

*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**

This part sets out the powers of the courts to impose particular disposals on offenders at remand, sentencing or following a finding of unfitness to plead.

#### *Chapter 1 - Remand to Hospital*

#### *Section 162 – Remand to hospital*

This section provides that, where the Crown Court or court of summary jurisdiction has the power to remand an accused person in custody and is of the view that they would remand the person in custody, the court may instead remand the accused to hospital for either a medical report or treatment or both. The criteria for remanding the person in hospital are contained within section 164(1) (the “medical report condition”) and section 165(1) (the “treatment condition”).

Before a court remands an accused person to hospital, it must be satisfied on the written or oral evidence from the managing authority of the hospital in question that arrangements have been made for the accused person’s detention there.

This section also provides that an accused person may be further remanded if remanding him or her on bail is not appropriate and the conditions set out in section 164(1) and section 165(1) are still met. An accused person can be remanded or further remanded under this section for a maximum of 28 days at a time and for no more than 12 weeks in total.

#### *Section 163 - Section 162: meaning of “accused person”*

This section defines “accused person” for the purposes of section 162.

An “accused person”, in relation to the Crown Court, is defined as a person who is awaiting trial before the court for an offence punishable with imprisonment, or a person who has been arraigned before the court for an offence punishable by imprisonment but has not yet been sentenced or otherwise dealt with for that offence.

An “accused person”, in relation to a court of summary jurisdiction, is defined as a person who has been convicted by the court of an offence punishable on summary conviction by imprisonment, or a person charged with such an offence if the court is satisfied that the person did the act or made the omission charged.

***Section 164 - Section 162: the medical report condition***

This section makes provision for the test that must be met before the “medical report condition” in section 162 is satisfied.

The court must be satisfied on the basis of medical evidence that the accused has a disorder or is suspected of having a disorder; that a report on his or her mental or physical condition ought to be made; that a proper assessment of his or her condition would be impracticable if he or she was remanded in custody; and that such an assessment will be practicable if the accused is remanded in hospital. In determining if the assessment will be practicable, the court must have regard to how likely it is that consent will be obtained or that examination will be capable of being carried out under Part 2 of the Act, or if the accused is under 16, that the examination can be carried out under the Mental Health Order.

***Section 165 - Section 162: the treatment condition***

This section makes provision for the test that must be met before the “treatment condition” in section 162 is satisfied.

The court must be satisfied on the basis of medical evidence that the accused person has a disorder requiring treatment, and that failure to provide treatment as an in-patient in a hospital would more likely than not result in serious physical or psychological harm to the accused person or serious physical harm to other people. The court must also be satisfied on the basis of the medical evidence that remanding the accused person to hospital is likely to have significantly better clinical outcomes for the person than would be the case if they were remanded in custody. In forming this view, the court must have regard to any other ways in which the accused person might be admitted to hospital if they were remanded in custody. In addition, the court must have regard to whether treatment for the disorder is available in the hospital that the accused person would be remanded to, and how likely it is that consent will be obtained or that treatment will be capable of being carried out under Part 2 of the Act, or, if the accused is under 16, that the examination can be carried out under the Mental Health Order.

***Section 166 - Effect of remand to hospital***

This section provides for the effect of remanding an accused person to hospital. Where the accused person has been remanded, a constable or persons directed by the court must take the accused person to hospital. The section also provides that the managing authority of a hospital must admit and detain the accused person for the duration of the remand period.

The court has the power to terminate the remand at any time if it thinks it appropriate to do so.

This section also provides that an accused person may obtain an independent medical report for the purposes of applying to the court for a termination of the remand.

Provision is also made for the arrest without warrant and return to court of an accused person who absconds from hospital or absconds whilst they are being taken to or from hospital. When the accused person is brought before the court, the remand can be terminated and the court can deal with the person in any way in which it would have dealt with the person had they not been remanded to hospital.

The section also provides that the court can further remand an accused person, without the person being brought before the court, if they are represented by counsel or a solicitor who is given an opportunity of being heard by the court.

## ***Chapter 2 – Powers of Court on Conviction***

### ***Section 167 - Public protection orders with and without restrictions***

This section provides the Crown Court with the power to make a public protection order with or without restriction in cases where a person is convicted of an offence punishable by imprisonment (with the exception of those offences where the sentence is fixed by law). A court of summary jurisdiction also has the power to make a public protection order with or without restriction where a person has been convicted of an offence punishable on summary conviction with imprisonment.

If the detention conditions provided by section 168 are met, the court may make a public protection order without restrictions. If those detention conditions are met as well as the restriction conditions provided by section 169, then the court may make a public protection order with restrictions.

The section provides that a public protection order without restrictions means an order which requires that the offender is admitted and detained in an appropriate establishment which is specified in the order. A public protection order with restrictions is defined as an order which requires that the offender is admitted to and detained in an appropriate establishment specified in the order and either provides that the order is to be treated as a public protection order with restrictions with no time limitation; or provides that for a specified period the order is to be treated as a public protection order with restrictions for a specific period of time.

