

These notes refer to the Mental Capacity Act (Northern Ireland) 2016 (c.18)

EXPLANATORY NOTES

MENTAL CAPACITY ACT (NORTHERN IRELAND) 2016

INTRODUCTION

BACKGROUND AND POLICY OBJECTIVES

OVERVIEW

Part 1

Remaining Parts

COMMENTARY ON SECTIONS

PART 1 – PRINCIPLES

Section 1 – Principles: capacity

Section 2 – Principle: best interests

Section 3 – Meaning of “lacks capacity”

Section 4 – Meaning of “unable to make a decision”

Section 5 – Supporting person to make decision

Section 6 – Compliance with section 1(2)

Section 7 – Best interests

Section 8 – Compliance with section 2

PART 2 – LACK OF CAPACITY: PROTECTION FROM LIABILITY, AND SAFEGUARDS

Chapter 1 – Protection from Liability, and General Safeguards

Sections 9 – 12

Chapter 2 – Additional Safeguards for Serious Interventions

Sections 13 – 14 - Formal assessments of capacity

Section 15 – Nominated person: need to have in place and consult

Chapter 3 – Additional Safeguard: Second Opinion

Sections 16 – 18

CHAPTER 4 – ADDITIONAL SAFEGUARD: AUTHORISATIONS ETC and CHAPTER 6 – EXTENSION OF PERIOD OF CERTAIN AUTHORISATIONS

Sections 19 – 23 - Treatment with serious consequences

Sections 24 – 27 - Deprivation of liberty

Sections 28 and 29 – Attendance requirements

Section 30 – 34 - Community residence requirements

Sections 37 – 44 - Extensions of period of authorisation

Chapter 5 – Additional Safeguard: Independent Mental Capacity Advocate

Sections 35 and 36 – Independent mental capacity advocate

Chapter 7 – Rights of Review of Authorisation

Section 45 – Right to apply to Tribunal

Section 46 – Applications: visiting and examining

Section 47 – Power of certain persons to refer case to Tribunal

Section 48 – Duty of HSC trust to refer case to Tribunal

Section 49 – References etc to Tribunal: persons formerly detained under the Mental Health Order

Section 50 – Duty of HSC trust to notify the Attorney General

Section 51 – Powers of Tribunal in relation to authorisation under Schedule 1

Section 52 – Powers of Tribunal in relation to authorisation under Schedule 2

Section 53 – Sections 51 and 52: additional powers of Tribunal

Chapter 8 – Supplementary

Sections 54-56 – Medical reports: involvement of nominated person and independent mental capacity advocate

Sections 57 and 58 – Provision of information

Section 59 – Failure by person other than D to take certain steps

Section 60 – Part 2 not applicable where other authority for act

Section 61 – Power to make further provision

Section 62 – Disregard of certain detention

Chapter 9 – Definitions for Purposes of Part 2

Sections 63 and 64 – “Serious intervention”

Sections 65 – 67 – Meaning of “emergency” in relation to safeguard provisions

Section 68 – Interpretation of Part 2: general

PART 3 – NOMINATED PERSON

Section 69 – Nominated person

Section 70 – Appointment of nominated person

Section 71 – Revocation of appointment

Section 72 - Resignation

Section 73 – Default nominated person

Section 74 – Section 73: the list

Section 75 – Section 73: persons to be disregarded

Section 76 – Section 73: meaning of “carer”

Section 77 – Declaration that particular person not to be nominated person

Section 78 – Notice declining to be a person’s nominated person

Section 79 – Formalities for documents under Part 3

Section 80 – Application to Tribunal for appointment of nominated person

Section 81 – Tribunal’s power to appoint nominated person

Section 82 – Tribunal’s power to disqualify person from being default nominated person

Section 83 – Revocation of Tribunal’s appointment where P regains capacity

Section 84 and 85 – Duties in relation to nominated person

PART 4 – INDEPENDENT MENTAL CAPACITY ADVOCATES

Section 86 – Independent mental capacity advocates

Section 87 – Functions of independent mental capacity advocates: provision of support, etc

Section 88 – Request for independent mental capacity advocate to be instructed

Section 89 – Steps to be taken before independent mental capacity advocate may be requested

