

Status: This version of this schedule contains provisions that are prospective.

Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, SCHEDULE 8 is up to date with all changes known to be in force on or before 19 April 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 8

Section 266.

Amendments of Mental Health Order

1 The Mental Health Order is amended as follows.

Commencement Information

- 11** [Sch. 8 para. 1](#) in operation at 2.12.2019 by [S.R. 2019/163](#), [art. 2\(2\)](#), [Sch. Pt. 2](#) (with [art. 3](#))
(as amended by [S.R. 2019/190](#), [art. 2](#))

2 Before Article 2 insert— “ Interpretation of Order ”.

Commencement Information

- 12** [Sch. 8 para. 2](#) in operation at 2.12.2019 by [S.R. 2019/163](#), [art. 2\(2\)](#), [Sch. Pt. 2](#) (with [art. 3](#))
(as amended by [S.R. 2019/190](#), [art. 2](#))

3.—(1) Article 2 (interpretation) is amended as follows.

(2) Amend paragraph (2) of that Article in accordance with sub-paragraphs (3) to (9).

(3) Insert the following at the appropriate places—

““the 2016 Act” means the Mental Capacity Act (Northern Ireland) 2016;”;

““best interests”: any determination of what would be in the best interests of a patient who is under 16 is to be made in accordance with Article 3B;”;

““independent advocate” has the same meaning as in Article 3C;”.

(4) Omit the definitions of “guardianship application”, “hospital order” and “guardianship order”, “interim hospital order”, “restriction direction”, “restriction order” and “transfer direction”.

(5) In the definition of “the applicant” omit the words from “and, in relation” to the end.

(6) In the definition of “patient” omit “(except in Part VIII)”.

(7) In the definition of “responsible authority” omit paragraph (b).

(8) In the definition of “responsible medical officer” for paragraph (b) substitute—

Status: This version of this schedule contains provisions that are prospective.

Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, SCHEDULE 8 is up to date with all changes known to be in force on or before 19 April 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*

“(b) in relation to a patient liable to be detained under Part 10 of the 2016 Act, means the responsible medical practitioner within the meaning of that Part;”.

(9) In the definition of “the Review Tribunal” for “the Mental Health Review Tribunal for Northern Ireland” substitute “ the Review Tribunal constituted under Article 70 ”.

(10) In paragraph (2A) of that Article—

(a) after “Articles” insert “ 3D, ”;

(b) omit “107(1B),” and “, 123(1)”.

(11) Omit paragraph (3) of that Article.

Commencement Information

- I3** Sch. 8 para. 3(1)(2)(9) in operation at 2.12.2019 by [S.R. 2019/163](#), [art. 2\(2\)](#), [Sch. Pt. 2](#) (with [art. 3](#)) (as amended by [S.R. 2019/190](#), [art. 2](#))
- I4** Sch. 8 para. 3(3) in operation at 2.12.2019 for specified purposes (but omit after “(Northern Ireland) 2016”) by [S.R. 2019/163](#), [art. 2\(2\)](#), [Sch. Pt. 2](#) (with [art. 3](#)) (as amended by [S.R. 2019/190](#), [art. 2](#))

4 After Article 3 insert—

“General provisions about patients under 16

Best interests of patient under 16

3A.—(1) This Article applies to a person responsible for the treatment or care (or both) of a patient under 16.

(2) The person's primary consideration, when making decisions about the patient's treatment or care, must be the patient's best interests.

(3) In this Article—

(a) “treatment” means any treatment relating to mental disorder;

(b) “care” means any care given where the patient is being assessed or treated for mental disorder.

(4) In this paragraph references to assessment or treatment are to any assessment or treatment, whether or not under Part 2.

Determination of a patient's best interests

3B.—(1) This Article applies where for any purpose of this Order it falls to a person to determine what treatment or care would be in the best interests of a patient (“C”) who is under 16.

Status: This version of this schedule contains provisions that are prospective.

Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, SCHEDULE 8 is up to date with all changes known to be in force on or before 19 April 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*

(2) In determining what would be in C's best interests, the person must take into account C's age but must not make the determination merely on the basis of—

- (a) C's age or appearance; or
- (b) any other characteristic of C's, including any condition that C has, which might lead others to make unjustified assumptions about what might be in C's best interests.

(3) The person—

- (a) must consider all the relevant circumstances (that is, all the circumstances of which the person is aware which it is reasonable to regard as relevant); and
- (b) must in particular take the following steps.

