

# Mental Capacity Bill

[AS INTRODUCED]

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A

## **B I L L**

TO

Make new provision relating to persons who lack capacity; to make provision about the powers of criminal courts in respect of persons with disorder; to disapply Part 2 of the Mental Health (Northern Ireland) Order 1986 in relation to persons aged 16 or over and make other amendments of that Order; to make provision in connection with the Convention on the International Protection of Adults signed at the Hague on 13th January 2000; and for connected purposes.

**B**E IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

### PART 1

#### PRINCIPLES

##### *Principles*

##### **Principles: capacity**

5     **1.**—(1) The principles in subsections (2) to (5) must be complied with where for any purpose of this Act a determination falls to be made of whether a person who is 16 or over lacks capacity in relation to a matter.

      (2) The person is not to be treated as lacking that capacity unless it is established that the person lacks capacity in relation to the matter within the  
10     meaning given by section 3.

      (3) Whether the person is, or is not, able to make a decision for himself or herself about the matter—

          (a) is to be determined solely by reference to whether the person is or is not able to do the things mentioned in section 4(1)(a) to (d); and

15     (b) accordingly, is not to be determined merely on the basis of any condition that the person has, or any other characteristic of the person, which might

lead others to make unjustified assumptions about his or her ability to make a decision.

(4) The person is not to be treated as unable to make a decision for himself or herself about the matter unless all practicable help and support to enable the person to make a decision about the matter have been given without success (see section 5).

(5) The person is not to be treated as unable to make a decision for himself or herself about the matter merely because the person makes an unwise decision.

(6) Nothing in subsections (1) to (5) removes any obligation that a person may be under in a particular situation to take steps to establish whether another person has capacity in relation to a matter.

### **Principle: best interests**

2.—(1) The principle in subsection (2) applies where, under this Act—

(a) an act is done for or on behalf of a person who is 16 or over and lacks capacity in relation to whether the act should be done; or

(b) a decision is made for or on behalf of a person who is 16 or over and lacks capacity to make the decision.

(2) The act must be done, or the decision must be made, in the person's best interests (see section 7).

### *Establishing whether a person has capacity*

#### **Meaning of “lacks capacity”**

3.—(1) For the purposes of this Act, a person who is 16 or over lacks capacity in relation to a matter if, at the material time, the person is unable to make a decision for himself or herself about the matter (within the meaning given by section 4) because of an impairment of, or a disturbance in the functioning of, the mind or brain.

(2) It does not matter—

(a) whether the impairment or disturbance is permanent or temporary;

(b) what the cause of the impairment or disturbance is.

(3) In particular, it does not matter whether the impairment or disturbance is caused by a disorder or disability or otherwise than by a disorder or disability.

#### **Meaning of “unable to make a decision”**

4.—(1) For the purposes of this Part a person is “unable to make a decision” for himself or herself about a matter if the person—

(a) is not able to understand the information relevant to the decision; or

(b) is not able to retain that information for the time required to make the decision; or

(c) is not able to appreciate the relevance of that information and to use and weigh that information as part of the process of making the decision; or

(d) is not able to communicate his or her decision (whether by talking, using sign language or any other means).



(2) In subsection (1) “the information relevant to the decision” includes information about the reasonably foreseeable consequences of—

- (a) deciding one way or another; or
- (b) failing to make the decision.

5 (3) For the purposes of subsection (1)(a) the person is not to be regarded as “not able to understand the information relevant to the decision” if the person is able to understand an appropriate explanation of the information.

(4) An appropriate explanation means an explanation of the information given to the person in a way appropriate to the person’s circumstances (using simple language, visual aids or any other means).

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**Supporting person to make decision**

15 **5.**—(1) A person is not to be regarded for the purposes of section 1(4) as having been given all practicable help and support to enable him or her to make a decision unless, in particular, the steps required by this section have been taken so far as practicable.

(2) Those steps are—

- (a) the provision to the person, in a way appropriate to his or her circumstances, of all the information relevant to the decision (or, where it is more likely to help the person to make a decision, of an explanation of that information);
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- (b) ensuring that the matter in question is raised with the person—
    - (i) at a time or times likely to help the person to make a decision; and
    - (ii) in an environment likely to help the person to make a decision;
  - (c) ensuring that persons whose involvement is likely to help the person to make a decision are involved in helping and supporting the person.
25

(3) The information referred to in subsection (2)(a) includes information about the reasonably foreseeable consequences of—

- (a) deciding one way or another; or
- (b) failing to make the decision.

30 (4) Nothing in this section is to be taken as in any way limiting the effect of section 1(4).

**Compliance with section 1(2)**

35 **6.**—(1) In proceedings under this Act or any other statutory provision, any question whether a person who is 16 or over lacks capacity in relation to a matter (within the meaning of this Act) is to be decided on the balance of probabilities.

(2) Subsection (3) applies where, other than in such proceedings, it falls to a person to determine for any purpose of this Act whether another person who is 16 or over (“P”) lacks capacity in relation to a matter.

(3) If—

- (a) the person making the determination has taken reasonable steps to establish whether P lacks capacity in relation to the matter,
40

- (b) the person reasonably believes that P lacks capacity in relation to the matter, and
  - (c) the principles in section 1(3) to (5) and section 5 have been complied with, for the purposes of section 1(2) the person is to be taken to have sufficiently “established” that P lacks capacity in relation to the matter.
- (4) In this section “proceedings” includes proceedings before a tribunal and proceedings of any panel constituted under Schedule 1 or 3.

*Establishing what is in a person’s best interests*

**Best interests**

- 10 7.—(1) This section applies where for any purpose of this Act it falls to a person to determine what would be in the best interests of another person who is 16 or over (“P”).
- (2) The person making the determination must not make it merely on the basis of—
- 15 (a) P’s age or appearance; or
  - (b) any other characteristic of P’s, including any condition that P has, which might lead others to make unjustified assumptions about what might be in P’s best interests.
- (3) That person—
- 20 (a) must consider all the relevant circumstances (that is, all the circumstances of which that person is aware which it is reasonable to regard as relevant); and
  - (b) must in particular take the following steps.
- (4) That person must consider—
- 25 (a) whether it is likely that P will at some time have capacity in relation to the matter in question; and
  - (b) if it appears likely that P will, when that is likely to be.
- (5) That person must, so far as practicable, encourage and help P to participate as fully as possible in the determination of what would be in P’s best interests.
- 30 (6) That person must have special regard to (so far as they are reasonably ascertainable)—
- (a) P’s past and present wishes and feelings (and, in particular, any relevant written statement made by P when P had capacity);
  - 35 (b) the beliefs and values that would be likely to influence P’s decision if P had capacity; and
  - (c) the other factors that P would be likely to consider if able to do so.
- (7) That person must—
- 40 (a) so far as it is practicable and appropriate to do so, consult the relevant people about what would be in P’s best interests and in particular about the matters mentioned in subsection (6); and

- (b) take into account the views of those people (so far as ascertained from that consultation or otherwise) about what would be in P’s best interests and in particular about those matters.

For the definition of “the relevant people” see subsection (11).

- 5 (8) That person must, in relation to any act or decision that is being considered, have regard to whether the same purpose can be as effectively achieved in a way that is less restrictive of P’s rights and freedom of action.

- 10 (9) That person must, in relation to any act that is being considered, have regard to whether failure to do the act is likely to result in harm to other persons with resulting harm to P.

(10) If the determination relates to life-sustaining treatment for P, the person making the determination must not, in considering whether the treatment is in the best interests of P, be motivated by a desire to bring about P’s death.

(11) In subsection (7) “the relevant people” means—

- 15 (a) any person who at the time of the determination is P’s nominated person (see section 67);
- (b) if at the time of the determination there is an independent advocate who is instructed under section 89 to represent and provide support to P, the independent advocate;
- 20 (c) any other person named by P as someone to be consulted on the matter in question or on matters of that kind;
- (d) anyone engaged in caring for P or interested in P’s welfare;
- (e) any attorney under a lasting power of attorney granted by P; and
- (f) any deputy appointed for P by the court.

25 **Compliance with section 2**

**8.—**(1) This section applies where a person other than the court (“the relevant person”)—

- (a) does an act for or on behalf of another person who is 16 or over and lacks capacity in relation to whether the act should be done; or
- 30 (b) makes a decision for or on behalf of another person who is 16 or over and lacks capacity to make the decision.

(2) The relevant person is to be taken to have sufficiently complied with the principle in section 2(2) (act or decision must be in best interests) if that person—

- 35 (a) reasonably believes that the act or decision is in the other person’s best interests; and
- (b) in determining whether the act or decision is in the other person’s best interests, has complied with section 7.

*Mental Capacity*

PART 2

LACK OF CAPACITY: PROTECTION FROM LIABILITY, AND  
SAFEGUARDS

CHAPTER 1

5 PROTECTION FROM LIABILITY, AND GENERAL SAFEGUARDS

**Protection from liability for acts in best interests of person lacking capacity**

9.—(1) This section applies where—

- (a) a person (“P”) is 16 or over;
- 10 (b) another person (“D”) does an act in connection with the care, treatment or personal welfare of P;
- (c) before doing the act, D takes reasonable steps to establish whether P lacks capacity in relation to the matter;
- (d) when doing the act, D reasonably believes—
  - (i) that P lacks capacity in relation to the matter; and
  - 15 (ii) that it will be in P’s best interests for the act to be done; and
- (e) D would have been liable in relation to the act if P had had capacity in relation to the matter and D had done the act without P’s consent.

(2) D does not incur any liability in relation to the act, apart from such liability, if any, as D would have incurred in relation to it even if P—

- 20 (a) had had capacity to consent in relation to the matter; and
- (b) had consented to D’s doing the act.

(3) But subsection (2) has effect subject to the additional safeguard provisions (each of which imposes a safeguard, additional to those in subsection (1)(c) and (d), and more than one of which may apply in a given case).

25 (4) The additional safeguard provisions are—

- (a) section 12 (conditions for any act of restraint);
- (b) sections 13 and 15 (formal assessment of capacity, and consultation of nominated person, required for serious interventions);
- (c) sections 16 and 17 (second opinion required for certain treatment);
- 30 (d) sections 19, 22, 24, 26, 28 and 30 (authorisation required for serious treatment where there is objection from P’s nominated person or compulsion, and for deprivations of liberty and certain other measures);
- (e) section 35 (independent advocate required for certain serious interventions).

35 (5) The principles in sections 1(3) to (5) and 5 (P not to be treated as lacking capacity on irrelevant grounds, or where practicable help and support not given) and section 7 (best interests) apply in particular for the purposes of determining whether a belief mentioned in subsection (1)(d) is reasonable.

40 (6) Where P is under 18, in subsection (1)(e) “without P’s consent” is to be read as “without P’s consent and without any consent that could be given by a parent or guardian of P”.

**General limitations on section 9**

10.—(1) Section 9 does not exclude—

(a) civil liability for loss or damage resulting from a person's negligence in doing an act; or

5 (b) criminal liability resulting from such negligence.

(2) Section 9 does not apply in relation to an act which is, or is done in the course of, psychosurgery.

(3) Section 9 does not apply in relation to an act that conflicts with a decision concerning the care, treatment or personal welfare of a person ("P") which—

10 (a) is made in accordance with this Act by an attorney under a lasting power of attorney granted by P and is within the scope of the attorney's authority; or

(b) is made in accordance with this Act by a deputy appointed for P by the court and is within the scope of the deputy's authority.

15 (4) Nothing in subsection (3) prevents a person from—

(a) providing life-sustaining treatment, or

(b) doing an act which the person reasonably believes to be necessary to prevent a serious deterioration in P's condition,

while a decision as respects any relevant issue is sought from the court.

20 (5) The Department may by regulations amend subsection (2) so as to extend the descriptions of treatment to which section 9 does not apply.

**Advance decisions: effect on section 9**

11.—(1) Section 9(2) (protection from liability) does not apply if—

25 (a) the act mentioned in section 9(1) is the carrying out or continuation of treatment of P; and

(b) carrying out or continuing that treatment conflicts with an effective advance decision to refuse treatment which has been made by P.

30 (2) In this section "an effective advance decision to refuse treatment" means a decision which, under the common law relating to advance decisions, has the same effect as if at the material time P—

(a) refused consent to the treatment's being carried out or continued; and

(b) had capacity to refuse that consent.

(3) In subsection (2) "the material time" means the time when the question arises whether the treatment should be carried out or continued.

35 (4) Nothing in this section prevents a person from—

(a) providing life-sustaining treatment, or

(b) doing an act which the person reasonably believes to be necessary to prevent a serious deterioration in P's condition,

while a decision as respects any relevant issue is sought from the court.

**Acts of restraint: condition that must be met**

12.—(1) This section applies where the act mentioned in section 9(1) (“the relevant act”) is—

- (a) an act restraining P; or
- 5 (b) an act that consists of instructing or authorising another person to do an act restraining P.

(2) Section 9(2) (protection from liability) applies to the relevant act only if the restraint condition (as well as the conditions of section 9(1)(c) and (d), and any other conditions that apply under this Part) is met in relation to the relevant act.

10 (3) The restraint condition is that at the time the relevant act is done, D reasonably believes—

- (a) that failure to do the relevant act would create a risk of harm to P; and
- (b) that the relevant act is a proportionate response to—
  - 15 (i) the likelihood of harm to P; and
  - (ii) the seriousness of the harm concerned.

(4) In this section an “act restraining P” means an act which—

- (a) is intended to restrict P’s liberty of movement, whether or not P resists; or
- (b) is a use of force or a threat to use force and is done with the intention of securing the doing of an act which P resists.

20 (5) This section does not apply to an act which in itself amounts to a deprivation of liberty (as to which see sections 24 and 25).

(6) Subsection (5) does not affect the application of this section to an act restraining P which is done while P is detained in circumstances amounting to a deprivation of liberty.

25

## CHAPTER 2

## ADDITIONAL SAFEGUARDS FOR SERIOUS INTERVENTIONS

*Formal capacity assessments etc***Formal assessment of capacity**

13.—(1) This section applies where—

- 30 (a) section 9(1)(a) and (b) apply; and
- (b) the act mentioned there is, or is part of, a serious intervention (see section 60).

(2) Where this section applies—

- 35 (a) the condition in section 9(1)(c) is to be regarded as met only if, before the act is done, a formal capacity assessment is carried out; and
- (b) a belief by D, at the time the act is done, that P lacks capacity in relation to the matter in question is not to be regarded as a reasonable belief if no statement of incapacity has been made.

40 (3) The formal capacity assessment must have been carried out, and the statement of incapacity made, recently enough before the act is done for it to be reasonable in all the circumstances to rely on them.

(4) This section does not apply where the situation is an emergency (see section 62).

(5) See section 14 for the meaning of “formal capacity assessment” and “statement of incapacity”.

5 **Section 13: formal capacity assessments and statements of incapacity**

**14.**—(1) This section supplements section 13.

(2) A “formal capacity assessment” means an assessment carried out by a suitably qualified person (who may be D if D is suitably qualified) of whether P lacks capacity in relation to the matter in question.

10 (3) A “statement of incapacity” means a statement in writing, by the person who carried out the formal capacity assessment (“the assessor”)—

(a) recording the fact that the assessment was carried out, by whom it was carried out and when;

15 (b) certifying that, in the opinion of the assessor, P lacks capacity within the meaning of this Act in relation to the matter in question;

(c) specifying which of the things mentioned in section 4(1)(a) to (d) P is, in the assessor’s opinion, not able to do in relation to that matter because of an impairment of, or a disturbance in the functioning of, P’s mind or brain; and

20 (d) specifying any help or support that has been given to P, without success, to enable P to make a decision in relation to the matter.

(4) Regulations may prescribe the descriptions of persons who are “suitably qualified” for the purposes of this section.

*Nominated persons*

25 **Nominated person: need to have in place and consult**

**15.**—(1) This section applies where the act mentioned in section 9(1) is, or is part of, a serious intervention (see section 60).

30 (2) Section 9(2) (protection from liability) applies to the act only if the nominated person conditions (as well as the conditions of section 9(1)(c) and (d), and any other conditions that apply under this Part) are met in relation to the act.

(3) The nominated person conditions are that—

(a) a nominated person is in place for P when D determines whether the act would be in P’s best interests; and

35 (b) in making that determination, D consults and takes into account the views of the nominated person to the extent required by section 7(7) (duty to consult where practicable and appropriate and to take views into account).

(4) This section does not apply where the situation is an emergency (see section 62).

40 (5) For the purposes of this section a nominated person “is in place for P” at a particular time if at that time there is someone who is P’s nominated person (see section 67).

CHAPTER 3  
ADDITIONAL SAFEGUARD: SECOND OPINION

**Second opinion needed for certain treatment**

5 **16.**—(1) This section applies where the act mentioned in section 9(1) is, or is done in the course of, the provision to P of any of the following treatment—

- (a) electro-convulsive therapy;
- (b) any treatment with serious consequences which is also treatment of a description specified for the purposes of this paragraph by regulations;
- (c) any treatment with serious consequences where, at the time of the act—  
10 (i) the question whether it is in P’s best interests for P to have the treatment is finely balanced; and  
(ii) the circumstances are such as may be prescribed.

15 (2) Section 9(2) (protection from liability) applies to the act only if, at the time the act is done, a second opinion has been obtained (and the conditions of section 9(1)(c) and (d), and any other conditions that apply under this Part, are met in relation to the act).

(3) The second opinion must have been obtained recently enough before the act is done for it to be reasonable in all the circumstances to rely on it.

20 (4) This section does not apply where the situation is an emergency (see section 62).

(5) In this section a “second opinion” means a relevant certificate (as defined by section 18) in respect of the treatment mentioned in subsection (1).

(6) For the purposes of subsection (1)(c)(i) it does not matter whether the choice is between—

- 25 (a) the treatment in question and no treatment; or
- (b) the treatment in question and another treatment.

(7) For the meaning of “treatment with serious consequences” see section 20.

**Second opinion needed for continuation of medication**

30 **17.**—(1) This section applies where—

- 30 (a) the act mentioned in section 9(1) is, or is done in the course of, the provision to P of treatment which is medication for any condition;
- (b) the medication is treatment with serious consequences and is of a description specified for the purposes of this paragraph by regulations;
- 35 (c) medication for that condition has been provided to P, on more than an occasional basis, for at least the relevant period; and
- (d) at the time of the act P is, and for at least the relevant period has been, a qualifying person (see subsection (5)).

40 (2) Section 9(2) (protection from liability) applies to the act only if, at the time the act is done, a second opinion has been obtained (and the conditions of section 9(1)(c) and (d), and any other conditions that apply under this Part, are met in relation to the act).



- (3) The second opinion must have been obtained—
  - (a) recently enough for it to be reasonable in all the circumstances to rely on it; and
  - (b) in any event, since the beginning of the relevant period.

5 (4) This section does not apply where the situation is an emergency (see section 62).

- (5) For the purposes of this section—
  - (a) a person is a “qualifying person” at any time when he or she—
    - 10 (i) is an in-patient or resident in a hospital, care home or place of a prescribed description; or
    - (ii) is subject to a requirement to attend at a particular place and particular times or intervals for the purpose of being given treatment for the condition;
  - (b) “the relevant period” is the period of 3 months ending immediately before the day on which the act is done;
  - (c) “second opinion” means a relevant certificate (as defined by section 18) in respect of the treatment mentioned in subsection (1)(a).

15 (6) The Department may by regulations amend subsection (5)(b) so as to alter the period mentioned there.

20 **Second opinion: relevant certificates**

**18.—**(1) In this Chapter “relevant certificate” means a statement in writing which—

- (a) is made by an appropriate medical practitioner; and
- (b) certifies that, in that practitioner’s opinion, it is in P’s best interests for P to have the treatment.

(2) An appropriate medical practitioner may, for the purposes of exercising any function under subsection (1), at any reasonable time—

- (a) visit P and examine him or her in private;
- (b) require the production of and examine any health records relating to P that are relevant.

(3) A medical practitioner may give a relevant certificate only if the medical practitioner has consulted such person or persons as appear to him or her to be principally concerned with P’s treatment.

35 (4) A medical practitioner who gives a relevant certificate must immediately send a copy of it to RQIA.

(5) For the purposes of this section “an appropriate medical practitioner” means a medical practitioner who—

- (a) is unconnected with P (see section 291);
- (b) is approved for the purposes of this section by RQIA; and
- 40 (c) has been asked by RQIA, following a relevant request, to provide an opinion on whether it would be in P’s best interests for P to have the treatment.

(6) In subsection (5) a “relevant request” means a request, made by a person for the purposes of section 16 or 17, for RQIA to arrange for a medical practitioner to provide such an opinion.

#### CHAPTER 4

#### 5 ADDITIONAL SAFEGUARD: AUTHORISATIONS ETC

#### *Treatment with serious consequences*

#### **Treatment with serious consequences: objection from nominated person**

19.—(1) This section applies where—

- 10 (a) the act mentioned in section 9(1) is, or is done in the course of, the provision to P of treatment which is treatment with serious consequences (see section 20); and
- (b) the treatment is carried out despite a reasonable objection from P’s nominated person.

(2) Section 9(2) (protection from liability) applies to the act only if—

- 15 (a) the provision of the treatment to P is authorised; and
- (b) the prevention of serious harm condition (as well as the conditions of section 9(1)(c) and (d), and any other conditions that apply under this Part) is met.

20 (3) Subsection (2)(a) does not apply where the situation is an emergency (see section 62).

(4) For the purposes of subsection (2)(a) the provision of the treatment to P is “authorised” if, at the time the act is done, there is in force an authorisation granted under Schedule 1 which authorises the provision of the treatment to P.

(5) See section 21 for the prevention of serious harm condition.

#### 25 **Meaning of “treatment with serious consequences”**

20.—(1) In this Part “treatment with serious consequences” means treatment which—

- (a) causes the person to whom it is given serious pain, serious distress, or serious side-effects;
- 30 (b) is major surgery;
- (c) affects seriously the options that will be available to that person in the future, or has a serious impact on his or her day-to-day life; or
- (d) in any other way has serious consequences for that person, whether physical or non-physical.

35 (2) Regulations may provide that treatment of a specified description—

- (a) is to be regarded as treatment falling within a particular paragraph of subsection (1); or
- (b) is not to be regarded as such treatment.
- (3) If—

(a) the act mentioned in section 9(1) is, or is done in the course of, the provision to P of treatment which turns out to be treatment with serious consequences, but

5 (b) at the time when the act is done D reasonably believes that the risk that the treatment will turn out to be treatment with such consequences is negligible,

the act is to be treated for the purposes of this Part as if the treatment were not treatment with serious consequences.

### **Section 19: the prevention of serious harm condition**

10 **21.**—(1) For the purposes of section 19, the prevention of serious harm condition is that at the time the act mentioned in subsection (1)(a) of that section is done, D reasonably believes—

(a) that failure to provide the treatment in question to P would create a risk of serious harm to P or of serious physical harm to other persons; and

15 (b) that carrying out that treatment is a proportionate response to—

(i) the likelihood of harm to P, or of physical harm to other persons; and

(ii) the seriousness of the harm concerned.

(2) Subsection (3) applies in any case where there are one or more treatments, other than the particular treatment in question, which—

20 (a) are available;

(b) would be appropriate in P's case; and

(c) are not objected to by P's nominated person.

25 (3) In determining whether failure to provide the treatment in question to P would create a risk of serious harm to P or of serious physical harm to other persons, it must be assumed that if the treatment in question were not provided, another treatment would be provided as soon as practicable.

### **Resistance etc by P to provision of certain treatment**

**22.**—(1) This section applies where—

30 (a) the act mentioned in section 9(1) is, or is done in the course of, the provision to P of treatment which is treatment with serious consequences (see section 20);

(b) section 19 (objection from nominated person) does not apply;

(c) the act—

(i) is resisted by P (see section 66); or

35 (ii) is done while P is subject to an additional measure (see section 23); and

(d) the circumstances are such as may be prescribed.

(2) Section 9(2) (protection from liability) applies to the act only if the provision of the treatment to P is authorised (and the conditions of section 9(1)(c) and (d), and any other conditions that apply under this Part, are met in relation to the act).

40 (3) This section does not apply where the situation is an emergency (see section 62).

(4) For the purposes of subsection (2) the provision of the treatment to P is “authorised” if, at the time the act is done, there is in force an authorisation granted under Schedule 1 which authorises the provision of the treatment to P.

### Meaning of “subject to an additional measure”

5     **23.**—(1) For the purposes of this Part a person is “subject to an additional measure” at the time a particular act is done if—

- (a) the act is done at a time when the person is detained by virtue of this Act in circumstances amounting to a deprivation of liberty;
- 10     (b) the act is, or is done in the course of, the provision of treatment and is done at a time when the person is subject to a requirement to attend at a particular place at particular times or intervals for the purpose of being given that treatment; or
- (c) the act is done at a time when the person is subject to a community residence requirement.

15     (2) For further provision about the measures mentioned in subsection (1)(a) to (c), see sections 24 to 34.

### *Deprivation of liberty*

#### **Deprivation of liberty**

20     **24.**—(1) This section applies where the act mentioned in section 9(1) amounts to, or is one of a number of acts that together amount to, a deprivation of P’s liberty.

(2) Section 9(2) (protection from liability) applies to the act only if—

- (a) the deprivation of P’s liberty consists of—
  - 25     (i) the detention of P, in circumstances amounting to a deprivation of liberty, in a place in which care or treatment is available for P; or
  - (ii) related detention;
- (b) the detention in question is authorised; and
- (c) the prevention of serious harm condition (as well as the conditions of section 9(1)(c) and (d), and any other conditions that apply under this Part) is met.

30     (3) Subsection (2)(b) does not apply where the situation is an emergency (see section 62).

(4) See section 25 for—

- (a) the meaning of “related detention” and of detention being “authorised”;
- 35     (b) the prevention of serious harm condition.

(5) In this Part any reference to an act which is one of a number of acts that together amount to a deprivation of P’s liberty includes (in particular) where P is detained in circumstances amounting to a deprivation of liberty, instructing another person to carry out or continue the detention.

#### 40     **Section 24: definitions**

**25.**—(1) This section applies for the purposes of section 24.

(2) “Related detention” means—

- (a) the detention of P in circumstances amounting to a deprivation of liberty while P is being taken to a place in which care or treatment is available for P; or
- 5 (b) the detention of P in circumstances amounting to a deprivation of liberty in pursuance of a condition imposed on P that relates to permission given to P to be absent from a relevant place (as defined by section 27).

