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## 2016 CHAPTER 18

### PART 10

#### CRIMINAL JUSTICE

##### CHAPTER 8

##### RIGHTS OF REVIEW OF DETENTION UNDER PART 10

PROSPECTIVE

#### *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>
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(2) In this section a “relevant period”, in relation to an order or direction, means—

- (a) the period of 6 months immediately following the initial period; or
- (b) any period of 12 months which begins with an anniversary of the date of the order or direction.

(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).

#### **Meaning of “a qualifying person”**

**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.

(2) “A qualifying person” means the person (“A”) who is liable to be detained under the order or direction or—

- (a) if A is 16 or over, any person who is A's nominated person;
- (b) if A is under 16, a person with parental responsibility for A.

(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.

#### **Applications: visiting and examination**

**227.**—(1) This section applies in relation to a person (“A”) who—

- (a) is liable to be detained under a public protection order; or
- (b) is liable to be detained in a hospital under a hospital direction or hospital transfer direction.

(2) A medical practitioner who is authorised—

- (a) by or on behalf of A, or

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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.

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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\(b\)](#)