An “appropriate establishment” is defined as either a hospital, or a care home in which care is provided for persons who have an impairment of, or a disturbance in the functioning of, the mind or brain, and which is designated by the Department of Justice for the purposes of this Section.

***Section 168 - Section 167: the detention conditions***

This section provides the detention conditions that must be met in order for the court to make a public protection order with or without restrictions. The court must be satisfied, on the required medical evidence, that: the offender has an impairment of, or a disturbance in the functioning of, the mind or brain; appropriate care or treatment is available for the offender in the establishment specified in the public protection order; dealing with the offender in any other way not involving his or her detention would create a risk, linked to the impairment or disturbance, of serious physical or psychological harm to other people; and detaining the offender is a proportionate response to both the likelihood of the harm concerned and the seriousness of that harm.

The court must also be satisfied that making an order that: detaining the individual is the most suitable way of dealing with the case, having regard to any other ways of dealing with the offender; the nature of the offence; the past history of the offender; and the risk of serious physical or psychological harm to other persons if the individual was not detained. In considering whether it would be appropriate to deal with the offender in a way not involving detention, or what risk doing so would create, the court must consider whether it could also make a sexual offences prevention order made under section 104 of the Sexual Offences Act 2003 or a violent offences prevention order and the effect of such an order. A violent offences protection order has the same meaning as in Part 8 of the Justice Act (Northern Ireland) 2015.

***Section 169 - Section 167: the restriction condition***

This section provides the additional condition that must be met in order for the court to be able to make a public protection order *with* restrictions. In order to meet this condition, the court must be satisfied that the risk of serious physical or psychological harm to other people is sufficient to warrant making a public protection order with restrictions rather than making a public protection order without restrictions. The nature of the offence, the past history of the offender, and the risk of serious physical or psychological harm to other persons if the person was set at large must be considered by the court.

***Section 170 - Further provision about making of public protection orders***

This section provides that a court may still make a public protection order in instances where an offender would otherwise be liable to be sentenced under Article 70(2) of the Firearms (NI) Order 2004, paragraph 2(4) or (5) of Schedule 2 to the Violent Crime Reduction Act 2006, or Article 13 or 14 of the Criminal Justice (Northern Ireland) Order 2008, or section 7 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015 – all of which would otherwise provide for minimum sentences on conviction.

Provision is also made that in cases where a public protection order is made, no custodial sentence, fine, or probation order may be made in respect of the offence, but the court may make any other order that it has power to make.

***Section 171 - Effect of public protection orders***

This section makes provision for the effect of a public protection order with or without restrictions. It places a duty on a constable, or persons directed by the court, to convey the accused person to hospital or a care home. It also provides that the managing authority of a hospital or care home must admit and detain the offender there in accordance with Chapter 3 (in respect of public protection orders without restriction) or Chapter 4 (in respect of public protection orders with restrictions).

This section also provides that any question of whether treatment should be given to a person detained under a public protection order is to be determined in the same way as it would be for a person who is not so detained.

***Section 172 - Power to direct the ending of restrictions under a public protection order***

This section provides the Department of Justice with the power to end restrictions if it is of the view that a public protection order with restrictions is no longer needed to protect the public from serious physical or psychological harm. On the ending of restrictions, the public protection order has the same effect as a public protection order without restrictions.

***Section 173 - Effect of ending restrictions under a public protection order***

This section applies where the Department of Justice ends the restriction element of a public protection order, or where a public protection order remains in force but the restriction period of the order has expired. In these circumstances, the public protection order continues as if it were a public protection order without restrictions, thus requiring the person to be detained in the establishment concerned.

***Section 174 - Hospital direction when passing custodial sentence***

This section provides the Crown Court with the power to make a hospital direction where a person is convicted of an offence punishable with imprisonment, other than an offence for which the sentence is fixed by law. A court of summary jurisdiction also has the power to make a hospital direction where a person is convicted of an offence punishable on summary conviction with imprisonment. Therefore, if the court, having considered the other available ways of dealing with the offender, decides to impose a custodial sentence and the conditions set out in section 175 are met, it may direct that the person, instead of being removed to and detained in prison, is instead removed to and detained in a specified hospital.

The section also provides that a hospital direction has effect not only in respect of the custodial sentence in respect of which the direction was made, but also any other custodial sentence imposed on the same or previous occasion.

### ***Section 175 - Conditions for giving hospital direction***

This section provides the conditions that the court must be satisfied are met before it can issue a hospital direction.

The court must be satisfied, on the required medical evidence, that the offender has a disorder requiring treatment, that failure to provide treatment to the offender as in-patient in a hospital would be more likely than not to result in serious physical or psychological harm to the offender or serious physical harm to other people, and that treatment appropriate to the offender's case is available in the hospital concerned.

