

*These notes refer to the Mental Capacity Act (Northern Ireland)
2016 (c.18) which received Royal Assent on 9 May 2016*

Mental Capacity Act (Northern Ireland) 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10 – Criminal Justice

Chapter 8 – Rights of Review of Detention under Part 10

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

This section provides that where the Tribunal notifies the Department of Justice that it is not satisfied that the prevention of serious harm condition is met in respect of a person who is liable to be detained in hospital, then the Department of Justice must by warrant direct that the person is removed to any prison in which the person might have been detained if the direction had not been given.

The direction will cease to have effect on the person's arrival in prison. In this section, "prison" is to read as a reference to a place where the person would have been liable to be detained had the direction not been made.

The section also provides that the Department of Justice does not have to direct that the person is removed to prison and that the direction will not cease to have effect on the person's arrival in prison, if the Department of Justice instead directs that, with effect from a specified date the person is to be treated as if he or she had been removed to hospital under section 16(2) of the Prison Act (Northern Ireland) 1953, or paragraph 3 of Schedule 2 to the Criminal Justice (Children) (Northern Ireland) Order 1998, and also directs that the relevant direction is to cease to have effect.