

*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 9 – Supplementary

Section 241 - Provision of information

This section contains a power to make regulations that may provide that information is to be given to certain prescribed persons at prescribed times when a public protection order, hospital direction or hospital transfer direction is made, or in such other circumstances where a person is or has been detained by virtue of this Part as may be prescribed in regulations.

Any regulations must include provision for the purpose of ensuring that where a person has been detained as a result of Part 10, that person is, as soon as practicable, made aware of the provision under which he or she has been detained, the effect of that provision and the rights of review by the Tribunal that are available. The regulations must also provide that, where a person is detained under this Part and discharged from being liable to be so detained, the person is informed in writing of that discharge.

Section 242 - Ways in which information must be provided

This section provides for a power to make regulations which provide for the ways in which information that is required to be given under Part 10 or any regulations made under Part 10 must be given to prescribed persons. Regulations may in particular require information to be given orally as well as in written form.

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

This section applies in relation to any provision of Part 10 which provides that the question whether a person may be given treatment while detained in pursuance of a remand, order or direction under Part 10, is to be determined in the same way as if the person was not so detained.

Such a provision does not prevent the person from falling within the reference in section 23 to a person detained under this Act in circumstances amounting

to a deprivation of liberty and accordingly, does not prevent section 20 from applying in relation to the person.

Section 244 - Absence without permission

This section applies when a person who is liable to be detained under a public protection order, hospital direction or hospital transfer direction is absent without permission, fails to return to the establishment in which or she is liable to be detained after a period of leave of absence, or is absent without permission from any place where he or she is required to be as a result of conditions that have been imposed on the grant of the period of leave. If a person is absent or fails to return to an establishment, he or she may be taken into custody and returned to there by any person who is on the staff of the establishment, any constable, any approved social worker or any person who has been authorised to do so by the managing authority of the establishment.

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

This section provides that where an individual is admitted to a hospital or other establishment as a result of the making of a public protection order or hospital direction, any previous public protection order or authority for detention under Part 2 of the Act will cease to have effect.

Section 246 - Appeals: general

This section applies where the court makes a public protection order, a hospital direction or a supervision and assessment order. Where a person appeals to any court against the order or direction, that court has the same powers as if the appeal was also against any further order made by the court. Where the person is a child, any appeal may be brought by the child, on behalf of the child by anyone who has parental responsibility for that child, or any guardian.

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

This section applies where, by virtue of Chapter 6, a court makes a public protection order or supervision and assessment order in respect of a person who is unfit to plead or who is not guilty by reason of insanity.

The section provides that the person has the same rights of appeal as if the order had been made upon his or her conviction. Accordingly, for the purposes of section 8 of the Criminal Appeal (Northern Ireland) Act 1980 and Article 140 of the Magistrates' Courts (Northern Ireland) Order 1981, the order is treated as if it were an order made on conviction, and for the purposes of Article 146 of the 1981 Order, the order is a determination of the proceedings in which the order was made.

On any appeal against the order, the Court of Appeal or county court has the same powers as if the appeal had been against both the finding and the sentence.

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

This section makes provision for an appeal against a hospital direction made by a magistrates’ court.

Section 249 - Requirements as to written evidence

This section provides that where, under Part 10, a court may act on the written evidence of a medical practitioner, a report in writing that is purported to be signed by the medical practitioner may be received in evidence without further proof of signature or that the practitioner has the required qualifications or is of the required description. However, the court may require the practitioner to give oral evidence.

Where a report is tendered in evidence other than by or on behalf of the person who is the subject of that report, then a copy of the report must be given to his or her legal representative. If the person is not legally represented, the substance of the report must be disclosed to him or her or if the person is a child, then the substance of the report must be disclosed to the parent or guardian, if they are present in court. The person may require the medical practitioner to be called to give oral evidence and evidence to rebut the report may be called.

Section 250 - Interpretation of Part 10: children

This section contains provision to aid with interpretation of Part 10 as it relates to children.

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

This section contains provision to aid with the interpretation of any reference to an impairment of or a disturbance in the function of a person’s mind or brain within Part 10.

Section 252 - Interpretation of Part 10: references to disorder

This section contains provision to aid with the interpretation of any reference to a disorder within Part 10.

Section 253 - Interpretation of Part 10: general

This section contains provision to aid with interpretation of Part 10. It also provides that a remand, order, direction of the court is not to be regarded as an act done or decision made for or on behalf of a person for the purposes of section 2 or any other purpose of the Act.