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Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, CHAPTER 3 is up to date with all changes known to be in force on or before 14 May 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

PROSPECTIVE

CHAPTER 3

DETENTION UNDER A PUBLIC PROTECTION ORDER WITHOUT RESTRICTIONS

Detention and discharge

Detention under a public protection order without restrictions

179.—(1) This section applies where—

- (a) a public protection order without restrictions is made in respect of a person under section 167; and
- (b) the person is admitted in pursuance of the order to the establishment specified in the order.

(2) The person may be detained in that establishment for a period not exceeding 6 months beginning with the date of the order.

(3) Subsection (2) is subject to (in particular)—

- (a) section 180 (discharge by responsible medical officer);
- (b) sections 181 to 186 (extension of period for which person liable to be detained);
- (c) section 231 (powers of Tribunal).

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Discharge from detention by responsible medical practitioner

180.—(1) A person who is for the time being liable to be detained under a public protection order without restrictions ceases to be so liable if the responsible medical practitioner (as defined by section 253) makes an order in writing discharging the person from being liable to be detained under the public protection order.

(2) Where—

- (a) a person is liable to be detained under a public protection order without restrictions, and
- (b) the responsible medical practitioner is satisfied that releasing the person from detention in an appropriate establishment would not create a substantial risk to others,

the responsible practitioner must make an order under subsection (1).

(3) For the purposes of subsection (2)(b) releasing the person from detention in an appropriate establishment would create a “substantial risk to others” if—

- (a) it would create a risk, linked to an impairment of or disturbance in the functioning of the person's mind or brain, of serious physical or psychological harm to other persons; and
- (b) the likelihood and seriousness of the harm concerned are such that detaining the person in an appropriate establishment in circumstances amounting to a deprivation of liberty is a proportionate response.

(4) A discharge of a person under this section does not prevent the person from being detained in circumstances amounting to a deprivation of liberty by virtue of Part 2 of this Act (or, if the person is under 16, Part 2 of the Mental Health Order), if the criteria that apply to such detention are met.

Extension of the period of an order

First extension of period of order

181.—(1) This section applies where—

- (a) a person is liable to be detained under a public protection order without restrictions; and
- (b) the initial period of the order has not ended.

(2) The period of the order may be extended for a period of 6 months, beginning immediately after the end of the initial period, by the making of an extension report (see section 183).

(3) In this Chapter “the initial period” of a public protection order without restrictions means the period of 6 months beginning with the date of the order.

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(4) In this Part “the period” of a public protection order without restrictions means the period for which the person to whom the order relates is liable to be detained under the order.

Subsequent extensions

182.—(1) This section applies where—

- (a) the period of a public protection order without restrictions has been extended for a period (“the current extension period”) under a relevant provision; and
- (b) the person to whom the order relates remains liable to be detained under the order.

(2) The period of the order may be further extended, for a period of one year beginning immediately after the end of the current extension period, by the making of an extension report (see section 183).

(3) In subsection (1)(a) “relevant provision” means—

- (a) section 181 (first extension);
- (b) this section; or
- (c) paragraph 8 of Schedule 6 (procedure for extension where responsible social worker not of the requisite opinion).

Sections 181 and 182: extension reports

183.—(1) This section applies for the purposes of sections 181 and 182.

(2) An “extension report”, in relation to a public protection order without restrictions made in respect of a person, is a report in the prescribed form which—

- (a) is made, within the reporting period, by an appropriate medical practitioner who has examined the person within the reporting period and made the report as soon as practicable after that examination;
- (b) states that in the appropriate medical practitioner's opinion the criteria for continuation are met (see section 185);
- (c) includes a statement in the prescribed form, by the responsible social worker, that in the social worker's opinion the criteria for continuation are met; and
- (d) includes any prescribed information.

(3) In this section—

“appropriate medical practitioner” means a medical practitioner who is unconnected with the person and is permitted by regulations under section 300 to make the report;

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“the reporting period” means—

- (a) in the case of an extension under section 181, the last month of the initial period;
- (b) in the case of an extension under section 182, the last two months of the current extension period (within the meaning of that section).

“the responsible social worker” means the approved social worker who is in charge of the person's case.

Extension of period where responsible person not of the requisite opinion

184 Schedule 6 provides a procedure for cases where it is proposed to make an extension under section 181 or 182 but the responsible social worker is not of the opinion that the criteria for continuation are met.

The criteria for continuation

185.—(1) In this Chapter “the criteria for continuation”, in relation to a public protection order without restrictions made in respect of a person, has the meaning given by subsection (2).

