
Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, Part 2 is up to date with all changes known to be in force on or before 16 April 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

SCHEDULES

SCHEDULE 2

Authorisation of short-term detention in hospital for examination etc

Part 2

The authorisation

Authorisation of detention in hospital for examination etc

2.—(1) The detention of a person in a hospital in circumstances amounting to a deprivation of liberty, for the purposes of examination (or of examination followed by other treatment or care), may be authorised by the making of a report under this paragraph.

(2) An appropriate healthcare professional (as defined by paragraph 3) may make a report under this paragraph in respect of a person who is 16 or over (“P”) if, in the opinion of the appropriate healthcare professional, the criteria for authorisation are met.

(3) The criteria for authorisation are that—

- (a) P has an illness or there is reason to suspect that P has an illness;
- (b) failure to detain P in a hospital in circumstances amounting to a deprivation of liberty, for the purposes of examination or of examination followed by other treatment or care, would create a risk of serious harm to P or of serious physical harm to other persons;
- (c) detaining P in the hospital in circumstances amounting to a deprivation of liberty, for those purposes, would be a proportionate response to—
 - (i) the likelihood of harm to P, or of physical harm to other persons; and
 - (ii) the seriousness of the harm concerned;
- (d) P lacks capacity in relation to whether he or she should be so detained; and
- (e) it would be in P's best interests for him or her to be so detained.

(4) A report under this paragraph must be in the prescribed form and must—

- (a) include a medical report (see paragraph 4);
- (b) include a statement by the appropriate healthcare professional that in his or her opinion the criteria for authorisation are met;

Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, Part 2 is up to date with all changes known to be in force on or before 16 April 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*

- (c) include prescribed information about the views, on prescribed matters, of P's nominated person and any prescribed person;
- (d) include any other prescribed information; and
- (e) state that the report authorises the detention, in circumstances amounting to a deprivation of liberty, of P in a specified hospital for the purposes of examination or of examination followed by other treatment or care.

(5) If the appropriate healthcare professional is of the opinion that P lacks (or probably lacks) capacity in relation to whether an application under section 45 (applications to Tribunal) should be made in respect of the authorisation granted by the making of the report under this paragraph, the report must contain a statement of that opinion.

(6) In this paragraph “examination” includes further examination.

Commencement Information

- I1** Sch. 2 para. 2 in operation at 2.12.2019 for specified purposes by [S.R. 2019/163, art. 2\(4\)](#), [Sch. Pt. 4](#) (with [art. 3](#)) (as amended by [S.R. 2019/190, art. 2](#))

Who may make a report under paragraph 2

3.—(1) In paragraph 2 “an appropriate healthcare professional” means a person who—

- (a) is of a prescribed description; and
- (b) is unconnected with P (see section 304).

(2) The descriptions of person who may be prescribed under this paragraph include in particular—

- (a) an approved social worker;
- (b) a person of a prescribed description who is designated by the managing authority of the hospital specified in the report under paragraph 2 as a person who may make reports under that paragraph.

Commencement Information

- I2** Sch. 2 para. 3 in operation at 2.12.2019 for specified purposes by [S.R. 2019/163, art. 2\(4\)](#), [Sch. Pt. 4](#) (with [art. 3](#)) (as amended by [S.R. 2019/190, art. 2](#))

Medical report

4.—(1) The medical report included in a report under paragraph 2 must be in the prescribed form and must—

Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, Part 2 is up to date with all changes known to be in force on or before 16 April 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*

- (a) be made by a medical practitioner who is unconnected with P and is permitted by regulations under section 300 to make the report;
 - (b) include a statement by the person making the medical report that in that person's opinion the criteria for authorisation are met; and
 - (c) include any prescribed information.
- (2) The maker of the medical report must have examined P not more than [^{F1}two days][^{F1}five days] before the date when the medical report is made.
- (3) See also sections 54 and 55 (involvement of nominated person and independent mental capacity advocate).

Textual Amendments

- F1** Words in Sch. 2 para. 4(2) substituted (temp.) (2.4.2020) by virtue of [Coronavirus Act 2020 \(c. 7\)](#), s. 87(2), [Sch. 11 para. 6](#) (with ss. 88-90, [Sch. 11 para. 2](#)); S.R. 2020/58, art. 2(e)

Modifications etc. (not altering text)

- C1** [Sch. 2 para. 4\(2\)](#) expiry of earlier affecting provision 2020 c. 7, Sch. 11 paras. 3-9 (25.3.2022) by [Coronavirus Act 2020 \(c. 7\)](#), s. 89 (with s. 90)

Commencement Information

- I3** Sch. 2 para. 4 in operation at 2.12.2019 for specified purposes by [S.R. 2019/163](#), art. 2(4), [Sch. Pt. 4](#) (with art. 3) (as amended by [S.R. 2019/190](#), art. 2)

Consultation required before report authorising detention is made

- 5** A person may make a report under paragraph 2 only if the person has personally seen P not more than [^{F2}two days][^{F2}five days] before the date on which that report is made.

