



2016 CHAPTER 18

**PART 15**

SUPPLEMENTARY

PROSPECTIVE

*Codes of practice*

**Codes of practice**

**288.**—(1) The Department must prepare and issue one or more codes of practice—

- (a) for the guidance of persons assessing whether a person who is 16 or over has capacity in relation to any matter;
- (b) for the guidance of persons acting in connection with the care, treatment or personal welfare of another person who is 16 or over (or is under 16 and is detained under Part 9 or being dealt with under Part 10);
- (c) for the guidance of nominated persons;
- (d) for the guidance of independent mental capacity advocates;
- (e) for the guidance of panels constituted under Part 2;
- (f) for the guidance of persons appointed as attorneys, or as replacements for attorneys, by a lasting power of attorney or an instrument executed with a view to creating such a power;
- (g) for the guidance of deputies appointed by the court;

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- (h) for the guidance of persons carrying out research in reliance on any provision made by or under this Act (and otherwise with respect to Part 8);
  - (i) with respect to such other matters concerned with this Act as the Department considers appropriate.
- (2) A code under subsection (1)(a) must include guidance in relation to sections 1(4) and 5 (help and support to enable a person to make a decision).
- (3) A code under subsection (1)(b) may in particular include guidance—
- (a) for HSC trusts, medical practitioners, staff of hospitals and care homes, approved social workers and members of other professions, in relation to—
    - (i) serious interventions, or serious interventions of particular descriptions, in respect of persons lacking capacity;
    - (ii) anything falling to be done where such an intervention is proposed;
  - (b) with respect to sections 65 to 67 (emergency situations).
- (4) The Department may from time to time revise a code issued under this section.
- (5) The Department may delegate the preparation or revision of the whole or any part of a code under this section so far as the Department considers appropriate.
- (6) Before preparing or making any alteration in a code under this section, the Department must consult such bodies as appear to it to be concerned (and must in particular consult the Department of Justice if the code contains specific provision about persons detained under Part 9 or persons being dealt with under Part 10).
- (7) The Department must lay before the Assembly copies of any code under this section and of any alteration in such a code; and if within the statutory period the Assembly passes a resolution requiring the code or alteration to be withdrawn the Department must withdraw the code or alteration and, where it withdraws the code, must prepare a code in substitution for the one withdrawn.
- (8) The Department must publish any code prepared or revised under this section.
- (9) For the purposes of this section a person is “being dealt with under Part 10” if—
- (a) the person is remanded to hospital under Chapter 1 of Part 10; or
  - (b) a public protection order, hospital direction, interim detention order or hospital transfer direction has been made in respect of the person and remains in force.
- (10) In this section—

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“hospital direction”, “hospital transfer direction”, “interim detention order” and “public protection order” have the same meaning as in Part 10 (see section 253);

“serious intervention” is to be read in accordance with section 63.

### **Effect of code**

**289.**—(1) A person acting in any of the ways mentioned in subsection (2) in relation to a person who is 16 or over and lacks capacity must have regard to any relevant code of practice.

(2) The ways of acting are—

- (a) in a professional capacity;
- (b) for remuneration;
- (c) as an independent mental capacity advocate;
- (d) as an attorney under a lasting power of attorney or an enduring power of attorney;
- (e) as a deputy appointed by the court;
- (f) as a person carrying out research in reliance on any provision made by or under this Act (see Part 8).

(3) If it appears to a court or tribunal conducting any criminal or civil proceedings that—

- (a) a provision of a code of practice, or
- (b) a failure to comply with a code of practice,

is relevant to a question arising in the proceedings, the provision or failure must be taken into account in deciding the question.

(4) In this section “code of practice” means a code of practice under section 288.

PROSPECTIVE

### *Provision of information and facilities*

#### **Provision of information by HSC trusts and the Department**

**290.**—(1) An HSC trust, and the Department, must provide to a relevant authority such returns, reports and other information as the relevant authority may require for the performance of its functions under this Act.

