
STATUTORY RULES OF NORTHERN IRELAND

2019 No. 190 (C. 6)

MENTAL CAPACITY

**The Mental Capacity (2016 Act) (Commencement
No. 1) (Amendment) Order (Northern Ireland) 2019**

Made - - - - 27th September 2019

The Department of Health⁽¹⁾, in exercise of the powers conferred by section 307 of the Mental Capacity Act (Northern Ireland) 2016⁽²⁾, makes the following Order:

Citation and interpretation

1.—(1) This Order may be cited as the Mental Capacity (2016 Act) (Commencement No. 1) (Amendment) Order (Northern Ireland) 2019.

(2) In this Order “the principal Order” means the Mental Capacity (2016 Act) (Commencement No. 1) Order (Northern Ireland) 2019⁽³⁾.

Amendments of the principal Order

2.—(1) The principal Order is amended as follows.

(2) For Article 2 there shall be substituted—

“Appointed days for provisions coming into operation

2.—(1) The day appointed for the coming into operation of the provisions of the Act specified in Part 1 of the Schedule, in so far as it relates to an act that is research, is 1st October 2019.

(2) The day appointed for the coming into operation of the provisions of the Act specified in Part 2 of the Schedule for all purposes is 2nd December 2019.

(3) The day appointed for the coming into operation of the provisions of the Act specified in Part 3 of the Schedule, in so far as it relates to an act that is a deprivation of liberty, offences or section 276 (power to make regulations about dealing with money and valuables), is 2nd December 2019.

(1) 2016 c.5 (NI), s. 1(5)

(2) 2016 c. 18 (NI)

(3) S.R. 2019 No. 163 (C. 5)

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(4) The day appointed for the coming into operation of the provisions of the Act specified in Part 4 of the Schedule, in so far as it relates to an act that is a deprivation of liberty, is 2nd December 2019.

(5) The day appointed for coming into operation of the provisions of the Act specified in Part 5 of the Schedule, in so far as it relates to an act that is a deprivation of liberty, is 2nd December 2020.”

(3) For the Schedule there shall be substituted—

“SCHEDULE

Article 2

PART 1

Provisions coming into operation on 1st October 2019 in so far as it relates to an act that is research

<i>Provisions of the Act</i>	<i>Subject Matter</i>
Sections 1 to 8	Principles, including capacity assessment and best interests
Sections 132 to 138	Research

PART 2

Provisions coming into operation on 2nd December 2019 for all purposes

<i>Provisions of the Act</i>	<i>Subject Matter</i>
Section 266(1)(c) and Schedule 8 paragraphs 1, 2, 3(1), (2), (3) but omit after “(Northern Ireland) 2016” and (9), 4 but omit until “In-patients under 16: duties of hospital managers”, 38, 39, 47, 48(1), (2), (5) and (6), and 71”.	Amendments to the Mental Health (Northern Ireland) Order 1986 to allow for a functioning Review Tribunal and to provide a duty on hospital managers in relation to age appropriate accommodation
Section 274	The Review Tribunal - renaming
Section 276	Money and valuables
Section 303(2) and Schedule 11 in so far as it relates to Article 83 of, and Schedule 3 paragraph 4(1) and 5 to, the Mental Health (Northern Ireland) Order 1986	Repeals of parts of the Mental Health (Northern Ireland) Order 1986

PART 3

Provisions coming into operation on 2nd December 2019 in so far as it relates to an act that is a deprivation of liberty, offences or section 276 (power to make regulations about dealing with money and valuables)

<i>Provisions of the Act</i>	<i>Subject Matter</i>
Sections 1 to 8	Principles, including capacity assessment and best interests

PART 4

Provisions coming into operation on 2nd December 2019 in so far as it relates to an act that is a deprivation of liberty

