



## 2016 CHAPTER 18

PROSPECTIVE

### **PART 9**

#### **POWER OF POLICE TO REMOVE PERSON TO PLACE OF SAFETY**

*Power of police to remove person from public place to place of safety*

##### **Power of police to remove person from public place to place of safety**

**139.—**(1) If—

- (a) a constable finds in a public place a person who appears to the constable to be in immediate need of care or control, and
- (b) the constable reasonably believes that the conditions in subsection (2) are met,

the constable may remove that person to a place of safety.

(2) Those conditions are that—

- (a) failure to remove the person from the public place would create a risk of serious physical or psychological harm to the person or of serious physical harm to other persons;
- (b) removing the person to a place of safety is a proportionate response to the likelihood and seriousness of the harm concerned;
- (c) because of an impairment of or disturbance in the functioning of the mind or brain (temporary or permanent, and however caused), the person is

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unable to make a decision for himself or herself as to whether he or she should be taken to a place of safety; and

(d) removing the person to the place of safety would be in the person's best interests.

(3) The powers conferred by this Part are subject to section 157 (principles).

(4) "Place of safety" and "public place" are defined for the purposes of this Part by section 160.

#### **Information to be given on removal**

**140.**—(1) The removal of a person ("R") from a public place under section 139 is not lawful unless R is informed—

(a) before or at the time of being taken from the public place, or

(b) as soon as practicable after that time,

that R is to be (or is being) removed to a place of safety under section 139.

(2) If R arrives at the place of safety before it is practicable to give R that information, subsection (1) is to be read as requiring R to be informed as soon as practicable that R has been removed to a place of safety under section 139.

(3) Nothing in this section is to be taken to require R to be informed if it was not reasonably practicable to inform R because R escaped before the information could be given.

(4) In consequence of this section, Article 30 of PACE (information to be given on arrest) does not apply in relation to the removal of a person from a public place under section 139.

#### **Search of person on exercise of power to remove**

**141.**—(1) Subsection (2) applies where a person in a public place is informed that he or she is to be (or is being) removed to a place of safety under section 139.

(2) The person is to be regarded for the purposes of Article 34 of PACE (search upon arrest) as having been arrested at the time when he or she was so informed.

(3) Where—

(a) a person ("R") is removed from a public place under section 139, and

(b) it is not practicable to inform R as mentioned in subsection (1) before R is removed from the public place,

R is to be regarded for the purposes of Article 34 of PACE as having been arrested at the time when it was decided to remove R from that place to a place of safety.

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- (4) Article 34 of PACE applies by virtue of this section as if—
- (a) paragraphs (2)(a)(ii) and (b), (6) and (7) were omitted;
  - (b) in paragraph (3) the reference to evidence were omitted.

*Powers of police to detain person removed from public place*

**Power of police to detain in hospital a person removed from a public place**

**142.—**(1) This section applies where a person is taken to a hospital under section 139.

(2) The person may be detained under this section in the hospital by a constable for the purpose of enabling the person to be examined by a medical practitioner and interviewed by an approved social worker, if the constable reasonably believes that the detention conditions are met (see section 144).

(3) If at any time while the person is detained in a hospital under this section it appears to the constable detaining the person that the detention conditions are no longer met, the person must immediately be discharged from detention under this section.

(4) Subsection (3) does not apply if the transfer conditions in section 145 are met and the person is taken to another place of safety under that section.

(5) See also section 146 (maximum period of detention under this Part).

**Power to detain in police station a person removed from a public place**

**143.—**(1) This section applies where a person is taken to a police station under section 139.

(2) If a custody officer reasonably believes that the detention conditions are met (see section 144), the person may be detained under this section in the police station—

- (a) for the purpose of enabling the person to be examined by a medical practitioner and interviewed by an approved social worker;
- (b) for the purpose of preventing physical or psychological harm to that person or other persons while any necessary arrangements are made for the person's care or treatment elsewhere.

