

Status: This version of this chapter contains provisions that are prospective.

Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, CHAPTER 8 is up to date with all changes known to be in force on or before 13 May 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 8

RIGHTS OF REVIEW OF DETENTION UNDER PART 10

Applications and references to Tribunal: general

Right to apply to Tribunal

225.—(1) Where the circumstances mentioned in the first column of the following table occur, a qualifying person (see section 226) may apply to the Tribunal within the period mentioned in the corresponding entry of the second column of the table.

<i>Circumstances</i>	<i>Period for making application</i>
A public protection order is made or a hospital direction or hospital transfer direction is given	The period of 6 months beginning with the date of the order or direction (“the initial period”)
The period of a public protection order without restrictions is extended (under section 181 or 182 or Schedule 6)	The period— (a) beginning with the date when the period of the order is extended; and

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<p>A person is—</p> <p>(a) liable to be detained under a public protection order with restrictions, or</p> <p>(b) liable to be detained in a hospital under a hospital direction or hospital transfer direction, at the beginning of a relevant period</p>	<p>(b) ending with the end of the period for which the order is extended</p> <p>The relevant period</p>
<p>(2) In this section a “relevant period”, in relation to an order or direction, means—</p> <p>(a) the period of 6 months immediately following the initial period; or</p> <p>(b) any period of 12 months which begins with an anniversary of the date of the order or direction.</p> <p>(3) This section is subject to sections 236 and 237 (applications to Tribunal following conditional discharge of person subject to public protection order with restrictions).</p>	
<p>Meaning of “a qualifying person”</p> <p>226.—(1) This section defines “a qualifying person”, in relation to a public protection order, hospital direction or hospital transfer direction, for the purposes of this Chapter.</p> <p>(2) “A qualifying person” means the person (“A”) who is liable to be detained under the order or direction or—</p> <p>(a) if A is 16 or over, any person who is A's nominated person;</p> <p>(b) if A is under 16, a person with parental responsibility for A.</p> <p>(3) If A is 16 or over and has capacity in relation to whether an application under this Chapter should be made, A's nominated person may make an application only with A's consent.</p>	
<p>Applications: visiting and examination</p> <p>227.—(1) This section applies in relation to a person (“A”) who—</p> <p>(a) is liable to be detained under a public protection order; or</p> <p>(b) is liable to be detained in a hospital under a hospital direction or hospital transfer direction.</p> <p>(2) A medical practitioner who is authorised—</p> <p>(a) by or on behalf of A, or</p>	

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(b) where A is 16 or over, by a person who is A's nominated person, may, for a purpose mentioned in subsection (3), do anything within section 275 (visiting etc powers) in relation to A.

(3) The purposes are—

- (a) the purpose of advising whether an application to the Tribunal under section 225 should be made by or in respect of A;
- (b) the purpose of providing information as to the condition of A for the purposes of an application.

Power of certain persons to refer case to Tribunal

228.—(1) A relevant person may at any time refer to the Tribunal the question whether a person who is liable to be detained under a public protection order should be discharged from being liable to be detained under the order.

(2) A relevant person may at any time refer to the Tribunal the question whether a person who is liable to be detained in hospital under—

- (a) a hospital direction, or
- (b) a hospital transfer direction,

should cease to be liable to be detained in hospital under the direction.

(3) For the purpose of providing information for the purposes of a reference under this section, any medical practitioner authorised by or on behalf of the person to whom the reference relates may do anything within section 275 (visiting etc powers) in relation to the person.

(4) In this section “relevant person” means—

- (a) the Attorney General;
- (b) the Department;
- (c) the Master (Care and Protection), acting on the direction of the High Court.

Duty of HSC trust to refer case to Tribunal

229.—(1) Where—

- (a) on a relevant date, a person is liable to be detained under a public protection order or is liable to be detained in a hospital under a hospital direction or hospital transfer direction,
- (b) the order or direction has been in force throughout the relevant period, and
- (c) the Tribunal has not considered the person's case at any time in that period,

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the relevant trust must as soon as practicable refer the person's case to the Tribunal.

- (2) The “relevant period” is—
 - (a) if the person is under 18, the period of one year ending with the relevant date;
 - (b) otherwise, the period of two years ending with the relevant date.
- (3) For the purposes of subsection (1) a “relevant date” means—
 - (a) in relation to a public protection order without restrictions, a date on which the period of the order is extended under section 182 or Schedule 6;
 - (b) in relation to a public protection order with restrictions, hospital direction or hospital transfer direction, any anniversary of the date of the order or direction.
- (4) For the purpose of providing information for the purposes of a reference under this section, any medical practitioner authorised by or on behalf of the person may do anything within section 275 (visiting etc powers) in relation to the person.
- (5) In this section—

“the person's case” means—

 - (a) in relation to a public protection order, the question whether the person should be discharged from being liable to be detained under the order;
 - (b) in relation to a hospital direction or hospital transfer direction, the question whether the person should cease to be liable to be detained in hospital under the direction;

“the relevant trust” means the HSC trust in whose area the hospital or other establishment in which the person is liable to be detained is situated.
- (6) The Department may by regulations amend subsection (2) so as to alter any period mentioned there.

