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2016 CHAPTER 18

PART 10

CRIMINAL JUSTICE

PROSPECTIVE

CHAPTER 7

TRANSFER FROM PRISON ETC TO HOSPITAL

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.

Civil prisoners and immigration detainees

Transfer of civil prisoner or immigration detainee to hospital

214.—(1) Where—

- (a) a person is a civil prisoner or an immigration detainee, and
- (b) the conditions for giving a direction under this section are met (see section 223),

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

(2) The managing authority of the hospital specified in the direction must—

- (a) admit the person; and
- (b) detain him or her in accordance with section 215.

(3) In this section—

“a civil prisoner” means a person committed by a court to prison for a limited term, other than a person serving a relevant sentence (as defined by section 211);

“an immigration detainee” means a person detained under the Immigration Act 1971 or under section 62 of the Nationality, Immigration and Asylum Act 2002.

Detention in hospital on removal under section 214

215.—(1) Where a person is admitted to a hospital under a direction given under section 214 (transfer of civil prisoners and immigration detainees), the person continues to be liable to be detained in hospital under that direction until that direction ceases to have effect under section 216 or 240.

(2) In sections 201 to 203 (which relate to detention under hospital directions) any reference to a hospital direction includes a reference to a direction under section 214.

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Termination of direction under section 214

216.—(1) This section applies where a direction is given in respect of a person (“A”) under section 214 (transfer of civil prisoner or immigration detainee to hospital).

(2) The direction (“the hospital transfer direction”) ceases to have effect, if it has not already done so, at the end of the period of liability to detention.

(3) If before the end of that period the Department of Justice receives a relevant notification—

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

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

(4) But subsection (3) 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 place, specified in the direction under this subsection, in which A might (but for the hospital transfer direction) be detained; and

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

(5) 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 (3), 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.

(6) In this section—

“the disorder” means the disorder in respect of which the hospital transfer direction was given;

“the hospital” means the hospital where A is detained;

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“the period of liability to detention” means the period during which A would, if the hospital transfer direction had not been given, have been liable to be detained in the place from which A was removed to hospital;

“the relevant provision”—

- (a) in the case of a civil prisoner (as defined by section 214), means section 16(2) of the Prison Act (Northern Ireland) 1953;
- (b) in the case of an immigration detainee (as defined by section 214) means—
 - (i) if the place specified in the direction under subsection (4) is a prison, section 16(2) of the Prison Act (Northern Ireland) 1953;
 - (ii) otherwise, removal centre rules (within the meaning of Part 8 of the Immigration and Asylum Act 1999);

“a suitable medical practitioner” means the responsible medical practitioner or—

- (a) if the disorder was mental disorder, an approved medical practitioner;
- (b) otherwise, any medical practitioner who appears to the Department of Justice to have special experience in the diagnosis or treatment of the disorder.

Persons remanded in custody by magistrates' court

Transfer to hospital of person remanded by magistrates' court

217.—(1) Where—

- (a) a person is remanded in custody by a magistrates' court, and
- (b) the conditions for giving a direction under this section are met (see section 223),

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

- (2) The managing authority of the hospital specified in the direction must—
 - (a) admit the person; and
 - (b) detain him or her in accordance with section 218.

Detention in hospital on removal under section 217

218.—(1) Where a person is admitted to a hospital under a direction given under section 217 (transfer of person remanded in custody by magistrates' court), the person continues to be liable to be detained in hospital under that direction until the direction ceases to have effect under—

- (a) section 219;

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(b) section 222 as applied by section 219(3); or

(c) section 240.

(2) In sections 201 to 203 (which relate to detention under hospital directions) any reference to a hospital direction includes a reference to a direction under section 217.

Termination of direction under section 217 etc

219.—(1) This section applies where a direction is given in respect of a person (“A”) under section 217 (transfer of person remanded in custody by magistrates' court).

(2) The direction (“the hospital transfer direction”) ceases to have effect at the end of the period of remand unless—

(a) it has already ceased to have effect (see subsection (4)); or

(b) A is committed in custody to the Crown Court for trial or to be otherwise dealt with.

(3) If A is committed to the Crown Court as mentioned in subsection (2) and the hospital transfer direction has not already ceased to have effect, section 222 (duration of transfer under section 220) applies as if the hospital transfer direction given in A's case had been given under section 220.

(4) If the magistrates' court is satisfied, on the written or oral evidence of the responsible medical practitioner—

(a) that A does not have, or no longer has, the disorder in respect of which the hospital transfer direction was given, or

(b) that it is more likely than not that 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) that no effective treatment for the disorder can be given to A in the hospital where A is detained,

that court may direct that the hospital transfer direction ceases to have effect.

(5) A direction under subsection (4) may be given even if the period of remand has not expired or the accused is committed to the Crown Court as mentioned in subsection (2).

(6) Subject to subsection (7), the power of further remanding A may be exercised by the magistrates' court without A's being brought before the court; and if the magistrates' court further remands A in custody (whether or not A is brought before the court) the period of remand is to be regarded for the purposes of this section as not having expired.

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(7) The magistrates' court may under subsection (6) further remand A in A's absence only if A has appeared before the court within the previous 6 months.

(8) The magistrates' court may, in the absence of A, conduct a preliminary inquiry into an offence alleged to have been committed by A and commit A for trial in accordance with Article 37 of the Magistrates' Courts (Northern Ireland) Order 1981 if—

- (a) it is satisfied on the written or oral evidence of the responsible medical practitioner that A is unfit to take part in the proceedings; and
- (b) A is represented by counsel, or a solicitor, who is given an opportunity of being heard.

