
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.