Duty to notify the Attorney General

- 230.**—(1) This section applies if—
- (a) immediately after the end of a relevant period, a person is—
 - (i) liable to be detained under a public protection order; or
 - (ii) liable to be detained in a hospital under a hospital direction or hospital transfer direction;
 - (b) no application or reference to the Tribunal was made in the relevant period; and

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- (c) 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.
- (2) The responsible medical practitioner must as soon as practicable give the Attorney General—
 - (a) notice of the matters mentioned in subsection (1)(a) to (c); and
 - (b) any prescribed information.
- (3) The following are relevant periods for the purposes of this section—
 - (a) the period of 6 months beginning with the date of the order or direction;
 - (b) any period of 6 months immediately following another relevant period.

Powers of Tribunal as to public protection orders

Powers of Tribunal as to public protection order without restrictions

231.—(1) This section applies where an application or reference to the Tribunal is made under this Chapter by or in respect of a person who is liable to be detained under a public protection order without restrictions.

- (2) The Tribunal must either—
 - (a) discharge the person absolutely (that is, discharge the person from being liable to be detained under the order); or
 - (b) decide not to discharge the person.
- (3) The Tribunal may decide as mentioned in subsection (2)(b) only if it is satisfied that the prevention of serious harm condition is met (see section 233).

Powers of Tribunal as to public protection order with restrictions

232.—(1) This section applies where an application or reference to the Tribunal is made under this Chapter (other than section 237) by or in respect of a person who is liable to be detained under a public protection order with restrictions.

- (2) The Tribunal must do one of the following—
 - (a) discharge the person absolutely (that is, discharge the person from being liable to be detained under the order);
 - (b) discharge the person from the establishment concerned subject to conditions (see further section 235);
 - (c) decide not to discharge the person.
- (3) The Tribunal may decide as mentioned in subsection (2)(c) only if it is satisfied that the prevention of serious harm condition is met (see section 233).
- (4) If the Tribunal is not satisfied that that condition is met, it must—

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- (a) discharge the person absolutely, if it is satisfied that it would be inappropriate for the person to remain liable to be recalled;
- (b) discharge the person subject to conditions, if it is not so satisfied.

(5) Where—

- (a) the Tribunal makes an order under this section discharging a person subject to conditions, and
- (b) the Tribunal is satisfied that arrangements need to be made in connection with the conditions before the discharge takes effect,

the order may provide that it takes effect from a future date (specified in the order) which in the opinion of the Tribunal will allow those arrangements to be made.

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

Sections 231 and 232: the prevention of serious harm condition

233 For the purposes of sections 231 and 232, the prevention of serious harm condition is that—

- (a) there is an impairment, or disturbance in the functioning of, the person's mind or brain;
- (b) releasing the person from detention in an appropriate establishment would create a risk, linked to the impairment or disturbance, of serious physical or psychological harm to other persons; and
- (c) the likelihood and seriousness of the harm concerned are such that detaining the person in an appropriate establishment in circumstances amounting to a deprivation of liberty is a proportionate response.

Sections 231 and 232: additional powers of Tribunal etc

234.—(1) Where under section 231 or 232 the Tribunal decides not to discharge a person, the Tribunal may, with a view to facilitating the discharge of the person at a future date—

- (a) recommend the taking of specified actions in relation to the person; and
- (b) further consider the person's case in the event of any recommendation not being complied with.

(2) Where the Tribunal further considers a person's case under subsection (1) (b), section 231 or (as the case may be) section 232 applies.

(3) A discharge of a person under this Chapter does not prevent the person from being detained in circumstances amounting to a deprivation of liberty by

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virtue of Part 2 of this Act (or, where the person is under 16, under Part 2 of the Mental Health Order), if the criteria that apply to such detention are met.

Effect of conditional discharge from public protection order with restrictions

Effect of conditional discharge

235.—(1) Where a person liable to be detained under a public protection order with restrictions is conditionally discharged by the Tribunal under section 232—

- (a) section 192 (power of the Department of Justice to recall person who has been conditionally discharged) applies as if the person had been conditionally discharged under section 191; and
- (b) the person must comply with any conditions imposed at the time of discharge by the Tribunal or at any later time by the Department of Justice.

(2) The Department of Justice may from time to time vary any condition imposed under subsection (1) (whether imposed by the Tribunal or the Department of Justice).