(3) If at any time while the person is detained under this section it appears to a custody officer that the detention conditions are no longer met, the person must immediately be discharged from detention under this section.

(4) Subsection (3) does not apply if the transfer conditions in section 145 are met and the person is taken to another place of safety under that section.

(5) See also section 146 (maximum period of detention under this Part).

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### **Sections 142 and 143: the detention conditions**

- 144.**—(1) This section applies for the purposes of sections 142 and 143.
- (2) The detention conditions are that—
- (a) failure to detain the person for the permitted purposes would create a risk of serious physical or psychological harm to the person or of serious physical harm to other persons;
  - (b) detaining the person in the place of safety for those purposes is a proportionate response to the likelihood and seriousness of the harm concerned;
  - (c) because of an impairment of or disturbance in the functioning of the mind or brain (temporary or permanent, and however caused), the person is unable to make a decision for himself or herself as to whether he or she should remain in the place of safety; and
  - (d) detention in the place of safety for those purposes is in the person's best interests.
- (3) In this section—
- “the place of safety” means the hospital or police station to which the person mentioned in section 142(1) or 143(1) has been taken;
- “the permitted purposes” means—
- (a) where the place of safety is a hospital, the purpose mentioned in section 142(2);
  - (b) where the place of safety is a police station, the purpose mentioned in section 143(2)(a) or (b).

### **Transfer from one place of safety to another**

- 145.**—(1) At any time while a person is detained in a place of safety under section 142 or 143, the person may be taken by a constable to another place of safety (“the new place of safety”) if the constable reasonably believes that the transfer conditions are met.
- (2) The transfer conditions are that—
- (a) there is appropriate care or treatment available in the new place of safety which is not available in the place where the person is being detained;
  - (b) discharging the person from detention rather than taking him or her to the new place of safety would create a risk of serious physical or psychological harm to the person or of serious physical harm to other persons;
  - (c) taking the person to the new place of safety (and not discharging him or her from detention) is a proportionate response to the likelihood and seriousness of the harm concerned;

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(d) because of an impairment of or disturbance in the functioning of the mind or brain (temporary or permanent, and however caused), the person is unable to make a decision for himself or herself as to whether he or she should be taken to the new place of safety; and

(e) taking the person to the new place of safety is in the person's best interests.

(3) Where a person is taken to a hospital under this section, section 142 applies as it applies where a person is taken to a hospital under section 139.

(4) Where a person is taken to a police station under this section, section 143 applies as it applies where a person is taken to a police station under section 139.

(5) In this section “appropriate care or treatment” means care or treatment which is appropriate in the person's case.

### **Maximum period of detention under Part 9**

**146.**—(1) A person removed from a public place under section 139 may not be detained under any provision of this Part after the end of the period of 24 hours beginning with the time of that removal.

(2) The Department of Justice may by regulations amend subsection (1) so as to alter the period mentioned there.

#### *Duties and powers of police where person removed to place of safety*

### **Duty to inform certain persons where power of removal or transfer used**

**147.**—(1) This section applies where a constable takes a person (“R”) to a place of safety under section 139 or 145.

(2) The constable must ensure that, as soon as practicable after R arrives at the place of safety, the required information is given to—

- (a) the HSC trust in whose area that place of safety is situated;
- (b) the appropriate person; and
- (c) if the appropriate person does not live with R and it is practicable to give the information to a relevant person who lives with R, such a person.

(3) But if—

- (a) it is not practicable to give the required information to the appropriate person, and
- (b) it is practicable to give the required information to a relevant person,

subsection (2) has effect as if the reference in paragraph (b) to the appropriate person were to a relevant person.

(4) In this section—

“the appropriate person” means—

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- (a) if R is 16 or over, any person who is R's nominated person;
  - (b) if R is under 16, a person with parental responsibility for R;
- “relevant person” means a person who is 16 or over and is—
- (a) named by R as someone to whom the information should be given;
  - (b) engaged in caring for R; or
  - (c) interested in R's welfare;
- “the required information” has the meaning given by section 148.

