

*Status: This version of this cross heading contains provisions that are prospective.*  
**Changes to legislation:** *Mental Capacity Act (Northern Ireland) 2016, Cross Heading: Powers of Tribunal as to public protection orders 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 8

###### RIGHTS OF REVIEW OF DETENTION UNDER PART 10

PROSPECTIVE

###### *Powers of Tribunal as to public protection orders*

###### **Powers of Tribunal as to public protection order without restrictions**

**231.—**(1) This section applies where an application or reference to the Tribunal is made under this Chapter by or in respect of a person who is liable to be detained under a public protection order without restrictions.

(2) The Tribunal must either—

(a) discharge the person absolutely (that is, discharge the person from being liable to be detained under the order); or

(b) decide not to discharge the person.

(3) The Tribunal may decide as mentioned in subsection (2)(b) only if it is satisfied that the prevention of serious harm condition is met (see section 233).

###### **Powers of Tribunal as to public protection order with restrictions**

**232.—**(1) This section applies where an application or reference to the Tribunal is made under this Chapter (other than section 237) by or in respect

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of a person who is liable to be detained under a public protection order with restrictions.

(2) The Tribunal must do one of the following—

- (a) discharge the person absolutely (that is, discharge the person from being liable to be detained under the order);
- (b) discharge the person from the establishment concerned subject to conditions (see further section 235);
- (c) decide not to discharge the person.

(3) The Tribunal may decide as mentioned in subsection (2)(c) only if it is satisfied that the prevention of serious harm condition is met (see section 233).

(4) If the Tribunal is not satisfied that that condition is met, it must—

- (a) discharge the person absolutely, if it is satisfied that it would be inappropriate for the person to remain liable to be recalled;
- (b) discharge the person subject to conditions, if it is not so satisfied.

(5) Where—

- (a) the Tribunal makes an order under this section discharging a person subject to conditions, and
- (b) the Tribunal is satisfied that arrangements need to be made in connection with the conditions before the discharge takes effect,

the order may provide that it takes effect from a future date (specified in the order) which in the opinion of the Tribunal will allow those arrangements to be made.

(6) In this section “the establishment concerned” means the establishment in which, immediately before the discharge, the person is liable to be detained under the public protection order.

### **Sections 231 and 232: the prevention of serious harm condition**

**233** For the purposes of sections 231 and 232, the prevention of serious harm condition is that—

- (a) there is an impairment, or disturbance in the functioning of, the person's mind or brain;
- (b) releasing the person from detention in an appropriate establishment would create a risk, linked to the impairment or disturbance, of serious physical or psychological harm to other persons; and
- (c) 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.

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### **Sections 231 and 232: additional powers of Tribunal etc**

**234.—**(1) Where under section 231 or 232 the Tribunal decides not to discharge a person, the Tribunal may, with a view to facilitating the discharge of the person at a future date—

- (a) recommend the taking of specified actions in relation to the person; and
- (b) further consider the person's case in the event of any recommendation not being complied with.

(2) Where the Tribunal further considers a person's case under subsection (1) (b), section 231 or (as the case may be) section 232 applies.

(3) A discharge of a person under this Chapter 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, where the person is under 16, under Part 2 of the Mental Health Order), if the criteria that apply to such detention are met.

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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\(b\)](#)