

*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 12 - Children

Section 265 – In-patients under 18: duties of hospital managers

This section places a new duty on hospital managers to ensure that any person aged 16 or 17 who is an in-patient in a hospital for the assessment or treatment of mental disorder under the Act is accommodated in an environment that is suitable for their age, subject to their needs.

Section 266 and Schedule 8 – Amendments of Mental Health Order: children etc

As the Act will replace Part 2 of the Mental Health Order as it currently applies to persons aged 16 and over, section 266 and Schedule 8 restricts its future application to children (defined in section 266 as children under 16) and repeals Articles 18 to 26 (guardianship) and all references to guardianship throughout the Order. Provisions in the Order relating to patients concerned in criminal proceedings are also repealed as the new provisions in the Act apply to persons of all ages. Articles 97 to 109 (management of property and affairs of patients) are also repealed.

In addition, Schedule 8 makes provision for additional safeguards for children in the Mental Health Order. These include a new overarching principle requiring persons making certain decisions under the Order to have a child's best interests as their primary consideration. Provision based on section 7 of the Act but adapted so that it is appropriate for children is made, explaining the steps to be taken when making a determination of what care or treatment would be in a child's best interests.

Provision is also made in Schedule 8 for independent advocates to be available to represent and support children admitted to hospital for assessment or treatment of mental disorder or where it is proposed to give a child certain kinds of serious treatment. The detail of this new safeguard will be provided for in regulations made under the Order. A duty to provide age-appropriate accommodation is also included in Schedule 8.

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The application of Part 4 of the Mental Health Order has also been restricted so that it only applies to persons under 16 in the future. However, some significant amendments have been made to this Part to align the safeguards in it as closely as possible to those that would apply to similar treatment if given under the provisions of the Act in respect of a person aged 16 and over.