### **Section 147: meaning of “the required information” etc**

**148.**—(1) This section supplements section 147.

(2) “The required information” means—

- (a) the fact that R has been taken to a place of safety under section 139 or 145;
- (b) R's name and address, if known;
- (c) the address of the place of safety to which R was taken;
- (d) the date and time at which R—
  - (i) was removed from the public place (where the notification relates to a removal under section 139); or
  - (ii) was taken from the place of safety from which he or she was transferred (where the notification relates to a transfer under section 145);
- (e) the circumstances giving rise to R's removal or transfer; and
- (f) if the place of safety to which R was taken is a police station, the reason why R was taken there.

(3) Section 147 applies instead of Article 10 of the Criminal Justice (Children) (Northern Ireland) Order 1998 in any case where (but for this subsection) both that section and that Article would apply.

(4) Article 57 of PACE (right to have someone informed when arrested and detained) does not apply in relation to a person detained in a place of safety under this Part.

### **Record of detention to be kept**

**149.**—(1) Where a person is taken to a place of safety under section 139 or section 145 and detained there under section 142 or 143, the appropriate officer (as defined by section 160) must make a written record of the fact that the person has been so detained.

(2) The written record—

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- (a) must be made as soon as practicable after the decision is made to detain the person under section 142 or 143; and
- (b) must be made in the presence of the person, who must at that time be informed by the appropriate officer that he or she is being detained under that section.

(3) Subsection (2)(b) does not apply where, at the time when the written record is made, the person is—

- (a) incapable of understanding what is said to him or her;
- (b) violent or likely to become violent; or
- (c) in urgent need of medical attention.

### **Responsibilities of the appropriate officer**

**150.**—(1) The appropriate officer must ensure that a person who is detained under this Part in a place of safety is treated in accordance with—

- (a) any provisions of this Part or PACE that relate to the treatment of persons who are so detained; and
- (b) any code of practice under this Act or PACE that relates to the treatment of persons who are so detained.

(2) The appropriate officer must also ensure that all matters relating to a person who is detained under this Part in a place of safety which are required by this Part, PACE or such a code of practice to be recorded in writing are so recorded.

### **Review of detention**

**151.**—(1) Where a person is detained in a place of safety under this Part, reviews of whether the detention conditions set out in section 144(2) are still met must be carried out periodically by the appropriate officer in accordance with this section.

(2) Subject to subsection (3)—

- (a) the first review must be not later than 6 hours after the person's arrival at the place of safety;
- (b) subsequent reviews must be at intervals of not more than 6 hours.

(3) A review may be postponed—

- (a) if, having regard to all the circumstances prevailing at the latest time for it specified in subsection (2), it is not practicable to carry out the review at that time;
- (b) if at that time the appropriate officer is not readily available.

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(4) If a review is postponed under subsection (3) it must be carried out as soon as practicable after the latest time specified for it in subsection (2).

(5) If a review is carried out after postponement under subsection (3), the fact that it was so carried out does not affect any requirement of this section as to the time at which any subsequent review is to be carried out.

(6) The appropriate officer must record in writing—

- (a) any decision made, on a review, to continue to detain the person;
- (b) the reasons for any postponement of a review.

(7) A record under subsection (6)(a)—

- (a) must be made as soon as practicable after the decision is made; and
- (b) must be made in the presence of the person, who must at that time be informed by the appropriate officer of the decision.

(8) Subsection (7)(b) does not apply where the person is, at the time when the written record is made—

- (a) incapable of understanding what is said to him or her;
- (b) asleep;
- (c) violent or likely to become violent; or
- (d) in urgent need of medical attention.

(9) Any reference in this section to a period of time is to be treated as approximate only.

#### **Access to legal advice**

**152.—**(1) A person who is detained in a place of safety under this Part is entitled, if he or she so requests, to consult a solicitor privately at any time.

(2) If a person makes such a request, he or she must be permitted to consult a solicitor as soon as is practicable.

(3) A request under this section and the time at which it was made must be recorded in writing.

