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STATUTORY RULES OF NORTHERN IRELAND

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**2019 No. 163 (C. 5)**

**MENTAL CAPACITY**

**The Mental Capacity (2016 Act) (Commencement  
No. 1) Order (Northern Ireland) 2019**

*Made - - - - 29th August 2019*

The Department of Health, in exercise of the powers conferred by section 307 of the Mental Capacity Act (Northern Ireland) 2016<sup>(1)</sup>, makes the following Order:

**Citation and interpretation**

1.—(1) This Order may be cited as the Mental Capacity (2016 Act) (Commencement No. 1) Order (Northern Ireland) 2019.

(2) In this Order—

“the 1986 Order” means the Mental Health (Northern Ireland) Order 1986;

“the Act” means the Mental Capacity Act (Northern Ireland) 2016;

“an act” is an act that requires the protection of liability in accordance with section 9 of the Act;

“deprivation of liberty” has the same meaning as in the Act subject to the conditions in Article 3;

“offences” means the offences found in sections 267 to 270 and 272 to 273 of the Act; and

“research” means research under sections 132 to 138 of the Act.

**Appointed days for provisions coming into force**

2.—(1) The day appointed for the coming into operation of the provisions of the Act specified in Part 1 of the Schedule for all purposes is 1st October 2019.

(2) The day appointed for the coming into operation of the provisions of the Act specified in Part 2 of the Schedule, in so far as it relates to an act that is a deprivation of liberty, research, offences or section 276 (power to make regulations about dealing with money and valuables), is 1st October 2019.

(3) The day appointed for the coming into operation of the provisions of the Act specified in Part 3 of the Schedule, in so far as it relates to an act that is a deprivation of liberty, is 1st October 2019.

(4) The day appointed for coming into operation of the provisions of the Act specified in Part 4 of the Schedule, in so far as it relates to an act that is a deprivation of liberty, is 1st October 2020.

**Limitations to commencement**

3. The provisions of the Act that are included in the Schedule and which are commenced by Article 2 of this Order do not apply in any circumstances in which a deprivation of liberty may instead be authorised by virtue of the provisions contained in Part 2 or Part 3 of the Mental Health (Northern Ireland) Order 1986.

**Transitional provisions**

4. Until the coming into operation of section 265 of the Act, the duty on hospital managers which appears at Article 3D “In-patients under 16: duties of hospital managers”, which is to be inserted into the Mental Health (NI) Order 1986 by section 266 of and Schedule 8 paragraph 4 to the Act shall apply to in-patients under 18 and the heading at Article 3D shall instead be construed as “In-patients under 18 – duties of hospital managers”.

Sealed with the Official Seal of the Department of Health on 29th August 2019.



*Mark Lee*  
A senior officer of the Department of Health.

## SCHEDULE

Article 2

## PART 1

**Provisions coming into operation on 1st October 2019 for all purposes**

<i>Provisions of the Act</i>	<i>Subject Matter</i>
Sections 132 to 138	Research
Section 266(1)(c) and Schedule 8 paragraphs 1, 2, 3(1), (2), (3) but omit after “(Northern Ireland) 2016” and (9), 4 but omit until “In-patients under 16: duties of hospital managers”, 38, 39, 47, 48(1), (2), (5) and (6), and 71	Amendments to the Mental Health (Northern Ireland) Order 1986 to allow for a functioning Review Tribunal and to provide a duty on hospital managers in relation to age appropriate accommodation
Section 274	The Review Tribunal - renaming
Section 276	Money and valuables
Section 303(2) and Schedule 11 in so far as it relates to Article 83 of, and Schedule 3 paragraph 4(1) and (5) to, the Mental Health (Northern Ireland) Order 1986	Repeals of parts of the Mental Health (Northern Ireland) Order 1986

## PART 2

**Provisions coming into operation on 1st October 2019 in so far as it relates to an act that is a deprivation of liberty, research, offences or section 276 (power to make regulations about dealing with money and valuables)**

<i>Provisions of the Act</i>	<i>Subject Matter</i>
Sections 1 to 8	Principles, including capacity assessment and best interests

## PART 3

**Provisions coming into operation on 1st October 2019 in so far as it relates to an act that is a deprivation of liberty**

<i>Provisions of the Act</i>	<i>Subject Matter</i>
Section 9(1) to (3)	Protection from liability - general
Section 9(4)(b)	Protection from liability – additional safeguards
In section 9(4)(d) “sections” and “24,26”	Protection from liability – additional safeguards
Section 9(5) and (6)	Protection from liability – help and support and parents
Section 10(1)	Limitations of section 9

