

*Status: This version of this chapter contains provisions that are prospective.*  
**Changes to legislation:** *Mental Capacity Act (Northern Ireland) 2016, CHAPTER 1 is up to date with all changes known to be in force on or before 14 May 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

PROSPECTIVE

#### CHAPTER 1

#### REMOVAL OF PERSONS FROM NORTHERN IRELAND

##### *Removal to other parts of UK of persons detained under Part 2*

##### **Removal of persons detained under Part 2 to England or Wales**

**254.**—(1) This section applies if it appears to the Department that the conditions for removal to England or Wales are met in the case of a person (“P”) who is detained in a hospital in circumstances amounting to a deprivation of liberty in pursuance of an authorisation under paragraph 15 of Schedule 1.

(2) The Department may authorise P's removal to England or Wales and may give any necessary directions for P's conveyance there.

(3) The conditions for removal to England or Wales are that—

- (a) P lacks capacity in relation to the question whether he or she should be removed to England or (as the case may be) Wales;
- (b) it would be in P's best interests to remove P there; and
- (c) arrangements have been made for admitting P to a hospital in England or Wales in which care or treatment which is appropriate in P's case is available for P.

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(4) Where P is removed from Northern Ireland under this section, the authorisation ceases to have effect when P is admitted to a hospital in England or Wales.

(5) In subsection (3)(c) and (4) “hospital” has the same meaning as in the 1983 Act.

### **Removal of persons detained under Part 2 to Scotland**

**255.**—(1) This section applies if it appears to the Department that the conditions for removal to Scotland are met in the case of a person (“P”) who is detained in a hospital in circumstances amounting to a deprivation of liberty in pursuance of an authorisation under paragraph 15 of Schedule 1.

(2) The Department may authorise P's removal to Scotland and may give any necessary directions for P's conveyance there.

(3) The conditions for removal to Scotland are that—

(a) P lacks capacity in relation to the question whether he or she should be removed to Scotland;

(b) it would be in P's best interests to remove P to Scotland; and

(c) arrangements have been made—

(i) for admitting P to a hospital in Scotland in which care or treatment which is appropriate in P's case is available for P; or

(ii) where P is not to be admitted to a hospital, for P's detention in hospital in Scotland to be authorised by virtue of the 2003 Act.

(4) Where P is removed from Northern Ireland under this section, the authorisation ceases to have effect—

(a) when P is duly received into a hospital in Scotland; or

(b) where P is not received into a hospital but P's detention in hospital is authorised by virtue of the 2003 Act, when P's detention is so authorised.

(5) In subsections (3)(c) and (4) “hospital” has the same meaning as in the 2003 Act.

### *Removal to other parts of UK of persons detained under Part 10*

### **Removal of certain persons detained under Part 10 to England or Wales**

**256.**—(1) This section applies in relation to a person (“P”) who is—

(a) detained under a public protection order; or

(b) detained in a hospital under a hospital direction or a hospital transfer direction made under section 211, 214 or 220.

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(2) If it appears to the Department of Justice that the conditions for removal to England or Wales are met in P's case, that Department may authorise P's removal to England or Wales and may give any necessary directions for P's conveyance there.

(3) The conditions for removal to England or Wales are that—

- (a) failure to remove P to England or (as the case may be) Wales would be more likely than not to result in serious physical or psychological harm to P or serious physical harm to other persons; and
- (b) arrangements have been made for admitting P to a hospital in England or Wales in which care or treatment which is appropriate in P's case is available for him or her.

(4) Where P is removed from Northern Ireland under this section, the order or direction mentioned in subsection (1) ceases to have effect when P leaves Northern Ireland (within the meaning given by section 98 of the Northern Ireland Act 1998); but this is subject to subsection (6).

(5) Subsection (6) applies where—

- (a) P is not admitted to a hospital in England or Wales, and
- (b) P returns to Northern Ireland at any time before the end of period for which the order or direction mentioned in subsection (1) would have continued in force (but for P's removal).

(6) Subsection (4) ceases to apply to the order or direction, so that (accordingly) the order or direction applies to P on P's return to Northern Ireland.

(7) In subsections (3)(b) and (5)(a) “hospital” has the same meaning as in the 1983 Act.

### **Removal of certain persons detained under Part 10 to Scotland**

**257.**—(1) This section applies in relation to a person (“P”) who is—

- (a) detained under a public protection order; or
- (b) detained in a hospital under a hospital direction or a hospital transfer direction made under section 211, 214 or 220.

(2) If it appears to the Department of Justice that the conditions for removal to Scotland are met in P's case, that Department may authorise P's removal to Scotland and may give any necessary directions for P's conveyance there.

(3) The conditions for removal to Scotland are that—

- (a) failure to remove P to Scotland would be more likely than not to result in serious physical or psychological harm to P or serious physical harm to other persons; and

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(b) arrangements have been made for admitting P to a hospital in Scotland in which care or treatment which is appropriate in P's case is available for him or her.

(4) Where P is removed from Northern Ireland under this section, the order or direction mentioned in subsection (1) ceases to have effect when P leaves Northern Ireland (within the meaning given by section 98 of the Northern Ireland Act 1998); but this is subject to subsection (6).

(5) Subsection (6) applies where—

(a) P is not admitted to a hospital in Scotland, and

(b) P returns to Northern Ireland at any time before the end of period for which the order or direction mentioned in subsection (1) would have continued in force (but for P's removal).

(6) Subsection (4) ceases to apply to the order or direction, so that (accordingly) the order or direction applies to P on P's return to Northern Ireland.

(7) In subsections (3)(b) and (5)(a) “hospital” has the same meaning as in the 2003 Act.

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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\(b\)](#)