

*Status: This version of this cross heading contains provisions that are prospective.*  
*Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, Cross Heading: References to the Tribunal is up to date with all changes known to be in force on or before 08 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 2**

#### LACK OF CAPACITY: PROTECTION FROM LIABILITY, AND SAFEGUARDS

##### CHAPTER 7

##### RIGHTS OF REVIEW OF AUTHORISATION

###### *References to the Tribunal*

###### **Power of certain persons to refer case to Tribunal**

**47.—**(1) At any time when an authorisation under Schedule 1 or 2 is in force, a person within subsection (2) may refer to the Tribunal the question whether the authorisation is appropriate.

(2) The persons are—

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

(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 authorisation relates may do anything within section 275 (visiting etc powers) in relation to the person.

*Status: This version of this cross heading contains provisions that are prospective.*

*Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, Cross Heading: References to the Tribunal is up to date with all changes known to be in force on or before 08 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*

#### **Commencement Information**

- II** S. 47 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(4), **Sch. Pt. 4** (with art. 3) (as amended by S.R. 2019/190, art. 2)

#### **Duty of HSC trust to refer case to Tribunal**

**48.—(1)** Where—

- (a) on any date (“the extension date”), the period of an authorisation under Schedule 1 is extended under section 38 or Schedule 3,
  - (b) the authorisation has been in force throughout the relevant period (see subsection (2)), and
  - (c) the Tribunal has not considered the person's case at any time in that period,
- 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 to whom the authorisation relates (“the person”) is under 18, the period of one year ending with the extension date;
- (b) otherwise, the period of two years ending with the extension date.

(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 may do anything within section 275 (visiting etc powers) in relation to the person.

(4) In this section—

“the person's case” means the question whether the authorisation is appropriate;

“the relevant trust” means—

- (a) where the extension is wholly or partly for the purposes of continuing the person's detention in a place, the HSC trust in whose area that place is situated;
- (b) where the extension is wholly or partly for the purposes of continuing the provision to the person of treatment specified by the authorisation or a requirement to attend for such treatment and paragraph (a) does not apply, the HSC trust in whose area the treatment is provided;
- (c) where the extension is for the purposes of continuing a community residence requirement and paragraph (b) does not apply, the HSC trust in whose area the place where the person is required by the community residence requirement to live is situated.

*Status: This version of this cross heading contains provisions that are prospective.*

*Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, Cross Heading: References to the Tribunal is up to date with all changes known to be in force on or before 08 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*

(5) The Department may by regulations amend subsection (2) so as to alter any period mentioned there.

#### Commencement Information

**I2** S. 48 in operation at 2.12.2019 for specified purposes by S.R. 2019/163, art. 2(4), Sch. Pt. 4 (with art. 3) (as amended by S.R. 2019/190, art. 2)

PROSPECTIVE

#### References etc to Tribunal: persons formerly detained under the Mental Health Order

**49.**—(1) This section applies where—

- (a) immediately before the day a person reaches the age of 16 (“the relevant day”), the person is liable to be detained under Part 2 of the Mental Health Order; and
- (b) on that day, there is in force an authorisation under Schedule 1 to this Act (“the authorisation”) that authorises the detention of the person in circumstances amounting to a deprivation of liberty.

(2) If an application to the Tribunal by the person, or a reference of the person's case to the Tribunal, was made under Part 5 of the Mental Health Order before the relevant day but has not been dealt with by that day, the matters to be considered by the Tribunal include the question whether the authorisation is appropriate.

(3) If—

- (a) on any date when the person is under 17, the period of the authorisation is extended (under section 37 or 38 or Schedule 3),
- (b) a relevant authority has been in force throughout the period of one year ending with that date, and
- (c) the Tribunal has not considered the person's case at any time in that period,

the relevant trust must as soon as practicable refer to the Tribunal the question whether the authorisation is appropriate.

(4) In this section—

“the person's case”—

- (a) in relation to any time when the person was under 16, has the same meaning as in Part 5 of the Mental Health Order;
- (b) in relation to any time when the person is 16 or over, means the question whether the authorisation is appropriate;

*Status: This version of this cross heading contains provisions that are prospective.*

*Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, Cross Heading: References to the Tribunal is up to date with all changes known to be in force on or before 08 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*

“relevant authority”—

- (a) in relation to any time when the person was under 16, means an authority under Part 2 of the Mental Health Order for the detention of the person;
- (b) in relation to any time when the person is 16 or over, means the authorisation;

“the relevant trust” has the same meaning as in section 48.

### **Duty of HSC trust to notify the Attorney General**

**50.—**(1) This section applies if—

- (a) the period of an authorisation under Schedule 1 has been extended (under section 38 or Schedule 3) for a period of one year;
- (b) the authorisation authorises a measure within section 41(2)(b) or (d) (deprivation of liberty or community residence requirement); and
- (c) at the relevant time, it appears to the relevant trust that the person to whom the authorisation relates lacks (or probably lacks) capacity in relation to whether an application under section 45 (applications to Tribunal) should be made.

(2) The relevant trust 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) In this section—

“the relevant time” means the time 6 months after the beginning of the one year period mentioned in subsection (1)(a);

“the relevant trust” has the same meaning as in section 48.

#### **Commencement Information**

- I3** S. 50(1)(a)(c)(2)(3) in operation at 2.12.2019 for specified purposes by [S.R. 2019/163](#), [art. 2\(4\)](#), [Sch. Pt. 4](#) (with [art. 3](#)) (as amended by [S.R. 2019/190](#), [art. 2](#))
- I4** S. 50(1)(b) in operation at 2.12.2019 for specified purposes (but omitting "or (d)") by [S.R. 2019/163](#), [art. 2\(4\)](#), [Sch. Pt. 4](#) (with [art. 3](#)) (as amended by [S.R. 2019/190](#), [art. 2](#))

**Status:**

This version of this cross heading contains provisions that are prospective.

**Changes to legislation:**

Mental Capacity Act (Northern Ireland) 2016, Cross Heading: References to the Tribunal is up to date with all changes known to be in force on or before 08 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.

[View outstanding changes](#)

**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\(b\)](#)