(2) In subsection (1) “relevant authority” means—

- (a) the High Court;

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- (b) the Public Guardian;
- (c) the Tribunal; or
- (d) the Attorney General.

### **Provision of facilities by HSC trusts and the Department**

**291.**—(1) An HSC trust must provide to a relevant authority such facilities as are necessary to enable the relevant authority to perform its functions under this Act.

(2) In subsection (1) “relevant authority” means—

- (a) the High Court;
- (b) the Public Guardian; or
- (c) the Tribunal.

(3) The Department must provide, to the Tribunal, such facilities as are necessary to enable the Tribunal to perform its functions under this Act.

PROSPECTIVE

### *Warrants*

#### **Warrants**

**292.**—(1) This section applies if it appears to a lay magistrate, on complaint on oath made by an officer of an HSC trust or a constable—

- (a) that there is reasonable cause to believe that a relevant person is to be found on any premises;
- (b) that admission to the premises has been refused or that a refusal of such admission is apprehended; and
- (c) that it is reasonable in the circumstances to issue a warrant.

(2) The lay magistrate may issue a warrant authorising any constable accompanied by a medical practitioner to enter the premises, if need be by force, and remove the relevant person.

(3) A constable executing a warrant under subsection (2) may be accompanied by an approved social worker (as well as a medical practitioner).

(4) It is not necessary to name the relevant person in any complaint or warrant under this section.

(5) In this section “relevant person” means a person who—

- (a) by virtue of this Act, is liable to be detained in a place in circumstances amounting to a deprivation of liberty; and

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(b) is, by virtue of this Act, to be taken to that place.

### **Warrants: persons liable to be detained under 1983 Act or 2005 Order**

**293.**—(1) This section applies if it appears to a lay magistrate, on complaint on oath made by an authorised person—

- (a) that there is reasonable cause to believe that a person who may be taken into custody by virtue of a provision mentioned in subsection (3)(a) or (b) (a “relevant person”) is to be found on any premises, and
- (b) that admission to the premises has been refused or that a refusal of such admission is apprehended.

(2) The lay magistrate may issue a warrant authorising any constable accompanied by a medical practitioner to enter the premises, if need be by force, and remove the relevant person.

(3) In this section “authorised person” means a person authorised by or under—

- (a) section 88 of the Mental Health Act 1983, or
- (b) article 8 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005,

to take any relevant person into custody in Northern Ireland.

PROSPECTIVE

### *Custody, detention etc*

#### **Provisions as to custody, detention etc**

**294.**—(1) A person who is—

- (a) being removed from any place, or taken to or detained in any place, by virtue of Part 9 (power of police to remove person to place of safety), or
- (b) being taken to or detained in any place by virtue of Part 10 (criminal justice),

is to be treated as being in legal custody.

(2) Subsection (3) applies to a constable or other person (“the relevant person”) who is required or authorised by virtue of Part 9 or 10 to—

- (a) take a person into custody;
- (b) take a person to any place; or
- (c) detain a person in any place.

(3) For the purposes of—

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- (a) taking the person into custody,
- (b) taking the person to the place, or
- (c) detaining the person in the place,

the relevant person has all the powers, authorities, protections and privileges which a constable has within the area for which he or she acts as constable.

(4) Nothing in subsection (3) affects any other power, or authority to do an act, that the relevant person (or any other person) may have.

### **Retaking of persons escaping from legal custody**

**295.**—(1) Where a person (“P”) who is in legal custody by virtue of section 294 escapes, P may be retaken into legal custody by any person mentioned in subsection (2).

(2) The persons are—

- (a) the person who had custody of P immediately before the escape;
- (b) any constable or approved social worker;
- (c) if P was liable to be detained in an appropriate establishment by virtue of Part 9 or 10 at the time of the escape (or was, under Part 9 or 10, being taken to or from an appropriate establishment)—
  - (i) any person on the staff of the appropriate establishment;
  - (ii) any person authorised in writing by the managing authority of the appropriate establishment.

(3) But P may not be retaken under this section after P has ceased to be liable to be detained by virtue of Part 9 or 10.