*Status: This is the original version (as it was originally made).*

<i>Provisions of the Act</i>	<i>Subject Matter</i>
Sections 13 to 15	Additional safeguards – formal assessment of capacity and nominated persons
Section 24	Deprivation of liberty – additional safeguards
Section 25 and Schedule 1 paragraphs 1, 2(1), 2(2)(b), 2(3), 2(4)(b), 3, 5 to 8, 10, 13 to 16, 19, 20 and 22 to 27 and Schedule 2	Deprivation of liberty – additional safeguards
Sections 26 and 27	Deprivation of liberty – additional safeguards
Sections 37 to 39	Extensions of authorisation
Section 40 and Schedule 3 paragraphs 1, 2(1), 2(2), 2(3)(a), 3 to 9	Extension of authorisation
Section 41(1), (2)(b), (3) and (4)	Extensions of authorisation
Section 42	Extensions of authorisation
Section 43(1) to (6) and (7)(a)	Extensions of authorisation
Section 44	Extensions of authorisation
Section 45(1) to (3)	Review Tribunal applications
Section 45(4) but omitting “section 29(4) or 32(4) or”	Review Tribunal applications
Sections 46 to 48	Review Tribunal applications
Section 50(1)(a), (b) but omitting “or (d)”, (c), (2) and (3)	References to the Tribunal
Section 51(1) to (3), (4)(b) and (5)	Review Tribunal powers
Sections 52 and 53	Review Tribunal powers
Section 54	Medical reports and nominated person
Section 56(1), (2)(a), (3) and (4)	Medical reports and emergency situations
Sections 57 to 59	Provisions of information and other supplementary provisions
Section 60(1) and (2)(d)	Acts where Part 2 is not applicable
Sections 61 and 62	Power to make further provisions and disregard
Section 63(2)(a)	Protection from liability – definition of serious intervention
Section 64	Protection from liability – definition of serious intervention
Section 65(1) but omitting “16” to “20” and “28 and 35”, (2) to (5)	Emergency provisions
Section 66(1)(a), (b), (d) but omitting “19,20” and “28”, (2) to (6)	Emergency provisions – definitions etc
Sections 67 to 68	Failure by person other than D to take steps to ensure safeguards are met and interpretations of Part 2

<i>Provisions of the Act</i>	<i>Subject Matter</i>
Sections 69 to 79	Nominated persons provisions
Section 80(1) to (4), (5)(a) to (c), (f) and (g), (6) and (7)	Nominated persons provisions
Sections 81 to 85	Nominated persons provisions
Section 267(1), (2)(a), (3) and (4)	Offence of ill-treatment and neglect
Section 268(1), (2), (3)(a), (c), (d), (4), (5)	Offence of forgery, false statement, etc
Section 270	Offence of assisting a person to absent themselves
Section 272(1) to (3), (4)(b) until “48” and (c) but omitting “or 126”	Offences of obstruction
Section 273	Offences by bodies corporate
Section 275	Review Tribunal
Section 280	Approved social workers
Section 281	Miscellaneous functions of HSC trusts
Section 288(1)(a) to (c), (e) and (i), (2) to (8)	Code of Practice
Section 289(1), (2)(a), (b), (3) and (4)	Code of Practice
Sections 290(1) and (2)(a), (c) and (d) and 291(1) and (2)(a) and (c) and (3)	Provision of information and facilities
Section 292	Warrants
Section 296	Special accommodation
Section 297	Trust panels
Section 300(1)(a) and (c) to (e), and (2) to (4)	Medical practitioners who can make medical reports
Section 301	Documents appearing to be duly made

## PART 4

### **Provisions coming into operation on 1st October 2020 in so far as it relates to an act that is a deprivation of liberty**

<i>Provisions of the Act</i>	<i>Subject Matter</i>
Section 269	Offence of unlawful detention

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## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

This Commencement Order commences the Mental Capacity Act (Northern Ireland) 2016 for the purposes of deprivation of liberty, research, offences and money and valuables.

The Order provides that the commencement date for all relevant provisions, apart from the offence of unlawful detention, is the 1st October 2019.

As the Mental Capacity Act (Northern Ireland) 2016 as commenced for the purpose of deprivation of liberty provides a new statutory framework for deprivation of liberty, a lead in time before the offence of unlawful detention is commenced is provided. The commencement date for the offence is therefore 1st October 2020.

The Commencement Order also provides two transitional arrangements.

The first transitional arrangement limits the scope of protection from liability in relation to a deprivation of liberty by excluding persons who are liable to be detained under the Mental Health (Northern Ireland) Order 1986. This is to create legal certainty and clarity in the transitional period.

The second transitional arrangement relates to hospital managers' duty to ensure age appropriate accommodation for under 18s. By commencing part of paragraph 4 of Schedule 8 a duty on hospital managers is imposed for those under 16 that are treated as in-patients in hospital for a mental disorder. Similar provision exists under the Mental Capacity Act in section 265. However, as a person cannot be treated under the Act during the limited commencement for deprivation of liberty only section 265 is not commenced. A transitional provision to extend the duty in paragraph 4 of Schedule 8 to patients over 16, but under 18, is therefore provided until the commencement of section 265 of the Act.