



## 2016 CHAPTER 18

### **PART 14**

#### MISCELLANEOUS

PROSPECTIVE

#### *The Review Tribunal*

##### **Renaming of Mental Health Review Tribunal**

**274.** The Mental Health Review Tribunal for Northern Ireland constituted under Article 70 of the Mental Health Order is renamed the Review Tribunal.

##### **Visiting etc powers of medical practitioners in connection with the Tribunal**

**275.—**(1) This section applies where a statutory provision provides that a medical practitioner may do anything within this section in relation to a person.

(2) The medical practitioner may, at any reasonable time, visit the person and examine him or her in private.

(3) The medical practitioner may, at any reasonable time, require the production of, examine and take copies of—

- (a) any health record (as defined by section 306) so far as it relates to the person;
- (b) any other records relating to the person's detention or care or treatment in any relevant place.

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*Status: This version of this part contains provisions that are prospective.*  
*Changes to legislation: There are currently no known outstanding effects for the Mental Capacity Act (Northern Ireland) 2016, PART 14 . (See end of Document for details)*

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(4) But if the person has capacity in relation to whether the power under subsection (3) should be exercised, the power may be exercised only with the person's consent.

(5) In this section “relevant place” means—

- (a) a hospital;
- (b) a care home;
- (c) a place of a prescribed description.

PROSPECTIVE

*Expenditure etc*

**Power to make regulations about dealing with money and valuables**

**276.—**(1) In this section “P” means a person who—

- (a) is 16 or over;
- (b) lacks capacity in relation to the management of his or her property or affairs; and
- (c) is an in-patient or resident in—
  - (i) a hospital;
  - (ii) a care home; or
  - (iii) an establishment of a prescribed description.

(2) Regulations may—

- (a) permit the relevant authority to receive and hold money and valuables on behalf of P;
- (b) permit the relevant authority to spend that money or dispose of those valuables for the benefit of P;
- (c) impose requirements as to the way in which money or valuables received under the regulations is to be held;
- (d) require the relevant authority to keep prescribed accounts and records in relation to the management of P's money and valuables;
- (e) require the relevant authority to make an annual return containing prescribed information to RQIA.

(3) Regulations under subsection (2) may not—

- (a) permit the relevant authority to receive or hold on behalf of any one person money or valuables exceeding £20,000 in total without the consent of RQIA;

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(b) permit the relevant authority to receive from a person (“B”), and hold on P’s behalf, money or valuables which B does not have power to give to the relevant authority to hold on P’s behalf;

(c) permit the relevant authority to do anything which is inconsistent with a relevant decision.

(4) The Department may by regulations amend subsection (3)(a) so as to alter the sum mentioned there.

(5) In consequence of this section, the following are not acts to which section 9 (protection from certain liability) applies—

(a) the receiving and holding by a relevant authority of money and valuables on behalf of P;

(b) the spending of that money, or the disposing of those valuables, by a relevant authority for the benefit of P.

(6) In this section—

“relevant authority” means—

(a) in relation to a person in a hospital or care home, the managing authority of the hospital or care home;

(b) in relation to a person in an establishment of a description prescribed under subsection (1)(c)(iii), the prescribed person.

“relevant decision” means a decision concerning P’s property or affairs which —

(a) is made by the court on P’s behalf under section 113(2)(a);

(b) is made in accordance with this Act by an attorney under a lasting power of attorney granted by P and is within the scope of the attorney’s authority;

(c) is made in accordance with the Enduring Powers of Attorney (Northern Ireland) Order 1987 by an attorney under an enduring power of attorney granted by P, and is within the scope of the attorney’s authority; or

(d) is made in accordance with this Act by a deputy appointed for P by the court and is within the scope of the deputy’s authority.

### **Contravention of regulations under section 276(2)**

**277.—**(1) Regulations under section 276(2) may provide that a contravention of any prescribed provision of the regulations is an offence.

(2) A person guilty of an offence under the regulations is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) Proceedings in respect of an offence under the regulations may be brought only—

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- (a) by RQIA; or
- (b) by, or with the consent of, the Director of Public Prosecutions for Northern Ireland.

(4) Proceedings for an offence under the regulations may be brought within a period of 6 months from the date on which evidence sufficient in the opinion of the prosecution to warrant the proceedings came to its knowledge; but no proceedings may be brought by virtue of this subsection more than 3 years after the commission of the offence.

### **Expenditure**

**278.**—(1) This section applies where—

- (a) an act mentioned in section 9(1) is (because of compliance with section 9(1)(c) and (d) and any of the additional safeguard provisions that are relevant) an act to which section 9(2) applies; and
- (b) the act involves expenditure.

(2) It is lawful for D—

- (a) to pledge P's credit for the purpose of the expenditure; and
- (b) to apply money in P's possession for meeting the expenditure.

(3) If the expenditure is borne for P by D, it is lawful for D—

- (a) to reimburse himself or herself out of money in P's possession; or
- (b) to be otherwise indemnified by P.