(4) The person—

- (a) must consider whether it is likely that C will, when he or she reaches the age of 16, have capacity in relation to the matter in question; and
- (b) if it appears likely that C will, must consider when C will reach that age.

(5) The person must, so far as reasonably practicable—

- (a) encourage and help C to participate, or to improve C's ability to participate, as fully as possible in any decision about C's treatment or care; and
- (b) in particular, ensure that C is provided in an appropriate way with information and advice about the treatment or care.

(6) The person must have special regard to (so far as they are reasonably ascertainable)—

- (a) C's past and present wishes and feelings (and, in particular, any relevant written statement made by C); and
- (b) C's beliefs and values.

(7) The person must—

- (a) so far as it is practicable and appropriate to do so, consult the relevant people about what would be in C's best interests and in particular about the matters mentioned in paragraph (6); and
- (b) take into account the views of those people (so far as ascertained from that consultation or otherwise) about what would be in C's best interests and in particular about those matters.

For the definition of “the relevant people” see paragraph (9).

Status: This version of this schedule contains provisions that are prospective.

Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, SCHEDULE 8 is up to date with all changes known to be in force on or before 19 April 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*

(8) The person must, in relation to anything proposed to be done, have regard to whether the same purpose can be as effectively achieved in a way that is less restrictive of C's rights and freedoms of action.

(9) In paragraph (7) “the relevant people” means—

- (a) every person who has parental responsibility for C;
- (b) C's nearest relative;
- (c) if at the time of the determination there is an independent advocate instructed to represent and provide support to C, the independent advocate;
- (d) any other person named by C as someone to be consulted on the matter in question or on matters of that kind;
- (e) anyone engaged in caring for C or interested in C's welfare.

Independent Advocates

3C.—(1) The Department must make regulations about independent advocates.

(2) An “independent advocate” means a person who has been appointed by an HSC trust, in accordance with the regulations, to be a person to whom the trust may from time to time offer instructions to represent and provide support to a patient who is under 16 in relation to matters specified in the instructions.

(3) The regulations may in particular—

- (a) require HSC trusts to make arrangements for the purpose of ensuring that independent advocates are available to be instructed;
- (b) make provision about such arrangements (including provision providing that a person may be appointed as mentioned in paragraph (2) only if the person meets prescribed conditions);
- (c) make provision for the purpose of securing the independence of independent advocates;
- (d) make provision in relation to the instruction of independent advocates (including provision permitting or requiring a prescribed person, in prescribed circumstances, to request an HSC trust to instruct an independent advocate);
- (e) make provision about the functions of independent advocates.

(4) The conditions that may be prescribed by virtue of paragraph (3)(b) include—

- (a) a condition that the person is approved, or belongs to a description of persons approved, in accordance with the regulations;

Status: This version of this schedule contains provisions that are prospective.

Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, SCHEDULE 8 is up to date with all changes known to be in force on or before 19 April 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

- (b) a condition that the person has prescribed qualifications or skills or has undertaken prescribed training.
- (5) The regulations must make provision for the purpose of securing that, except in prescribed circumstances, an independent advocate is instructed—
 - (a) where a patient under 16 is admitted to a hospital (whether under Part 2 or otherwise) for the assessment or treatment of mental disorder; or
 - (b) where it is proposed to give a patient under 16 a form of medical treatment to which Article 63 or 63B applies.
- (6) The regulations may apply, or make provision corresponding to, any provision within paragraph (7) (with or without modifications).
- (7) The provisions are—
 - (a) any provision of Part 4 of the 2016 Act;
 - (b) any provision of regulations made under that Part;
 - (c) any provision that could be made by regulations under that Part.

In-patients under 16: duties of hospital managers

3D.—(1) This Article applies in relation to a patient who—

- (a) is under 16; and
- (b) is an in-patient in a hospital for the purposes of the assessment or treatment of mental disorder (whether by virtue of Part 2 or otherwise).

(2) The responsible authority of the hospital must ensure that (subject to the patient's needs) the patient's environment in the hospital is suitable having regard to his or her age.

(3) For the purposes of deciding how to fulfil the duty under paragraph (2), the responsible authority must consult a person who appears to that authority to have knowledge or experience which makes that person suitable to be consulted.”.

