

Status: This version of this cross heading contains provisions that are prospective.
Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, Cross Heading: Public protection orders with and without restrictions is up to date with all changes known to be in force on or before 10 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*



2016 CHAPTER 18

PART 10

CRIMINAL JUSTICE

CHAPTER 2

POWERS OF COURT ON CONVICTION

PROSPECTIVE

Public protection orders with and without restrictions

Public protection orders with and without restrictions

167.—(1) This section applies where—

- (a) a person is convicted before the Crown Court of an offence punishable with imprisonment, other than an offence for which the sentence is fixed by law; or
- (b) a person is convicted by a court of summary jurisdiction of an offence punishable on summary conviction with imprisonment.

(2) The court may—

- (a) if the detention conditions are met, make a public protection order without restrictions;
- (b) if the detention conditions and the restriction condition are met, make a public protection order with restrictions.

For the meaning of “the detention conditions” and “the restriction condition” see sections 168 and 169.

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

Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, Cross Heading: Public protection orders with and without restrictions is up to date with all changes known to be in force on or before 10 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

(3) In this Part (except paragraph (b)) “public protection order without restrictions” means an order which—

- (a) requires that the offender be admitted to and detained in an appropriate establishment which is specified in the order; and
- (b) provides that the order is to be treated as a public protection order without restrictions.

(4) In this Part (except paragraph (b)) “public protection order with restrictions” means an order which—

- (a) requires that the offender be admitted to and detained in an appropriate establishment which is specified in the order; and
- (b) either—
 - (i) provides (with no time limit) that the order is to be treated as a public protection order with restrictions; or
 - (ii) provides that for a specified period the order is to be treated as a public protection order with restrictions.

(5) For the effect of public protection orders without restrictions and public protection orders with restrictions see—

- (a) section 171 (effect of public protection orders with and without restrictions);
- (b) Chapter 3 (detention under public protection orders without restrictions); and
- (c) Chapter 4 (detention under public protection orders with restrictions: restrictions on discharge etc).

(6) In this Part “appropriate establishment” means—

- (a) a hospital; or
- (b) a care home—
 - (i) in which care is provided for people who have an impairment of, or a disturbance in the functioning of, the mind or brain; and
 - (ii) which is designated by the Department of Justice for the purposes of this paragraph.

(7) In this Part “public protection order” (without more) means a public protection order without restrictions or a public protection order with restrictions.

Section 167: the detention conditions

168.—(1) For the purposes of section 167 “the detention conditions” are—

- (a) that the court is satisfied, on the required medical evidence, of the matters mentioned in subsection (2);

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

Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, Cross Heading: Public protection orders with and without restrictions is up to date with all changes known to be in force on or before 10 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

- (b) that, having regard to all the circumstances and in particular to the matters mentioned in subsection (3), the court considers that making an order for the offender to be detained in an appropriate establishment is the most suitable way of dealing with the case; and
 - (c) that the court is satisfied, on the written or oral evidence of a person representing the managing authority of the appropriate establishment specified in the order (“the establishment”), that arrangements have been made for the offender's detention there in pursuance of the order.
- (2) The matters referred to in subsection (1)(a) are—
- (a) that there is an impairment of, or a disturbance in the functioning of, the offender's mind or brain;
 - (b) that appropriate care or treatment is available for the offender in the establishment;
 - (c) that dealing with the offender in any way not involving his or her detention would create a risk, linked to the impairment or disturbance, of serious physical or psychological harm to other persons; and
 - (d) that detaining the offender in the establishment in circumstances amounting to a deprivation of liberty would be a proportionate response to—
 - (i) the likelihood of the harm concerned; and
 - (ii) the seriousness of that harm.
- (3) The matters referred to in subsection (1)(b) are—
- (a) the other available ways of dealing with the offender;
 - (b) the nature of the offence;
 - (c) the past history of the offender;
 - (d) the risk of physical or psychological harm to other persons if the offender were set at large.
- (4) In considering for any purpose of this section whether it would be appropriate to deal with the offender in a way not involving detention, or what risk would be created by dealing with the offender in that way, the court—
- (a) must in particular consider whether if it dealt with the offender in that way it could also make a sexual offences prevention order or violent offences prevention order in respect of the offender; and
 - (b) if it could make such an order, must take into account that fact and the effect of such an order.
- (5) In this section “the required medical evidence” means the written or oral evidence of at least two medical practitioners, including the oral evidence of an approved medical practitioner.
- (6) In this section—

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

Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, Cross Heading: Public protection orders with and without restrictions is up to date with all changes known to be in force on or before 10 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

“sexual offences prevention order” means an order under section 106 of the Sexual Offences Act 2003;

“violent offences prevention order” has the same meaning as in Part 8 of the Justice Act (Northern Ireland) 2015 (see section 76(1)).

