction) be detained; and
- (b) the hospital transfer direction is to cease to have effect.

(5) In this section a “relevant notification” means a written notification by a suitable medical practitioner that—

- (a) in the practitioner's opinion A does not have, or no longer has, the disorder;
- (b) in the practitioner's opinion it is more likely than not that, if A were transferred under subsection (3), no serious physical or psychological harm to A or serious physical harm to other persons would result from A's ceasing to be provided with treatment for the disorder as an in-patient in hospital; or
- (c) in the practitioner's opinion no effective treatment for the disorder can be given to A in the hospital.

(6) In this section—

“the disorder” means the disorder in respect of which the hospital transfer direction was given;

“the hospital” means the hospital where A is detained;

“the period of liability to detention” means the period during which A would, if the hospital transfer direction had not been given, have been liable to be detained in the place from which A was removed to hospital;

“the relevant provision”—

- (a) in the case of a civil prisoner (as defined by section 214), means section 16(2) of the Prison Act (Northern Ireland) 1953;
- (b) in the case of an immigration detainee (as defined by section 214) means—

Status: This version of this part contains provisions that are prospective.

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- (i) if the place specified in the direction under subsection (4) is a prison, section 16(2) of the Prison Act (Northern Ireland) 1953;
- (ii) otherwise, removal centre rules (within the meaning of Part 8 of the Immigration and Asylum Act 1999);

“a suitable medical practitioner” means the responsible medical practitioner or—

- (a) if the disorder was mental disorder, an approved medical practitioner;
- (b) otherwise, any medical practitioner who appears to the Department of Justice to have special experience in the diagnosis or treatment of the disorder.

Persons remanded in custody by magistrates' court

Transfer to hospital of person remanded by magistrates' court

217.—(1) Where—

- (a) a person is remanded in custody by a magistrates' court, and
- (b) the conditions for giving a direction under this section are met (see section 223),

the Department of Justice may by warrant direct that that person be removed to a hospital specified in the direction.

- (2) The managing authority of the hospital specified in the direction must—
 - (a) admit the person; and
 - (b) detain him or her in accordance with section 218.

Detention in hospital on removal under section 217

218.—(1) Where a person is admitted to a hospital under a direction given under section 217 (transfer of person remanded in custody by magistrates' court), the person continues to be liable to be detained in hospital under that direction until the direction ceases to have effect under—

- (a) section 219;
- (b) section 222 as applied by section 219(3); or
- (c) section 240.

(2) In sections 201 to 203 (which relate to detention under hospital directions) any reference to a hospital direction includes a reference to a direction under section 217.

Status: This version of this part contains provisions that are prospective.

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Termination of direction under section 217 etc

219.—(1) This section applies where a direction is given in respect of a person (“A”) under section 217 (transfer of person remanded in custody by magistrates' court).

(2) The direction (“the hospital transfer direction”) ceases to have effect at the end of the period of remand unless—

- (a) it has already ceased to have effect (see subsection (4)); or
- (b) A is committed in custody to the Crown Court for trial or to be otherwise dealt with.

(3) If A is committed to the Crown Court as mentioned in subsection (2) and the hospital transfer direction has not already ceased to have effect, section 222 (duration of transfer under section 220) applies as if the hospital transfer direction given in A's case had been given under section 220.

(4) If the magistrates' court is satisfied, on the written or oral evidence of the responsible medical practitioner—

- (a) that A does not have, or no longer has, the disorder in respect of which the hospital transfer direction was given, or
- (b) that it is more likely than not that no serious physical or psychological harm to A or serious physical harm to other persons would result from A's ceasing to be provided with treatment for the disorder as an in-patient in hospital, or
- (c) that no effective treatment for the disorder can be given to A in the hospital where A is detained,

that court may direct that the hospital transfer direction ceases to have effect.

(5) A direction under subsection (4) may be given even if the period of remand has not expired or the accused is committed to the Crown Court as mentioned in subsection (2).

(6) Subject to subsection (7), the power of further remanding A may be exercised by the magistrates' court without A's being brought before the court; and if the magistrates' court further remands A in custody (whether or not A is brought before the court) the period of remand is to be regarded for the purposes of this section as not having expired.