(3) Detention is “authorised” if, at the time the act is done, there is in force an authorisation granted—

- 10 (a) by a panel under Schedule 1, or
- (b) by the making of a report under paragraph 2 of Schedule 2 (authorisation of short-term detention for examination etc),

which authorises that detention.

(4) See paragraph 22 of Schedule 1 or paragraph 18 of Schedule 2 (as the case may be) for provisions about the scope of an authorisation.

(5) The prevention of serious harm condition is that at the time the act is done D reasonably believes—

- 20 (a) that failure to detain P in circumstances amounting to a deprivation of liberty would create a risk of serious harm to P or of serious physical harm to other persons; and
- (b) that the detention in question is a proportionate response to—
  - (i) the likelihood of harm to P, or of physical harm to other persons; and
  - (ii) the seriousness of the harm concerned.

(6) References in this section to “the act” are to the act mentioned in section 25 24(1).

### **Taking person to a place for deprivation of liberty**

**26.**—(1) This section applies where—

- (a) the act mentioned in section 9(1) is, or is done in the course of, taking P to a place; and
- 30 (b) although taking P to that place does not itself involve a deprivation of liberty, it is done in order that P can be detained in circumstances amounting to a deprivation of liberty at that place.

(2) Section 9(2) (protection from liability) applies to the act only if—

- (a) the detention that is to be carried out is authorised; and
- 35 (b) the prevention of serious harm condition (as well as the conditions of section 9(1)(c) and (d), and any other conditions that apply under this Part) is met.

(3) Subsection (2)(a) does not apply where the situation is an emergency (see section 62).

40 (4) In this section “authorised” and “the prevention of serious harm condition” have the same meaning as in section 25(3) and (5), but for this purpose references there to “the act” are to be read as the act mentioned in subsection (1)(a) of this section.

**Permission for absence**

27.—(1) For the avoidance of doubt, if—

- (a) by virtue of this Part a person (“P”) is detained in a relevant place,
- (b) P is given permission to be absent from the relevant place for a particular period or a particular occasion, and
- (c) a person does an act within subsection (2),

section 9(2) (protection from liability) applies to that act provided that the conditions of section 9(1)(c) and (d), and any other conditions that apply under this Part, are met in relation to that act.

(2) The acts within this subsection are—

- (a) imposing any condition on P in relation to the permission;
- (b) any act for the purpose of ensuring that P complies with such a condition;
- (c) recalling P to the relevant place.

(3) For the purposes of this section a place is a “relevant place” if—

- (a) P is detained in the place in circumstances amounting to a deprivation of liberty; and
- (b) care or treatment is available to P in the place.

*Requirements to attend for treatment with serious consequences***Requirements to attend for certain treatment**

28.—(1) This section applies where the act mentioned in section 9(1) is—

- (a) the imposition on P of a requirement to attend at a particular place at particular times or intervals for the purpose of being given treatment which is likely to be treatment with serious consequences (an “attendance requirement”); or
- (b) an act done for the purpose of ensuring that P complies with an attendance requirement.

(2) Section 9(2) (protection from liability) applies to the act only if—

- (a) the requirement is authorised; and
- (b) the receipt of treatment condition (as well as the conditions of section 9(1)(c) and (d), and any other conditions that apply under this Part) is met.

(3) Subsection (2)(a) does not apply where the situation is an emergency (see section 62).

(4) For the purposes of subsection (2)(a) the requirement is “authorised” if, at the time the act is done, there is in force an authorisation granted under Schedule 1 which permits that requirement to be imposed.

(5) The receipt of treatment condition is that at the time the act is done D reasonably believes that—

- (a) failure to impose the requirement, or
- (b) where the requirement is already imposed, failure to ensure that P complies with the requirement,

would be more likely than not to result in P’s not receiving the treatment.

(6) See section 65 for the meaning of treatment which is “likely” to be treatment with serious consequences.

**Duty to revoke requirement where criteria no longer met**

29.—(1) If—

- 5 (a) an attendance requirement has been authorised under Schedule 1 and has been imposed on a person, and  
 (b) at any time after the imposition of the requirement, the medical practitioner in charge of the treatment considers that any of the conditions in subsection (2) is no longer met,

10 the requirement must be revoked.

(2) Those conditions are—

- (a) that the person lacks capacity in relation to whether he or she should attend at the place and times or intervals concerned for the purpose of being given the treatment;  
 15 (b) that it is more likely than not that, without the attendance requirement, the person would not receive the treatment;  
 (c) that the attendance requirement is in the person’s best interests.

(3) Nothing in subsection (1) limits the effect of section 28 (under which acts to ensure compliance with an attendance requirement are unlawful if certain  
 20 conditions are not met).

(4) Where an attendance requirement is revoked in the circumstances mentioned in subsection (1)(b), another attendance requirement may not be imposed on the person by virtue of the same authorisation.

(5) In this section “attendance requirement” has the same meaning as in section  
 25 28.

*Community residence requirements*

**Community residence requirements: authorisation etc**

30.—(1) This section applies where the act mentioned in section 9(1) is—

- 30 (a) the imposition on P of a community residence requirement (see section 31); or  
 (b) an act done for the purpose of ensuring that P complies with a community residence requirement.

(2) Section 9(2) (protection from liability) applies to the act only if—

- (a) the community residence requirement is authorised; and  
 35 (b) the prevention of harm condition (as well as the conditions of section 9(1)(c) and (d), and any other conditions that apply under this Part) is met.

(3) For the purposes of subsection (2)(a) the community residence requirement is “authorised” if, at the time the act is done, there is in force an authorisation granted under Schedule 1 which permits that community residence requirement to  
 40 be imposed.

(4) The prevention of harm condition is that at the time the act is done D reasonably believes—

- (a) that failure to do the act would create a risk of harm to P; and
- (b) that the act is a proportionate response to—
  - (i) the likelihood of harm to P; and
  - (ii) the seriousness of the harm concerned.

5 **Meaning of “community residence requirement”**

**31.**—(1) In this Part a “community residence requirement”, in relation to a person (“P”), means a requirement imposed on P by an HSC trust for P to live at a particular place, whether or not the requirement also contains provision imposing one or more of the requirements mentioned in subsection (2).

10 (2) Those requirements are—

- (a) a requirement for P to allow a healthcare professional access to P at a place where P is living;
- (b) a requirement (or requirements) for P to attend at particular places and times or intervals for the purpose of training, education, occupation or treatment.

15

(3) Regulations may prescribe the descriptions of persons who are “healthcare professionals” for the purposes of subsection (2).

(4) In subsection (2)(b) “treatment” does not include treatment which is likely to be treatment with serious consequences (requirements to attend for which are dealt with by section 28).

20

(5) References in this Part to an act done for the purpose of ensuring that P complies with a community residence requirement are to an act done—

- (a) for the purpose of ensuring that P moves to, continues to live at or resumes living at the place required by the community residence requirement; or
- (b) for the purpose of ensuring that P complies with a provision of the community residence requirement that requires P to attend a place or allow a person access to P.

25

**Duty to revoke community residence requirement where criteria no longer met**

30 **32.**—(1) If—

- (a) a community residence requirement which is permitted by an authorisation under Schedule 1 to be imposed on a person has been imposed, and
- (b) at any time after the imposition of the requirement, the approved social worker in charge of the person’s case considers that any of the conditions in subsection (2) is no longer met,

35

the requirement must be revoked.

(2) Those conditions are—

- (a) that the person lacks capacity in relation to the matters covered by the community residence requirement;
- (b) that revoking the community residence requirement would create a risk of harm to the person;
- (c) that keeping the requirement in place is a proportionate response to—

40



(i) the likelihood of harm to the person if the requirement were revoked;  
and

(ii) the seriousness of the harm concerned;

(d) that the community residence requirement is in the person's best interests.

5 (3) Subsection (1) is without prejudice to section 30 (under which acts to ensure compliance with a community residence requirement are unlawful if criteria are not met).

(4) Where a community residence requirement is revoked in the circumstances mentioned in subsection (1)(b), another community residence requirement may not  
10 be imposed on the person by virtue of the same authorisation.

### **Duties in relation to people subject to community residence requirements**

**33.** The Department may make regulations—

(a) for imposing on HSC trusts such duties as the Department considers appropriate in the interests of people who are subject to community  
15 residence requirements;

(b) requiring people subject to community residence requirements to be visited on prescribed occasions or at prescribed intervals.

### **Community residence requirements: further provision**

**34.—**(1) For the avoidance of doubt, the imposition by an HSC trust of a  
20 community residence requirement is not to be regarded for the purposes of this Act—

(a) as an act which in itself amounts to a deprivation of liberty; or

(b) as an act within section 12(4) (acts of restraint).

(2) Subsection (3) applies if—

25 (a) a person is detained in a place in circumstances which—

(i) amount to a deprivation of liberty; and

(ii) include a requirement for the person to live in the place; and

(b) the detention of the person in the place in circumstances amounting to a deprivation of liberty is authorised under Schedule 1.

30 (3) Where this subsection applies, the requirement for the person to live in the place is not to be regarded for the purposes of section 30 or any other provision of this Act as a community residence requirement.

## **CHAPTER 5**

### **ADDITIONAL SAFEGUARD: INDEPENDENT ADVOCATE**

#### **35 Independent advocate: need to have in place and consult**

**35.—**(1) This section applies where the act mentioned in section 9(1) is a relevant act (as defined by section 36).

(2) Section 9(2) (protection from liability) applies to the act only if the independent advocate conditions (as well as the conditions of section 9(1)(c) and  
40 (d), and any other conditions that apply under this Part) are met.

(3) The independent advocate conditions are that—

- (a) at the time when D determines whether the act would be in P's best interests, there is an independent advocate who is instructed under section 89 to represent and provide support to P; and
- (b) in determining whether the act would be in P's best interests, D consults and takes into account the views of the independent advocate to the extent required by section 7(7) (duty to consult where practicable and appropriate and to take views into account).
- (4) This section does not apply if—
- (a) the situation is an emergency; or
- (b) at the time when D determines whether the act would be in P's best interests, P has made a declaration under section 88 or 91 (declarations declining services of an independent advocate) in relation to the matter in question (and has not revoked the declaration).

### Section 35: relevant acts

- 36.—(1) In section 35 “relevant act” means any of the following—
- (a) an act which amounts to a deprivation of P's liberty, or one of a number of acts that together amount to such a deprivation;
- (b) the imposition on P of a requirement to attend at a particular place at particular times or intervals for the purpose of being given treatment which is likely to be treatment with serious consequences;
- (c) the imposition on P of a community residence requirement;
- (d) the provision of serious compulsory treatment;
- (e) a serious compulsory intervention not falling within paragraphs (a) to (d).
- (2) For the purposes of subsection (1)(d) an act is “the provision of serious compulsory treatment” if—
- (a) it is, or is done in the course of, the provision to P of treatment with serious consequences; and
- (b) the treatment is carried out despite a reasonable objection from P's nominated person or subsection (4) applies.
- (3) For the purposes of subsection (1)(e) an act is a “serious compulsory intervention” if—
- (a) it is, or is part of, a serious intervention; and
- (b) the intervention is carried out despite a reasonable objection from P's nominated person or subsection (4) applies.
- (4) This subsection applies if—
- (a) the act—
- (i) is resisted by P (see section 66); or
- (ii) is done while P is subject to an additional measure (see section 23); and
- (b) the circumstances are such as may be prescribed.

CHAPTER 6  
EXTENSION OF PERIOD OF CERTAIN AUTHORISATIONS

*Extensions of period of authorisation*

**First extension of period of authorisation**

- 5     **37.**—(1) This section applies where—
- (a) an authorisation has been granted (and has not been revoked); and
  - (b) the initial period of the authorisation has not ended.
- (2) The period of the authorisation may be extended for a period of 6 months beginning immediately after the end of the initial period, by the making of an extension report (see section 39).
- 10
- (3) In this Chapter—
- “authorisation” means an authorisation under paragraph 15 of Schedule 1;
  - “the initial period” of an authorisation means the period of 6 months beginning with the date the authorisation is granted (see paragraph 15(6) of Schedule 1);
  - 15     “the period” of an authorisation means the period at the end of which the authorisation (unless previously revoked) expires.

**Subsequent extensions**

- 20     **38.**—(1) This section applies where—
- (a) an authorisation has been granted (and has not been revoked);
  - (b) the period of the authorisation has been extended for a period (“the current extension period”) under a relevant provision; and
  - (c) the current extension period has not ended.
- (2) The period of the authorisation may be further extended, for a period of one year beginning immediately after the end of the current extension period, by the making of an extension report (see section 39).
- 25
- (3) In subsection (1)(b) “relevant provision” means—
- (a) section 37 (first extension);
  - (b) this section (subsequent extensions); or
  - 30     (c) paragraph 8(2) of Schedule 3 (extension where responsible person is not of the opinion that the criteria for continuation are met).

**Sections 37 and 38: extension reports**

- 35     **39.**—(1) This section applies for the purposes of this Chapter.
- (2) An “extension report”, in relation to an authorisation in respect of a person (“P”), is a report in the prescribed form which—
- (a) is made, within the reporting period, by an appropriate medical practitioner who has examined P within the reporting period and made the report as soon as practicable after that examination;

- (b) specifies the authorised measure (or, if more than one, each authorised measure) that is proposed to be continued after the end of the current period;
- (c) states that in the appropriate medical practitioner’s opinion the criteria for continuation (see section 41) are met in respect of each specified measure;
- (d) includes a statement in the prescribed form, by the responsible person (see section 42), that in that person’s opinion the criteria for continuation are met in respect of each specified measure; and
- (e) includes any prescribed information.

10 (3) If—

- (a) the report specifies a measure within section 41(2)(b) or (d) (deprivation of liberty or community residence requirement), and
- (b) the appropriate medical practitioner is of the opinion that P is likely to lack capacity in relation to whether an application under section 45 (applications to Tribunal) should be made in respect of the authorisation,
- 15 the report must contain a statement of that opinion.

(4) In this section—

“appropriate medical practitioner” means a medical practitioner who is unconnected with P and is permitted by regulations under section 286 to make the report;

“authorised measure” and “measure” have the meaning given by section 41;

“the current period” means—

- (a) in the case of an extension under section 37, the initial period;
- (b) in the case of an extension under section 38, the current extension period (within the meaning of that section);

“the reporting period” means—

- (a) in the case of an extension under section 37, the last month of the current period;
- (b) in the case of an extension under section 38, the last two months of the current period.

### **Extension of period where responsible person not of the requisite opinion**

40. Schedule 3 makes provision for cases where it is proposed to make an extension under section 37 or 38 but the responsible person is not of the opinion that the criteria for continuation are met.

35 *Supplementary provisions about extension*

### **Meaning of “measure”, “authorised measure” and “the criteria for continuation”**

41.—(1) In this Chapter, in relation to an authorisation—

“authorised measure” means a measure which is authorised by the authorisation and has begun; and

“measure” is to be read in accordance with subsection (2).

(2) Each of the following is a “measure” for the purposes of this Chapter—

- (a) the provision to P of particular treatment specified by the authorisation;
- (b) the detention of P in circumstances amounting to a deprivation of liberty in a place specified by the authorisation, for purposes so specified;
- 5 (c) a requirement to attend at a particular place at particular times or intervals for the purpose of being given treatment specified by the authorisation;
- (d) a community residence requirement.

(3) In this Chapter “the criteria for continuation”, in relation to a measure, means the criteria for authorisation for that measure as set out in Part 3 of Schedule 1.

- 10 (4) In paragraphs 11(a) and 12(a) and (b) of that Schedule as they apply for the purposes of this section, the references to imposing a requirement include continuing the requirement.

### Meaning of “the responsible person”

15 **42.**—(1) In this Chapter “the responsible person” means a person prescribed by regulations.

(2) Regulations under this section may in particular provide that—

- (a) in prescribed circumstances the responsible person is the approved social worker in charge of P’s case;
  - 20 (b) in prescribed circumstances, the responsible person is a person of a prescribed description who is designated by the managing authority of a hospital or care home in which P is an in-patient or resident as a person who may make statements under this Chapter;
  - (c) in prescribed circumstances, the responsible person is a person of a prescribed description who is designated by an appropriate person (as defined by the regulations) as a person who may make statements under this Chapter.
- 25

### Extension reports: further provision

**43.**—(1) This section contains further provision about extension reports.

30 (2) For the purposes of section 39 an extension report is made when the completed report is signed by the medical practitioner making it.

(3) See also sections 52 and 53 (involvement of nominated person and independent advocate).

(4) A medical practitioner who makes an extension report must give it to the relevant trust as soon as practicable.

35 (5) Where an extension report is given to the relevant trust, that trust must as soon as practicable—

- (a) give prescribed information to P and any prescribed person; and
- (b) give RQIA a copy of the report.

40 (6) Regulations under subsection (5) must ensure that the Attorney General is given notice in any case where the report contains the statement mentioned in section 39(3) (statement that P likely to lack capacity in relation to making of Tribunal application).

(7) In this section “the relevant trust” means—

- (a) where the extension made by the report is wholly or partly for the purposes of continuing P’s detention in a place, the HSC trust in whose area that place is situated;
- 5 (b) where the extension made by the report is wholly or partly for the purposes of continuing the provision to P of treatment specified by the authorisation or a requirement to attend for such treatment, and paragraph (a) does not apply, the HSC trust in whose area the treatment is provided;
- 10 (c) where the extension made by the report is for the purposes of continuing a community residence requirement and paragraph (b) does not apply, the HSC trust in whose area the place where P is required by the community residence requirement to live is situated.

#### **Effect of extension on authorisation where authorised measure unused etc**

44.—(1) This section applies where—

- 15 (a) an authorisation has been granted;
- (b) the period of the authorisation is extended under section 37 or 38; and
- (c) when the extension report is made, there is a measure authorised by the authorisation which is not specified by the report as a measure that is proposed to be continued after the end of the current period (as defined by section 39).
- 20

(2) From the time immediately after the end of the current period, the provision of the authorisation which authorises that measure is to be treated as cancelled.

(3) See section 41 for the meaning of “measure”.

### CHAPTER 7

#### RIGHTS OF REVIEW OF AUTHORISATION

##### *Applications to the Tribunal*

#### **Right to apply to Tribunal**

45.—(1) Where an event mentioned in the first column of the following table occurs, a qualifying person may apply to the Tribunal within the period mentioned in the corresponding entry of the second column of the table.

<i>Event</i>	<i>Period for making application</i>
The grant of an authorisation under paragraph 15 of Schedule 1	The period of 6 months beginning with the date the authorisation is granted
35 The grant of an interim authorisation under paragraph 20 of that Schedule	The period of 28 days beginning with the date the interim authorisation is granted
The grant of an authorisation under Schedule 2	The period of 28 days beginning with the date of admission (as defined by paragraph 14(3) of Schedule 2)
40 The extension under Chapter 6 of the period of an authorisation under	The period— (a) beginning with the date when

paragraph 15 of Schedule 1

the period of the authorisation  
is extended; and  
(b) ending with the end of the  
period for which the  
authorisation is extended

5

(2) In this section “a qualifying person” means—

- (a) the person to whom the authorisation relates (“P”); or
- (b) subject to subsection (3), a person who is P’s nominated person.

10 (3) If P has capacity in relation to whether an application under this section should be made, P’s nominated person may make an application only with P’s consent.

(4) No application under this section may be made in respect of an authorisation that—

- 15 (a) has ceased to be effective by virtue of section 29(4) or 32(4) or paragraph 23 of Schedule 1 (effect on authorisation of discharge from detention etc); or
- (b) for any other reason is no longer in force.

#### **Applications: visiting and examination**

46.—(1) A medical practitioner who is authorised—

- 20 (a) by or on behalf of a person (“P”) to whom an authorisation under Schedule 1 or 2 relates, or
- (b) by P’s nominated person,

may, for a purpose mentioned in subsection (2), do anything within section 264 (visiting etc powers) in relation to P.

25 (2) The purposes are—

- (a) the purpose of advising whether an application to the Tribunal under section 45 should be made by or in respect of P;
- (b) the purpose of providing information as to the condition of P for the purposes of an application.

30

#### *References to the Tribunal*

#### **Power of certain persons to refer case to Tribunal**

47.—(1) At any time when an authorisation under Schedule 1 or 2 is in force, a person within subsection (2) may refer to the Tribunal the question whether the authorisation is appropriate.

35 (2) The persons are—

- (a) the Attorney General;
- (b) the Department;
- (c) the Master (Care and Protection), acting on the direction of the court.

40 (3) For the purpose of providing information for the purposes of a reference under this section, any medical practitioner authorised by or on behalf of the

person to whom the authorisation relates may do anything within section 264 (visiting etc powers) in relation to the person.

#### **Duty of HSC trust to refer case to Tribunal**

**48.**—(1) This section applies if—

- 5 (a) an authorisation under Schedule 1 has been granted in respect of a person;  
(b) the period of the authorisation is extended under section 37 or 38 or Schedule 3; and  
(c) the Tribunal has not considered the person's case within the period of two years (or, if the person is under 18, one year) ending with the date when  
10 the period of the authorisation is extended.

(2) The relevant trust must as soon as practicable refer the person's case to the Tribunal.

(3) For the purpose of providing information for the purposes of a reference under this section, any medical practitioner authorised by or on behalf of the  
15 person may do anything within section 264 (visiting etc powers) in relation to the person.

(4) In this section—

“the person's case” means the question whether the authorisation is appropriate;

20 “the relevant trust” means—

- (a) where the extension is wholly or partly for the purposes of continuing the person's detention in a place, the HSC trust in whose area that place is situated;
- 25 (b) where the extension is wholly or partly for the purposes of continuing the provision to the person of treatment specified by the authorisation or a requirement to attend for such treatment and paragraph (a) does not apply, the HSC trust in whose area the treatment is provided;
- (c) where the extension is for the purposes of continuing a community residence requirement and paragraph (b) does not apply, the HSC trust in  
30 whose area the place where the person is required by the community residence requirement to live is situated.

(5) The Department may by regulations amend subsection (1)(c) so as to alter any period mentioned there.

#### **Duty of HSC trust to notify the Attorney General**

35 **49.**—(1) This section applies if—

- (a) the period of an authorisation under Schedule 1 has been extended (under section 38 or Schedule 3) for a period of one year;
- (b) the authorisation authorises a measure within section 41(2)(b) or (d) (deprivation of liberty or community residence requirement); and  
40 (c) at the relevant time, it appears to the relevant trust that the person to whom the authorisation relates is likely to lack capacity in relation to whether an application under section 45 (applications to Tribunal) should be made.

(2) The relevant trust must as soon as practicable give the Attorney General—



- (a) notice of the matters mentioned in subsection (1)(a) to (c); and
- (b) any prescribed information.

(3) In this section—

5 “the relevant time” means the time 6 months after the beginning of the one year period mentioned in subsection (1)(a);

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

### *Powers of the Tribunal*

#### **Powers of Tribunal in relation to authorisation under Schedule 1**

10 **50.**—(1) Where an application or reference to the Tribunal is made under this Chapter in relation to an authorisation under Schedule 1, the Tribunal must do one of the following—

- (a) revoke the authorisation;
- (b) if the authorisation authorises more than one measure (as defined by subsection (4)), vary the authorisation by cancelling any provision of it
- 15 which authorises a measure;
- (c) decide to take no action in respect of the authorisation.

(2) In the case of an authorisation under paragraph 15 of Schedule 1, the Tribunal—

- 20 (a) may vary the authorisation only if satisfied that the criteria for authorisation are met in respect of each measure that will remain authorised by the authorisation;
- (b) may decide as mentioned in subsection (1)(c) only if satisfied that the criteria for authorisation are met in respect of each measure that is authorised by the authorisation.

25 (3) In the case of an interim authorisation under paragraph 20 of Schedule 1, the Tribunal—

- (a) may vary the authorisation only if satisfied that it is more likely than not that the criteria for authorisation are met in respect of each measure that will remain authorised by the authorisation;
- 30 (b) may decide as mentioned in subsection (1)(c) only if satisfied that it is more likely than not that the criteria for authorisation are met in respect of each measure that is authorised by the authorisation.

(4) For the purposes of this section each of the following is a “measure”—

- (a) the provision to P of treatment specified by the authorisation;
- 35 (b) the detention of P in a place in circumstances amounting to a deprivation of liberty;
- (c) a requirement to attend at a particular place at particular times or intervals for the purpose of being given treatment specified by the authorisation;
- (d) a community residence requirement.

40 (5) In this section “the criteria for authorisation”, in relation to a measure, means the criteria for authorisation for that measure as set out in Part 3 of Schedule 1.

(6) In paragraphs 11(a) and 12(a) and (b) of that Schedule as they apply for the purposes of this section, the references to imposing a requirement include continuing the requirement.

### **Powers of Tribunal in relation to authorisation under Schedule 2**

5 **51.**—(1) Where an application or reference to the Tribunal is made under this Chapter in relation to an authorisation under Schedule 2, the Tribunal must either—

- (a) revoke the authorisation; or
- (b) decide to take no action in respect of the authorisation.

10 (2) The Tribunal may decide as mentioned in subsection (1)(b) only if it is satisfied that the prevention of serious harm condition (as defined by paragraph 12 of Schedule 2) is met.

## CHAPTER 8 SUPPLEMENTARY

15 *Medical reports: involvement of nominated person and independent advocate*

### **Medical reports: involvement of nominated person**

**52.**—(1) A relevant medical report may be made only if—

- (a) a nominated person is in place for P at the time when the person making the report determines for the purposes of the report what would be in P's best interests; and
- (b) in making that determination, the person making the report consults and takes into account the views of the nominated person to the extent required by section 7(7) (duty to consult where practicable and appropriate and to take views into account).

25 (2) Subsection (1)—

- (a) does not apply where the situation is an emergency for the purposes of this section (see section 54); and
- (b) is without prejudice to section 53 (need to involve independent advocate).

30 (3) For the purposes of this section a nominated person is “in place for P” at a particular time if at that time there is someone who is P's nominated person (see section 67).

(4) In this section “a relevant medical report” means—

- (a) a report under section 39;
- (b) a medical report under paragraph 7 of Schedule 1;
- 35 (c) a medical report under paragraph 4, 11, 13 or 14 of Schedule 2; or
- (d) a medical report under paragraph 5 of Schedule 3.