(4) Subsections (1) to (3) do not affect any power under which (apart from those subsections) a person—

- (a) has lawful control of P's money or other property; and
- (b) has power to spend money for P's benefit.

(5) In this section “additional safeguard provisions” has the same meaning as in section 9.

### **Payment for necessary goods and services**

**279.**—(1) If necessary goods or services are supplied to a person who lacks capacity to contract for the supply, that person must pay a reasonable price for them.

(2) In subsection (1) “necessary” means suitable to a person's condition in life and to that person's actual requirements at the time when the goods or services are supplied.

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## PROSPECTIVE

*Miscellaneous functions of HSC trusts***Appointment of approved social workers**

**280.**—(1) In this Act “approved social worker” means a social worker appointed by an HSC trust under this section.

(2) An HSC trust must appoint a sufficient number of social workers under this section for the purpose of performing the functions conferred on approved social workers by or under this Act.

(3) An HSC trust may appoint a person under this section only if the person is approved by the trust as having appropriate competence in dealing with people who lack capacity.

(4) In determining whether to approve a person as having such competence, an HSC trust must have regard to such matters as the Department may direct.

(5) Any power under this Act to prescribe a description of person includes power to prescribe approved social workers or approved social workers of a particular description.

**Miscellaneous functions of HSC trusts**

**281.**—(1) An HSC trust may, to such extent as may be prescribed or approved by the Department—

- (a) pay to persons who lack capacity, and who are receiving care or treatment in any place, such amounts as the trust considers appropriate in respect of those persons' occasional personal expenses where it appears to the trust that those persons would otherwise be without resources to meet those expenses;
- (b) provide financial assistance for any person who is absent with permission from a place of detention, where the needs of the person are such that such assistance is necessary to give full effect to treatment provided to the person or to provide for the person's settlement or resettlement in the community;
- (c) contribute to the maintenance of persons who are subject to community residence requirements (as defined by section 31);
- (d) pay to persons who by virtue of this Act are subject to requirements to attend for the purpose of any treatment, education, occupation or training amounts in respect of those persons' expenses in complying with such requirements;

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(e) provide, or co-operate in the provision of, suitable training or occupation (whether in premises provided by the Department or elsewhere) for persons who lack capacity.

(2) In subsection (1)(b) “place of detention” means a place where the person is detained, by virtue of this Act, in circumstances amounting to a deprivation of liberty.

PROSPECTIVE

*Direct payments in place of provision of care services*

**Direct payments in place of provision of care services**

**282.**—(1) Section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002 (direct payments in place of provision of care services) is amended as follows.

(2) After subsection (2) insert—

“(2A) Regulations may make provision for and in connection with requiring or authorising an authority in the case of a person who falls within subsection (2B) (“P”) to make to a suitable person, with the appropriate consent, such payments as the authority may determine in accordance with the regulations in respect of that person's securing the provision for P of the service mentioned in subsection (2B)(a).

(2B) A person falls within this subsection if—

- (a) the authority has decided under the 1972 Order that his or her needs call for the provision by it of a particular social care service;
- (b) he or she lacks capacity to consent to the making of payments, under regulations under this section, in respect of securing the provision for him or her of that service or is reasonably believed by the authority to lack that capacity; and
- (c) he or she is of a prescribed description.

(2C) In subsection (2A) “a suitable person” means—

- (a) where there is an attorney or deputy for P—
  - (i) the attorney or deputy; or
  - (ii) any individual or other person (other than P) who is considered by the attorney or deputy and by the authority to be suitable to receive the payments in respect of securing the provision for P of the service concerned;

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(b) where there is no attorney or deputy for P, any individual or other person (other than P) who is considered by the authority to be suitable to receive those payments.

(2D) In subsection (2A) “the appropriate consent” means—

(a) the consent of the person to whom the payments are made by the authority; and

(b) where there is an attorney or deputy for P and the person mentioned in paragraph (a) is not the attorney or deputy, the consent of the attorney or deputy.

(2E) In subsection (2B) “lacks capacity” has the same meaning as in the Mental Capacity Act (Northern Ireland) 2016 (“the Mental Capacity Act”); and sections 1 and 5 of that Act (principles relating to capacity) apply in relation to regulations under subsection (2A) as they apply in relation to that Act.

(2F) For the purposes of subsections (2C) and (2D)—

(a) there is an attorney for P if there is at least one person who is an attorney under a lasting power of attorney or enduring power of attorney (within the meaning of the Mental Capacity Act) granted by P whose powers as attorney consist of or include such powers as may be prescribed;

(b) there is a deputy for P if there is at least one person who is a deputy appointed for P under section 113(2)(b) of that Act and whose powers as deputy consist of or include such powers as may be prescribed.

(2G) Where there are two or more persons each of whom is an attorney for P for the purposes of subsections (2C) and (2D), references in those subsections to “the attorney” are to be read—

(a) if the powers prescribed under subsection (2F)(a) are exercisable by the attorneys jointly and severally, as meaning any of the attorneys;

(b) otherwise, as meaning the attorneys.