Commencement Information

- I5** Sch. 8 para. 4 in operation at 2.12.2019 for specified purposes (but omit until “In-patients under 16: duties of hospital managers”) by [S.R. 2019/163](#), [art. 2\(2\)](#), [Sch. Pt. 2](#) (with [arts. 3, 4](#)) (as amended by [S.R. 2019/190](#), [art. 2](#))

Status: This version of this schedule contains provisions that are prospective.

Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, SCHEDULE 8 is up to date with all changes known to be in force on or before 19 April 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*

PROSPECTIVE

5 In the heading of Part 2 for “AND GUARDIANSHIP” substitute “ : CHILDREN UNDER 16 ”.

PROSPECTIVE

6.—(1) Article 4 (admission for assessment) is amended as follows.

(2) In paragraph (1) after “patient” insert “ who is under 16 ”.

(3) In paragraph (2) after “patient” insert “ who is under 16 ”.

PROSPECTIVE

7 In Article 8 (effect of application for assessment) omit paragraph (3).

PROSPECTIVE

8 In Article 12 (detention for treatment) omit paragraph (3).

PROSPECTIVE

9 In Article 13(1) (renewal of authority for detention) after “discharged” insert “ or reached the age of 16 ”.

PROSPECTIVE

10 After Article 14 insert—

“Liability to detention under Part 2 ends at the age of 16

14A.—(1) A patient who, immediately before his or her 16th birthday, is liable to be detained under this Part ceases to be so liable when he or she reaches the age of 16.

(2) Nothing in paragraph (1) prevents the patient from being detained by virtue of the 2016 Act”

PROSPECTIVE

11 Omit Articles 18 to 26 (guardianship).

Status: This version of this schedule contains provisions that are prospective.

Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, SCHEDULE 8 is up to date with all changes known to be in force on or before 19 April 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*

PROSPECTIVE

12 In the italic heading before Article 27 omit “or guardianship”.

PROSPECTIVE

13.—(1) Article 27 (duty of authority to give information to patients and nearest relatives) is amended as follows.

(2) In paragraph (1) omit—

- (a) each “or subject to guardianship”;
- (b) in sub-paragraph (b) “or guardianship”;
- (c) “or the commencement or renewal of the authority for his guardianship”.

(3) In paragraph (2) omit—

- (a) each “or subject to guardianship”;
- (b) in sub-paragraph (a)(i) “, 24”;
- (c) “or his reception into guardianship”.

(4) In paragraph (4)—

- (a) omit “or subject to guardianship”;
- (b) for “the patient,” substitute “ the patient and ”;
- (c) omit the words from “and, in” to “guardian of the patient”.

PROSPECTIVE

14 In Article 28 (transfer of patients) omit—

- (a) paragraphs (5) to (7);
- (b) in paragraph (9) the words from “and, in” to “guardian of the patient”.

PROSPECTIVE

15 In Article 29 (return and readmission of patients absent without leave) omit—

- (a) paragraph (2);
- (b) in paragraph (3) “or subject to guardianship, as the case may be,”.

Status: This version of this schedule contains provisions that are prospective.

Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, SCHEDULE 8 is up to date with all changes known to be in force on or before 19 April 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*

PROSPECTIVE

16.—(1) Article 30 (special provisions as to patients absent without leave) is amended as follows.

- (2) In paragraph (1) omit—
 - (a) “or subject to guardianship”;
 - (b) the second “or subject”.
- (3) In paragraph (2)—
 - (a) omit “or subject to guardianship”;
 - (b) for “, 13 or 23” substitute “ or 13 ”.
- (4) In paragraph (3) omit “or guardianship”.

PROSPECTIVE

17.—(1) Article 31 is amended as follows.

- (2) In paragraph (1) omit—
 - (a) “or subject to guardianship”;
 - (b) the second “or subject”.
- (3) In paragraph (2) omit—
 - (a) each “or subject to guardianship”;
 - (b) the last “or subject”.

PROSPECTIVE

18 In Article 32(3) (definition of “nearest relative”) omit “or his reception into guardianship”.

PROSPECTIVE

19 In Article 33 (children and young persons in care) omit “who is a child or young person”.

PROSPECTIVE

- 20.—**(1) Article 34 (minors under guardianship, etc) is amended as follows.
- (2) In paragraph (1)—

Status: This version of this schedule contains provisions that are prospective.

Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, SCHEDULE 8 is up to date with all changes known to be in force on or before 19 April 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*

- (a) for “a person who has not attained the age of 18 years” substitute “ a patient ”;
- (b) for “such a person” substitute “ a patient ”.
- (3) Omit paragraph (3).