(4) Nothing in subsection (3) prevents section 139 (power to remove person from public place to place of safety) from applying in relation to P at any time after the escape.

(5) In this section “appropriate establishment” has the meaning given by section 167.

(6) Nothing in subsection (1) affects any other power, or authority to do an act, that a person mentioned in subsection (2) (or any other person) may have.

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PROSPECTIVE

### *Special accommodation*

#### **Special accommodation**

**296.—**(1) A relevant department may provide such accommodation as appears to it to be necessary for persons who—

- (a) are detained by virtue of this Act; and
- (b) in the opinion of the relevant department, require care or treatment under conditions of special security for the protection of other persons.

(2) In this section “relevant department” means—

- (a) the Department;
- (b) the Department of Justice.

PROSPECTIVE

### *Panels*

#### **Panels constituted to decide applications: general provision**

**297.—**(1) In this section “panel” means a panel constituted under—

- (a) Schedule 1 (applications for authorisation);
- (b) Schedule 3 (applications for extension of period of authorisation);
- (c) Schedule 6 (applications for extension of period of public protection order without restrictions).

(2) A panel must have 3 members (all of whom must be present during any proceedings of the panel).

(3) Regulations may make further provision about the membership or procedure of panels, including—

- (a) provision requiring panels to give prescribed persons the opportunity to make representations;
- (b) provision enabling a panel to request prescribed persons to provide information to the panel or attend before the panel to give oral evidence;
- (c) provision about steps that a panel is, or is not, to be regarded as required by section 7 to take where it has to make a determination of what would be in a person's best interests;
- (d) provision for cases where a panel cannot reach a unanimous decision.

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- (4) The Department may by regulations amend any of the following—
- (a) the definition of “the permitted period” in paragraph 19(2) of Schedule 1;
  - (b) any period mentioned in paragraph 20(2)(b) or (3)(b) of that Schedule;
  - (c) the definition of “the permitted period” in paragraph 9(2) of Schedule 3;
  - (d) the definition of “the permitted period” in paragraph 9(2) of Schedule 6.

PROSPECTIVE

*Protection from proceedings*

**Protection for acts done in pursuance of Part 9 or 10**

**298.**—(1) No civil proceedings may be brought against a person in any court in respect of a relevant act without the leave of the High Court.

(2) No criminal proceedings may be brought against a person in any court in respect of a relevant act except by, or with the consent of, the Director of Public Prosecutions for Northern Ireland.

(3) This section does not apply to proceedings against the Department, the Regional Board or an HSC trust. (4) In this section “relevant act” means any act purporting to be done in pursuance of any provision of Part 9 or 10.

*Other supplementary provision*

PROSPECTIVE

**Risk of serious physical harm to others**

**299.**—(1) Subsection (2) applies where for any purpose of this Act a determination falls to be made of whether doing a particular thing, or failure to do a particular thing, in relation to a person would create a risk, or any particular level of risk, of serious physical harm to other persons.

(2) In determining that question, regard may be had only to evidence—

- (a) that the person has behaved violently towards other persons; or
- (b) that the person has behaved himself or herself in such a way that other persons were placed in reasonable fear of serious physical harm to themselves.



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## PROSPECTIVE

**Medical practitioners who may make certain medical reports**

**300.**—(1) In this section a “medical report” means—

- (a) a report under section 39;
- (b) a report under section 183;
- (c) a medical report under paragraph 7 of Schedule 1;
- (d) a medical report under paragraph 4 of Schedule 2;
- (e) a medical report under paragraph 5 of Schedule 3;
- (f) a medical report under paragraph 5 of Schedule 6.

(2) Regulations may make provision prescribing the descriptions of medical practitioners who may make medical reports.

(3) The regulations may in particular do any of the following—

- (a) prescribe conditions that must be met by a medical practitioner making a medical report;
- (b) provide that, except in any prescribed circumstances, the medical practitioner who makes a medical report—
  - (i) must be of a prescribed description; or
  - (ii) must not be of a prescribed description.