The court must consider that giving a hospital direction is appropriate having regard to all the circumstances. In particular the court must have regard for: the power to transfer the person to prison when discharged from hospital; the ways in which the offender could become an in-patient in a hospital if the court imposed a custodial sentence without giving a hospital direction; and how likely it will be that consent will be obtained for treatment, or will be capable of being given under Part 2 of the Act or under the Mental Health Order if the person is under 16 years old.

### ***Section 176 - Effect of hospital directions***

Where a court makes a hospital direction, this section places a duty on a constable, or persons directed by the court, to take the offender to the appropriate hospital. It also provides that the managing authority of a hospital must admit and detain the offender in accordance with Chapter 5 of this Part.

This section also provides that any question of whether treatment should be given to a person detained under a hospital direction is to be determined in the same way as it would be for a person who is not so detained.

### ***Section 177 - Interim detention orders***

Before making a public protection order, hospital direction or dealing with the offender in some other way, this section provides that the Crown Court may make an interim detention order where a person is convicted of an offence punishable with imprisonment, other than an offence for which the sentence is fixed by law. A court of summary jurisdiction is also given power to make an interim detention order where a person is convicted of an offence punishable on summary conviction with imprisonment.

Before an interim detention order can be made, the court must be satisfied on the required medical evidence that: the offender has an impairment of, or disturbance in the functioning of, the mind or brain; that appropriate care or treatment is available for the offender in the hospital specified in the order; and

there is reason to suppose that the most suitable way of dealing with the case may be to make a public protection order or to pass a custodial sentence and give a hospital direction.

The section provides that a court may not make an interim detention order unless satisfied on the written or oral evidence of a person representing the managing authority of the hospital specified in the order that arrangements have been made for the offender's detention in that hospital.

### ***Section 178 - Effect of interim detention orders***

Where the court makes an interim detention order, this section places a duty on a constable or persons directed by the court to take the person subject to hospital. It also provides that the managing authority of a hospital must admit and detain the person.

This section also provides that any question of whether treatment should be given to a person detained under an interim detention order is to be determined in the same way as it would be for a person who is not so detained. It also provides that a court can make an interim detention order for an initial period of up to 12 weeks and that the court may also renew the order for a maximum of 28 days at a time if this is justified on the basis of medical advice. The section also sets a maximum total period for detention under the interim detention order of 6 months.

The section also provides that a court must terminate an interim detention order if it makes a public protection order, or a custodial sentence with or without a hospital direction, or another disposal in respect of the person. It further provides for the arresting without warrant and bringing before the court of an offender who absconds from hospital while subject to an interim detention order.

## ***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.

## ***Chapter 4 – Detention under a Public Protection Order With Restrictions***

### ***Section 190 - Detention under a public protection order with restrictions***

This section provides that a person liable to be detained under a public protection order with restrictions is to continue to be so liable until absolutely discharged by the Department of Justice under section 191 or by the Tribunal under Chapter 8.

### ***Section 191 - Discharge from detention by Department of Justice***

This section provides the Department of Justice with the power, at any time where a public protection order with restrictions is in force in relation to a person, to discharge the person by warrant, either absolutely or subject to conditions. The power to discharge absolutely can also be exercised in respect of a person who has been conditionally discharged by the Department of Justice under this section or by the Review Tribunal under section 232.

If a public protection order with restrictions provides that such restrictions are for a specified period of time and that period of time ends when a person has been conditionally discharged and not recalled, this section provides that at the end of the restricted period, the person is to be treated as absolutely discharged and no longer liable to be detained under the public protection order.

Discharge of a person under this section does not prevent him/her being detained under Part 2 of the Act or Part 2 of the Mental Health Order if he or she is under 16, if the relevant criteria for detention are met.

### ***Section 192 - Power to recall person who has been conditionally discharged***

This section provides the Department of Justice with the power to recall a person who has been conditionally discharged under section 191 at any time where the public protection order with restrictions remains in force. In order to recall the person, it must appear to the Department of Justice that failure to recall the person would create a risk, linked to an impairment of or disturbance in the functioning of the person's mind or brain, of serious physical or psychological harm to others, and that the likelihood and seriousness of the harm concerned are such that recalling the person is a proportionate response.

### ***Section 193- Reports by responsible medical practitioner***

This section provides that where a public protection order with restrictions is in force in respect of a person, the responsible medical practitioner must examine that person and make a report to the Department of Justice at such intervals as the Department of Justice directs. Such intervals must not exceed one year.

### ***Section 194 - Direction for person to attend for purposes of justice etc***

This section provides that where a person is liable to be detained under a public protection order with restrictions and the Department of Justice is satisfied that his or her attendance at any place in Northern Ireland is desirable in the interests

of justice or for the purposes of any public inquiry, the Department of Justice may direct that the person is taken to that place. In these circumstances, unless the Department of Justice directs otherwise, the person is to be kept in custody while being taken to that place, while being kept there, and while being taken back to the establishment where he or she is liable to be detained under the public protection order.

