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**Changes to legislation:** There are currently no known outstanding effects for the Mental Capacity Act (Northern Ireland) 2016, SCHEDULE 7. (See end of Document for details)

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## SCHEDULES

PROSPECTIVE

### SCHEDULE 7

Section 207.

#### Supervision and assessment orders

#### **Part 1**

##### Introductory

##### *Introductory*

1.—(1) In this Part a “supervision and assessment order” is an order made in respect of a person (“the supervised person”) containing—

- (a) a supervision element (see paragraph 3), and
- (b) an assessment element (see paragraph 4).

(2) A supervision and assessment order may also include a residence element (see paragraph 5).

(3) In this Schedule, references to the commission of offences by a person include the commission of offences in the circumstances described in section 206 (finding that person not guilty on the ground of insanity).

#### **Part 2**

##### Making and contents of order

##### *Conditions which must be satisfied before order can be made*

2.—(1) A court may make a supervision and assessment order only if the following four conditions are met.

(2) The first condition is that the court is satisfied, on the required medical evidence, that the supervised person has a disorder, or that there is reason to suspect that the supervised person has a disorder.

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(3) The second condition is that the court is satisfied, on the required medical evidence, that examination of the supervised person (“S”) is necessary or desirable for the assessment of one or both of the following—

- (a) whether the disorder requires treatment;
- (b) whether consent to the giving of such treatment will be given by S, or by a person with authority to give consent on behalf of S, or whether such treatment will be capable of being given to S by virtue of Part 2 of this Act (or, if S is under 16, under the Mental Health Order).

(4) The third condition is that the court is satisfied that supervision under the order is desirable in the interests of—

- (a) securing the rehabilitation of the supervised person, or
- (b) protecting the public from harm from that person or preventing the commission by that person of offences.

(5) The fourth condition is that the court is satisfied that the making of such an order is the most suitable means of dealing with the supervised person.

(6) In this paragraph “the required medical evidence” means the written or oral evidence of at least two medical practitioners, including—

- (a) if the disorder is mental disorder, the oral evidence of an approved medical practitioner;
- (b) otherwise, the oral evidence of a medical practitioner who appears to the court to have special experience in the diagnosis or treatment of the disorder.

#### *Supervision element*

3.—(1) A supervision element is a requirement that the supervised person be under the supervision of—

- (a) a social worker, or
- (b) a probation officer,

for a period specified in the order (“the supervision period”), which must be not less than 6 months and not more than 3 years.

(2) The social worker or probation officer is referred to in this Schedule as “the supervising officer”.

(3) The court must not make a supervision and assessment order unless it is satisfied that the supervising officer is willing to undertake the supervision.

(4) If the supervising officer is a social worker—

- (a) the supervision and assessment order must specify the HSC trust for the area in which the supervised person resides or will reside, and

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- (b) the social worker must be an approved social worker appointed as such by that trust.

*Assessment element*

4.—(1) An assessment element is a requirement that, during a specified period (“the assessment period”), the supervised person must—

- (a) attend at a specified place at a specified time or times, or  
(b) make himself or herself available at a specified place at a specified time or times,

for assessment by or under the direction of a medical practitioner.

(2) The assessment period may be the whole or any part of the supervision period.

(3) Assessment under sub-paragraph (1) is to be assessment of such of the following as the medical practitioner considers appropriate at the time of the assessment—

- (a) the supervised person's condition;  
(b) either or both of the matters mentioned in paragraph 2(3)(a) and (b).  
(4) In sub-paragraph (1) “specified” means specified in the order.

*Residence element*

5.—(1) A residence element is any requirement as to the residence of the supervised person during a period specified in the order (“the residence period”).

(2) The residence period may be the whole or any part of the supervision period.

(3) Before including a residence element, the court must consider the home surroundings of the supervised person.

(4) A residence element may not require the supervised person to reside as an in-patient or resident in a hospital or care home.

*Procedural requirements relating to the making of the order*

6.—(1) Before making a supervision and assessment order, the court must explain to the supervised person in ordinary language—

- (a) the effect of each of the elements included in the order, and  
(b) that a court of summary jurisdiction, and the court making the order, have power under paragraphs 8 to 10, 11 and 13 to review the order on the application either of the supervised person or the supervising officer.