(7) The magistrates' court may under subsection (6) further remand A in A's absence only if A has appeared before the court within the previous 6 months.

(8) The magistrates' court may, in the absence of A, conduct a preliminary inquiry into an offence alleged to have been committed by A and commit A for trial in accordance with Article 37 of the Magistrates' Courts (Northern Ireland) Order 1981 if—

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- (a) it is satisfied on the written or oral evidence of the responsible medical practitioner that A is unfit to take part in the proceedings; and
- (b) A is represented by counsel, or a solicitor, who is given an opportunity of being heard.

Other detainees

Transfer of certain other detainees to hospital

220.—(1) Where—

- (a) a person (“A”) is a relevant detainee, and
- (b) the conditions for giving a direction under this section are met (see section 223),

the Department of Justice may by warrant direct that A be removed to a hospital specified in the direction.

(2) The managing authority of the hospital specified in the direction must—

- (a) admit the person; and
- (b) detain him or her in accordance with section 221.

(3) In this section “a relevant detainee” means a person detained in a relevant place who is not—

- (a) a person serving a relevant sentence (as defined by section 211);
- (b) a civil prisoner or immigration detainee (as defined by section 214); or
- (c) a person remanded in custody by a magistrates' court.

(4) In this section “a relevant place” means—

- (a) a prison;
- (b) a remand centre;
- (c) a young offenders centre; or
- (d) a juvenile justice centre.

Detention in hospital on removal under section 220

221.—(1) Where a person is admitted to a hospital under a direction given under section 220 (transfer of certain detainees), the person continues to be liable to be detained in hospital under that direction until the direction ceases to have effect under section 222 or 240.

(2) In sections 201 to 203 (which relate to detention under hospital directions) any reference to a hospital direction includes a reference to a direction under section 220.

Status: This version of this part contains provisions that are prospective.

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Termination of direction under section 220

222.—(1) This section applies where a direction under section 220 (transfer of certain detainees to hospital) is given in respect of a person (“A”).

(2) The direction (“the hospital transfer direction”) ceases to have effect, if it has not already done so, when A's case is disposed of by the court; but this does not limit any power of the court under this Part in respect of A.

(3) If the Department of Justice receives a relevant notification before A's case is disposed of by the court—

- (a) the Department of Justice must by warrant direct that A be removed to any place in which A might (but for the hospital transfer direction) be detained, to be dealt with there as if the hospital transfer direction had not been given; and
- (b) the hospital transfer direction ceases to have effect on A's arrival in that place.

(4) But subsection (3) does not apply if (having received a relevant notification) the Department of Justice directs that with effect from a specified date—

- (a) A is to be treated as if he or she had been removed to the hospital under the relevant provision from a place, specified in the direction under this subsection, in which A might (but for the hospital transfer direction) be detained; and
- (b) the hospital transfer direction is to cease to have effect.

(5) In this section a “relevant notification” means a written notification by a suitable medical practitioner that—

- (a) in the practitioner's opinion A does not have, or no longer has, the disorder;
- (b) in the practitioner's opinion it is more likely than not that, if A were transferred under subsection (3), no serious physical or psychological harm to A or serious physical harm to other persons would result from A's ceasing to be provided with treatment for the disorder as an in-patient in hospital; or
- (c) in the practitioner's opinion no effective treatment for the disorder can be given to A in the hospital.

(6) Where no direction has been given under subsection (3) or (4) and the case has not been disposed of by the court, the court may, if it is satisfied on the written or oral evidence of the responsible medical practitioner that one or more of the relevant conditions is met—

- (a) order A to be removed to any place in which A might (but for the hospital transfer direction) be detained, to be dealt with there as if the hospital transfer direction had not been given; or

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(b) order A to be released on bail.

(7) The “relevant conditions” referred to in subsection (6) are—

- (a) that A does not have, or no longer has, the disorder;
- (b) that it is more likely than not that, if the court made an order under subsection (6), no serious physical or psychological harm to A or serious physical harm to other persons would result from A's ceasing to be provided with treatment for the disorder as an in-patient in hospital;
- (c) that no effective treatment for the disorder can be given to A in the hospital.

