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Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, CHAPTER 4 is up to date with all changes known to be in force on or before 18 March 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes*



2016 CHAPTER 18

PART 10

CRIMINAL JUSTICE

PROSPECTIVE

CHAPTER 4

DETENTION UNDER A PUBLIC PROTECTION ORDER WITH RESTRICTIONS

Detention under a public protection order with restrictions

190.—(1) This section applies where a person is liable to be detained under a public protection order with restrictions made under section 167.

(2) The person continues to be liable to be detained under the order until discharged absolutely under section 191 or Chapter 8.

Discharge from detention by Department of Justice

191.—(1) At any time while a public protection order with restrictions is in force in respect of a person the Department of Justice may, if it considers it appropriate to do so, by warrant—

- (a) discharge the person absolutely (that is, discharge the person from being liable to be detained under the order); or
- (b) discharge the person from the establishment concerned subject to conditions (see further section 192).

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(2) The power under subsection (1) to discharge a person absolutely includes power to do so at a time when the person has been conditionally discharged under this section or section 232 and has not been recalled under section 192.

(3) If—

- (a) a public protection order with restrictions provides that the order is to be treated as a public protection order with restrictions for a specified period (“the restricted period”), and
- (b) that period ends at a time when the person has been conditionally discharged under subsection (1) and has not been recalled under section 192,

the person is to be treated as absolutely discharged when the restricted period ends (and accordingly ceases at that time to be liable to be detained under the public protection order).

(4) A discharge of a person under this section does not prevent the person from being detained in circumstances amounting to a deprivation of liberty by virtue of Part 2 of this Act (or, if the person is under 16, Part 2 of the Mental Health Order) if the criteria that apply to such detention are met.

(5) In this section “the establishment concerned” means the establishment in which, immediately before the discharge under subsection (1), the person is liable to be detained under the public protection order.

Power to recall person who has been conditionally discharged

192.—(1) This section applies where a public protection order with restrictions is in force in respect of a person who has been conditionally discharged under section 191.

(2) The Department of Justice may by warrant recall the person to an appropriate establishment specified in the warrant (“the specified establishment”) if it appears to the Department that—

- (a) 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 other persons; and
- (b) the likelihood and seriousness of the harm concerned are such that recalling the person is a proportionate response.

(3) On a recall under this section—

- (a) if the specified establishment is not the one from which the person was conditionally discharged, section 171(1)(b) applies as if the establishment referred to there were the specified establishment;
- (b) in any case, the person is to be treated for the purposes of section 244 (power to return to hospital etc a person who is absent without permission) as if the person had absented himself or herself, without

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permission given under section 195, from the specified establishment;
and

- (c) if the public protection order provides that the order is to be treated as a public protection order with restrictions for a specified period, that period is treated as not ending until the person returns to the specified establishment or is returned there under section 244.

Reports by responsible medical practitioner

193.—(1) While a public protection order with restrictions is in force in respect of a person, the responsible medical practitioner must at such intervals (not exceeding one year) as the Department of Justice may direct examine and report to the Department of Justice on that person.

- (2) A report under this section must contain any prescribed information.

Direction for person to attend for purposes of justice etc

194.—(1) Where—

- (a) a person is liable to be detained under a public protection order with restrictions, and
- (b) the Department of Justice is satisfied that the person's 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 the person to be taken to that place.

(2) Where a person is directed under this section to be taken to any place, the person is, unless the Department of Justice otherwise directs, to be kept in custody—

- (a) while being taken to that place;
- (b) while at that place; and
- (c) while being taken back to the establishment in which he or she is liable to be detained under the public protection order.

Permission for absence

195.—(1) Where a person (“A”) is liable to be detained under a public protection order with restrictions, the responsible medical practitioner may with the consent of the Department of Justice—

- (a) give A permission to be absent from the establishment in which A is liable to be detained (“the establishment”); and
- (b) impose in relation to that permission any conditions the responsible medical practitioner considers necessary for the health or safety of A or the protection of other persons.

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(2) The permission may be for a specified occasion or a specified period.

(3) Where permission is given for a specified period, the period may be extended by further permission given in the person's absence.

(4) The responsible medical practitioner may, on giving permission, direct that the person is to remain in custody during his or her absence; but such a direction may be given only if it appears to that practitioner that the direction is necessary for the health or safety of the person or the protection of other persons.

(5) Where such a direction is given, the person may be kept in the custody of—

- (a) a person on the staff of the establishment; or
- (b) any other person authorised in writing by the managing authority of the establishment.

(6) Where permission to be absent for more than 28 days is given to a person under this section, or a period for which a person is permitted to be absent is extended for more than 28 days, the managing authority of the establishment must—

- (a) within the period of 14 days beginning with the day the permission is given or the day the period is extended (as the case may be), inform RQIA of the address at which the person is staying; and
- (b) notify RQIA of the person's return within the period of 14 days beginning with the day of the return.

(7) Where—

- (a) a person is absent in pursuance of permission given under this section, and
- (b) it appears to the responsible medical practitioner or the Department of Justice that it is necessary to do so for the health or safety of the person or the protection of other persons or because the person is not receiving proper care,

the responsible medical practitioner or the Department of Justice may by notice in writing, given to the person or to the person for the time being in charge of him or her, revoke the permission and recall the person to the establishment.

(8) But a person may not be recalled under subsection (7) after the person has ceased to be liable to be detained under the order mentioned in subsection (1).

Transfers between hospitals etc

196.—(1) Where a person is liable to be detained under a public protection order with restrictions, the managing authority of the establishment in which the person is liable to be detained may, with the consent of the Department of

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Justice, arrange for the transfer of the person from that establishment to another suitable establishment.

(2) Where a person is transferred under this section, section 171(1)(b) applies as if the establishment referred to there were the establishment to which the person has been transferred.

(3) Before a managing authority arranges for the transfer of a person (“A”) under this section, it must if practicable inform—

- (a) if A is 16 or over, any person who is A's nominated person;
- (b) if A is under 16, a person with parental responsibility for A.

(4) Where a person is transferred under this section, the managing authority which arranged the transfer must immediately notify RQIA of the transfer.

(5) The power of a managing authority under this section to arrange for the transfer of a person from one establishment to another is subject to any prescribed conditions.

(6) In this section “suitable establishment” means an appropriate establishment (as defined by section 167) in which appropriate care or treatment is available for the person.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 285(2)(a)-(c) substituted for s. 285(2)(a)(b) by [2022 c. 18 \(N.I.\) Sch. 3 para. 77\(b\)](#)