Other detainees

Transfer of certain other detainees to hospital

220.—(1) Where—

- (a) a person (“A”) is a relevant detainee, and
- (b) the conditions for giving a direction under this section are met (see section 223),

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

(2) The managing authority of the hospital specified in the direction must—

- (a) admit the person; and
- (b) detain him or her in accordance with section 221.

(3) In this section “a relevant detainee” means a person detained in a relevant place who is not—

- (a) a person serving a relevant sentence (as defined by section 211);
- (b) a civil prisoner or immigration detainee (as defined by section 214); or
- (c) a person remanded in custody by a magistrates' court.

(4) In this section “a relevant place” means—

- (a) a prison;
- (b) a remand centre;
- (c) a young offenders centre; or
- (d) a juvenile justice centre.

Detention in hospital on removal under section 220

221.—(1) Where a person is admitted to a hospital under a direction given under section 220 (transfer of certain detainees), the person continues to be

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liable to be detained in hospital under that direction until the direction ceases to have effect under section 222 or 240.

(2) In sections 201 to 203 (which relate to detention under hospital directions) any reference to a hospital direction includes a reference to a direction under section 220.

Termination of direction under section 220

222.—(1) This section applies where a direction under section 220 (transfer of certain detainees to hospital) is given in respect of a person (“A”).

(2) The direction (“the hospital transfer direction”) ceases to have effect, if it has not already done so, when A's case is disposed of by the court; but this does not limit any power of the court under this Part in respect of A.

(3) If the Department of Justice receives a relevant notification before A's case is disposed of by the court—

- (a) the Department of Justice must by warrant direct that A be removed to any place in which A might (but for the hospital transfer direction) be detained, to be dealt with there as if the hospital transfer direction had not been given; and
- (b) the hospital transfer direction ceases to have effect on A's arrival in that place.

(4) But subsection (3) 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 place, specified in the direction under this subsection, in which A might (but for the hospital transfer direction) be detained; and
- (b) the hospital transfer direction is to cease to have effect.

(5) 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 (3), 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.

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(6) Where no direction has been given under subsection (3) or (4) and the case has not been disposed of by the court, the court may, if it is satisfied on the written or oral evidence of the responsible medical practitioner that one or more of the relevant conditions is met—

- (a) order A to be removed to any place in which A might (but for the hospital transfer direction) be detained, to be dealt with there as if the hospital transfer direction had not been given; or
- (b) order A to be released on bail.

(7) The “relevant conditions” referred to in subsection (6) are—

- (a) that A does not have, or no longer has, the disorder;
- (b) that it is more likely than not that, if the court made an order under subsection (6), 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;
- (c) that no effective treatment for the disorder can be given to A in the hospital.

(8) Where under subsection (6) the court orders A to be removed to a place or to be released on bail, the hospital transfer direction ceases to have effect on A's arrival in that place or release on bail (as the case may be).

(9) In this section—

“the court” means the court having jurisdiction to try or otherwise deal with A;

“the disorder” means the disorder in respect of which the hospital transfer direction was given;

“the hospital” means the hospital where A is detained;

“the relevant provision” means—

- (a) section 16(2) of the Prison Act (Northern Ireland) 1953; or
- (b) if A would (but for the hospital transfer direction) be detained in a juvenile justice centre, paragraph 3 of Schedule 2 to the Criminal Justice (Children) (Northern Ireland) Order 1998;

“a suitable medical practitioner” means the responsible medical practitioner or—

- (a) if the disorder was mental disorder, any approved medical practitioner;
- (b) 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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Conditions for transfer to hospital under section 214, 217 or 220

Conditions for transfer to hospital under section 214, 217 or 220

223.—(1) In this section a “relevant transfer direction” means a direction under—

- (a) section 214 (transfer of civil prisoner or immigration detainee to hospital);
- (b) section 217 (transfer to hospital of person remanded in custody by magistrates' court); or
- (c) section 220 (transfer of certain other detainees to hospital).

(2) The conditions for giving a relevant transfer direction 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 (3);
- (b) that, having regard to all the circumstances and in particular the matters mentioned in subsection (4), 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, that arrangements have been made for the offender's detention in that hospital in pursuance of the direction.

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

- (a) that A urgently needs treatment for a disorder;
- (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 specified in the direction.

(4) The matters referred to in subsection (2)(b) are—

- (a) the ways in which A might become an in-patient in a hospital if no direction were given under this section; and
- (b) how likely it is that, if the 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).

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(5) In subsection (2)(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.

General provisions about hospital transfer directions

General provisions about hospital transfer directions

224.—(1) In this Part “hospital transfer direction” means a direction under—

- (a) section 211 (transfer of person serving custodial sentence etc to hospital);
- (b) section 214 (transfer of civil prisoner or immigration detainee to hospital);
- (c) section 217 (transfer to hospital of person remanded in custody by magistrates' court); or
- (d) section 220 (transfer of certain other detainees to hospital).

(2) If—

- (a) a hospital transfer direction is given in respect of a person, and
- (b) the person has not been admitted to the hospital specified in the direction by the end of the period of 14 days beginning with the date of the direction,

the direction ceases to have effect at the end of that period.

(3) Any question whether a person may be given any treatment while detained in hospital in pursuance of a hospital transfer direction is (subject to section 243) to be determined in the same way as if the person were not so detained.

(4) Subsection (5) applies if—

- (a) a hospital transfer direction is given in respect of a person; and
- (b) the responsible medical practitioner is of the opinion that the person lacks (or probably lacks) capacity in relation to whether an application under section 225 (applications to Tribunal) should be made.

(5) The responsible medical practitioner must as soon as practicable give the Attorney General—

- (a) notice of the matters mentioned in subsection (4)(a) and (b); and
- (b) any prescribed information.

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(6) Any power under this Chapter to direct that a person be removed to a hospital includes a power, if the person is already in a hospital, to direct that the person remain in the hospital.

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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\(b\)](#)