

*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

### COMMENTARY ON SECTIONS

#### **Part 10 – Criminal Justice**

#### ***Chapter 3 – Detention under a Public Protection Order Without Restrictions***

#### ***Section 179 - Detention under a public protection order without restrictions***

This section provides that a person detained in an establishment under a public protection order without restrictions can be detained for a period not exceeding 6 months. This is subject to discharge under section 180, extension under sections 181 to 186, and the powers of the Tribunal under section 231.

#### ***Section 180 - Discharge from detention by responsible medical practitioner***

This section provides for the discharge from detention of an individual who is subject to a public protection order without restrictions by a responsible medical practitioner.

The responsible medical practitioner must make an order discharging the person from detention if they are satisfied that doing so would not create a substantial risk to others. The section provides that releasing the person would create a substantial risk to others if doing so would create a risk, linked to linked to an impairment of or disturbance in the functioning of the person's mind or brain, of serious physical or psychological harm to other persons, and the likelihood and seriousness of the harm concerned are such that detaining the person is a proportionate response.

The section also provides that being discharged from a public protection order without restrictions does not prevent a person being detained under Part 2 of the Act (or Part 2 of the Mental Health Order if the person is aged under 16) providing that the relevant detention criteria are met.

#### ***Section 181 - First extension of period of order***

This section provides that a public protection order without restriction can be extended for 6 months where the person concerned is still liable to be held under the order and the "initial period" of the order has not ended. The "initial period" is six months beginning with the date of the order.

***Section 182 - Subsequent extensions***

This section provides that a public protection order without restrictions may be extended for a period of one year where the order has previously been extended under section 181, this section, or under paragraph 8 of Schedule 6, and the person is still liable to be detained under the order.

***Section 183 - Sections 181 and 182: extension reports***

This section provides for the format of extension reports. For an order to be extended, a report must be made by an appropriate medical practitioner within the reporting period, and the medical practitioner must have examined the person within that timeframe. The report must state that, in the medical practitioner's opinion, the conditions for continued detention are met and also include a statement from a responsible social worker to that effect, as well as any such other information as may be prescribed in regulations.

***Section 184 - Extension of period where responsible person not of the requisite opinion***

This section provides that Schedule 6 sets out the procedure for cases where it is proposed to extend a public protection order without restrictions but the responsible social worker considers that criteria for continuation are not met.

***Section 185 - The criteria for continuation***

This section sets out the criteria that must be met in order to extend a public protection order by 6 months in the case of a first extension or one year in the case of a further extension. The criteria are that: the person subject to the order has an impairment of, or disturbance in the functioning of, the mind or brain; appropriate care or treatment is available for him/her in the establishment concerned; failure to detain him/her in circumstances amounting to a deprivation of liberty in an appropriate establishment in which such care or treatment is available for him or her would create a risk, linked to the impairment or disturbance, of serious physical or psychological harm to other persons; and that detaining him or her in the establishment concerned, in circumstances amounting to a deprivation of liberty, would be a proportionate response to the likelihood of the harm concerned and the seriousness of that harm.

***Section 186 - Extension reports: further provision***

This section makes further provision in respect of a report made under section 183. It provides that a report for the purposes of each of those sections is made upon its signing by the medical practitioner making it. The report must be given to the relevant HSC trust in whose area the establishment in which the individual is detained is situated as soon as practicable. The section also provides that where a report is given to the HSC trust, that HSC trust must as soon as practicable give information to the person to whom the public protection

order relates as well as such other persons as may be prescribed in regulations. The HSC trust must also forward a copy of the report to RQIA.

### ***Section 187 - Permission for absence***

This section provides that a responsible medical practitioner may give permission to a person detained under a protection order without restrictions to be absent from the establishment where he or she is detained. Any conditions considered necessary by the practitioner for the health and safety of the offender or the protection of others can be imposed.

Permission to be absent can be given for a specified occasion or for a specified period. Where the permission is in respect of a specified period, the period can be extended by a further permission, given in the person's absence.

The responsible medical practitioner may also direct that the person is to remain in custody during his or her absence. Such a direction can only be given if the practitioner thinks that this is necessary for the health and safety of the offender or for the protection of other persons. In these cases, the offender may be kept in the custody of a person on the staff of the establishment concerned, or in the custody of any other person authorised in writing by the managing authority of the establishment.

The section also provides that where a person is given permission to be absent for more than 28 days under this section, or a period of permitted absence is extended for more than 28 days, the managing authority of the establishment must notify RQIA of the address where the offender is staying within 14 days of the permission being given or on the day when the period is extended. The managing authority must also notify RQIA of the person's return to the establishment within 14 days of his or her arrival back in the establishment.

Where a person is absent under this section and it appears to the responsible medical practitioner that it is necessary to do so for the health and safety of the offender, the protection of other persons, or because the offender is not receiving proper care, the practitioner may revoke the permission and recall the offender to the establishment concerned.

Notice of revocation of the permission must be in writing. An offender may not be recalled after ceasing to be liable to be detained under the public protection order.

### ***Section 188 - Transfer between hospitals etc***

This section provides that the managing authority of the establishment where a person subject to a public protection order without restrictions is detained has the power to transfer that person to another suitable establishment. Where the person is transferred under this section, the managing authority of the new establishment must admit him or her and detain him or her in accordance with the relevant provisions defined in Chapter 3 of Part 10 of the Act.

Before a person is transferred under this section, the managing authority must inform certain people, depending on the age of the person being transferred. Where a person transferred under this section is 16 years of age or over, the managing authority must, where practicable, inform his or her nominated person. If the person is under 16, then the managing authority must inform someone with parental responsibility for him or her. Where a person is transferred under this section, the managing authority must immediately notify RQIA of the transfer.

***Section 189 - Effect of custodial sentence***

This section applies where a person who is liable to be detained under a public protection order without restrictions is detained in custody in pursuance of any sentence or order passed or made by a court in the UK. This includes an order committing or remanding the person in custody.

If such a person is detained in custody for a period of more than 6 months, or successive periods of time which exceed 6 months in total, then this section provides that at the end of 6 months beginning with the date of the person's detention in custody he or she ceases to be liable to be detained under the public protection order.

If the person is detained in custody for a period of time not exceeding 6 months, or a period of time not exceeding 6 months in total, and has not ceased to be liable to be detained under the public protection order, then section 244 of the Act applies as if, on the day of discharge from custody, the person had absented him or herself without permission from the establishment he or she is liable to be detained under the public protection order.