### ***Section 195 - Permission for absence***

This section provides that where a person is liable to be detained under a public protection order with restrictions, a responsible medical practitioner may, with the consent of the Department of Justice, give permission for that person to be absent from the establishment where he or she is detained. The practitioner may attach to the permission any conditions considered necessary by the practitioner for the health and safety of the offender or the protection of others. 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 further permission given in the offender's absence.

The responsible medical practitioner may also direct that the person is to remain in custody during his or her absence but such a direction can only be given if the practitioner thinks that this is necessary for the health and safety of the person or for the protection of other persons. In these cases, the person 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 person is staying within 14 days of the permission being given or of the day when the period is extended. The managing authority must also notify RQIA of the offender's return within 14 days.

Where a person is absent under this section and it appears to the responsible medical practitioner or the Department of Justice 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 or the Department of Justice may revoke the permission and recall the person to the establishment concerned. However, a person may not be recalled when he or she has ceased to be liable to be detained under the public protection order.

### ***Section 196 - Transfers between hospitals etc***

While a person is subject to a public protection order with restrictions, this section provides the managing authority of the establishment where the person is detained, with 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.

## ***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.

## ***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.

***Chapter 7 – Transfer from Prison Etc to Hospital***

***Section 211 - Power to transfer person serving custodial sentence etc to hospital***

This section provides that the Department of Justice may direct that a person who is serving a sentence is removed to hospital if certain conditions are met. The section applies to a person who is serving a custodial sentence as defined in section 253; a person who is detained because of a failure to comply with an order to enter into a recognizance to keep the peace or to be of good behaviour (or both); or a person who is detained because of a failure to pay a fine.

***Section 212 - Conditions for transfer under section 211***

This section makes provision for the conditions that must be met for transferring a person to hospital under section 211. The Department of Justice must be satisfied, based on medical evidence, that the person has a disorder which requires treatment and that failure to provide that treatment on the basis of in-patient care would be more likely than not to result in serious physical or psychological harm to the person, or serious physical harm to other people. The Department of Justice also has to be satisfied on the medical evidence that treatment that is appropriate for the person has to be available in the hospital that he or she will be transferred to. Additionally, the Department of Justice also has to consider that giving a direction to transfer a person to hospital is appropriate, having regard to: the public interest; all the circumstances of the case; the ways in which the person could otherwise become an in-patient if a direction was not given; and how likely it is that consent will be obtained for treatment, treatment

can be given to the person under Part 2 of the Act or if the person is under 16 years of age, the Mental Health Order.

***Section 213 - Effect of transfer under section 211***

This section provides for the effect of a transferring a person to hospital. If a direction is given to transfer the person, the managing authority of the hospital must admit the person and detain him or her in the hospital in accordance with chapter 5 of Part 10 of the Act.

***Section 214 - Transfer of civil prisoner or immigration detainee to hospital***

This section provides that the Department of Justice may direct that a person who is a civil prisoner or immigration detainee can be transferred to hospital if certain conditions are met.

The section also provides that if such a direction is given, then the managing authority of the hospital must admit the person and detain him or her there in accordance with section 215.

***Section 215 - Detention in hospital on removal under section 214***

This section provides that where a hospital transfer direction is given in relation to a civil prisoner or an immigration detainee, the person will be liable to be detained in hospital until the hospital transfer direction ceases to have effect. It ceases to have effect if the conditions under section 216 are met, or if the Review Tribunal so directs under section 240. Sections 201 to 203, which relate to detention under hospital directions, apply to civil prisoners and immigration detainees detained in hospital under this section.

***Section 216 - Duration of direction under section 214***

This section provides that a hospital transfer direction under section 214 ceases to have effect in certain circumstances. The direction ceases to have effect, if it has not done so already, at the end of the period of liability to detention. The Department of Justice must also direct by warrant that the individual be returned to custody, with the hospital direction ceasing to have effect upon their return, if it has received a relevant notification by a suitable medical practitioner. The medical practitioner must be of the opinion that the individual does not have or is no longer suffering from the disorder which precipitated the direction; it is more likely than not that if the person was transferred from hospital, no serious physical or psychological harm to him or her or serious physical harm to other persons would result from the cessation of treatment as an in-patient; or that no effective treatment for the individual's disorder can be provided in hospital.

The section also provides that the duty 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 the hospital under a relevant provision and that the hospital direction is to cease to have effect. "Relevant provision" is defined in the case of a civil prisoner as

section 16(2) of the Prison Act (Northern Ireland) 1953, and in the case of an immigration detainee as either section 16(2) of the Prison Act (Northern Ireland) 1953 or Part 8 of the Immigration and Asylum Act 1999.

***Section 217 - Transfer to hospital of person remanded by magistrates' court***

This section provides that the Department of Justice may direct that a person who is remanded in custody by a magistrates' court can be transferred to hospital if certain conditions are met.