(8) Where under subsection (6) the court orders A to be removed to a place or to be released on bail, the hospital transfer direction ceases to have effect on A's arrival in that place or release on bail (as the case may be).

(9) In this section—

“the court” means the court having jurisdiction to try or otherwise deal with A;

“the disorder” means the disorder in respect of which the hospital transfer direction was given;

“the hospital” means the hospital where A is detained;

“the relevant provision” means—

- (a) section 16(2) of the Prison Act (Northern Ireland) 1953; or
- (b) if A would (but for the hospital transfer direction) be detained in a juvenile justice centre, paragraph 3 of Schedule 2 to the Criminal Justice (Children) (Northern Ireland) Order 1998;

“a suitable medical practitioner” means the responsible medical practitioner or—

- (a) if the disorder was mental disorder, any approved medical practitioner;
- (b) otherwise, any medical practitioner who appears to the Department of Justice to have special experience in the diagnosis or treatment of the disorder.

Conditions for transfer to hospital under section 214, 217 or 220

Conditions for transfer to hospital under section 214, 217 or 220

223.—(1) In this section a “relevant transfer direction” means a direction under—

- (a) section 214 (transfer of civil prisoner or immigration detainee to hospital);

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- (b) section 217 (transfer to hospital of person remanded in custody by magistrates' court); or
 - (c) section 220 (transfer of certain other detainees to hospital).
- (2) The conditions for giving a relevant transfer direction in respect of a person (“A”) are—
- (a) that the Department of Justice is satisfied, on the required medical reports, of the matters mentioned in subsection (3);
 - (b) that, having regard to all the circumstances and in particular the matters mentioned in subsection (4), the Department of Justice considers that giving the direction is appropriate; and
 - (c) that the Department is satisfied, on the written report of a person representing the managing authority of the hospital specified in the direction, that arrangements have been made for the offender's detention in that hospital in pursuance of the direction.
- (3) The matters referred to in subsection (2)(a) are—
- (a) that A urgently needs treatment for a disorder;
 - (b) that failure to provide treatment to A as an in-patient in a hospital would be more likely than not to result in serious physical or psychological harm to A or serious physical harm to other persons; and
 - (c) that treatment appropriate to A's case is available for A in the hospital specified in the direction.
- (4) The matters referred to in subsection (2)(b) are—
- (a) the ways in which A might become an in-patient in a hospital if no direction were given under this section; and
 - (b) how likely it is that, if the direction is given and A is detained in hospital under the direction—
 - (i) consent to treatment will be given by A, or by a person with authority to give consent on behalf of A; or
 - (ii) treatment will be capable of being given to A by virtue of Part 2 of this Act (or, if A is under 16, under the Mental Health Order).
- (5) In subsection (2)(a) “the required medical reports” means written reports from at least two medical practitioners, including—
- (a) if the disorder is mental disorder, an approved medical practitioner;
 - (b) otherwise, a medical practitioner who appears to the Department of Justice to have special experience in the diagnosis or treatment of the disorder.

Status: This version of this part contains provisions that are prospective.

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General provisions about hospital transfer directions

General provisions about hospital transfer directions

224.—(1) In this Part “hospital transfer direction” means a direction under—

- (a) section 211 (transfer of person serving custodial sentence etc to hospital);
- (b) section 214 (transfer of civil prisoner or immigration detainee to hospital);
- (c) section 217 (transfer to hospital of person remanded in custody by magistrates' court); or
- (d) section 220 (transfer of certain other detainees to hospital).

(2) If—

- (a) a hospital transfer direction is given in respect of a person, and
- (b) the person has not been admitted to the hospital specified in the direction by the end of the period of 14 days beginning with the date of the direction,

the direction ceases to have effect at the end of that period.

(3) Any question whether a person may be given any treatment while detained in hospital in pursuance of a hospital transfer direction is (subject to section 243) to be determined in the same way as if the person were not so detained.

