

Mental Capacity Bill – amendment sheet

Full list of amendments (sequential)

Clause 4, Page 2, Line 41

At end insert-

‘and references to enabling or helping a person to make a decision about a matter are to be read accordingly.’

Explanation: This amendment ensures that references to enabling a person to make a decision (or helping a person to make a decision) are read as enabling or helping the person to do the things in clause 4(1)(a) to (d). This means that it is now clear on the face of the Bill that help and support must be given to enable the person to communicate his or her decision, as originally intended.

Clause 5, Page 3, Line 29

At end insert-

‘(3A) For the purposes of providing the information or explanation mentioned in subsection (2)(a) in a way appropriate to the person’s circumstances it may, in particular, be appropriate—

(a) to use simple language or visual aids; or

(b) to provide support for the purposes of communicating the information or explanation.

(3B) The reference in subsection (2)(c) to persons whose involvement is likely to help the person to make a decision may, in particular, include a person who provides support to help the person communicate his or her decision.’

Explanation: This amendment amplifies what is said in subsection (2) in a way that brings out the point that help and support must be given to enable the person to communicate his or her decision but does not affect the generality of subsection (2).

Clause 7, Page 5, Line 17

After ‘independent’ insert ‘mental capacity’

Explanation: This amendment changes reference to “independent advocate” to “independent mental capacity advocate”

Clause 7, Page 5, Line 19

After ‘independent’ insert ‘mental capacity’

Explanation: This amendment changes reference to “independent advocate” to “independent mental capacity advocate”

Clause 7, Page 5, Line 23

After second 'attorney' insert ', or an enduring power of attorney,'

Explanation: This amendment inserts a reference to an attorney under an enduring power of attorney in the list of relevant people to be consulted as part of the best interests determination.

Clause 9, Page 6, Line 33

After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 14, Page 9, Line 22

Leave out subsection (4) and insert-

(4) In this section references to a "suitably qualified" person are to a person of a prescribed description.'

Explanation: This is a technical amendment

Clause 16, Page 10, Line 10

Leave out 'for P'

Explanation: This is a technical amendment

Clause 18, Page 11, Line 24

Leave out 'for P'

Explanation: This is a technical amendment

Clause 18, Page 11, Line 32

Leave out from 'consulted' to end of line 33 and insert '—

- (a) examined P;
- (b) examined any health records relating to P that have been produced under subsection (2)(b) and appear to the practitioner to be relevant (having taken reasonable steps to require the production of relevant health records); and
- (c) consulted such person or persons as appear to the practitioner to be principally concerned with treating P (generally).'

Explanation: This amendment ensures that the second opinion doctor must examine P and any relevant health records before providing a certificate under clause 18.

Clause 18, Page 11, Line 41

Leave out 'for P'

Explanation: This is a technical amendment

Clause 18, Page 11, Line 42

At end insert-

'(5A) Where RQIA receives a relevant request and proposes to ask a medical practitioner to provide an opinion on whether it would be in P's best interests to have the treatment, it must (when considering who to ask) have regard to the desirability of asking a medical practitioner who is independent of any medical practitioner concerned with the provision to P of the treatment.'

Explanation: This amendment clarifies that the doctor providing the second opinion should be independent of the doctor providing the treatment.

Clause 18, Page 12, Line 1

Leave out 'subsection (5)' and insert 'this section'

Explanation: This is a technical amendment

Clause 23, Page 14, Line 14

At end insert '; or

- (d) the act is done at a time when a supervision and assessment order (see Schedule 7A) is in force in respect of the person.'

Explanation: Amended to include supervision and assessment orders as an "additional measure" for the purposes of Part 2 of the Bill. This means that authorisation must be sought if a person is subject to a supervision and assessment order, and resists an act done in the course of provision of treatment which is considered "treatment with serious consequences".

Clause 28, Page 16, Line 22

Leave out 'which is likely to' and insert 'that would or might'

Explanation: This is a technical amendment

Clause 28, Page 17, Line 1

Leave out subsection (6)

Explanation: This is a technical amendment

Clause 31, Page 18, Line 16

Leave out subsection (3) and insert-

‘(3) In subsection (2)(a) “healthcare professional” means a person of a prescribed description.’

Explanation: This is a technical amendment

Clause 31, Page 18, Line 18

Leave out ‘which is likely to’ and insert ‘that would or might’

Explanation: This is a technical amendment

Clause 35, Page 19, Line 39

After ‘independent’ insert ‘mental capacity’

Explanation: This amendment changes reference to “independent advocate” to “independent mental capacity advocate”

Clause 35, Page 19, Line 41

After ‘independent’ insert ‘mental capacity’

Explanation: This amendment changes reference to “independent advocate” to “independent mental capacity advocate”

Clause 35, Page 20, Line 2

After ‘independent’ insert ‘mental capacity’

Explanation: This amendment changes reference to “independent advocate” to “independent mental capacity advocate”

Clause 35, Page 20, Line 5

After ‘independent’ insert ‘mental capacity’

Explanation: This amendment changes reference to “independent advocate” to “independent mental capacity advocate”

Clause 35, Page 20, Line 12

After ‘independent’ insert ‘mental capacity’

Explanation: This amendment changes reference to “independent advocate” to “independent mental capacity advocate”

Clause 36, Page 20, Line 19

Leave out ‘which is likely to’ and insert ‘that would or might’

Explanation: This is a technical amendment

Clause 39, Page 22, Line 13

Leave out 'is likely to lack' and insert 'lacks (or probably lacks)'

Explanation: This is a technical amendment

Clause 43, Page 23, Line 32

After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 43, Page 23, Line 41

Leave out 'likely to lack' and insert 'lacks, or probably lacks,'

Explanation: This is a technical amendment

Clause 48, Page 26, Line 4

Leave out subsections (1) and (2) and insert-

(1) Where—

- (a) on any date ("the extension date"), the period of an authorisation under Schedule 1 is extended under section 38 or Schedule 3,
 - (b) the authorisation has been in force throughout the relevant period (see subsection (2)), and
 - (c) the Tribunal has not considered the person's case at any time in that period,
- the relevant trust must as soon as practicable refer the person's case to the Tribunal.

(2) The "relevant period" is—

- (a) if the person to whom the authorisation relates ("the person") is under 18, the period of one year ending with the extension date;
- (b) otherwise, the period of two years ending with the extension date.'

Explanation: This is a technical amendment

Clause 48, Page 26, Line 32

Leave out '(1)(c)' and insert '(2)'

Explanation: This is a technical amendment

New clause

After clause 48 insert-

'References etc to Tribunal: persons formerly detained under the Mental Health Order

48A.—(1) This section applies where—

- (a) immediately before the day a person reaches the age of 16 (“the relevant day”), the person is liable to be detained under Part 2 of the Mental Health Order; and
- (b) on that day, there is in force an authorisation under Schedule 1 to this Act (“the authorisation”) that authorises the detention of the person in circumstances amounting to a deprivation of liberty.

(2) If an application to the Tribunal by the person, or a reference of the person’s case to the Tribunal, was made under Part 5 of the Mental Health Order before the relevant day but has not been dealt with by that day, the matters to be considered by the Tribunal include the question whether the authorisation is appropriate.

(3) If—

- (a) on any date when the person is under 17, the period of the authorisation is extended (under section 37 or 38 or Schedule 3),
- (b) a relevant authority has been in force throughout the period of one year ending with that date, and
- (c) the Tribunal has not considered the person’s case at any time in that period,

the relevant trust must as soon as practicable refer to the Tribunal the question whether the authorisation is appropriate.

(4) In this section—

“the person’s case”—

- (a) in relation to any time when the person was under 16, has the same meaning as in Part 5 of the Mental Health Order;
- (b) in relation to any time when the person is 16 or over, means the question whether the authorisation is appropriate;

“relevant authority”—

- (a) in relation to any time when the person was under 16, means an authority under Part 2 of the Mental Health Order for the detention of the person;
- (b) in relation to any time when the person is 16 or over, means the authorisation;

“the relevant trust” has the same meaning as in section 48.’

Explanation: A new clause 48A would require the relevant trust, as soon as practicable after the person’s 16th birthday, to refer a “person’s case” to the Tribunal if the detention was renewed under Article 13 of the Mental Health (NI) Order 1986 and a year has elapsed since the case was last considered by the Tribunal.

Clause 49, Page 26, Line 41

Leave out ‘is likely to lack’ and insert ‘lacks (or probably lacks)’

Explanation: This is a technical amendment

Clause 50, Page 27, Line 27

Leave out ‘it is more likely than not’ and insert ‘there is a good prospect of it being established’

Explanation: This amendment is to clarify that where the Tribunal decides if the criteria for authorisation are met, it must do so on the balance of probabilities – the civil standard of proof. Using the words “more likely than not” (which is the civil standard) expressly in subsection (3) could have inferred that a more heightened standard applied for the purposes of subsection (2). The amendment avoids this potential for confusion.

Clause 50, Page 27, Line 30

Leave out ‘it is more likely than not’ and insert ‘there is a good prospect of it being established’

Explanation: This amendment is to clarify that where the Tribunal decides if the criteria for authorisation are met, it must do so on the balance of probabilities. Using the words “more likely than not” (which is the civil standard) expressly in subsection (3) could have inferred that a more heightened standard applied for the purposes of subsection (2). The amendment avoids this potential for confusion.

Clause 51, Page 28, Line 11

Leave out from ‘prevention’ to ‘2)’ in line 12 and insert ‘condition in paragraph 12 of Schedule 2’

Explanation: This is a technical amendment

New Clause

After clause 51 insert-

‘Sections 50 and 51: additional powers of Tribunal

51A.—(1) This section applies where, under section 50 or 51, the Tribunal decides to do anything other than revoke the authorisation.

(2) The Tribunal may, with a view to facilitating the ending at a future date of a measure still authorised by the authorisation—

- (a) recommend the taking of specified actions in relation to P; and
- (b) further consider P’s case in the event of any recommendation not being complied with.

(3) Where the Tribunal further considers P’s case under subsection (2)(b), section 50 or (as the case may be) section 51 applies.’

Explanation: Additional power for the Review Tribunal, when considering a person’s case, to recommend the taking of specific actions and to allow it to further consider the case in the event that the recommendations are not complied with. This change reflects an aspect of Article 77(2) of the Mental Health (NI) Order 1986.

Clause 52, Page 28, Line 28

After ‘independent’ insert ‘mental capacity’

Explanation: This amendment changes reference to “independent advocate” to “independent mental capacity advocate”

Clause 53, Page 28, Line 40
At end insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 53, Page 29, Line 4
At end insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 53, Page 29, Line 13
After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 54, Page 29, Line 31
After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 58, Page 31, Line 32
Leave out 'power' and insert 'a power (or duty)'

Explanation: This is a technical amendment

New Clause
After clause 58 insert-

'Power to make further provision

58A.—(1) The Department may by regulations make provision modifying any provision of this Part in relation to cases where—

- (a) an act is proposed to be done in respect of a person after that person has reached the age of 16, but
- (b) at the time the act is proposed, the person is under 16.

(2) The Department may by regulations make provision enabling prescribed relevant documents that are found to be incorrect or defective within a prescribed period from being made—

- (a) to be rectified within a prescribed period, and
- (b) to have effect as if originally made as rectified.

(3) In subsection (2) "relevant document" means an authorisation, or other document, made for the purposes of this Part.'

Explanation: This amendment is linked to the replacement of 288 and makes provision for more limited powers to make further provision in regulations. New clause 58A replaces but mirrors the effect of subsection (3) of clause 288.

Clause 59, Page 32, Line 6
Leave out 'other' and insert 'otherwise'

Explanation: This is a technical amendment

Clause 59, Page 32, Line 8
Leave out from beginning to 'be' and insert 'immediately after the end of that period, was not'

Explanation: This is a technical amendment

Clause 59, Page 32, Line 32
Leave out 'liable to be'

Explanation: This is a technical amendment

Clause 63, Page 35, Line 4
After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 65
The Minister of Health of Health, Social Services and Public Safety gives notice of his intention to oppose the question that clause 65 stand part of the Bill.

Explanation: This is a technical amendment

Clause 66, Page 36, Line 27
At end insert-
'treatment that "might be" treatment with serious consequences: references to such treatment are to treatment where the risk of the treatment turning out to be treatment with serious consequences is more than negligible.'

Explanation: This is a technical amendment

Clause 77, Page 41, Line 37
After 'X' insert '(including sensitive personal information)'

Explanation: This amendment clarifies the nature of information that may be disclosed to the nominated person and aligns the language used in the Bill with the Data Protection Act 1998.

Clause 78, Page 42, Line 27

After second 'attorney' insert ', or an enduring power of attorney,'

Explanation: This amendment inserts a reference to an attorney under an enduring power of attorney in the list of qualifying persons who may apply to the Tribunal for the appointment of a nominated person.

