

Status: This version of this cross heading contains provisions that are prospective.
Changes to legislation: *Mental Capacity Act (Northern Ireland) 2016, Cross Heading: Persons to be detained under Part 10 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

CHAPTER 2

PERSONS REMOVED FROM ENGLAND, WALES OR SCOTLAND TO NORTHERN IRELAND

PROSPECTIVE

Persons to be detained under Part 10

Persons to be detained under Part 10 after removal from England or Wales

260.—(1) This section applies where—

- (a) a person (“P”) is removed from England and Wales to Northern Ireland by virtue of Part 6 of the 1983 Act; and
- (b) immediately before being removed, P is subject to—
 - (i) a hospital order;
 - (ii) a hospital direction (within the meaning of the 1983 Act); or
 - (iii) a transfer direction.

(2) Immediately after P's admission to an appropriate establishment in Northern Ireland in pursuance of arrangements made for the purposes of his or her removal from England or Wales, the relevant trust must notify RQIA of P's admission.

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(3) The relevant trust must also arrange for a report in the prescribed form, containing prescribed information, to be made by the responsible medical practitioner and given to the relevant trust within the period of 28 days beginning with the day P is admitted to the appropriate establishment.

(4) Where a report under subsection (3) is given to the relevant trust, that trust must as soon as practicable give RQIA a copy of the report.

(5) Where (immediately before being removed from England or Wales) P is of a description mentioned in the first column of the following table, an order or direction of a kind mentioned in the corresponding entry of the second column of the table, specifying the appropriate establishment, is treated as having been made or given in respect of P.

<i>Description of person</i>	<i>Order or direction treated as made</i>
Person subject to a hospital order and a restriction order	Public protection order with restrictions that provides as mentioned in section 167(4)(b)(i) (no time limit for treating the order as a PPO with restrictions)
Person subject to a hospital order but not a restriction order	Public protection order without restrictions
Person subject to a hospital direction (within the meaning of the 1983 Act)	Hospital direction under section 174
Person subject to a transfer direction given by virtue of section 47(1) of the 1983 Act	Hospital transfer direction under section 211
Person subject to a transfer direction given by virtue of section 48(2)(a) of the 1983 Act	Hospital transfer direction under section 220
Person subject to a transfer direction given by virtue of section 48(2)(c) or (d) of the 1983 Act	Hospital transfer direction under section 214

(6) An order or direction is to be treated as having been made or given under subsection (5), for the purposes mentioned in the first column of the following table, on the date mentioned in the corresponding entry in the second column of the table.

<i>Purpose</i>	<i>Date on which order or direction treated as made</i>
Duration for which P may be detained under section 179 and	Date of P's arrival in Northern Ireland

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calculation of the “initial period” for the purposes of section 181 (where P is treated as being subject to a public protection order without restrictions)

Calculation of the “release date” within the meaning given by section 199 (where P is treated as being subject to a hospital direction made under section 174)

Right to apply to the Tribunal under the first entry in the table in section 225(1)

Calculation of the “relevant date” for the purposes of section 229(3) (referral of case to the Tribunal)

Date on which the hospital direction (within the meaning of the 1983 Act) was made

Date on which the hospital order, hospital direction (within the meaning of the 1983 Act) or transfer direction was made

Date on which the hospital order, hospital direction (within the meaning of the 1983 Act) or transfer direction was made

(7) The first report under section 193 (where P is treated as being subject to a public protection order with restrictions) must be made—

- (a) if the most recent report on P under section 41(6) of the 1983 Act was made more than 6 months before P's arrival in Northern Ireland, not later than 6 months after P's arrival there, or
- (b) otherwise, not later than 12 months after the most recent report under that section.

(8) Section 224(2) (direction ceasing to have effect if person not admitted within 14 days) does not apply to a hospital transfer direction which is treated as having been given under subsection (5).

(9) The date of P's arrival in Northern Ireland is to be treated as being the end of a relevant period for the purposes of section 230 (duty to notify Attorney General).

(10) Where (immediately before being removed) P is subject to—

- (a) a hospital direction (within the meaning of the 1983 Act), or
- (b) a transfer direction made because P was serving a sentence of imprisonment (within the meaning of section 47 of that Act),

P is to be treated as if the sentence, order or committal in relation to which the direction has effect were a similar or corresponding sentence, order or committal imposed or made by a court in Northern Ireland.

