

Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, SCHEDULE 2 is up to date with all changes known to be in force on or before 14 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

SCHEDULES

SCHEDULE 2

Section 25.

Authorisation of short-term detention in hospital for examination etc

Part 1

Preliminary

1.—(1) In this Schedule—

“the criteria for authorisation” has the meaning given by paragraph 2(3);

“the responsible medical practitioner”, in relation to a person who is an in-patient in a hospital, means the medical practitioner who is in charge of the person's care in the hospital (see also sub-paragraphs (2) and (3)).

(2) Regulations may provide that the medical practitioner in charge of a person's care in a hospital may carry out prescribed functions of the responsible medical practitioner under this Schedule only if prescribed conditions are met.

(3) A condition that may be prescribed under sub-paragraph (2) is that the practitioner is approved by RQIA for prescribed purposes.

(4) For the purposes of this Schedule a report is made when the completed report is signed by the person making it.

(5) Where a report under paragraph 2 is made in respect of a person who is already an in-patient in the hospital specified in the report, the person is to be treated for the purposes of this Schedule as if admitted to the hospital at the time the report was made.

Commencement Information

II Sch. 2 para. 1 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(4), Sch. Pt. 4 (with art. 3) (as amended by S.R. 2019/190, art. 2)

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Part 2

The authorisation

Authorisation of detention in hospital for examination etc

2.—(1) The detention of a person in a hospital in circumstances amounting to a deprivation of liberty, for the purposes of examination (or of examination followed by other treatment or care), may be authorised by the making of a report under this paragraph.

(2) An appropriate healthcare professional (as defined by paragraph 3) may make a report under this paragraph in respect of a person who is 16 or over (“P”) if, in the opinion of the appropriate healthcare professional, the criteria for authorisation are met.

(3) The criteria for authorisation are that—

- (a) P has an illness or there is reason to suspect that P has an illness;
- (b) failure to detain P in a hospital in circumstances amounting to a deprivation of liberty, for the purposes of examination or of examination followed by other treatment or care, would create a risk of serious harm to P or of serious physical harm to other persons;
- (c) detaining P in the hospital in circumstances amounting to a deprivation of liberty, for those purposes, would be a proportionate response to—
 - (i) the likelihood of harm to P, or of physical harm to other persons; and
 - (ii) the seriousness of the harm concerned;
- (d) P lacks capacity in relation to whether he or she should be so detained; and
- (e) it would be in P's best interests for him or her to be so detained.

(4) A report under this paragraph must be in the prescribed form and must—

- (a) include a medical report (see paragraph 4);
- (b) include a statement by the appropriate healthcare professional that in his or her opinion the criteria for authorisation are met;
- (c) include prescribed information about the views, on prescribed matters, of P's nominated person and any prescribed person;
- (d) include any other prescribed information; and
- (e) state that the report authorises the detention, in circumstances amounting to a deprivation of liberty, of P in a specified hospital for the purposes of examination or of examination followed by other treatment or care.

(5) If the appropriate healthcare professional is of the opinion that P lacks (or probably lacks) capacity in relation to whether an application under section 45 (applications to Tribunal) should be made in respect of the authorisation granted by

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the making of the report under this paragraph, the report must contain a statement of that opinion.

(6) In this paragraph “examination” includes further examination.

Commencement Information

I2 Sch. 2 para. 2 in operation at 2.12.2019 for specified purposes by [S.R. 2019/163, art. 2\(4\)](#), [Sch. Pt. 4](#) (with [art. 3](#)) (as amended by [S.R. 2019/190, art. 2](#))

Who may make a report under paragraph 2

3.—(1) In paragraph 2 “an appropriate healthcare professional” means a person who—

- (a) is of a prescribed description; and
- (b) is unconnected with P (see section 304).

(2) The descriptions of person who may be prescribed under this paragraph include in particular—

- (a) an approved social worker;
- (b) a person of a prescribed description who is designated by the managing authority of the hospital specified in the report under paragraph 2 as a person who may make reports under that paragraph.