Clause 78, Page 42, Line 31

Leave out subsection (6) and insert-

'(6) In this section "appropriate healthcare professional" means a person of a prescribed description.'

Explanation: This is a technical amendment

Clause 84, Page 45, Line 6

After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 84, Page 45, Line 8

At end insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 84, Page 45, Line 15

After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 84, Page 45, Line 16

Leave out ', so far as practicable,'

Explanation: This amendment strengthens the principle of independence that HSC Trusts must have regard to when commissioning and instructing an advocate for the purposes of the Bill.

Clause 84, Page 45, Line 19

Leave out "'an independent' and insert "'independent mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 85, Page 45, Line 39

After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 85, Page 45, Line 41

After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 85, Page 46, Line 13

After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 85, Page 46, Line 17

After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 86, Page 46, Line 26

After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 86, Page 46, Line 29

After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 86, Page 46, Line 37

Leave out subsection (6) and insert-

'(6) In this section "appropriate healthcare professional" means a person of a prescribed description.'

Explanation: This is a technical amendment

Clause 87, Page 46, Line 41
After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 87, Page 47, Line 2
After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 87, Page 47, Line 8
After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 87, Page 47, Line 8
After 'P' insert '(including sensitive personal information)'

Explanation: This amendment clarifies the nature of information that may be disclosed to an independent advocate and aligns the language used in the Bill with the Data Protection Act 1998.

Clause 87, Page 47, Line 9
After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 88, Page 47, Line 12
At end insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 88, Page 47, Line 19
After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 89, Page 47, Line 27

After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 89, Page 47, Line 32

After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 90, Page 47, Line 35

After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 90, Page 47, Line 38

After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 90, Page 47, Line 40

After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 90, Page 48, Line 1

After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 90, Page 48, Line 5

At end insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 91, Page 48, Line 9
After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 91, Page 48, Line 12
After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 91, Page 48, Line 13
At end insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 92, Page 48, Line 22
After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 92, Page 48, Line 23
After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 92, Page 48, Line 27
After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 94, Page 49, Line 10
After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 94, Page 49, Line 14

After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 94, Page 49, Line 17

After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 94, Page 49, Line 19

After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 94, Page 49, Line 21

After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Clause 113, Page 61, Line 34

At end insert-

'(1A) In this section "specified" means specified by the court.'

Explanation: This is a technical amendment

Clause 115, Page 62, Line 37

Leave out paragraphs (a) and (b) and insert-

'(a) in specified circumstances or on the happening of specified events;

(b) for a specified period.'

Explanation: This is a technical amendment

Clause 115, Page 63, Line 14

At end insert-

'(10) In this section "specified" means specified by the court.'

Explanation: This is a technical amendment

Clause 116, Page 63, Line 35

After 'attorney' insert ', or an enduring power of attorney,'

Explanation: This amendment ensures that a deputy may not be given a power to make a decision on behalf of P that is inconsistent with a decision made by an attorney under an enduring power of attorney.

Clause 121, Page 66, Line 11

Leave out 'permission' and insert 'leave'

Explanation: This is a technical amendment

Clause 121, Page 66, Line 16

Leave out paragraphs (c) and (d) and insert-

'(c) where the application relates to a lasting power of attorney or enduring power of attorney and the application is made by the donor or any person who is an attorney under the power;'

Explanation: This amendment ensures that the donor of, or an attorney under, an enduring power of attorney can apply to the court under Part 6 without leave.

Clause 121, Page 66, Line 26

Leave out 'permission' and insert 'leave'

Explanation: This is a technical amendment

Clause 121, Page 66, Line 28

Leave out 'permission' and insert 'leave'

Explanation: This is a technical amendment

New clause

After clause 121 insert-

'Duty to notify Attorney General

121A.—(1) A person who makes an application to the court under this Part must notify the Attorney General of this fact.

(2) The notification must be made in accordance with rules of court.

(3) The Attorney General may intervene in the proceedings on the application in such way as the Attorney General considers appropriate.'

Explanation: New clause 121A creates a duty to notify the Attorney General of applications to the High Court under Part 6 of the Bill.

Clause 122, Page 68, Line 11

Leave out 'permission' and insert 'leave'

Explanation: This is a technical amendment

Clause 122, Page 68, Line 12

Leave out 'permission' and insert 'leave'

Explanation: This is a technical amendment

Clause 122, Page 68, Line 13

Leave out 'permission' and insert 'leave'

Explanation: This is a technical amendment

Clause 122, Page 68, Line 20

Leave out 'permission' and insert 'leave'

Explanation: This is a technical amendment

Clause 125, Page 70, Line 20

At end insert 'or its employees or agents;'

Explanation: To address Committee concerns that all providers of care in Northern Ireland are covered by the clause.

Clause 127, Page 71, Line 19

Leave out first 'permission' and insert 'leave'

Explanation: This is a technical amendment

Clause 127, Page 71, Line 19

Leave out second 'permission' and insert 'leave'

Explanation: This is a technical amendment

Clause 127, Page 71, Line 22

Leave out 'institution' and insert 'bringing'

Explanation: This is a technical amendment

Clause 131, Page 73, Line 11

Leave out from 'and' to end of line 12 and insert 'that are designated by regulations made for the purposes of this subsection.'

Explanation: This amendment requires the designation of any other regulations relating to clinical trials that are not to be treated as research for the purposes of Part 8 to be done by regulations subject to negative resolution.

Clause 133, Page 74, Line 38

After second 'attorney' insert ', or an enduring power of attorney,'

Explanation: This amendment inserts a reference to an attorney under an enduring power of attorney in the list of people who can be consulted about P's involvement in a research project.

Clause 137, Page 76, Line 39

After first 'serious' insert 'physical or psychological'

Clause 137, Page 77, Line 2

Leave out sub-paragraphs (i) and (ii) and insert 'the likelihood and seriousness of the harm concerned;'

Explanation: Clauses 137, 141, and 142 – which cover the power to remove a person from a public place to place of safety, and their subsequent detention at that place of safety – have been amended to clarify that the potential of the individual to create a risk of serious "physical or psychological harm" to himself must be considered.

Clause 139, Page 77, Line 35

Leave out 'taken' and insert 'removed'

Explanation: This is a technical amendment

Clause 139, Page 77, Line 37

Leave out 'taken' and insert 'removed'

Explanation: This is a technical amendment

Clause 141, Page 78, Line 25

After 'preventing' insert 'physical or psychological'

Explanation: Clauses 137, 141, and 142 – which cover the power to remove a person from a public place to place of safety, and their subsequent detention at that place of safety – have been amended to clarify that the potential of the individual to create a risk of serious "physical or psychological harm" to himself must be considered.

Clause 142, Page 78, Line 38

After first 'serious' insert 'physical or psychological'

Explanation: As above

Clause 142, Page 79, Line 1

Leave out sub-paragraphs (i) and (ii) and insert ‘the likelihood and seriousness of the harm concerned;’

Explanation: As above

Clause 143, Page 79, Line 27

After ‘serious’ insert ‘physical or psychological’

Explanation: Clause 143 – which sets out the criteria the criteria for transferring a person from one place of safety to another – has been amended to clarify that the potential of the individual to create a risk of serious “physical or psychological harm” to himself must be considered.

Clause 143, Page 79, Line 31

Leave out sub-paragraphs (i) and (ii) and insert ‘the likelihood and seriousness of the harm concerned;’

Explanation: As above

Clause 145, Page 80, Line 12

Leave out from ‘removes’ to end of line 14 and insert ‘takes a person (“R”) to a place of safety under section 137 or 143.’

Explanation: This is a technical amendment

Clause 145, Page 80, Line 15

Leave out ‘the person (“R”)’ and insert ‘R’

Explanation: This is a technical amendment

Clause 145, Page 80, Line 18

Leave out ‘(but this is subject to subsection (4))’

Explanation: This is a technical amendment

Clause 145, Page 80, Line 20

Leave out ‘person within subsection (3)’ and insert ‘relevant person’

Explanation: This is a technical amendment

Clause 145, Page 80, Line 22

Leave out subsection (3)

Explanation: This is a technical amendment

Clause 145, Page 80, Line 26
At beginning insert 'But'

Explanation: This is a technical amendment

Clause 145, Page 80, Line 28
Leave out 'but' and insert 'and'

Explanation: This is a technical amendment

Clause 145, Page 80, Line 29
Leave out 'person within subsection (3)' and insert 'relevant person'

Explanation: This is a technical amendment

Clause 145, Page 80
Leave out lines 31 to 33 and insert 'subsection (2) has effect as if the reference in paragraph (b) to the appropriate person were to a relevant person.'

Explanation: This is a technical amendment

Clause 145, Page 80, Line 37
At end insert-
"relevant person" means a person who is 16 or over and is—
(a) named by R as someone to whom the information should be given;
(b) engaged in caring for R; or
(c) interested in R's welfare;

Explanation: This is a technical amendment

Clause 145, Page 80, Line 39
Leave out subsections (6) and (7)

Explanation: This is a technical amendment

Clause 146, Page 81, Line 5
Leave out subsection (1) and insert-
'(1) This section supplements section 145.'

Explanation: This is a technical amendment

Clause 146, Page 81, Line 9

Leave out 'That information is' and insert "'The required information' means'

Explanation: This is a technical amendment

Clause 146, Page 81, Line 10

Leave out from 'removed' to 'be' in line 11

Explanation: This is a technical amendment

Clause 146, Page 81, Line 11

After 'section' insert '137 or'

Explanation: This is a technical amendment

Clause 146, Page 81, Line 13

Leave out from 'removed' to 'be' in line 14

Explanation: This is a technical amendment

Clause 146, Page 81, Line 18

Leave out 'removed' and insert 'taken'

Explanation: This is a technical amendment

Clause 146, Page 81, Line 22

Leave out 'removed or transferred' and insert 'taken'

Explanation: This is a technical amendment

Clause 146, Page 81, Line 23

Leave out 'removed or transferred' and insert 'taken'

Explanation: This is a technical amendment

Clause 146, Page 81, Line 23

At end insert-

'(3) Section 145 applies instead of Article 10 of the Criminal Justice (Children) (Northern Ireland) Order 1998 in any case where (but for this subsection) both that section and that Article would apply.

(4) Article 57 of PACE (right to have someone informed when arrested and detained) does not apply in relation to a person detained in a place of safety under this Part.'

Explanation: This is a technical amendment

Clause 153, Page 83, Line 39
After '(10A)' insert ', (12)(a)(iii)'

Explanation: Clause 153 – concerning intimate searches of persons detained under a place of safety power – is amended so that paragraph (12)(a)(iii) does not apply: a small, technical amendment.

Clause 155, Page 85, Line 17
Leave out ', 2 and 7 (principles and best interests)' and insert 'to 3 and 5 to 8 (principles, best interests etc)'

Explanation: This is a technical amendment

Clause 158, Page 86, Line 19

Leave out 'has the meaning given by' and insert ', and references to enabling a person to make a decision, are to be read in accordance with'

Explanation: This is a consequential amendment linked to the above amendment to clause 5.

Clause 163, Page 88, Line 38
Leave out 'substantially likely' and insert 'more likely than not'

Explanation: This is a technical amendment

Clause 163, Page 88, Line 38
After first 'serious' insert 'physical or psychological'

Explanation: Clause 163 – which deals with remanding an individual to a hospital for treatment – has been amended to clarify that the potential of the individual to create a risk of serious "physical or psychological harm" to himself must be considered.

Clause 166, Page 92, Line 21
Leave out from 'means' to end of line 22 and insert 'has the same meaning as in Part 8 of the Justice Act (Northern Ireland) 2015 (see section 76(1)).'

Explanation: This is a technical amendment

Clause 166, Page 91, Line 39
After 'physical' insert 'or psychological'

Explanation: Clause 166 – which deals with detaining an individual under a public protection order – has been amended so that the potential of the individual to create a risk of serious "physical or psychological harm" to other persons must be considered.

Clause 166, Page 92, Line 6
After 'of' insert 'physical or psychological'

Explanation: As above

Clause 167, Page 92, Line 28
After 'physical' insert 'or psychological'

Explanation: Clause 167 – which deals with imposing a restriction condition upon an individual detained under a public protection order – has been amended so that the potential of the individual to create a risk of serious “physical or psychological harm” to other persons must be considered.

Clause 167, Page 92, Line 32
After 'of' insert 'physical or psychological'

Explanation: As above

Clause 170, Page 93, Line 30
After 'physical' insert 'or psychological'

Explanation: Clause 170 – which deals with the ending of restriction conditions imposed upon an individual detained under a public protection order – has been amended so that the potential of the individual to create a risk of serious “physical or psychological harm” to other persons must be considered.

Clause 173, Page 95, Line 24
Leave out 'substantially likely' and insert 'more likely than not'

Explanation: This is a technical amendment

Clause 173, Page 95, Line 24
After 'serious' insert 'physical or psychological'

Explanation: Clause 173 – which sets out the conditions for giving a hospital direction – has been amended so that the potential of the individual to create a risk of serious “physical or psychological harm” to other persons must be considered.