### **Medical reports: involvement of independent advocate**

**53.**—(1) A relevant medical report may be made only if—

- (a) at the time when the person making the report determines for the purposes of the report what would be in P's best interests, there is an independent

advocate who is instructed under section 89 to represent and provide support to P; and

- (b) in determining what would be in P's best interests, the person making the report consults and takes into account the views of the independent advocate to the extent required by section 7(7) (duty to consult where practicable and appropriate and to take views into account).

(2) Subsection (1)—

- (a) does not apply where the situation is an emergency for the purposes of this section (see section 54); and

- (b) is without prejudice to section 52 (need to involve nominated person).

(3) Subsection (1) does not apply if, at the time mentioned in subsection (1)(a), P has made a declaration under section 88 or 91 (declarations declining services of an independent advocate) in relation to the matter in question (and has not revoked the declaration).

(4) In this section “a relevant medical report” has the same meaning as in section 52.

### **Sections 52 and 53: meaning of “emergency”**

**54.—**(1) For the purposes of section 52 or 53 the situation is an “emergency” if, at the time when the person making the report determines what would be in P's best interests, that person—

- (a) knows that the safeguard in that section is not met, but reasonably believes that to delay the report until that safeguard is met would involve an unacceptable risk of harm to P; or

- (b) does not know whether the safeguard is met, but reasonably believes that to delay the report even until it is established whether the safeguard is met would involve an unacceptable risk of harm to P.

(2) For the purposes of this section—

- (a) the safeguard in section 52 is met when a nominated person is in place for P (within the meaning given by that section);

- (b) the safeguard in section 53 is met when—

- (i) an independent advocate is instructed under section 89 to represent and provide support to P in the determination of what would be in P's best interests; or

- (ii) P has made (and not revoked) a declaration under section 88 or 91 in relation to the matter.

(3) For the purposes of this section the risk of harm to P involved in delaying the report until a particular safeguard is met, or until it is established whether it is met, is an “unacceptable” risk if—

- (a) the seriousness of the harm that could be caused to P by such delay, and

- (b) the likelihood of the harm,

are such as to outweigh the risk of harm to P of making the report without that safeguard being met.

(4) In deciding for the purposes of this section when a safeguard would be met, or when it would be established whether a safeguard is met, it must be assumed that any necessary steps would be taken as soon as practicable.

*Provision of information*

5 **Provision of information**

**55.**—(1) Regulations may make provision requiring a prescribed person to give prescribed information to prescribed persons—

- (a) where, after an authorisation has been granted under Schedule 1 or 2, a prescribed event occurs;
- 10 (b) in such other circumstances where an act has been done in pursuance of this Part as may be prescribed.

(2) The regulations may include provision as to when the information must be given.

(3) The information that may be prescribed by—

- 15 (a) regulations made under this section, or
- (b) regulations made under any other provision of this Part which requires prescribed information to be given to a person, includes a copy of a prescribed document.

(4) Regulations under this section must in particular include provision for the purposes of ensuring—

- 20 (a) that where a person is detained by virtue of this Part in circumstances amounting to a deprivation of liberty, the person is made aware as soon as practicable of—
  - 25 (i) the provisions of this Part by virtue of which he or she is detained, and the effect of those provisions; and
  - (ii) what rights are available under Chapter 7 (review by the Tribunal);
- (b) that where a person who has been detained under this Part in circumstances amounting to a deprivation of liberty is discharged from detention, the person is informed in writing that he or she is discharged from detention.
- 30

**Ways in which information must be provided**

**56.**—(1) Regulations may make provision about the way in which relevant information must be given to prescribed persons.

(2) In this section “relevant information” means information which is—

- 35 (a) required to be given by any provision of this Part or of regulations made under this Part; and
- (b) specified by the regulations under this section.

(3) Regulations under this section may in particular require information to be given orally as well as in writing.

*Other supplementary provision***Failure by person other than D to take certain steps**

57.—(1) This section applies if, in relation to an act done by a person (“D”)—

- 5 (a) all the conditions for section 9 to apply are met, except that supportive steps that it would have been practicable to take were not taken;
- (b) the fact that those steps were not taken is not to any extent due to an unreasonable failure by D to take such steps; and
- (c) at the time of the act, it is no longer practicable for such steps to be taken.

10 (2) For the purposes of determining whether D is liable in relation to the act, section 9 is to be taken to apply to the act.

(3) But if—

- (a) D is an employee of a person (“E”), and
- 15 (b) any other employee of E unreasonably failed to take supportive steps in relation to the matter at a time when it would have been practicable to take such steps,

for the purposes of determining whether E is liable in relation to the act subsection (2) is to be disregarded.

20 (4) In this section “supportive steps” means steps to help or support the person to whom the act relates (“P”) to enable P to make a decision for himself or herself about the matter.

(5) For the purposes of this section a failure by a person at any time to take a supportive step that it would be practicable to take is unreasonable unless—

- 25 (a) at the time in question the person reasonably believes that the step can be taken at a later time and still be as effective as it would be if taken immediately; and
- (b) not taking the step immediately is reasonable in the circumstances.

(6) Any person for whose acts another person may be vicariously liable is to be treated for the purposes of this section as an employee of that other person.

**Part 2 not applicable where other authority for act**

30 58.—(1) Section 9 does not apply in relation to an act—

- (a) which gives effect to a relevant decision; or
- (b) which a person has power to do under any other statutory provision (including any provision of this Act).

35 (2) In this section a “relevant decision” means a decision concerning the care, treatment or personal welfare of a person (“P”) which—

- (a) is made by the court on P’s behalf under section 112(2)(a);
- (b) is made in accordance with this Act by an attorney under a lasting power of attorney granted by P and is within the scope of the attorney’s authority;
- 40 (c) is made in accordance with this Act by a deputy appointed for P by the court and is within the scope of the deputy’s authority; or
- (d) where P is under 18, is a decision made by a parent or guardian of P which is effective under any rule of law.

*Disregard of certain detention***Disregard of certain detention**

**59.**—(1) In this section a “person who has been subject to short-term detention” means a person who—

- 5 (a) for any period, has been detained under this Part in a hospital in circumstances amounting to a deprivation of liberty other than under an authorisation under Schedule 1; and
- (b) at the end of that period, did not become liable to be detained in a hospital in circumstances amounting to a deprivation of liberty under an authorisation under Schedule 1.
- 10

(2) In this section “the relevant detention” means the detention mentioned in subsection (1)(a).

(3) Where a question seeking information with respect to the previous health or circumstances of a person who has been subject to short-term detention is put to that or any other person, otherwise than in judicial proceedings—

15

- (a) the question is to be treated as not relating to the relevant detention and the answer may be framed accordingly; and
- (b) the person questioned is not to be subjected to any liability or otherwise prejudiced in law by reason of any failure to acknowledge or disclose the relevant detention in answering the question.
- 20

(4) An obligation imposed on a person (“A”) by any rule of law or by the provisions of any agreement or arrangement to disclose any matters does not extend to requiring disclosure of the relevant detention of a person who has been subject to short-term detention (whether A or another person).

(5) The fact that a person who has been subject to short-term detention has been subject to the relevant detention, or any failure to disclose that fact, is not a proper ground for dismissing or excluding the person from any office, profession, occupation or employment, or for prejudicing the person in any way in any occupation or employment.

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(6) Any disqualification, disability, prohibition or other penalty which, by virtue of any rule of law or statutory provision other than this Act, attaches to or is imposed on any person by reason of the fact that the person has been liable to be detained in circumstances amounting to a deprivation of liberty under this Act is not to attach to a person merely because he or she is a person who has been subject to short-term detention.

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(7) In subsection (3) “judicial proceedings” includes, in addition to proceedings before any of the ordinary courts of law, proceedings before any tribunal, body or person that has power—

- (a) by virtue of any statutory provision, law, custom or practice,
- (b) under the rules governing any association, institution, profession, occupation or employment, or
- (c) under any provision of an agreement providing for arbitration with respect to questions arising under the agreement,
- 40

to determine any question affecting the rights, privileges, obligations or liabilities of any person, or to receive evidence affecting the determination of any such question.

## CHAPTER 9

## DEFINITIONS FOR PURPOSES OF PART 2

*Meaning of “serious intervention”***“Serious intervention”**

**60.**—(1) In this Part “serious intervention” means an intervention in connection with the care, treatment or personal welfare of P which (or any part of which)—

- 10 (a) consists of or involves major surgery;
- (b) causes P serious pain, serious distress, or serious side-effects;
- (c) affects seriously the options that will be available to P in the future, or has a serious impact on P’s day-to-day life; or
- 15 (d) in any other way has serious consequences for P, whether physical or non-physical.

(2) Without prejudice to subsection (1), and to avoid any doubt, each of the following is a serious intervention for the purposes of this Part—

- (a) any deprivation of liberty;
- 20 (b) the imposition of a requirement mentioned in section 28(1)(a) (requirements to attend at particular times or intervals for certain treatment);
- (c) the imposition of a community residence requirement (see section 31).

(3) Regulations may provide that a prescribed intervention (except one mentioned in subsection (2))—

- 25 (a) is to be regarded as an intervention falling within a particular paragraph of subsection (1); or
- (b) is not to be regarded as such an intervention.

(4) If—

- 30 (a) the act mentioned in section 9(1) is, or is part of, an intervention which turns out to be a serious intervention, but
- (b) at the time the act is done D reasonably believes that the risk that the intervention will turn out to be a serious intervention is negligible,

that act is to be treated for the purposes of this Part as if the intervention were not a serious intervention.

**Acts that are “part of” serious interventions**

**61.**—(1) This section applies where, for any purpose of this Part, a question arises whether a particular act is part of an intervention which is a serious intervention.

(2) Where an act is done which—

- 40 (a) is a use of force or a threat to use force, and

(b) is done with the intention of securing the doing of another act in connection with the care, treatment or personal welfare of a person which that person resists,

the act mentioned in paragraph (a) is to be taken to be part of the same intervention as the act mentioned in paragraph (b).

(3) Nothing in this section limits the acts that are to be regarded as part of a particular intervention.

### *Meaning of “emergency”*

#### **Meaning of “emergency” in relation to safeguard provisions**

10 **62.**—(1) This section applies in relation to sections 13, 15, 16, 17, 19, 22, 24, 26, 28 and 35 (provisions which contain additional safeguards, and which require a determination of whether the situation is an “emergency”).

(2) For the purposes of any one of those sections, the situation is an “emergency” if at the relevant time—

15 (a) D knows that the safeguard in that section is not met, but reasonably believes that to delay until that safeguard is met would create an unacceptable risk of harm to P; or

(b) D does not know whether that safeguard is met, but reasonably believes that to delay even until it is established whether it is met would create an unacceptable risk of harm to P.

(3) But the situation is not an “emergency” by virtue of falling within subsection (2) if the fact that the safeguard in question is not met by the relevant time is to any extent due to an unreasonable failure by D to take a step that it would have been practicable to take for the purposes of ensuring that the safeguard is met by the relevant time.

(4) Subsections (2) and (3) are to be read in accordance with section 63.

(5) For the purposes of any section mentioned in subsection (1), the situation is also an “emergency” if, at the time when the act mentioned in that section is done, D—

30 (a) does not know of the effect of that section;

(b) is not a person with expertise such that he or she could reasonably be expected to know of its effect; and

(c) reasonably believes that it is necessary to do the act without delay to prevent harm to P.

#### 35 **Section 62: definitions etc**

**63.**—(1) For the purposes of section 62(2) and (3) and this section—

(a) the safeguard in section 13 is met when a formal capacity assessment has been carried out and a statement of incapacity made;

40 (b) the safeguard in section 15 is met when a nominated person is in place for P;

(c) the safeguard in section 16 or 17 is met when a second opinion is obtained;



- (d) the safeguard in section 19, 22, 24, 26 or 28 is met where the provision of treatment, detention or requirement mentioned in that section is authorised;
- (e) the safeguard in section 35 is met when—
- (i) an independent advocate is instructed under section 89 to represent and provide support to P in the determination of what would be in P’s best interests; or
  - (ii) P has made (and not revoked) a declaration under section 88 or 91 in relation to the matter.
- (2) In section 62(2) and (3) and this section “the relevant time” means—
- (a) in relation to section 15 or 35, the time when D determines that the act mentioned in that section would be in P’s best interests;
  - (b) in relation to any other section mentioned in section 62(1), the time when the act mentioned in that section is done.
- (3) For the purposes of section 62(2), the risk of harm to P created by delaying until a particular safeguard is met, or until it is established whether it is met, is an “unacceptable” risk if—
- (a) the seriousness of the harm that could be caused to P by such delay, and
  - (b) the likelihood of the harm,
- are such as to outweigh the risk of harm to P of not complying with the safeguard.
- (4) In determining for the purposes of section 62(2) and this section when a safeguard would be met, or when it would be established whether a safeguard is met, it must be assumed that any necessary steps would be taken as soon as practicable.
- (5) For the purposes of section 62(3), a failure by D at any time (“the time in question”) to take a practicable step for the purposes of ensuring that the safeguard is met by the relevant time is unreasonable unless, at the time in question—
- (a) he or she reasonably believes that (ignoring any provision of this Act relating to emergency situations) the matter is not one to which the safeguard will apply; or
  - (b) he or she reasonably believes that that step does not have to be taken immediately in order for the safeguard to be met in time, and not taking that step immediately is reasonable in the circumstances.
- (6) Expressions used in a paragraph of subsection (1) and in the section mentioned in that paragraph have the same meaning in that paragraph as in that section.

#### **Failure by persons other than D to take steps to ensure safeguard met**

- 64.**—(1) This section has effect in relation to section 62(2) in a case where D is an employee of a person (“E”).
- (2) For the purposes of determining whether E is liable in relation to an act done in a situation falling within section 62(2), any reference in section 62(3) or 63(5) to “D” includes any other employee of E.
- (3) Any person for whose acts another person may be vicariously liable is to be treated for the purposes of this section as an employee of that other person.

*Other definitions for purposes of Part 2***References to treatment “likely” to be treatment with serious consequences**

65.—(1) This section applies for the purposes of any reference in this Part to treatment that is, or would be, likely to be treatment with serious consequences.

5 (2) Treatment is to be regarded as “likely” to be treatment with such consequences if the risk that it will turn out to be treatment with such consequences is more than negligible.

(3) Nothing in this section affects the meaning of “likely” in any other context.

**Interpretation of Part 2: general**

10 66.—(1) For the purposes of this Part—

“community residence requirement” has the meaning given by section 31;

“emergency”—

(a) in sections 52 to 54, has the meaning given by section 54;

(b) otherwise, has the meaning given by section 62;

15 “reasonable objection”: an act is done “despite” a reasonable objection from a person’s nominated person if the nominated person—

(a) has reasonably objected to the proposal to do the act; and

(b) has not, by the time the act is done, withdrawn that objection (by any means);

20 “resisted by”: an act is resisted by a person if the doing of the act is secured by the use of force or a threat to use force;

“requirement”: a requirement for a person (“P”) to do a thing is imposed on P by a person if that person tells P (by any means and in any words) that if P does not do that thing, further action will or may be taken in respect of P;

25 “serious intervention” is to be read in accordance with section 60;

“subject to an additional measure” has the meaning given by section 23;

“treatment with serious consequences” has the meaning given by section 20.

(2) See also sections 291 to 293 (definitions for purposes of Act).

## PART 3

## 30 NOMINATED PERSON

*Nominated person***Nominated person**

67.—(1) A person is the nominated person, within the meaning of this Act, of another person (“P”) if—

35 (a) the person is currently appointed as P’s nominated person under section 68 or 79; or

(b) where no-one is so appointed, the person is the default nominated person for P under sections 71 to 74.

(2) For the purposes of this Part a person is “currently” appointed under section 68 or 79 if—

- (a) the person has been appointed under that section; and
- (b) the appointment has not been revoked under any provision of this Part and the person has not resigned under any such provision.

*Appointment by person of his or her nominated person*

**Appointment of nominated person**

**68.**—(1) A person who is 16 or over (“the appointer”) may, at any time when he or she has capacity to do so, appoint one person who is 16 or over to be the appointer’s nominated person.

(2) An appointment under this section is valid only if—

- (a) the appointment is in writing and the conditions of section 77 (formalities) are met; and
- (b) the person appointed consents in writing to being the appointer’s nominated person.

(3) That consent may be given—

- (a) before section 77 is complied with (in which case the appointment takes effect when that section is complied with); or
- (b) at the same time as, or after, that section is complied with (in which case the appointment takes effect when the consent is given).

(4) An appointment under this section remains effective even where, at a time after the appointment, the appointer no longer has capacity to make decisions about his or her nominated person.

**Revocation of appointment**

**69.**—(1) An appointment may, where the appointer has capacity to revoke it, be revoked by the appointer.

(2) A revocation under subsection (1) is valid only if the revocation is in writing and the conditions of section 77 (formalities) are met.

(3) An appointment made by a person revokes any previous appointment made by that person.

(4) In this section “appointment” means an appointment under section 68.

**Resignation**

**70.** A person appointed under section 68 may resign as the appointer’s nominated person by giving notice in writing to that effect to the appointer.

*Default nominated person*

**Default nominated person**

**71.**—(1) Where—

- (a) a person (“P”) is 16 or over, and

- (b) there is no person currently appointed as P's nominated person under section 68 or 79,

this section and sections 72 to 74 apply to determine who (if anyone) is the default nominated person for P.

5 (2) The default nominated person for P is—

(a) where there is only one person who is within the list in subsection (3), that person;

(b) where there are two or more persons who are within that list, the person highest up the list;

10 but this is subject to sections 72 and 73.

(3) The list is as follows—

(a) P's carer (as defined by section 74);

(b) P's spouse or civil partner (except one within subsection (4) (separation etc));

15 (c) a person within subsection (5) (person living with P as spouse etc);

(d) P's child;

(e) P's parent;

(f) P's brother or sister;

(g) P's grandparent;

20 (h) P's grandchild;

(i) P's aunt or uncle;

(j) P's niece or nephew;

(k) a person within subsection (6) (person living with P etc).

(4) A person is within this subsection if—

25 (a) the person is permanently separated from P (either by agreement or under an order of a court); or

(b) the person has deserted or been deserted by P for a period which has not ended.

(5) A person is within this subsection if—

30 (a) the person is living with P as if he or she were P's spouse or civil partner, and has been so living for a period of at least 6 months; or

(b) if P is living in a relevant place, at the relevant time the person had been living with P as if he or she were P's spouse or civil partner for a period of at least 6 months.

35 (6) A person is within this subsection if—

(a) the person is someone with whom P lives and has been living for a period of at least 5 years; or

(b) if P is living in a relevant place, at the relevant time the person was someone with whom P had been living for a period of at least 5 years.

40 (7) In this section—

“relevant place” means—

(a) a hospital;

- (b) a care home; or
- (c) a place of a prescribed description;

“the relevant time” means the time when P started living at the relevant place.

### **Section 71: the list**

5     **72.**—(1) This section contains provisions about the list in section 71(3) (“the list”).

(2) A person within the list (“A”) is “higher” up the list than another person within the list (“B”) if A is within a paragraph of the list that comes before the paragraph which B is within.

10     (3) Where—

- (a) two or more persons are within the same paragraph of the list, and
- (b) there is no person higher up the list,

the default nominated person is the older (or oldest) of those persons (but this is subject to subsections (5) and (6)).

15     (4) In determining who is the default nominated person for P—

- (a) a stepchild of a person is to be treated as the child of that person; and
- (b) a relationship of the half-blood is to be treated as a relationship of the whole blood;

but this is subject to subsections (5) and (6).

20     (5) Subsection (6) applies where—

- (a) P has two or more relatives within the same paragraph of the list (“the relevant paragraph”);
  - (b) there is no person higher up the list; and
  - (c) one or more of the relatives is within the relevant paragraph because of
- 25     subsection (4).

(6) In determining who is the default nominated person for P—

- (a) any relatives of the whole blood are to be preferred over the relatives who are within the relevant paragraph because of subsection (4);
  - (b) any relatives of the half-blood are to be preferred over any relatives who
- 30     are within the relevant paragraph because of subsection (4)(a).

(7) This section is subject to section 73.

### **Section 71: persons to be disregarded**

**73.**—(1) This section supplements section 71.

35     (2) In determining who is the default nominated person for P, the following are to be disregarded—

- (a) any person under 16;
  - (b) where P is ordinarily resident in the United Kingdom, the Channel Islands, the Isle of Man or Ireland, any person who is not so resident;
  - (c) any person who under section 75 (declaration by P) is to be disregarded in
- 40     determining who is the default nominated person for P;

- (d) any person who has in accordance with section 76 declined to be the nominated person for P (and has not withdrawn that notice);
- (e) any person who under an order of the Tribunal under section 80 is to be disregarded in determining who is the default nominated person for P.

5 **Section 71: meaning of “carer”**

74.—(1) In section 71, the reference to a “carer” of P is to a person who is 16 or over and—

- (a) provides a substantial amount of care for and support to P—
  - (i) on a regular basis; and
  - 10 (ii) on a domestic basis; or
- (b) where P is living in a relevant place, provided a substantial amount of care for and support to P on a regular basis and on a domestic basis, before the relevant time.

15 (2) For the purposes of subsection (1) care and support is provided on a domestic basis unless it is provided under a contract of employment, under any other contract with any person, or as a volunteer for any organisation.

(3) Where there are two or more persons within subsection (1), but one of them provides (or provided, before the relevant time) most of the care for and support to P, that person is P’s carer for the purposes of section 71.

20 (4) Where there are two or more persons within subsection (1) and subsection (3) does not apply, each of those persons is P’s “carer” (and accordingly section 72(3) applies).

(5) In this section “relevant place” and “the relevant time” have the same meaning as in section 71.

25 *Declarations etc*

**Declaration that particular person not to be nominated person**

75.—(1) A person who is 16 or over and has capacity to do so (“the declarer”) may make a declaration—

- 30 (a) stating that a person specified in the declaration is not to be the declarer’s nominated person;
- (b) specifying two or more persons and stating that neither (or none) of them is to be the declarer’s nominated person;
- (c) stating that no person of a description specified in the declaration is to be the declarer’s nominated person.

35 (2) Where a declaration has been made under subsection (1) and has not been revoked, any person who is specified, or of a description specified, in the declaration—

- (a) is to be disregarded in determining who is the default nominated person for the declarer under sections 71 to 74; and
- 40 (b) may not be appointed by the Tribunal under section 79 as the declarer’s nominated person (subject to subsection (3)).

(3) Subsection (2)(b) does not apply where there has been a change of circumstances since the declaration was made that, in the Tribunal’s opinion, justifies appointing the person concerned.

5 (4) A declaration under this section remains effective even where, at a time after making the declaration, the declarer no longer has capacity to make decisions about the declaration.

(5) A declaration under this section may be revoked by the declarer at any time when the declarer has capacity to do so.

10 (6) A declaration, or revocation of a declaration, under this section is valid only if it is in writing and the conditions of section 77 (formalities) are met.

**Notice declining to be a person’s nominated person**

**76.—**(1) A person may at any time decline to be the default nominated person for another person (“P”) by giving notice in writing to that effect to P.

15 (2) A person who has given notice under subsection (1) may at any time withdraw the notice by giving a further notice in writing to P.

*Formalities*

**Formalities for documents under Part 3**

**77.—**(1) This section applies in relation to—

- 20 (a) the appointment of a nominated person under section 68;
- (b) the revocation of an appointment under section 69(1);
- (c) the making of a declaration under section 75(1);
- (d) the revocation of a declaration under section 75(5).

(2) For the purposes of section 68(2), 69(2) and 75(6), the conditions of this section are met if—

- 25 (a) the document containing the appointment, revocation or declaration is signed by the person making the appointment, revocation or declaration (“X”);
- (b) X’s signature is witnessed by a person of a prescribed description; and
- (c) the person witnessing the signature certifies that, in his or her opinion, X—
  - 30 (i) understands the effect of the appointment, revocation or declaration; and
  - (ii) has not been subjected to any undue pressure in relation to the appointment, revocation or declaration.

35 (3) In the case of an appointment of a nominated person under section 68, the certificate under subsection (2)(c) must include a statement that, in the opinion of the person witnessing the signature, X understands that the appointment may result in information about X being disclosed by virtue of this Act to the person appointed.

40 (4) Regulations may make provision for this section to have effect with prescribed modifications where a person making an appointment, revocation or declaration mentioned in subsection (1) is physically unable to make a signature.

*Powers of the Tribunal***Application to Tribunal for appointment of nominated person**

78.—(1) A qualifying person may apply to the Tribunal for an order under section 79 in relation to a person who is 16 or over (“P”) if the qualifying person reasonably believes that—

- (a) P lacks capacity to make decisions about who should be his or her nominated person; and
- (b) one of the conditions mentioned in subsection (2) is met.

(2) Those conditions are—

- (a) the person who is P’s nominated person is not suitable to be so;
- (b) there is no-one who is P’s nominated person;
- (c) it is not practicable to establish whether P has a nominated person;
- (d) someone is P’s nominated person, but it is not practicable to establish who that is.

(3) The factors that may be taken into account in determining whether a person is not suitable to be P’s nominated person include whether the person has behaved, is behaving or proposes to behave in a way that is not in P’s best interests.

(4) An application may be made on the ground mentioned in subsection (2)(c) or (d) only if the applicant has taken reasonable steps to establish—

- (a) whether P has a nominated person; or (as the case may be),
- (b) who P’s nominated person is.

(5) In this section “a qualifying person” means any of the following—

- (a) an appropriate healthcare professional;
- (b) if P is an in-patient in a hospital or care home, the managing authority of the hospital or care home;
- (c) if P is living in a place of a prescribed description, a prescribed person;
- (d) an attorney under a lasting power of attorney granted by P;
- (e) a deputy appointed for P by the court;
- (f) any relative of P;
- (g) any person interested in P’s welfare.

(6) Regulations may prescribe the descriptions of persons who are “appropriate healthcare professionals” for the purposes of this section.

(7) Where the applicant is a person within subsection (5)(a) or (b), the applicant must send a copy of the application to RQIA as soon as practicable.

**35 Tribunal’s power to appoint nominated person**

79.—(1) This section applies where an application is made to the Tribunal under section 78 in relation to a person (“P”).

(2) The Tribunal may, if it is satisfied of the matters mentioned in paragraphs (a) and (b) of section 78(1), make an order under this section.

(3) An order under this section is an order appointing as P’s nominated person one person who is 16 or over and is specified in the order.



(4) An appointment under this section revokes any previous appointment under this section or section 68 of a person as P's nominated person.

(5) A person who has been appointed under this section may resign as P's nominated person by giving notice in writing to that effect to P.