(4) Subsection (5) applies if—

- (a) a hospital transfer direction is given in respect of a person; and
- (b) the responsible medical practitioner is of the opinion that the person lacks (or probably lacks) capacity in relation to whether an application under section 225 (applications to Tribunal) should be made.

(5) The responsible medical practitioner must as soon as practicable give the Attorney General—

- (a) notice of the matters mentioned in subsection (4)(a) and (b); and
- (b) any prescribed information.

(6) Any power under this Chapter to direct that a person be removed to a hospital includes a power, if the person is already in a hospital, to direct that the person remain in the hospital.

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, PART 10 is up to date with all changes known to be in force on or before 11 March 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

CHAPTER 8

RIGHTS OF REVIEW OF DETENTION UNDER PART 10

Applications and references to Tribunal: general

Right to apply to Tribunal

225.—(1) Where the circumstances mentioned in the first column of the following table occur, a qualifying person (see section 226) may apply to the Tribunal within the period mentioned in the corresponding entry of the second column of the table.

<i>Circumstances</i>	<i>Period for making application</i>
A public protection order is made or a hospital direction or hospital transfer direction is given	The period of 6 months beginning with the date of the order or direction (“the initial period”)
The period of a public protection order without restrictions is extended (under section 181 or 182 or Schedule 6)	The period— (a) beginning with the date when the period of the order is extended; and (b) ending with the end of the period for which the order is extended
A person is— (a) liable to be detained under a public protection order with restrictions, or (b) liable to be detained in a hospital under a hospital direction or hospital transfer direction, at the beginning of a relevant period	The relevant period

(2) In this section a “relevant period”, in relation to an order or direction, means—

- (a) the period of 6 months immediately following the initial period; or
- (b) any period of 12 months which begins with an anniversary of the date of the order or direction.

(3) This section is subject to sections 236 and 237 (applications to Tribunal following conditional discharge of person subject to public protection order with restrictions).

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, PART 10 is up to date with all changes known to be in force on or before 11 March 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

Meaning of “a qualifying person”

226.—(1) This section defines “a qualifying person”, in relation to a public protection order, hospital direction or hospital transfer direction, for the purposes of this Chapter.

(2) “A qualifying person” means the person (“A”) who is liable to be detained under the order or direction or—

- (a) if A is 16 or over, any person who is A's nominated person;
- (b) if A is under 16, a person with parental responsibility for A.

(3) If A is 16 or over and has capacity in relation to whether an application under this Chapter should be made, A's nominated person may make an application only with A's consent.

Applications: visiting and examination

227.—(1) This section applies in relation to a person (“A”) who—

- (a) is liable to be detained under a public protection order; or
- (b) is liable to be detained in a hospital under a hospital direction or hospital transfer direction.

(2) A medical practitioner who is authorised—

- (a) by or on behalf of A, or
- (b) where A is 16 or over, by a person who is A's nominated person,

may, for a purpose mentioned in subsection (3), do anything within section 275 (visiting etc powers) in relation to A.

(3) The purposes are—

- (a) the purpose of advising whether an application to the Tribunal under section 225 should be made by or in respect of A;
- (b) the purpose of providing information as to the condition of A for the purposes of an application.

Power of certain persons to refer case to Tribunal

228.—(1) A relevant person may at any time refer to the Tribunal the question whether a person who is liable to be detained under a public protection order should be discharged from being liable to be detained under the order.

(2) A relevant person may at any time refer to the Tribunal the question whether a person who is liable to be detained in hospital under—

- (a) a hospital direction, or
- (b) a hospital transfer direction,

should cease to be liable to be detained in hospital under the direction.

Status: This version of this part contains provisions that are prospective.

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(3) For the purpose of providing information for the purposes of a reference under this section, any medical practitioner authorised by or on behalf of the person to whom the reference relates may do anything within section 275 (visiting etc powers) in relation to the person.

(4) In this section “relevant person” means—

- (a) the Attorney General;
- (b) the Department;
- (c) the Master (Care and Protection), acting on the direction of the High Court.