Clause 178, Page 99, Line 5
After 'physical' insert 'or psychological'

Explanation: Clause 178 – which sets out the conditions for discharging an individual subject to a public protection order without restrictions from detention – has been amended so that the

potential of the individual to create a risk of serious “physical or psychological harm” to other persons must be considered.

Clause 183, Page 100, Line 41

After ‘physical’ insert ‘or psychological’

Explanation: Clause 183 – which covers the conditions for the continuation of a public protection order without restrictions – has been amended so that the potential of the individual to create a risk of serious “physical or psychological harm” to other persons must be considered.

Clause 190, Page 104, Line 23

After ‘physical’ insert ‘or psychological’

Explanation: Clause 190 – which sets out the power to recall a person who has been conditionally discharged from a public protection order with restrictions – has been amended so that the potential of the individual to create a risk of serious “physical or psychological harm” to other persons must be considered.

Clause 195, Page 106, Line 41

Leave out ‘234’ and insert ‘235’

Explanation: This is a technical amendment

Clause 196, Page 107, Line 7

Leave out ‘may’ and insert ‘must’

Explanation: Clause 196 is amended at paragraph (2)(a) to impose a duty on, rather than grant a power to, the DoJ, to direct that a prisoner be returned from hospital if that prisoner can no longer be detained in hospital. Clause 196 has also been amended to include a new paragraph (3A), which clarifies that this duty does not apply if the DoJ directs that with effect from a specified date the person is to be treated as if he or she had been removed to hospital from prison under another statutory power. Clauses 213 and 219 have also been similarly amended.

Clause 196, Page 107, Line 10

At end insert-

‘(2A) But subsection (2) does not apply if (having received a relevant notification) the Department of Justice directs that with effect from a specified date—

- (a) A is to be treated as if he or she had been removed to the hospital under the relevant provision from a prison specified in the direction under this subsection; and
- (b) the hospital direction is to cease to have effect.’

Explanation: As above

Clause 196, Page 107, Line 15

Leave out 'not substantially likely' and insert 'more likely than not'

Explanation: This is a technical amendment

Clause 196, Page 107, Line 16

After '(2),' insert 'no'

Explanation: This is a technical amendment

Clause 196, Page 107, Line 16

After first 'serious' insert 'physical or psychological'

Explanation: Clause 196 – which deals with the transfer to prison of a person detained in hospital under a hospital direction – has been amended to clarify that the potential of the individual to create a risk of serious “physical or psychological harm” to himself must be considered.

Clause 196, Page 107, Line 20

Leave out 'where A is detained'

Explanation: This is a technical amendment

Clause 196, Page 107, Line 21

Leave out subsections (4) to (6) and insert-

'(4) In this section—

- (a) “the disorder” means the disorder in respect of which the hospital direction was given;
- (b) “the hospital” means the hospital where A is detained;
- (c) any reference to “prison” is to be read, where A would (but for the hospital direction) be detained in a place of any other description, as a reference to a place of that other description;
- (d) “the relevant provision” means—
 - (i) section 16(2) of the Prison Act (Northern Ireland) 1953; or
 - (ii) if A would (but for the hospital direction) be detained in a juvenile justice centre, paragraph 3 of Schedule 2 to the Criminal Justice (Children) (Northern Ireland) Order 1998;
- (e) “a suitable medical practitioner” means the responsible medical practitioner or—
 - (i) if the disorder was mental disorder, any approved medical practitioner;
 - (ii) otherwise, any medical practitioner who appears to the Department of Justice to have special experience in the diagnosis or treatment of the disorder.'

Explanation: As above

Clause 198, Page 108, Line 10

At end insert-

- (e) any power to apply to the Sentence Review Commissioners;
- (f) any power or duty of the Sentence Review Commissioners or the Secretary of State under the Northern Ireland (Sentences) Act 1998.'

Explanation: This clause, which imposes duties and grants powers to release an individual from detention in hospital under a hospital direction, is amended to clarify that the right to apply to, and powers of, the Sentence Review Commissioners apply to that individual.

Clause 205, Page 111, Line 12

Leave out 'treatment' and insert 'assessment'

Explanation: Clause 205 is amended to reflect the decision to rename "Supervision and Treatment Orders" as "Supervision and Assessment Orders", and to take account of new Schedule 7A, which provides for these Orders.

Clause 205, Page 111, Line 21

At end insert-

'(5A) The power to make an order under subsection (2)(c) is subject to Schedule 7A, which makes provision about such orders.'

Explanation: As above

Clause 205, Page 111, Line 24

Leave out '(5)' and insert '(5A)'

Explanation: As above

Clause 205, Page 111, Line 31

Leave out subsection (8)

Explanation: As above

Clause 206, Page 111, Line 38

Leave out 'treatment' and insert 'assessment'

Explanation: Amended to reflect the decision to rename "Supervision and Treatment Orders" as "Supervision and Assessment Orders"

Clause 206, Page 112, Line 7

Leave out 'treatment' and insert 'assessment'

Explanation: As above

New clause

After clause 207 insert-

'Restraining orders

Power to make restraining order following finding of unfitness to plead etc

207A.—(1) In Article 7 of the Protection from Harassment (Northern Ireland) Order 1997 (restraining orders on conviction) (“the 1997 Order”)—

- (a) in the heading at the end insert “etc”;
- (b) for paragraph (7) substitute—

“(7) A court—

- (a) which deals with a person convicted of an offence under this Article, or
 - (b) before which a person is acquitted of an offence under this Article,
- may vary or discharge the order in question by a further order.

(8) In paragraphs (1) and (7) references to a person convicted of an offence include—

- (a) a person in respect of whom findings that the person is unfit to be tried, and that the person did the act or made the omission charged against him or her in respect of the offence, have been made; and
- (b) a person in respect of whom a public protection order (as defined by section 165 of the Mental Capacity Act (Northern Ireland) 2016) has been made in respect of the offence by virtue of section 207 of that Act.

(9) Where an order under this Article is made in respect of a person by virtue of paragraph (7)(b) or (8), the person has the same right of appeal against the order as if—

- (a) the person had been convicted of the offence in question before the court that made the order; and
- (b) that court had made the order when dealing with the person in respect of that offence.”.

(2) In Article 7A(2) of the 1997 Order (restraining orders on acquittal) after “7” insert “(and paragraph (8) so far as applying for the purposes of paragraph (7))”.

(3) The amendments made by subsections (1) and (2) apply in relation to offences committed (or alleged to have been committed) before (as well as after) the coming into operation of this section.

(4) In Article 7(8)(b) of the 1997 Order (inserted by subsection (1))—

- (a) the reference to a public protection order is to be read, until the coming into operation of section 165, as a reference to a hospital order within the meaning of the Mental Health Order; and
- (b) the reference to section 207 is to be read, until the coming into operation of that section, as a reference to Article 44(4) of the Mental Health Order.’

Explanation: New clause 207A amends Articles 7 and 7A of the Harassment (Northern Ireland) Order 1997 to address the lacuna identified by the Committee.

Clause 209, Page 113, Line 26

Leave out ‘substantially likely’ and insert ‘more likely than not’

Explanation: This is a technical amendment

Clause 209, Page 113, Line 26

After first ‘serious’ insert ‘physical or psychological’

Explanation: Clause 209 – which sets out the conditions that must be met in order to exercise the power at clause 208 to transfer a person serving a custodial sentence to hospital – has been amended to clarify that the potential of the individual to create a risk of serious “physical or psychological harm” to himself must be considered.

Clause 212, Page 114, Line 31
Leave out ‘234’ and insert ‘235’

Explanation: This is a technical amendment

Clause 213, Page 115, Line 3
Leave out ‘may’ and insert ‘must’

Explanation: Clause 213 is amended at paragraph (2)(a) to impose a duty on, rather than grant a power to, the DoJ, to direct that a prisoner be returned from hospital if that prisoner can no longer be detained in hospital. Clause 213 has also been amended to include a new paragraph (3A), which clarifies that this duty does not apply if the DoJ directs that with effect from a specified date the person is to be treated as if he or she had been removed to hospital from prison under another statutory power. Clauses 196 and 219 have also been similarly amended.

Clause 213, Page 115, Line 8
At end insert-

‘(3A) But subsection (3) does not apply if (having received a relevant notification) the Department of Justice directs that with effect from a specified date—
(a) A is to be treated as if he or she had been removed to the hospital under the relevant provision from a place, specified in the direction under this subsection, in which A might (but for the hospital transfer direction) be detained; and
(b) the hospital transfer direction is to cease to have effect.’

Explanation: As above

Clause 213, Page 115, Line 13
Leave out ‘not substantially likely’ and insert ‘more likely than not’

Explanation: This is a technical amendment

Clause 213, Page 115, Line 14
After ‘(3),’ insert ‘no’

Explanation: This is a technical amendment

Clause 213, Page 115, Line 14
After first ‘serious’ insert ‘physical or psychological’

Explanation: Clause 213 – which deals with the duration of a direction made under clause 211 to transfer a civil prisoner or immigration detainee to hospital – has been amended to clarify that the potential of the individual to create a risk of serious “physical or psychological harm” to himself must be considered.

Clause 213, Page 115, Line 18
Leave out ‘where A is detained’

Explanation: This is a technical amendment

Clause 213, Page 115, Line 21

At end insert-

“‘the hospital” means the hospital where A is detained;’

Explanation: This is a technical amendment

Clause 213, Page 115, Line 24

At end insert-

“‘the relevant provision” —

- (a) in the case of a civil prisoner (as defined by section 211), means section 16(2) of the Prison Act (Northern Ireland) 1953;
- (b) in the case of an immigration detainee (as defined by section 211) means—
 - (i) if the place specified in the direction under subsection (3A) is a prison, section 16(2) of the Prison Act (Northern Ireland) 1953;
 - (ii) otherwise, removal centre rules (within the meaning of Part 8 of the Immigration and Asylum Act 1999);’

Explanation: This is a technical amendment

Clause 215, Page 116, Line 8
Leave out ‘234’ and insert ‘235’

Explanation: This is a technical amendment

Clause 216, Page 116, Line 29

Leave out ‘not substantially likely that’ and insert ‘more likely than not that no’

Explanation: This is a technical amendment

Clause 216, Page 116, Line 29

After first ‘serious’ insert ‘physical or psychological’

Explanation: Clause 216 – which deals with the duration of a direction made under clause 214 to transfer a person remanded by a magistrates’ court to hospital – has been amended to clarify that the potential of the individual to create a risk of serious “physical or psychological harm” to himself must be considered.

Clause 218, Page 117, Line 36
Leave out ‘234’ and insert ‘235’

Explanation: This is a technical amendment

Clause 219, Page 118, Line 9
Leave out ‘may’ and insert ‘must’

Explanation: Clause 219 is amended at paragraph (2)(a) to impose a duty on, rather than grant a power to, the DoJ, to direct that a prisoner be returned from hospital if that prisoner can no longer be detained in hospital. Clause 219 has also been amended to include a new paragraph (3A), which clarifies that this duty does not apply if the DoJ directs that with effect from a specified date the person is to be treated as if he or she had been removed to hospital from prison under another statutory power. Clauses 196 and 213 have also been similarly amended.

Clause 219, Page 118, Line 14
At end insert-

‘(3A) But subsection (3) does not apply if (having received a relevant notification) the Department of Justice directs that with effect from a specified date—
(a) A is to be treated as if he or she had been removed to the hospital under the relevant provision from a place, specified in the direction under this subsection, in which A might (but for the hospital transfer direction) be detained; and
(b) the hospital transfer direction is to cease to have effect.’

Explanation: As above

Clause 219, Page 118, Line 15
Leave out ‘subsection (3)’ and insert ‘this section’

Explanation: As above

Clause 219, Page 118, Line 19
Leave out ‘not substantially likely’ and insert ‘more likely than not’

Explanation: This is a technical amendment

Clause 219, Page 118, Line 20

After first 'serious' insert 'physical or psychological'

Explanation: Clause 219 – which deals with the duration of a direction made under clause 217 to transfer certain other detainees to hospital – has been amended to clarify that the potential of the individual to create a risk of serious “physical or psychological harm” to himself must be considered.

Clause 219, Page 118, Line 20

After '(3),' insert 'no'

Explanation: This is a technical amendment

Clause 219, Page 118, Line 24

Leave out 'where A is detained'

Explanation: As above

Clause 219, Page 118, Line 25

After '(3)' insert 'or (3A)'

Explanation: As above

Clause 219, Page 118, Line 35

Leave out 'not substantially likely' and insert 'more likely than not'

Explanation: This is a technical amendment

Clause 219, Page 118, Line 36

After '(5),' insert 'no'

Explanation: This is a technical amendment

Clause 219, Page 118, Line 36

After first 'serious' insert 'physical or psychological'

Explanation: Clause 219 – which deals with the duration of a direction made under clause 217 to transfer certain other detainees to hospital – has been amended to clarify that the potential of the individual to create a risk of serious “physical or psychological harm” to himself must be considered.

