



2016 CHAPTER 18

PART 10

CRIMINAL JUSTICE

CHAPTER 8

RIGHTS OF REVIEW OF DETENTION UNDER PART 10

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.

(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—

- (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.