Textual Amendments

- F2** Words in Sch. 2 para. 5 substituted (temp.) (2.4.2020) by virtue of [Coronavirus Act 2020 \(c. 7\)](#), s. 87(2), [Sch. 11 para. 7](#) (with ss. 88-90, [Sch. 11 para. 2](#)); S.R. 2020/58, art. 2(e)

Modifications etc. (not altering text)

- C2** [Sch. 2 para. 5](#) expiry of earlier affecting provision 2020 c. 7, Sch. 11 paras. 3-9 (25.3.2022) by [Coronavirus Act 2020 \(c. 7\)](#), s. 89 (with s. 90)

Commencement Information

- I4** Sch. 2 para. 5 in operation at 2.12.2019 for specified purposes by [S.R. 2019/163](#), art. 2(4), [Sch. Pt. 4](#) (with art. 3) (as amended by [S.R. 2019/190](#), art. 2)

Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, Part 2 is up to date with all changes known to be in force on or before 16 April 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*

6.—(1) Where—

- (a) it is proposed to make a report under paragraph 2, and
- (b) P's nominated person objects to the making of the report,

a person may make a report under paragraph 2 in respect of P ^[F3] only if the person has consulted an approved social worker.]]^{F3} only if—

- (a) the person has consulted an approved social worker, or
- (b) the person considers that it is impractical or would involve undesirable delay to consult an approved social worker, the person has consulted a relevant social worker.]

(2) This applies even if the person making the report under paragraph 2 is an approved social worker.

Textual Amendments

- F3** Words in Sch. 2 para. 6(1) substituted (temp.) (2.4.2020) by virtue of [Coronavirus Act 2020 \(c. 7\), s. 87\(2\)](#), [Sch. 11 para. 8\(1\)](#) (with ss. 88-90, [Sch. 11 para. 2](#)); [S.R. 2020/58, art. 2\(e\)](#)

Modifications etc. (not altering text)

- C3** [Sch. 2 para. 6\(1\)](#) expiry of earlier affecting provision 2020 c. 7, Sch. 11 paras. 3-9 (25.3.2022) by [Coronavirus Act 2020 \(c. 7\), s. 89](#) (with s. 90)

Commencement Information

- I5** Sch. 2 para. 6 in operation at 2.12.2019 for specified purposes by [S.R. 2019/163, art. 2\(4\)](#), [Sch. Pt. 4](#) (with [art. 3](#)) (as amended by [S.R. 2019/190, art. 2](#))

Information to be given where report authorising detention is made

7.—(1) Where a report under paragraph 2 is made, the person who made the report must as soon as practicable give prescribed information to—

- (a) the managing authority of the hospital specified in the report; and
- (b) any prescribed person.

(2) Regulations under sub-paragraph (1) must ensure that where a report containing the statement mentioned in paragraph 2(5) is made, the Attorney General is notified of that fact.

Commencement Information

- I6** Sch. 2 para. 7 in operation at 2.12.2019 for specified purposes by [S.R. 2019/163, art. 2\(4\)](#), [Sch. Pt. 4](#) (with [art. 3](#)) (as amended by [S.R. 2019/190, art. 2](#))

Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, Part 2 is up to date with all changes known to be in force on or before 16 April 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*

Duration of authorisation: preliminary

- 8.**—(1) An authorisation granted by the making of a report under paragraph 2—
- (a) takes effect from the time the report is made; and
 - (b) expires (if not previously revoked) when an event which terminates the authorisation occurs (or, if more than one such event occurs, on the occurrence of the first of those events).
- (2) “An event which terminates the authorisation” is to be read in accordance with Part 3 of this Schedule.

Commencement Information

- I7** Sch. 2 para. 8 in operation at 2.12.2019 for specified purposes by [S.R. 2019/163, art. 2\(4\)](#), [Sch. Pt. 4](#) (with [art. 3](#)) (as amended by [S.R. 2019/190, art. 2](#))

Changes to legislation:

Mental Capacity Act (Northern Ireland) 2016, Part 2 is up to date with all changes known to be in force on or before 16 April 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.

[View outstanding changes](#)

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\(b\)](#)