

*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 6 – Unfitness to Be Tried Etc***

#### ***Section 204 - Procedure where question of unfitness to be tried arises***

Where a person has been charged on indictment with an offence and the question arises whether he or she is fit to be tried, this section provides for procedures to be followed by the court.

The question of unfitness to be tried must be determined as soon as it arises. However, the court may postpone consideration of the question until any time up to the opening of the case for the defence if, having regard to the nature of the supposed condition of the accused, the court considers that the postponement is appropriate and in the interests of the accused. In addition, the section provides that if, before the question falls to be determined, the jury returns a verdict of acquittal on the count or each of the counts on which the accused is being tried, that question must not be determined.

The section also provides that the question of fitness to be tried is to be determined by the court without a jury. The court must not determine that the accused person is unfit to be tried unless it is satisfied on the medical evidence that this is the case.

#### ***Section 205 - Finding that the accused did the act or made the omission charged***

Where the court determines that a person is unfit to be tried this section provides that the trial must not proceed any further. It must be determined by a jury on the evidence (if any) already given in the trial, and on such evidence as may be put forward by the prosecution, or by a person appointed by the court under this section to put the case for the defence, whether it is satisfied that the accused did the act or made the omission with which he or she was charged. If the jury is satisfied, it must make a finding that the accused did the act or made the omission charged against the accused. If the jury is not so satisfied, it must return a verdict of acquittal as if on the count in question the trial had proceeded to a conclusion.

The section also provides that where the question of fitness to be tried was determined after arraignment of the accused, the jury is to determine whether the accused did the act or made the omission with which he or she was charged.

***Section 206 - Procedure in relation to finding of insanity***

Where, on the trial on indictment of any person charged with the commissioning of an offence, medical evidence is given that the person charged was an insane person at the time the offence was committed, and the jury finds that although the person charged did the act or made the omission, he or she was an insane person at that time, the section provides that, in these circumstances, the court must direct a finding that the person is not guilty on the grounds of insanity.

***Section 207 - Powers to deal with person unfit to be tried or not guilty by reason of insanity***

This section makes provision for the powers of a court to dispose of a person who is found unfit to be tried, or was found not guilty by reason of insanity. In these circumstances, the court must make a public protection order without restrictions; make a public protection order with restrictions; make a supervision and assessment order; or make an order for the absolute discharge of the accused. Schedule 7 makes provision for supervision and assessment orders.

The power to make a public protection order without restrictions is only exercisable if the detention conditions provided by section 168 are met. The power to make a public protection order with restrictions is only exercisable if the detention conditions provided by section 168 and the restriction condition provided by section 169 are met.

The section also provides that, where the findings relate to an offence for which the sentence is fixed by law, the provisions in respect of disposals detailed above do not apply, and instead the court must make a public protection order with restrictions. That order must not include provision that the restriction is for a specified period only.

***Section 208 - Remission for trial where person no longer unfit to be tried***

This section applies where findings have been recorded against a person that he or she is unfit to be tried and that he or she did the act or made the omission charged, he or she is liable to be detained under a public protection order or subject to a supervision and assessment order made under section 207, and the Department of Justice has been notified by a responsible medical practitioner that the person is no longer unfit to be tried.

Where a public protection order has been made, the Department of Justice may remit the person for trial to the Crown Court.

Where a supervision and assessment order has been made, the Department of Justice may remit the person's case for trial to the Crown Court.

This section also provides that where a person is remitted for trial under this section, the public protection order ceases to have effect once the person has arrived at the Crown Court and the court has made any order relating to the trial. A supervision and assessment order will cease to have effect when the case has been remitted for trial, and the Crown Court has made any order relating to the trial.

***Section 209 - Power to make order where the accused did the act or made the omission charged***

Where a person is charged before a court of summary jurisdiction with any act or omission as an offence and the court would have the power on conviction to make a public protection order, if the court is satisfied that the person did the act or made the omission charged, the court may make a public protection order with or without restrictions if it considers it appropriate to do so.

***Section 210 – Power to make restraining order following finding of unfitness to plead etc***

This section amends Article 7 of the Protection from Harassment (Northern Ireland) Order 1997 by providing that a restraining order can be made in respect of a person who has been found to be unfit to plead and to have done the act or omission charged against him or her, and in respect of a person in relation to whom a public protection order has been made by virtue of section 209. The section also provides a right of appeal against a restraining order.