

*These notes refer to the Mental Capacity Act (Northern Ireland)
2016 (c.18) which received Royal Assent on 9 May 2016*

Mental Capacity Act (Northern Ireland) 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10 – Criminal Justice

Chapter 4 – Detention under a Public Protection Order With Restrictions

Section 190 - Detention under a public protection order with restrictions

This section provides that a person liable to be detained under a public protection order with restrictions is to continue to be so liable until absolutely discharged by the Department of Justice under section 191 or by the Tribunal under Chapter 8.

Section 191 - Discharge from detention by Department of Justice

This section provides the Department of Justice with the power, at any time where a public protection order with restrictions is in force in relation to a person, to discharge the person by warrant, either absolutely or subject to conditions. The power to discharge absolutely can also be exercised in respect of a person who has been conditionally discharged by the Department of Justice under this section or by the Review Tribunal under section 232.

If a public protection order with restrictions provides that such restrictions are for a specified period of time and that period of time ends when a person has been conditionally discharged and not recalled, this section provides that at the end of the restricted period, the person is to be treated as absolutely discharged and no longer liable to be detained under the public protection order.

Discharge of a person under this section does not prevent him/her being detained under Part 2 of the Act or Part 2 of the Mental Health Order if he or she is under 16, if the relevant criteria for detention are met.

Section 192 - Power to recall person who has been conditionally discharged

This section provides the Department of Justice with the power to recall a person who has been conditionally discharged under section 191 at any time where the public protection order with restrictions remains in force. In order to recall the person, it must appear to the Department of Justice that 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 others, and that the likelihood and seriousness of the harm concerned are such that recalling the person is a proportionate response.

Section 193- Reports by responsible medical practitioner

This section provides that where a public protection order with restrictions is in force in respect of a person, the responsible medical practitioner must examine that person and make a report to the Department of Justice at such intervals as the Department of Justice directs. Such intervals must not exceed one year.

Section 194 - Direction for person to attend for purposes of justice etc

This section provides that where a person is liable to be detained under a public protection order with restrictions and the Department of Justice is satisfied that his or her 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 that the person is taken to that place. In these circumstances, unless the Department of Justice directs otherwise, the person is to be kept in custody while being taken to that place, while being kept there, and while being taken back to the establishment where he or she is liable to be detained under the public protection order.

Section 195 - Permission for absence

This section provides that where a person is liable to be detained under a public protection order with restrictions, a responsible medical practitioner may, with the consent of the Department of Justice, give permission for that person to be absent from the establishment where he or she is detained. The practitioner may attach to the permission any conditions considered necessary by the practitioner for the health and safety of the offender or the protection of others. Permission to be absent can be given for a specified occasion or for a specified period. Where the permission is in respect of a specified period, the period can be extended by further permission given in the offender's absence.

The responsible medical practitioner may also direct that the person is to remain in custody during his or her absence but such a direction can only be given if the practitioner thinks that this is necessary for the health and safety of the person or for the protection of other persons. In these cases, the person may be kept in the custody of a person on the staff of the establishment concerned, or in the custody of any other person authorised in writing by the managing authority of the establishment.

The section also provides that where a person is given permission to be absent for more than 28 days under this section, or a period of permitted absence is extended for more than 28 days, the managing authority of the establishment must notify RQIA of the address where the person is staying within 14 days of the permission being given or of the day when the period is extended. The managing authority must also notify RQIA of the offender's return within 14 days.

Where a person is absent under this section and it appears to the responsible medical practitioner or the Department of Justice that it is necessary to do so for the health and safety of the offender, the protection of other persons, or because the offender is not receiving proper care, the practitioner or the Department of Justice may revoke the permission and recall the person to the establishment concerned. However, a person may not be recalled when he or she has ceased to be liable to be detained under the public protection order.

Section 196 - Transfers between hospitals etc

While a person is subject to a public protection order with restrictions, this section provides the managing authority of the establishment where the person is detained, with a power to transfer the person to another suitable establishment with the consent of the Department of Justice.

Before a person is transferred under this section, the managing authority must inform certain people of the transfer, depending on the age of the person. Where a person transferred under this section is 16 years of age or over, the managing authority must, where practicable, inform his or her nominated person. If the person is under 16, then the managing authority must inform someone with parental responsibility for him or her. Where a person is transferred under this section, the managing authority must also immediately notify RQIA of the transfer.