(11) In this section—

“hospital order” has the same meaning as in the 1983 Act;

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“relevant trust” means the HSC trust in whose area the appropriate establishment is situated;

“restriction order” has the same meaning as in the 1983 Act;

“transfer direction” has the same meaning as in the 1983 Act.

Persons to be detained under Part 10 after removal from Scotland

261.—(1) This section applies where—

- (a) a person (“P”) is removed from Scotland to Northern Ireland under regulations made under section 290 of the 2003 Act; and
- (b) immediately before being removed, P is subject to—
 - (i) a relevant compulsion order;
 - (ii) a hospital direction (within the meaning of the 1995 Act); or
 - (iii) a transfer for treatment direction.

(2) Immediately after P's admission to an appropriate establishment in Northern Ireland in pursuance of arrangements made for the purposes of his or her removal from Scotland, the relevant trust must notify RQIA of P's admission.

(3) The relevant trust must also arrange for a report in the prescribed form, containing prescribed information, to be made by the responsible medical practitioner and given to the relevant trust within the period of 28 days beginning with the day P is admitted to the appropriate establishment.

(4) Where a report under subsection (3) is given to the relevant trust, that trust must as soon as practicable give RQIA a copy of the report.

(5) Where (immediately before being removed from Scotland) P is of a description mentioned in the first column of the following table, an order or direction of a kind mentioned in the corresponding entry of the second column of the table, specifying the appropriate establishment, is treated as having been made or given in respect of P.

<i>Description of person</i>	<i>Order or direction treated as made</i>
Person subject to a relevant compulsion order and a restriction order	Public protection order with restrictions that provides as mentioned in section 167(4)(b)(i) (no time limit for treating the order as a PPO with restrictions)
Person subject to a relevant compulsion order but not a restriction order	Public protection order without restrictions

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Person subject to a hospital direction (within the meaning of the 1995 Act)	Hospital direction under section 174
Person subject to a transfer for treatment direction	Hospital transfer direction of a description specified in P's case in a direction given by the Department of Justice under this subsection

(6) An order or direction is to be treated as having been made or given under subsection (5), for the purposes mentioned in the first column of the following table, on the date mentioned in the corresponding entry in the second column of the table.

<i>Purpose</i>	<i>Date on which order or direction treated as made</i>
Duration for which P may be detained under section 179 and calculation of the “initial period” for the purposes of section 181 (where P is treated as being subject to a public protection order without restrictions)	Date of P's arrival in Northern Ireland
Calculation of the “release date” within the meaning given by section 199 (where P is treated as being subject to a hospital direction made under section 174)	Date on which the hospital direction (within the meaning of the 1995 Act) was made
Right to apply to the Tribunal under the first entry in the table in section 225(1)	Date on which the relevant compulsion order, hospital direction (within the meaning of the 1995 Act) or transfer for treatment direction was made
Calculation of the “relevant date” for the purposes of section 229(3) (referral of case to the Tribunal)	Date on which the relevant compulsion order, hospital direction (within the meaning of the 1995 Act) or transfer for treatment direction was made

(7) The first report under section 193 (where P is treated as being subject to a public protection order with restrictions) must be made—

- (a) if the most recent report on P under section 183 of the 2003 Act was made more than 6 months before P's arrival in Northern Ireland, not later than 6 months after P's arrival there, or

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(b) otherwise, not later than 12 months after the most recent report under that section.

(8) Section 224(2) (direction ceasing to have effect if person not admitted within 14 days) does not apply to a hospital transfer direction which is treated as having been given under subsection (5).

(9) The date of P's arrival in Northern Ireland is to be treated as being the end of a relevant period for the purposes of section 230 (duty to notify Attorney General).

(10) Where (immediately before being removed) P is subject to—

- (a) a hospital direction (within the meaning of the 1995 Act), or
- (b) a transfer for treatment direction made because P was serving a sentence of imprisonment (within the meaning of section 136(1) of the 2003 Act),

P is to be treated as if the sentence, order or committal in relation to which the direction has effect were a similar or corresponding sentence, order or committal imposed or made by a court in Northern Ireland.

(11) In this section—

“relevant compulsion order” means a compulsion order (within the meaning of the 1995 Act) that authorises the detention of the person in a hospital (within the meaning of that Act);

“relevant trust” means the HSC trust in whose area the appropriate establishment is situated;

“restriction order” has the same meaning as in the 1995 Act;

“transfer for treatment direction” 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\(b\)](#)