

Status: This version of this provision is prospective.

Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, Section 168 is up to date with all changes known to be in force on or before 19 August 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

CHAPTER 2

POWERS OF COURT ON CONVICTION

Public protection orders with and without restrictions

PROSPECTIVE

Section 167: the detention conditions

168.—(1) For the purposes of section 167 “the detention conditions” are—

- (a) that the court is satisfied, on the required medical evidence, of the matters mentioned in subsection (2);
- (b) that, having regard to all the circumstances and in particular to the matters mentioned in subsection (3), the court considers that making an order for the offender to be detained in an appropriate establishment is the most suitable way of dealing with the case; and
- (c) that the court is satisfied, on the written or oral evidence of a person representing the managing authority of the appropriate establishment specified in the order (“the establishment”), that arrangements have been made for the offender’s detention there in pursuance of the order.

(2) The matters referred to in subsection (1)(a) are—

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- (a) that there is an impairment of, or a disturbance in the functioning of, the offender's mind or brain;
 - (b) that appropriate care or treatment is available for the offender in the establishment;
 - (c) that dealing with the offender in any way not involving his or her detention would create a risk, linked to the impairment or disturbance, of serious physical or psychological harm to other persons; and
 - (d) that detaining the offender in the establishment in circumstances amounting to a deprivation of liberty would be a proportionate response to—
 - (i) the likelihood of the harm concerned; and
 - (ii) the seriousness of that harm.
- (3) The matters referred to in subsection (1)(b) are—
- (a) the other available ways of dealing with the offender;
 - (b) the nature of the offence;
 - (c) the past history of the offender;
 - (d) the risk of physical or psychological harm to other persons if the offender were set at large.
- (4) In considering for any purpose of this section whether it would be appropriate to deal with the offender in a way not involving detention, or what risk would be created by dealing with the offender in that way, the court—
- (a) must in particular consider whether if it dealt with the offender in that way it could also make a sexual offences prevention order or violent offences prevention order in respect of the offender; and
 - (b) if it could make such an order, must take into account that fact and the effect of such an order.
- (5) In this section “the required medical evidence” means the written or oral evidence of at least two medical practitioners, including the oral evidence of an approved medical practitioner.
- (6) In this section—
- “sexual offences prevention order” means an order under section 106 of the Sexual Offences Act 2003;
 - “violent offences prevention order” has the same meaning as in Part 8 of the Justice Act (Northern Ireland) 2015 (see section 76(1)).

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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\(b\)](#)