(4) Where any provision of this Act confers power to prescribe conditions that must be met by a medical practitioner making a report or certifying any matter, a condition that may be prescribed is that the practitioner is a person approved by RQIA for prescribed purposes.

## PROSPECTIVE

**Documents appearing to be duly made**

**301.** Regulations may make provision enabling documents of a prescribed description which appear to be duly made in pursuance of a prescribed provision of this Act to be acted on without further proof of prescribed matters.

**Regulations**

**302.**—(1) Regulations to which subsection (3) applies may be made only if a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.

(2) Any other regulations under this Act are subject to negative resolution.

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(3) This subsection applies to—

- (a) regulations under section 10(5), 17(6), 21(2), 20(1), 36(4)(b), 48(5), 61(2), 63(3), 96, 98(9), 117(11), 138, 146(2), 160(2), 229(6), 268(5), 276(4), 297(4) or 306(3), paragraph 14(1) of Schedule 7 or paragraph 31 of Schedule 9;
- (b) regulations under section 262 or 263 that amend this Act;
- (c) regulations under section 276(2) containing any provision that creates an offence;
- (d) regulations under section 303(3) that amend the text of Northern Ireland legislation or an Act of Parliament;
- (e) any other regulations under this Act that are contained in a statutory rule that contains regulations within any of paragraphs (a) to (d).

(4) Regulations under this Act may contain incidental, supplementary, transitional, transitory or saving provision.

### **Consequential amendments and repeals**

**303.**—(1) Schedule 10 contains consequential amendments.

(2) The provisions listed in Schedule 11 are repealed to the extent specified there.

(3) The Department or the Department of Justice may by regulations make such other amendments of statutory provisions (passed or made before, or in the same session as, this Act) as it considers appropriate in consequence of this Act.

#### **Annotations:**

#### **Commencement Information**

**II** [S. 303](#) partly in operation; [s. 303\(3\)](#) in operation at 10.5.2016 see [s. 307\(1\)](#)

### *Definitions*

#### **Persons “unconnected with” a person**

**304.**—(1) For the purposes of this Act a person (“B”) is “unconnected with” another person (“A”) unless—

- (a) B receives any payments made on account of A's maintenance, or has an interest in the receipt of any such payments;
- (b) B is A's spouse, civil partner, parent, child, brother, sister, mother-in law, father-in law, son-in-law, daughter-in-law, sister-in-law or brother-in-law;
- (c) B is living with A as if he or she were A's spouse or civil partner and has been so living for a period of at least 6 months;

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- (d) B is someone with whom A lives and has been living for a period of at least 5 years; or
- (e) A is living in a relevant place and, at the time when A started living in the relevant place—
  - (i) B had been living with A as if he or she were A's spouse or civil partner for a period of at least 6 months; or
  - (ii) B was a person with whom A had been living for a period of at least 5 years.
- (2) In subsection (1)(e) “relevant place” means—
  - (a) a hospital;
  - (b) a care home; or
  - (c) a place of a prescribed description.

### **Meaning of “mental disorder”**

**305.**—(1) In this Act “mental disorder” means any disorder or disability of the mind.

(2) Dependence on alcohol or drugs is not to be considered a disorder or disability of the mind for the purposes of subsection (1) (but this does not prevent a disorder or disability of the mind that is related to alcohol or drugs, but is not dependence, from being so considered).

### **Definitions for purposes of Act**

**306.**—(1) In this Act—

“the 2003 Order” means the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;

“approved social worker” has the meaning given by section 280;

“the area” of an HSC trust means the area prescribed by regulations as the area of that trust for the purposes of this Act;

“bankrupt”: references to an individual's being bankrupt include the individual's being subject to a bankruptcy restrictions order, or interim bankruptcy restrictions order, under the Insolvency (Northern Ireland) Order 1989;

“best interests”—

(a) in relation to a person who is 16 or over, is to be read in accordance with section 7 (subject to paragraph (b));

(b) in Part 9, is to be read in accordance with section 157;