If the Department of Justice does so direct, the section also provides that the managing authority of the hospital must admit the person and detain him or her there in accordance with section 218.

***Section 218 - Detention in hospital on removal under section 217***

This section provides that when an individual is detained in hospital following removal under a direction given in accordance with section 217, he or she shall be liable to be detained until the direction ceases to have effect in accordance with sections 219, 222 or 240.

Provision is also made for applying sections 201 to 203 in these circumstances. Section 201 requires the responsible medical practitioner to examine the person and report to the Department of Justice at intervals not exceeding a year. Section 202 makes provision for permission being granted to give the person leave of absence from hospital, whilst section 203 makes provision for transferring the individual between hospitals.

***Section 219 - Duration of direction under section 217***

The section provides that a hospital transfer direction, made in respect of an individual remanded by a magistrates' court, ceases to have effect in certain circumstances. The direction ceases to have effect at the end of the remand period, unless it has already ceased to have effect, or when the individual is committed in custody to the Crown Court for trial (or otherwise dealt with).

If the magistrates' court is satisfied that the person is no longer suffering from the disorder which precipitated the direction, or that it is more likely than not that no serious physical or psychological harm to the person or serious physical harm to others would result from the person ceasing to be provided with treatment as an in-patient, or on the basis that effective treatment for the individual's disorder can no longer be provided, it may direct that the direction will cease to have effect. The court can make this decision even if the period of remand has not expired or if the individual has been committed to the Crown Court.

The magistrates' court may also further remand the individual in their absence, unless the individual has not appeared before the court within the previous six months. The Court may also conduct a preliminary enquiry and commit the individual to trial in his or her absence, on the basis of oral or written medical evidence that the individual is unable to take part in proceedings, and the

individual is represented by counsel or a solicitor who is given the opportunity of being heard.

### ***Section 220 - Transfer of certain other detainees to hospital***

This section provides that the Department of Justice may direct by warrant that a “relevant detainee” – being someone who is not serving a sentence within the meaning of section 211, a civil prisoner or immigration detainee within the meaning of section 214, or a person remanded in custody by a magistrates court – be removed from a relevant place to a hospital if the conditions for giving such a direction set out in section 223 are met. The managing authority of the hospital specified in the direction must admit the person and detain them.

### ***Section 221 - Detention in hospital on removal under section 220***

This section provides that a person subject to a hospital direction given under section 220 shall be liable to be detained under the direction ceases to have effect under section 222 or 240. The section also provides that sections 201 to 203 apply to hospital directions granted under section 220.

### ***Section 222 - Termination of direction under section 220***

The section provides that a hospital transfer direction, made in respect of other detainees under section 220, ceases to have effect in certain circumstances. The direction ceases to have effect when the detainee’s case is dealt with by the court.

The Department of Justice must also direct by warrant that the detainee be removed to custody and the direction will cease to have effect upon the detainee’s return to custody. The Department of Justice may issue this warrant following written notification from a suitable medical practitioner that, in his or her opinion, the detainee is no longer suffering from the disorder which precipitated the direction, or on the basis of risk, or on the basis that effective treatment for the detainee’s disorder can no longer be provided.

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 transfer 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.

In the absence of warrant from the Department of Justice, the court may direct that an individual be returned to custody from hospital or released on bail. This direction must be based on the written or oral evidence of the responsible medical practitioner, on the basis that, in his or her opinion, the detainee is no longer suffering from the disorder which precipitated the direction, or on the basis of risk, or on the basis that effective treatment for the detainee’s disorder can no longer be provided.

### ***Section 223 - Conditions for transfer to hospital under section 214, 217 or 220***

This section makes provision for the conditions that are to be satisfied before the Department of Justice can make a hospital transfer direction in respect of civil prisoners, immigration detainees, persons who have been remanded in custody by a magistrates' court and "other detainees".

The Department of Justice has to be satisfied, on the basis of medical evidence, that the person urgently needs treatment for a disorder; that failure to provide treatment to the person as an in-patient would be more likely than not to result in serious physical or psychological harm to him or her or serious physical harm to other people; and that treatment that is appropriate for the person is available in the hospital concerned.

In addition, the section provides that the Department of Justice also has to consider that giving the hospital transfer direction is appropriate, having regard to all the circumstances. In particular, the Department of Justice has to consider other ways in which the person may become an in-patient and also the likelihood that consent will be obtained for treatment under Part 2 of the Act or if the person is under 16 years of age, the Mental Health Order.

### ***Section 224 - General provisions about hospital transfer directions***

This section contains general provisions about hospital transfer directions. It provides for the meaning of "hospital transfer direction" for the purposes of the Part. It also provides that a hospital transfer direction will cease to have effect at the end of the period of 14 days beginning with the date of the direction, if the person has not been admitted to hospital during that time.

