

*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 5 – Detention under a Hospital Direction

Section 197 - Detention under a hospital direction

This section provides that a person liable to be detained under a hospital direction will continue to be detained under the direction until it ceases to have effect under section 198, when the Department of Justice transfers the person back to prison, or under section 240, when the Review Tribunal notifies the Department of Justice that the criteria for detaining the person in hospital are no longer met.

Section 198 - Termination of hospital directions

This section provides that the Department of Justice must, on receipt of a relevant notification before a person's release date, by warrant direct that a person serving a prison sentence and detained in hospital under a hospital direction is removed to any prison in which he or she might have been detained if the hospital direction had not been given. On the person's arrival in prison, the hospital direction ceases to have effect.

However, this does not apply if (having received a relevant notification) the Department of Justice directs that with effect from a specified date the person is to be treated as if he or she had been removed to hospital under a relevant provision and that the hospital direction is to cease to have effect. "Relevant provision" is defined as meaning section 16(2) of the Prison Act (Northern Ireland) 1953 or paragraph 3 of Schedule 2 to the Criminal Justice (Children) (Northern Ireland) Order 1998.

The section defines "relevant notification" as a notification by a suitable medical practitioner (defined as the responsible medical practitioner or any medical practitioner who is approved by RQIA for the purposes of this section as having special experience in the diagnosis or treatment of disorder of the kind in question) that, in the opinion of the practitioner, the person does not have, or no longer has the disorder in respect of which the hospital direction was given, no

effective treatment for the disorder can be given to him or her in the hospital, or it is more likely than not that if he or she were transferred to a prison, that no serious physical or psychological harm to him or herself or serious physical harm to other persons would result from his or her ceasing to be provided with medical treatment as an in-patient in a hospital.

The section also provides that where a person is serving a custodial sentence which is not a sentence of imprisonment, references to prison mean a place where persons serving a sentence of that kind may be detained.

Section 199 - Section 198: meaning of “release date”

This section defines “release date” for the purposes of section 198. An individual’s release date will be determined in accordance with the duties and powers to release them from detention under section 200.

Section 200 - Duties and powers to release from detention

This section imposes duties and grants powers to release an individual from detention under a hospital direction. The individual is to be treated as if they were detained in custody for the purposes of these duties and powers. If the individual is required to be released on license, unconditionally, under the terms of the legislation which authorised their custodial sentence, referred to the Parole Commissioners, or subject to the duty of that body, or can apply to the Sentence Review Commissioners, or subject to any power or duty of that body or the Secretary of State under the Northern Ireland (Sentences) Act 1998, then these requirements or duties apply as if the person were not subject to a hospital direction.

If the individual is subject to Articles 39 or 44A of the Criminal Justice (Children) (Northern Ireland) Order 1998, their release date is the day on which the period of supervision under that order begins.

An individual absent without leave from a hospital direction and liable to be taken into custody under this Part, shall be treated as unlawfully at large and absent from prison.

Section 201 - Reports by responsible medical practitioner

This section provides that where a hospital direction is in force, the responsible medical officer must examine the person to whom it applies, and report to the Department of Justice at such intervals as the Department of Justice directs. Such intervals must not exceed one year.

Section 202 - Permission for absence etc

This section provides that section 194 (direction for person to attend for purposes of justice etc.) and section 195 (permission for absence) apply in relation to a person liable to be detained under a hospital direction.

Section 203 - Transfers between hospitals

While a person is subject to a hospital direction, this section provides the managing authority of the establishment where the person is detained to have a power to transfer the person to another suitable establishment with the consent of the Department of Justice.

Before a person is transferred under this section, the managing authority must inform certain people of the transfer, depending on the age of the person. 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 also immediately notify RQIA of the transfer.