

*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 15 – Supplementary

Section 288 – Codes of practice

This section places an obligation on the Department of Health to provide one or more codes of practice. It stipulates that the Department of Health must consult with relevant bodies before preparing or revising the code and must in particular consult the Department of Justice if the code contains specific provision about persons detained under Part 9 or 10; and that the Department of Health may delegate the preparation or revision of the code as it sees fit. The code, or any alterations of the code, must be laid before the Assembly for the statutory period required; and provided the Assembly does not resolve to withdraw the draft, the code must then be published.

Section 289 – Effect of code

This section places a duty on relevant people to have regard to the code(s) of practice when acting in any of the ways mentioned in subsection (2), in relation to a person aged 16 or over who lacks capacity. The provision of the code(s) or failure to comply with them may be taken into account in any relevant court or tribunal proceedings.

Section 290 – Provision of information by HSC trusts and the Department

This section places a duty on the HSC trusts and the Department to provide a relevant authority with returns, reports and other information as the authority may require for the performance of its functions under the Act. “Relevant authority” means the High Court, the Public Guardian, the Review Tribunal or the Attorney General for Northern Ireland.

Section 291 – Provision of facilities by HSC trusts and the Department

This section places a duty on an HSC trust to provide to a relevant authority such facilities as are necessary to enable the relevant authority to perform its functions under the Act. The section also places a duty on the Department to provide to the Review Tribunal such facilities as are necessary for it to perform its functions

under the Act. “Relevant authority” means the High Court, the Public Guardian, or the Review Tribunal.

Section 292 - Warrants

An application for a warrant may be made by an officer of a HSC trust or a constable where any person liable to be detained in a place in circumstances amounting to a deprivation of liberty is found on any premises to which admission has been refused or refusal of such admission is apprehended. The warrant authorises any constable accompanied by a medical practitioner, and an approved social worker (if appropriate), to enter the premises using force if necessary and to remove the person.

Section 293 - Warrants: persons liable to be detained under 1983 Act or 2005 Order

An application for a warrant may be made by representatives of the health services in Scotland or England and Wales, where a person is found on any premises in Northern Ireland to which admission has been refused or refusal of such admission is apprehended, and there is reasonable cause to believe that the person may be subject to relevant mental health law in Scotland, or England and Wales, which permits him to be taken into custody there. The warrant authorises a constable, accompanied by a medical practitioner, to enter the premises using force if necessary and remove the person.

Section 294 – Provisions as to custody, detention etc

This section provides that an individual removed from, taken to or detained in any place by the police under Part 9, or taken to or detained in any place under Part 10, is to be treated as being in legal custody. The section also provides that the constable or any other person taking or detaining the individual under Part 9 or 10 has all the powers, authorities, protections and privileges which a constable has within the area for which he or she acts as constable.

Section 295 – Retaking of persons escaping from legal custody

This section makes provision for the retaking of persons (“P”) escaped from legal custody. Provided that P remains liable to be detained by virtue of Part 9 or 10, then P can be retaken into custody by: whomever had custody of him/her prior to the escape; any constable or social worker; or, if P was detained in an appropriate establishment, any person of the staff or authorised in writing by the managing authority of that establishment.

Section 296 – Special accommodation

Although Northern Ireland does not at present have any high security hospitals, this section makes provision for the Department of Health and the Department of Justice to, in the future, provide such special accommodation for people detained under the Act who require care and treatment in accommodation under conditions of special security, to protect other persons.

Section 297 – Panels constituted to decide applications: general provision

This section requires a panel constituted to grant an authorisation under the Act (under Schedules 1, 3 or 6) to have 3 members, all of whom must be present during any panel proceedings. Further membership requirements may be provided by regulations, including requirements around how the panel should operate. The section also allows for regulations to amend the time limit in which panels must make decisions on authorisations (currently 7 working days on receipt of application); and also the length of interim authorisations granted. (currently 28 days).

Section 298 – Protection for acts done in pursuance of Part 9 or 10

This section provides that no civil proceedings may be brought in relation to any act purporting to be done in pursuance of Part 9 or 10, without the leave of the High Court, and any criminal proceedings in relation to such an act may only be brought by or with the consent of the Director of Public Prosecutions. This section does not apply in respect of proceedings brought against the Department, the Regional Board, or a HSC trust.

Section 299 – Risk of serious physical harm to others

This section provides that only evidence that the person has behaved violently towards other people, or that the person has behaved in such a way as to place other people in reasonable fear of serious physical harm to themselves, may be taken into account where a determination is required on the risk of serious physical harm to others.

Section 300 – Medical practitioners who may make certain medical reports

Regulations may specify which type of medical practitioners may make medical reports under the Act. It may include, for example, that the medical practitioner must be approved by RQIA.

Section 301 – Documents appearing to be duly made

Regulations may make provision to enable certain documents (prescribed) to be treated as factual and accurate, to the extent that they can be acted upon without further proof in certain circumstances.

Section 302 – Regulations

This section details the Assembly process under which regulations of the Act shall be approved.

Section 303 – Consequential amendments and repeals

This section states that the Act's consequential amendments can be found in Schedule 10 of the Act; and that provisions to be repealed are to be found in Schedule 11. It also provides that the Departments may by regulations make

such other amendments of statutory provisions as is considered appropriate in consequence of the Act.

Section 304 – Persons “unconnected with” a person

This section sets out what the Act means when it refers to someone being “unconnected with” another person.

Section 305 – Meaning of “mental disorder”

This section defines “mental disorder” for the purposes of the Act, as meaning any disorder or disability of the mind.

Section 306 – Definitions for purposes of Act

This section sets out the definitions of words and phrases as they apply in the Act.

Section 307 – Commencement etc

This section sets out that provisions of the Act will commence on a day, or days, set by the Department; but that certain sections regarding regulation making powers and definitions come into operation the day after Royal Assent is achieved. It also provides that the Departments may make transitional, transitory, or saving provisions through regulations, as appropriate, in relation to the commencement of any provision of the Act.

Section 308 – Short title

This section sets out how the Act may be referred to (the Mental Capacity Act (Northern Ireland) 2016).