Clause 219, Page 118, Line 40

Leave out 'where A is detained'

Explanation: As above

Clause 219, Page 119, Line 3

At end insert-

- “the hospital” means the hospital where A is detained;
“the relevant provision” means—
(a) section 16(2) of the Prison Act (Northern Ireland) 1953; or
(b) if A would (but for the hospital transfer direction) be detained in a juvenile justice centre, paragraph 3 of Schedule 2 to the Criminal Justice (Children) (Northern Ireland) Order 1998;’

Explanation: As above

Clause 220, Page 119, Line 32

Leave out ‘substantially likely’ and insert ‘more likely than not’

Explanation: This is a technical amendment

Clause 220, Page 119, Line 32

After first ‘serious’ insert ‘physical or psychological’

Explanation: Clause 220 – which sets out the conditions for transfer to a hospital under clauses 211, 214 and 217 – has been amended to clarify that the potential of the individual to create a risk of serious “physical or psychological harm” to himself must be considered.

Clause 221, Page 120, Line 27

Leave out ‘is likely to lack’ and insert ‘lacks (or probably lacks)’

Explanation: This is a technical amendment

Clause 222, Page 121, Line 33

At end insert-

‘(3) This section is subject to sections 232 and 233 (applications to Tribunal following conditional discharge of person subject to public protection order with restrictions).’

Explanation: This is a technical amendment

Clause 226, Page 122, Line 38

Leave out subsections (1) and (2) and insert-

- ‘(1) Where—
(a) on a relevant date, a person is liable to be detained under a public protection order or is liable to be detained in a hospital under a hospital direction or hospital transfer direction,
(b) the order or direction has been in force throughout the relevant period, and
(c) the Tribunal has not considered the person’s case at any time in that period,
the relevant trust must as soon as practicable refer the person’s case to the Tribunal.
(2) The “relevant period” is—
(a) if the person is under 18, the period of one year ending with the relevant date;

(b) otherwise, the period of two years ending with the relevant date.’

Explanation: This is a technical amendment

Clause 226, Page 123, Line 9
Leave out ‘179 or’

Explanation: This is a technical amendment

Clause 226, Page 123, Line 12
Leave out sub-paragraph (i)

Explanation: This is a technical amendment

Clause 226, Page 123, Line 28
Leave out ‘(1)(b)’ and insert ‘(2)’

Explanation: This is a technical amendment

Clause 227, Page 123, Line 38
Leave out ‘is likely to lack’ and insert ‘lacks (or probably lacks)’

Explanation: This is a technical amendment

Clause 228, Page 124, Line 16
Leave out subsection (4)

Explanation: Technical drafting change - subsection moved to new clause 230A(3).

Clause 230, Page 125, Line 12
At end insert ‘or psychological’

Explanation: Clause 230 – which provides an explanation of the “prevention of serious harm condition” for the purposes of clauses 228 and 229 – has been amended so that the potential of the individual to create a risk of serious “psychological harm” to other persons must be also considered in addition to serious physical harm.

New Clause

After clause 230 insert-

‘Sections 228 and 229: additional powers of Tribunal etc

230A.—(1) Where under section 228 or 229 the Tribunal decides not to discharge a person, the Tribunal may, with a view to facilitating the discharge of the person at a future date—

- (a) recommend the taking of specified actions in relation to the person; and

(b) further consider the person’s case in the event of any recommendation not being complied with.

(2) Where the Tribunal further considers a person’s case under subsection (1)(b), section 228 or (as the case may be) section 229 applies.

(3) A discharge of a person under this Chapter does not prevent the person from being detained in circumstances amounting to a deprivation of liberty by virtue of Part 2 of this Act (or, where the person is under 16, under Part 2 of the Mental Health Order), if the criteria that apply to such detention are met.’

Explanation: Additional power for the Review Tribunal, when considering a person’s case, to recommend the taking of specific actions and to allow it to further consider the case in the event that the recommendations are not complied with. This change reflects an aspect of Article 77(2) of the Mental Health (NI) Order 1986.

Clause 232, Page 126, Line 9

At end insert-

‘(5A) No application under section 222 may be made in respect of the order.’

Explanation: This is a technical amendment

Clause 234, Page 127, Line 16

Leave out ‘substantially likely’ and insert ‘more likely than not’

Explanation: This is a technical amendment

Clause 234, Page 127, Line 17

After first ‘serious’ insert ‘physical or psychological’

Explanation: Clause 234 – which sets out the powers of the Tribunal in respect of hospital directions and hospital transfer directions – has been amended to clarify that the potential of the individual to create a risk of serious “physical or psychological harm” to himself must be considered.

New Clause

After clause 234 insert-

‘Section 234: additional powers of Tribunal

234A.—(1) This section applies where under section 234 the Tribunal notifies the Department of Justice that it is satisfied that the prevention of serious harm condition is met in respect of a person.

(2) The Tribunal may, with a view to facilitating a transfer of the person at a future date—

(a) recommend the taking of specified actions in relation to the person; and

(b) further consider the person’s case in the event of any recommendation not being complied with.

(3) Where the Tribunal further considers the person’s case under subsection (2)(b), section 234 applies.

(4) In subsection (2) the reference to a “transfer” of the person is to a transfer to any place in which the person might (but for the relevant direction) be detained.’

Explanation: Additional power for the Review Tribunal, when considering a person’s case, to recommend the taking of specific actions and to allow it to further consider the case in the event that the recommendations are not complied with. This change reflects an aspect of Article 77(2) of the Mental Health (NI) Order 1986.

Clause 241, Page 130, Line 31

Leave out ‘treatment’ and insert ‘assessment’

Explanation: Amended to reflect the decision to rename “Supervision and Treatment Orders” as “Supervision and Assessment Orders”

Clause 242, Page 131, Line 3

Leave out ‘treatment’ and insert ‘assessment’

Explanation: Amended to reflect the decision to rename “Supervision and Treatment Orders” as “Supervision and Assessment Orders”

New Clause

After clause 242 insert-

‘Hospital directions: cases stated by magistrates’ courts

242A.—(1) This section applies where a magistrates’ court makes a hospital direction.

(2) For the purposes of Article 146 of the Magistrates’ Courts (Northern Ireland) Order 1981 (cases stated by magistrates’ courts), the hospital direction is a determination of the proceedings in which the direction was made.’

Explanation: New clause 242A is inserted to allow for an appeal to be made against a hospital direction that is a made by a magistrates court.

Clause 247, Page 133

Leave out line 24

Explanation: This is a technical amendment

Clause 247, Page 133,

Leave out line 25 and insert-

“supervision and assessment order” has the meaning given by paragraph 1(1) of Schedule 7A;’

Explanation: Amended to reflect the decision to rename “Supervision and Treatment Orders” as “Supervision and Assessment Orders”, and to take account of new Schedule 7A, which provides for these Orders.

Clause 248, Page 134, Line 6

Leave out 'by virtue of this Act is liable to be' and insert 'is'

Explanation: This is a technical amendment

Clause 248, Page 134, Line 22

Leave out subsection (5)

Explanation: Clause 248 has been amended in line with the amendments to clause 252 below.

Clause 249, Page 134, Line 28

Leave out 'by virtue of this Act is liable to be' and insert 'is'

Explanation: This is a technical amendment

Clause 249, Page 135, Line 8

Leave out subsection (5)

Explanation: Clause 249 has been amended in line with the amendments to clause 252 below.

New Clause

After clause 249 insert-

'Removal to other parts of UK of persons detained under Part 10

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

249A.—(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 208, 211 or 217.

(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 is admitted to a hospital in England or Wales.

(5) In subsection (3)(b) and (4) "hospital" has the same meaning as in the 1983 Act.'

Explanation: Clause 249A provides the Department of Justice with a power to transfer certain persons detained under Part 10 of the Bill to England and Wales for treatment, akin to the power currently available under Article 134 of the Mental Health (Northern Ireland) Order 1986 and Part VI of the Mental Health Act 1983.

New Clause

After clause 249 insert-

‘Removal of certain persons detained under Part 10 to Scotland

249B.—(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 208, 211 or 217.

(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
- (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 is admitted to a hospital in Scotland.

(5) In subsection (3)(b) and (4) “hospital” has the same meaning as in the 2003 Act.’

Explanation: Clause 249B provides the Department of Justice with a power to transfer certain persons detained under Part 10 of the Bill to Scotland for treatment, akin to the power currently available under Article 134 of the Mental Health (Northern Ireland) Order 1986 and the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005.

Clause 250, Page 135, Line 27

After ‘If (’ insert ‘immediately’

Explanation: Clause 250 is amended to provide greater clarity.

Clause 251, Page 136, Line 6

After ‘(’ insert ‘immediately’

Explanation: Clause 251 is amended to provide greater clarity.

New Clause

After clause 251 insert-

'Persons to be detained under Part 10

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

251A.—(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.

(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 165(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 172 |
| Person subject to a transfer direction given by virtue of section 47(1) of the 1983 Act | Hospital transfer direction under section 208 |
| Person subject to a transfer direction given by virtue of section 48(2)(a) of the 1983 Act | Hospital transfer direction under section 217 |
| 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 211 |

(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 177 and calculation of the “initial period” for the purposes of section 179 (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 197 (where P is treated as being subject to a hospital direction made under section 172) | Date on which the hospital direction (within the meaning of the 1983 Act) was made |
| Right to apply to the Tribunal under the first entry in the table in section 222(1) | Date on which the hospital order, hospital direction (within the meaning of the 1983 Act) or transfer direction was made |
| Calculation of the “relevant date” for the purposes of section 226(3) (referral of case to the Tribunal) | Date on which the hospital order, hospital direction (within the meaning of the 1983 Act) or transfer direction was made |
| Calculation of the “relevant period” for the purposes of section 227(3) (duty to notify Attorney General) | Date of P’s arrival in Northern Ireland |

(7) The first report under section 191 (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 221(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) 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.

(10) In this section—

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

“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.’

Explanation: Clause 251A provides for how persons, who have been transferred from England and Wales to Northern Ireland, will be managed under Part 10 of the Bill, akin to the power currently available under Article 134 of the Mental Health (Northern Ireland) Order 1986 and Part VI of the Mental Health Act 1983.

New Clause

After clause 251 insert-

‘Persons to be detained under Part 10 after removal from Scotland

251B.—(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 on his or her arrival in Northern Ireland.

| <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 165(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 |
| Person subject to a hospital direction (within the meaning of the 1995 Act) | Hospital direction under section 172 |
| 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 177 and calculation of the "initial period" for the purposes of section 179 (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 197 (where P is treated as being subject to a hospital direction made under section 172) | 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 222(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 226(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 |
| Calculation of the "relevant period" for the purposes of section 227(3) (duty to notify Attorney General) | Date of P's arrival in Northern Ireland |

(7) The first report under section 191 (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
- (b) otherwise, not later than 12 months after the most recent report under that section.

(8) Section 221(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) 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.

(10) 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.’

Explanation: Clause 251B provides for the how persons, who have been transferred from Scotland to Northern Ireland, will be managed under Part 10 of the Bill, akin to the power currently available under Article 134 of the Mental Health (Northern Ireland) Order 1986 and the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005.

Leave out clause 252 and insert -

‘Removal or transfer from Northern Ireland: power to make further provision

252.—(1) Regulations may make provision in connection with the removal of a person by virtue of this Part or Part 2 to a place outside Northern Ireland (whether or not a place in the United Kingdom).

(2) Regulations may make provision for and in connection with enabling the Department to authorise, and to give directions in connection with, the removal or transfer to a place outside Northern Ireland (whether or not a place in the United Kingdom) of prescribed descriptions of persons where—

- (a) the person is subject in Northern Ireland to measures under this Act, and
- (b) the person lacks capacity in relation to the removal or transfer and the removal or transfer would be in that person's best interests.

(3) Regulations may make provision for and in connection with enabling the Department of Justice to authorise, and to give directions in connection with, the removal or transfer to a place outside Northern Ireland (whether or not a place in the United Kingdom) of prescribed descriptions of persons where—

- (a) the person is subject in Northern Ireland to measures under this Act, and
- (b) either—
 - (i) the person consents to the removal or transfer, or
 - (ii) failure to remove or transfer the person there would be more likely than not to result in serious physical or psychological harm to the person or serious physical harm to other persons.

(4) In this section, references to the "transfer" of a person are to the transfer of responsibility for a person who is not detained by virtue of Part 2 or Part 10; and regulations may prescribe the powers and duties that constitute responsibility for a person for this purpose.

(5) References to persons subject to measures under this Act include, in particular,—

- (a) in subsection (2)(a), persons in respect of whom an authorisation under Part 2 has been granted authorising a particular measure (within the meaning given by section 41);
- (b) in subsection (3)(a), persons in respect of whom an order or direction has been made or given under Part 10 (including persons in respect of whom a warrant under section 189(1)(b) or an order under section 229(2)(b) is in effect).