(4) Article 59 of PACE (access to legal advice) does not apply in relation to a person who is detained in a place of safety under this Part.

#### **Searches of person following removal to place of safety**

**153.** Article 55 of PACE (searches of detained persons) applies in relation to a person detained in a place of safety under this Part as if—

- (a) in paragraph (1) the reference to a person who has been brought to a police station after being arrested elsewhere were to a person who has been brought to a police station under section 139 or under section 145 (except from another police station);



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- (b) paragraph (4)(a)(iii) were omitted;
- (c) in paragraph (7) the reference to the person mentioned there were to a person detained in a place of safety under this Part.

#### **Searches and examination to ascertain identity**

**154.** Article 55A of PACE (searches and examination to ascertain identity) applies in relation to a person detained in a place of safety under this Part as if—

- (a) in paragraph (1) the reference to a person who is detained in a police station were to a person who is detained in any place of safety under this Part;
- (b) paragraphs (1)(a), (2), (5) and (9) to (13) were omitted;
- (c) in paragraphs (6) and (7) the references to taking photographs were omitted.

#### **Intimate searches**

**155.** Article 56 of PACE (intimate searches) applies in relation to a person detained in a place of safety under this Part as if—

- (a) in paragraph (1)(a) the reference to a person who has been arrested and is in police detention were a reference to a person detained in a place of safety under this Part;
- (b) in paragraph (1)(a)(ii) the reference to police detention or the custody of a court were a reference to detention under this Part;
- (c) paragraphs (1)(b), (3A) to (4), (9), (10A), (12)(a)(iii) and (13A) were omitted.

#### **Annual records**

**156.—(1)** The records that must be kept under Article 50 of PACE include records showing, on an annual basis—

- (a) the number of persons detained under this Part in hospitals;
- (b) the number of persons detained under this Part in police stations.
- (c) the number of children detained under this Part in hospitals;
- (d) the number of children detained under this Part in police stations;
- (e) final disposals in respect of children detained as mentioned in paragraphs (c) and (d).

(2) Every annual report under section 58(1) of the Police (Northern Ireland) Act 2000 must contain information about the matters mentioned in subsection (1) in respect of the period to which the report relates.

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(3) Regulations may provide that the records to be kept by virtue of subsection (1)(e) are records of such information, in respect of each child who ceases to be detained under this Part, as may be prescribed; and that subsection (2) is to be read accordingly.

(4) In this section “children” means persons under 18.

### *Supplementary*

#### **Principles applying for purposes of Part 9**

**157.—**(1) Where for any purpose of this Part a determination falls to be made of whether a person is unable to make a decision for himself or herself about a matter—

- (a) the question whether the person is or is not able to make such a decision is to be determined solely by reference to whether the person is or is not able to do the things mentioned in section 4(1)(a) to (d);
- (b) the person is not to be treated as unable to make a decision for himself or herself about the matter unless all practicable help and support to enable the person to make such a decision have been given without success;
- (c) the person is not to be treated as unable to make a decision for himself or herself about the matter merely because the person makes an unwise decision.

(2) A determination that a person is unable to make a decision, or about what is in a person's best interests, must not be made for any purpose of this Part merely on the basis of—

- (a) the person's age or appearance; or
- (b) any other characteristic of the person, including any condition that the person has, which might lead others to make unjustified assumptions about the person's ability to make a decision or about what is in the person's best interests.

(3) Where for any purpose of this Part it falls to a person (“the relevant officer”) to determine what would be in the best interests of another person (“R”), the relevant officer—

- (a) must consider all the relevant circumstances (that is, all the circumstances of which the relevant officer is aware which it is reasonable to regard as relevant); and
- (b) must in particular take the steps in subsections (4) to (8).

(4) The relevant officer must, in determining what would be in R's best interests—

- (a) so far as practicable, encourage and help R to participate as fully as possible in that determination; and

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(b) have special regard to (so far as they are reasonably ascertainable) R's past and present wishes and feelings.