5 (6) This section is subject to section 75(2)(b) (effect of declaration by P).

#### **Tribunal's power to disqualify person from being default nominated person**

**80.**—(1) This section applies where the Tribunal makes an order under section 79 on the ground that the person who is P's nominated person ("the person concerned") is not suitable to be P's nominated person.

10 (2) The Tribunal may order that, if at any time a determination falls to be made of who (if anyone) is the default nominated person for P, the person concerned is to be disregarded.

#### **Revocation of Tribunal's appointment where P regains capacity**

**81.**—(1) This section applies if—

15 (a) an appointment of a nominated person for a person ("P") has been made by the Tribunal under section 79; and

(b) P regains capacity to make decisions about who should be his or her nominated person.

20 (2) P may, at any time while he or she has capacity to do so, apply to the Tribunal for revocation of the appointment.

(3) On an application under this section the Tribunal must make an order revoking the appointment under section 79 unless it is satisfied that P no longer has capacity to make decisions about who should be his or her nominated person.

(4) If on such an application the Tribunal is satisfied—

25 (a) that P no longer has capacity to make decisions about who should be his or her nominated person, but

(b) that a different person should be appointed as P's nominated person, the Tribunal may make an order under section 79.

#### *Duties in relation to nominated person*

#### **30 Duties in relation to nominated person: supplementary**

**82.**—(1) This section applies where under any provision of or made under this Act a person ("the person concerned") is subject to—

35 (a) a duty to consult (if it is practicable and appropriate to do so), and take into account the views of, the nominated person of a person ("P") in determining what would be in P's best interests; or

(b) a duty to inform, send a document to, or do any other thing in relation to, P's nominated person.

(2) Subsection (3) applies if the person concerned—

(a) takes reasonable steps to establish who P's nominated person is; and

40 (b) at the relevant time reasonably believes that a particular person ("NP") is P's nominated person.

(3) In determining whether the person concerned has complied with the duty in question, anything done by that person in relation to NP for the purposes of that duty is to be treated as if NP were P's nominated person (even if NP was in fact not P's nominated person).

5 (4) Subsection (5) applies (subject to subsection (6)) if the person concerned takes reasonable steps to establish who P's nominated person is and at the relevant time—

(a) the person concerned reasonably believes that there is no-one who is P's nominated person;

10 (b) it has not been practicable to establish whether P has a nominated person; or

(c) it has not been practicable to establish who P's nominated person is.

15 (5) The person concerned is to be taken not to have contravened the duty in question (even if it has in fact been contravened because there is a person who is P's nominated person as respects whom the duty has not been complied with).

(6) Subsection (5) does not apply if—

(a) the duty in question is the duty imposed by section 7(7) and (11)(a) (duty to consult P's nominated person, if any, in determining best interests); and

20 (b) the case is one where by virtue of section 15 or 52 a nominated person must be in place for P at the relevant time.

(7) In this section “the relevant time” means—

(a) in relation to a duty mentioned in subsection (1)(a), the time when the person concerned determines what would be in P's best interests;

25 (b) in relation to a duty mentioned in subsection (1)(b), the time when the duty applies.

(8) Subsections (2)(b) and (4)(a) are to be read in accordance with section 83(1).

(9) Subsection (4)(b) and (c) are to be read in accordance with section 83(3).

#### **Determining who is nominated person**

30 **83.—**(1) Where a person (“D”) is determining for any purpose of this Act whether another person (“P”) has a nominated person or who P's nominated person is, then unless D has reason to believe that an action mentioned in subsection (2) has been taken, D may assume that that action has not been taken.

(2) The actions referred to in subsection (1) are—

(a) the appointment of a person as P's nominated person;

35 (b) the revocation of such an appointment;

(c) a declaration by P that a particular person is not to be P's default nominated person;

(d) any other action under Part 3 which would affect whether P has a nominated person or who P's nominated person is.

40 (3) For the purposes of this Act it is “practicable to establish” whether a person has a nominated person, or who a person's nominated person is, if it is practicable to form a reasonable belief about that matter (having regard to subsection (1)).

*Mental Capacity*

PART 4

INDEPENDENT ADVOCATES

*Independent advocates*

**Independent advocates**

5       **84.**—(1) Each HSC trust must make arrangements to secure that, where the trust  
is required by section 89 to instruct an independent advocate to represent and  
provide support to a person (“P”) in the determination of whether a particular act  
in relation to which P lacks capacity would be in P’s best interests, an independent  
advocate is available to be instructed by the trust to represent and provide support  
10 to P in that determination.

(2) Arrangements under subsection (1) may include provision for payments to  
be made to, or in relation to, persons carrying out functions by virtue of the  
arrangements.

15       (3) In making arrangements under subsection (1), and instructing an  
independent advocate under section 89, an HSC trust must have regard to the  
principle that a person to whom a proposed act would relate should, so far as  
practicable, be represented by someone who is independent of any person who will  
be responsible for the act if it is done.

20       (4) In this Act “an independent advocate” means a person who has been  
appointed by an HSC trust, in accordance with regulations under the following  
provisions of this section, to be a person to whom the trust may from time to time  
offer instructions under section 89.

(5) The Department may make regulations about the arrangements that may be  
entered into by HSC trusts for the purposes of this section.

25       (6) The regulations may in particular—

- (a) provide that a person may be appointed as mentioned in subsection (4)  
only if the person meets prescribed conditions;
- (b) provide for the appointment of a person to be subject to prescribed  
conditions;
- 30       (c) enable an appointment to be such that the person appointed will only be  
offered instructions of a description specified by the appointment.

(7) The conditions that may be prescribed under subsection (6)(a) include—

- (a) a condition that the person is approved, or belongs to a description of  
persons approved, in accordance with the regulations;
- 35       (b) a condition that the person has prescribed qualifications or skills or has  
undertaken prescribed training.

**Functions of independent advocates: provision of support, etc**

**85.**—(1) The Department may make regulations about the functions of  
independent advocates.

40       (2) The regulations may in particular require prescribed steps to be taken by an  
independent advocate who has been instructed under section 89 to represent and

provide support to a person (“P”) in the determination of whether a particular act in relation to which P lacks capacity would be in P’s best interests.

(3) The steps that may be prescribed under subsection (2) include steps for the purpose of—

- 5 (a) providing support to P so that P may participate as fully as possible in any relevant decision;
- (b) obtaining and evaluating relevant information;
- (c) ascertaining P’s past and present wishes and feelings, and the beliefs and values that would be likely to influence P’s decision if P had capacity;
- 10 (d) ascertaining what alternative courses of action are available in relation to P;
- (e) informing persons responsible for determining what would be in P’s best interests of the independent advocate’s conclusions;
- 15 (f) informing P’s nominated person (if any) of matters relevant to the nominated person.

(4) The regulations may also make provision as to circumstances in which an independent advocate may challenge, or provide assistance for the purposes of challenging, any relevant decision.

*Procedure for ensuring that an independent advocate is instructed*

20 **Request for independent advocate to be instructed**

**86.**—(1) This section applies where it reasonably appears to an appropriate healthcare professional—

- 25 (a) that a determination needs to be made of whether a particular act would be in the best interests of a person (“P”) who is 16 or over and lacks capacity in relation to the matter; and
- (b) that by reason of section 35 or 53, an independent advocate needs to be instructed to represent and provide support to P in that determination.

(2) The appropriate healthcare professional may request the relevant trust to instruct an independent advocate to represent and provide support to P in the determination of whether the act would be in P’s best interests.

(3) A request under this section may be made only if the steps required by section 87 have been taken so far as practicable.

(4) A request under this section must be in a prescribed form and include prescribed information.

35 (5) In this section “the relevant trust” means the HSC trust in whose area the act would be carried out.

(6) Regulations may prescribe the descriptions of persons who are “appropriate healthcare professionals” for the purposes of this section.

**Steps to be taken before independent advocate may be requested**

40 **87.**—(1) The steps referred to in section 86(3) are as follows.

- (2) P must be given prescribed information relating to independent advocates.

(3) P must be given an opportunity to decide whether to make a declaration under section 88 (refusal by P of independent advocate).

(4) If P's decision is to make such a declaration, P must be given an opportunity to make that declaration.

5 (5) But the steps in subsections (3) and (4) need not be taken where P does not have capacity to make a declaration under section 88.

(6) The information prescribed under subsection (2) must include notice that, if an independent advocate is instructed, this may result in information about P being disclosed by virtue of this Act to the independent advocate.

#### 10 **Right to declare that no independent advocate to be instructed**

**88.**—(1) Where the steps in section 87 have been taken, P may (at any time when P has capacity to do so) declare that he or she does not wish an independent advocate to be instructed to represent and provide support to him or her in the matter in question.

15 (2) A declaration may be revoked by P at any time when P has capacity to do so.

(3) A declaration, or a revocation of a declaration, is valid only if it is in writing and the conditions of section 93 (formalities) are met.

(4) Where a declaration has been made (and not revoked)—

20 (a) no request may be made under section 86 for an independent advocate to be instructed to represent and provide support to P in the matter in question; and

(b) accordingly, no such instruction may be given under section 89.

(5) In this section “declaration” means a declaration under this section.

#### **Instruction of independent advocate**

25 **89.** Where—

(a) an HSC trust receives a request duly made under section 86 for the trust to instruct an independent advocate to represent and provide support to a person (“P”) in the determination of whether a particular act would be in P's best interests, and

30 (b) no declaration has been made by P under section 88 in relation to the matter (or a declaration has been made but revoked),

the trust must instruct an independent advocate to represent and provide support to P in the determination of whether the act would be in P's best interests.

#### **Powers of independent advocates**

35 **90.**—(1) This section applies where an independent advocate has been instructed as mentioned in section 89 to represent and provide support to a person (“P”).

(2) The independent advocate may do anything within subsection (3) or (4) for the purpose of exercising any of his or her functions.

40 (3) The independent advocate may, at any reasonable time, visit P and interview P in private.

(4) The independent advocate may, at any reasonable time, require the production of, examine and take copies of—

- (a) any health records relating to P, or
- (b) any records relating to P's care, treatment or personal welfare,

5 that the person holding the record considers may be relevant to the independent advocate's investigation.

*Procedure after instruction of independent advocate*

**Right of person to discontinue involvement of independent advocate**

10 **91.**—(1) Where an independent advocate has been instructed under section 89 to represent and provide support to a person in a matter, the person may (at any time when the person has capacity to do so) declare that he or she does not wish to continue to have the services of an independent advocate in the matter.

(2) Where a declaration is made, the HSC trust that instructed the independent advocate must withdraw the instruction.

15 (3) A declaration may be revoked by the person at any time when the person has capacity to do so.

(4) A declaration, or a revocation of a declaration, is valid only if it is in writing and the conditions of section 93 (formalities) are met.

(5) In this section “declaration” means a declaration under this section.

20 **Continuing duty of trust in relation to independent advocate**

**92.**—(1) The duty of an HSC trust under section 89 is to be taken to include a duty to instruct a new independent advocate to represent and provide support to P in the matter in question if for any reason an independent advocate previously instructed under that section to represent and provide support to P in that matter  
25 ceases to be able to do so.

(2) But this does not apply where—

- (a) the reason why the independent advocate previously instructed is no longer able to represent and provide support to P in the matter is that P has made a declaration under section 91; and
- 30 (b) that declaration has not been revoked.

*Formalities*

**Formalities for declarations under Part 4**

**93.**—(1) This section applies to the making or revocation of a declaration under section 88 or 91.

35 (2) For the purposes of section 88(3) or 91(4), the conditions of this section are met if—

- (a) the document containing the declaration or revocation is signed by the person making the declaration or revocation (“P”);
- (b) P's signature is witnessed by a person of a prescribed description; and
- 40 (c) the person witnessing the signature certifies that, in his or her opinion, P—

- (i) understands the effect of the declaration or revocation; and
- (ii) has not been subjected to any undue pressure in relation to the declaration or revocation.

5 (3) Regulations may make provision for subsection (2) to have effect with prescribed modifications where the person making or revoking the declaration is physically unable to make a signature.

*Power to adjust role of advocate*

**Power to adjust role of independent advocate**

94.—(1) The Department may by regulations—

- 10 (a) expand the role of independent advocates in relation to persons who are 16 or over and lack capacity;
- (b) adjust the obligation to make arrangements imposed by section 84.

(2) The regulations may in particular—

- 15 (a) prescribe circumstances in which an independent advocate must be instructed by a person of a prescribed description to represent and provide support to a person who lacks capacity;
- (b) prescribe circumstances in which an independent advocate may be so instructed;
- (c) contain provision about the making of requests for independent advocates to be instructed in prescribed circumstances;
- 20 (d) contain provision about the functions of independent advocates instructed in prescribed circumstances.

(3) The regulations may make provision in any way that the Department considers appropriate and may in particular—

- 25 (a) apply, or make provision corresponding to, any provision within subsection (4) (with or without modifications);
- (b) amend any provision of this Part.

(4) The provisions are—

- (a) any provision of this Part;
- 30 (b) any provision of regulations made under this Part;
- (c) any provision that could be made by regulations under this Part.

*Mental Capacity*

PART 5

LASTING POWERS OF ATTORNEY ETC

CHAPTER 1

LASTING POWERS OF ATTORNEY

5 *Creation of lasting power of attorney*

**Lasting powers of attorney**

95.—(1) A lasting power of attorney is a power of attorney by which the donor confers on the attorney (or attorneys) authority to make decisions about (or about specified matters concerning) all or any of the following—

- 10 (a) the donor’s care, treatment and personal welfare,  
(b) the donor’s property and affairs,

and which includes authority to make such decisions in circumstances where the donor no longer has capacity.

(2) A lasting power of attorney is created only if—

- 15 (a) an instrument conferring authority of the kind mentioned in subsection (1) is made and registered in accordance with Schedule 4;  
(b) at the time when the donor executes the instrument, the donor is 18 or over and has capacity to execute it; and  
(c) section 99 (requirements as respects attorneys) is complied with.

20 (3) An instrument which—

- (a) purports to create a lasting power of attorney, but  
(b) does not comply with this section, section 99 or Schedule 4,  
confers no authority.

(4) The authority conferred by a lasting power of attorney is subject to—

- 25 (a) the provisions of this Act and, in particular—  
(i) sections 96 to 98 (restrictions);  
(ii) sections 1, 2, 5 and 7 (principles, best interests); and  
(b) any conditions or restrictions specified in the instrument.

(5) In the following provisions of this Part, in relation to a lasting power of attorney or an instrument executed with a view to creating such a power—

- 30 (a) any reference to “care, treatment and personal welfare” includes matters concerning care, treatment or personal welfare that are specified in the power or instrument;  
(b) any reference to “property and affairs” includes matters concerning  
35 property or affairs that are specified in the power or instrument.

(6) Subsections (2) and (3) are subject to—

- (a) section 100(5) (joint and several appointments: breach of requirements as respects some but not all attorneys); and  
(b) section 101(6) (breach of requirements as respects replacement attorneys).



*Scope of lasting power of attorney***Restrictions on scope of lasting power of attorney**

5 **96.**—(1) Where a lasting power of attorney authorises an attorney to make decisions about the donor’s care, treatment and personal welfare (or about any of those matters), the authority—

(a) does not extend to making such decisions in circumstances other than those where the donor lacks, or the attorney reasonably believes that the donor lacks, capacity; and

10 (b) is subject to section 97(2) (effective advance decision to refuse treatment made after execution of instrument).

(2) Where a lasting power of attorney authorises an attorney to make decisions about the donor’s treatment (whether or not it also authorises the making of decisions about other matters), the authority extends to giving or refusing consent to the provision of a treatment by a person providing health care for the donor; but  
15 this subsection—

(a) is subject to subsections (1) and (7) and to any conditions or restrictions in the instrument; and

20 (b) authorises the giving or refusing of consent to the provision of life-sustaining treatment only if the instrument contains express provision to that effect.

(3) A lasting power of attorney does not authorise an attorney to deprive the donor of his or her liberty or to authorise another person to deprive the donor of his or her liberty.

25 (4) A lasting power of attorney authorises an attorney to do, or to authorise another person to do, an act restraining the donor only if the conditions in subsection (6) are met.

(5) In subsection (4) an “act restraining the donor” means an act (other than a deprivation of the donor’s liberty) which—

30 (a) is intended to restrict the donor’s liberty of movement, whether or not the donor resists; or

(b) is a use of force or a threat to use force and is done with the intention of securing the doing of an act which the donor resists.

(6) The conditions referred to in subsection (4) are that the attorney reasonably believes—

35 (a) that the donor lacks capacity in relation to the matter in question;

(b) that there is a risk of harm to the donor if the attorney does not do or (as the case may be) authorise the act restraining the donor; and

(c) that doing or authorising that act is a proportionate response to—

40 (i) the likelihood of harm to the donor; and

(ii) the seriousness of the harm concerned.

(7) A lasting power of attorney does not authorise an attorney to give consent to psychosurgery in respect of the donor.

(8) The Department may by regulations amend subsection (7) so as to extend the descriptions of treatment to which an attorney may not give consent.

### **Relationship between advance decisions and lasting powers of attorney**

5 **97.**—(1) This section applies in relation to any authority conferred on an attorney by a lasting power of attorney to give or refuse consent to the carrying out or continuation of a treatment.

(2) The authority is subject to any effective advance decision to refuse the treatment made by the donor after, or at the same time as, the execution of the relevant instrument.

10 (3) Any relevant decision to refuse the treatment made by the donor before the execution of the relevant instrument is to be treated as having been withdrawn by the execution of the relevant instrument (and accordingly is not an effective advance decision to refuse the treatment).

(4) In this section—

15 (a) “an effective advance decision to refuse the treatment” means a decision which, under the common law relating to advance decisions, has the same effect as if at the material time the donor—

- (i) refused consent to the treatment’s being carried out or continued; and
- (ii) had capacity to refuse that consent;

20 (b) “the material time” means the time when the question arises whether the treatment should be carried out or continued;

(c) “relevant decision to refuse the treatment” means a decision that would (but for the execution of the relevant instrument) have been an effective advance decision to refuse the treatment;

25 (d) references to the “execution of the relevant instrument” are to the execution by the donor of an instrument with a view to creating the lasting power of attorney.

(5) Subsection (3) does not affect any rule of law under which a decision that would otherwise fall within subsection (4)(a) is to be regarded as having been  
30 withdrawn.

### **Scope of lasting powers of attorney: gifts**

**98.**—(1) Where a lasting power of attorney authorises an attorney to make decisions about the donor’s property and affairs, it does not authorise the attorney to dispose of the donor’s property by making gifts except to the extent permitted  
35 by subsection (2).

(2) The attorney may make gifts—

(a) on customary occasions to persons (including the attorney) who are related to or associated with the donor, or

40 (b) to any charity to which the donor made or might have been expected to make gifts,

if the value of each such gift is not unreasonable having regard to all the circumstances and, in particular, the size of the donor’s estate.

(3) “Customary occasion” means—

- (a) a birthday, the birth of a child, a marriage or anniversary of a marriage, or the formation or anniversary of a civil partnership; or
  - (b) any other occasion on which presents are customarily given within families or among friends or associates.
- 5 (4) Subsection (2) is subject to any conditions or restrictions in the instrument.

*Appointment of attorneys and replacements*

**Appointment of attorneys: requirements as respects attorneys**

**99.**—(1) A person appointed as an attorney by an instrument executed with a view to creating a lasting power of attorney (a “relevant instrument”) must be—

- 10 (a) an individual who is 18 or over at the time the instrument is executed; or
- (b) if the instrument relates only to the donor’s property and affairs, either such an individual or a trust corporation.

(2) An individual who is bankrupt may not be appointed by a relevant instrument as an attorney in relation to the donor’s property and affairs.

15 **Appointment of two or more attorneys**

**100.**—(1) This section applies in relation to an instrument executed with a view to creating a lasting power of attorney which appoints two or more persons to act as attorneys.

(2) The instrument may appoint them to act—

- 20 (a) jointly;
- (b) jointly and severally; or
- (c) jointly in respect of some matters and jointly and severally in respect of others.

25 (3) To the extent to which it does not specify whether they are to act jointly or jointly and severally, the instrument is to be treated as appointing them to act jointly.

(4) If they are to act jointly in respect of all matters, a failure, as respects one of the persons, to comply with a requirement of section 99 or Part 1 or 2 of Schedule 4 prevents a lasting power of attorney from being created.

30 (5) If they are to act jointly and severally in respect of some or all matters, a failure, as respects one of the persons, to comply with a requirement of section 99 or Part 1 or 2 of Schedule 4—

- (a) prevents the appointment from taking effect in that person’s case; but
- 35 (b) does not prevent a lasting power of attorney from being created in the case of the other or others (limited, where they are to act jointly and severally only in respect of some matters, to those matters).

**Appointment of replacement attorneys**

**101.**—(1) An instrument executed with a view to creating a lasting power of attorney—

- (a) cannot give a person appointed as attorney power to appoint a substitute or successor (whether of that person or any other person appointed as attorney); but
  - (b) may itself appoint one or more persons (“replacement attorneys”) to replace any person appointed as attorney on the occurrence of a terminating event which has the effect of terminating that person’s appointment.
- (2) An instrument that appoints a person as a replacement attorney may not appoint a person to replace a replacement attorney (in the event that a terminating event terminates the appointment of the replacement attorney).
- (3) Where an instrument executed with a view to creating a lasting power of attorney—
- (a) appoints two or more persons as attorneys, and
  - (b) appoints two or more persons as replacement attorneys,
- it may specify the order in which the appointments of the replacement attorneys are to take effect.
- (4) Nothing in subsection (3) limits the power under subsection (1)(b) for an instrument to specify a particular person (or persons) as the person who is to replace a particular person appointed as attorney (“A”) on the occurrence of a terminating event that terminates A’s appointment.
- (5) Section 99 (requirements as respects attorneys) applies in relation to the appointment of a person as a replacement attorney as it applies in relation to the appointment of a person as an attorney.
- (6) A failure, in relation to a person appointed as a replacement attorney, to comply with a requirement of section 99 or Part 1 or 2 of Schedule 4 does not prevent a lasting power of attorney from being created.
- (7) In this section “a terminating event” means—
- (a) an event mentioned in section 105(2)(a) to (f);
  - (b) a termination of an appointment under section 108(4)(b).

**30 Appointment of two or more replacements for a single initial appointee**

- 102.**—(1) This section applies to an instrument executed with a view to creating a lasting power of attorney that—
- (a) appoints one person (“A”) as attorney; and
  - (b) under section 101(1)(b) appoints two or more persons (“the replacement attorneys”) to replace A.
- (2) The instrument may provide that the replacement attorneys, if they replace A, are to act—
- (a) jointly;
  - (b) jointly and severally; or
  - (c) jointly in respect of some matters and jointly and severally in respect of others.

(3) To the extent to which it does not specify whether they are to act jointly or jointly and severally, the instrument is to be treated as appointing them to act jointly.

5 (4) Subsections (5) and (6) apply where, in relation to some but not all of the replacement attorneys, there is a failure to comply with a requirement of section 99 or Part 1 or 2 of Schedule 4.

(5) To the extent that the replacement attorneys were appointed to act jointly, the appointment mentioned in subsection (1)(b) is of no effect.

10 (6) To the extent that they were appointed to act jointly and severally, that appointment is to be treated as being an appointment of such of the replacement attorneys as respects whom there is no failure to comply with a requirement of section 99 or Part 1 or 2 of Schedule 4.

### **Replacement attorneys: position where two or more initial appointees**

**103.**—(1) This section applies where—

- 15 (a) an instrument executed with a view to creating a lasting power of attorney appoints two or more persons as attorneys (the “initial appointees”);
- (b) an initial appointee is replaced under the instrument by virtue of section 101(1)(b); and
- 20 (c) on that replacement, there are at least two relevant appointees under the instrument.

(2) A person is a “relevant appointee” under the instrument if—

- (a) the person was appointed as an attorney by the instrument (whether or not to act jointly with the initial appointee who has been replaced) and no terminating event has terminated the person’s appointment; or
- 25 (b) the person has replaced an initial appointee and no terminating event has terminated the person’s appointment.

(3) The relevant appointees are—

- (a) if the initial appointees were appointed to act jointly, to be treated as appointed to act jointly;
- 30 (b) if the initial appointees were appointed to act jointly and severally, to be treated as appointed to act jointly and severally;
- (c) if the initial appointees were appointed to act jointly in respect of some matters and jointly and severally in respect of others, to be treated as appointed to act in the same way.

35 (4) But where a terminating event has terminated a relevant appointee’s appointment in relation to the donor’s property and affairs (but not in relation to other matters), subsection (3) is subject to that termination.

(5) In this section “terminating event” has the same meaning as in section 101.

### **Revocation of lasting power etc by donor or on donor’s bankruptcy**

40 **104.**—(1) Where—

- (a) an instrument (“a relevant instrument”) is executed with a view to creating a lasting power of attorney, or

(b) a lasting power of attorney is registered, the donor may, at any time when the donor has capacity to do so, revoke the instrument or the lasting power of attorney.

5 (2) Where a relevant instrument has been executed (but not registered) and the donor is bankrupt, the bankruptcy revokes the instrument so far as it relates to the donor's property and affairs.

(3) Where the donor of a lasting power of attorney is bankrupt—

10 (a) if the donor is bankrupt merely because an interim bankruptcy restrictions order has effect, the power is suspended, so far as it relates to the donor's property and affairs, for so long as the order has effect;

(b) otherwise, the bankruptcy revokes the power so far as it relates to the donor's property and affairs.

### **Revocation etc: events relating to the attorney**

15 **105.**—(1) This section applies where an event mentioned in subsection (2) occurs in relation to a person (“A”) appointed as an attorney or replacement attorney by—

(a) a lasting power of attorney; or

(b) an instrument executed with a view to creating a lasting power of attorney.

(2) The events referred to in subsection (1) are—

20 (a) the disclaimer of the appointment by A in accordance with any prescribed requirements;

(b) the death of A;

(c) the bankruptcy of A (but see subsections (5) to (8));

(d) if A is a trust corporation, its winding-up or dissolution;

25 (e) the dissolution or annulment of a marriage or civil partnership between the donor and A (but see subsections (5) and (9));

(f) the lack of capacity of A.

(3) The event terminates A's appointment.

30 (4) If A is an attorney under the power or an intended attorney under the instrument, the event revokes the power or instrument unless—

(a) A was appointed as an attorney by the power or instrument and is replaced under its terms; or

35 (b) A is one of two or more persons who were to act jointly and severally in respect of any matter and, after the event, there is at least one remaining attorney or intended attorney (as the case may be).