PROSPECTIVE

21 In Article 35(1) (assignment of functions by nearest relative) omit “or subject to guardianship”.

PROSPECTIVE

22.—(1) Article 36 (appointment by county court of acting nearest relative) is amended as follows.

(2) In paragraph (1) for the words from “the applicant” to the end substitute “a person specified in the order who—

- (a) is either the applicant or another person specified in the application (and is not the patient);
- (b) in the opinion of the court is a proper person to act as the patient's nearest relative; and
- (c) is willing to do so.”.

(3) In paragraph (2) after “on the application of—” insert—

“(za) the patient;”.

(4) In paragraph (3)—

- (a) in sub-paragraph (c) omit “or a guardianship application”;
- (b) omit the word “or” after sub-paragraph (c);
- (c) in sub-paragraph (d) omit “or guardianship”;
- (d) after sub-paragraph (d) insert “or
- (e) that the nearest relative of the patient is otherwise not a suitable person to act as such.”.

(5) In paragraph (4) for “(3)(a) or (b)” substitute “ (3)(a), (b) or (e) ”.

PROSPECTIVE

23.—(1) Article 37 (discharge and variation of orders under Article 36) is amended as follows.

(2) In paragraph (1)—

Status: This version of this schedule contains provisions that are prospective.

Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, SCHEDULE 8 is up to date with all changes known to be in force on or before 19 April 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*

- (a) after “application made—” insert—
 - “(za) by the patient;”;
- (b) in sub-paragraph (b) for “or (b)” substitute “, (b) or (e) ”.
- (3) After paragraph (1) insert—
 - “(1A) But in the case of an order made on the ground specified in Article 36(3)(e), an application may not be made under paragraph (1)(b) by the person who was the nearest relative of the patient when the order was made except with the leave of the county court.”.
- (4) In paragraph (2)—
 - (a) after “or on the application of” insert “ the patient or of ”;
 - (b) for the words from “for the first-mentioned person” to the end substitute “for the person having those functions another person (other than the patient) who—
 - (a) in the opinion of the court is a proper person to exercise those functions; and
 - (b) is willing to do so.”.
- (5) In paragraph (4) omit—
 - (a) “or subject to guardianship”;
 - (b) the second, third and fourth “or subject”.

PROSPECTIVE

24 In Article 39 (special provision as to wards of court) omit paragraph (3).

PROSPECTIVE

25 In Article 40 (duty of approved social worker to make application for assessment or guardianship) omit—

- (a) in the heading “or guardianship”;
- (b) in paragraph (1) “or a guardianship application”;
- (c) in paragraph (2) “or guardianship (as the case may be)”;
- (d) in paragraph (5) “or Article 19(3) to (6)”.

PROSPECTIVE

26 In Article 41 (applications, recommendations and reports under Part 2) omit “guardianship application,”.

Status: This version of this schedule contains provisions that are prospective.

Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, SCHEDULE 8 is up to date with all changes known to be in force on or before 19 April 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*

PROSPECTIVE

27 Omit Part 3 (patients concerned in criminal proceedings or under sentence).

PROSPECTIVE

28 In the heading of Part 4, at the end insert “ : CHILDREN UNDER 16 ”.

PROSPECTIVE

29 For Article 62 substitute—

“Patients to whom the provisions of this Part apply

62.—(1) Articles 63 to 63B and, so far as relevant to those Articles, Articles 65, 66 and 68 apply to all patients who are under 16.

(2) The other provisions of this Part apply to any patient who is under 16 and is liable to be detained under this Order or Part 10 of the 2016 Act except the following—

- (a) a patient who is liable to be detained by virtue of Article 7(2) or (3), 7A(2) or 129 of this Order;
- (b) a patient who has been conditionally discharged under section 191 or 232 of the 2016 Act (and has not been recalled).”.

PROSPECTIVE

30.—(1) Article 63 (treatment requiring consent and a second opinion) is amended as follows.

(2) In paragraph (2) for the first “Article” substitute “ Articles 63A and ”.

(3) For paragraph (3) substitute—

“(3) Before giving a certificate under paragraph (2), the medical practitioner must consult—

- (a) such person or persons as appear to the medical practitioner to be principally concerned with the patient's medical treatment; and
- (b) the independent advocate instructed to represent and provide support to the patient.”.