Commencement Information

I3 Sch. 2 para. 3 in operation at 2.12.2019 for specified purposes by [S.R. 2019/163, art. 2\(4\)](#), [Sch. Pt. 4](#) (with [art. 3](#)) (as amended by [S.R. 2019/190, art. 2](#))

Medical report

4.—(1) The medical report included in a report under paragraph 2 must be in the prescribed form and must—

- (a) be made by a medical practitioner who is unconnected with P and is permitted by regulations under section 300 to make the report;
- (b) include a statement by the person making the medical report that in that person's opinion the criteria for authorisation are met; and
- (c) include any prescribed information.

(2) The maker of the medical report must have examined P not more than [^{F1}two days][^{F1}five days] before the date when the medical report is made.

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(3) See also sections 54 and 55 (involvement of nominated person and independent mental capacity advocate).

Textual Amendments

F1 Words in Sch. 2 para. 4(2) substituted (temp.) (2.4.2020) by virtue of [Coronavirus Act 2020 \(c. 7\)](#), s. 87(2), [Sch. 11 para. 6](#) (with ss. 88-90, [Sch. 11 para. 2](#)); S.R. 2020/58, art. 2(e)

Modifications etc. (not altering text)

C1 [Sch. 2 para. 4\(2\)](#) expiry of earlier affecting provision 2020 c. 7, Sch. 11 paras. 3-9 (25.3.2022) by [Coronavirus Act 2020 \(c. 7\)](#), s. 89 (with s. 90)

Commencement Information

I4 Sch. 2 para. 4 in operation at 2.12.2019 for specified purposes by [S.R. 2019/163](#), art. 2(4), [Sch. Pt. 4](#) (with art. 3) (as amended by [S.R. 2019/190](#), art. 2)

Consultation required before report authorising detention is made

5 A person may make a report under paragraph 2 only if the person has personally seen P not more than [^{F2}two days][^{F2}five days] before the date on which that report is made.

Textual Amendments

F2 Words in Sch. 2 para. 5 substituted (temp.) (2.4.2020) by virtue of [Coronavirus Act 2020 \(c. 7\)](#), s. 87(2), [Sch. 11 para. 7](#) (with ss. 88-90, [Sch. 11 para. 2](#)); S.R. 2020/58, art. 2(e)

Modifications etc. (not altering text)

C2 [Sch. 2 para. 5](#) expiry of earlier affecting provision 2020 c. 7, Sch. 11 paras. 3-9 (25.3.2022) by [Coronavirus Act 2020 \(c. 7\)](#), s. 89 (with s. 90)

Commencement Information

I5 Sch. 2 para. 5 in operation at 2.12.2019 for specified purposes by [S.R. 2019/163](#), art. 2(4), [Sch. Pt. 4](#) (with art. 3) (as amended by [S.R. 2019/190](#), art. 2)

6.—(1) Where—

- (a) it is proposed to make a report under paragraph 2, and
- (b) P's nominated person objects to the making of the report,

a person may make a report under paragraph 2 in respect of P [^{F3}only if the person has consulted an approved social worker.][^{F3}only if—

- (a) the person has consulted an approved social worker, or

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(b) the person considers that it is impractical or would involve undesirable delay to consult an approved social worker, the person has consulted a relevant social worker.]

(2) This applies even if the person making the report under paragraph 2 is an approved social worker.