(5) Subsections (3) and (4) are subject—

(a) in the case of an event mentioned in subsection (2)(c), to subsections (6) and (7);

(b) in the case of an event mentioned in subsection (2)(e), to subsection (9).

40 (6) The bankruptcy of A does not terminate A's appointment, or revoke the instrument or power, in so far as A's authority relates to the donor's care, treatment and personal welfare.

(7) Where A is an attorney under a lasting power of attorney and is bankrupt merely because an interim bankruptcy restrictions order has effect, A's appointment and the power are suspended, so far as they relate to the donor's property and affairs, for so long as the order has effect.

5 (8) The reference in subsection (7) to the suspension of the power is to be read, where A is one of two or more attorneys who are to act jointly and severally in respect of any matter, as a reference to the suspension of the power so far as it relates to A.

10 (9) The dissolution or annulment of a marriage or civil partnership does not terminate A's appointment, or revoke the instrument or power, if the instrument or power provides that it is not to do so.

(10) In subsection (4) "intended attorney" means a person who, if the instrument were registered and a lasting power of attorney were created, would be an attorney under the lasting power.

15 *Protection of attorney and others*

**Protection of attorney and others if no power created or power revoked**

**106.**—(1) Subsections (2) to (4) apply if—

- (a) an instrument has been registered under Schedule 4 as a lasting power of attorney, but  
 20 (b) a lasting power of attorney was not created,  
 whether or not the registration has been cancelled at the time of the act or transaction in question.

(2) A person ("X") who acts (whether alone or with others) in purported exercise of the power does not incur any liability (to the donor or any other  
 25 person) because of the non-existence of the power unless at the time of acting X—

- (a) knows that a lasting power of attorney was not created; or  
 (b) is aware of circumstances which, if a lasting power of attorney had been created, would have terminated X's authority to act as an attorney.

(3) Any transaction between—

- 30 (a) one or more persons acting in purported exercise of the power, and  
 (b) another person ("Y"),

is, in favour of Y, as valid as if the power had been in existence; but this is subject to subsection (4).

(4) Subsection (3) does not apply if, at the time of the transaction, Y—

- 35 (a) knows that a lasting power of attorney was not created; or  
 (b) is aware of circumstances which, if a lasting power of attorney had been created, would have terminated the authority of any person within subsection (3)(a) to act as an attorney.

40 (5) If the interest of a purchaser depends on whether a transaction was valid by virtue of subsection (3), it is to be conclusively presumed in favour of the purchaser that the transaction was valid if—

- (a) the transaction was completed within 12 months of the date on which the instrument was registered; or

- (b) Y makes a statutory declaration, before or within 3 months after the completion of the purchase, that Y had no reason at the time of the transaction to doubt that the person or persons mentioned in subsection (3) (a) had authority to dispose of the property which was the subject of the transaction.

(6) In its application to a lasting power of attorney which relates to matters in addition to the donor's property and affairs, section 4 of the Powers of Attorney Act (Northern Ireland) 1971 (protection where power is revoked) has effect as if references to revocation included the cessation of the power in relation to the donor's property and affairs.

### **Reliance on authority of attorney in relation to treatment etc**

**107.**—(1) This section applies if—

- (a) an instrument has been registered under Schedule 4 as a lasting power of attorney granted by a person (“P”);
- (b) another person (“D”) does an act in connection with the care, treatment or personal welfare of P;
- (c) D does the act with the consent of a person (“A”) purporting to be an attorney under a lasting power of attorney granted by P; and
- (d) either A is not such an attorney, or it is not within the scope of A’s authority to consent in relation to the matter in question.

(2) If—

- (a) before doing the act, D takes reasonable steps to establish whether—
- (i) A is an attorney under a lasting power of attorney granted by P, and
- (ii) it is within the scope of A’s authority to consent in relation to the matter in question, and
- (b) when doing the act, D reasonably believes that A is such an attorney and has authority to consent in relation to the matter,

D does not incur any liability in relation to the act because A was not such an attorney or, as the case may be, did not have such authority.

### *Powers of the court*

#### **Powers of court as to lasting powers of attorney**

**108.**—(1) This section applies if—

- (a) a person has executed an instrument with a view to creating a lasting power of attorney (a “relevant instrument”) or purported to execute a relevant instrument; or
- (b) an instrument has been registered as a lasting power of attorney.

(2) The court may determine any question relating to—

- (a) whether one or more of the requirements for the creation of a lasting power of attorney have been met;
- (b) whether the instrument or power has been revoked or has otherwise come to an end.

(3) Subsection (4) applies if the court is satisfied—



- (a) that fraud or undue pressure was used to induce a person to create a lasting power of attorney or execute a relevant instrument;
- (b) that an attorney under a lasting power of attorney has behaved, or is behaving, in a way that contravenes the attorney's authority or is not in the donor's best interests; or
- (c) that a person appointed as attorney or replacement attorney by a lasting power of attorney or relevant instrument proposes to behave as attorney in a way that would contravene the attorney's authority or would not be in the donor's best interests.
- (4) Where this subsection applies, the court may—
- (a) direct that an instrument purporting to create the lasting power of attorney is not to be registered; or
- (b) if the donor lacks capacity to revoke the instrument or the lasting power of attorney—
- (i) revoke the instrument or power; or
- (ii) terminate the appointment of a person appointed as attorney or replacement attorney by the instrument or power.

#### **Powers of court as to operation of lasting powers of attorney**

- 109.**—(1) The court may determine any question as to the meaning or effect of a lasting power of attorney or an instrument purporting to create one.
- (2) The court may—
- (a) give directions with respect to decisions—
- (i) which an attorney under a lasting power of attorney has authority to make; and
- (ii) which the donor lacks capacity to make;
- (b) give any consent or authorisation to act which an attorney under a lasting power of attorney would have to obtain from the donor if the donor had capacity to give it.
- (3) The court may, if the donor of a lasting power of attorney lacks capacity to do so—
- (a) give directions to an attorney with respect to the rendering by the attorney of reports or accounts and the production of records kept by the attorney for that purpose;
- (b) require an attorney (“A”) to supply information or produce documents or things in A's possession as attorney;
- (c) give directions with respect to the remuneration or expenses of an attorney;
- (d) relieve an attorney wholly or partly from any liability which the attorney has or may have incurred on account of a breach of a duty as attorney.
- (4) The court may authorise the making of gifts, under a lasting power of attorney, which are not within section 98(2) (permitted gifts).

CHAPTER 2  
ENDURING POWERS OF ATTORNEY

**Enduring powers of attorney**

5 **110.**—(1) The Enduring Powers of Attorney (Northern Ireland) Order 1987 ceases to have effect.

(2) Accordingly, no enduring power of attorney within the meaning of that Order may be created after the commencement of subsection (1).

(3) Schedule 5 contains provision about existing enduring powers of attorney and transitional provisions and savings in relation to that Order.

10

PART 6

HIGH COURT POWERS: DECISIONS AND DEPUTIES

*Decisions and deputies*

**The court’s power to make declarations**

15 **111.**—(1) The court may make declarations in relation to a person who is 16 or over as to—

- (a) whether the person has or lacks capacity to make a decision specified in the declaration;
- (b) whether the person has or lacks capacity to make decisions on a matter described in the declaration;
- 20 (c) the lawfulness or otherwise of any act done, or yet to be done, in relation to the person.

(2) In this section “act” includes an omission and a course of conduct.

**The court’s powers to make decisions and appoint deputies: general**

**112.**—(1) This section applies if—

- 25 (a) a person (“P”) lacks capacity in relation to a matter or matters concerning—
  - (i) P’s care, treatment or personal welfare, or
  - (ii) P’s property and affairs; and
- (b) P is 16 or over or section 114(3) applies.

30 (2) The court may—

- (a) by making an order, make on P’s behalf a decision or decisions that P lacks capacity to make in relation to the matter or matters; or
- (b) appoint a person (a “deputy”) to make decisions on P’s behalf in relation to the matter or matters (see further sections 115 and 116).

35 (3) The powers of the court under this section are subject to the provisions of this Act and, in particular, to sections 1, 2, 5 and 7 (principles, best interests).

(4) When deciding whether it would be in P's best interests to appoint a deputy, the court must (in addition to complying with section 7) have regard to the principles that—

- 5 (a) a decision by the court is to be preferred to the appointment of a deputy to make a decision; and
- (b) the powers conferred on a deputy should be as limited in scope and duration as is practicable in the circumstances.

(5) The court may—

- 10 (a) make such further orders,
  - (b) give such directions, and
  - (c) confer on a deputy such powers or impose on a deputy such duties,
- as it considers appropriate for giving effect to, or otherwise in connection with, an order or appointment made by it under subsection (2).

15 (6) The court may make an order or appointment under any provision of this section, or give a direction under subsection (5), on such terms as it considers are in P's best interests (even where no application is before the court for an order, appointment or direction on those terms).

(7) An order of the court may be varied or discharged by a subsequent order.

20 (8) The court may, in particular, revoke the appointment of a deputy or vary the powers conferred on a deputy if it is satisfied that the deputy—

- (a) has behaved, or is behaving, in a way that contravenes the authority conferred on the deputy by the court or is not in P's best interests; or
- (b) proposes to behave in a way that would contravene that authority or would not be in P's best interests.

#### 25 **Section 112 powers: care, treatment and personal welfare**

**113.**—(1) The powers under section 112 as respects P's care, treatment and personal welfare extend in particular to—

- (a) deciding where P is to live;
- (b) deciding what contact, if any, P is to have with any specified persons;
- 30 (c) making an order prohibiting a specified person from having contact with P;
- (d) giving or refusing consent to the provision of a treatment by a person providing health care for P;
- (e) giving a direction that a person responsible for P's health care allow a different person to take over that responsibility.

35 (2) Subsection (1) is subject to section 116 (restrictions on deputies).

#### **Section 112 powers: property and affairs**

**114.**—(1) The powers under section 112 as respects P's property and affairs extend in particular to—

- (a) the control and management of P's property;
- 40 (b) the sale, exchange, charging, gift or other disposition of P's property;
- (c) the acquisition of property in P's name or on P's behalf;

- (d) the carrying on, on P's behalf, of any profession, trade or business;
  - (e) the taking of a decision which will have the effect of dissolving a partnership of which P is a member;
  - (f) the carrying out of any contract entered into by P;
  - 5 (g) the discharge of P's debts and of any of P's obligations, whether legally enforceable or not;
  - (h) the settlement of any of P's property, whether for P's benefit or for the benefit of others;
  - (i) the execution for P of a will;
  - 10 (j) the exercise of any power (including a power to consent) vested in P whether beneficially or as trustee or otherwise;
  - (k) the conduct of legal proceedings in P's name or on P's behalf.
- (2) No will may be executed by virtue of subsection (1)(i) at a time when P is under 18.
- 15 (3) The powers under section 112 as respects any matter concerning P's property and affairs (except the power to execute a will for P) may be exercised even if P is under 16 if the court considers it likely that P will still lack capacity to make decisions in respect of that matter when P reaches 18.
- (4) Schedule 6 supplements the provisions of this section.
- 20 (5) Subsection (1) is subject to section 116 (restrictions on deputies).

### **Appointment of deputies**

- 115.**—(1) A deputy appointed by the court must be—
- (a) an individual who is 18 or over; or
  - 25 (b) as respects powers concerning property and affairs, either such an individual or a trust corporation.
- (2) The court may appoint an individual by appointing the holder for the time being of a specified office or position.
- (3) A person may be appointed as a deputy only with that person's consent.
- (4) The court may appoint two or more deputies to act—
- 30 (a) jointly;
  - (b) jointly and severally; or
  - (c) jointly in respect of some matters and jointly and severally in respect of others.
- (5) When appointing a deputy or deputies, the court may at the same time
- 35 appoint one or more other persons to succeed the existing deputy or those deputies—
- (a) in such circumstances, or on the happening of such events, as may be specified by the court;
  - (b) for such period as may be so specified.
- 40 (6) A deputy is to be treated as P's agent in relation to anything done or decided by the deputy within the scope of the deputy's appointment and in accordance with this Act.

(7) The deputy is entitled—

- (a) to be reimbursed out of P's property for the deputy's reasonable expenses in discharging the deputy's functions; and
- (b) if the court so directs when appointing the deputy, to remuneration out of P's property for discharging them.

(8) The court may confer on a deputy powers to—

- (a) take possession or control of all or any specified part of P's property;
- (b) exercise all or any specified powers in respect of it, including such powers of investment as the court may determine.

(9) The court may require a deputy—

- (a) to give to the Public Guardian such security as the court considers appropriate for the proper performance of the deputy's functions; and
- (b) to submit to the Public Guardian such reports at such times or at such intervals as the court may direct.

### Restrictions on deputies

**116.**—(1) A deputy does not have power to make a decision on behalf of P in relation to a matter unless P lacks capacity, or the deputy reasonably believes that P lacks capacity, in relation to the matter.

(2) The authority conferred on a deputy is subject to the provisions of this Act and, in particular, sections 1, 2, 5 and 7 (principles, best interests).

(3) Nothing in section 112 or 113 permits a deputy to be given power—

- (a) to prohibit a specified person from having contact with P;
- (b) to direct a person responsible for P's health care to allow a different person to take over that responsibility.

(4) Nothing in section 112 or 114 permits a deputy to be given powers with respect to—

- (a) the settlement of any of P's property, whether for P's benefit or for the benefit of others;
- (b) the execution for P of a will; or
- (c) the exercise of any power (including a power to consent) vested in P whether beneficially or as trustee or otherwise.

(5) A deputy may not be given power to make a decision on behalf of P which is inconsistent with a decision that—

- (a) is made in accordance with this Act by an attorney under a lasting power of attorney granted by P; and
- (b) is within the scope of the attorney's authority.

(6) A deputy may not refuse consent to the provision of life-sustaining treatment to P.

(7) A deputy may not deprive P of his or her liberty or authorise another person to deprive P of his or her liberty.

(8) A deputy may not do, or authorise another person to do, an act restraining P unless in doing so the deputy is acting within the scope of an authority expressly conferred on the deputy by the court and the deputy reasonably believes—

- (a) that P lacks capacity in relation to the matter in question;
- 5 (b) that there is a risk of harm to P if the deputy does not do or (as the case may be) authorise the act restraining P; and
- (c) that doing or authorising that act is a proportionate response to—
  - (i) the likelihood of harm to P; and
  - (ii) the seriousness of the harm concerned.

10 (9) In this section an “act restraining P” means an act (other than a deprivation of P’s liberty) which—

- (a) is intended to restrict P’s liberty of movement, whether or not P resists; or
- (b) is a use of force or a threat to use force and is done with the intention of securing the doing of an act which P resists.

15 (10) A deputy may not give consent to psychosurgery in respect of P.

(11) The Department may by regulations amend subsection (10) so as to extend the descriptions of treatment to which a deputy may not give consent.

### **Reliance on authority of deputy in relation to treatment etc**

**117.**—(1) This section applies if—

- 20 (a) an order has been made under section 112(2)(b) appointing a deputy for a person (“P”);
- (b) another person (“D”) does an act in connection with the care, treatment or personal welfare of P;
- 25 (c) D does the act with the consent of a person (“C”) purporting to be P’s deputy; and
- (d) either C is not P’s deputy, or it is not within the scope of C’s authority to consent in relation to the matter in question.

(2) If—

- (a) before doing the act, D takes reasonable steps to establish whether—
  - 30 (i) C is P’s deputy, and
  - (ii) it is within the scope of C’s authority to consent in relation to the matter in question, and
- (b) when doing the act, D reasonably believes that C is P’s deputy and has authority to consent in relation to the matter,

35 D does not incur any liability in relation to the act because C was not P’s deputy or (as the case may be) did not have such authority.

### *Ancillary powers of the court*

#### **Interim orders and directions**

40 **118.** The court may, pending the determination of an application to it in relation to a person (“P”), make an order or give directions in respect of any matter if—

- (a) there is reason to believe that P lacks capacity in relation to the matter;

- (b) the matter is one to which the court's powers under this Part extend; and
- (c) it is in P's best interests to make the order, or give the directions, without delay.

### **Power to call for reports**

- 5     **119.**—(1) This section applies where, in proceedings brought in respect of a person (“P”) under this Part, the court is considering a question relating to P.
- (2) The court may require a report to be made to it by the Public Guardian or by a Court Visitor.
- (3) The court may require an HSC trust, the Regional Board or RQIA to arrange  
10 for a report to be made—
- (a) by one of its officers or employees; or
  - (b) by such other person (other than the Public Guardian or a Court Visitor) as that body considers appropriate.
- (4) The report must deal with such matters relating to P as the court may direct.
- 15     (5) Rules of court may specify matters which, unless the court directs otherwise, must also be dealt with in the report.
- (6) The report may be made in writing or orally, as the court may direct.

### **Powers of Public Guardian or Court Visitor in respect of reports under section 119(2)**

- 20     **120.**—(1) This section applies where, in proceedings brought in respect of a person (“P”) under this Part, the court imposes a requirement to make a report under section 119(2).
- (2) If the Public Guardian or a Court Visitor is making a visit in the course of complying with the requirement, he or she may interview P in private.
- 25     (3) If a Court Visitor who is a Special Visitor is making a visit in the course of complying with the requirement, he or she may if the court so directs carry out in private a medical, psychiatric or psychological examination of P's capacity and condition.
- (4) For the purpose of complying with the requirement, the Public Guardian or a  
30 Court Visitor may at all reasonable times require the production of, examine and take copies of—
- (a) any health record (as defined by section 293),
  - (b) any relevant record, or
  - (c) any court record,
- 35 so far as the record relates to P.
- (5) But if P has capacity in relation to whether the power under subsection (4) should be exercised, the power may be exercised only with P's consent.
- (6) In this section—
- 40     “court record” means documentation held by the court relating to the proceedings mentioned in subsection (1);

“relevant record” means a record relating to P’s care, treatment or personal welfare which is a record of or held by—

- (a) an HSC trust;
- (b) the Regional Board;
- 5 (c) RQIA;
- (d) a Northern Ireland department or its employees or agents;
- (e) the managing authority of an independent hospital; or
- (f) the managing authority of a care home.

*Practice and procedure*

10 **Applications to the court**

**121.**—(1) No permission is required for an application to the court for the exercise of any of its powers under this Part—

- (a) by a person who lacks, or is alleged to lack, capacity;
- 15 (b) if such a person is under 18, by anyone with parental responsibility for that person;
- (c) by the donor of a lasting power of attorney to which the application relates;
- (d) by a person who is an attorney under a lasting power of attorney to which the application relates;
- 20 (e) by a deputy appointed by the court for a person to whom the application relates;
- (f) by a person named in an existing order of the court, if the application relates to the order; or
- (g) where the application is made by virtue of section 127 (proceedings following inquiry by Public Guardian).

25 (2) But, subject to rules of court and to paragraph 21(2) of Schedule 9 (declarations relating to private international law), permission is required for any other application to the court for the exercise of any of its powers under this Act.

(3) In deciding whether to grant permission the court must (in particular) have regard to—

- 30 (a) the applicant’s connection with the person to whom the application relates;
- (b) the reasons for the application;
- (c) the benefit to the person to whom the application relates of a proposed order or directions; and
- (d) whether the benefit can be achieved in any other way.

35 **Rules of court**

**122.**—(1) In this section “proceedings” means proceedings before the court with respect to a person who lacks, or is alleged to lack, capacity (“P”).

(2) Rules of court may make provision as to the conduct of such proceedings including provision—

- 40 (a) as to the carrying out of preliminary or incidental inquiries;



- (b) as to the way and form in which proceedings are to be commenced and carried on;
- (c) as to the persons by whom proceedings may be commenced and carried on;
- 5 (d) as to the persons who are to be entitled to be notified of, to attend, or to take part in proceedings;
- (e) as to the evidence which may be authorised or required to be given in proceedings and the way (whether on oath or otherwise and whether orally or in writing) in which it is to be given;
- 10 (f) as to the administration of oaths and taking of affidavits for the purposes of proceedings;
- (g) for the allocation, in specified circumstances, of any specified description of proceedings to a specified judge or to specified descriptions of judges;
- (h) for the exercise of the jurisdiction of the court, in specified circumstances, by its officers or other staff;
- 15 (i) for enabling the court to appoint a suitable person (who may, with his or her consent, be the Official Solicitor) to act in the name of, or on behalf of, or to represent P;
- (j) for enabling an application to the court to be disposed of without a hearing;
- 20 (k) as to authorising or requiring—
- (i) the attendance and examination of persons who lack, or are alleged to lack capacity;
- (ii) the provision of information; and
- (iii) the production of documents;
- 25 (l) for enabling the court to proceed with, or with any part of, a hearing in the absence of P;
- (m) for enabling or requiring the proceedings or any part of them to be conducted in private and for enabling the court to determine who is to be admitted when the court sits in private and to exclude specified persons when it sits in public;
- 30 (n) as to what may be received as evidence (whether or not admissible apart from the rules) and the way in which it is to be presented;
- (o) for the enforcement of orders made and directions given in the proceedings;
- 35 (p) as to—
- (i) the making of orders for the payment of costs to or by persons attending, as well as persons taking part in, proceedings; and
- (ii) the way in which and funds out of which any such costs are to be paid;
- (q) the way in which, and funds from which, fees are to be paid;
- 40 (r) as to the termination of proceedings, whether on the death or recovery of P or otherwise, and the exercise, pending the termination of the proceedings, of powers exercisable under this Part in relation to P's—
- (i) care, treatment or personal welfare; or
- (ii) property or affairs;

- (s) for charging fees and costs upon P's estate;
- (t) for the payment of fees and costs within a specified time of P's death or the conclusion of the proceedings.

(3) Rules of court may also make provision as to appeals from decisions of the court in such proceedings, including provision—

- (a) that where a decision of the court is made by a person exercising the jurisdiction of the court by virtue of rules made under subsection (2)(h), an appeal from that decision lies to a judge of the court of a specified description and not to the Court of Appeal;
- (b) that, in specified cases, an appeal from a decision of the court may not be made without permission;
- (c) as to the person or persons entitled to grant permission to appeal;
- (d) as to any requirements to be met before permission is granted;
- (e) that where a judge of the court makes a decision on an appeal, no appeal may be made to the Court of Appeal from that decision unless the Court of Appeal considers that—
  - (i) the appeal would raise an important point of principle or practice; or
  - (ii) there is some other compelling reason for the Court of Appeal to hear it;
- (f) as to any considerations to be taken into account in relation to granting or refusing permission to appeal.

(4) A charge, created by virtue of subsection (2)(s), upon the estate of a person is not to cause any interest of that person in any property to fail or determine or to be prevented from recommencing.

(5) In this section “specified” means specified by the rules.

## PART 7

### PUBLIC GUARDIAN AND COURT VISITORS

#### *Public Guardian*

##### **The Public Guardian**

**123.**—(1) The Department of Justice must appoint an officer, to be known as the Public Guardian.

(2) The Department of Justice may pay to the Public Guardian such salary and allowances as it may determine.

(3) A determination under subsection (2) requires the approval of the Department of Finance.

(4) The Department of Justice may, after consulting the Public Guardian—

- (a) provide the Public Guardian with such officers and staff, or
- (b) enter into such contracts with other persons for the provision (by them or their sub-contractors) of officers, staff or services,

as it considers necessary for the proper performance of the Public Guardian's functions.

(5) Any functions of the Public Guardian may, to the extent authorised by the Public Guardian, be performed by any of the Public Guardian's officers.

### Functions of the Public Guardian

**124.**—(1) The Public Guardian has the following functions—

- 5 (a) establishing and maintaining a register of lasting powers of attorney;
- (b) establishing and maintaining a register of orders appointing deputies;
- (c) supervising deputies appointed by the court;
- (d) directing a Court Visitor to visit—
- 10 (i) a person who is an attorney under a lasting power of attorney,
- (ii) a deputy appointed by the court, or
- (iii) a person who proposes to grant or has granted a lasting power of attorney or for whom a deputy is appointed ("P"), and to make a report to the Public Guardian on such matters as the Public Guardian may direct;
- 15 (e) receiving security which the court requires a person to give for the performance of functions;
- (f) receiving reports from persons who are attorneys under lasting powers of attorney and deputies appointed by the court;
- (g) reporting to the court on such matters relating to proceedings under this Act (except proceedings under Part 10) as the court requires;
- 20 (h) dealing with representations (including complaints) about the way in which powers of an attorney under a lasting power of attorney or of a deputy appointed by the court are being exercised;
- (i) publishing (in any way the Public Guardian considers appropriate) any information the Public Guardian considers appropriate about the performance of the Public Guardian's functions.
- 25

(2) The functions conferred by subsection (1)(c), (d) and (h) may be performed in co-operation with any other person who has functions in relation to the care or treatment of P.

- 30 (3) The Department of Justice may by regulations make provision—
- (a) conferring on the Public Guardian other functions in connection with this Act;
- (b) in connection with the performance by the Public Guardian of his or her functions.

- 35 (4) Regulations made under subsection (3)(b) may in particular make provision as to—
- (a) the giving of security by deputies appointed by the court and the enforcement and discharge of security so given;
- 40 (b) the way in which, and funds into which, fees which may be charged by the Public Guardian under section 116 of the Judicature (Northern Ireland) Act 1978 are to be paid;

- (c) the making of reports to the Public Guardian by deputies appointed by the court and others who are directed by the court to carry out any transaction for a person who lacks capacity.

### Further powers of the Public Guardian

5 **125.**—(1) The powers under subsections (2) and (3) may be exercised for the purpose of enabling the Public Guardian to carry out his or her functions in relation to a person (“P”)—

- (a) who proposes to grant or has granted a lasting power of attorney; or
- (b) for whom a deputy is appointed.

10 (2) The Public Guardian may visit P and interview P in private.

(3) The Public Guardian may at all reasonable times require the production of, examine and take copies of—

- (a) any health record (as defined by section 293), or
- (b) any relevant record,

15 so far as the record relates to P.

(4) But if P has capacity in relation to whether the power under subsection (3) should be exercised, the power may be exercised only with P’s consent.

(5) In this section “relevant record” means a record relating to P’s care, treatment or personal welfare which is a record of or held by—

- 20 (a) an HSC trust;
- (b) the Regional Board;
- (c) RQIA;
- (d) a Northern Ireland department or its employees or agents;
- (e) the managing authority of an independent hospital; or
- 25 (f) the managing authority of a care home.