(5) Where it is practicable for the relevant officer to consult—

(a) a key person (see subsection (7)), or

(b) any other person who is named by R as someone to be consulted or who is engaged in caring for R or interested in R's welfare,

about what would be in R's best interests and in particular about R's past and present wishes and feelings, the relevant officer must, so far as is practicable and appropriate, consult those persons about those questions.

(6) So far as the views of any of those persons about those questions are ascertained, the relevant officer must take those views into account.

(7) In subsection (5) “a key person” means—

(a) if R is 16 or over, any person who is R's nominated person;

(b) if R is under 16, a person with parental responsibility for R.

(8) The relevant officer must, in relation to any removal, detention or transfer that is being considered, have regard to whether the purpose for which it would be carried out can be as effectively achieved in a way that is less restrictive of R's rights and freedom of action.

(9) In consequence of this section, sections 1 to 3 and 5 to 8 (principles, best interests etc) do not apply for the purposes of this Part.

### **Reasonable belief etc**

**158.—**(1) This section applies if, after a person (“the relevant officer”) has removed, detained or transferred another person in reliance on any provision of this Part, any question arises—

(a) whether a particular provision of section 157 was complied with; or

(b) whether a belief of the relevant officer that a condition in section 139(2), 144(2) or 145(2) was met was a reasonable belief.

(2) In deciding that question, regard is to be had in particular to—

(a) the place and other circumstances in which the relevant officer's determination fell to be made; and

(b) in particular, where the relevant officer did not have available to him or her the advice of a medical practitioner or approved social worker, that fact.

(3) Nothing in this section affects the matters to which regard is to be had in deciding any similar question that may arise under any other Part.

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### **Power of constable to use reasonable force**

**159.** Where—

- (a) a power is conferred on a constable by virtue of this Part, and
- (b) the provision conferring the power does not provide that the power may be exercised only with the consent of a person other than a police officer,

the constable may use reasonable force, if necessary, in the exercise of the power.

### **Definitions for purposes of Part 9**

**160.—**(1) In this Part—

“the appropriate officer”, in relation to a person who is detained in a place of safety, means—

- (a) where the place of safety is a hospital, the constable who has charge of the person;
- (b) where the place of safety is a police station, the custody officer at that police station;

“best interests”: see section 157 for provisions about the determination of a person's best interests;

“custody officer”, in relation to a police station, means a person who under PACE is a custody officer, or performing the functions of a custody officer, at that police station;

“PACE” means the Police and Criminal Evidence (Northern Ireland) Order 1989;

“place of safety” means—

- (a) any hospital whose managing authority is willing temporarily to receive persons who may be taken there under this Part; or
- (b) any police station;

“public place” means a place to which the public have access;

“unable to make a decision”, and references to enabling a person to make a decision, are to be read in accordance with section 4.

(2) The Department of Justice may by regulations amend the definition of “place of safety” in subsection (1).

(3) Regulations under subsection (2) may make such consequential amendments of this Part as the Department of Justice considers appropriate.

(4) The provision which may be made by virtue of subsection (3) includes, in particular, provision which amends or applies either of sections 142 and 143 or makes provision corresponding to those sections.

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(5) For the purposes of sections 147 and 157, where the age of a person is not known, it is to be taken to be the age that the person appears to be.

#### **Relationship of Part 9 to other provisions**

**161.**—(1) A power that a constable has under any provision of this Part (a “place of safety power”) does not affect—

- (a) any authority that the constable has under Part 2 to do an act other than an act authorised by the place of safety power;
- (b) any authority to do any act that a person other than the constable has; or
- (c) any power that the constable has otherwise than under this Act.

(2) If, while a person is detained in or being taken to a place of safety under any provision of this Part, the person is arrested for an offence—

- (a) the relevant provisions of PACE apply; and
- (b) the person ceases to be liable to be detained under this Part or taken to a place of safety under this Part.

(3) Nothing in subsection (2)(b) affects the application of this Part on any subsequent occasion on which the person is found in a public place.

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