<i>Provisions of the Act</i>	<i>Subject Matter</i>
Section 9(1) to (3)	Protection from liability - general
Section 9(4)(b)	Protection from liability – additional safeguards
In section 9(4)(d) “sections” and “24,26”	Protection from liability – additional safeguards
Section 9(5) and (6)	Protection from liability – help and support and parents
Section 10(1)	Limitations of section 9
Sections 13 to 15	Additional safeguards – formal assessment of capacity and nominated persons
Section 24	Deprivation of liberty – additional safeguards
Section 25 and Schedule 1 paragraphs 1, 2(1), 2(2)(b), 2(3), 2(4)(b), 3, 5 to 8, 10, 13 to 16, 19, 20 and 22 to 27 and Schedule 2	Deprivation of liberty – additional safeguards
Sections 26 and 27	Deprivation of liberty – additional safeguards
Sections 37 to 39	Extensions of authorisation
Section 40 and Schedule 3 paragraphs 1, 2(1), 2(2), 2(3)(a), 3 to 9	Extension of authorisation
Section 41(1), (2)(b), (3) and (4)	Extensions of authorisation
Section 42	Extensions of authorisation
Section 43(1) to (6) and (7)(a)	Extensions of authorisation
Section 44	Extensions of authorisation
Section 45(1) to (3)	Review Tribunal applications
Section 45(4) but omitting “section 29(4) or 32(4) or”	Review Tribunal applications
Sections 46 to 48	Review Tribunal applications
Section 50(1)(a), (b) but omitting “or (d)”, (c), (2) and (3)	References to the Tribunal
Section 51(1) to (3), (4)(b) and (5)	Review Tribunal powers
Sections 52 and 53	Review Tribunal powers
Section 54	Medical reports and nominated person
Section 56(1), (2)(a), (3) and (4)	Medical reports and emergency situations
Sections 57 to 59	Provisions of information and other supplementary provisions
Section 60(1) and (2)(d)	Acts where Part 2 is not applicable
Sections 61 and 62	Power to make further provisions and disregard

<i>Provisions of the Act</i>	<i>Subject Matter</i>
Section 63(2)(a)	Protection from liability – definition of serious intervention
Section 64	Protection from liability – definition of serious intervention
Section 65(1) but omitting “16” to “20” and “28 and 35”, (2) to (5)	Emergency provisions
Section 66(1)(a), (b), (d) but omitting “19,20” and “28”, (2) to (6)	Emergency provisions – definitions etc
Sections 67 to 68	Failure by person other than D to take steps to ensure safeguards are met and interpretations of Part 2
Sections 69 to 79	Nominated persons provisions
Section 80(1) to (4), (5)(a) to (c), (f) and (g), (6) and (7)	Nominated persons provisions
Sections 81 to 85	Nominated persons provisions
Section 267(1), (2)(a), (3) and (4)	Offence of ill-treatment and neglect
Section 268(1), (2), (3)(a), (c), (d), (4), (5)	Offence of forgery, false statement, etc
Section 270	Offence of assisting a person to absent themselves
Section 272(1) to (3), (4)(b) until “48” and (c) but omitting “or 126”	Offences of obstruction
Section 273	Offences by bodies corporate
Section 275	Review Tribunal
Section 280	Approved social workers
Section 281	Miscellaneous functions of HSC trusts
Section 288(1)(a) to (c), (e) and (i), (2) to (8)	Code of Practice
Section 289(1), (2)(a), (b), (3) and (4)	Code of Practice
Sections 290(1) and (2)(a), (c) and (d) and 291(1) and (2)(a) and (c) and (3)	Provision of information and facilities
Section 292	Warrants
Section 296	Special accommodation
Section 297	Trust panels
Section 299	Risk of serious physical harm to others
Section 300(1)(a) and (c) to (e), and (2) to (4)	Medical practitioners who can make medical reports
Section 301	Documents appearing to be duly made

PART 5

Provisions coming into operation on 2nd December 2020 in so far as it relates to an act that is a deprivation of liberty

<i>Provisions of the Act</i>	<i>Subject Matter</i>
Section 269	Offence of unlawful detention”

Sealed with the Official Seal of the Department of Health on 27th September 2019.



Mark Lee
A senior officer of the Department of Health.

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order amends the Mental Capacity (2016 Act) (Commencement No. 1) Order (Northern Ireland) 2019 by changing the commencement date of the Mental Capacity Act (Northern Ireland) 2016 for the purposes of deprivation of liberty, offences and money and valuables to the 2nd December 2019. The commencement date for the purposes of research remains the 1st October 2019. The commencement date for the offence of unlawful detention is changed to 2nd December 2020.

This Order also commences a further provision, section 299 of the Mental Capacity Act (Northern Ireland) 2016, on 2nd December 2019. This section provides the evidence required when determining serious physical harm to others.