### Duty to notify the Public Guardian

**126.**—(1) Where a relevant authority is satisfied—

- 30 (a) that a person with whom the authority is concerned lacks capacity in relation to a matter or matters relating to that person’s care, treatment, personal welfare or property and affairs,
- (b) that any of the powers of the court under section 112 ought to be exercised with respect to that matter or matters, and
- (c) that arrangements in that behalf have not been made and are not being made,

35 it is the duty of that relevant authority to notify the Public Guardian of the situation.

(2) In this section a “relevant authority” means—

- (a) an HSC trust;
- (b) the Regional Board;
- 40 (c) RQIA;
- (d) the managing authority of an independent hospital;

- (e) the managing authority of a care home.
- (3) In this section “a person with whom the authority is concerned” means—
  - (a) in relation to an HSC trust, a person within the area of the trust;
  - (b) in relation to the Regional Board, any person;
  - 5 (c) in relation to RQIA, any person;
  - (d) in relation to the managing authority of an independent hospital or of a care home, an in-patient or resident in the hospital or care home.

**Notifications under section 126: procedure and effect**

10 **127.**—(1) A notification under section 126 must be made within such time and in such form as rules of court may specify.

(2) Where a notification is made under section 126 in relation to any person (“P”), the body or person making the notification must, where practicable, inform P’s nominated person.

15 (3) The Public Guardian, on receipt of a notification in respect of a person under section 126—

- (a) must consider whether the Public Guardian should make inquiries into the person’s case; and
- (b) if the Public Guardian considers that he or she should make inquiries, must seek the permission of the court to make them and, if permission is granted, must make such inquiries as he or she considers appropriate.

(4) Where inquiries have been made under subsection (3) the Public Guardian may, if he or she considers it appropriate to do so, arrange for the institution of proceedings before the court under section 112.

25 (5) Inquiries under subsection (3) must be made within the period specified by the court.

*Court Visitors*

**Court Visitors**

**128.**—(1) A Court Visitor is a person who is appointed by the Department of Justice to—

- 30 (a) a panel of Special Visitors; or
- (b) a panel of General Visitors.

(2) A person may be appointed to a panel of Special Visitors only if—

- (a) the person is a medical practitioner or appears to the Department of Justice to have other suitable qualifications or training; and
- 35 (b) the person appears to the Department of Justice to have special knowledge of and experience in relation to persons with impairment of, or disturbance in the functioning of, the mind or brain.

(3) A General Visitor need not have a medical qualification.

(4) A Court Visitor—

- 40 (a) may be appointed for such term and subject to such conditions, and
- (b) may be paid such remuneration and allowances,

as the Department of Justice may determine.

### **Powers of Court Visitors**

5 **129.**—(1) The powers under subsection (2) and (3) may be exercised for the purpose of enabling a Court Visitor to carry out his or her functions under this Act in relation to a person who lacks capacity.

(2) The Court Visitor may visit the person and interview the person in private.

(3) The Court Visitor may at all reasonable times require the production of, examine and take copies of—

- 10 (a) any health record (as defined by section 293), or  
(b) any relevant record,

so far as the record relates to the person.

(4) But if the person has capacity in relation to whether the power under subsection (3) should be exercised, the power may be exercised only with his or her consent.

15 (5) In this section “relevant record” means a record relating to the person’s care, treatment or personal welfare which is a record of or held by—

- (a) an HSC trust;  
(b) the Regional Board;  
(c) RQIA;  
20 (d) a Northern Ireland department or its employees or agents;  
(e) the managing authority of an independent hospital; or  
(f) the managing authority of a care home.

## **PART 8**

### **RESEARCH**

25 *Approved research projects*

#### **Research**

**130.**—(1) Intrusive research carried out on, or in relation to, a person who is 16 or over and lacks capacity to consent to it is unlawful unless it is carried out—

- 30 (a) as part of an approved research project (see subsection (3)); and  
(b) in accordance with sections 133 to 135.

(2) Research is “intrusive” if it is of a kind that would be unlawful if it were carried out—

- (a) on or in relation to a person who had capacity to consent to it; but  
(b) without that person’s consent.

35 (3) In this section “approved research project” means a research project which is for the time being approved for the purposes of this Part by the appropriate body in accordance with section 132.

(4) In this Part “appropriate body”, in relation to a research project, means the person, committee or other body which is specified in regulations made for the

purposes of this subsection as the appropriate body in relation to a project of the kind in question.

(5) Section 131 supplements this section.

### **Section 130: supplementary**

5 **131.**—(1) This section applies for the purposes of section 130.

(2) A clinical trial which is subject to the provisions of clinical trials regulations is not to be treated as research.

(3) In subsection (2) “clinical trials regulations” means—

- 10 (a) the Medicines for Human Use (Clinical Trials) Regulations 2004 and any other regulations replacing those regulations or amending them; and
- (b) any other regulations relating to clinical trials and designated by the Department as clinical trials regulations for the purposes of this section.

### **Approval of research projects**

15 **132.**—(1) The appropriate body may approve a research project for the purposes of this Part only if it is satisfied that the following requirements will be met in relation to research carried out as part of the project on, or in relation to, a person who is 16 or over and lacks capacity to consent to taking part in the project (“P”).

(2) The research must be connected with—

- 20 (a) an impairing condition affecting P; or
- (b) its treatment.

(3) There must be reasonable grounds for believing that research of comparable effectiveness cannot be carried out if the project has to be confined to, or relate only to, persons who have capacity to consent to taking part in it.

(4) The research must—

- 25 (a) have the potential to benefit P without imposing on P a burden that is disproportionate to the potential benefit to P; or
- (b) be intended to provide knowledge of the causes or treatment of, or of the care of persons affected by, the same or a similar condition.

30 (5) If the research falls within paragraph (b) of subsection (4) but not within paragraph (a), there must be reasonable grounds for believing—

- (a) that the risk to P from taking part in the project is likely to be negligible; and
- (b) that nothing done to, or in relation to, P as part of the project will—
- 35 (i) interfere with P’s freedom of action or privacy in a significant way; or
- (ii) be unduly invasive or restrictive.

(6) Without prejudice to subsection (5), there must be reasonable grounds for believing that no serious intervention will be carried out in respect of P as part of the project unless the intervention is one that could lawfully be carried out in respect of P if it were not part of the project (for example, because the conditions of Part 2 are met).

40

(7) There must be reasonable arrangements in place for ensuring that the requirements of sections 133 to 135 will be met.

(8) In this section—

“impairing condition” means a condition which is (or may be) attributable to, or which causes or contributes to (or may cause or contribute to), an impairment of, or a disturbance in the functioning of, the mind or brain;

5 “serious intervention” is to be read in accordance with section 60.

**Requirement to consult nominated person, carer etc**

**133.**—(1) This section applies if a person (“R”)—

(a) is conducting a research project approved under section 132; and

10 (b) wishes to carry out research, as part of the project, on or in relation to a person (“P”) who is 16 or over and lacks capacity to consent to taking part in the project.

(2) R must take reasonable steps to identify a person who—

(a) otherwise than in a professional capacity, is engaged in caring for P or is interested in P’s welfare; and

15 (b) is prepared to be consulted by R under this section.

(3) If R is unable to identify such a person R must, in accordance with guidance issued by the Department, appoint a person who—

(a) is prepared to be consulted by R under this section; and

(b) has no connection with the project.

20 (4) R must provide the person identified under subsection (2), or appointed under subsection (3), with information about the project and ask that person—

(a) for advice as to whether P should take part in the project; and

(b) what, in that person’s opinion, P’s wishes and feelings about taking part in the project would be likely to be if P had capacity in relation to the matter.

25 (5) If, at any time, the person consulted advises R that in that person’s opinion P’s wishes and feelings would be likely to lead P to decline to take part in the project (or to wish to withdraw from it) if P had capacity in relation to the matter, R must ensure—

(a) if P is not already taking part in the project, that P does not take part in it;

30 (b) if P is taking part in the project, that P is withdrawn from it.

(6) Subsection (5)(b) does not require treatment that P has been receiving as part of the project to be discontinued if the treatment can lawfully be carried out despite P having withdrawn from the project.

35 (7) In subsection (2)(a) “in a professional capacity” means under a contract of employment, under any other contract with any person, or as a volunteer for any organisation.

(8) The fact that a person within subsection (2)(a) is—

(a) an attorney under a lasting power of attorney granted by P,

(b) P’s deputy, or

40 (c) P’s nominated person,

does not prevent that person from being the person consulted under this section.

(9) This section is subject to section 134 (urgent treatment).



**Section 133: exception for urgent treatment**

**134.**—(1) This section applies if—

- (a) section 133 applies;
- 5 (b) treatment is being, or is about to be, provided for P as a matter of urgency; and
- (c) R considers that, having regard to the nature of the research and the particular circumstances of the case—
  - (i) it is also necessary to take action for the purposes of the research as a matter of urgency; but
  - 10 (ii) it is not practicable to consult under section 133.

(2) R may take the action if—

- (a) R has the agreement of a medical practitioner who is not involved in the organisation or conduct of the research project; or
- 15 (b) where it is not practicable in the time available to obtain that agreement, R acts in accordance with a procedure approved by the appropriate body at the time when the research project was approved under section 132.

(3) But R may not continue to act in reliance on subsection (2) if R has reasonable grounds for believing that it is no longer necessary to take the action as a matter of urgency.

20 **Additional safeguards**

**135.**—(1) This section applies in relation to a person (“P”) who is 16 or over and is taking part in a research project approved under section 132 even though P lacks capacity to consent to taking part.

(2) Nothing may be done to, or in relation to, P in the course of the research—

- 25 (a) to which P appears to object (whether by showing signs of resistance or otherwise) except where what is being done is intended to protect P from harm or to reduce or prevent pain or discomfort; or
- (b) which is the carrying out or continuation of treatment of P and would be contrary to—
  - 30 (i) an effective advance decision to refuse treatment which has been made by P, or
  - (ii) any other form of statement made by P and not subsequently withdrawn, of which the person conducting the research project (“R”) is aware.

35 (3) The interests of P must be assumed to outweigh those of science and society.

(4) If P indicates (in any way) a wish to be withdrawn from the project P must be withdrawn without delay.

40 (5) P must be withdrawn from the project, without delay, if at any time R has reasonable grounds for believing that any requirement set out in section 132(2) to (7) is no longer met in relation to research being carried out on, or in relation to, P.

(6) Subsections (4) and (5) do not require treatment that P has been receiving as part of the project to be discontinued if the treatment can lawfully be carried out despite P having withdrawn from the project.

(7) In this section—

(a) “an effective advance decision to refuse treatment” means a decision which, under the common law relating to advance decisions, has the same effect as if at the material time P—

- 5 (i) refused consent to the treatment’s being carried out or continued; and  
 (ii) had capacity to refuse that consent; and  
 (b) “the material time” means the time when the question arises whether the treatment should be carried out or continued.

*Transitional cases*

10 **Loss of capacity during research project: transitional cases**

**136.**—(1) This section applies where a person who is 16 or over (“P”)—

(a) consented to take part in a research project begun before the coming into operation of section 130; and

- 15 (b) before the conclusion of the project, loses capacity to consent to continue to take part in it.

(2) Regulations may provide that, despite P’s loss of capacity, research of a prescribed kind may be carried out on, or in relation to, P if—

(a) the project satisfies prescribed requirements;

- 20 (b) any information or material relating to P which is used in the research is of a prescribed description and was obtained before P’s loss of capacity; and

(c) the person conducting the project takes in relation to P such steps as may be prescribed for the purpose of protecting P.

(3) The regulations may in particular—

- 25 (a) make provision about when, for the purposes of the regulations, a project is to be treated as having begun;

(b) include provision similar to any made by sections 132 to 135.

PART 9

POWER OF POLICE TO REMOVE PERSON TO PLACE OF SAFETY

*Power of police to remove person from public place to place of safety*

30 **Power of police to remove person from public place to place of safety**

**137.**—(1) If—

(a) a constable finds in a public place a person who appears to the constable to be in immediate need of care or control, and

- 35 (b) the constable reasonably believes that the conditions in subsection (2) are met,

the constable may remove that person to a place of safety.

(2) Those conditions are that—

(a) failure to remove the person from the public place would create a risk of serious harm to the person or of serious physical harm to other persons;

- (b) removing the person to a place of safety is a proportionate response to—
- (i) the likelihood of harm to the person, or of physical harm to other persons; and
  - (ii) the seriousness of the harm concerned;
- 5 (c) because of an impairment of or disturbance in the functioning of the mind or brain (temporary or permanent, and however caused), the person is unable to make a decision for himself or herself as to whether he or she should be taken to a place of safety; and
- (d) removing the person to the place of safety would be in the person's best  
10 interests.
- (3) The powers conferred by this Part are subject to section 155 (principles).
- (4) "Place of safety" and "public place" are defined for the purposes of this Part by section 158.

#### **Information to be given on removal**

- 15 **138.**—(1) The removal of a person ("R") from a public place under section 137 is not lawful unless R is informed—
- (a) before or at the time of being taken from the public place, or
  - (b) as soon as practicable after that time,
- that R is to be (or is being) removed to a place of safety under section 137.
- 20 (2) If R arrives at the place of safety before it is practicable to give R that information, subsection (1) is to be read as requiring R to be informed as soon as practicable that R has been removed to a place of safety under section 137.
- (3) Nothing in this section is to be taken to require R to be informed if it was not reasonably practicable to inform R because R escaped before the information  
25 could be given.
- (4) In consequence of this section, Article 30 of PACE (information to be given on arrest) does not apply in relation to the removal of a person from a public place under section 137.

#### **Search of person on exercise of power to remove**

- 30 **139.**—(1) Subsection (2) applies where a person in a public place is informed that he or she is to be (or is being) removed to a place of safety under section 137.
- (2) The person is to be regarded for the purposes of Article 34 of PACE (search upon arrest) as having been arrested at the time when he or she was so informed.
- (3) Where—
- 35 (a) a person ("R") is taken from a public place under section 137, and
  - (b) it is not practicable to inform R as mentioned in subsection (1) before R is taken from the public place,
- R is to be regarded for the purposes of Article 34 of PACE as having been arrested at the time when it was decided to remove R from that place to a place of safety.
- 40 (4) Article 34 of PACE applies by virtue of this section as if—
- (a) paragraphs (2)(a)(ii) and (b), (6) and (7) were omitted;

(b) in paragraph (3) the reference to evidence were omitted.

*Powers of police to detain person removed from public place*

**Power of police to detain in hospital a person removed from a public place**

5 **140.**—(1) This section applies where a person is taken to a hospital under section 137.

(2) The person may be detained under this section in the hospital by a constable for the purpose of enabling the person to be examined by a medical practitioner and interviewed by an approved social worker, if the constable reasonably believes that the detention conditions are met (see section 142).

10 (3) If at any time while the person is detained in a hospital under this section it appears to the constable detaining the person that the detention conditions are no longer met, the person must immediately be discharged from detention under this section.

15 (4) Subsection (3) does not apply if the transfer conditions in section 143 are met and the person is taken to another place of safety under that section.

(5) See also section 144 (maximum period of detention under this Part).

**Power to detain in police station a person removed from a public place**

**141.**—(1) This section applies where a person is taken to a police station under section 137.

20 (2) If a custody officer reasonably believes that the detention conditions are met (see section 142), the person may be detained under this section in the police station—

(a) for the purpose of enabling the person to be examined by a medical practitioner and interviewed by an approved social worker;

25 (b) for the purpose of preventing harm to that person or other persons while any necessary arrangements are made for the person's care or treatment elsewhere.

30 (3) If at any time while the person is detained under this section it appears to a custody officer that the detention conditions are no longer met, the person must immediately be discharged from detention under this section.

(4) Subsection (3) does not apply if the transfer conditions in section 143 are met and the person is taken to another place of safety under that section.

(5) See also section 144 (maximum period of detention under this Part).

**Sections 140 and 141: the detention conditions**

35 **142.**—(1) This section applies for the purposes of sections 140 and 141.

(2) The detention conditions are that—

(a) failure to detain the person for the permitted purposes would create a risk of serious harm to the person or of serious physical harm to other persons;

40 (b) detaining the person in the place of safety for those purposes is a proportionate response to—

- (i) the likelihood of harm to the person, or of physical harm to other persons; and
  - (ii) the seriousness of the harm concerned;
  - (c) because of an impairment of or disturbance in the functioning of the mind or brain (temporary or permanent, and however caused), the person is unable to make a decision for himself or herself as to whether he or she should remain in the place of safety; and
  - (d) detention in the place of safety for those purposes is in the person's best interests.
- (3) In this section—
- “the place of safety” means the hospital or police station to which the person mentioned in section 140(1) or 141(1) has been taken;
  - “the permitted purposes” means—
    - (a) where the place of safety is a hospital, the purpose mentioned in section 140(2);
    - (b) where the place of safety is a police station, the purpose mentioned in section 141(2)(a) or (b).

#### **Transfer from one place of safety to another**

**143.**—(1) At any time while a person is detained in a place of safety under section 140 or 141, the person may be taken by a constable to another place of safety (“the new place of safety”) if the constable reasonably believes that the transfer conditions are met.

- (2) The transfer conditions are that—
- (a) there is appropriate care or treatment available in the new place of safety which is not available in the place where the person is being detained;
  - (b) discharging the person from detention rather than taking him or her to the new place of safety would create a risk of serious harm to the person or of serious physical harm to other persons;
  - (c) taking the person to the new place of safety (and not discharging him or her from detention) is a proportionate response to—
    - (i) the likelihood of harm to the person, or of physical harm to other persons; and
    - (ii) the seriousness of the harm concerned;
  - (d) because of an impairment of or disturbance in the functioning of the mind or brain (temporary or permanent, and however caused), the person is unable to make a decision for himself or herself as to whether he or she should be taken to the new place of safety; and
  - (e) taking the person to the new place of safety is in the person's best interests.
- (3) Where a person is taken to a hospital under this section, section 140 applies as it applies where a person is taken to a hospital under section 137.
- (4) Where a person is taken to a police station under this section, section 141 applies as it applies where a person is taken to a police station under section 137.

(5) In this section “appropriate care or treatment” means care or treatment which is appropriate in the person’s case.

### Maximum period of detention under Part 9

144.—(1) A person removed from a public place under section 137 may not be detained under any provision of this Part after the end of the period of 24 hours beginning with the time of that removal.

(2) The Department of Justice may by regulations amend subsection (1) so as to alter the period mentioned there.

### *Duties and powers of police where person removed to place of safety*

#### 10 **Duty to inform certain persons where power of removal or transfer used**

145.—(1) This section applies where—

- (a) a constable removes a person from a public place to a place of safety under section 137; or
- (b) a constable takes a person to a place of safety under section 143.

15 (2) The constable must ensure that, as soon as practicable after the person (“R”) arrives at the place of safety, the required information is given to—

- (a) the HSC trust in whose area that place of safety is situated;
- (b) the appropriate person (but this is subject to subsection (4)); and
- (c) if the appropriate person does not live with R and it is practicable to give the information to a person within subsection (3) who lives with R, such a person.

(3) A person is within this subsection if the person—

- (a) is 16 or over; and
- (b) is named by R as someone to whom the information should be given or is engaged in caring for R or is interested in R’s welfare.

(4) If—

- (a) it is not practicable to give the required information to the appropriate person, but
- (b) it is practicable to give the required information to a person within subsection (3),

the constable must ensure that a person within subsection (3) is given the required information as soon as practicable after R arrives at the place of safety (and subsection (2)(b) does not apply).

(5) In this section—

“the appropriate person” means—

- (a) if R is 16 or over, any person who is R’s nominated person;
- (b) if R is under 16, a person with parental responsibility for R;

“the required information” has the meaning given by section 146.

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

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

**Section 145: meaning of “the required information”**

- 5     **146.**—(1) In relation to any case where a person (“R”)—
- (a) is removed from a public place to a place of safety under section 137, or
  - (b) is taken from one place of safety to another under section 143,
- “the required information” is the information mentioned in subsection (2).
- (2) That information is—
- 10     (a) the fact that R has been removed to a place of safety under section 137 or (as the case may be) taken to a place of safety under section 143;
- (b) R’s name and address, if known;
  - (c) the address of the place of safety to which R was removed or (as the case may be) taken;
- 15     (d) the date and time at which R—
- (i) was removed from the public place (where the notification relates to a removal under section 137); or
  - (ii) was removed from the place of safety from which he or she was transferred (where the notification relates to a transfer under section
- 20     143);
- (e) the circumstances giving rise to R’s removal or transfer; and
  - (f) if the place of safety to which R was removed or transferred is a police station, the reason why R was removed or transferred there.

**Record of detention to be kept**

- 25     **147.**—(1) Where a person is taken to a place of safety under section 137 or section 143 and detained there under section 140 or 141, the appropriate officer (as defined by section 158) must make a written record of the fact that the person has been so detained.
- (2) The written record—
- 30     (a) must be made as soon as practicable after the decision is made to detain the person under section 140 or 141; and
- (b) must be made in the presence of the person, who must at that time be informed by the appropriate officer that he or she is being detained under that section.
- 35     (3) Subsection (2)(b) does not apply where, at the time when the written record is made, the person is—
- (a) incapable of understanding what is said to him or her;
  - (b) violent or likely to become violent; or
  - (c) in urgent need of medical attention.

**Responsibilities of the appropriate officer**

148.—(1) The appropriate officer must ensure that a person who is detained under this Part in a place of safety is treated in accordance with—

- 5 (a) any provisions of this Part or PACE that relate to the treatment of persons who are so detained; and
- (b) any code of practice under this Act or PACE that relates to the treatment of persons who are so detained.

(2) The appropriate officer must also ensure that all matters relating to a person who is detained under this Part in a place of safety which are required by this Part, PACE or such a code of practice to be recorded in writing are so recorded.

**Review of detention**

149.—(1) Where a person is detained in a place of safety under this Part, reviews of whether the detention conditions set out in section 142(2) are still met must be carried out periodically by the appropriate officer in accordance with this section.

(2) Subject to subsection (3)—

- (a) the first review must be not later than 6 hours after the person's arrival at the place of safety;
- (b) subsequent reviews must be at intervals of not more than 6 hours.

20 (3) A review may be postponed—

- (a) if, having regard to all the circumstances prevailing at the latest time for it specified in subsection (2), it is not practicable to carry out the review at that time;
- (b) if at that time the appropriate officer is not readily available.

25 (4) If a review is postponed under subsection (3) it must be carried out as soon as practicable after the latest time specified for it in subsection (2).

(5) If a review is carried out after postponement under subsection (3), the fact that it was so carried out does not affect any requirement of this section as to the time at which any subsequent review is to be carried out.

30 (6) The appropriate officer must record in writing—

- (a) any decision made, on a review, to continue to detain the person;
- (b) the reasons for any postponement of a review.

(7) A record under subsection (6)(a)—

- (a) must be made as soon as practicable after the decision is made; and
- 35 (b) must be made in the presence of the person, who must at that time be informed by the appropriate officer of the decision.

(8) Subsection (7)(b) does not apply where the person is, at the time when the written record is made—

- (a) incapable of understanding what is said to him or her;
- 40 (b) asleep;
- (c) violent or likely to become violent; or
- (d) in urgent need of medical attention.



(9) Any reference in this section to a period of time is to be treated as approximate only.

### Access to legal advice

5 **150.**—(1) A person who is detained in a place of safety under this Part is entitled, if he or she so requests, to consult a solicitor privately at any time.

(2) If a person makes such a request, he or she must be permitted to consult a solicitor as soon as is practicable.

(3) A request under this section and the time at which it was made must be recorded in writing.

10 (4) Article 59 of PACE (access to legal advice) does not apply in relation to a person who is detained in a place of safety under this Part.

### Searches of person following removal to place of safety

**151.** Article 55 of PACE (searches of detained persons) applies in relation to a person detained in a place of safety under this Part as if—

15 (a) in paragraph (1) the reference to a person who has been brought to a police station after being arrested elsewhere were to a person who has been brought to a police station under section 137 or under section 143 (except from another police station);

(b) paragraph (4)(a)(iii) were omitted;

20 (c) in paragraph (7) the reference to the person mentioned there were to a person detained in a place of safety under this Part.

### Searches and examination to ascertain identity

**152.** Article 55A of PACE (searches and examination to ascertain identity) applies in relation to a person detained in a place of safety under this Part as if—

25 (a) in paragraph (1) the reference to a person who is detained in a police station were to a person who is detained in any place of safety under this Part;

(b) paragraphs (1)(a), (2), (5) and (9) to (13) were omitted;

30 (c) in paragraphs (6) and (7) the references to taking photographs were omitted.

### Intimate searches

**153.** Article 56 of PACE (intimate searches) applies in relation to a person detained in a place of safety under this Part as if—

35 (a) in paragraph (1)(a) the reference to a person who has been arrested and is in police detention were a reference to a person detained in a place of safety under this Part;

(b) in paragraph (1)(a)(ii) the reference to police detention or the custody of a court were a reference to detention under this Part;

(c) paragraphs (1)(b), (3A) to (4), (9), (10A) and (13A) were omitted.

**Annual records**

**154.**—(1) The records that must be kept under Article 50 of PACE include records showing, on an annual basis—

- (a) the number of persons detained under this Part in hospitals;
- 5 (b) the number of persons detained under this Part in police stations.

(2) Every annual report under section 58(1) of the Police (Northern Ireland) Act 2000 must contain information about the matters mentioned in subsection (1) in respect of the period to which the report relates.

*Supplementary*10 **Principles applying for purposes of Part 9**

**155.**—(1) Where for any purpose of this Part a determination falls to be made of whether a person is unable to make a decision for himself or herself about a matter—

- 15 (a) the question whether the person is or is not able to make such a decision is to be determined solely by reference to whether the person is or is not able to do the things mentioned in section 4(1)(a) to (d);
- (b) the person is not to be treated as unable to make a decision for himself or herself about the matter unless all practicable help and support to enable the person to make such a decision have been given without success;
- 20 (c) the person is not to be treated as unable to make a decision for himself or herself about the matter merely because the person makes an unwise decision.

(2) A determination that a person is unable to make a decision, or about what is in a person's best interests, must not be made for any purpose of this Part merely on the basis of—

- (a) the person's age or appearance; or
- (b) any other characteristic of the person, including any condition that the person has, which might lead others to make unjustified assumptions about the person's ability to make a decision or about what is in the person's best interests.
- 30

(3) Where for any purpose of this Part it falls to a person ("the relevant officer") to determine what would be in the best interests of another person ("R"), the relevant officer—

- 35 (a) must consider all the relevant circumstances (that is, all the circumstances of which the relevant officer is aware which it is reasonable to regard as relevant); and
- (b) must in particular take the steps in subsections (4) to (8).

