

*Status: This version of this cross heading contains provisions that are prospective.*  
**Changes to legislation:** *Mental Capacity Act (Northern Ireland) 2016, Cross Heading: Persons serving custodial sentences etc is up to date with all changes known to be in force on or before 13 April 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

CHAPTER 7

TRANSFER FROM PRISON ETC TO HOSPITAL

PROSPECTIVE

*Persons serving custodial sentences etc*

**Power to transfer person serving custodial sentence etc to hospital**

**211.—**(1) Where—

- (a) a person is serving a relevant sentence, and
- (b) the conditions for giving a direction under this section are met (see section 212),

the Department of Justice may by warrant direct that the person be removed to a hospital specified in the direction.

(2) For the purposes of this section a person is “serving a relevant sentence” if—

- (a) the person is detained under a custodial sentence (defined by section 253);
- (b) the person is committed to custody for failure to comply with an order to enter into a recognizance to keep the peace or to be of good behaviour or both; or

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(c) the person is committed by a court to a prison in default of payment of any sum adjudged to be paid on the person's conviction.

(3) In subsection (2)(c) “prison” includes a young offenders centre or juvenile justice centre.

### **Conditions for transfer under section 211**

**212.**—(1) The conditions for giving a direction under section 211 in respect of a person (“A”) are—

- (a) that the Department of Justice is satisfied, on the required medical reports, of the matters mentioned in subsection (2);
- (b) that, having regard to the public interest and all the circumstances, and in particular to the matters mentioned in subsection (3), the Department of Justice considers that giving the direction is appropriate; and
- (c) that the Department is satisfied, on the written report of a person representing the managing authority of the hospital specified in the direction (“the hospital”), that arrangements have been made for the offender's detention in the hospital in pursuance of the direction.

(2) The matters referred to in subsection (1)(a) are—

- (a) that A has a disorder requiring treatment;
- (b) that failure to provide treatment to A as an in-patient in a hospital would be more likely than not to result in serious physical or psychological harm to A or serious physical harm to other persons; and
- (c) that treatment appropriate to A's case is available for A in the hospital.

(3) The matters referred to in subsection (1)(b) are—

- (a) the ways in which A might become an in-patient in a hospital if no direction under this section were given; and
- (b) how likely it is that, if such a direction is given and A is detained in hospital under the direction—
  - (i) consent to treatment will be given by A, or by a person with authority to give consent on behalf of A; or
  - (ii) treatment will be capable of being given to A by virtue of Part 2 of this Act (or, if A is under 16, under the Mental Health Order).

(4) In subsection (1)(a) “the required medical reports” means written reports from at least two medical practitioners, including—

- (a) if the disorder is mental disorder, an approved medical practitioner;
- (b) otherwise, a 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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### **Effect of transfer under section 211**

**213.—**(1) Where a direction is given in respect of a person under section 211 (transfer of person serving custodial sentence etc to hospital), the managing authority of the hospital specified in the direction must—

- (a) admit the person; and
- (b) detain him or her in accordance with Chapter 5.

(2) In Chapter 5 (detention under a hospital direction), any reference to a hospital direction includes a reference to a direction under section 211.

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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\(b\)](#)