Section 90 – Right to declare that no independent mental capacity advocate to be instructed

Section 91 – Instruction of independent mental capacity advocate

Section 92 – Powers of independent mental capacity advocates

Section 93 – Right of person to discontinue involvement of independent mental capacity advocate

Section 94 – Continuing duty of trust in relation to independent mental capacity advocate

Section 95 – Formalities for declarations under Part 4

Section 96 – Power to adjust role of independent mental capacity advocate

PART 5 – LASTING POWERS OF ATTORNEY

Chapter 1 - Lasting Powers of Attorney

Section 97 – Lasting powers of attorney

Section 98 – Restrictions on scope of lasting power of attorney

Section 99 – Relationship between advance decisions and lasting powers of attorney

Section 100 – Scope of lasting powers of attorney: gifts

Section 101 – Appointment of attorneys: requirements as respects attorneys

Section 102 – Appointment of two or more attorneys

Section 103 – Appointment of replacement attorneys

Section 104 – Appointment of two or more replacements for a single initial appointee

Section 105 – Replacement attorneys: position where two or more initial appointees

Section 106 – Revocation of lasting power etc by donor or on donor's bankruptcy

Section 107 – Revocation etc: events relating to the attorney

Section 108 – Protection of attorney and others if no power created or power revoked

Section 109 – Reliance on authority of attorney in relation to treatment etc

Section 110 – Powers of court as to lasting powers of attorney

Section 111 – Powers of court as to operation of lasting powers of attorney

PART 6 – HIGH COURT POWERS: DECISIONS AND DEPUTIES

Section 112 – The court's power to make declarations

Section 113 – The court's powers to make decisions and appoint deputies: general

Section 114 – Section 113 powers: care, treatment and personal welfare

Section 115 – Section 113 powers: property and affairs

Section 116 – Appointment of deputies

Section 117 – Restrictions on deputies

Section 118 – Reliance on authority of deputy in relation to treatment etc

Section 119 – Interim orders and directions

Section 120 – Power to call for reports

Section 121 - Powers of Public Guardian or Court Visitor in respect of reports under section 120(2)

Section 122 – Applications to the court

Section 123– Duty to notify Attorney General

Section 124 – Rules of court

PART 7 – PUBLIC GUARDIAN AND COURT VISITORS

Section 125 – The Public Guardian

Section 126 – Functions of the Public Guardian

Section 127 – Further powers of the Public Guardian

Section 128 – Duty to notify the Public Guardian

Section 129 – Notifications under section 128: procedure and effect

Section 130 – Court Visitors

Section 131 – Powers of Court Visitors

PART 8 – RESEARCH

Section 132 - Research

Section 133 – Section 132: exception for clinical trials

Section 134 – Approval of research projects

Section 135 – Requirement to consult nominated person, carer etc

Section 136 – Section 135: exception for urgent treatment

Section 137 – Additional safeguards

Section 138 – Loss of capacity during research project: transitional cases

PART 9 – POWER OF POLICE TO REMOVE PERSON TO PLACE OF SAFETY

- Section 139 - Power of police to remove person from public place to place of safety
- Section 140 - Information to be given on removal
- Section 141 - Search of person on exercise of power to remove
- Section 142 - Power of police to detain in hospital a person removed from a public place
- Section 143 - Power to detain in police station a person removed from a public place
- Section 144 - Sections 142 and 143: the detention conditions
- Section 145 - Transfer from one place of safety to another
- Section 146 - Maximum period of detention under Part 9
- Section 147 - Duty to inform certain persons where power of removal or transfer used
- Section 148 - Section 147: meaning of “the required information”
- Section 149 - Record of detention to be kept
- Section 150 - Responsibilities of the appropriate officer
- Section 151 - Review of detention
- Section 152 - Access to legal advice
- Section 153 - Searches of person following removal to place of safety
- Section 154 - Searches and examination to ascertain identity
- Section 155 - Intimate searches
- Section 156 - Annual records
- Section 157 - Principles applying for purposes of Part 9
- Section 158 - Reasonable belief etc
- Section 159 - Power of constable to use reasonable force
- Section 160 - Definition for purposes of Part 9