The section also provides that the question of whether a person who is detained in hospital under a hospital transfer direction should receive treatment is to be determined as if the person was not detained under the direction.

This section also provides that, if the responsible medical practitioner is of the opinion that the person who has been given the direction lacks or probably lacks capacity in relation to whether an application to the Tribunal under section 225 should be made, the practitioner must, as soon as practicable, give the Attorney General any prescribed information and notice that a hospital transfer direction has been given.

## ***Chapter 8 – Rights of Review of Detention under Part 10***

### ***Section 225 - Right to apply to Tribunal***

This section provides that a "qualifying person" (as defined in section 226) may apply to the Tribunal within six months of the making of an order or direction ("the initial period") where a public protection order, or a hospital direction or hospital transfer direction is given.

The section also provides that if a public protection order without restriction is extended, a qualifying person may apply to the Tribunal within the period beginning with the date of extension and ending with the date on which the extension ends (“the extension period”).

Additionally, the section provides that where a public protection order with restrictions, a hospital direction or hospital transfer direction is in force, a qualifying person may apply to the Tribunal within 6 months following the initial period or within any 12 month period beginning with the anniversary of the date of the making of the order or direction.

### ***Section 226 - Meaning of “a qualifying person”***

This section defines a “qualifying person” as being the person who is liable to be detained under the public protection order, hospital direction or hospital transfer direction, or if the person is 16 years of age or more, their nominated person. If the person is under the age of 16, a “qualifying person” can also be a person with parental responsibility for the person.

The section also provides that if the person who is liable to be detained is 16 years of age or more and has capacity to make a decision about whether an application to the Tribunal should be made, the nominated person requires the consent of the person before he or she can make an application.

### ***Section 227 - Applications: visiting and examination***

For the purposes of advising whether an application to the Tribunal should be made or for providing information about a person’s condition for such an application, this section provides that a medical practitioner who has been authorised by or on behalf of the person or, if the person is aged 16 or over by a nominated person, may visit the person and examine him or her in private. For the same purposes, and with the same authorisations, the medical practitioner may also require the production of and examine and take copies of, any health record and any other record that relates to the person’s detention, care or treatment.

### ***Section 228 - Power of certain persons to refer case to Tribunal***

This section provides that a person’s case can be referred to the Tribunal at any time by the Attorney General, the Department, or, on the direction of the High Court, the Master (Care and Protection). In relation to a person who is detained under a public protection order, the question to be referred to the Tribunal is whether the person should be discharged from detention. In relation to the hospital direction and hospital transfer direction, the question is whether the person should be transferred from hospital to the place where he or she would have been detained if the direction had not been given.

Provision is also made that for the purpose of providing information for the referral, a medical practitioner who has been authorised by or on behalf of the person who is being detained may visit the detained person and examine him or

her in private, as well as requiring the production of, examine and take copies of, any health record and any other record that relates to the person's detention, care or treatment.

***Section 229 - Duty of HSC trust to refer case to Tribunal***

This section provides that the HSC trust in whose area the person is detained has a duty to refer the person's case to the Tribunal. The duty arises, if on a relevant date, the person is subject to a public protection order or is liable to be detained in a hospital under a hospital direction or hospital transfer direction; the order or direction have been in force throughout the relevant period; and the Tribunal has not considered the person's case at any time during that period. "Relevant period" is defined as meaning if the person is under 18, the period of one year ending with the relevant date or otherwise, the period of two years ending with the relevant date

"Relevant date" is defined as meaning, in relation to a public protection order without restrictions, a date on which the order is extended and in relation to a public protection order with restrictions, hospital direction or hospital transfer direction, the first day after the end of the period of 6 months beginning with the date of the order or direction or any anniversary of the date of the order or direction.

The section also provides that for the purpose of providing information for the reference, a medical practitioner who has been authorised by or on behalf of the person who is being detained may visit the detained person and examine him or her in private, as well as require the production of, and can examine and take copies of, any health record and any other record that relates to the person's detention, care or treatment.

***Section 230 - Duty to notify the Attorney General***

This section provides that the responsible medical practitioner must, as soon as practicable, give the Attorney General any prescribed information and notice of various matters. This duty arises if immediately after the end of a relevant period, a person is liable to be detained under a public protection order or is liable to be detained in hospital under a hospital direction or hospital transfer direction; no application or reference to the Tribunal was made during the relevant period; and the responsible medical practitioner is of the opinion that the person lacks or probably lacks capacity in relation to whether an application to the Tribunal under section 225 should be made.

"The relevant period" means the period of six months beginning with the date of the order or direction, and any period of six months immediately following another relevant period.

***Section 231 - Powers of Tribunal as to public protection order without restrictions***

This section makes provision for the powers that the Tribunal can exercise when an application or referral is made to it in relation to a person who is subject to a public protection order without restrictions. The Tribunal may discharge the person from being liable to be detained under the order or decide not to discharge the person from that liability. The Tribunal can only decide not to discharge the person if it is satisfied that the prevention of serious harm condition contained in section 233 is met.