Duty of HSC trust to refer case to Tribunal

229.—(1) Where—

- (a) on a relevant date, a person is liable to be detained under a public protection order or is liable to be detained in a hospital under a hospital direction or hospital transfer direction,
- (b) the order or direction has been in force throughout the relevant period, and
- (c) the Tribunal has not considered the person's case at any time in that period,

the relevant trust must as soon as practicable refer the person's case to the Tribunal.

(2) The “relevant period” is—

- (a) if the person is under 18, the period of one year ending with the relevant date;
- (b) otherwise, the period of two years ending with the relevant date.

(3) For the purposes of subsection (1) a “relevant date” means—

- (a) in relation to a public protection order without restrictions, a date on which the period of the order is extended under section 182 or Schedule 6;
- (b) in relation to a public protection order with restrictions, hospital direction or hospital transfer direction, any anniversary of the date of the order or direction.

(4) For the purpose of providing information for the purposes of a reference under this section, any medical practitioner authorised by or on behalf of the person may do anything within section 275 (visiting etc powers) in relation to the person.

(5) In this section—

“the person's case” means—

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, PART 10 is up to date with all changes known to be in force on or before 11 March 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

- (a) in relation to a public protection order, the question whether the person should be discharged from being liable to be detained under the order;
- (b) in relation to a hospital direction or hospital transfer direction, the question whether the person should cease to be liable to be detained in hospital under the direction;

“the relevant trust” means the HSC trust in whose area the hospital or other establishment in which the person is liable to be detained is situated.

(6) The Department may by regulations amend subsection (2) so as to alter any period mentioned there.

Duty to notify the Attorney General

230.—(1) This section applies if—

- (a) immediately after the end of a relevant period, a person is—
 - (i) liable to be detained under a public protection order; or
 - (ii) liable to be detained in a hospital under a hospital direction or hospital transfer direction;
- (b) no application or reference to the Tribunal was made in the relevant period; and
- (c) the responsible medical practitioner is of the opinion that the person lacks (or probably lacks) capacity in relation to whether an application under section 225 (applications to Tribunal) should be made.

(2) The responsible medical practitioner must as soon as practicable give the Attorney General—

- (a) notice of the matters mentioned in subsection (1)(a) to (c); and
- (b) any prescribed information.

(3) The following are relevant periods for the purposes of this section—

- (a) the period of 6 months beginning with the date of the order or direction;
- (b) any period of 6 months immediately following another relevant period.

Powers of Tribunal as to public protection orders

Powers of Tribunal as to public protection order without restrictions

231.—(1) This section applies where an application or reference to the Tribunal is made under this Chapter by or in respect of a person who is liable to be detained under a public protection order without restrictions.

(2) The Tribunal must either—

- (a) discharge the person absolutely (that is, discharge the person from being liable to be detained under the order); or

Status: This version of this part contains provisions that are prospective.

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(b) decide not to discharge the person.

(3) The Tribunal may decide as mentioned in subsection (2)(b) only if it is satisfied that the prevention of serious harm condition is met (see section 233).

Powers of Tribunal as to public protection order with restrictions

232.—(1) This section applies where an application or reference to the Tribunal is made under this Chapter (other than section 237) by or in respect of a person who is liable to be detained under a public protection order with restrictions.

(2) The Tribunal must do one of the following—

- (a) discharge the person absolutely (that is, discharge the person from being liable to be detained under the order);
- (b) discharge the person from the establishment concerned subject to conditions (see further section 235);
- (c) decide not to discharge the person.

(3) The Tribunal may decide as mentioned in subsection (2)(c) only if it is satisfied that the prevention of serious harm condition is met (see section 233).

(4) If the Tribunal is not satisfied that that condition is met, it must—

- (a) discharge the person absolutely, if it is satisfied that it would be inappropriate for the person to remain liable to be recalled;
- (b) discharge the person subject to conditions, if it is not so satisfied.

(5) Where—

- (a) the Tribunal makes an order under this section discharging a person subject to conditions, and
- (b) the Tribunal is satisfied that arrangements need to be made in connection with the conditions before the discharge takes effect,

the order may provide that it takes effect from a future date (specified in the order) which in the opinion of the Tribunal will allow those arrangements to be made.

