

*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 13 – Offences

Section 267 – Ill-treatment or neglect

This section makes it an offence for a person, X, to ill-treat or wilfully neglect another person, P, where: (1) P is in the care of X and X knows or believes that P lacks capacity in relation to matters concerning P's care; (2) P is detained under Part 9 or 10 and is in the custody or care of X; (3) X is an attorney appointed by P under a lasting power of attorney or enduring power of attorney; or (4) X is a court-appointed deputy for P. This offence applies in respect of persons of all ages. Conviction can result in a fine, prison term or both.

Section 268 – Forgery, false statements etc

This section makes it an offence for anyone to make a false entry or statement in the documents listed in the section and makes it an offence to use a false entry or statement in a document with the intent to deceive. Conviction can result in a fine, prison term or both.

Section 269 – Unlawful detention of persons lacking capacity etc

This section makes it an offence for a person ("R") to knowingly detain a person ("P") who is over 16 and lacks capacity, in circumstances amounting to a deprivation of liberty and there is no authority to do so under the Act or any other statutory provision. R also commits an offence if R intentionally detains P in circumstances amounting to a deprivation of liberty; R does so in purported reliance on Part 9 or 10; and P is not liable to be detained by virtue of that Part. It also makes it an offence to continue to detain someone who has been detained in any place under the Act after their liability to be so detained by virtue of the Act or any other statutory provision ceases. Conviction can result in a fine, prison term or both. However, no offence under this section is committed where the person who is detained is under 18 and the detention gives effect to a decision made by a parent or guardian of the person. Nor does this new offence replace or in any way interfere with the common law offence of false imprisonment.

Section 270 – Assisting persons to absent themselves without permission

This section creates several new offences relating to assisting someone to absent themselves without permission from a place in which they are liable to be detained in circumstances amounting to a deprivation of liberty under the Act. A person can only be guilty of an offence under this section if they know that the person they are assisting is liable to be detained under the Act. Conviction can result in a fine, prison term or both.

Section 271 – Assisting persons to breach community residence requirement

This section creates new offences relating to assisting someone to breach a community residence requirement. Conviction can result in a fine, prison term or both.

Section 272 - Obstruction

In certain circumstances someone may be authorised by the Act to visit, interview or examine a person affected by the provisions of the Act. This section makes it an offence to refuse or obstruct that access, or to refuse to produce related records when requested by the authorised person. The section also makes it an offence for any third person to insist on being present after having been requested to withdraw by the authorised person. Conviction can result in a fine, prison term or both.

Section 273 – Offences by bodies corporate

Where an offence has been committed under the Act by a body corporate, e.g. bank, building society, private healthcare company, HSC trust, this section sets out that any director, manager, secretary, or other similar officer of that body is also guilty of the offence if (1) it was done with their consent; (2) if they connived in the offence; or (3) if the offence can be attributed to neglect on their part. Under the section such persons can have proceedings issued against them in addition to those which may be issued against the body corporate.

Section 20(2) of the Interpretation Act (Northern Ireland) 1954 (offences committed by a body corporate) has been disapplied to offences committed by bodies corporate under the Act. Specific provision on this topic is made by subsections (1) and (2) of this section.