(4) The relevant officer must, in determining what would be in R's best interests—

- 40 (a) so far as practicable, encourage and help R to participate as fully as possible in that determination; and
- (b) have special regard to (so far as they are reasonably ascertainable) R's past and present wishes and feelings.

(5) Where it is practicable for the relevant officer to consult—

(a) a key person (see subsection (7)), or

(b) any other person who is named by R as someone to be consulted or who is engaged in caring for R or interested in R's welfare,

5 about what would be in R's best interests and in particular about R's past and present wishes and feelings, the relevant officer must, so far as is practicable and appropriate, consult those persons about those questions.

(6) So far as the views of any of those persons about those questions are ascertained, the relevant officer must take those views into account.

10 (7) In subsection (5) "a key person" means—

(a) if R is 16 or over, any person who is R's nominated person;

(b) if R is under 16, a person with parental responsibility for R.

15 (8) The relevant officer must, in relation to any removal, detention or transfer that is being considered, have regard to whether the purpose for which it would be carried out can be as effectively achieved in a way that is less restrictive of R's rights and freedom of action.

(9) In consequence of this section, sections 1, 2 and 7 (principles and best interests) do not apply for the purposes of this Part.

#### **Reasonable belief etc**

20 **156.**—(1) This section applies if, after a person ("the relevant officer") has removed, detained or transferred another person in reliance on any provision of this Part, any question arises—

(a) whether a particular provision of section 155 was complied with; or

25 (b) whether a belief of the relevant officer that a condition in section 137(2), 142(2) or 143(2) was met was a reasonable belief.

(2) In deciding that question, regard is to be had in particular to—

(a) the place and other circumstances in which the relevant officer's determination fell to be made; and

30 (b) in particular, where the relevant officer did not have available to him or her the advice of a medical practitioner or approved social worker, that fact.

(3) Nothing in this section affects the matters to which regard is to be had in deciding any similar question that may arise under any other Part.

#### **Power of constable to use reasonable force**

**157.** Where—

35 (a) a power is conferred on a constable by virtue of this Part, and

(b) the provision conferring the power does not provide that the power may be exercised only with the consent of a person other than a police officer,

the constable may use reasonable force, if necessary, in the exercise of the power.

#### **Definitions for purposes of Part 9**

40 **158.**—(1) In this Part—

“the appropriate officer”, in relation to a person who is detained in a place of safety, means—

(a) where the place of safety is a hospital, the constable who has charge of the person;

5 (b) where the place of safety is a police station, the custody officer at that police station;

“best interests”: see section 155 for provisions about the determination of a person’s best interests;

10 “custody officer”, in relation to a police station, means a person who under PACE is a custody officer, or performing the functions of a custody officer, at that police station;

“PACE” means the Police and Criminal Evidence (Northern Ireland) Order 1989;

“place of safety” means—

15 (a) any hospital whose managing authority is willing temporarily to receive persons who may be taken there under this Part; or

(b) any police station;

“public place” means a place to which the public have access;

“unable to make a decision” has the meaning given by section 4.

20 (2) The Department of Justice may by regulations amend the definition of “place of safety” in subsection (1).

(3) Regulations under subsection (2) may make such consequential amendments of this Part as the Department of Justice considers appropriate.

25 (4) The provision which may be made by virtue of subsection (3) includes, in particular, provision which amends or applies either of sections 140 and 141 or makes provision corresponding to those sections.

(5) For the purposes of sections 145 and 155, where the age of a person is not known, it is to be taken to be the age that the person appears to be.

### **Relationship of Part 9 to other provisions**

30 **159.**—(1) A power that a constable has under any provision of this Part (a “place of safety power”) does not affect—

(a) any authority that the constable has under Part 2 to do an act other than an act authorised by the place of safety power;

(b) any authority to do any act that a person other than the constable has; or

35 (c) any power that the constable has otherwise than under this Act.

(2) If, while a person is detained in or being taken to a place of safety under any provision of this Part, the person is arrested for an offence—

(a) the relevant provisions of PACE apply; and

40 (b) the person ceases to be liable to be detained under this Part or taken to a place of safety under this Part.

(3) Nothing in subsection (2)(b) affects the application of this Part on any subsequent occasion on which the person is found in a public place.

*Mental Capacity*

PART 10

CRIMINAL JUSTICE

CHAPTER 1

REMAND TO HOSPITAL

5 **Remand to hospital**

**160.**—(1) Where—

- (a) the Crown Court or a court of summary jurisdiction has power to remand an accused person (“A”) in custody,
  - 10 (b) the court considers that it would remand A in custody if it did not remand A under this section, and
  - (c) either or both of the conditions for remand to hospital are met,
- the court may, instead of remanding A in custody, remand A to a hospital specified by the court.

(2) In this section “the conditions for remand to hospital” means—

- 15 (a) the medical report condition (see section 162(1));
- (b) the treatment condition (see section 163(1)).

(3) The court may remand an accused person under this section only if it is satisfied, on the written or oral evidence of a person representing the managing authority of the hospital, that arrangements have been made for the accused person’s detention in the hospital in pursuance of the remand.

(4) Where a court has remanded an accused person (“A”) under this section, it may further remand A under this section if it considers that—

- (a) it would remand A in custody if it did not make the further remand under this section; and
- 25 (b) either or both of the conditions for remand to hospital are met.

(5) A person may not be remanded or further remanded under this section for more than 28 days at a time or for more than 12 weeks in total.

(6) For the meaning of “an accused person” see section 161.

**Section 160: meaning of “accused person”**

30 **161.**—(1) In section 160 “an accused person” has the following meaning.

(2) In relation to the Crown Court, “an accused person” means—

- (a) a person who is awaiting trial before the court for an offence punishable with imprisonment, or
- (b) a person who has been arraigned before the court for an offence punishable with imprisonment and has not yet been sentenced or otherwise dealt with for that offence,
- 35

but does not include a person who has been convicted before the Crown Court of an offence for which the sentence is fixed by law.

(3) In relation to a court of summary jurisdiction, “an accused person” means—

- (a) a person who has been convicted by the court of an offence punishable on summary conviction with imprisonment; or
- (b) a person charged with such an offence if the court is satisfied that the person did the act or made the omission charged.

5 **Section 160: the medical report condition**

**162.**—(1) For the purposes of section 160 “the medical report condition” is that—

- (a) the court is satisfied on the required medical evidence that A has, or there is reason to suspect that A has, a disorder;
- 10 (b) the court considers that a report ought to be made as to A’s mental or physical condition;
- (c) it appears to the court that a proper assessment of A’s condition for the purposes of the report will be impracticable if A is remanded in custody; and
- 15 (d) it appears to the court, having regard in particular to the matter mentioned in subsection (2), that such an assessment will be practicable if A is remanded to hospital.

(2) The matter mentioned in subsection (1)(d) is how likely it is, as regards any examination that may be necessary for the assessment—

- 20 (a) that consent will be given by A or by a person with authority to give consent on behalf of A; or
- (b) that the examination will be capable of being carried out by virtue of Part 2 of this Act (or, if A is under 16, under the Mental Health Order).

(3) In subsection (1)(a) “the required medical evidence” means (subject to 25 subsection (4)) the oral evidence of—

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

(4) Where this section applies for the purposes of section 160(4) (further 30 remands), in subsection (1)(a) “the required medical evidence” means the written or oral evidence of the medical practitioner who is in charge of A’s care in the hospital.

**Section 160: the treatment condition**

**163.**—(1) For the purposes of section 160 “the treatment condition” is that—

- 35 (a) the court is satisfied on the required medical evidence—
  - (i) that A has a disorder requiring treatment; and
  - (ii) that failure to provide treatment to A as an in-patient in a hospital would be substantially likely to result in serious harm to A or serious physical harm to other persons; and
- 40 (b) it appears to the court, having regard in particular to the matters mentioned in subsection (2), that remanding A to hospital is likely to result in significantly better clinical outcomes for A than if A were remanded in custody.

(2) The matters mentioned in subsection (1)(b) are—

- (a) the ways in which A might become an in-patient in a hospital if remanded in custody;
- 5 (b) whether treatment for the disorder is available in the hospital to which A would be remanded if A were remanded to hospital; and
- (c) how likely it is, as regards such treatment—
  - (i) that consent will be given by A or by a person with authority to give consent on behalf of A; or
  - 10 (ii) that the treatment will be capable of being given to A by virtue of Part 2 of this Act (or, if A is under 16, under the Mental Health Order).

(3) In subsection (1)(a) “the required medical evidence” means, subject to subsection (4), the written or oral evidence of at least two medical practitioners, including—

- 15 (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.

(4) Where this section applies for the purposes of section 160(4) (further remands), in subsection (1)(a) “the required medical evidence” means the written or oral evidence of the medical practitioner who is in charge of A’s care in the hospital.

#### **Effect of remand to hospital**

**164.**—(1) Where a person is remanded under section 160—

- 25 (a) a constable or any other person directed to do so by the court must take the person to the hospital specified by the court;
- (b) the managing authority of that hospital must—
  - (i) admit the person; and
  - 30 (ii) subject to the following provisions of this section, detain him or her for the period of the remand; and
- (c) any question whether the person may be given any treatment while detained in pursuance of the remand is (subject to section 238) to be determined in the same way as if the person were not so detained.

(2) The court which remanded the person may at any time terminate the remand if it appears to the court that it is appropriate to do so.

(3) A person remanded under section 160 may obtain at his or her own expense, from a medical practitioner chosen by the person, an independent report as to the person’s mental or physical condition and apply to the court on the basis of that report for the remand to be terminated under subsection (2).

40 (4) If a person remanded under section 160 absconds from the hospital, or while being taken to or from the hospital—

- (a) the person may be arrested without warrant by any constable;

(b) after being arrested, the person must be brought as soon as practicable before the court that remanded him or her; and

(c) on the person's being brought before it, the court may terminate the remand and deal with the person in any way in which it would have dealt with the person if the person had not been remanded under section 160.

(5) The power of further remanding a person under section 160 may be exercised by the court without the person's being brought before the court if the person is represented by counsel, or a solicitor, who is given an opportunity of being heard.

(6) References in subsections (1) to (4) to a remand under section 160 include a further remand under that section; and subsection (1) applies in relation to the further remand to a hospital of a person who has been admitted to the hospital and is not brought before the court as if paragraphs (a) and (b)(i) were omitted.

## CHAPTER 2

### POWERS OF COURT ON CONVICTION

#### *Public protection orders with and without restrictions*

#### **Public protection orders with and without restrictions**

**165.**—(1) This section applies where—

(a) a person is convicted before the Crown Court of an offence punishable with imprisonment, other than an offence for which the sentence is fixed by law; or

(b) a person is convicted by a court of summary jurisdiction of an offence punishable on summary conviction with imprisonment.

(2) The court may—

(a) if the detention conditions are met, make a public protection order without restrictions;

(b) if the detention conditions and the restriction condition are met, make a public protection order with restrictions.

For the meaning of “the detention conditions” and “the restriction condition” see sections 166 and 167.

(3) In this Part (except paragraph (b)) “public protection order without restrictions” means an order which—

(a) requires that the offender be admitted to and detained in an appropriate establishment which is specified in the order; and

(b) provides that the order is to be treated as a public protection order without restrictions.

(4) In this Part (except paragraph (b)) “public protection order with restrictions” means an order which—

(a) requires that the offender be admitted to and detained in an appropriate establishment which is specified in the order; and

(b) either—

(i) provides (with no time limit) that the order is to be treated as a public protection order with restrictions; or



(ii) provides that for a specified period the order is to be treated as a public protection order with restrictions.

(5) For the effect of public protection orders without restrictions and public protection orders with restrictions see—

- 5 (a) section 169 (effect of public protection orders with and without restrictions);
- (b) Chapter 3 (detention under public protection orders without restrictions); and
- 10 (c) Chapter 4 (detention under public protection orders with restrictions: restrictions on discharge etc).

(6) In this Part “appropriate establishment” means—

- (a) a hospital; or
- (b) a care home—
- 15 (i) in which care is provided for people who have an impairment of, or a disturbance in the functioning of, the mind or brain; and
- (ii) which is designated by the Department of Justice for the purposes of this paragraph.

(7) In this Part “public protection order” (without more) means a public protection order without restrictions or a public protection order with restrictions.

20 **Section 165: the detention conditions**

**166.**—(1) For the purposes of section 165 “the detention conditions” are—

- (a) that the court is satisfied, on the required medical evidence, of the matters mentioned in subsection (2);
- 25 (b) that, having regard to all the circumstances and in particular to the matters mentioned in subsection (3), the court considers that making an order for the offender to be detained in an appropriate establishment is the most suitable way of dealing with the case; and
- (c) that the court is satisfied, on the written or oral evidence of a person representing the managing authority of the appropriate establishment
- 30 specified in the order (“the establishment”), that arrangements have been made for the offender’s detention there in pursuance of the order.

(2) The matters referred to in subsection (1)(a) are—

- (a) that there is an impairment of, or a disturbance in the functioning of, the offender’s mind or brain;
- 35 (b) that appropriate care or treatment is available for the offender in the establishment;
- (c) that dealing with the offender in any way not involving his or her detention would create a risk, linked to the impairment or disturbance, of serious physical harm to other persons; and
- 40 (d) that detaining the offender in the establishment in circumstances amounting to a deprivation of liberty would be a proportionate response to—
- (i) the likelihood of the harm concerned; and

(ii) the seriousness of that harm.

(3) The matters referred to in subsection (1)(b) are—

(a) the other available ways of dealing with the offender;

(b) the nature of the offence;

5 (c) the past history of the offender;

(d) the risk of harm to other persons if the offender were set at large.

(4) In considering for any purpose of this section whether it would be appropriate to deal with the offender in a way not involving detention, or what risk would be created by dealing with the offender in that way, the court—

10 (a) must in particular consider whether if it dealt with the offender in that way it could also make a sexual offences prevention order or violent offences prevention order in respect of the offender; and

(b) if it could make such an order, must take into account that fact and the effect of such an order.

15 (5) In this section “the required medical evidence” means the written or oral evidence of at least two medical practitioners, including the oral evidence of an approved medical practitioner.

(6) In this section—

20 “sexual offences prevention order” means an order under section 104 of the Sexual Offences Act 2003;

“violent offences prevention order” means an order under section 51 of the Justice Act (Northern Ireland) 2015.

### **Section 165: the restriction condition**

25 **167.**—(1) For the purposes of section 165 “the restriction condition” is that the court, having regard to all the circumstances and in particular to the matters mentioned in subsection (2), considers that making a public protection order with restrictions (rather than a public protection order without restrictions) is necessary for the protection of the public from serious physical harm.

(2) The matters are—

30 (a) the nature of the offence;

(b) the past history of the offender;

(c) the risk of harm to other persons if the offender were set at large.

### **Further provision about making of public protection orders**

35 **168.**—(1) Nothing in a provision mentioned in subsection (2) prevents a court from making a public protection order in respect of an offence the sentence for which would otherwise fall to be imposed under that provision.

(2) The provisions referred to in subsection (1) are—

(a) Article 70(2) of the Firearms (Northern Ireland) Order 2004;

40 (b) paragraph 2(4) or (5) of Schedule 2 to the Violent Crime Reduction Act 2006;

(c) Article 13 or 14 of the Criminal Justice (Northern Ireland) Order 2008;

(d) section 7 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

(3) Any reference in this section to a sentence falling to be imposed under a provision mentioned in subsection (2) is to be read in accordance with Article 4(2) of the Criminal Justice (Northern Ireland) Order 2008.

(4) Where a public protection order is made in respect of an offence, the court—

(a) may not pass a custodial sentence or impose a fine or make a probation order in respect of the offence; but

(b) may make any other order which the court has power to make.

#### 10 **Effect of public protection orders**

**169.**—(1) Where a court makes a public protection order in respect of a person—

(a) a constable or any other person directed to do so by the court must take the person to the establishment specified in the order;

15 (b) the managing authority of that establishment must—

(i) admit the person; and

(ii) detain him or her in accordance with the relevant provisions; and

(c) any question whether the person may be given any treatment while detained in pursuance of the order is (subject to section 238) to be determined in the same way as if the person were not so detained.

(2) In this section “the relevant provisions” means—

(a) in relation to a public protection order without restrictions, Chapter 3;

(b) in relation to a public protection order with restrictions, Chapter 4 (but see sections 170 and 171).

#### 25 **Power to direct the ending of restrictions under a public protection order**

**170.**—(1) This section applies if—

(a) a public protection order with restrictions is in force in respect of a person; and

30 (b) the Department of Justice is satisfied that it is no longer necessary for the protection of the public from serious physical harm that the person be subject to a public protection order with restrictions.

(2) The Department of Justice may direct that, with effect from a date specified in the direction, the public protection order is to have effect as a public protection order without restrictions (see further section 171).

#### 35 **Effect of ending of restrictions under a public protection order**

**171.**—(1) This section applies where a court has made a public protection order with restrictions in respect of a person and—

(a) a direction is made under section 170 (ending of restrictions) in respect of the order; or

40 (b) the order provides that for a specified period the order is to be treated as a public protection order with restrictions, and that period ends at a time

when the order is still in force and when no direction has been made under section 170.

(2) From the end of the restricted period—

- (a) Chapter 4 ceases to apply;
- 5 (b) the order has effect as if it were a public protection order without restrictions requiring the person to be detained in the establishment concerned; and
- (c) Chapter 3 applies in relation to the person as if the order had been made (as a public protection order without restrictions) on the last day of the  
10 restricted period and as if the person had then been admitted to the establishment concerned in pursuance of the order.

(3) If when the restricted period ends the person is absent with permission given under section 193, the permission, and any accompanying direction under section 193(4), have effect from the end of the restricted period as if given under section  
15 185.

(4) In this section—

“the establishment concerned” means the establishment in which, immediately before the end of the restricted period, the person was liable to be detained under the public protection order with restrictions;

20 “the restricted period” means—

- (a) where subsection (1)(a) applies, the period beginning with the actual making of the public protection order and ending immediately before the date specified in the direction under section 170;
- (b) where subsection (1)(b) applies, the period that was specified in the  
25 order as the period for which the order should be treated as a public protection order with restrictions.

### *Hospital directions*

#### **Hospital direction when passing custodial sentence**

172.—(1) This section applies where—

- 30 (a) a person is convicted before the Crown Court of an offence punishable with imprisonment, other than an offence for which the sentence is fixed by law; or
- (b) a person is convicted by a court of summary jurisdiction of an offence punishable on summary conviction with imprisonment.

35 (2) If—

- (a) the court, having considered the other available ways of dealing with the offender, decides to impose a custodial sentence (as defined by section 247) in respect of the offence, and
  - (b) the conditions in section 173 are met,
- 40 the court may when it passes the custodial sentence direct that, instead of being removed to and detained in a prison, the offender is to be removed to and detained in a hospital specified in the direction.

(3) A direction under this section given in relation to an offender has effect not only as regards the custodial sentence mentioned in subsection (2) but also (so far as applicable) as regards any other custodial sentence imposed on the same or a previous occasion.

5 (4) Where the custodial sentence imposed by the court is not a sentence of imprisonment, any reference in this section to a “prison” is to a place in which the person would be liable to be detained under the sentence but for the direction under this section.

(5) In this Part a “hospital direction” means a direction under this section.

## 10 **Conditions for giving hospital direction**

**173.**—(1) The conditions referred to in section 172(2) are—

- (a) that the court is satisfied, on the required medical evidence, of the matters mentioned in subsection (2);
- 15 (b) that, having regard to all the circumstances and in particular to the matters mentioned in subsection (3), the court considers that giving a hospital direction is appropriate; and
- (c) that the court is satisfied on the written or oral evidence of a person representing the managing authority of the hospital specified in the direction (“the hospital”) that arrangements have been made for the offender’s detention in the hospital in pursuance of the direction.

(2) The matters referred to in subsection (1)(a) are—

- (a) that the offender has a disorder requiring treatment;
- (b) that failure to provide treatment to the offender as an in-patient in a hospital would be substantially likely to result in serious harm to the offender or serious physical harm to other persons; and
- 25 (c) that treatment appropriate to the offender’s case is available for the offender in the hospital.

(3) The matters referred to in subsection (1)(b) are—

- (a) the effect of section 196 (transfer from hospital to prison);
- 30 (b) the ways in which the offender might become an in-patient in a hospital if the court passed a custodial sentence without giving a hospital direction; and
- (c) how likely it is that, if a hospital direction is given and the offender is detained in hospital under the direction—
- 35 (i) consent to treatment will be given by the offender, or by a person with authority to give consent on behalf of the offender; or
- (ii) treatment will be capable of being given to the offender by virtue of Part 2 of this Act (or, if the offender is under 16, under the Mental Health Order).

40 (4) In subsection (1)(a) “the required medical evidence” means the written or oral evidence of at least two medical practitioners, including the oral evidence of—

- (a) if the disorder is mental disorder, an approved medical practitioner;

- (b) otherwise, a medical practitioner who appears to the court to have special experience in the diagnosis or treatment of the disorder.

### **Effect of hospital directions**

**174.** Where a court gives a hospital direction in respect of a person—

- 5 (a) a constable or any other person directed to do so by the court must take the person to the hospital specified in the direction;
- (b) the managing authority of that hospital must—
  - (i) admit the person; and
  - (ii) detain him or her in accordance with Chapter 5; and
- 10 (c) any question whether the person may be given any treatment while detained in a hospital in pursuance of the direction is (subject to section 238) to be determined in the same way as if the person were not so detained.

### *Interim detention orders*

#### 15 **Interim detention orders**

**175.**—(1) This section applies where—

- (a) a person is convicted before the Crown Court of an offence punishable with imprisonment, other than an offence for which the sentence is fixed by law; or
- 20 (b) a person is convicted by a court of summary jurisdiction of an offence punishable on summary conviction with imprisonment.

(2) If the conditions in subsection (3) are met the court may, before—

- (a) making a public protection order,
- (b) passing a custodial sentence with a hospital direction, or
- 25 (c) dealing with the offender in some other way,

make an order which requires that the offender be admitted to a hospital specified in the order and detained there in accordance with section 176.

(3) The conditions are—

- (a) that the court is satisfied on the required medical evidence—
  - 30 (i) that there is an impairment of, or disturbance in the functioning of, the offender's mind or brain; and
  - (ii) that appropriate care or treatment is available for the offender in the hospital;
- (b) that there is reason to suppose that the most suitable way of dealing with the case may be—
  - 35 (i) to make a public protection order; or
  - (ii) to pass a custodial sentence and give a hospital direction;
- (c) that the court is satisfied on the written or oral evidence of a person representing the managing authority of the hospital that arrangements have been made for the offender's detention in the hospital in pursuance of the order.
- 40

(4) The court may regard the condition in subsection (3)(b) as met only if—

(a) it considers that a custodial sentence is not, or may not be, appropriate but is satisfied on the required medical evidence that there is reason to suppose that the conditions in section 166(2)(c) and (d) may be met; or

5 (b) it considers that a custodial sentence is appropriate and is satisfied on the required medical evidence that there is reason to suppose that the condition in section 173(2)(b) may be met.

(5) In this section “the required medical evidence” means the written or oral evidence of at least two medical practitioners, including the oral evidence of an approved medical practitioner.

(6) In this Part “interim detention order” means an order under this section.

### **Effect of interim detention orders**

**176.**—(1) Where a court makes an interim detention order in respect of a person—

15 (a) a constable or any other person directed to do so by the court must take the person to the hospital specified in the order;

(b) the managing authority of the hospital must—

(i) admit the person; and

(ii) detain him or her in accordance with this section; and

20 (c) any question whether the person may be given any treatment while detained in pursuance of the order is (subject to section 238) to be determined in the same way as if the person were not so detained.

(2) An interim detention order—

25 (a) has effect for such period, not exceeding 12 weeks, as the court may specify when making the order; but

(b) subject to subsection (3), may be renewed for further periods of not more than 28 days at a time if it appears to the court on the written or oral evidence of the responsible medical practitioner that the continuation of the order is justified.

30 (3) An interim detention order may not continue in force for more than 6 months in total.

(4) Where an interim detention order has been made, the court must terminate the order if it—

(a) makes a public protection order in respect of the offender;

35 (b) passes a custodial sentence and gives a hospital direction in respect of the offender; or

(c) decides, after considering the written or oral evidence of the responsible medical practitioner, to pass a custodial sentence without a hospital direction or to deal with the offender in some other way.

40 (5) The power of renewing an interim detention order may be exercised without the offender’s being brought before the court if the offender is represented by counsel, or a solicitor, who is given an opportunity of being heard.

(6) In the case of an offender who is subject to an interim detention order, the court may make a public protection order without the offender's being brought before the court if the offender is represented by counsel, or a solicitor, who is given an opportunity of being heard.

5 (7) If an offender absconds from a hospital in which he or she is liable to be detained under an interim detention order, or while being taken to or from such a hospital—

- (a) the offender may be arrested without warrant by any constable;
- 10 (b) after being arrested, the offender must be brought as soon as practicable before the court that made the order; and
- (c) on the offender's being brought before it, the court may terminate the interim detention order and deal with the offender in any way in which it could have done if no such order had been made.

### CHAPTER 3

## 15 DETENTION UNDER A PUBLIC PROTECTION ORDER WITHOUT RESTRICTIONS

### *Detention and discharge*

#### **Detention under a public protection order without restrictions**

177.—(1) This section applies where—

- 20 (a) a public protection order without restrictions is made in respect of a person under section 165; and
- (b) the person is admitted in pursuance of the order to the establishment specified in the order.

(2) The person may be detained in that establishment for a period not exceeding 25 6 months beginning with the date of the order.

(3) Subsection (2) is subject to (in particular)—

- (a) section 178 (discharge by responsible medical officer);
- (b) sections 179 to 184 (extension of period for which person liable to be detained);
- 30 (c) section 228 (powers of Tribunal).

#### **Discharge from detention by responsible medical practitioner**

178.—(1) A person who is for the time being liable to be detained under a public protection order without restrictions ceases to be so liable if the responsible medical practitioner (as defined by section 247) makes an order in writing 35 discharging the person from being liable to be detained under the public protection order.

(2) Where—

- (a) a person is liable to be detained under a public protection order without restrictions, and
- 40 (b) the responsible medical practitioner is satisfied that releasing the person from detention in an appropriate establishment would not create a substantial risk to others,



the responsible practitioner must make an order under subsection (1).