Textual Amendments

F3 Words in Sch. 2 para. 6(1) substituted (temp.) (2.4.2020) by virtue of [Coronavirus Act 2020](#) (c. 7), s. 87(2), [Sch. 11 para. 8\(1\)](#) (with ss. 88-90, [Sch. 11 para. 2](#)); S.R. 2020/58, art. 2(e)

Modifications etc. (not altering text)

C3 [Sch. 2 para. 6\(1\)](#) expiry of earlier affecting provision 2020 c. 7, Sch. 11 paras. 3-9 (25.3.2022) by [Coronavirus Act 2020](#) (c. 7), s. 89 (with s. 90)

Commencement Information

I6 Sch. 2 para. 6 in operation at 2.12.2019 for specified purposes by [S.R. 2019/163](#), art. 2(4), [Sch. Pt. 4](#) (with art. 3) (as amended by [S.R. 2019/190](#), art. 2)

Information to be given where report authorising detention is made

7.—(1) Where a report under paragraph 2 is made, the person who made the report must as soon as practicable give prescribed information to—

- (a) the managing authority of the hospital specified in the report; and
- (b) any prescribed person.

(2) Regulations under sub-paragraph (1) must ensure that where a report containing the statement mentioned in paragraph 2(5) is made, the Attorney General is notified of that fact.

Commencement Information

I7 Sch. 2 para. 7 in operation at 2.12.2019 for specified purposes by [S.R. 2019/163](#), art. 2(4), [Sch. Pt. 4](#) (with art. 3) (as amended by [S.R. 2019/190](#), art. 2)

Duration of authorisation: preliminary

8.—(1) An authorisation granted by the making of a report under paragraph 2—

- (a) takes effect from the time the report is made; and
- (b) expires (if not previously revoked) when an event which terminates the authorisation occurs (or, if more than one such event occurs, on the occurrence of the first of those events).

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(2) “An event which terminates the authorisation” is to be read in accordance with Part 3 of this Schedule.

Commencement Information

18 Sch. 2 para. 8 in operation at 2.12.2019 for specified purposes by [S.R. 2019/163, art. 2\(4\)](#), [Sch. Pt. 4](#) (with [art. 3](#)) (as amended by [S.R. 2019/190, art. 2](#))

Part 3

Events terminating the authorisation

Expiry where failure to admit P within period required

9.—(1) If—

- (a) at the time when a report under paragraph 2 is made P is not already an in-patient in the hospital specified in the report, and
- (b) at the end of the period allowed for admission P has not been admitted to that hospital,

the expiry of that period is an event which terminates the authorisation.

(2) In this paragraph “the period allowed for admission” means—

- (a) two days beginning with the date when the medical report under paragraph 4 was made; or
- (b) such longer period, not exceeding 14 days beginning with that date, as a medical practitioner who meets prescribed conditions may (before the end of the period mentioned in head (a)) certify to be necessary because of exceptional circumstances.

(3) A certificate under sub-paragraph (2)(b) must be in the prescribed form and include prescribed information.

Commencement Information

19 [Sch. 2 para. 9](#) in operation at 2.12.2019 for specified purposes by [S.R. 2019/163, art. 2\(4\)](#), [Sch. Pt. 4](#) (with [art. 3](#)) (as amended by [S.R. 2019/190, art. 2](#))

Expiry where failure to give P certain information

10.—(1) This paragraph applies if—

- (a) pursuant to a report under paragraph 2, P is admitted to the hospital specified in the report; or

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(b) P is treated under paragraph 1(5) as so admitted.

(2) If P is not given prescribed information by the managing authority of the hospital as soon as practicable after the admission or deemed admission, the failure to give P that information is an event which terminates the authorisation.

Commencement Information

110 Sch. 2 para. 10 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(4), Sch. Pt. 4 (with art. 3) (as amended by S.R. 2019/190, art. 2)

Expiry where failure to examine and report on P on admission

11.—(1) This paragraph applies where—

- (a) pursuant to a report under paragraph 2, P is admitted to the hospital specified in the report; or
- (b) P is treated under paragraph 1(5) as so admitted.

(2) Immediately after being admitted or treated as admitted, P must be examined by a medical practitioner who—

- (a) is within sub-paragraph (3); and
- (b) did not make the medical report under paragraph 4.

(3) The medical practitioners are—

- (a) the responsible medical practitioner;
- (b) another medical practitioner who meets prescribed conditions; or
- (c) any other medical practitioner who is on the staff of the hospital.