Status: This version of this schedule contains provisions that are prospective.

Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, SCHEDULE 8 is up to date with all changes known to be in force on or before 19 April 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

PROSPECTIVE

31 After Article 63 insert—**“Treatment within Article 63: procedure where patient incapable of consenting**

63A.—(1) Medical treatment to which Article 63 applies may be given to a patient under 16 if paragraphs (2) to (4) apply.

(2) This paragraph applies if a medical practitioner appointed for the purposes of this Part by RQIA (not being the responsible medical officer) has certified in the prescribed form—

- (a) that the patient is not capable of understanding the nature, purpose and likely effects of the treatment in question; and
- (b) that having regard to the likelihood of the treatment alleviating or preventing a deterioration of the patient's condition, the treatment should be given.

(3) This paragraph applies if two persons appointed for the purposes of this paragraph by RQIA (not being medical practitioners) have certified in the prescribed form that the patient is not capable of understanding the nature, purpose and likely effects of the treatment in question.

(4) This paragraph applies if—

- (a) an application is made to the court for an order authorising the giving of the treatment in question to the patient;
- (b) the application is made by the medical practitioner principally concerned with the patient's medical treatment (or, if there is more than one, any of them); and
- (c) the court makes an order authorising the giving of the treatment.

(5) Before giving a certificate under paragraph (2), the medical practitioner must consult—

- (a) such person or persons as appear to the medical practitioner to be principally concerned with the patient's medical treatment; and
- (b) the independent advocate instructed to represent and provide support to the patient.

(6) A person appointed under paragraph (3) may at any reasonable time, for the purpose of exercising his or her functions under that paragraph, in private visit and interview any patient.

(7) A person who gives a certificate under this Article must immediately forward a copy of it to RQIA.

Status: This version of this schedule contains provisions that are prospective.

Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, SCHEDULE 8 is up to date with all changes known to be in force on or before 19 April 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

Electro-convulsive therapy etc

63B.—(1) This Article applies to the following forms of medical treatment for mental disorder—

- (a) electro-convulsive therapy; and
- (b) such other forms of treatment as may be prescribed for the purposes of this Article.

(2) Subject to Article 68 (urgent treatment), a patient must not be given any form of treatment to which this Article applies unless paragraph (3) or (4) applies.

(3) This paragraph applies if—

- (a) the patient has consented to the treatment in question; and
- (b) a medical practitioner appointed for the purposes of this Part by RQIA (not being the responsible medical officer) has certified in the prescribed form—
 - (i) that the patient is capable of understanding the nature, purpose and likely effects of the treatment in question and has consented to it; and
 - (ii) that having regard to the likelihood of the treatment alleviating or preventing a deterioration of the patient's condition, the treatment should be given.

(4) This paragraph applies if a medical practitioner appointed for the purposes of this Part by RQIA (not being the responsible medical officer) has certified in the prescribed form—

- (a) that the patient is not capable of understanding the nature, purpose and likely effects of the treatment in question; and
- (b) that having regard to the likelihood of the treatment alleviating or preventing a deterioration of the patient's condition, the treatment should be given.

(5) Before giving a certificate under this Article, the medical practitioner must consult—

- (a) such person or persons as appear to the medical practitioner to be principally concerned with the patient's medical treatment; and
- (b) the independent advocate instructed to represent and provide support to the patient.

(6) A person who gives a certificate under this Article must immediately forward a copy of it to RQIA.

(7) Before making regulations for the purposes of this Article, the Department must consult such bodies as appear to it to be concerned.”

Status: This version of this schedule contains provisions that are prospective.

Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, SCHEDULE 8 is up to date with all changes known to be in force on or before 19 April 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

PROSPECTIVE

32 In Article 64(1)(b) (treatment requiring consent or second opinion) after “63” insert “ or 63B ”.

PROSPECTIVE

33 In Article 65 (plans of treatment)—

- (a) for “Article 63 or 64” substitute “ any of Articles 63 to 64 ”;
- (b) for “that Article” substitute “ Article 63, 63B or 64 ”.

PROSPECTIVE

34 In Article 66(1) (withdrawal of consent) after “63” insert “ , 63B ”.

PROSPECTIVE

35.—(1) Article 67 (review of treatment) is amended as follows.

(2) In paragraph (1) after “63(2)” insert “ , 63A, 63B ”.