(6) Regulations under this section—

- (a) may prescribe steps to be taken before a person may be removed or transferred, or prescribe other conditions which must be met before a person may be removed or transferred,
- (b) may provide that, where a person is removed or transferred, any prescribed measure to which the person is subject ceases to have effect, and
- (c) may apply, or make provision similar to, any provision of Part 2 or Part 10 (with or without modifications).

(7) The powers to make regulations under this section must be exercised so as to ensure that, where under this Part the removal or transfer of a person from Northern Ireland is authorised—

- (a) notice of the authorisation and proposed removal or transfer must be given to—

(i) the person to be removed or transferred, and

(ii) any prescribed person,

at least a prescribed period before the date of the proposed removal or transfer; and

(b) there is a right to apply to the Tribunal in respect of the authorisation (except where the Tribunal approved the removal or transfer before the authorisation was given).

(8) Regulations under this section may amend this Part, and may make supplementary or consequential amendments to other provisions of this Act.

(9) In this section “regulations” means—

(a) in relation to provision concerning the removal or transfer of a Part 10 transferee, regulations made by the Department of Justice;

(b) in any other case, regulations made by the Department.

(10) In subsection (9) a “Part 10 transferee” is a person—

(a) who is detained by virtue of Part 10 or (if not detained under this Act) is subject to an order or direction made or given under Part 10, or

(b) (in the case of a person who is neither detained under this Act nor subject to a prescribed measure having effect under it) in whose case either of the conditions in subsection (3)(b) is met.’

Explanation: Clause 252 has been amended to take account of the insertion of new powers in relation to Part 10 transfers from Northern Ireland.

Leave out clause 253 and insert-

‘Persons removed or transferred to Northern Ireland: power to make further provision

253.—(1) Regulations may make provision, in respect of persons of a prescribed description removed to Northern Ireland under a relevant provision—

(a) requiring prescribed steps to be taken when the person arrives in Northern Ireland;

(b) providing for the person to be treated as if he or she were a person of a prescribed description subject to measures under this Act.

(2) The reference in subsection (1)(b) to persons subject to measures under this Act includes, in particular—

(a) persons in respect of whom an authorisation under Part 2 has been granted authorising a particular measure (within the meaning given by section 41), and

- (b) persons in respect of whom an order or direction has been made or given under Part 10 (including persons in respect of whom a warrant under section 189(1)(b) or an order under section 229(2)(b) is in effect).

(3) Subsection (1)(b) permits the regulations to provide for a person to be treated as if an authorisation under Part 2 authorising a particular measure had been granted only where the person (before being removed to Northern Ireland) was subject under the law of England, Wales or Scotland to a corresponding or similar measure.

(4) Subsection (1)(b) permits the regulations to provide for a person to be treated as if an order or direction had been made or given under Part 10 only where the person (before being removed to Northern Ireland) was subject under the law of England, Wales or Scotland to an order, direction or other measure have corresponding or similar effect.

(5) Regulations may make provision about the application of this Act to persons who are removed to Northern Ireland under a relevant provision and who are treated, by virtue of this Part, as if they were subject to particular measures under this Act.

(6) In this section “a relevant provision” means—

- (a) Part 6 of the 1983 Act;
- (b) regulations made under section 289 or 290 of the 2003 Act; or
- (c) any provision of the law of a country or territory other than the United Kingdom which is similar or corresponds to this Part or Part 2 or 10 of this Act.

(7) Regulations under this section may amend this Part, and may make supplementary or consequential amendments to other provisions of this Act.

(8) In this section “regulations” means—

- (a) in relation to provision concerning a Part 10 arrival, regulations made by the Department of Justice;
- (b) in any other case, regulations made by the Department.

(9) In subsection (8) a “Part 10 arrival” is a person who (by virtue of the regulations) is to be treated as if an order or direction under Part 10 had been made or given in respect of him or her.’

Explanation: Clause 253 has also been amended to take account of the insertion of new powers in relation to transfers to Northern Ireland that will be dealt with under Part 10.

After clause 253 insert-

‘Interpretation of Part 11

253A. In this Part—

“the 1983 Act” means the Mental Health Act 1983;

“the 1995 Act” means the Criminal Procedure (Scotland) Act 1995;

“the 2003 Act” means the Mental Health (Care and Treatment) (Scotland) Act 2003;

“appropriate establishment” has the same meaning as in Part 10 (see section 165);

“hospital direction”, except where otherwise provided, has the same meaning as in Part 10 (see section 247(1));

“hospital transfer direction” has the same meaning as in Part 10 (see section 247(1));

“public protection order”, “public protection order with restrictions” and “public protection order without restrictions” have the same meaning as in Part 10 (see section 165);

“the responsible medical practitioner” has the same meaning as in Part 10 (see section 247(1)).’

Explanation: New clause 253A has been drafted to provide definitions of certain terms for the purposes of Part 11.

Clause 256, Page 138, Line 23

At end insert-

‘(aa) P is detained under Part 9 or 10, and is in the custody or care of X;’

Explanation: This amendment extends the application of the offence to individuals detained under Parts 9 and 10 of the Bill, which cover police place of safety powers and criminal court disposals respectively.

Clause 256, Page 138, Line 24

After second ‘attorney’ insert ‘, or an enduring power of attorney,’

Explanation: This amendment inserts a reference to an attorney under an enduring power of attorney in the list of people by whom the offence of ill-treatment or neglect could be committed.

Clause 256, Page 138, Line 30

At end insert-

‘(4) Proceedings in respect of an offence under this section may be brought only by, or with the consent of, the Director of Public Prosecutions for Northern Ireland.’

Explanation: This amendment is to ensure alignment with the consent requirements for the equivalent offence under Article 121 of the Mental Health (NI) Order 1986; and minimises the potential for vexatious prosecutions.

Clause 258, Page 139, Line 23

Leave out ‘receives and’

Explanation: This amendment is a technical amendment to address the use of particular wording in the Bill.

Clause 258, Page 139, Line 27

At end insert-

- ‘(1A) A person (“R”) commits an offence if—
- (a) R intentionally detains another person (“P”) in circumstances amounting to a deprivation of liberty;
 - (b) R does so in purported reliance on Part 9 or 10; and
 - (c) P is not liable to be detained by virtue of that Part.’

Explanation: This amendment extends the application of the offence to individuals detained under Parts 9 and 10 of the Bill, which cover police place of safety powers and criminal court disposals respectively.

Clause 258, Page 140, Line 2

At end insert-

‘(5) Proceedings in respect of an offence under this section may be brought only by, or with the consent of, the Director of Public Prosecutions for Northern Ireland.’

Explanation: This amendment is to ensure alignment with the consent requirements for the equivalent offence under Article 121 of the Mental Health (NI) Order 1986; and minimises the potential for vexatious prosecutions.

(6) Section 20(1) of the Interpretation Act (Northern Ireland) 1954 applies in relation to the offence under this section as it applies in relation to other offences under this Act (so, for example, nothing in this section prevents a person from being prosecuted and punished for an offence of false imprisonment).’

Explanation: This amendment clarifies that the offence of unlawful detention does not interfere with the common law offence of false imprisonment.

Clause 259, Page 140, Line 4

Leave out subsections (1) to (5) and insert-

- ‘(1) A person commits an offence if—
- (a) the person knows that another person (“P”) is, by virtue of this Act, liable to be detained in a place in circumstances amounting to a deprivation of liberty; and
 - (b) the person induces, or intentionally assists, P to absent himself or herself without permission from that place.
- (2) A person commits an offence if—
- (a) the person knows that another person (“P”) is, by virtue of this Act, liable to be detained in a place (“the relevant place”) in circumstances amounting to a deprivation of liberty;
 - (b) P has absented himself or herself without permission from the relevant place; and
 - (c) the person—
 - (i) allows P to live or stay with the person, knowing that P absented himself or herself without permission from the relevant place; or
 - (ii) gives P any assistance with the intention of preventing, delaying or interfering with P’s being returned to detention.

(3) A person commits an offence if—

- (a) the person knows that another person (“P”) is, by virtue of this Act, liable to be detained in a place in circumstances amounting to a deprivation of liberty;
- (b) P is being taken to that place; and
- (c) the person induces, or intentionally assists, P to escape.

(4) In subsections (1) and (2) references to P absenting himself or herself without permission from a place where P is liable to be detained (“the relevant place”) include—

- (a) P failing to return to the relevant place at the end of an occasion or period for which P was given permission to be absent, or on being recalled from a permitted absence; and
- (b) P absenting himself or herself, without permission, from a place where P is required to be by conditions imposed on the grant of a permission for absence from the relevant place.’

Explanation: This amendment provides that a person can only be guilty of an offence under this clause if they know that the person they are assisting is liable to be detained under the Bill.

Clause 260, Page 140, Line 31

Leave out subsections (1) to (3) and insert-

‘(1) A person commits an offence if—

- (a) the person knows that another person (“P”) is required by a community residence requirement to live at a particular place; and
- (b) the person induces, or intentionally assists, P to stop living at that place.

(2) A person commits an offence if—

- (a) the person knows that another person (“P”) is required by a community residence requirement to live at a particular place;
- (b) P has stopped living at that place; and
- (c) the person gives P any assistance with the intention of preventing, delaying or interfering with P’s being returned to live at that place.’

Explanation: This amendment provides that a person can only be guilty of an offence under this clause if they know that the person they are assisting is subject to a community residence requirement under the Bill.

Clause 260, Page 141, Line 3

Leave out from ‘has’ to end of line 4 and insert ‘means a community residence requirement (as defined by section 31) that is imposed under Part 2.’

Explanation: This is a technical amendment.

Clause 262, Page 141, Line 39

At end insert-

‘(2A) Proceedings in respect of an offence committed by virtue of this section may be brought only by, or with the consent of—

- (a) the Attorney General; or
- (b) the Director of Public Prosecutions for Northern Ireland.’

Explanation: This amendment is to ensure alignment with the consent requirements for offences by bodies corporate as set out in section 20 of the Interpretation Act (Northern Ireland) 1954 and minimises the potential for vexatious prosecutions.

Clause 265, Page 143, Line 9
Leave out subsection (3)

Explanation: This is a technical amendment

Clause 265, Page 143, Line 37
After second 'attorney' insert ', or an enduring power of attorney,'

Explanation: This amendment ensures that any regulations made under clause 265(2) may not permit the relevant authority to do anything inconsistent with a decision concerning P's property and affairs made by an attorney under an enduring power of attorney.

Clause 266, Page 143, Line 42
After '265' insert '(2)'

Explanation: This is a technical amendment

Clause 266, Page 144, Line 3
Leave out from 'taken' to 'has' in line 4 and insert 'brought only—
(a) by RQIA; or
(b) by, or with'

Explanation: This is a technical amendment

Clause 270, Page 145, Line 20
Leave out from ', in' to 'Act' in line 22 and insert 'is absent with permission from a place of detention'

Explanation: This is a technical amendment

Clause 270, Page 145, Line 34
At end insert-
'(2) In subsection (1)(b) "place of detention" means a place where the person is detained, by virtue of this Act, in circumstances amounting to a deprivation of liberty.'

Explanation: This is a technical amendment

Clause 271, Page 146, Line 34
Leave out from 'granted' to 'and' in line 35 and insert 'or enduring power of attorney (within the meaning of the Mental Capacity Act) granted by P'

Explanation: This amendment ensures that references to “attorney” in the direct payment provisions in the Bill include attorneys under an enduring power of attorney.

New clause

After clause 272 insert-

‘Advance decisions to refuse treatment

Review of law relating to advance decisions

272A.—(1) Before the third anniversary of the day this section comes into operation, the Department must—

- (a) review the law relating to advance decisions to refuse treatment; and
- (b) produce a report setting out the conclusions reached on the review (including any proposals for changes to that law).

(2) The Department must lay a copy of the report before the Assembly.’

Explanation: This amendment places a statutory obligation on the Department to review the law in relation to advance decisions and produce a report to be laid before the Assembly. The report must be made by three years after the Bill comes into operation.

Clause 274, Page 148, Line 35

After ‘questions’ insert ‘or propositions’

Explanation: This is a technical amendment

Clause 276, Page 149, Line 16

At end insert ‘(or is under 16 and is detained under Part 9 or being dealt with under Part 10)’

Explanation: This is a technical amendment

Clause 276, Page 149, Line 18

After ‘independent’ insert ‘mental capacity’

Explanation: This amendment changes reference to “independent advocate” to “independent mental capacity advocate”

Clause 276, Page 149, Line 19

Leave out ‘of this Act’

Explanation: This is a technical amendment

Clause 276, Page 150, Line 5

At end insert ‘(and must in particular consult the Department of Justice if the code contains specific provision about persons detained under Part 9 or persons being dealt with under Part 10)’

Explanation: This is a technical amendment

Clause 276, Page 150, Line 12

At end insert-

- (8A) For the purposes of this section a person is “being dealt with under Part 10” if—
- (a) the person is remanded to hospital under Chapter 1 of Part 10; or
 - (b) a public protection order, hospital direction, interim detention order or hospital transfer direction has been made in respect of the person and remains in force.’