(4) A medical practitioner carrying out an examination under this paragraph must immediately make a report in the prescribed form of the examination.

(5) The report must include a statement by the person making the report as to whether, in that person's opinion, the condition in paragraph 12 is met.

(6) If the report states that in the opinion of the person making the report that condition is not met, the making of the report is an event which terminates the authorisation.

(7) A person who makes a report under this paragraph must immediately give the report to the managing authority of the hospital.

(8) If there is a failure to examine P in accordance with sub-paragraph (2), or to make a report in accordance with sub-paragraphs (4) and (5), the failure is an event which terminates the authorisation.

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Commencement Information

- I11** Sch. 2 para. 11 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(4), Sch. Pt. 4 (with art. 3) (as amended by S.R. 2019/190, art. 2)

The condition for detention

- 12.**—(1) This paragraph applies for the purposes of paragraphs 11, 13 and 14.
- (2) The condition referred to in those paragraphs is that—
- (a) failure to detain P in the hospital in circumstances amounting to a deprivation of liberty, for the purposes of further care, would create a risk of serious harm to P or of serious physical harm to other persons;
 - (b) detaining P in the hospital in circumstances amounting to a deprivation of liberty, for those purposes, is a proportionate response to—
 - (i) the likelihood of harm to P, or of physical harm to other persons; and
 - (ii) the seriousness of the harm concerned;
 - (c) P lacks capacity in relation to whether he or she should be so detained; and
 - (d) it would be in P's best interests for him or her to be so detained.
- (3) In sub-paragraph (2) “further care” means such one or more of the following as are appropriate in P's case—
- (a) further examination;
 - (b) the provision to P of other treatment or care.

Commencement Information

- I12** Sch. 2 para. 12 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(4), Sch. Pt. 4 (with art. 3) (as amended by S.R. 2019/190, art. 2)

Expiry where no examination and report by suitable medical practitioner within required time

- 13.**—(1) This paragraph applies where—
- (a) a report under paragraph 11 (an “admission report”) has been made;
 - (b) the admission report was not such as to terminate the authorisation; and
 - (c) the admission report was made by a practitioner within paragraph 11(3)(c) (and not within paragraph 11(3)(a) or (b)).
- (2) If, at the end of 48 hours from the time when the admission report was made, a suitable medical practitioner has not examined P and made a report in

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accordance with sub-paragraphs (4) and (5), the expiry of that period is an event which terminates the authorisation.

(3) In this paragraph “a suitable medical practitioner” means—

- (a) the responsible medical practitioner; or
- (b) if it is not practicable for that practitioner to carry out the examination under this paragraph, another medical practitioner who meets prescribed conditions.

(4) A medical practitioner carrying out an examination under this paragraph must immediately make a report in the prescribed form of the examination.

(5) The report must include a statement by the person making the report as to whether, in that person's opinion, the condition in paragraph 12 is met.

(6) If the report states that in the opinion of the person making the report that condition is not met, the making of the report is an event which terminates the authorisation.

(7) A person who makes a report under this paragraph must immediately give the report to the managing authority of the hospital.

Commencement Information

I13 Sch. 2 para. 13 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(4), Sch. Pt. 4 (with art. 3) (as amended by S.R. 2019/190, art. 2)

Expiry where no further examination and report on P within 14 days

14.—(1) This paragraph applies where—

- (a) either of the following has been made—
 - (i) a report under paragraph 11 by a practitioner within paragraph 11(3) (a) or (b); or
 - (ii) a report under paragraph 13; and
- (b) the report was not such as to terminate the authorisation.

(2) If at the end of 14 days beginning with the date of admission a suitable medical practitioner has not examined P and made a further report in accordance with sub-paragraphs (5) and (6), the expiry of that period is an event which terminates the authorisation.

(3) In this paragraph “the date of admission” means the date when the report under paragraph 11 was made (whether or not that report was made as mentioned in sub-paragraph (1)(a)(i)).