(3) In paragraph (2)—

- (a) for “subject to a restriction order or restriction direction” substitute “ liable to be detained by virtue of an order or direction under Part 10 of the 2016 Act ”;
- (b) in sub-paragraph (b) for the words from “the responsible medical officer” to the end substitute “ a relevant report is made in respect of the patient. ”.

(4) After that paragraph insert—

“(2A) In paragraph (2)(b) “relevant report” means a report under any of the following provisions of the 2016 Act—

- (a) section 183 or paragraph 5 of Schedule 6 (reports extending public protection orders without restrictions);
- (b) section 193 (reports on persons subject to public protection orders with restrictions);
- (c) section 201 (reports on persons subject to hospital directions and hospital transfer directions).”.

(5) In paragraph (3)—

- (a) after “63(2)” insert “ , 63A, 63B ”;
- (b) for “63 and 64” substitute “ 63 to 64 ”.

Status: This version of this schedule contains provisions that are prospective.

Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, SCHEDULE 8 is up to date with all changes known to be in force on or before 19 April 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*

PROSPECTIVE

- 36.—**(1) Article 68 (urgent treatment) is amended as follows.
- (2) In paragraph (1) for the first “and” substitute “ to ”.
- (3) In paragraph (2) for “Article 63 or 64” substitute “ any of Articles 63 to 64 ”;

PROSPECTIVE

37 In Article 69 (treatment not requiring consent) after “63” insert “ , 63B ”.

38 For the heading of Part 5 substitute— “ THE REVIEW TRIBUNAL ”.

Commencement Information

- I6** [Sch. 8 para. 38](#) in operation at 2.12.2019 by [S.R. 2019/163](#), art. 2(2), [Sch. Pt. 2](#) (with art. 3)
(as amended by [S.R. 2019/190](#), art. 2)

39 In Article 70(1) (constitution of the Review Tribunal) for “Mental Health Review Tribunal for Northern Ireland” substitute “ Review Tribunal ”.

Commencement Information

- I7** [Sch. 8 para. 39](#) in operation at 2.12.2019 by [S.R. 2019/163](#), art. 2(2), [Sch. Pt. 2](#) (with art. 3)
(as amended by [S.R. 2019/190](#), art. 2)

PROSPECTIVE

- 40.—**(1) Article 71 (applications to the tribunal under Part 2) is amended as follows.
- (2) Omit paragraph (2).
- (3) In paragraph (3) omit the words from “or the authority” to “Article 23”.
- (4) In paragraph (4) omit—
- (a) sub-paragraph (b);
- (b) the words “or, as the case may be, Article 24(7)”.
- (5) In paragraph (5) omit “or subject to guardianship”.

Status: This version of this schedule contains provisions that are prospective.

Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, SCHEDULE 8 is up to date with all changes known to be in force on or before 19 April 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

PROSPECTIVE

41 In Article 72(1) (reference of cases of Part 2 patients to tribunal) omit “or subject to guardianship”.

PROSPECTIVE

42.—(1) Article 73 (duty on Boards to refer cases to the tribunal) is amended as follows.

(2) In paragraph (1)—

(a) omit “or his guardianship”;

(b) omit “or 23”;

(c) for “2 years (or, if the patient has not attained the age of 16 years, one year)” substitute “one year”.

(3) In paragraph (3) for “periods” substitute “period”.

PROSPECTIVE

43 Omit Articles 74 to 76 (applications and references concerning Part 3 patients).

PROSPECTIVE

44.—(1) Article 77 (power to discharge patients other than restricted patients) is amended as follows.

(2) In the heading omit “other than restricted patients”.

(3) Omit paragraph (3).

(4) In paragraph (4) for “to (3)” substitute “and (2)”.

(5) Omit paragraph (5).

PROSPECTIVE

45 Omit Articles 78 to 80 (discharge of restricted patients etc).

Status: This version of this schedule contains provisions that are prospective.

Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, SCHEDULE 8 is up to date with all changes known to be in force on or before 19 April 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

PROSPECTIVE

46 In Article 81 (visiting and examination of patients) omit “or subject to guardianship”.

47 For Article 82 substitute—

“Applications to the tribunal

82.—(1) Applications to the Review Tribunal may be made only in such cases and at such times as are expressly provided by virtue of this Order, the 2016 Act or any other statutory provision.

(2) Where any statutory provision authorises an application to be made to the Review Tribunal within a specified period, not more than one such application relating to the same matter may be made within that period; but for this purpose any application withdrawn in accordance with rules made under Article 83 is to be disregarded.