***Section 232 - Powers of Tribunal as to public protection order with restrictions***

This section makes provision for the powers that the Tribunal can exercise when an application or referral is made it in relation to a person who is subject to a public protection order with restrictions. The Tribunal may discharge the person absolutely or conditionally, or decide not to discharge the person from liability to be detained under the order.

The section provides that a person must be discharged absolutely if it is not satisfied that releasing the individual would create a substantial risk to others and it is satisfied that it is inappropriate for the person to be liable to be recalled to hospital.

The section provides that a person must be discharged conditionally if it is not satisfied that releasing the individual would create a substantial risk to others, but it is satisfied that it is appropriate for the person to be liable to be recalled to hospital.

Where the Tribunal makes an order discharging the person conditionally, the section provides that the order can take effect from a date in the future if the Tribunal considers that arrangements need to be made to give effect to the conditions.

***Section 233 - Sections 231 and 232: the prevention of serious harm condition***

This section defines the prevention of serious harm condition that must be considered by the Tribunal when considering the discharge of persons who are subject to public protection orders, with or without restrictions.

The condition is that there is an impairment, or disturbance in the functioning of, the person's mind or brain; releasing the person from detention would create a risk, linked to the impairment or disturbance, of serious physical or psychological harm to other persons; and the likelihood and seriousness of the harm are such that detaining the person is a proportionate response.

***Section 234 – Sections 231 and 232: additional powers of Tribunal etc***

This section provides that where the Tribunal decides under section 231 or 232 not to discharge a person, it may, with a view to facilitating the discharge of the person at a later date, recommend the taking of specified actions and further consider the case where those actions have not been complied with. Where the Tribunal further considers the case, section 231 or as the case may be, section 232, applies.

A discharge of a person under Chapter 8 does not prevent that person from being detained in circumstances amounting to a deprivation of liberty by virtue of Part 2 of the Act or under Part 2 of the Mental Health Order.

***Section 235 - Effect of conditional discharge***

This section provides that if a person who is liable to be detained under a public protection order with restrictions is conditionally discharged by the Tribunal, the Department of Justice has a power to recall the person to hospital. The section also provides that the person must comply with all conditions that are imposed by the Tribunal upon discharge, or imposed later by the Department of Justice. Provision is also made for the Department of Justice to vary any conditions that have been imposed.

The section provides that if the person is subject to a public protection order with restrictions for a specified period only and that period ends whilst the person is conditionally discharged and has not been recalled to hospital, then the person is to be regarded as absolutely discharged and is no longer liable to be detained under the order.

***Section 236 - Application and references to Tribunal where person recalled***

This section makes provision for the Department of Justice to make a reference to the Tribunal within one month from the date of the person's return to hospital where he or she has been recalled from being conditionally discharged from being liable to be detained under a public protection order with restrictions. The person, his or her nominated person (if he or she is aged 16 or over), or an individual who has parental responsibility for the person if he or she is aged under 16, may also apply to the Tribunal within 6 months of the date of the return to hospital, within the 6 months following that period or within any 12 month period beginning with an anniversary of the date of the arrival of the person in hospital. No application under section 225 may be made in respect of the order.

***Section 237 - Applications to Tribunal where person has not been recalled***

This section applies where a person who has been conditionally discharged from liability to be detained from a public protection order with restrictions has not been recalled. In these circumstances the person, his or her nominated person (if he or she is aged 16 or over) or an individual who has parental responsibility for the person if he or she is aged under 16, may apply to the Tribunal within a 12 month period beginning with the date on which the person was conditionally

discharged and within any period of 12 months beginning with an anniversary of that date. If such an application is made, the Tribunal may vary any condition, impose any condition, discharge the individual from liability to be detained under the public protection order, or take no action.

***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.

***Section 239 – Section 238: additional powers of Tribunal***

Where under section 239, the Tribunal notifies the Department of Justice that it is satisfied that the prevention of serious harm condition is met, it may, with a view to facilitating the transfer of the person at a future date, recommend the taking of specified actions and further consider the case in the event of those actions not being complied with. Where the Tribunal further considers the case, section 238 applies.

***Section 240 – Section 238: procedure where prevention of serious harm condition is not met***

This section provides that where the Tribunal notifies the Department of Justice that it is not satisfied that the prevention of serious harm condition is met in respect of a person who is liable to be detained in hospital, then the Department of Justice must by warrant direct that the person is removed to any prison in which the person might have been detained if the direction had not been given.

The direction will cease to have effect on the person’s arrival in prison. 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.

The section also provides that the Department of Justice does not have to direct that the person is removed to prison and that the direction will not cease to

have effect on the person's arrival in prison, if the Department of Justice instead 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 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, and also directs that the relevant direction is to cease to have effect.