(4) In this paragraph “a suitable medical practitioner” means—

- (a) the responsible medical practitioner; or

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(b) if it is not practicable for that practitioner to carry out the examination under this paragraph, another medical practitioner meeting prescribed conditions.

(5) A medical practitioner carrying out an examination under this paragraph must immediately make a report in the prescribed form of the examination.

(6) The report must include a statement by the person making the report as to whether, in that person's opinion, the condition in paragraph 12 is met.

(7) If the report states that in the opinion of the person making the report that condition is not met, the making of the report is an event which terminates the authorisation.

(8) A person who makes a report under this paragraph must immediately give the report to the managing authority of the hospital.

Commencement Information

I14 Sch. 2 para. 14 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(4), Sch. Pt. 4 (with art. 3) (as amended by S.R. 2019/190, art. 2)

Expiry 14 days after date of further report

15.—(1) This paragraph applies where a report under paragraph 14 has been made and the report was not such as to terminate the authorisation.

(2) The expiry of the remaining period allowed is an event which terminates the authorisation.

(3) “The remaining period allowed” is the period of 14 days beginning with the day after the date the report under paragraph 14 is made.

Commencement Information

I15 Sch. 2 para. 15 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(4), Sch. Pt. 4 (with art. 3) (as amended by S.R. 2019/190, art. 2)

Discharge

16.—(1) If—

(a) pursuant to a report under paragraph 2, P is admitted to the hospital specified in the report, or

(b) P is treated under paragraph 1(5) as so admitted,

and P is subsequently discharged from detention, that discharge is an event which terminates the authorisation.

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(2) For the purposes of this paragraph P is “discharged from detention” if P is informed in writing by the responsible medical practitioner that he or she is discharged from detention.

Commencement Information

I16 Sch. 2 para. 16 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(4), Sch. Pt. 4 (with art. 3) (as amended by S.R. 2019/190, art. 2)

Unreasonable delay in taking certain steps

17.—(1) If—

- (a) pursuant to a report under paragraph 2, P is admitted to the hospital specified in the report, or
- (b) P is treated under paragraph 1(5) as so admitted,

and subsequently there is an unreasonable delay in taking a relevant step, the start of that delay is an event which terminates the authorisation.

(2) In this paragraph a “relevant step” means making an application under Schedule 1 where a measure that would need authorisation under that Schedule is proposed in relation to P.

Commencement Information

I17 Sch. 2 para. 17 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(4), Sch. Pt. 4 (with art. 3) (as amended by S.R. 2019/190, art. 2)

Part 4

Supplementary provisions

Detention covered by authorisation

18.—(1) This paragraph applies where a report is made under paragraph 2.

(2) The authorisation granted by the making of the report authorises—

- (a) the detention (at any time when the authorisation is in force) of P in the hospital specified in the report for the purposes of examination, or of any treatment or care following examination;
- (b) any related detention which may occur while the authorisation is in force.

(3) In sub-paragraph (2) “related detention” means—

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- (a) any detention of P while P is being taken to the hospital specified in the report;
- (b) any detention of P while P is absent from the hospital, if the detention—
 - (i) is in pursuance of a condition imposed in accordance with section 27 (permission for absence from hospital); and
 - (ii) is for no longer than 7 days.

(4) In sub-paragraphs (2) and (3) “detention” means detention in circumstances amounting to a deprivation of liberty.

(5) Nothing in the authorisation or this paragraph affects the operation of this Part of this Act in relation to any detention of P in circumstances not amounting to a deprivation of liberty.

Commencement Information

I18 Sch. 2 para. 18 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(4), Sch. Pt. 4 (with art. 3) (as amended by S.R. 2019/190, art. 2)

Relationship with other conditions

19 For the avoidance of doubt, the fact that a particular measure is authorised by an authorisation under this Schedule does not affect the need for the other conditions of this Part of this Act that apply to be met in respect of any act which is, or is part of, that measure.