(3) Any application to the Review Tribunal is to be made by notice in writing addressed to the tribunal (but this is subject to any statutory provision which provides otherwise).

(4) The Department of Justice may make regulations about what is, or is not, to be regarded as the same matter for the purposes of paragraph (2).

(5) Regulations under paragraph (4) may be made only if a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.”.

Commencement Information

I8 [Sch. 8 para. 47](#) in operation at 2.12.2019 by [S.R. 2019/163](#), art. 2(2), [Sch. Pt. 2](#) (with art. 3) (as amended by [S.R. 2019/190](#), art. 2)

48.—(1) Article 83 (procedure of Tribunal) is amended as follows.

(2) In paragraph (2)(a) and (i) omit “under this Order”.

(3) In paragraph (4)—

(a) for “restricted patients” substitute “ persons within paragraph (4A) ”;

(b) for “restricted patient” substitute “ person within paragraph (4A) ”.

(4) After that paragraph insert—

“(4A) A person is within this paragraph if any of the following is in force in respect of the person—

(a) a public protection order with restrictions (within the meaning of Part 10 of the 2016 Act);

Status: This version of this schedule contains provisions that are prospective.

Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, SCHEDULE 8 is up to date with all changes known to be in force on or before 19 April 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*

(b) a hospital direction (within the meaning of that Part of that Act);

(c) a direction under section 211 of that Act.”.

(5) In paragraph (5)—

(a) omit “by this Order or by rules under this Article”;

(b) at the end insert “ (but this is subject to any rules under this Article) ”.

(6) After paragraph (8) insert—

“(9) Any reference in this Article to a patient includes a person by or in respect of whom an application or reference to the Review Tribunal is made under the 2016 Act or any other statutory provision.”.

Commencement Information

19 Sch. 8 para. 48(1)(2)(5)(6) in operation at 2.12.2019 by S.R. 2019/163, art. 2(2), **Sch. Pt. 2** (with art. 3) (as amended by S.R. 2019/190, art. 2)

PROSPECTIVE

49 Omit Article 84 (interpretation of Part 5).

PROSPECTIVE

50 Omit Part 6 (functions of RQIA).

PROSPECTIVE

51 In Article 90 (registration of private hospitals) omit paragraph (1).

PROSPECTIVE

52 Omit Articles 91 to 94 (provisions about registration and inspections).

PROSPECTIVE

53 Omit Article 96 (offences under Part 7).

PROSPECTIVE

54 Omit Part 8 (management of property and affairs of patients).

Status: This version of this schedule contains provisions that are prospective.

Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, SCHEDULE 8 is up to date with all changes known to be in force on or before 19 April 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*

PROSPECTIVE

55 In Article 111(1) (code of practice)—

- (a) in sub-paragraph (a) omit “and the reception of patients into guardianship”;
- (b) in sub-paragraph (b) after “patients” insert “ under 16 ”.

PROSPECTIVE

56 In Article 113(1) (miscellaneous powers of the Board etc) omit sub-paragraph (c).

PROSPECTIVE

57.—(1) Article 116 (powers of the Board etc in relation to property of patients) is amended as follows.

- (2) In paragraph (1) after the first “patient” insert “ under 16 ”.
- (3) In paragraph (5) for the words from “controller” to the end substitute “ deputy (within the meaning of the 2016 Act) has the power to control and manage the patient's property. ”.

PROSPECTIVE

58.—(1) Article 118 (provision information by Department etc) is amended as follows.

- (2) In paragraph (1)—
 - (a) after each “persons” insert “ under 16 ”;
 - (b) omit sub-paragraph (a).
- (3) In paragraph (2) for the words from “facilities” to the end substitute “ facilities to the Review Tribunal as are necessary for it to exercise its functions under this Order. ”.
- (4) In paragraph (3) for “and RQIA as are necessary for them to exercise their” substitute “ as are necessary for it to exercise its ”.

PROSPECTIVE

59.—(1) Article 120 (unlawful detention of patients) is amended as follows.

Status: This version of this schedule contains provisions that are prospective.

Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, SCHEDULE 8 is up to date with all changes known to be in force on or before 19 April 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*

- (2) In paragraph (1) after the second “person” insert “ under 16 ”;
- (3) In paragraph (2) after “patient” insert “ under the age of 16 ”.
- (4) After paragraph (3) insert—
 - “(4) Nothing in this Article applies in relation to a person detained by virtue of the 2016 Act”

PROSPECTIVE

- 60.**—(1) Article 121 (ill-treatment of patients) is amended as follows.
- (2) In paragraph (1)—
 - (a) in sub-paragraph (a) after “patient” insert “ who is under 16 and is ”;
 - (b) in sub-paragraph (b) after “patient” insert “ who is under 16 and is ”.
 - (3) In paragraph (2) for the words from “for” to “otherwise” substitute “ under 16 and is ”.

PROSPECTIVE

- 61** In Article 124(1)(a) (assist patients to absent themselves without leave) omit “or being subject to guardianship under this Order,”.

PROSPECTIVE

- 62** In Article 127 (voluntary use of services) omit paragraph (2).

PROSPECTIVE

- 63** Omit Article 128 (pay, pensions etc of patients).

PROSPECTIVE

- 64.**—(1) Article 129 (warrants) is amended as follows.
- (2) In paragraph (1)—
 - (a) after the first “person” insert “ under 16 ”;
 - (b) for “a place of safety” substitute “ an appropriate place ”.
 - (3) Omit paragraph (3).
 - (4) In paragraph (5) for “a place of safety” substitute “ an appropriate place ”.

Status: This version of this schedule contains provisions that are prospective.

Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, SCHEDULE 8 is up to date with all changes known to be in force on or before 19 April 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*

(5) In paragraph (7)—

- (a) for ““place of safety”” substitute ““appropriate place””;
- (b) omit “any police station.”.

PROSPECTIVE

65 Omit Article 130 (mentally disordered persons found in public places).

PROSPECTIVE

66 In Article 131(1) (custody, conveyance and detention) for “a place of safety or at any place to which he is taken under Article 48(5)” substitute “an appropriate place (as defined by Article 129(7)) ”.

PROSPECTIVE

67.—(1) Article 132 (retaking of patients escaping from custody) is amended as follows.

(2) In paragraph (1)(b) omit “or subject to guardianship”.

(3) In paragraph (2) omit—

- (a) “or subject to guardianship”;
- (b) the words from “(not being” to “such an order)”.

(4) In paragraph (3)—

- (a) for “a place of safety” substitute “an appropriate place”;
- (b) omit “or Article 130”.

(5) In paragraph (4) for the words from “who escapes” to the end of paragraph (b) substitute “who escapes while being taken to or from a hospital in pursuance of Article 28 ”.

(6) Omit paragraph (6).

PROSPECTIVE

68.—(1) Article 133 (protection for acts done in pursuance of Order) is amended as follows.

(2) Omit paragraph (1).

(3) In paragraph (2) for each “such act” substitute “relevant act ”.

(4) After that paragraph insert—

Status: This version of this schedule contains provisions that are prospective.

Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, SCHEDULE 8 is up to date with all changes known to be in force on or before 19 April 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*

“(2A) In paragraph (2) “relevant act” means any act purporting to be done in pursuance of this Order (or any regulations or rules made under it).”.

PROSPECTIVE

69 Omit Schedule 2 (application of Part 2 to patients detained etc under Part 3).

PROSPECTIVE

70 Omit Schedule 2A (supervision and treatment orders).

71.—(1) Schedule 3 (the Tribunal) is amended as follows.

(2) For the title substitute— “ THE REVIEW TRIBUNAL ”.

(3) In paragraph 4(1)—

(a) after “sub-paragraph (2)” insert “ and paragraph 7 ”;

(b) omit “under this Order”.

(4) In paragraph 5 omit “under this Order”.

(5) After paragraph 6 insert—

“7 In any proceedings which are to be heard and determined by the Review Tribunal constituted as mentioned in paragraph 4(1) or (2)(a), the proceedings may with the consent of the parties be heard and determined in the absence of any one member other than the president, and in that event the tribunal is to be treated as properly constituted.”.

Commencement Information

I10 [Sch. 8 para. 71](#) in operation at 2.12.2019 by [S.R. 2019/163](#), art. 2(2), [Sch. Pt. 2](#) (with art. 3) (as amended by [S.R. 2019/190](#), art. 2)

Status:

This version of this schedule contains provisions that are prospective.

Changes to legislation:

Mental Capacity Act (Northern Ireland) 2016, SCHEDULE 8 is up to date with all changes known to be in force on or before 19 April 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\(b\)](#)