Explanation: This is a technical amendment

Clause 276, Page 150, Line 13

After first ‘section’ insert ‘—

“hospital direction”, “hospital transfer direction”, “interim detention order” and “public protection order” have the same meaning as in Part 10 (see section 247);’

Explanation: This is a technical amendment

Clause 277, Page 150, Line 22

After ‘independent’ insert ‘mental capacity’

Explanation: This amendment changes reference to “independent advocate” to “independent mental capacity advocate”

Clause 277, Page 150, Line 23

After second ‘attorney’ insert ‘or an enduring power of attorney’

Explanation: This amendment inserts a reference to an attorney under an enduring power of attorney in the list of people that must have regard to any relevant code of practice.

New clause

After clause 277 insert-

‘Provision of information and facilities

Provision of information by HSC trusts and the Department

277A.—(1) An HSC trust, and the Department, must provide to a relevant authority such returns, reports and other information as the relevant authority may require for the performance of its functions under this Act.

(2) In subsection (1) “relevant authority” means—

- (a) the High Court;
- (b) the Public Guardian; or

(c) the Tribunal.’

Explanation: Places a duty on DHSSPS and the HSC Trusts to furnish such returns, reports and other information about an individual who is the subject of proceedings under the Bill as the High Court, the Review Tribunal and the Public Guardian may require for the exercise of functions under the Bill.

New clause

After clause 277 insert-

‘Provision of facilities by HSC trusts and the Department

277B.—(1) An HSC trust must provide to a relevant authority such facilities as are necessary to enable the relevant authority to perform its functions under this Act.

(2) The Department must provide, to the Tribunal, such facilities as are necessary to enable the Tribunal to perform its functions under this Act.

(3) In this section “relevant authority” has the meaning given by section 277A.’

Explanation: Places a duty on DHSSPS and the HSC Trusts to provide facilities (e.g. room) as the High Court, the Review Tribunal and the Public Guardian may require for the exercise of functions under the Bill.

Clause 278, Page 150, line 37

Leave out ‘justice of the peace’ and insert ‘lay magistrate’

Explanation: This is a technical amendment

Clause 278, Page 150, Line 39

Leave out from ‘person’ to ‘place’ in line 40 and insert ‘relevant person’

Explanation: This is a technical amendment

Clause 278, Page 151, line 4

Leave out ‘justice’ and insert ‘lay magistrate’

Explanation: This is a technical amendment

Clause 278, Page 151, Line 5

At end insert ‘relevant’

Explanation: This is a technical amendment

Clause 278, Page 151, Line 6

At end insert-

‘(2A) A constable executing a warrant under subsection (2) may be accompanied by an approved social worker (as well as a medical practitioner).’

Explanation: This amendment allows an Approved Social Worker to accompany a constable as well as a medical practitioner to enter premises when a warrant issued under clause 278 is being executed.

Clause 278, Page 151, Line 7

Leave out 'person concerned' and insert 'relevant person'

Explanation: This is a technical amendment

Clause 278, Page 151, Line 9

Leave out from 'place'" to end of line 10 and insert 'person" means a person who—

- (a) by virtue of this Act, is liable to be detained in a place in circumstances amounting to a deprivation of liberty; and
- (b) is, by virtue of this Act, to be taken to that place.'

Explanation: This is a technical amendment

Clause 279, Page 151, line 12

Leave out 'justice of the peace' and insert 'lay magistrate'

Explanation: This is a technical amendment

Clause 279, Page 151, Line 15

At end insert '(a "relevant person")'

Explanation: This is a technical amendment

Clause 279, Page 151, line 19

Leave out 'justice' and insert 'lay magistrate'

Explanation: This is a technical amendment

Clause 279, Page 151, Line 21

Leave out 'person liable to be so taken' and insert 'relevant person'

Explanation: This is a technical amendment

Clause 279, Page 151, Line 23

Leave out '1983 Act' and insert 'Mental Health Act 1983'

Explanation: Clause 279 has been amended to provide greater clarity.

Clause 279, Page 151, Line 26

Leave out from 'into' to end of line and insert 'any relevant person into custody in Northern Ireland.'

Explanation: This is a technical amendment

Clause 280, Page 152, Line 4

At end insert-

'(4) Nothing in subsection (3) affects any other power, or authority to do an act, that the relevant person (or any other person) may have.'

Explanation: This is a technical amendment

Clause 281, Page 152, Line 24

At end insert-

'(6) Nothing in subsection (1) affects any other power, or authority to do an act, that a person mentioned in subsection (2) (or any other person) may have.'

Explanation: This is a technical amendment

Clause 282, Page 152, Line 29

Leave out 'liable to be'

Explanation: This is a technical amendment

Clause 282, Page 152, Line 31

Leave out 'from serious physical harm'

Explanation: Clause 282 – which deals with the provision of special accommodation for persons that require care of treatment in conditions of special security for the protection of other persons – has been amended so that the words “from serious physical harm” have been removed, to allow for the detention of individuals who might pose a risk of “serious psychological harm” to other persons.

Clause 283, Page 152, Line 38

Leave out “a panel” and insert “panel”

Explanation: This is a technical amendment

Clause 283, Page 153, Line 3

At end insert '(all of whom must be present during any proceedings of the panel).'

Explanation: This amendment provides that all panel members must be in attendance during proceedings of the panel (which includes when a decision is to be made).

Clause 283, Page 153

Leave out line 4

Explanation: This is technical amendment linked to amendment above.

Clause 283, Page 153, Line 5

Leave out from 'provision' to end and insert 'further provision about the membership or procedure of panels,'

Explanation: This is technical amendment linked to amendment above.

Clause 283, Page 153, Line 7

Leave out 'the panel to afford' and insert 'panels to give'

Explanation: This is a technical amendment

Clause 283, Page 153, Line 9

Leave out 'the' and insert 'a'

Explanation: This is a technical amendment

Clause 283, Page 153, Line 11

Leave out 'the' and insert 'a'

Explanation: This is a technical amendment

Clause 283, Page 153, Line 14

Leave out 'the' and insert 'a'

Explanation: This is a technical amendment

Clause 284, Page 153, Line 25

Leave out 'permission' and insert 'consent'

Explanation: This is a technical amendment

Clause 288

The Minister of Health of Health, Social Services and Public Safety gives notice of his intention to oppose the question that clause 288 stand part of the Bill.

Explanation: This amendment sees the replacement of clause 288 resulting in more limited powers to make further provision in regulations. New clause 58A replaces but mirrors the effect of subsection (3) of clause 288. A power to make regulations amending other primary legislation in consequence of the Bill only is now contained in clause 290. The power to make transitional, transitory or saving provision by regulations in connection with the commencement of the Bill has been moved to clause 294 and does not now include a power to amend or modify other primary

legislation. The amendments to clause 289 are largely consequential on the changes to clause 288 and the Department's acceptance of the recommendations in the Examiner of Statutory Rules report.

Clause 289, Page 155, Line 8

Leave out 'under a relevant provision' and insert 'to which subsection (3) applies'

Explanation: This is a technical amendment.

Clause 289, Page 155, Line 11

Leave out 'Regulations under any other provision of' and insert 'Any other regulations under'

Explanation: This is a technical amendment.

Clause 289, Page 155, Line 13

Leave out from beginning to 'means' and insert 'This subsection applies to—
(a) regulations under'.

Explanation: This is a technical amendment.

Clause 289, Page 155, Line 13

At end insert '36(4)(b),'

Explanation: This amendment gives effect to one of the recommendations in the Examiner of Statutory Rules report.

Clause 289, Page 155, Line 14

After '48(5),' insert '58A(2),'

Explanation: This amendment is a consequential technical amendment on foot of the amendments to clause 288.

Clause 289, Page 155, Line 14

Leave out '205(8),'

Explanation: This amendment is a consequential technical amendment on foot of the amendment to clause 205.

Clause 289, Page 155, Line 15

Leave out ', 288(3)(b)'

Explanation: This amendment is a consequential technical amendment on foot of the amendments to clause 288

Clause 289, Page 155, Line 15,

After '293(3)' insert ', paragraph 14(1) of Schedule 7A'

Explanation: This amendment means that the regulation making power at paragraph 14 of Schedule 7A will be subject to affirmative resolution, in order to reflect the potential for any regulations introduced under this paragraph to have a significant policy impact.

Clause 289, Page 155, Line 15

At end insert-

- (b) regulations under section 252 or 253 that amend this Act;
- (c) regulations under section 265(2) containing any provision that creates an offence;
- (d) regulations under section 290(3) that amend the text of Northern Ireland legislation or an Act of Parliament;
- (e) any other regulations under this Act that are contained in a statutory rule that contains regulations within any of paragraphs (a) to (d).'

Explanation: This amendment provides for certain regulations to be subject to the draft affirmative procedure – paragraph (b) relates to the amendments of Part 11; paragraph (c) gives effect to a recommendation from the Examiner of Statutory Rules; paragraph (d) relates to the omission of clause 288; paragraph (e) is technical.

Clause 290, Page 155, Line 21

At end insert-

'(3) The Department or the Department of Justice may by regulations make such other amendments of statutory provisions as it considers appropriate in consequence of this Act.'

Explanation: This amendment is a consequential technical amendment on foot of the amendments to clause 288

Clause 293, Page 156

Leave out lines 12 to 14

Explanation: Clause 293 has been amended to take account of amendments to Part 11.

Clause 293, Page 157, Line 9

After 'physical' insert 'or psychological'

Explanation: Clause 293 – which provides a definition of “harm” for the purposes of the Bill – has been amended so that the potential of the individual to create a risk of serious “psychological harm” is included within the scope of the definition.

Clause 293, Page 157, Line 11

After '(b)' insert 'except in references to physical harm,'

Explanation: As above

Clause 293, Page 157

Leave out line 27

Explanation: This amendment changes reference to “independent advocate” to “independent mental capacity advocate”

Clause 293, Page 157, Line 28

At end insert-

“independent mental capacity advocate” has the meaning given by section 84;’

Explanation: This amendment changes reference to “independent advocate” to “independent mental capacity advocate”

Clause 293, Page 157, Line 33

At end insert-

“liable to be detained”: any reference to a person who, by virtue of this Act, is liable to be detained in a place in circumstances amounting to a deprivation of liberty includes—
(a) a person who is detained in the place in such circumstances, where section 9(2) applies in relation to the detention, and
(b) a person who would fall within paragraph (a) if he or she were so detained, whether or not an authorisation under Schedule 1 or 2 is in force in respect of the person;’

Explanation: This is a technical amendment

Clause 293, Page 159, Line 11

After “regulations” insert ‘and “prescribed” mean’

Explanation: This is a technical amendment

Clause 293, Page 159, Line 12

Leave out ‘means’

Explanation: This is a technical amendment

Clause 293, Page 159, Line 13

At end insert ‘prescribed by such regulations;’

Explanation: This is a technical amendment

Clause 293, Page 159, Line 14

Leave out ‘section 289’ and insert ‘sections 252, 253, 289, 290 and 294’

Explanation: This amendment is a consequential technical amendment on foot of the amendments to clause 288

Clause 293, Page 159, Line 15

Leave out ‘means’

Explanation: This is a technical amendment

Clause 293, Page 159, Line 15

At end insert 'and prescribed by such regulations.'

Explanation: This is a technical amendment

Clause 293, Page 159

Leave out lines 16 and 17

Explanation: This is a technical amendment

Clause 293, Page 159, Line 17

At end insert-

'(6A) Part 1 (principles) applies in relation to regulations made under any provision of this Act as it applies in relation to that provision.'

Explanation: This is a technical amendment

Clause 294, Page 159, Line 23

After 'Sections' insert '272A,'

Explanation: This is a technical amendment consequential on the amendment inserting a new clause 272A.

Clause 294, Page 159, Line 23

Leave out '288, 289 and' and insert '289, 290(3),'

Explanation: This amendment is a consequential technical amendment on foot of the amendments to clause 288

Clause 294, Page 159, Line 26

At end insert-

'(3) The Department or the Department of Justice may by regulations make such transitional, transitory or saving provision as it considers appropriate in connection with the coming into operation of any provision of this Act.'

Explanation: This amendment is linked to the replacement of 288. The power to make transitional, transitory or saving provision by regulations in connection with the commencement of the Bill has been moved to clause 294 and does not now include a power to amend or modify other primary legislation.