## ***Chapter 9 – Supplementary***

### ***Section 241 - Provision of information***

This section contains a power to make regulations that may provide that information is to be given to certain prescribed persons at prescribed times when a public protection order, hospital direction or hospital transfer direction is made, or in such other circumstances where a person is or has been detained by virtue of this Part as may be prescribed in regulations.

Any regulations must include provision for the purpose of ensuring that where a person has been detained as a result of Part 10, that person is, as soon as practicable, made aware of the provision under which he or she has been detained, the effect of that provision and the rights of review by the Tribunal that are available. The regulations must also provide that, where a person is detained under this Part and discharged from being liable to be so detained, the person is informed in writing of that discharge.

### ***Section 242 - Ways in which information must be provided***

This section provides for a power to make regulations which provide for the ways in which information that is required to be given under Part 10 or any regulations made under Part 10 must be given to prescribed persons. Regulations may in particular require information to be given orally as well as in written form.

### ***Section 243 - Section 22 may apply to person detained under Part 10***

This section applies in relation to any provision of Part 10 which provides that the question whether a person may be given treatment while detained in pursuance of a remand, order or direction under Part 10, is to be determined in the same way as if the person was not so detained.

Such a provision does not prevent the person from falling within the reference in section 23 to a person detained under this Act in circumstances amounting to a deprivation of liberty and accordingly, does not prevent section 20 from applying in relation to the person.

### ***Section 244 - Absence without permission***

This section applies when a person who is liable to be detained under a public protection order, hospital direction or hospital transfer direction is absent without permission, fails to return to the establishment in which or she is liable

to be detained after a period of leave of absence, or is absent without permission from any place where he or she is required to be as a result of conditions that have been imposed on the grant of the period of leave. If a person is absent or fails to return to an establishment, he or she may be taken into custody and returned to there by any person who is on the staff of the establishment, any constable, any approved social worker or any person who has been authorised to do so by the managing authority of the establishment.

***Section 245 - Effect of court order or direction on previous authority for hospital detention***

This section provides that where an individual is admitted to a hospital or other establishment as a result of the making of a public protection order or hospital direction, any previous public protection order or authority for detention under Part 2 of the Act will cease to have effect.

***Section 246 - Appeals: general***

This section applies where the court makes a public protection order, a hospital direction or a supervision and assessment order. Where a person appeals to any court against the order or direction, that court has the same powers as if the appeal was also against any further order made by the court. Where the person is a child, any appeal may be brought by the child, on behalf of the child by anyone who has parental responsibility for that child, or any guardian.

***Section 247 - Appeals against orders made on finding of unfitness to be tried etc***

This section applies where, by virtue of Chapter 6, a court makes a public protection order or supervision and assessment order in respect of a person who is unfit to plead or who is not guilty by reason of insanity.

The section provides that the person has the same rights of appeal as if the order had been made upon his or her conviction. Accordingly, for the purposes of section 8 of the Criminal Appeal (Northern Ireland) Act 1980 and Article 140 of the Magistrates' Courts (Northern Ireland) Order 1981, the order is treated as if it were an order made on conviction, and for the purposes of Article 146 of the 1981 Order, the order is a determination of the proceedings in which the order was made.

On any appeal against the order, the Court of Appeal or county court has the same powers as if the appeal had been against both the finding and the sentence.

***Section 248 – Hospital directions: cases stated by magistrates' courts***

This section makes provision for an appeal against a hospital direction made by a magistrates' court.

***Section 249 - Requirements as to written evidence***

This section provides that where, under Part 10, a court may act on the written evidence of a medical practitioner, a report in writing that is purported to be signed by the medical practitioner may be received in evidence without further proof of signature or that the practitioner has the required qualifications or is of the required description. However, the court may require the practitioner to give oral evidence.

Where a report is tendered in evidence other than by or on behalf of the person who is the subject of that report, then a copy of the report must be given to his or her legal representative. If the person is not legally represented, the substance of the report must be disclosed to him or her or if the person is a child, then the substance of the report must be disclosed to the parent or guardian, if they are present in court. The person may require the medical practitioner to be called to give oral evidence and evidence to rebut the report may be called.

***Section 250 - Interpretation of Part 10: children***

This section contains provision to aid with interpretation of Part 10 as it relates to children.

***Section 251 - Interpretation of Part 10: impairment of or disturbance in the functioning of the mind or brain***

This section contains provision to aid with the interpretation of any reference to an impairment of or a disturbance in the function of a person's mind or brain within Part 10.

***Section 252 - Interpretation of Part 10: references to disorder***

This section contains provision to aid with the interpretation of any reference to a disorder within Part 10.

***Section 253 - Interpretation of Part 10: general***

This section contains provision to aid with interpretation of Part 10. It also provides that a remand, order, direction of the court is not to be regarded as an act done or decision made for or on behalf of a person for the purposes of section 2 or any other purpose of the Act.