

Status: This version of this provision is prospective.

Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, Section 262 is up to date with all changes known to be in force on or before 25 September 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 11

TRANSFER BETWEEN JURISDICTIONS

CHAPTER 3

SUPPLEMENTARY

PROSPECTIVE

Removal or transfer from Northern Ireland: power to make further provision

262.—(1) Regulations may make provision in connection with the removal of a person by virtue of this Part or Part 2 to a place outside Northern Ireland (whether or not a place in the United Kingdom).

(2) Regulations may make provision for and in connection with enabling the Department to authorise, and to give directions in connection with, the removal or transfer to a place outside Northern Ireland (whether or not a place in the United Kingdom) of prescribed descriptions of persons where—

- (a) the person is subject in Northern Ireland to measures under this Act, and
- (b) the person lacks capacity in relation to the removal or transfer and the removal or transfer would be in that person's best interests.

(3) Regulations may make provision for and in connection with enabling the Department of Justice to authorise, and to give directions in connection with, the removal or transfer to a place outside Northern Ireland (whether or not a place in the United Kingdom) of prescribed descriptions of persons where—

- (a) the person is subject in Northern Ireland to measures under this Act, and

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(b) either—

- (i) the person consents to the removal or transfer, or
- (ii) failure to remove or transfer the person there would be more likely than not to result in serious physical or psychological harm to the person or serious physical harm to other persons.

(4) In this section, references to the “transfer” of a person are to the transfer of responsibility for a person who is not detained by virtue of Part 2 or Part 10; and regulations may prescribe the powers and duties that constitute responsibility for a person for this purpose.

(5) References to persons subject to measures under this Act include, in particular,—

- (a) in subsection (2)(a), persons in respect of whom an authorisation under Part 2 has been granted authorising a particular measure (within the meaning given by section 41);
- (b) in subsection (3)(a), persons in respect of whom an order or direction has been made or given under Part 10 (including persons in respect of whom a warrant under section 191(1)(b) or an order under section 232(2)(b) is in effect).

(6) Regulations under this section—

- (a) may prescribe steps to be taken before a person may be removed or transferred, or prescribe other conditions which must be met before a person may be removed or transferred,
- (b) may provide that, where a person is removed or transferred, any prescribed measure to which the person is subject ceases to have effect, and
- (c) may apply, or make provision similar to, any provision of Part 2 or Part 10 (with or without modifications).

(7) The powers to make regulations under this section must be exercised so as to ensure that, where under this Part the removal or transfer of a person from Northern Ireland is authorised—

- (a) notice of the authorisation and proposed removal or transfer must be given to—
 - (i) the person to be removed or transferred, and
 - (ii) any prescribed person,at least a prescribed period before the date of the proposed removal or transfer; and
- (b) there is a right to apply to the Tribunal in respect of the authorisation (except where the Tribunal approved the removal or transfer before the authorisation was given).

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(8) Regulations under this section may amend this Part, and may make supplementary or consequential amendments to other provisions of this Act.

(9) In this section “regulations” means—

- (a) in relation to provision concerning the removal or transfer of a Part 10 transferee, regulations made by the Department of Justice;
- (b) in any other case, regulations made by the Department.

(10) In subsection (9) a “Part 10 transferee” is a person—

- (a) who is detained by virtue of Part 10 or (if not detained under this Act) in respect of whom an order or direction has been made or given under Part 10, or
- (b) (in the case of a person who does not fall within paragraph (a)) whose removal is authorised on the ground that either of the conditions set out in subsection (3)(b) is met.

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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\(b\)](#)