Schedule 1, Page 160, Line 33

Leave out 'which would be likely to' and insert 'that would or might'

Explanation: This is a technical amendment

Schedule 1, Page 161, Line 40

Leave out 'be, or would be likely to be,' and insert 'or might be'

Explanation: This is a technical amendment

Schedule 1, Page 162, Line 32

Leave out 'would be likely to lack' and insert 'would lack (or would probably lack)'

Explanation: This is a technical amendment

Schedule 1, Page 163, Line 12

After 'independent' insert 'mental capacity'

Explanation: This amendment changes reference to "independent advocate" to "independent mental capacity advocate"

Schedule 1, Page 164, Line 11

Leave out 'for P'

Explanation: This is a technical amendment

Schedule 1, Page 164, Line 15

Leave out 'which would be likely to' and insert 'that would or might'

Explanation: This is a technical amendment

Schedule 1, Page 167, Line 28

Leave out 'likely to lack' and insert 'lacks, or probably lacks,'

Explanation: This is a technical amendment

Schedule 1, Page 167, Line 32

Leave out from 'in' to end of line 36 and insert '—

(a) that it will not be possible within that period to decide whether the criteria for authorisation are met in respect of a measure proposed in the application, but

(b) that there is a good prospect of it being established that the criteria for authorisation are met in respect of the measure,'

Explanation: This amendment aims to achieve the same as the original wording but now avoids using the same wording as the civil standard of proof (which, for the avoidance of doubt, applies where the panel (or the tribunal) is deciding if the criteria for authorisation are met). “Good” is a relatively high test – higher than “reasonable” and, in the Department’s view, is justified in the circumstances where an interim authorisation is being granted.

Schedule 1, Page 168, Line 23

Leave out ‘likely to lack’ and insert ‘lacks, or probably lacks,’

Explanation: This is a technical amendment

Schedule 1, Page 169

Leave out line 30 and insert ‘an authorisation under this Schedule authorises the detention of P’

Explanation: This is a technical amendment

Schedule 1, Page 169

Leave out lines 33 and 34 and insert ‘the authorisation ceases to authorise any detention of P.’

Explanation: This is a technical amendment

Schedule 2, Page 172, Line 1

Leave out ‘is likely to lack’ and insert ‘lacks (or probably lacks)’

Explanation: This is a technical amendment

Schedule 2, Page 172, Line 28

After ‘independent’ insert ‘mental capacity’

Explanation: This amendment changes reference to “independent advocate” to “independent mental capacity advocate”

Schedule 2, Page 174, Line 9

Leave out sub-paragraphs (2) and (3) and insert-

'(2) Immediately after being admitted or treated as admitted, P must be examined by a medical practitioner who—

- (a) is within sub-paragraph (4); and
- (b) did not make the medical report under paragraph 4.'

Explanation: This amendment restricts the time frame within which the examination required for the admission report (in paragraph 11) must be done. The current provisions in the Bill require the examination to be done within "the initial period" within which it would have been practicable to examine P and make a report. The amendment removes the concept of an "initial period" and requires an immediate examination on admission. This approach mirrors that in the equivalent Article 9 of the Mental Health (NI) Order 1986.

Schedule 2, Page 174, Line 19

Leave out from beginning to 'by' and insert 'The medical practitioners are'

Explanation: This is a technical amendment

Schedule 2, Page 174, Line 23

Leave out sub-paragraph (5)

Explanation: This is a technical amendment

Schedule 2, Page 174, Line 33

At end insert-

'(10) If there is a failure to examine P in accordance with sub-paragraph (2), or to make a report in accordance with sub-paragraphs (6) and (7), the failure is an event which terminates the authorisation.'

Explanation: This is a technical amendment

Schedule 2, Page 177, Line 33

Leave out sub-paragraph (1) and insert-

'(1) Where a report under this Schedule is incorrect or defective in any respect as a result of an administrative error, the appropriate person may (subject to sub-paragraph (2)) amend the report for the purpose of correcting the error.

(1A) "The appropriate person", in relation to a report ("the relevant report"), means—

- (a) if the relevant report is a report under paragraph 2 and the amendment is to the medical report included in the relevant report, the person who signed the medical report;
- (b) otherwise, the person who signed the relevant report.'

Explanation: This amendment limits the type of errors that can be corrected under paragraph 20 to include administrative errors only.

Schedule 2, Page 177, Line 40

Leave out 'But'

Explanation: This is a technical amendment

Schedule 2, Page 178, Line 10
Leave out 'in respect of a person ("P")'

Explanation: This is a technical amendment

Schedule 2, Page 178, Line 14
Leave out from ', or' to end of line 16 and insert 'does not comply with the requirements of paragraph 4.'

Explanation: This is a technical amendment

Schedule 2, Page 178, Line 19
Leave out from 'or' to 'given' in line 20

Explanation: This is a technical amendment

Schedule 2, Page 178, Line 22
Leave out from 'or' to end of line 27 and insert 'is made in accordance with paragraph 4 before the end of the permitted period.'

Explanation: This is a technical amendment

Schedule 2, Page 178, Line 28
Leave out sub-paragraph (5) and insert—
'(5) Nothing in this paragraph limits the application of paragraph 20.'

Explanation: This is a technical amendment

Schedule 2, Page 178, Line 32
At end insert—
'22.—(1) This paragraph applies where—
 (a) a report under paragraph 2 ("the authorisation report") has been made in respect of a person ("P"); and
 (b) at any time before the end of the permitted period, it appears to the managing authority that a report under paragraph 11, 13 or 14 made in respect of P ("the original report") does not comply with the requirements of that paragraph ("the relevant paragraph").
(2) The managing authority may, before the end of the permitted period, give notice in writing to that effect to the person who signed the authorisation report.
(3) Where any such notice is given, the original report is to be disregarded.
(4) But if, before the end of the permitted period—

- (a) P is examined, and a fresh report is made, in accordance with the requirements of the relevant paragraph (except any requirements as to the timing of the examination or report), and
- (b) the fresh report states that in the opinion of the person making the report the condition in paragraph 12 is met,

the authorisation has effect, and is treated as always having had effect, as if it had not expired by virtue of the relevant paragraph.

(5) Nothing in this paragraph limits the application of paragraph 20.

(6) In this paragraph—

“the managing authority” has the same meaning as in paragraph 21;

“the permitted period” has the same meaning as in paragraph 20.’

Explanation: This is a technical amendment

Schedule 3, Page 180, Line 19

Leave out ‘would be likely to lack’ and insert ‘would lack (or would probably lack)’

Explanation: This is a technical amendment

Schedule 3, Page 180, Line 34

After ‘independent’ insert ‘mental capacity’

Explanation: This amendment changes reference to “independent advocate” to “independent mental capacity advocate”

Schedule 3, Page 182, Line 8

Leave out ‘likely to lack’ and insert ‘lacks, or probably lacks,’

Explanation: This is a technical amendment

Schedule 4, Page 186, Line 32

Leave out ‘give notice of the fact in the prescribed form to’ and insert ‘notify’

Explanation: This is a technical amendment

Schedule 4, Page 187, Line 9

At end insert ‘or has otherwise come to an end.’

Explanation: This is a technical amendment

Schedule 4, Page 187, Line 10

Leave out sub-paragraph (2)

Explanation: This is a technical amendment

Schedule 4, Page 187, Line 31

At end insert-

'Notification on cancellation

19A. If the Public Guardian cancels the registration of an instrument as a lasting power of attorney, the Public Guardian must notify—

- (a) the donor;
- (b) each person appointed as attorney; and
- (c) each person (if any) appointed as replacement attorney.'

Explanation: This is a technical amendment

Schedule 5, Page 201, Line 36

Leave out sub-paragraph (2)

Explanation: This is a technical amendment

New Schedule

After Schedule 7 insert-

'SCHEDULE 7A

Section 205

SUPERVISION AND ASSESSMENT ORDERS

PART 1

INTRODUCTORY

Introductory

1.—(1) In this Part a “supervision and assessment order” is an order made in respect of a person (“the supervised person”) containing—

- (a) a supervision element (see paragraph 3), and
- (b) an assessment element (see paragraph 4).

(2) A supervision and assessment order may also include a residence element (see paragraph 5).

(3) In this Schedule, references to the commission of offences by a person include the commission of offences in the circumstances described in section 204 (finding that person not guilty on the ground of insanity).

PART 2

MAKING AND CONTENTS OF ORDER

Conditions which must be satisfied before order can be made

2.—(1) A court may make a supervision and assessment order only if the following four conditions are met.

(2) The first condition is that the court is satisfied, on the required medical evidence, that the supervised person has a disorder, or that there is reason to suspect that the supervised person has a disorder.

(3) The second condition is that the court is satisfied, on the required medical evidence, that examination of the supervised person (“S”) is necessary or desirable for the assessment of one or both of the following—

- (a) whether the disorder requires treatment;
- (b) whether consent to the giving of such treatment will be given by S, or by a person with authority to give consent on behalf of S, or whether such treatment will be capable of being given to S by virtue of Part 2 of this Act (or, if S is under 16, under the Mental Health Order).

(4) The third condition is that the court is satisfied that supervision under the order is desirable in the interests of—

- (a) securing the rehabilitation of the supervised person, or
- (b) protecting the public from harm from that person or preventing the commission by that person of offences.

(5) The fourth condition is that the court is satisfied that the making of such an order is the most suitable means of dealing with the supervised person.

(6) In this paragraph “the required medical evidence” means the written or oral evidence of at least two medical practitioners, including—

- (a) if the disorder is mental disorder, the oral evidence of an approved medical practitioner;
- (b) otherwise, the oral evidence of a medical practitioner who appears to the court to have special experience in the diagnosis or treatment of the disorder.

Supervision element

3.—(1) A supervision element is a requirement that the supervised person be under the supervision of—

- (a) a social worker, or
- (b) a probation officer,

for a period specified in the order (“the supervision period”), which must be not less than 6 months and not more than 3 years.

(2) The social worker or probation officer is referred to in this Schedule as “the supervising officer”.

(3) The court must not make a supervision and assessment order unless it is satisfied that the supervising officer is willing to undertake the supervision.

(4) If the supervising officer is a social worker—

- (a) the supervision and assessment order must specify the HSC trust for the area in which the supervised person resides or will reside, and
- (b) the social worker must be an approved social worker appointed as such by that trust.

Assessment element

4.—(1) An assessment element is a requirement that, during a specified period (“the assessment period”), the supervised person must—

- (a) attend at a specified place at a specified time or times, or
 - (b) make himself or herself available at a specified place at a specified time or times,
- for assessment by or under the direction of a medical practitioner.

(2) The assessment period may be the whole or any part of the supervision period.

(3) Assessment under sub-paragraph (1) is to be assessment of such of the following as the medical practitioner considers appropriate at the time of the assessment—

- (a) the supervised person’s condition;
- (b) either or both of the matters mentioned in paragraph 2(3)(a) and (b).

(4) In sub-paragraph (1) “specified” means specified in the order.

Residence element

5.—(1) A residence element is any requirement as to the residence of the supervised person during a period specified in the order (“the residence period”).

(2) The residence period may be the whole or any part of the supervision period.

(3) Before including a residence element, the court must consider the home surroundings of the supervised person.

(4) A residence element may not require the supervised person to reside as an in-patient or resident in a hospital or care home.

Procedural requirements relating to the making of the order

6.—(1) Before making a supervision and assessment order, the court must explain to the supervised person in ordinary language—

- (a) the effect of each of the elements included in the order, and
 - (b) that a court of summary jurisdiction, and the court making the order, have power under paragraphs 8 to 10, 11 and 13, to review the order on the application either of the supervised person or the supervising officer.
- (2) After making an order, the court must as soon as practicable—
- (a) give at least 2 copies of the order to the supervising officer, and
 - (b) if the supervising officer is a social worker, send at least 1 copy of the order to the Probation Board.
- (3) The supervising officer must give a copy of the order to the supervised person.

PART 3

EFFECT OF ORDER

7. Where an order is made, the supervised person must (as well as complying with the assessment element and any residence element) keep in touch with the supervising officer in accordance with such instructions as that officer may from time to time give, and must notify the supervising officer of any change of address.

PART 4

AMENDMENT OR REVOCATION OF ORDER

Amendment of order: general

8.—(1) A court of summary jurisdiction may, on the application of the supervised person or the supervising officer, amend a supervision and assessment order—

- (a) by cancelling any of the requirements of the order; or
- (b) by inserting in the order (either in addition to or in substitution for any such requirement) any requirement which the court could include if it were the court by which the order was made and were then making it.

(2) The power of a court under sub-paragraph (1) does not include power to amend an order by extending any period specified in it beyond the end of 3 years from the date of the original order.

Amendment of order: change of area of residence

9.—(1) This paragraph applies where—

- (a) a supervision and assessment order requires the supervised person to be under the supervision of a social worker, and
- (b) (in accordance with paragraph 3(4)) the order specifies the HSC trust for the area in which the person resides (“the current trust”).

(2) If a court of summary jurisdiction is satisfied that the supervised person proposes to change, or has changed, his residence to the area of another HSC trust, the court may amend the order by substituting, for the current trust, the other HSC trust.