(2) The criteria for continuation are—

- (a) that there is an impairment of, or disturbance in the functioning of, the mind or brain of the person;
- (b) that appropriate care or treatment is available for the person in the establishment concerned;
- (c) that failure to detain the person in circumstances amounting to a deprivation of liberty in an appropriate establishment in which appropriate care or treatment is available for the person would create a risk, linked to the impairment or disturbance, of serious physical or psychological harm to other persons; and
- (d) that detaining the person in the establishment concerned, 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) In this section “the establishment concerned” means the establishment in which the person would be liable to be detained if the period of the order were extended.

Extension reports: further provision

186.—(1) This section contains further provisions about extension reports (as defined by section 183).

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(2) For the purposes of that section an extension report is made when the completed report is signed by the medical practitioner making it.

(3) A medical practitioner who makes an extension report must give it to the relevant trust as soon as practicable.

(4) Where an extension report is given to the relevant trust, that trust must as soon as practicable—

- (a) give prescribed information to the person to whom the public protection order relates and any prescribed person; and
- (b) give RQIA a copy of the report.

(5) In this section “the relevant trust” means the HSC trust in whose area the establishment in which the person is liable to be detained under the public protection order is situated.

Permission for absence and transfers

Permission for absence

187.—(1) Where a person is liable to be detained under a public protection order without restrictions, the responsible medical practitioner may—

- (a) give the person permission to be absent from the establishment in which the person is liable to be detained; and
- (b) impose in relation to that permission any conditions that the responsible medical practitioner considers necessary for the health or safety of the person or the protection of other persons.

(2) The permission may be for a specified occasion or a specified period.

(3) Where permission is given for a specified period, the period may be extended by further permission given in the person's absence.

(4) The responsible medical practitioner may, on giving permission, direct that the person is to remain in custody during his or her absence; but such a direction may be given only if it appears to that practitioner that the direction is necessary for the health or safety of the person or the protection of other persons.

(5) Where such a direction is given, the person may be kept in the custody of—

- (a) a person on the staff of the establishment; or
- (b) any other person authorised in writing by the managing authority of the establishment.

(6) Where permission to be absent for more than 28 days is given to a person under this section, or a period for which a person is permitted to be absent is

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extended for more than 28 days, the managing authority of the establishment must—

- (a) within the period of 14 days beginning with the day the permission is given or the day the period is extended (as the case may be), inform RQIA of the address at which the person is staying; and
- (b) notify RQIA of the person's return within the period of 14 days beginning with the day of the return.

(7) Where a person (“A”) is absent in pursuance of permission given under this section, the responsible medical practitioner may, by notice in writing given to A or to the person for the time being in charge of A, revoke the permission and recall A to the establishment if it appears to that practitioner that it is necessary to do so—

- (a) for the health or safety of A;
- (b) for the protection of other persons; or
- (c) because A is not receiving proper care.

(8) But a person may not be recalled under subsection (7) after the person has ceased to be liable to be detained under the order mentioned in subsection (1).

Transfers between hospitals etc

188.—(1) Where a person is liable to be detained under a public protection order without restrictions, the managing authority of the establishment in which the person is liable to be detained may arrange for the transfer of the person from that establishment to another suitable establishment.

(2) Where a person is transferred under this section, section 171(1)(b) applies as if the establishment referred to there were the establishment to which the person has been transferred.

(3) Before a managing authority arranges for the transfer of a person (“A”) under this section, it must if practicable inform—

- (a) if A is 16 or over, any person who is A's nominated person;
- (b) if A is under 16, a person with parental responsibility for A.

(4) Where a person is transferred under this section, the managing authority which arranged the transfer must immediately notify RQIA of the transfer.

(5) The power of a managing authority under this section to arrange for the transfer of a person from one establishment to another is subject to any prescribed conditions.

(6) In this section “suitable establishment” means an appropriate establishment (as defined by section 167) in which appropriate care or treatment is available for the person.

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Effect of custodial sentence

Effect of custodial sentence

189.—(1) This section applies where a person who is liable to be detained under a public protection order without restrictions is detained in custody in pursuance of any sentence or order passed or made by a court in the United Kingdom (including an order committing or remanding the person in custody).

(2) If the person is detained in custody for a period exceeding 6 months, or for successive periods exceeding 6 months in total, the person ceases at the end of the period of 6 months beginning with the first day of the detention in custody to be liable to be detained under the public protection order.

(3) Subsection (4) applies where—

- (a) subsection (2) does not apply; and
- (b) at the time of the person's discharge from custody, the person is liable to be detained under the public protection order.

(4) Section 244 (power to return to hospital etc a person who is absent without permission) applies in relation to the person as if on the day of the discharge from custody the person had absented himself or herself without permission given under section 187 from the establishment where the person is liable to be detained under the public protection order.

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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\(b\)](#)