Section 167: the restriction condition

169.—(1) For the purposes of section 167 “the restriction condition” is that the court, having regard to all the circumstances and in particular to the matters mentioned in subsection (2), considers that making a public protection order with restrictions (rather than a public protection order without restrictions) is necessary for the protection of the public from serious physical or psychological harm.

(2) The matters are—

- (a) the nature of the offence;
- (b) the past history of the offender;
- (c) the risk of physical or psychological harm to other persons if the offender were set at large.

Further provision about making of public protection orders

170.—(1) Nothing in a provision mentioned in subsection (2) prevents a court from making a public protection order in respect of an offence the sentence for which would otherwise fall to be imposed under that provision.

(2) The provisions referred to in subsection (1) are—

- (a) Article 70(2) of the Firearms (Northern Ireland) Order 2004;
- (b) paragraph 2(4) or (5) of Schedule 2 to the Violent Crime Reduction Act 2006;
- (c) Article 13 or 14 of the Criminal Justice (Northern Ireland) Order 2008;
- (d) section 7 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

(3) Any reference in this section to a sentence falling to be imposed under a provision mentioned in subsection (2) is to be read in accordance with Article 4(2) of the Criminal Justice (Northern Ireland) Order 2008.

(4) Where a public protection order is made in respect of an offence, the court—

- (a) may not pass a custodial sentence or impose a fine or make a probation order in respect of the offence; but
- (b) may make any other order which the court has power to make.

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

Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, Cross Heading: Public protection orders with and without restrictions is up to date with all changes known to be in force on or before 10 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

Effect of public protection orders

171.—(1) Where a court makes a public protection order in respect of a person—

- (a) a constable or any other person directed to do so by the court must take the person to the establishment specified in the order;
 - (b) the managing authority of that establishment must—
 - (i) admit the person; and
 - (ii) detain him or her in accordance with the relevant provisions; and
 - (c) any question whether the person may be given any treatment while detained in pursuance of the order is (subject to section 243) to be determined in the same way as if the person were not so detained.
- (2) In this section “the relevant provisions” means—
- (a) in relation to a public protection order without restrictions, Chapter 3;
 - (b) in relation to a public protection order with restrictions, Chapter 4 (but see sections 172 and 173).

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

172.—(1) This section applies if—

- (a) a public protection order with restrictions is in force in respect of a person; and
- (b) the Department of Justice is satisfied that it is no longer necessary for the protection of the public from serious physical or psychological harm that the person be subject to a public protection order with restrictions.

(2) The Department of Justice may direct that, with effect from a date specified in the direction, the public protection order is to have effect as a public protection order without restrictions (see further section 173).

Effect of ending of restrictions under a public protection order

173.—(1) This section applies where a court has made a public protection order with restrictions in respect of a person and—

- (a) a direction is made under section 172 (ending of restrictions) in respect of the order; or
- (b) the order provides that for a specified period the order is to be treated as a public protection order with restrictions, and that period ends at a time when the order is still in force and when no direction has been made under section 172.

(2) From the end of the restricted period—

- (a) Chapter 4 ceases to apply;

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

Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, Cross Heading: Public protection orders with and without restrictions is up to date with all changes known to be in force on or before 10 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

(b) the order has effect as if it were a public protection order without restrictions requiring the person to be detained in the establishment concerned; and

(c) Chapter 3 applies in relation to the person as if the order had been made (as a public protection order without restrictions) on the last day of the restricted period and as if the person had then been admitted to the establishment concerned in pursuance of the order.

(3) If when the restricted period ends the person is absent with permission given under section 195, the permission, and any accompanying direction under section 195(4), have effect from the end of the restricted period as if given under section 187.

(4) In this section—

“the establishment concerned” means the establishment in which, immediately before the end of the restricted period, the person was liable to be detained under the public protection order with restrictions;

“the restricted period” means—

(a) where subsection (1)(a) applies, the period beginning with the actual making of the public protection order and ending immediately before the date specified in the direction under section 172;

(b) where subsection (1)(b) applies, the period that was specified in the order as the period for which the order should be treated as a public protection order with restrictions.

Status:

This version of this cross heading contains provisions that are prospective.

Changes to legislation:

Mental Capacity Act (Northern Ireland) 2016, Cross Heading: Public protection orders with and without restrictions is up to date with all changes known to be in force on or before 10 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\(b\)](#)