(3) The court must amend the order as mentioned in sub-paragraph (2) if the supervising officer applies for it to do so.

(4) Where—

- (a) the court amends a supervision and assessment order under this paragraph, and
- (b) the order contains requirements which in the opinion of the court cannot be complied with if the supervised person ceases to reside in the area of the current trust,

the court must either cancel those requirements or substitute for them other requirements which can be complied with if the supervised person ceases to reside in that area.

Medical reports

10.—(1) In this paragraph “relevant medical practitioner” means a medical practitioner by whom or under whose direction the supervised person—

- (a) has been assessed in pursuance of a supervision and assessment order, or
- (b) is being treated for a disorder in pursuance of such an order.

(2) Sub-paragraph (3) applies where any of the following conditions is met—

- (a) the order requires the supervised person to attend or make himself or herself available for assessment at specified intervals, but a relevant medical practitioner considers that assessment at longer intervals is sufficient for the purposes mentioned in paragraph 2(3)(a) and (b);
 - (b) a relevant medical practitioner considers that it is necessary or desirable, for the purposes mentioned in paragraph 2(3)(a) and (b), to assess the supervised person more frequently than specified in the order;
 - (c) a relevant medical practitioner considers that the supervised person no longer requires treatment for his or her disorder;
 - (d) a relevant medical practitioner considers that the supervised person's disorder is not (or is no longer) susceptible to treatment;
 - (e) a relevant medical practitioner considers that the assessment period should be extended (subject to sub-paragraph (5));
 - (f) a relevant medical practitioner is for any reason unwilling to continue to assess or treat, or direct the assessment or treatment of, the supervised person;
 - (g) a relevant medical practitioner becomes aware that the supervised person has been admitted to hospital as an in-patient.
- (3) The relevant medical practitioner must make a report in writing to that effect to the supervising officer.
- (4) The supervising officer must—
- (a) in the case of a report made as mentioned in sub-paragraph (2)(a), inform the court which made the order;
 - (b) in the case of a report made as mentioned in sub-paragraph (2)(b) to (f), apply to a court of summary jurisdiction for the order to be amended as the court considers appropriate (including by cancelling the assessment element);
 - (c) in the case of a report made as mentioned in sub-paragraph (2)(g), apply to a court of summary jurisdiction for the assessment element to be suspended whilst the supervised person remains an in-patient.
- (5) On an application made in the case of a report made as mentioned in sub-paragraph (2)(e)—
- (a) if the court considers it appropriate for the assessment period to end later than the end of the existing supervision period, the court may extend the supervision period;
 - (b) the assessment period (as extended) must not end later than the end of the supervision period (as extended); and
 - (c) neither period may be extended beyond the end of 3 years from the date of the original order.

Revocation of order

11.—(1) A court that has made a supervision and assessment order may, on the application of the supervised person or the supervising officer, revoke the order under this paragraph.

(2) The court may do so only if the court is satisfied that, having regard to circumstances which have arisen since the order was made, it would be in the interests of the health or welfare of the supervised person to revoke the order.

Procedural requirements on amendment or revocation of order

12.—(1) On the making under any of paragraphs 8 to 11 of an order amending or revoking a supervision and assessment order, the court must as soon as practicable give to the supervising officer at least 2 copies of the amending or revoking order.

(2) The supervising officer, when given copies under sub-paragraph (1), must give a copy of the amending or revoking order to—

- (a) the supervised person, and

- (b) if the supervised person is receiving in-patient treatment or is residing in a hospital, the person in charge of that hospital.

PART 5
BREACH OF ORDER

13.—(1) This paragraph applies where—

- (a) a supervision and assessment order is in force, and
- (b) the supervising officer applies to the court that made the order for the order to be revoked under this paragraph.

(2) If—

- (a) it is proved to the satisfaction of the court that the supervised person (“S”) has, without reasonable excuse, failed to comply with any of the requirements of the order, and

(b) it appears to the court to be in the interests of justice to do so, the court may revoke the order and deal with S, for the matter in respect of which the order was made, in any manner in which the court could deal with S if a finding mentioned in section 205(1) had just been recorded by it in respect of that matter.

(3) In doing so, the court must take into account the extent to which S has complied with the requirements of the order.

(4) In proceedings under this paragraph any question as to whether S has failed to comply with the requirements of the order is to be determined by the court and not by the verdict of a jury.

(5) Where the court proposes to exercise its powers under this paragraph, it must summon S to appear before the court and, if S does not appear in answer to the summons, may issue a warrant for the arrest of S.

PART 6
SUPPLEMENTARY

Power to vary period for which supervision element may be made

14.—(1) The Department of Justice may make regulations substituting, for the period of 3 years mentioned in paragraph 3(1), such other period (exceeding 6 months) as may be specified in the regulations.

(2) Regulations under sub-paragraph (1) may make in paragraph 8(2) any amendment which the Department thinks necessary in consequence of the substitution made by the regulations.

Transitional provision relating to the abolition of petty sessions districts

15.—(1) Until the day on which section 1 of the Justice (Northern Ireland) Act 2015 comes into operation, this Schedule is to be read with the following modifications.

(2) If the supervising officer is a probation officer—

- (a) the supervision and assessment order must specify the petty sessions district in which the supervised person resides or will reside, and
- (b) the supervising officer must be a probation officer appointed for or assigned to that district.

(3) If the supervising officer is a social worker—

- (a) paragraph 6(2)(b) does not apply, but
- (b) the court must, as soon as practicable after making the order, give to the probation officer assigned to the court at least 1 copy of the order.

(4) After making an order, the court must send to the clerk of petty sessions for the petty sessions district in which the supervised person resides or will reside—

- (a) a copy of the order; and
- (b) such documents and information relating to the case as it considers likely to be of assistance to a court acting for that district in the exercise of its functions in relation to the order.

(5) The functions conferred by paragraphs 8 to 10 are to be exercised by a court for the petty sessions district in which the supervised person resides or will reside.

(6) In paragraph 9—

(a) in sub-paragraph (1)(a), the reference to supervision by a social worker includes supervision by a probation officer appointed for or assigned to a petty sessions district;

(b) the references to an HSC trust or to the area of such a trust include a petty sessions district.

(7) If the court amends a supervision and assessment order so as to substitute one petty session district for another, the court which amends the order must send to the clerk of petty sessions for the new petty sessions district—

(a) at least 2 copies of the amending order; and

(b) such documents and information relating to the case as it considers likely to be of assistance to a court acting for that district in the exercise of its functions in relation to the order.

(8) The clerk of petty sessions for the new petty sessions district, when given copies under sub-paragraph (7), must give a copy of the amending order to the supervising officer.'

Explanation: New Schedule 7A provides for Supervision and Assessment Orders.

Schedule 8, Page 211, Line 17

Leave out 'affects any liability of the patient to be' and insert 'prevents the patient from being'

Explanation: This is a technical amendment

Schedule 8, Page 218, Line 18

Leave out paragraphs 50 and 51 and insert-
'50. Omit Part 6 (functions of RQIA).

Explanation: This amendment relates to the repeal of Part 6 of the Mental Health (NI) Order 1986 which sets out the functions of the RQIA under that Order. These functions were transferred from the Mental Health Commission to the RQIA in 2009, but at that time, were not amended to take account of the wider functions conferred on the RQIA by the Health and Personal Social Services (Quality, Improvement and Regulation) (NI) Order 2003 (the RQIA Order). The purpose of repealing Part 6 of the Mental Health (NI) Order 1986 is to address overlaps and make provision for all of RQIA's functions in the one piece of legislation (the RQIA Order).

51. In Article 90 (registration of private hospitals) omit paragraph (1).

51A. Omit Articles 91 to 94 (provisions about registration and inspections).

51B. Omit Article 96 (offences under Part 7).'

Explanation: This amendment addresses the dual registration problem relating to private mental health hospitals. Currently, they must be registered both under Part 7 of the Mental Health (NI) Order 1986 and Part 3 of the RQIA Order. The effect of the amendment is that any future registration and inspection of private hospitals must be done in accordance with the provisions of the RQIA Order. There are currently no private mental health hospitals in NI.

Schedule 8, Page 219, Line 9

Leave out sub-paragraphs (3) and (4) and insert-

‘(3) In paragraph (2) for the words from “facilities” to the end substitute “facilities to the Review Tribunal as are necessary for it to exercise its functions under this Order.”.

(4) In paragraph (3) for “and RQIA as are necessary for them to exercise their” substitute “as are necessary for it to exercise its”.’

Explanation: The above amendment to “leave out sub-paragraphs (3)...” is linked to new clause 277A above – the amendments reflect duties that are required under the amended Mental Health (NI) Order 1986. Article 118 has also been amended to remove reference to the RQIA, as the intention is that this will be provided for in the amended RQIA Order.

Explanation: The above amendment to “leave out sub-paragraphs... (4)” ensures that the duty in Article 118(4) of the Mental Health (NI) Order 1986 to maintain a register of people receiving medical treatment for mental disorder as in-patients in hospital applies to people under 18

Schedule 8, Page 219, Line 13

At end insert-

‘(4) After paragraph (3) insert—

“(4) Nothing in this Article applies in relation to a person detained by virtue of the 2016 Act.”’

Explanation: This is a technical amendment

Schedule 8, Page 219, Line 23

Leave out paragraph 61 and insert-

‘61. Omit Article 128 (pay, pensions etc of patients).’

Explanation: This amendment relates to the repeal of Article 128 of the Mental Health (NI) Order 1986 which will no longer be required once the Bill is commenced.

Schedule 8, Page 219, Line 27

At end insert-

‘(b) for “a place of safety” substitute “an appropriate place”.’

Explanation: References to “place of safety” in Article 129 of the Mental Health (NI) Order 1986 have been amended to an “appropriate place”, in order to avoid confusion with the new places of safety regime in Part 9 of the Bill.

Schedule 8, Page 219, Line 28

At end insert-

‘(4) In paragraph (5) for “a place of safety” substitute “an appropriate place”.

(5) In paragraph (7)—

(a) for ““place of safety”” substitute ““appropriate place””;

(b) omit “any police station,”.’

Explanation: As above

Schedule 8, Page 219, Line 30

Leave out 'omit "or' and insert 'for "a place of safety or'

Explanation: As above

Schedule 8, Page 219, Line 31

At end insert 'substitute "an appropriate place (as defined by Article 129(7))".'

Explanation: As above

Schedule 8, Page 219, Line 38

After '(3)' insert '—

(a) for "a place of safety" substitute "an appropriate place";

(b) '

Explanation: As above

Schedule 8, Page 220, Line 13

Leave out paragraph 67

Explanation: This amendment is made on the basis that the amendment of existing provisions will be dealt with after Royal Assent in conjunction with the drafting of an Order in Council and the drafting of regulations under Part 11.

Schedule 9, Page 226, Line 15

Leave out 'permission' and insert 'leave'

Explanation: This is a technical amendment

Schedule 10, Page 228, Line 17

At end insert-

'A1. In section 116(1) (fees) after "Enforcement of Judgments Office" insert "or the Public Guardian".'

Explanation: This is a technical amendment

Schedule 10, Page 231, Line 11

At end insert-

‘(4) In paragraph (4) at the end insert “(and “sentence” includes a hospital direction under Part 10 of the Mental Capacity Act (Northern Ireland) 2016)”.

Magistrates’ Courts (Northern Ireland) Order 1981 (NI 26)

15. In Article 140 (appeals against conviction, sentence etc) after paragraph (2) insert—
“(2ZA) In paragraph (1) “sentence” also includes a hospital direction under Part 10 of the Mental Capacity Act (Northern Ireland) 2016.”.’

Explanation: This is a technical amendment

Schedule 11, Page 234, Column 2

Leave out lines 19 to 34 and insert-

- | ‘Part 6.
- | Article 90(1).
- | Articles 91 to 94.
- | Article 96.’

Explanation: These repeals relate to the above Schedule 8 amendments.

Schedule 11, Page 234, Column 2

Leave out line 41

Explanation: This repeal relates to the amendments on inclusion of new clause 277A

Schedule 11, Page 235, Column 2

Leave out line 2 and insert-

- | ‘Article 128.
- | In Article 129—
 - (a) paragraph (3);
 - (b) in paragraph (7) the words “any police station,”.’

Explanation: These repeals relate to the above Schedule 8 amendments - the reference to “any police station” in Article 129(7) of the Mental Health (NI) Order 1986 is repealed so that it will no longer be possible to take a child under 16 to a police station under the clause, as both stakeholders and professionals alike agreed that this is not appropriate (and rarely used).

Schedule 11, Page 235, Column 2

Leave out lines 4 and 5

Explanation: These repeals relate to the above Schedule 8 amendments.

Schedule 11, Page 235, Column 2

Leave out lines 17 to 28

Explanation: This amendment is made on the basis that the amendment of existing provisions will be dealt with after Royal Assent in conjunction with the drafting of an Order in Council and the drafting of regulations under Part 11.