(6) In this section “the establishment concerned” means the establishment in which, immediately before the discharge, the person is liable to be detained under the public protection order.

Sections 231 and 232: the prevention of serious harm condition

233 For the purposes of sections 231 and 232, the prevention of serious harm condition is that—

- (a) there is an impairment, or disturbance in the functioning of, the person's mind or brain;

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- (b) releasing the person from detention in an appropriate establishment would create a risk, linked to the impairment or disturbance, of serious physical or psychological harm to other persons; and
- (c) the likelihood and seriousness of the harm concerned are such that detaining the person in an appropriate establishment in circumstances amounting to a deprivation of liberty is a proportionate response.

Sections 231 and 232: additional powers of Tribunal etc

234.—(1) Where under section 231 or 232 the Tribunal decides not to discharge a person, the Tribunal may, with a view to facilitating the discharge of the person at a future date—

- (a) recommend the taking of specified actions in relation to the person; and
- (b) further consider the person's case in the event of any recommendation not being complied with.

(2) Where the Tribunal further considers a person's case under subsection (1) (b), section 231 or (as the case may be) section 232 applies.

(3) A discharge of a person under this Chapter does not prevent the person from being detained in circumstances amounting to a deprivation of liberty by virtue of Part 2 of this Act (or, where the person is under 16, under Part 2 of the Mental Health Order), if the criteria that apply to such detention are met.

Effect of conditional discharge from public protection order with restrictions

Effect of conditional discharge

235.—(1) Where a person liable to be detained under a public protection order with restrictions is conditionally discharged by the Tribunal under section 232—

- (a) section 192 (power of the Department of Justice to recall person who has been conditionally discharged) applies as if the person had been conditionally discharged under section 191; and
- (b) the person must comply with any conditions imposed at the time of discharge by the Tribunal or at any later time by the Department of Justice.

(2) The Department of Justice may from time to time vary any condition imposed under subsection (1) (whether imposed by the Tribunal or the Department of Justice).

(3) If—

- (a) a public protection order with restrictions provides that the order is to be treated as a public protection order with restrictions for a specified period (“the restricted period”), and

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- (b) the restricted period ends at a time when the person has been conditionally discharged under section 232 and has not been recalled by virtue of this section,

the person is to be treated as absolutely discharged when the restricted period ends (and accordingly ceases at that time to be liable to be detained under the public protection order).

Applications and references to Tribunal where person recalled

236.—(1) This section applies where a person liable to be detained under a public protection order with restrictions—

- (a) has been conditionally discharged under section 191 or 232; and
- (b) is subsequently recalled under section 192.

(2) The Department of Justice must, within the period of one month beginning with the return date, refer to the Tribunal the question whether the person should be discharged from being liable to be detained under the public protection order.

(3) A qualifying person may apply to the Tribunal within any relevant period.

(4) Sections 228(3) and 227 (visiting and examination powers) apply in relation to references and applications under this section as they apply in relation to references under section 228 and applications under section 225.

(5) See also section 232 (Tribunal's powers on a reference or application).

(6) No application under section 225 may be made in respect of the order.

(7) In this section—

“a qualifying person” has the meaning given by section 226;

“relevant period” means—

- (a) the period of 6 months beginning with the return date (“the initial period”);
- (b) the period of 6 months immediately following the initial period; or
- (c) any period of 12 months which begins with an anniversary of the return date;

“the return date” means the date on which the person returns or is returned to the establishment specified in the warrant recalling the person.

Applications to Tribunal where person has not been recalled

237.—(1) This section applies where a person liable to be detained under a public protection order with restrictions has been conditionally discharged under section 191 or 232 (and has not been recalled under section 192).

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, PART 10 is up to date with all changes known to be in force on or before 11 March 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

- (2) A qualifying person (see section 226) may apply to the Tribunal—
- (a) within the period of 12 months beginning with the date on which the person was conditionally discharged; and
 - (b) within any period of 12 months which begins with an anniversary of that date.
- (3) On an application under this section the Tribunal must do one of the following (and may do things mentioned in both paragraphs (a) and (b))—
- (a) vary any condition to which the person is subject in connection with the discharge;
 - (b) impose any condition that might have been imposed in connection with the discharge;
 - (c) discharge the person from liability to be detained under the public protection order;
 - (d) decide to take no action.
- (4) No application under section 225 may be made in respect of the order.