(2) After making an order, the court must as soon as practicable—

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- (a) give at least 2 copies of the order to the supervising officer, and
  - (b) if the supervising officer is a social worker, send at least 1 copy of the order to the Probation Board.
- (3) The supervising officer must give a copy of the order to the supervised person.

### **Part 3**

#### Effect of order

7. Where an order is made, the supervised person must (as well as complying with the assessment element and any residence element) keep in touch with the supervising officer in accordance with such instructions as that officer may from time to time give, and must notify the supervising officer of any change of address.

### **Part 4**

#### Amendment or revocation of order

##### *Amendment of order: general*

8.—(1) A court of summary jurisdiction may, on the application of the supervised person or the supervising officer, amend a supervision and assessment order—

- (a) by cancelling any of the requirements of the order; or
- (b) by inserting in the order (either in addition to or in substitution for any such requirement) any requirement which the court could include if it were the court by which the order was made and were then making it.

(2) The power of a court under sub-paragraph (1) does not include power to amend an order by extending any period specified in it beyond the end of 3 years from the date of the original order.

##### *Amendment of order: change of area of residence*

9.—(1) This paragraph applies where—

- (a) a supervision and assessment order requires the supervised person to be under the supervision of a social worker, and
- (b) (in accordance with paragraph 3(4)) the order specifies the HSC trust for the area in which the person resides (“the current trust”).

(2) If a court of summary jurisdiction is satisfied that the supervised person proposes to change, or has changed, his residence to the area of another HSC trust,

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the court may amend the order by substituting, for the current trust, the other HSC trust.

(3) The court must amend the order as mentioned in sub-paragraph (2) if the supervising officer applies for it to do so.

(4) Where—

- (a) the court amends a supervision and assessment order under this paragraph, and
- (b) the order contains requirements which in the opinion of the court cannot be complied with if the supervised person ceases to reside in the area of the current trust,

the court must either cancel those requirements or substitute for them other requirements which can be complied with if the supervised person ceases to reside in that area.

#### *Medical reports*

**10.—**(1) In this paragraph “relevant medical practitioner” means a medical practitioner by whom or under whose direction the supervised person—

- (a) has been assessed in pursuance of a supervision and assessment order, or
- (b) is being treated for a disorder in pursuance of such an order.

(2) Sub-paragraph (3) applies where any of the following conditions is met—

- (a) the order requires the supervised person to attend or make himself or herself available for assessment at specified intervals, but a relevant medical practitioner considers that assessment at longer intervals is sufficient for the purposes mentioned in paragraph 2(3)(a) and (b);
- (b) a relevant medical practitioner considers that it is necessary or desirable, for the purposes mentioned in paragraph 2(3)(a) and (b), to assess the supervised person more frequently than specified in the order;
- (c) a relevant medical practitioner considers that the supervised person no longer requires treatment for his or her disorder;
- (d) a relevant medical practitioner considers that the supervised person's disorder is not (or is no longer) susceptible to treatment;
- (e) a relevant medical practitioner considers that the assessment period should be extended (subject to sub-paragraph (5));
- (f) a relevant medical practitioner is for any reason unwilling to continue to assess or treat, or direct the assessment or treatment of, the supervised person;
- (g) a relevant medical practitioner becomes aware that the supervised person has been admitted to hospital as an in-patient.

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- (3) The relevant medical practitioner must make a report in writing to that effect to the supervising officer.
- (4) The supervising officer must—
- (a) in the case of a report made as mentioned in sub-paragraph (2)(a), inform the court which made the order;
  - (b) in the case of a report made as mentioned in sub-paragraph (2)(b) to (f), apply to a court of summary jurisdiction for the order to be amended as the court considers appropriate (including by cancelling the assessment element);
  - (c) in the case of a report made as mentioned in sub-paragraph (2)(g), apply to a court of summary jurisdiction for the assessment element to be suspended whilst the supervised person remains an in-patient.
- (5) On an application made in the case of a report made as mentioned in sub-paragraph (2)(e)—
- (a) if the court considers it appropriate for the assessment period to end later than the end of the existing supervision period, the court may extend the supervision period;
  - (b) the assessment period (as extended) must not end later than the end of the supervision period (as extended); and
  - (c) neither period may be extended beyond the end of 3 years from the date of the original order.