Commencement Information

I19 Sch. 2 para. 19 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(4), Sch. Pt. 4 (with art. 3) (as amended by S.R. 2019/190, art. 2)

Rectification of reports: correction of administrative errors

20.—(1) Where a report under this Schedule is incorrect or defective in any respect as a result of an administrative error, the appropriate person may (subject to sub-paragraph (3)) amend the report for the purpose of correcting the error.

(2) “The appropriate person”, in relation to a report (“the relevant report”), means—

- (a) if the relevant report is a report under paragraph 2 and the amendment is to the medical report included in the relevant report, the person who signed the medical report;
- (b) otherwise, the person who signed the relevant report.

(3) An amendment under this paragraph may be made only—

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(a) with the consent of the managing authority of the hospital specified in the report; and

(b) before the end of the permitted period.

(4) Where an amendment under this paragraph is made to a report, the report is to have effect, and to be treated as always having had effect, as if it had been originally made as so amended.

(5) In this paragraph “the permitted period” means the period of 28 days beginning with the date of admission (as defined by paragraph 14(3)).

Commencement Information

I20 Sch. 2 para. 20 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(4), Sch. Pt. 4 (with art. 3) (as amended by S.R. 2019/190, art. 2)

Rectification of reports: substitution of medical reports

21.—(1) This paragraph applies where—

(a) a report under paragraph 2 (“the authorisation report”) has been made; and

(b) at any time before the end of the permitted period it appears to the managing authority that the medical report included in the authorisation report does not comply with the requirements of paragraph 4.

(2) The managing authority may, before the end of the permitted period, give notice in writing to that effect to the person who signed the authorisation report.

(3) Where any such notice is given, the medical report is to be disregarded.

(4) But if, before the end of the permitted period—

(a) a fresh medical report is made in accordance with paragraph 4, and

(b) the fresh report states that in the opinion of the person making the report the condition in paragraph 12 is met, and has been met at all times since the making of the medical report mentioned in sub-paragraph (1)(b),

the authorisation report is valid, and is to be treated as always having been valid.

(5) Nothing in this paragraph limits the application of paragraph 20.

(6) In this paragraph—

“the managing authority” means the managing authority of the hospital specified in the authorisation report;

“the permitted period” has the same meaning as in paragraph 20.

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Commencement Information

I21 Sch. 2 para. 21 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(4), Sch. Pt. 4 (with art. 3) (as amended by S.R. 2019/190, art. 2)

22.—(1) This paragraph applies where—

- (a) a report under paragraph 2 (“the authorisation report”) has been made in respect of a person (“P”); and
 - (b) at any time before the end of the permitted period, it appears to the managing authority that a report under paragraph 11, 13 or 14 made in respect of P (“the original report”) does not comply with the requirements of that paragraph (“the relevant paragraph”).
- (2) The managing authority may, before the end of the permitted period, give notice in writing to that effect to the person who signed the authorisation report.
- (3) Where any such notice is given, the original report is to be disregarded.
- (4) But if, before the end of the permitted period—
- (a) P is examined, and a fresh report is made, in accordance with the requirements of the relevant paragraph (except any requirements as to the timing of the examination or report), and
 - (b) the fresh report states that in the opinion of the person making the report the condition in paragraph 12 is met, and has been met at all times since the making of the original report,
- the authorisation has effect, and is treated as always having had effect, as if it had not expired by virtue of the relevant paragraph.
- (5) Nothing in this paragraph limits the application of paragraph 20.
- (6) In this paragraph—
- “the managing authority” has the same meaning as in paragraph 21;
 - “the permitted period” has the same meaning as in paragraph 20.

Commencement Information

I22 Sch. 2 para. 22 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(4), Sch. Pt. 4 (with art. 3) (as amended by S.R. 2019/190, art. 2)

Changes to legislation:

Mental Capacity Act (Northern Ireland) 2016, SCHEDULE 2 is up to date with all changes known to be in force on or before 14 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.

[View outstanding changes](#)

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\(b\)](#)