

*These notes refer to the Mental Capacity Act (Northern Ireland)
2016 (c.18) which received Royal Assent on 9 May 2016*

Mental Capacity Act (Northern Ireland) 2016

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 10 – Criminal Justice

Chapter 7 – Transfer from Prison Etc to Hospital

Section 211 - Power to transfer person serving custodial sentence etc to hospital

This section provides that the Department of Justice may direct that a person who is serving a sentence is removed to hospital if certain conditions are met. The section applies to a person who is serving a custodial sentence as defined in section 253; a person who is detained because of a failure to comply with an order to enter into a recognizance to keep the peace or to be of good behaviour (or both); or a person who is detained because of a failure to pay a fine.

Section 212 - Conditions for transfer under section 211

This section makes provision for the conditions that must be met for transferring a person to hospital under section 211. The Department of Justice must be satisfied, based on medical evidence, that the person has a disorder which requires treatment and that failure to provide that treatment on the basis of in-patient care would be more likely than not to result in serious physical or psychological harm to the person, or serious physical harm to other people. The Department of Justice also has to be satisfied on the medical evidence that treatment that is appropriate for the person has to be available in the hospital that he or she will be transferred to. Additionally, the Department of Justice also has to consider that giving a direction to transfer a person to hospital is appropriate, having regard to: the public interest; all the circumstances of the case; the ways in which the person could otherwise become an in-patient if a direction was not given; and how likely it is that consent will be obtained for treatment, treatment can be given to the person under Part 2 of the Act or if the person is under 16 years of age, the Mental Health Order.

Section 213 - Effect of transfer under section 211

This section provides for the effect of a transferring a person to hospital. If a direction is given to transfer the person, the managing authority of the hospital

must admit the person and detain him or her in the hospital in accordance with chapter 5 of Part 10 of the Act.

Section 214 - Transfer of civil prisoner or immigration detainee to hospital

This section provides that the Department of Justice may direct that a person who is a civil prisoner or immigration detainee can be transferred to hospital if certain conditions are met.

The section also provides that if such a direction is given, then the managing authority of the hospital must admit the person and detain him or her there in accordance with section 215.

Section 215 - Detention in hospital on removal under section 214

This section provides that where a hospital transfer direction is given in relation to a civil prisoner or an immigration detainee, the person will be liable to be detained in hospital until the hospital transfer direction ceases to have effect. It ceases to have effect if the conditions under section 216 are met, or if the Review Tribunal so directs under section 240. Sections 201 to 203, which relate to detention under hospital directions, apply to civil prisoners and immigration detainees detained in hospital under this section.

Section 216 - Duration of direction under section 214

This section provides that a hospital transfer direction under section 214 ceases to have effect in certain circumstances. The direction ceases to have effect, if it has not done so already, at the end of the period of liability to detention. The Department of Justice must also direct by warrant that the individual be returned to custody, with the hospital direction ceasing to have effect upon their return, if it has received a relevant notification by a suitable medical practitioner. The medical practitioner must be of the opinion that the individual does not have or is no longer suffering from the disorder which precipitated the direction; it is more likely than not that if the person was transferred from hospital, no serious physical or psychological harm to him or her or serious physical harm to other persons would result from the cessation of treatment as an in-patient; or that no effective treatment for the individual's disorder can be provided in hospital.

The section also provides that the duty does not apply if (having received a relevant notification) the Department of Justice directs that with effect from a specified date the person is to be treated as if he or she had been removed to the hospital under a relevant provision and that the hospital direction is to cease to have effect. "Relevant provision" is defined in the case of a civil prisoner as section 16(2) of the Prison Act (Northern Ireland) 1953, and in the case of an immigration detainee as either section 16(2) of the Prison Act (Northern Ireland) 1953 or Part 8 of the Immigration and Asylum Act 1999.

Section 217 - Transfer to hospital of person remanded by magistrates' court

This section provides that the Department of Justice may direct that a person who is remanded in custody by a magistrates' court can be transferred to hospital if certain conditions are met.

If the Department of Justice does so direct, the section also provides that the managing authority of the hospital must admit the person and detain him or her there in accordance with section 218.

Section 218 - Detention in hospital on removal under section 217

This section provides that when an individual is detained in hospital following removal under a direction given in accordance with section 217, he or she shall be liable to be detained until the direction ceases to have effect in accordance with sections 219, 222 or 240.

Provision is also made for applying sections 201 to 203 in these circumstances. Section 201 requires the responsible medical practitioner to examine the person and report to the Department of Justice at intervals not exceeding a year. Section 202 makes provision for permission being granted to give the person leave of absence from hospital, whilst section 203 makes provision for transferring the individual between hospitals.

