

*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 8 – Rights of Review of Detention under Part 10

Section 238 - Powers of Tribunal as to hospital directions and hospital transfer directions

This section applies where an application or reference is made to the Tribunal in relation to a person who is liable to be detained under a hospital direction or hospital transfer direction.

The Tribunal must decide if it is satisfied that the prevention of serious harm condition is met, and must notify the Department of Justice whether it is so satisfied.

In this section, the “prevention of serious harm condition” is that the person has the disorder in respect of which the direction was given; effective treatment for the disorder can be given to the person in the hospital where he or she is detained; and it is more likely than not that, if the person was transferred to prison, serious physical or psychological harm to that person or serious physical harm to other persons would result from the person ceasing to receive treatment for the disorder as an in-patient. In this section, “prison” is to read as a reference to a place where the person would have been liable to be detained had the direction not been made.