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## 2016 CHAPTER 18

### PART 10

#### CRIMINAL JUSTICE

PROSPECTIVE

#### CHAPTER 5

##### DETENTION UNDER A HOSPITAL DIRECTION

###### **Detention under a hospital direction**

**197.**—(1) This section applies where a person is admitted to a hospital under a hospital direction.

(2) The person continues to be liable to be detained in hospital under the hospital direction until the direction ceases to have effect under section 198 or 240.

###### **Termination of hospital directions**

**198.**—(1) A hospital direction in respect of a person (“A”) ceases to have effect, if it has not already done so, on A's release date (see sections 199 and 200).

(2) If before A's release date the Department of Justice receives a relevant notification—

- (a) the Department of Justice must by warrant direct that A be removed to any prison in which A might (but for the hospital direction) be detained, to be dealt with there as if the hospital direction had not been given; and

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(b) the hospital direction ceases to have effect on A's arrival in prison.

(3) But subsection (2) does not apply if (having received a relevant notification) the Department of Justice directs that with effect from a specified date—

(a) A is to be treated as if he or she had been removed to the hospital under the relevant provision from a prison specified in the direction under this subsection; and

(b) the hospital direction is to cease to have effect.

(4) In this section a “relevant notification” means a written notification by a suitable medical practitioner that—

(a) in the practitioner's opinion A does not have, or no longer has, the disorder;

(b) in the practitioner's opinion it is more likely than not that, if A were transferred under subsection (2), no serious physical or psychological harm to A or serious physical harm to other persons would result from A's ceasing to be provided with treatment for the disorder as an in-patient in hospital; or

(c) in the practitioner's opinion no effective treatment for the disorder can be given to A in the hospital.

(5) In this section—

(a) “the disorder” means the disorder in respect of which the hospital direction was given;

(b) “the hospital” means the hospital where A is detained;

(c) any reference to “prison” is to be read, where A would (but for the hospital direction) be detained in a place of any other description, as a reference to a place of that other description;

(d) “the relevant provision” means—

(i) section 16(2) of the Prison Act (Northern Ireland) 1953; or

(ii) if A would (but for the hospital direction) be detained in a juvenile justice centre, paragraph 3 of Schedule 2 to the Criminal Justice (Children) (Northern Ireland) Order 1998;

(e) “a suitable medical practitioner” means the responsible medical practitioner or—

(i) if the disorder was mental disorder, any approved medical practitioner;

(ii) otherwise, any medical practitioner who appears to the Department of Justice to have special experience in the diagnosis or treatment of the disorder.

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### **Section 198: meaning of “release date”**

**199** For the purposes of section 198, A's “release date” is—

- (a) the day (if any) on which A is entitled to be released by virtue of section 200; or
- (b) if by virtue of section 200 a power to release A before that day is exercised, the day on which A is released under the power.

### **Duties and powers to release from detention**

**200.**—(1) Where—

- (a) a hospital direction is in force in respect of a person (“A”), and
- (b) a power or duty mentioned in subsection (2) would apply in relation to A if the hospital direction had not been given and A were detained in a prison,

the power or duty applies in relation to A as it would apply if the hospital direction had not been given and A were detained in a prison.

(2) The powers and duties referred to in subsection (1) are—

- (a) any power or duty to release A on licence, or to release A unconditionally;
- (b) any power or duty of the Department of Justice to give a direction under section 5 of the Life Sentences (Northern Ireland) Order 2001 (direction that the release provisions are to apply);
- (c) any power or duty to make a reference to the Parole Commissioners or to require a reference to those Commissioners;
- (d) any power or duty of the Parole Commissioners;
- (e) any power to apply to the Sentence Review Commissioners;
- (f) any power or duty of the Sentence Review Commissioners or the Secretary of State under the Northern Ireland (Sentences) Act 1998.

(3) If A would (but for the hospital direction) be liable to be detained in a place of a description other than a prison, any reference in subsection (1) to a “prison” is to be read as a reference to a place of that description.

(4) If A is detained under—

- (a) a juvenile justice centre order under Article 39 of the Criminal Justice (Children) (Northern Ireland) Order 1998,
- (b) a custody care order under Article 44A of that Order, or
- (c) a custody probation order under Article 24 of the Criminal Justice (Northern Ireland) Order 1996,

the reference in subsection (2)(a) to releasing A unconditionally includes a reference to releasing A at the start of a period of supervision.

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(5) For the purposes of section 38(2) of the Prison Act (Northern Ireland) 1953 (discounting from sentences of certain prisoners periods while they are unlawfully at large), a person who—

- (a) is subject to a hospital direction, and
- (b) is at large in circumstances in which the person is liable to be taken into custody under any provision of this Part or section 295 (retaking of persons escaping from legal custody),

is to be treated as unlawfully at large and absent from prison.

(6) In this section “the Parole Commissioners” means the Parole Commissioners for Northern Ireland.

### **Reports by responsible medical practitioner**

**201.**—(1) While a hospital direction 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.

### **Permission for absence etc**

**202.**—(1) The provisions mentioned in subsection (2) apply in relation to a person liable to be detained in a hospital under a hospital direction as they apply in relation to a person liable to be detained under a public protection order with restrictions.

(2) Those provisions are—

- section 194 (direction for person to attend for purposes of justice etc);
- section 195 (permission for absence).

### **Transfers between hospitals**

**203.**—(1) Where a person is liable to be detained in a hospital under a hospital direction, the managing authority of the hospital may, with the consent of the Department of Justice, arrange for the transfer of the person from that hospital to another hospital in which treatment appropriate to the person's case is available for the person.

(2) Where a person is transferred under this section—

- (a) the managing authority of the hospital to which the person is transferred must admit the person and detain him or her in accordance with this Chapter; and
- (b) the managing authority of the hospital from which the person was transferred ceases to be under a duty to detain the person.

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(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 hospital to another is subject to any prescribed conditions.

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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\(b\)](#)