Section 161 - Relationship of Part 9 to other provisions

PART 10 – CRIMINAL JUSTICE

Chapter 1 - Remand to Hospital

Section 162 – Remand to hospital

Section 163 - Section 162: meaning of “accused person”

Section 164 - Section 162: the medical report condition

Section 165 - Section 162: the treatment condition

Section 166 - Effect of remand to hospital

Chapter 2 – Powers of Court on Conviction

Section 167 - Public protection orders with and without restrictions

Section 168 - Section 167: the detention conditions

Section 169 - Section 167: the restriction condition

Section 170 - Further provision about making of public protection orders

Section 171 - Effect of public protection orders

Section 172 - Power to direct the ending of restrictions under a public protection order

Section 173 - Effect of ending restrictions under a public protection order

Section 174 - Hospital direction when passing custodial sentence

Section 175 - Conditions for giving hospital direction

Section 176 - Effect of hospital directions

Section 177 - Interim detention orders

Section 178 - Effect of interim detention orders

Chapter 3 – Detention under a Public Protection Order Without Restrictions

Section 179 - Detention under a public protection order without restrictions

Section 180 - Discharge from detention by responsible medical practitioner

Section 181 - First extension of period of order

Section 182 - Subsequent extensions

Section 183 - Sections 181 and 182: extension reports

Section 184 - Extension of period where responsible person not of the requisite opinion

Section 185 - The criteria for continuation

Section 186 - Extension reports: further provision

Section 187 - Permission for absence

Section 188 - Transfer between hospitals etc

Section 189 - Effect of custodial sentence

Chapter 4 – Detention under a Public Protection Order With Restrictions

Section 190 - Detention under a public protection order with restrictions

Section 191 - Discharge from detention by Department of Justice

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

Section 193- Reports by responsible medical practitioner

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

Section 195 - Permission for absence

Section 196 - Transfers between hospitals etc

Chapter 5 – Detention under a Hospital Direction

Section 197 - Detention under a hospital direction

Section 198 - Termination of hospital directions

Section 199 - Section 198: meaning of “release date”

Section 200 - Duties and powers to release from detention

Section 201 - Reports by responsible medical practitioner

Section 202 - Permission for absence etc

Section 203 - Transfers between hospitals

Chapter 6 – Unfitness to Be Tried Etc

Section 204 - Procedure where question of unfitness to be tried arises

Section 205 - Finding that the accused did the act or made the omission charged

Section 206 - Procedure in relation to finding of insanity

Section 207 - Powers to deal with person unfit to be tried or not guilty by reason of insanity

Section 208 - Remission for trial where person no longer unfit to be tried

Section 209 - Power to make order where the accused did the act or made the omission charged

Section 210 – Power to make restraining order following finding of unfitness to plead etc

Chapter 7 – Transfer from Prison Etc to Hospital

Section 211 - Power to transfer person serving custodial sentence etc to hospital

Section 212 - Conditions for transfer under section 211

Section 213 - Effect of transfer under section 211

Section 214 - Transfer of civil prisoner or immigration detainee to hospital

Section 215 - Detention in hospital on removal under section 214

Section 216 - Duration of direction under section 214

Section 217 - Transfer to hospital of person remanded by magistrates' court

Section 218 - Detention in hospital on removal under section 217

Section 219 - Duration of direction under section 217

Section 220 - Transfer of certain other detainees to hospital

Section 221 - Detention in hospital on removal under section 220

Section 222 - Termination of direction under section 220

Section 223 - Conditions for transfer to hospital under section 214, 217 or 220

Section 224 - General provisions about hospital transfer directions

Chapter 8 – Rights of Review of Detention under Part 10

Section 225 - Right to apply to Tribunal

Section 226 - Meaning of “a qualifying person”

Section 227 - Applications: visiting and examination

Section 228 - Power of certain persons to refer case to Tribunal

Section 229 - Duty of HSC trust to refer case to Tribunal

Section 230 - Duty to notify the Attorney General

Section 231 - Powers of Tribunal as to public protection order without restrictions

Section 232 - Powers of Tribunal as to public protection order with restrictions

Section 233 - Sections 231 and 232: the prevention of serious harm condition

Section 234 – Sections 231 and 232: additional powers of Tribunal etc

Section 235 - Effect of conditional discharge

Section 236 - Application and references to Tribunal where person recalled

Section 237 - Applications to Tribunal where person has not been recalled

Section 238 - Powers of Tribunal as to hospital directions and hospital transfer directions

