

*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

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## EXPLANATORY NOTES

### OVERVIEW

#### *Remaining Parts*

**Part 3** makes further provision in relation to nominated persons: the appointment and revocation of nominated persons, the default mechanism and the Tribunal's powers to appoint or disqualify nominated persons.

**Part 4** of the Act provides for the new independent advocacy safeguard. It provides for a new duty on HSC trusts to make arrangements to secure the availability of independent mental capacity advocates when required under Part 2, and also sets out procedures for instructing advocates to act. Regulation making powers are created to make further provision for the commissioning of independent advocacy services and the functions of independent mental capacity advocates under Part 2.

**Part 5** of the Act provides for a new form of power of attorney, the lasting power of attorney (LPA).

**Part 6** of the Act makes provision for High Court powers to make decisions and appoint deputies for persons who lack capacity to make decisions in respect of their care, treatment, personal welfare, or their property and affairs. This Part makes provision for powers which can be exercised by the High Court in connection with these roles, as well as making provision for the various rules of court which may be made in respect of this Part of the Act.

**Part 7** of the Act makes provision for the creation of a Public Guardian and the functions to be performed by that officer, as well as imposing duties upon relevant authorities to notify the Public Guardian of certain events. This Part also provides a further power for the Department of Justice to appoint Court Visitors.

**Part 8** of the Act puts in place new requirements and safeguards for intrusive research projects involving people who lack capacity to consent to taking part in that research.

**Part 9** of the Act creates powers for police constables to remove a person from a public place, if that person appears to be in immediate need of care or control, and take them to a 'place of safety'. Part 9 also includes powers for constables to detain persons at a place of safety or transfer them between places of safety.

**Part 10** of the Act creates court disposals to send persons on remand and convicted offenders to healthcare facilities for medical treatment. Part 10 also provides court powers for persons found unfit to plead, as well as a power for the Department of Justice to transfer prisoners to healthcare facilities for medical treatment. In addition, this Part includes the rights of review for persons detained under Part 10.

**Part 11** of the Act provides for the transfer of persons detained in hospital, in circumstances amounting to deprivation of liberty, or subject to a criminal justice disposal, between Northern Ireland and other UK jurisdictions. Regulation making powers are created to make further provision about transfers, including to and from jurisdictions outside the UK.

**Part 12** provides for additional safeguards for children subject to the Act and the Mental Health Order. It also amends that Order so that it will not apply to persons aged 16 or over when the Act comes into operation.

**Part 13** sets out the offences specific to the Act.

**Part 14** sets out miscellaneous provisions, including amendment of the Carers and Direct Payments Act (Northern Ireland) 2002; provision giving effect in Northern Ireland to the Convention on the International Protection of Adults; and matters that are excluded from the scope of the Act.

**Part 15** makes provisions relating to codes of practice and other supplementary matters. Definitions, commencement and short title of the Act are also included.