

Status: This version of this cross heading contains provisions that are prospective.
Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, Cross Heading: Detention under Part 10: further provision is up to date with all changes known to be in force on or before 11 July 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 N.I.

CRIMINAL JUSTICE

CHAPTER 9 N.I.

SUPPLEMENTARY

PROSPECTIVE

Detention under Part 10: further provision

Section 20 may apply to person detained under Part 10 N.I.

243.—(1) This section applies in relation to any provision of this Part which provides that the question whether a person may be given any treatment while detained in pursuance of a remand, order or direction under this Part is to be determined in the same way as if the person were not so detained.

(2) The provision—

- (a) does not prevent the person from falling within the reference in section 23 to a person detained by virtue of this Act in circumstances amounting to a deprivation of liberty; and
- (b) accordingly, does not prevent section 20 (authorisation needed for treatment with serious consequences where person lacks capacity and is detained etc) from applying in relation to the person.

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Absence without permission **N.I.**

244.—(1) This section applies where a person liable to be detained under a public protection order, or liable to be detained in a hospital under a hospital direction or hospital transfer direction—

- (a) absents himself or herself from the establishment concerned, without permission given under the relevant section;
- (b) fails to return to the establishment concerned at the end of an occasion or period for which he or she was given permission under the relevant section to be absent, or on being recalled under that section; or
- (c) absents himself or herself, without permission, from any place where he or she is required to be by conditions imposed on the grant of a permission under the relevant section.

(2) The person may be taken into custody and returned to that establishment or place by—

- (a) any person on the staff of the establishment concerned;
- (b) any constable;
- (c) any approved social worker; or
- (d) any person authorised in writing by the managing authority of the establishment concerned.

(3) In this section—

“the relevant section” means—

- (a) in relation to a person liable to be detained under a public protection order without restrictions, section 187;
- (b) in relation to a person liable to be detained under a public protection order with restrictions or liable to be detained in a hospital under a hospital direction or hospital transfer direction, section 195;

“the establishment concerned” means the hospital or other establishment where the person is liable to be detained under the order or direction.

Effect of court order or direction on previous authority for hospital detention **N.I.**

245.—(1) Where a person is admitted to a hospital or other establishment in pursuance of a public protection order or hospital direction, any previous relevant authority by virtue of which the person was liable to be detained ceases to have effect.

(2) Each of the following is a “relevant authority” for the purposes of subsection (1)—

- (a) a public protection order;

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(b) an authorisation under Part 2.

(3) But if the public protection order or hospital direction mentioned in subsection (1), or any conviction to which it relates, is quashed on appeal—

(a) that subsection does not apply; and

(b) where the previous relevant authority was a public protection order without restrictions, section 189 (effect of custodial sentence) has effect as if, during any period for which the person was liable to be detained under the quashed order or direction, the person had been detained in custody.

(4) Where the person mentioned in subsection (1) is under 16—

(a) the reference in subsection (1) to a relevant authority includes an application or medical report under the Mental Health Order; and

(b) in subsection (3)—

(i) the reference to a public protection order without restrictions includes a reference to such an application or medical report; and

(ii) the reference to section 189 includes a reference to Article 31 of that Order.

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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\(b\)](#)