“capacity”: see “lacks capacity”;

“care home” means—

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- (a) a residential care home, as defined by Article 10 of the 2003 Order, in respect of which a person is registered under Part 3 of that Order; or
- (b) a nursing home, as defined by Article 11 of that Order, in respect of which a person is registered under Part 3 of that Order;

“care or treatment” includes care and treatment;

“condition”, in the context of any reference to treatment for a condition or medication for a condition, includes pain;

“the court” (except in Part 10) means the High Court;

“Court Visitor” has the meaning given by section 130;

“the Department” means the Department of Health;

“deprivation of liberty” means a deprivation of liberty within the meaning of Article 5(1) of the Human Rights Convention (and for the purposes of any reference to a deprivation of liberty, it does not matter whether the deprivation of liberty is done by a public authority or not);

“deputy” is to be read in accordance with section 113(2)(b);

“enduring power of attorney” means a power of attorney that is an enduring power within the meaning of the Enduring Powers of Attorney (Northern Ireland) Order 1987;

“examination”, in relation to a person, includes an interview with the person for the purpose of ascertaining the person's mental or physical condition or of ascertaining any other matter for the purposes of this Act;

“harm”—

- (a) except in references to physical or psychological harm, means harm of any kind whether physical or non-physical; and
- (b) except in references to physical harm, includes harm to a person resulting from that person's harming others;

[<sup>F1</sup>“health record” has the meaning given by section 205 of the Data Protection Act 2018;]

“hospital” means any establishment whose main purpose is to provide treatment to people with illness and which—

- (a) receives such people as in-patients; and
- (b) is managed by an HSC trust or is an independent hospital in respect of which a person is registered under Part 3 of the 2003 Order;

“HSC trust” means a Health and Social Care trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991 (but does not include the Northern Ireland Ambulance Service Health and Social Care Trust);

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“the Human Rights Convention” has the same meaning as “the Convention” in the Human Rights Act 1998;

“illness” includes any injury, disorder or disability requiring treatment or nursing (see subsection (4));

“independent hospital” has the same meaning as in the 2003 Order;

“independent mental capacity advocate” has the meaning given by section 86;

“lacks capacity”: any reference to a person who is 16 or over lacking capacity in relation to a matter is to be read in accordance with sections 1 and 3 to 6, and any reference to such a person having capacity in relation to a matter is to be read accordingly;

“lasting power of attorney” has the meaning given by section 97;

“liable to be detained”: any reference to a person who, by virtue of this Act, is liable to be detained in a place in circumstances amounting to a deprivation of liberty includes—

- (a) person who is detained in the place in such circumstances, where section 9(2) applies in relation to the detention, and
- (b) a person who would fall within paragraph (a) if he or she were so detained,

whether or not an authorisation under Schedule 1 or 2 is in force in respect of the person;

“life-sustaining treatment” means treatment that in the view of a person providing health care for the person concerned is necessary to sustain life;

“the managing authority”, in relation to a hospital or care home, means—

- (a) in relation to a hospital managed by an HSC trust, that trust;
- (b) in relation to an independent hospital, a person registered under Part 3 of the 2003 Order in respect of the hospital;
- (c) in relation to a care home, a person registered under Part 3 of the 2003 Order in respect of the care home;

but paragraphs (b) and (c) are subject to any regulations made under subsection (6).

“making decisions”: references to making decisions, in relation to an attorney under a lasting power of attorney or a deputy appointed by the court, include (where appropriate) acting on decisions made;

“medical practitioner” means a fully registered person within the meaning of the Medical Act 1983 who holds a licence to practise under that Act;

“mental disorder” has the meaning given by section 305;

“the Mental Health Order” means the Mental Health (Northern Ireland) Order 1986;

