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## 2016 CHAPTER 18

### PART 11

#### TRANSFER BETWEEN JURISDICTIONS

PROSPECTIVE

#### CHAPTER 3 SUPPLEMENTARY

#### **Removal or transfer from Northern Ireland: power to make further provision**

**262.**—(1) Regulations may make provision in connection with the removal of a person by virtue of this Part or Part 2 to a place outside Northern Ireland (whether or not a place in the United Kingdom).

(2) Regulations may make provision for and in connection with enabling the Department to authorise, and to give directions in connection with, the removal or transfer to a place outside Northern Ireland (whether or not a place in the United Kingdom) of prescribed descriptions of persons where—

- (a) the person is subject in Northern Ireland to measures under this Act, and
- (b) the person lacks capacity in relation to the removal or transfer and the removal or transfer would be in that person's best interests.

(3) Regulations may make provision for and in connection with enabling the Department of Justice to authorise, and to give directions in connection with, the removal or transfer to a place outside Northern Ireland (whether or not a place in the United Kingdom) of prescribed descriptions of persons where—

- (a) the person is subject in Northern Ireland to measures under this Act, and

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(b) either—

- (i) the person consents to the removal or transfer, or
- (ii) failure to remove or transfer the person there would be more likely than not to result in serious physical or psychological harm to the person or serious physical harm to other persons.

(4) In this section, references to the “transfer” of a person are to the transfer of responsibility for a person who is not detained by virtue of Part 2 or Part 10; and regulations may prescribe the powers and duties that constitute responsibility for a person for this purpose.

(5) References to persons subject to measures under this Act include, in particular,—

- (a) in subsection (2)(a), persons in respect of whom an authorisation under Part 2 has been granted authorising a particular measure (within the meaning given by section 41);
- (b) in subsection (3)(a), persons in respect of whom an order or direction has been made or given under Part 10 (including persons in respect of whom a warrant under section 191(1)(b) or an order under section 232(2)(b) is in effect).

(6) Regulations under this section—

- (a) may prescribe steps to be taken before a person may be removed or transferred, or prescribe other conditions which must be met before a person may be removed or transferred,
- (b) may provide that, where a person is removed or transferred, any prescribed measure to which the person is subject ceases to have effect, and
- (c) may apply, or make provision similar to, any provision of Part 2 or Part 10 (with or without modifications).

(7) The powers to make regulations under this section must be exercised so as to ensure that, where under this Part the removal or transfer of a person from Northern Ireland is authorised—

- (a) notice of the authorisation and proposed removal or transfer must be given to—
  - (i) the person to be removed or transferred, and
  - (ii) any prescribed person,at least a prescribed period before the date of the proposed removal or transfer; and
- (b) there is a right to apply to the Tribunal in respect of the authorisation (except where the Tribunal approved the removal or transfer before the authorisation was given).

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(8) Regulations under this section may amend this Part, and may make supplementary or consequential amendments to other provisions of this Act.

(9) In this section “regulations” means—

- (a) in relation to provision concerning the removal or transfer of a Part 10 transferee, regulations made by the Department of Justice;
- (b) in any other case, regulations made by the Department.

(10) In subsection (9) a “Part 10 transferee” is a person—

- (a) who is detained by virtue of Part 10 or (if not detained under this Act) in respect of whom an order or direction has been made or given under Part 10, or
- (b) (in the case of a person who does not fall within paragraph (a)) whose removal is authorised on the ground that either of the conditions set out in subsection (3)(b) is met.

#### **Persons removed or transferred to Northern Ireland: power to make further provision**

**263.**—(1) Regulations may make provision, in respect of persons of a prescribed description removed to Northern Ireland under a relevant provision—

- (a) requiring prescribed steps to be taken when the person arrives in Northern Ireland;
- (b) providing for the person to be treated as if he or she were a person of a prescribed description subject to measures under this Act.

(2) The reference in subsection (1)(b) to persons subject to measures under this Act includes, in particular—

- (a) persons in respect of whom an authorisation under Part 2 has been granted authorising a particular measure (within the meaning given by section 41), and
- (b) persons in respect of whom an order or direction has been made or given under Part 10 (including persons in respect of whom a warrant under section 191(1)(b) or an order under section 232(2)(b) is in effect).

(3) Subsection (1)(b) permits the regulations to provide for a person to be treated as if an authorisation under Part 2 authorising a particular measure had been granted only where the person (before being removed to Northern Ireland) was subject under the law of England and Wales or Scotland to a corresponding or similar measure.

(4) Subsection (1)(b) permits the regulations to provide for a person to be treated as if an order or direction had been made or given under Part 10 only where the person (before being removed to Northern Ireland) was subject

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under the law of England and Wales or Scotland to an order, direction or other measure having corresponding or similar effect.

(5) Regulations may make provision about the application of this Act to persons who are removed to Northern Ireland under a relevant provision and who are treated, by virtue of this Part, as if they were subject to particular measures under this Act.

(6) In this section “a relevant provision” means—

- (a) Part 6 of the 1983 Act;
- (b) regulations made under section 289 or 290 of the 2003 Act; or
- (c) any provision of the law of a country or territory other than the United Kingdom which is similar or corresponds to this Part or Part 2 or 10 of this Act.

(7) Regulations under this section may amend this Part, and may make supplementary or consequential amendments to other provisions of this Act.

(8) In this section “regulations” means—

- (a) in relation to provision concerning a Part 10 arrival, regulations made by the Department of Justice;
- (b) in any other case, regulations made by the Department.

(9) In subsection (8) a “Part 10 arrival” is a person who (by virtue of this Part or the regulations) is to be treated as if an order or direction under Part 10 had been made or given in respect of him or her.

### **Interpretation of Part 11**

**264** In this Part—

“the 1983 Act” means the Mental Health Act 1983;

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995;

“the 2003 Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003;

“appropriate establishment” has the same meaning as in Part 10 (see section 167);

“hospital direction”, except where otherwise provided, has the same meaning as in Part 10 (see section 253(1));

“hospital transfer direction” has the same meaning as in Part 10 (see section 253(1));

“public protection order”, “public protection order with restrictions” and “public protection order without restrictions” have the same meaning as in Part 10 (see section 167);

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“the responsible medical practitioner” has the same meaning as in Part 10 (see section 253(1)).

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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\(b\)](#)