(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) the restricted period ends at a time when the person has been conditionally discharged under section 232 and has not been recalled by virtue of this section,

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).

Applications and references to Tribunal where person recalled

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

- (a) has been conditionally discharged under section 191 or 232; and
- (b) is subsequently recalled under section 192.

(2) The Department of Justice must, within the period of one month beginning with the return date, refer to the Tribunal the question whether the person should be discharged from being liable to be detained under the public protection order.

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(3) A qualifying person may apply to the Tribunal within any relevant period.

(4) Sections 228(3) and 227 (visiting and examination powers) apply in relation to references and applications under this section as they apply in relation to references under section 228 and applications under section 225.

(5) See also section 232 (Tribunal's powers on a reference or application).

(6) No application under section 225 may be made in respect of the order.

(7) In this section—

“a qualifying person” has the meaning given by section 226;

“relevant period” means—

(a) the period of 6 months beginning with the return date (“the initial period”);

(b) the period of 6 months immediately following the initial period; or

(c) any period of 12 months which begins with an anniversary of the return date;

“the return date” means the date on which the person returns or is returned to the establishment specified in the warrant recalling the person.

Applications to Tribunal where person has not been recalled

237.—(1) This section applies where a person liable to be detained under a public protection order with restrictions has been conditionally discharged under section 191 or 232 (and has not been recalled under section 192).

(2) A qualifying person (see section 226) may apply to the Tribunal—

(a) within the period of 12 months beginning with the date on which the person was conditionally discharged; and

(b) within any period of 12 months which begins with an anniversary of that date.

(3) On an application under this section the Tribunal must do one of the following (and may do things mentioned in both paragraphs (a) and (b))—

(a) vary any condition to which the person is subject in connection with the discharge;

(b) impose any condition that might have been imposed in connection with the discharge;

(c) discharge the person from liability to be detained under the public protection order;

(d) decide to take no action.

(4) No application under section 225 may be made in respect of the order.

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Powers of Tribunal as to hospital directions and hospital transfer directions

Powers of Tribunal as to hospital directions and hospital transfer directions

238.—(1) This section applies where an application or reference to the Tribunal is made under this Chapter by or in respect of a person who is liable to be detained in hospital under a hospital direction or hospital transfer direction (“the relevant direction”).

(2) The Tribunal must—

- (a) decide whether it is satisfied that the prevention of serious harm condition is met; and
- (b) notify the Department of Justice whether it is so satisfied.

(3) The prevention of serious harm condition is that—

- (a) the person has the disorder in respect of which the relevant direction was given;
- (b) effective treatment for the disorder can be given to the person in the hospital where he or she is detained; and
- (c) it is more likely than not that, if the person were transferred to prison, serious physical or psychological harm to the person or serious physical harm to other persons would result from the person's ceasing to be provided with treatment for the disorder as an in-patient in hospital.

(4) In this section the reference to “prison” is to be read, where the person would (but for the relevant direction) be liable to be detained in a place of any other description, as a reference to a place of that other description.

Section 238: additional powers of Tribunal

239.—(1) This section applies where under section 238 the Tribunal notifies the Department of Justice that it is satisfied that the prevention of serious harm condition is met in respect of a person.

(2) The Tribunal may, with a view to facilitating a transfer of the person at a future date—

- (a) recommend the taking of specified actions in relation to the person; and
- (b) further consider the person's case in the event of any recommendation not being complied with.

(3) Where the Tribunal further considers the person's case under subsection (2)(b), section 238 applies.

(4) In subsection (2) the reference to a “transfer” of the person is to a transfer to any place in which the person might (but for the relevant direction) be detained.

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Section 238: procedure where prevention of serious harm condition is not met

240.—(1) This section applies where, under section 238, the Tribunal notifies the Department of Justice that it is not satisfied that the prevention of serious harm condition is met in respect of a person liable to be detained in a hospital.

(2) The Department of Justice must by warrant direct that the person be removed to any prison in which the person might (but for the relevant direction) be detained, to be dealt with there as if the relevant direction had not been given.

(3) The relevant direction ceases to have effect on the person's arrival in prison.

(4) But subsections (2) and (3) do not apply if the Department of Justice directs that with effect from a specified date—

- (a) the person 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 relevant direction is to cease to have effect.

(5) In this section—

- (a) any reference to “prison” is to be read, where the person would (but for the relevant direction) be detained in a place of any other description, as a reference to a place of that other description;
- (b) “the relevant direction” has the same meaning as in section 238;
- (c) “the relevant provision” means—
 - (i) section 16(2) of the Prison Act (Northern Ireland) 1953; or
 - (ii) if the person would (but for the relevant direction) be detained in a juvenile justice centre, paragraph 3 of Schedule 2 to the Criminal Justice (Children) (Northern Ireland) Order 1998.

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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\(b\)](#)