(2H) Where there are two or more persons each of whom is a deputy for P for the purposes of subsections (2C) and (2D), references in those subsections to “the deputy” are to be read—

(a) if the powers prescribed under subsection (2F)(b) are exercisable by the deputies jointly and severally, as meaning any of the deputies;

(b) otherwise, as meaning the deputies.”.

(3) In subsection (3)—

(a) in paragraph (a)—

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- (i) for “to a person” substitute “ to or in respect of a person ”; and
- (ii) after “(2)(a) or (b)” insert “ or (2B)(a) ”;
- (b) in paragraph (c)(i) after “the payee's means” insert “ (in the case of payments under subsection (1)) or the means of P (in the case of payments under subsection (2A)) ”;
- (c) in paragraph (d), after “payee” insert “ (in the case of payments under subsection (1)) or P or the payee (in the case of payments under subsection (2A)) ”;
- (d) in paragraph (e), for “repayment (whether by the payee or otherwise) of the whole or part of the direct payments)” substitute “ the whole or part of the direct payments to be repaid, whether by the payee (in the case of payments under subsection (1)) or by P or the payee (in the case of payments under subsection (2A)) or otherwise ”;
- (e) in paragraph (g) after “(2)(a) or (b)” insert “ or (2B)(a) ”;
- (f) after paragraph (h) insert—
  - “(j) requiring or authorising the authority to have regard to prescribed matters when making a decision for the purposes of a provision of the regulations;
  - (k) requiring or authorising the authority to take prescribed steps before or after the authority makes a decision for the purposes of a provision of the regulations;
  - (l) specifying circumstances in which a person who fell within paragraph (b) of subsection (2B) but no longer does so must or may be treated as falling within that paragraph for the purposes of this section or of the regulations.”.
- (4) In subsection (4)(b) after “the payee” insert “ (in the case of payments under subsection (1)) or P (in the case of payments under subsection (2A)) ”.
- (5) In subsection (5)—
  - (a) in paragraph (a), for “the payee will himself” substitute “ the payee (in the case of payments under subsection (1)) or P (in the case of payments under subsection (2A)) will ”;
  - (b) in paragraph (b), after “the payee” insert “ or P ”.
- (6) After subsection (6) insert—
  - “(6A) Conditions that for the purposes of subsection(3)(d) are to be taken to be conditions in relation to direct payments include, in particular, conditions relating to—
    - (a) the securing of the provision of the service concerned;
    - (b) the provider of the service;

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- (c) the person to whom payments are made in respect of the provision of the service; or
- (d) the provision of the service.”.

PROSPECTIVE

### *International protection of adults*

#### **International protection of adults**

##### **283.** Schedule 9—

- (a) gives effect in Northern Ireland to the Convention on the International Protection of Adults signed at the Hague on 13 January 2000 (in so far as this Act does not otherwise do so); and
- (b) makes related provision as to the private international law of Northern Ireland.

### *Advance decisions to refuse treatment*

#### **Review of law relating to advance decisions**

**284.**—(1) Before the third anniversary of the day this section comes into operation, the Department must—

- (a) review the law relating to advance decisions to refuse treatment; and
  - (b) produce a report setting out the conclusions reached on the review (including any proposals for changes to that law).
- (2) The Department must lay a copy of the report before the Assembly.

PROSPECTIVE

### *Matters excluded from Act*

#### **Family relationships etc**

**285.**—(1) Nothing in this Act permits a decision on any of the following matters to be made on behalf of a person—

- (a) consenting to marriage or a civil partnership;
- (b) consenting to have sexual relations;

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- (c) consenting to a decree of divorce or judicial separation being granted on the basis of two years' separation;
  - (d) consenting to a dissolution order or separation order being made in relation to a civil partnership on the basis of two years' separation;
  - (e) agreeing for any purposes of the Adoption (Northern Ireland) Order 1987 to the making of an adoption order;
  - (f) discharging parental responsibilities in matters not relating to a child's property;
  - (g) giving a consent under the Human Fertilisation and Embryology Act 1990;
  - (h) giving a consent under the Human Fertilisation and Embryology Act 2008.
- (2) In subsection (1)(e) “adoption order” means—
- (a) an order under Article 12(1) of the Adoption (Northern Ireland) Order 1987; or
  - (b) any other order referred to by the definition of “adoption order” in Article 2(2) of that Order.

### **Voting rights**

**286.**—(1) Nothing in this Act permits a decision on voting at an election for any public office, or at a referendum, to be made on behalf of a person.

(2) In this section “referendum” means a referendum or other poll held, in pursuance of any statutory provision, on one or more questions or propositions specified in or in accordance with any such provision.

PROSPECTIVE

### *Declaratory provision*

### **Relationship of Act with law relating to murder etc**

**287.** For the avoidance of doubt, it is hereby declared that nothing in this Act is to be taken to affect the law relating to murder or manslaughter or the operation of section 13 of the Criminal Justice Act (Northern Ireland) 1966 (encouraging or assisting suicide).

**Status:**

This version of this part contains provisions that are prospective.

**Changes to legislation:**

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