#### *Revocation of order*

**11.—**(1) A court that has made a supervision and assessment order may, on the application of the supervised person or the supervising officer, revoke the order under this paragraph.

(2) The court may do so only if the court is satisfied that, having regard to circumstances which have arisen since the order was made, it would be in the interests of the health or welfare of the supervised person to revoke the order.

#### *Procedural requirements on amendment or revocation of order*

**12.—**(1) On the making under any of paragraphs 8 to 11 of an order amending or revoking a supervision and assessment order, the court must as soon as practicable give to the supervising officer at least 2 copies of the amending or revoking order.

(2) The supervising officer, when given copies under sub-paragraph (1), must give a copy of the amending or revoking order to—

- (a) the supervised person, and

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- (b) if the supervised person is receiving in-patient treatment or is residing in a hospital, the person in charge of that hospital.

## Part 5

### Breach of order

**13.**—(1) This paragraph applies where—

- (a) a supervision and assessment order is in force, and  
 (b) the supervising officer applies to the court that made the order for the order to be revoked under this paragraph.

(2) If—

- (a) it is proved to the satisfaction of the court that the supervised person (“S”) has, without reasonable excuse, failed to comply with any of the requirements of the order, and  
 (b) it appears to the court to be in the interests of justice to do so,

the court may revoke the order and deal with S, for the matter in respect of which the order was made, in any manner in which the court could deal with S if a finding mentioned in section 207(1) had just been recorded by it in respect of that matter.

(3) In doing so, the court must take into account the extent to which S has complied with the requirements of the order.

(4) In proceedings under this paragraph any question as to whether S has failed to comply with the requirements of the order is to be determined by the court and not by the verdict of a jury.

(5) Where the court proposes to exercise its powers under this paragraph, it must summon S to appear before the court and, if S does not appear in answer to the summons, may issue a warrant for the arrest of S.

## Part 6

### Supplementary

#### *Power to vary period for which supervision element may be made*

**14.**—(1) The Department of Justice may make regulations substituting, for the period of 3 years mentioned in paragraph 3(1), such other period (exceeding 6 months) as may be specified in the regulations.

(2) Regulations under sub-paragraph (1) may make in paragraph 8(2) any amendment which the Department thinks necessary in consequence of the substitution made by the regulations.

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*Transitional provision relating to the abolition of petty sessions districts*

**15.—**(1) Until the day on which section 1 of the Justice (Northern Ireland) Act 2015 comes into operation, this Schedule is to be read with the following modifications.

(2) If the supervising officer is a probation officer—

- (a) the supervision and assessment order must specify the petty sessions district in which the supervised person resides or will reside, and
- (b) the supervising officer must be a probation officer appointed for or assigned to that district.

(3) If the supervising officer is a social worker—

- (a) paragraph 6(2)(b) does not apply, but
- (b) the court must, as soon as practicable after making the order, give to the probation officer assigned to the court at least 1 copy of the order.

(4) After making an order, the court must send to the clerk of petty sessions for the petty sessions district in which the supervised person resides or will reside—

- (a) a copy of the order; and
- (b) such documents and information relating to the case as it considers likely to be of assistance to a court acting for that district in the exercise of its functions in relation to the order.

(5) The functions conferred by paragraphs 8 to 10 are to be exercised by a court for the petty sessions district in which the supervised person resides or will reside.

(6) In paragraph 9—

- (a) in sub-paragraph (1)(a), the reference to supervision by a social worker includes supervision by a probation officer appointed for or assigned to a petty sessions district;
- (b) the references to an HSC trust or to the area of such a trust include a petty sessions district.

(7) If the court amends a supervision and assessment order so as to substitute one petty session district for another, the court which amends the order must send to the clerk of petty sessions for the new petty sessions district—

- (a) at least 2 copies of the amending order; and
- (b) such documents and information relating to the case as it considers likely to be of assistance to a court acting for that district in the exercise of its functions in relation to the order.

(8) The clerk of petty sessions for the new petty sessions district, when given copies under sub-paragraph (7), must give a copy of the amending order to the supervising officer.



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