Powers of Tribunal as to hospital directions and hospital transfer directions

Powers of Tribunal as to hospital directions and hospital transfer directions

238.—(1) This section applies where an application or reference to the Tribunal is made under this Chapter by or in respect of a person who is liable to be detained in hospital under a hospital direction or hospital transfer direction (“the relevant direction”).

- (2) The Tribunal must—
- (a) decide whether it is satisfied that the prevention of serious harm condition is met; and
 - (b) notify the Department of Justice whether it is so satisfied.
- (3) The prevention of serious harm condition is that—
- (a) the person has the disorder in respect of which the relevant direction was given;
 - (b) effective treatment for the disorder can be given to the person in the hospital where he or she is detained; and
 - (c) it is more likely than not that, if the person were transferred to prison, serious physical or psychological harm to the person or serious physical harm to other persons would result from the person's ceasing to be provided with treatment for the disorder as an in-patient in hospital.

Status: This version of this part contains provisions that are prospective.

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(4) In this section the reference to “prison” is to be read, where the person would (but for the relevant direction) be liable to be detained in a place of any other description, as a reference to a place of that other description.

Section 238: additional powers of Tribunal

239.—(1) This section applies where under section 238 the Tribunal notifies the Department of Justice that it is satisfied that the prevention of serious harm condition is met in respect of a person.

(2) The Tribunal may, with a view to facilitating a transfer of the person at a future date—

- (a) recommend the taking of specified actions in relation to the person; and
- (b) further consider the person's case in the event of any recommendation not being complied with.

(3) Where the Tribunal further considers the person's case under subsection (2)(b), section 238 applies.

(4) In subsection (2) the reference to a “transfer” of the person is to a transfer to any place in which the person might (but for the relevant direction) be detained.

Section 238: procedure where prevention of serious harm condition is not met

240.—(1) This section applies where, under section 238, the Tribunal notifies the Department of Justice that it is not satisfied that the prevention of serious harm condition is met in respect of a person liable to be detained in a hospital.

(2) The Department of Justice must by warrant direct that the person be removed to any prison in which the person might (but for the relevant direction) be detained, to be dealt with there as if the relevant direction had not been given.

(3) The relevant direction ceases to have effect on the person's arrival in prison.

(4) But subsections (2) and (3) do not apply if the Department of Justice directs that with effect from a specified date—

- (a) the person is to be treated as if he or she had been removed to the hospital under the relevant provision from a prison specified in the direction under this subsection; and
- (b) the relevant direction is to cease to have effect.

(5) In this section—

Status: This version of this part contains provisions that are prospective.

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- (a) any reference to “prison” is to be read, where the person would (but for the relevant direction) be detained in a place of any other description, as a reference to a place of that other description;
- (b) “the relevant direction” has the same meaning as in section 238;
- (c) “the relevant provision” means—
 - (i) section 16(2) of the Prison Act (Northern Ireland) 1953; or
 - (ii) if the person would (but for the relevant direction) be detained in a juvenile justice centre, paragraph 3 of Schedule 2 to the Criminal Justice (Children) (Northern Ireland) Order 1998.

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.

(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.

Status: This version of this part contains provisions that are prospective.

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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.

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—

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- (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;
- (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)—

Status: This version of this part contains provisions that are prospective.

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- (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.

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.

Status: This version of this part contains provisions that are prospective.

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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—

- (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.

Status: This version of this part contains provisions that are prospective.

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(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.

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).

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, PART 10 is up to date with all changes known to be in force on or before 11 March 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

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;

“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—

Status: This version of this part contains provisions that are prospective.

Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, PART 10 is up to date with all changes known to be in force on or before 11 March 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

- (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).

Status:

This version of this part contains provisions that are prospective.

Changes to legislation:

Mental Capacity Act (Northern Ireland) 2016, PART 10 is up to date with all changes known to be in force on or before 11 March 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.

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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\(b\)](#)