

*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 11 – Transfer between Jurisdictions

Sections 254 and 255 – Removal of persons detained under Part 2 from Northern Ireland to England or Wales or Scotland

Section 254 establishes a framework for the transfer of patients detained in a hospital under Part 2 of the Act from Northern Ireland to England or Wales.

If P is detained in a hospital under a Schedule 1 authorisation, the Northern Ireland Department of Health may authorise his or her removal to England or Wales (and may give any necessary directions for P's conveyance there) provided the following conditions are met: (1) P lacks capacity in relation to the question of his or her removal to England or Wales; (2) it would be in P's best interests to remove P there; and (3) appropriate arrangements have been made for admitting P to a hospital in England or Wales in which appropriate care or treatment is available.

The effect of the section is that an authorisation granted in respect of P under Schedule 1 of the Act will cease to have effect once P is admitted to a hospital in England or Wales. At that point, the relevant law in England and Wales will apply (the Mental Health Act 1983).

Section 255 establishes the same framework for the transfer of patients detained in a hospital under Part 2 from Northern Ireland to Scotland. The effect of the section is that the authorisation granted in respect of P under Schedule 1 will cease to have effect once P is admitted to a hospital in Scotland or P's detention is authorised (in another way) under the Mental Health (Care and Treatment) Act 2003. At that point, the relevant law in Scotland will apply (the 2003 Act).

Section 256 – Removal of certain persons detained under Part 10 to England or Wales

Section 256 establishes a framework for the transfer of patients from Northern Ireland to England or Wales who are detained under a public protection order or a hospital direction made under section 211, 214 or 220. The Department of Justice may authorise the removal of a person to England or Wales if certain conditions are met. These conditions are that failure to remove the person would

be more likely than not to result in serious physical or psychological harm to the person or serious physical harm to others; and that arrangements have been made for admitting the person to hospital in the other jurisdiction in which care or treatment that is appropriate in the person's case is available.

Section 257 - Removal of certain persons detained under Part 10 to Scotland

Section 257 establishes the same framework for the transfer of patients from Northern Ireland to Scotland who are detained under a public protection order or a hospital direction made under section 211, 214 or 220.

Sections 258 and 259 – Persons to be detained under Part 2 after removal from England or Wales or Scotland to Northern Ireland

Section 258 makes provision for the transfer of a person who is aged 16 or over and who is liable to be detained for treatment under Part 2 of the 1983 Act from England or Wales to Northern Ireland. It places certain obligations upon the relevant HSC Trust to: (1) notify RQIA of the person's admission to hospital; (2) arrange for a report to be made (the form of which is to be prescribed) within 28 days of admission; and (3) forward a copy of that report to RQIA as soon as practicable.

The effect of the section is that an authorisation under Schedule 1 is deemed to have been granted for the purposes of P's detention in hospital in Northern Ireland to provide care or treatment to P.

Section 259 makes provision for the transfer of a person who is aged 16 or over and who is subject to a compulsory treatment order under section 64 of the 2003 Act from Scotland to Northern Ireland. It places the same obligations on the relevant Trust as section 258 in respect of such transfers. The effect of the section is also the same as section 258.

Section 260 – Persons to be detained under Part 10 after removal from England or Wales

This section applies where a person is transferred from England or Wales to Northern Ireland and immediately before being removed was subject to a hospital order, hospital direction or a transfer direction in England or Wales. Certain obligations are placed on the HSC Trust to (1) notify RQIA of the person's admission to an appropriate establishment; (2) arrange for a report to be made (the form of which is to be prescribed) within 28 days of admission; and (3) forward a copy of that report to RQIA as soon as practicable. Provision is also made to treat a person as if a particular order or direction under Part 10 had been made or given in respect of that person. Additionally, provision is made so that the order or direction that is treated as having been made or given in respect of the person is so treated for particular purposes from a specified date.

Section 261 – Persons to be detained under Part 10 after removal from Scotland

This section establishes the same approach for persons who are transferred from Scotland as is taken in section 260 for those transferred from England or Wales.

Section 262 – Removal or transfer from Northern Ireland: power to make further provision

Section 262 provides for regulations to make provision in connection with the removal of a person by virtue of Part 11 or Part 2 to a place outside Northern Ireland (whether or not a place which is in the United Kingdom). The section also provides for regulations to make provision for, and in connection with, enabling the Northern Ireland Department of Health and the Department of Justice to authorise and give directions in connection with the removal or transfer to a place outside Northern Ireland of prescribed descriptions of persons in particular circumstances. The regulations may prescribe steps to be taken before a person is removed or transferred, or may prescribe other conditions to be met before removal or transfer; may provide that where a person is removed or transferred, any prescribed measure to which the person is subject ceases to have effect; and may apply, or make provision similar to, any provision of Part 2 or Part 10 (with or without modifications). The power to make regulations must be exercised so as to ensure that notice is given to prescribed persons and the person who is to be removed or transferred at least a prescribed period before the date of the proposed removal or transfer; and there is a right to apply to the Tribunal in respect of the removal or transfer.

Section 263 – Persons removed or transferred to Northern Ireland: power to make further provision

Section 263 provides that regulations may be made to make provision, in respect of persons of a prescribed description who are removed to Northern Ireland, requiring prescribed steps to be taken when the person arrives in Northern Ireland and providing for the person to be treated as if he or she was a person of a prescribed description subject to measures under the Act. The section also provides that regulations may make provision about the application of the Act to persons who are removed to Northern Ireland and who are treated as being subject to particular measures under the Act.

Sections 262 and 263 enable provision to be made in the future should it prove possible to devise arrangements for the transfer between the UK jurisdictions of persons subject to other measures such as community residence requirements and their equivalent in England, Wales or Scotland. Once the Act comes into force, there is insufficient correspondence between such measures and their equivalents in the rest of the UK to enable the Act to make such provisions at this point.

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Section 264 – Interpretation of Part 11

Section 264 provides definitions of particular terms for the purposes of Part 11.