Section 219 - Duration of direction under section 217

The section provides that a hospital transfer direction, made in respect of an individual remanded by a magistrates' court, ceases to have effect in certain circumstances. The direction ceases to have effect at the end of the remand period, unless it has already ceased to have effect, or when the individual is committed in custody to the Crown Court for trial (or otherwise dealt with).

If the magistrates' court is satisfied that the person is no longer suffering from the disorder which precipitated the direction, or that it is more likely than not that no serious physical or psychological harm to the person or serious physical harm to others would result from the person ceasing to be provided with treatment as an in-patient, or on the basis that effective treatment for the individual's disorder can no longer be provided, it may direct that the direction will cease to have effect. The court can make this decision even if the period of remand has not expired or if the individual has been committed to the Crown Court.

The magistrates' court may also further remand the individual in their absence, unless the individual has not appeared before the court within the previous six months. The Court may also conduct a preliminary enquiry and commit the individual to trial in his or her absence, on the basis of oral or written medical evidence that the individual is unable to take part in proceedings, and the individual is represented by counsel or a solicitor who is given the opportunity of being heard.

Section 220 - Transfer of certain other detainees to hospital

This section provides that the Department of Justice may direct by warrant that a “relevant detainee” – being someone who is not serving a sentence within the meaning of section 211, a civil prisoner or immigration detainee within the meaning of section 214, or a person remanded in custody by a magistrates court – be removed from a relevant place to a hospital if the conditions for giving such a direction set out in section 223 are met. The managing authority of the hospital specified in the direction must admit the person and detain them.

Section 221 - Detention in hospital on removal under section 220

This section provides that a person subject to a hospital direction given under section 220 shall be liable to be detained under the direction ceases to have effect under section 222 or 240. The section also provides that sections 201 to 203 apply to hospital directions granted under section 220.

Section 222 - Termination of direction under section 220

The section provides that a hospital transfer direction, made in respect of other detainees under section 220, ceases to have effect in certain circumstances. The direction ceases to have effect when the detainee’s case is dealt with by the court.

The Department of Justice must also direct by warrant that the detainee be removed to custody and the direction will cease to have effect upon the detainee’s return to custody. The Department of Justice may issue this warrant following written notification from a suitable medical practitioner that, in his or her opinion, the detainee is no longer suffering from the disorder which precipitated the direction, or on the basis of risk, or on the basis that effective treatment for the detainee’s disorder can no longer be provided.

However, this does not apply if (having received a relevant notification) the Department of Justice directs that with effect from a specified date the person is to be treated as if he or she had been removed to hospital under a relevant provision and that the hospital transfer direction is to cease to have effect. “Relevant provision” is defined as meaning section 16(2) of the Prison Act (Northern Ireland) 1953 or paragraph 3 of Schedule 2 to the Criminal Justice (Children) (Northern Ireland) Order 1998.

In the absence of warrant from the Department of Justice, the court may direct that an individual be returned to custody from hospital or released on bail. This direction must be based on the written or oral evidence of the responsible medical practitioner, on the basis that, in his or her opinion, the detainee is no longer suffering from the disorder which precipitated the direction, or on the basis of risk, or on the basis that effective treatment for the detainee’s disorder can no longer be provided.

Section 223 - Conditions for transfer to hospital under section 214, 217 or 220

This section makes provision for the conditions that are to be satisfied before the Department of Justice can make a hospital transfer direction in respect of civil prisoners, immigration detainees, persons who have been remanded in custody by a magistrates' court and "other detainees".

The Department of Justice has to be satisfied, on the basis of medical evidence, that the person urgently needs treatment for a disorder; that failure to provide treatment to the person as an in-patient would be more likely than not to result in serious physical or psychological harm to him or her or serious physical harm to other people; and that treatment that is appropriate for the person is available in the hospital concerned.

In addition, the section provides that the Department of Justice also has to consider that giving the hospital transfer direction is appropriate, having regard to all the circumstances. In particular, the Department of Justice has to consider other ways in which the person may become an in-patient and also the likelihood that consent will be obtained for treatment under Part 2 of the Act or if the person is under 16 years of age, the Mental Health Order.

Section 224 - General provisions about hospital transfer directions

This section contains general provisions about hospital transfer directions. It provides for the meaning of "hospital transfer direction" for the purposes of the Part. It also provides that a hospital transfer direction will cease to have effect at the end of the period of 14 days beginning with the date of the direction, if the person has not been admitted to hospital during that time.

The section also provides that the question of whether a person who is detained in hospital under a hospital transfer direction should receive treatment is to be determined as if the person was not detained under the direction.

This section also provides that, if the responsible medical practitioner is of the opinion that the person who has been given the direction lacks or probably lacks capacity in relation to whether an application to the Tribunal under section 225 should be made, the practitioner must, as soon as practicable, give the Attorney General any prescribed information and notice that a hospital transfer direction has been given.