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- “nominated person” has the meaning given by section 69;
- “parental responsibility” has the same meaning as in the Children (Northern Ireland) Order 1995 (see Article 6 of that Order);
- “prescribed” is to be read in accordance with subsection (7);
- “property” includes any thing in action and any interest in real or personal property;
- “psychosurgery” means any surgical operation for destroying brain tissue or for destroying the functioning of brain tissue;
- “public authority” has the same meaning as in the Human Rights Act 1998;
- “Public Guardian” has the same meaning as in section 125;
- “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property;
- “the Regional Board” means the Regional Health and Social Care Board established by section 7 of the Health and Social Care (Reform) Act (Northern Ireland) 2009;
- “regulations” is to be read in accordance with subsection (7);
- “RQIA” means the Health and Social Care Regulation and Quality Improvement Authority;
- “rules of court” means rules of court made under section 55 of the Judicature (Northern Ireland) Act 1978;
- “statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954;
- “taking” a person to a place includes returning or transferring the person to that place;
- “treatment” includes any examination, any procedure (diagnostic or otherwise), and any therapy;
- “the Tribunal” means the Review Tribunal constituted under Article 70 of the Mental Health Order;
- “trust corporation” has the same meaning as in the Trustee Act (Northern Ireland) 1958;
- “unconnected with”, in relation to a person, is to be read in accordance with section 304;
- “working day” means a day that is not—
- (a) a Saturday or Sunday; or
  - (b) a public holiday.

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(2) Regulations prescribing the area of an HSC trust for the purposes of this Act may prescribe, as that area, a specified area and specified premises which are outside that specified area.

(3) The Department may by regulations amend the definition of “HSC trust” in subsection (1).

(4) For the purposes of the definition of “illness” in subsection (1), a disorder, disability or injury of a person “requires” treatment or nursing if it, or any of its symptoms or manifestations, could be alleviated or prevented from worsening by treatment or nursing.

(5) Any reference in this Act to a person who “lacks capacity” (without more) is to be read, in relation to a person who is 16 or over, as a reference to a person who lacks capacity in relation to a matter that is relevant for the purposes of the provision containing the reference.

(6) Regulations may provide that for the purposes of any prescribed provision of this Act, “the managing authority”, in relation to an independent hospital or a care home (“the establishment”)—

- (a) means the person registered as the person who manages the establishment;
- (b) means the person registered as the person who carries on the establishment;
- or
- (c) means both the person mentioned in paragraph (a) and the person mentioned in paragraph (b).

“Registered” here means registered under Part 3 of the 2003 Order.

(7) In this Act “regulations” and “prescribed” mean—

- (a) in section 126, Part 9 and Part 10 (except section 229), regulations made by the Department of Justice, and prescribed by such regulations;
- (b) in any other provision of this Act (except sections 262, 263, 302, 303 and 307 and this subsection), regulations made by the Department, and prescribed by such regulations.

(8) Part 1 (principles) applies in relation to regulations made under any provision of this Act as it applies in relation to that provision.

(9) For the avoidance of doubt, the definition of “act” in section 46(2) of the Interpretation Act (Northern Ireland) 1954 does not apply for the purposes of this Act.

**Annotations:**

**Amendments (Textual)**

- F1** Words in s. 306(1) substituted (25.5.2018) by [Data Protection Act 2018 \(c. 12\)](#), s. 212(1), [Sch. 19 para. 206](#) (with ss. 117, 209, 210); S.I. 2018/625, reg. 2(1)(g)

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### *Final provisions*

#### **Commencement etc**

**307.**—(1) Sections 284, 302, 303(3), 304 to 306, this section and section 308 come into operation on the day after Royal Assent.

(2) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.

(3) Until the coming into operation of section 1 of the Departments Act (Northern Ireland) 2016—

(a) any reference in this Act to the Department of Health is to be read as a reference to the Department of Health, Social Services and Public Safety;

(b) any reference in this Act to the Department of Finance is to be read as a reference to the Department of Finance and Personnel.

(4) The Department or the Department of Justice may by regulations make such transitional, transitory or saving provision as it considers appropriate in connection with the coming into operation of any provision of this Act.

#### **Short title**

**308.** This Act may be cited as the Mental Capacity Act (Northern Ireland) 2016.



**Status:**

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**Changes to legislation:**

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