Section 239 – Section 238: additional powers of Tribunal

Section 240 – Section 238: procedure where prevention of serious harm condition is not met

Chapter 9 – Supplementary

Section 241 - Provision of information

Section 242 - Ways in which information must be provided

Section 243 - Section 22 may apply to person detained under Part 10

Section 244 - Absence without permission

Section 245 - Effect of court order or direction on previous authority for hospital detention

Section 246 - Appeals: general

Section 247 - Appeals against orders made on finding of unfitness to be tried etc

Section 248 – Hospital directions: cases stated by magistrates' courts

Section 249 - Requirements as to written evidence

Section 250 - Interpretation of Part 10: children

Section 251 - Interpretation of Part 10: impairment of or disturbance in the functioning of the mind or brain

Section 252 - Interpretation of Part 10: references to disorder

Section 253 - Interpretation of Part 10: general

PART 11 – TRANSFER BETWEEN JURISDICTIONS

Sections 254 and 255 – Removal of persons detained under Part 2 from Northern Ireland to England or Wales or Scotland

Section 256 – Removal of certain persons detained under Part 10 to England or Wales

Section 257 - Removal of certain persons detained under Part 10 to Scotland

Sections 258 and 259 – Persons to be detained under Part 2 after removal from England or Wales or Scotland to Northern Ireland

Section 260 – Persons to be detained under Part 10 after removal from England or Wales

Section 261 – Persons to be detained under Part 10 after removal from Scotland

Section 262 – Removal or transfer from Northern Ireland: power to make further provision

Section 263 – Persons removed or transferred to Northern Ireland: power to make further provision

Section 264 – Interpretation of Part 11

PART 12 - CHILDREN

Section 265 – In-patients under 18: duties of hospital managers

Section 266 and Schedule 8 – Amendments of Mental Health Order: children etc

PART 13 – OFFENCES

Section 267 – Ill-treatment or neglect

Section 268 – Forgery, false statements etc

Section 269 – Unlawful detention of persons lacking capacity etc

Section 270 – Assisting persons to absent themselves without permission

Section 271 – Assisting persons to breach community residence requirement

Section 272 - Obstruction

Section 273 – Offences by bodies corporate

PART 14 – MISCELLANEOUS

Section 274 - Renaming of Mental Health Review Tribunal

Section 275 - Visiting etc powers of medical practitioners in connection with the Tribunal

Section 276 – Power to make regulations about dealing with money and valuables

Section 277 – Contravention of regulations under section 276(2)

Sections 278 and 279 – Expenditure and payment for necessary goods and services

Section 280 – Appointment of approved social workers

Section 281– Miscellaneous functions of HSC trusts

Section 282 – Direct payments in place of provision of care services

Section 283 – International protection of adults

Section 284 – Review of law relating to advance decisions

Sections 285 and 286 – Matters excluded from the Act

Section 287 – Relationship of Act with law relating to murder etc

PART 15 – SUPPLEMENTARY

Section 288 – Codes of practice

Section 289 – Effect of code

Section 290 – Provision of information by HSC trusts and the Department

Section 291 – Provision of facilities by HSC trusts and the Department

Section 292 - Warrants

Section 293 - Warrants: persons liable to be detained under 1983 Act or 2005 Order

Section 294 – Provisions as to custody, detention etc

Section 295 – Retaking of persons escaping from legal custody

These notes refer to the Mental Capacity Act (Northern Ireland) 2016 (c.18)

Section 296 – Special accommodation

Section 297 – Panels constituted to decide applications: general provision

Section 298 – Protection for acts done in pursuance of Part 9 or 10

Section 299 – Risk of serious physical harm to others

Section 300 – Medical practitioners who may make certain medical reports

Section 301 – Documents appearing to be duly made

Section 302 – Regulations

Section 303 – Consequential amendments and repeals

Section 304 – Persons “unconnected with” a person

Section 305 – Meaning of “mental disorder”

Section 306 – Definitions for purposes of Act

Section 307 – Commencement etc

Section 308 – Short title

HANSARD REPORTS