

*These notes refer to the Mental Capacity Act (Northern Ireland)
2016 (c.18) which received Royal Assent on 9 May 2016*

Mental Capacity Act (Northern Ireland) 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10 – Criminal Justice

Chapter 1 - Remand to Hospital

Section 162 – Remand to hospital

This section provides that, where the Crown Court or court of summary jurisdiction has the power to remand an accused person in custody and is of the view that they would remand the person in custody, the court may instead remand the accused to hospital for either a medical report or treatment or both. The criteria for remanding the person in hospital are contained within section 164(1) (the “medical report condition”) and section 165(1) (the “treatment condition”).

Before a court remands an accused person to hospital, it must be satisfied on the written or oral evidence from the managing authority of the hospital in question that arrangements have been made for the accused person’s detention there.

This section also provides that an accused person may be further remanded if remanding him or her on bail is not appropriate and the conditions set out in section 164(1) and section 165(1) are still met. An accused person can be remanded or further remanded under this section for a maximum of 28 days at a time and for no more than 12 weeks in total.

Section 163 - Section 162: meaning of “accused person”

This section defines “accused person” for the purposes of section 162.

An “accused person”, in relation to the Crown Court, is defined as a person who is awaiting trial before the court for an offence punishable with imprisonment, or a person who has been arraigned before the court for an offence punishable by imprisonment but has not yet been sentenced or otherwise dealt with for that offence.

An “accused person”, in relation to a court of summary jurisdiction, is defined as a person who has been convicted by the court of an offence punishable on

summary conviction by imprisonment, or a person charged with such an offence if the court is satisfied that the person did the act or made the omission charged.

Section 164 - Section 162: the medical report condition

This section makes provision for the test that must be met before the “medical report condition” in section 162 is satisfied.

The court must be satisfied on the basis of medical evidence that the accused has a disorder or is suspected of having a disorder; that a report on his or her mental or physical condition ought to be made; that a proper assessment of his or her condition would be impracticable if he or she was remanded in custody; and that such an assessment will be practicable if the accused is remanded in hospital. In determining if the assessment will be practicable, the court must have regard to how likely it is that consent will be obtained or that examination will be capable of being carried out under Part 2 of the Act, or if the accused is under 16, that the examination can be carried out under the Mental Health Order.

Section 165 - Section 162: the treatment condition

This section makes provision for the test that must be met before the “treatment condition” in section 162 is satisfied.

The court must be satisfied on the basis of medical evidence that the accused person has a disorder requiring treatment, and that failure to provide treatment as an in-patient in a hospital would more likely than not result in serious physical or psychological harm to the accused person or serious physical harm to other people. The court must also be satisfied on the basis of the medical evidence that remanding the accused person to hospital is likely to have significantly better clinical outcomes for the person than would be the case if they were remanded in custody. In forming this view, the court must have regard to any other ways in which the accused person might be admitted to hospital if they were remanded in custody. In addition, the court must have regard to whether treatment for the disorder is available in the hospital that the accused person would be remanded to, and how likely it is that consent will be obtained or that treatment will be capable of being carried out under Part 2 of the Act, or, if the accused is under 16, that the examination can be carried out under the Mental Health Order.

Section 166 - Effect of remand to hospital

This section provides for the effect of remanding an accused person to hospital. Where the accused person has been remanded, a constable or persons directed by the court must take the accused person to hospital. The section also provides that the managing authority of a hospital must admit and detain the accused person for the duration of the remand period.

The court has the power to terminate the remand at any time if it thinks it appropriate to do so.

This section also provides that an accused person may obtain an independent medical report for the purposes of applying to the court for a termination of the remand.

Provision is also made for the arrest without warrant and return to court of an accused person who absconds from hospital or absconds whilst they are being taken to or from hospital. When the accused person is brought before the court, the remand can be terminated and the court can deal with the person in any way in which it would have dealt with the person had they not been remanded to hospital.

The section also provides that the court can further remand an accused person, without the person being brought before the court, if they are represented by counsel or a solicitor who is given an opportunity of being heard by the court.