(3) For the purposes of subsection (2)(b) releasing the person from detention in an appropriate establishment would create a “substantial risk to others” if—

- 5 (a) it would create a risk, linked to an impairment of or disturbance in the functioning of the person’s mind or brain, of serious physical harm to other persons; and
- (b) the likelihood and seriousness of the harm concerned are such that detaining the person in an appropriate establishment in circumstances amounting to a deprivation of liberty is a proportionate response.

10 (4) A discharge of a person under this section 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, if the person is under 16, Part 2 of the Mental Health Order), if the criteria that apply to such detention are met.

#### *Extension of the period of an order*

#### 15 **First extension of period of order**

**179.**—(1) This section applies where—

- (a) a person is liable to be detained under a public protection order without restrictions; and
- (b) the initial period of the order has not ended.

20 (2) The period of the order may be extended for a period of 6 months, beginning immediately after the end of the initial period, by the making of an extension report (see section 181).

(3) In this Chapter “the initial period” of a public protection order without restrictions means the period of 6 months beginning with the date of the order.

25 (4) In this Part “the period” of a public protection order without restrictions means the period for which the person to whom the order relates is liable to be detained under the order.

#### **Subsequent extensions**

**180.**—(1) This section applies where—

- 30 (a) the period of a public protection order without restrictions has been extended for a period (“the current extension period”) under a relevant provision; and
- (b) the person to whom the order relates remains liable to be detained under the order.

35 (2) The period of the order may be further extended, for a period of one year beginning immediately after the end of the current extension period, by the making of an extension report (see section 181).

(3) In subsection (1)(a) “relevant provision” means—

- (a) section 179 (first extension);
- 40 (b) this section; or
- (c) paragraph 8 of Schedule 7 (procedure for extension where responsible social worker not of the requisite opinion).

**Sections 179 and 180: extension reports**

**181.**—(1) This section applies for the purposes of sections 179 and 180.

(2) An “extension report”, in relation to a public protection order without restrictions made in respect of a person, is a report in the prescribed form which—

- 5 (a) is made, within the reporting period, by an appropriate medical practitioner who has examined the person within the reporting period and made the report as soon as practicable after that examination;
- (b) states that in the appropriate medical practitioner’s opinion the criteria for continuation are met (see section 183);
- 10 (c) includes a statement in the prescribed form, by the responsible social worker, that in the social worker’s opinion the criteria for continuation are met; and
- (d) includes any prescribed information.

(3) In this section—

15 “appropriate medical practitioner” means a medical practitioner who is unconnected with the person and is permitted by regulations under section 286 to make the report;

“the reporting period” means—

- 20 (a) in the case of an extension under section 179, the last month of the initial period;
- (b) in the case of an extension under section 180, the last two months of the current extension period (within the meaning of that section).

“the responsible social worker” means the approved social worker who is in charge of the person’s case.

25 **Extension of period where responsible person not of the requisite opinion**

**182.** Schedule 7 provides a procedure for cases where it is proposed to make an extension under section 179 or 180 but the responsible social worker is not of the opinion that the criteria for continuation are met.

**The criteria for continuation**

30 **183.**—(1) In this Chapter “the criteria for continuation”, in relation to a public protection order without restrictions made in respect of a person, has the meaning given by subsection (2).

(2) The criteria for continuation are—

- 35 (a) that there is an impairment of, or disturbance in the functioning of, the mind or brain of the person;
- (b) that appropriate care or treatment is available for the person in the establishment concerned;
- (c) that failure to detain the person in circumstances amounting to a deprivation of liberty in an appropriate establishment in which appropriate care or treatment is available for the person would create a risk, linked to
- 40 the impairment or disturbance, of serious physical harm to other persons; and

(d) that detaining the person in the establishment concerned, in circumstances amounting to a deprivation of liberty, would be a proportionate response to—

- (i) the likelihood of the harm concerned; and
- (ii) the seriousness of that harm.

(3) In this section “the establishment concerned” means the establishment in which the person would be liable to be detained if the period of the order were extended.

#### **Extension reports: further provision**

**184.**—(1) This section contains further provisions about extension reports (as defined by section 181).

(2) For the purposes of that section an extension report is made when the completed report is signed by the medical practitioner making it.

(3) A medical practitioner who makes an extension report must give it to the relevant trust as soon as practicable.

(4) Where an extension report is given to the relevant trust, that trust must as soon as practicable—

- (a) give prescribed information to the person to whom the public protection order relates and any prescribed person; and
- (b) give RQIA a copy of the report.

(5) In this section “the relevant trust” means the HSC trust in whose area the establishment in which the person is liable to be detained under the public protection order is situated.

#### *Permission for absence and transfers*

#### **Permission for absence**

**185.**—(1) Where a person is liable to be detained under a public protection order without restrictions, the responsible medical practitioner may—

- (a) give the person permission to be absent from the establishment in which the person is liable to be detained; and
- (b) impose in relation to that permission any conditions that the responsible medical practitioner considers necessary for the health or safety of the person or the protection of other persons.

(2) The permission may be for a specified occasion or a specified period.

(3) Where permission is given for a specified period, the period may be extended by further permission given in the person’s absence.

(4) The responsible medical practitioner may, on giving permission, direct that the person is to remain in custody during his or her absence; but such a direction may be given only if it appears to that practitioner that the direction is necessary for the health or safety of the person or the protection of other persons.

(5) Where such a direction is given, the person may be kept in the custody of—

- (a) a person on the staff of the establishment; or

(b) any other person authorised in writing by the managing authority of the establishment.

(6) Where permission to be absent for more than 28 days is given to a person under this section, or a period for which a person is permitted to be absent is extended for more than 28 days, the managing authority of the establishment must—

(a) within the period of 14 days beginning with the day the permission is given or the day the period is extended (as the case may be), inform RQIA of the address at which the person is staying; and

(b) notify RQIA of the person's return within the period of 14 days beginning with the day of the return.

(7) Where a person ("A") is absent in pursuance of permission given under this section, the responsible medical practitioner may, by notice in writing given to A or to the person for the time being in charge of A, revoke the permission and recall A to the establishment if it appears to that practitioner that it is necessary to do so—

(a) for the health or safety of A;

(b) for the protection of other persons; or

(c) because A is not receiving proper care.

(8) But a person may not be recalled under subsection (7) after the person has ceased to be liable to be detained under the order mentioned in subsection (1).

#### **Transfers between hospitals etc**

**186.**—(1) Where a person is liable to be detained under a public protection order without restrictions, the managing authority of the establishment in which the person is liable to be detained may arrange for the transfer of the person from that establishment to another suitable establishment.

(2) Where a person is transferred under this section, section 169(1)(b) applies as if the establishment referred to there were the establishment to which the person has been transferred.

(3) Before a managing authority arranges for the transfer of a person ("A") under this section, it must if practicable inform—

(a) if A is 16 or over, any person who is A's nominated person;

(b) if A is under 16, a person with parental responsibility for A.

(4) Where a person is transferred under this section, the managing authority which arranged the transfer must immediately notify RQIA of the transfer.

(5) The power of a managing authority under this section to arrange for the transfer of a person from one establishment to another is subject to any prescribed conditions.

(6) In this section "suitable establishment" means an appropriate establishment (as defined by section 165) in which appropriate care or treatment is available for the person.

*Effect of custodial sentence***Effect of custodial sentence**

5 **187.**—(1) This section applies where a person who is liable to be detained under a public protection order without restrictions is detained in custody in pursuance of any sentence or order passed or made by a court in the United Kingdom (including an order committing or remanding the person in custody).

10 (2) If the person is detained in custody for a period exceeding 6 months, or for successive periods exceeding 6 months in total, the person ceases at the end of the period of 6 months beginning with the first day of the detention in custody to be liable to be detained under the public protection order.

(3) Subsection (4) applies where—

(a) subsection (2) does not apply; and

(b) at the time of the person's discharge from custody, the person is liable to be detained under the public protection order.

15 (4) Section 239 (power to return to hospital etc a person who is absent without permission) applies in relation to the person as if on the day of the discharge from custody the person had absented himself or herself without permission given under section 185 from the establishment where the person is liable to be detained under the public protection order.

20

## CHAPTER 4

## DETENTION UNDER A PUBLIC PROTECTION ORDER WITH RESTRICTIONS

**Detention under a public protection order with restrictions**

25 **188.**—(1) This section applies where a person is liable to be detained under a public protection order with restrictions made under section 165.

(2) The person continues to be liable to be detained under the order until discharged absolutely under section 189 or Chapter 8.

**Discharge from detention by Department of Justice**

30 **189.**—(1) At any time while a public protection order with restrictions is in force in respect of a person the Department of Justice may, if it considers it appropriate to do so, by warrant—

(a) discharge the person absolutely (that is, discharge the person from being liable to be detained under the order); or

35 (b) discharge the person from the establishment concerned subject to conditions (see further section 190).

(2) The power under subsection (1) to discharge a person absolutely includes power to do so at a time when the person has been conditionally discharged under this section or section 229 and has not been recalled under section 190.

(3) If—

40 (a) a public protection order with restrictions provides that the order is to be treated as a public protection order with restrictions for a specified period (“the restricted period”), and

(b) that period ends at a time when the person has been conditionally discharged under subsection (1) and has not been recalled under section 190,

the person is to be treated as absolutely discharged when the restricted period ends (and accordingly ceases at that time to be liable to be detained under the public protection order).

(4) A discharge of a person under this section 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, if the person is under 16, Part 2 of the Mental Health Order) if the criteria that apply to such detention are met.

(5) In this section “the establishment concerned” means the establishment in which, immediately before the discharge under subsection (1), the person is liable to be detained under the public protection order.

### **Power to recall person who has been conditionally discharged**

**190.**—(1) This section applies where a public protection order with restrictions is in force in respect of a person who has been conditionally discharged under section 189.

(2) The Department of Justice may by warrant recall the person to an appropriate establishment specified in the warrant (“the specified establishment”) if it appears to the Department that—

- (a) failure to recall the person would create a risk, linked to an impairment of or disturbance in the functioning of the person’s mind or brain, of serious physical harm to other persons; and
- (b) the likelihood and seriousness of the harm concerned are such that recalling the person is a proportionate response.

(3) On a recall under this section—

- (a) if the specified establishment is not the one from which the person was conditionally discharged, section 169(1)(b) applies as if the establishment referred to there were the specified establishment;
- (b) in any case, the person is to be treated for the purposes of section 239 (power to return to hospital etc a person who is absent without permission) as if the person had absented himself or herself, without permission given under section 193, from the specified establishment; and
- (c) if the public protection order provides that the order is to be treated as a public protection order with restrictions for a specified period, that period is treated as not ending until the person returns to the specified establishment or is returned there under section 239.

### **Reports by responsible medical practitioner**

**191.**—(1) While a public protection order with restrictions is in force in respect of a person, the responsible medical practitioner must at such intervals (not exceeding one year) as the Department of Justice may direct examine and report to the Department of Justice on that person.

(2) A report under this section must contain any prescribed information.

**Direction for person to attend for purposes of justice etc**

192.—(1) Where—

- (a) a person is liable to be detained under a public protection order with restrictions, and
  - 5 (b) the Department of Justice is satisfied that the person's attendance at any place in Northern Ireland is desirable in the interests of justice or for the purposes of any public inquiry,
- the Department of Justice may direct the person to be taken to that place.

(2) Where a person is directed under this section to be taken to any place, the person is, unless the Department of Justice otherwise directs, to be kept in custody—

- (a) while being taken to that place;
- (b) while at that place; and
- 15 (c) while being taken back to the establishment in which he or she is liable to be detained under the public protection order.

**Permission for absence**

193.—(1) Where a person ("A") is liable to be detained under a public protection order with restrictions, the responsible medical practitioner may with the consent of the Department of Justice—

- 20 (a) give A permission to be absent from the establishment in which A is liable to be detained ("the establishment"); and
- (b) impose in relation to that permission any conditions the responsible medical practitioner considers necessary for the health or safety of A or the protection of other persons.

25 (2) The permission may be for a specified occasion or a specified period.

(3) Where permission is given for a specified period, the period may be extended by further permission given in the person's absence.

(4) The responsible medical practitioner may, on giving permission, direct that the person is to remain in custody during his or her absence; but such a direction may be given only if it appears to that practitioner that the direction is necessary for the health or safety of the person or the protection of other persons.

(5) Where such a direction is given, the person may be kept in the custody of—

- (a) a person on the staff of the establishment; or
- 35 (b) any other person authorised in writing by the managing authority of the establishment.

(6) Where permission to be absent for more than 28 days is given to a person under this section, or a period for which a person is permitted to be absent is extended for more than 28 days, the managing authority of the establishment must—

- 40 (a) within the period of 14 days beginning with the day the permission is given or the day the period is extended (as the case may be), inform RQIA of the address at which the person is staying; and

(b) notify RQIA of the person's return within the period of 14 days beginning with the day of the return.

(7) Where—

(a) a person is absent in pursuance of permission given under this section, and

5 (b) it appears to the responsible medical practitioner or the Department of Justice that it is necessary to do so for the health or safety of the person or the protection of other persons or because the person is not receiving proper care,

10 responsible medical practitioner or the Department of Justice may by notice in writing, given to the person or to the person for the time being in charge of him or her, revoke the permission and recall the person to the establishment.

(8) But a person may not be recalled under subsection (7) after the person has ceased to be liable to be detained under the order mentioned in subsection (1).

### **Transfers between hospitals etc**

15 **194.**—(1) Where a person is liable to be detained under a public protection order with restrictions, the managing authority of the establishment in which the person is liable to be detained may, with the consent of the Department of Justice, arrange for the transfer of the person from that establishment to another suitable establishment.

20 (2) Where a person is transferred under this section, section 169(1)(b) applies as if the establishment referred to there were the establishment to which the person has been transferred.

(3) Before a managing authority arranges for the transfer of a person (“A”) under this section, it must if practicable inform—

25 (a) if A is 16 or over, any person who is A's nominated person;

(b) if A is under 16, a person with parental responsibility for A.

(4) Where a person is transferred under this section, the managing authority which arranged the transfer must immediately notify RQIA of the transfer.

30 (5) The power of a managing authority under this section to arrange for the transfer of a person from one establishment to another is subject to any prescribed conditions.

(6) In this section “suitable establishment” means an appropriate establishment (as defined by section 165) in which appropriate care or treatment is available for the person.

35

## CHAPTER 5

### DETENTION UNDER A HOSPITAL DIRECTION

#### **Detention under a hospital direction**

**195.**—(1) This section applies where a person is admitted to a hospital under a hospital direction.

40 (2) The person continues to be liable to be detained in hospital under the hospital direction until the direction ceases to have effect under section 196 or 234.



### **Transfer to prison etc of person detained in hospital under a hospital direction**

**196.**—(1) A hospital direction in respect of a person (“A”) ceases to have effect, if it has not already done so, on A’s release date (see sections 197 and 198).

5 (2) If before A’s release date the Department of Justice receives a relevant notification—

(a) the Department of Justice may by warrant direct that A be removed to any prison in which A might (but for the hospital direction) be detained, to be dealt with there as if the hospital direction had not been given; and

10 (b) the hospital direction ceases to have effect on A’s arrival in prison.

(3) In this section a “relevant notification” means a written notification by a suitable medical practitioner that—

(a) in the practitioner’s opinion A does not have, or no longer has, the disorder;

15 (b) in the practitioner’s opinion it is not substantially likely that, if A were transferred under subsection (2), serious harm to A or serious physical harm to other persons would result from A’s ceasing to be provided with treatment for the disorder as an in-patient in hospital; or

20 (c) in the practitioner’s opinion no effective treatment for the disorder can be given to A in the hospital where A is detained.

(4) In this section “a suitable medical practitioner” means the responsible medical practitioner or—

(a) if the disorder was mental disorder, any approved medical practitioner;

25 (b) otherwise, any medical practitioner who appears to the Department of Justice to have special experience in the diagnosis or treatment of the disorder.

(5) In this section “the disorder” means the disorder in respect of which the hospital direction was given.

30 (6) If A would (but for the hospital direction) be liable to be detained in a place of a description other than a prison, any reference in this section to a “prison” is to be read as a reference to a place of that description.

### **Section 196: meaning of “release date”**

**197.** For the purposes of section 196 A’s “release date” is—

35 (a) the day (if any) on which A is entitled to be released by virtue of section 198; or

(b) if by virtue of section 198 a power to release A before that day is exercised, the day on which A is released under the power.

### **Duties and powers to release from detention**

**198.**—(1) Where—

40 (a) a hospital direction is in force in respect of a person (“A”), and

(b) a power or duty mentioned in subsection (2) would apply in relation to A if the hospital direction had not been given and A were detained in a prison,

the power or duty applies in relation to A as it would apply if the hospital direction had not been given and A were detained in a prison.

(2) The powers and duties referred to in subsection (1) are—

- (a) any power or duty to release A on licence, or to release A unconditionally;
- 5 (b) any power or duty of the Department of Justice to give a direction under section 5 of the Life Sentences (Northern Ireland) Order 2001 (direction that the release provisions are to apply);
- (c) any power or duty to make a reference to the Parole Commissioners or to require a reference to those Commissioners;
- 10 (d) any power or duty of the Parole Commissioners.

(3) If A would (but for the hospital direction) be liable to be detained in a place of a description other than a prison, any reference in subsection (1) to a “prison” is to be read as a reference to a place of that description.

(4) If A is detained under—

- 15 (a) a juvenile justice centre order under Article 39 of the Criminal Justice (Children) (Northern Ireland) Order 1998,
- (b) a custody care order under Article 44A of that Order, or
- (c) a custody probation order under Article 24 of the Criminal Justice (Northern Ireland) Order 1996,

20 the reference in subsection (2)(a) to releasing A unconditionally includes a reference to releasing A at the start of a period of supervision.

(5) For the purposes of section 38(2) of the Prison Act (Northern Ireland) 1953 (discounting from sentences of certain prisoners periods while they are unlawfully at large), a person who—

- 25 (a) is subject to a hospital direction, and
- (b) is at large in circumstances in which the person is liable to be taken into custody under any provision of this Part or section 281 (retaking of persons escaping from legal custody),

is to be treated as unlawfully at large and absent from prison.

30 (6) In this section “the Parole Commissioners” means the Parole Commissioners for Northern Ireland.

### **Reports by responsible medical practitioner**

35 **199.**—(1) While a hospital direction is in force in respect of a person, the responsible medical practitioner must at such intervals (not exceeding one year) as the Department of Justice may direct examine and report to the Department of Justice on that person.

(2) A report under this section must contain any prescribed information.

### **Permission for absence etc**

40 **200.**—(1) The provisions mentioned in subsection (2) apply in relation to a person liable to be detained in a hospital under a hospital direction as they apply in relation to a person liable to be detained under a public protection order with restrictions.

- (2) Those provisions are—  
 section 192 (direction for person to attend for purposes of justice etc);  
 section 193 (permission for absence).

### **Transfers between hospitals**

- 5     **201.**—(1) Where a person is liable to be detained in a hospital under a hospital direction, the managing authority of the hospital may, with the consent of the Department of Justice, arrange for the transfer of the person from that hospital to another hospital in which treatment appropriate to the person’s case is available for the person.
- 10     (2) Where a person is transferred under this section—  
       (a) the managing authority of the hospital to which the person is transferred must admit the person and detain him or her in accordance with this Chapter; and  
       (b) the managing authority of the hospital from which the person was  
 15     transferred ceases to be under a duty to detain the person.
- (3) Before a managing authority arranges for the transfer of a person (“A”) under this section, it must if practicable inform—  
       (a) if A is 16 or over, any person who is A’s nominated person;  
       (b) if A is under 16, a person with parental responsibility for A.
- 20     (4) Where a person is transferred under this section, the managing authority which arranged the transfer must immediately notify RQIA of the transfer.
- (5) The power of a managing authority under this section to arrange for the transfer of a person from one hospital to another is subject to any prescribed conditions.

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## CHAPTER 6

### UNFITNESS TO BE TRIED ETC

#### *Procedure during trial on indictment*

#### **Procedure where question of fitness to be tried arises**

- 30     **202.**—(1) This section applies where, on the trial of a person charged on indictment with the commission of an offence, the question arises (at the instance of the defence or otherwise) whether the accused is unfit to be tried.
- (2) In the following provisions of this section that question is referred to as “the question of fitness to be tried”.
- 35     (3) The question of fitness to be tried must be determined as soon as it arises; but this is subject to subsections (4) and (5).
- (4) The court may postpone consideration of the question of fitness to be tried until any time up to the opening of the case for the defence if, having regard to the nature of the supposed condition of the accused, the court considers that the postponement is appropriate and is in the interests of the accused.

(5) If, before the question of fitness to be tried falls to be determined, the jury returns a verdict of acquittal on the count or each of the counts on which the accused is being tried, that question must not be determined.

5 (6) The question of fitness to be tried is to be determined by the court without a jury.

(7) The court may determine that the accused is unfit to be tried only if it is satisfied on the required medical evidence that the accused is unfit to be tried.

10 (8) In this section “the required medical evidence” means the written or oral evidence of at least two medical practitioners, including the oral evidence of an approved medical practitioner.

### **Finding that the accused did the act or made the omission charged**

**203.**—(1) This section applies where in accordance with section 202(6) it is determined by a court that the accused is unfit to be tried.

15 (2) The trial must not proceed or further proceed but it must be determined by a jury—

(a) on the evidence (if any) already given in the trial, and

(b) on such evidence as may be adduced or further adduced by the prosecution, or adduced by a person appointed by the court under this section to put the case for the defence,

20 whether it is satisfied, as respects the count or each of the counts on which the accused was to be or was being tried, that the accused did the act or made the omission charged against the accused as the offence.

25 (3) If as respects that count or any of those counts the jury is satisfied as mentioned in subsection (2), it must make a finding that the accused did the act or made the omission charged against the accused.

(4) If as respects that count or any of those counts the jury is not so satisfied, it must return a verdict of acquittal as if on the count in question the trial had proceeded to a conclusion.

30 (5) Where the question of fitness to be tried was determined after arraignment of the accused, the determination under subsection (2) is to be made by the jury by whom the accused was being tried.

### **Procedure in relation to finding of insanity**

**204.**—(1) This section applies where, on the trial on indictment of any person charged with the commission of an offence—

35 (a) the required medical evidence is given that the person charged was an insane person at the time the offence was committed; and

(b) the jury finds that although the person charged did the act or made the omission charged, he or she was an insane person at that time.

40 (2) The court must direct a finding to be recorded to the effect that the person is not guilty of the offence charged on the ground of insanity.

(3) In this section—

“insane person” and “insanity” have the meanings given by section 1 of the Criminal Justice Act (Northern Ireland) 1966;

“the required medical evidence” means the written or oral evidence of at least two medical practitioners, including the oral evidence of an approved medical practitioner.

### **Powers to deal with person unfit to be tried or not guilty by reason of insanity**

- 5 **205.**—(1) This section applies where—
- (a) findings are recorded that the accused is unfit to be tried and that the accused did the act or made the omission charged; or
  - (b) a finding is recorded that the accused is not guilty by reason of insanity.
- (2) Subject to the following provisions of this section, the court must—
- 10 (a) make a public protection order without restrictions (see section 165(3));
  - (b) make a public protection order with restrictions (see section 165(4));
  - (c) make a supervision and treatment order; or
  - (d) make an order for the absolute discharge of the accused.
- (3) The power to make an order under subsection (2)(a) is exercisable only if the  
15 detention conditions are met.
- (4) The power to make an order under subsection (2)(b) is exercisable only if the detention conditions and the restriction condition are met.
- (5) Sections 166 and 167 (meaning of “the detention conditions” and “the restriction condition”) apply for the purposes of this section (any reference to the  
20 offender being read as a reference to the accused, and any reference to the offence being read accordingly).
- (6) Where the offence to which the finding or findings relate is one for which the sentence is fixed by law—
- (a) subsections (2) to (5) do not apply;
  - 25 (b) the court must make a public protection order with restrictions; and
  - (c) the order must not include provision to the effect that it is to be treated as a public protection order with restrictions for a specified period only.
- (7) Subject to section 206, a public protection order made under this section has the same effect as if it had been made under section 165 (as to that effect, see the  
30 provisions mentioned in section 165(5)).
- (8) The Department of Justice must make regulations about supervision and treatment orders.

### **Remission for trial where person no longer unfit to be tried**

- 35 **206.**—(1) This section applies where—
- (a) findings mentioned in section 205(1)(a) have been recorded in respect of a person;
  - (b) the person is liable to be detained under a public protection order made under section 205 or is subject to a supervision and treatment order made under that section; and
  - 40 (c) a suitable medical practitioner notifies the Department of Justice that, in that practitioner’s opinion, the person is no longer unfit to be tried.

- (2) If the person is liable to be detained under a public protection order—
- (a) the Department of Justice may remit the person to the Crown Court at the relevant place, for trial; and—
  - (b) where it does so, the order ceases to have effect once the person has arrived at the Crown Court at the relevant place and the Crown Court has made any order relating to the trial.
- (3) If the person is subject to a supervision and treatment order—
- (a) the Department of Justice may remit the person’s case to the Crown Court at the relevant place, for trial; and
  - (b) where it does so, the order ceases to have effect once the person’s case has been so remitted and the Crown Court has made any order relating to the trial.
- (4) In this section—
- “the relevant place” means the place where, but for the findings mentioned in subsection (1)(a), the person would have been tried;
  - “a suitable medical practitioner” means—
    - (a) the responsible medical practitioner; or
    - (b) any approved medical practitioner.

*Procedure of court of summary jurisdiction*

**20 Power to make order where the accused did the act or made the omission charged**

**207.** Where—

- (a) a person is charged before a court of summary jurisdiction with any act or omission as an offence,
- (b) the court would have power on convicting the person of the offence to make an order under section 165 (public protection orders), and
- (c) the court is satisfied that the accused did the act or made the omission charged,

the court may, if it considers it appropriate to do so, make the order under section 165 without convicting the accused.

CHAPTER 7

TRANSFER FROM PRISON ETC TO HOSPITAL

*Persons serving custodial sentences etc*

**Power to transfer person serving custodial sentence etc to hospital**

**208.**—(1) Where—

- (a) a person is serving a relevant sentence, and
- (b) the conditions for giving a direction under this section are met (see section 209),

the Department of Justice may by warrant direct that the person be removed to a hospital specified in the direction.

(2) For the purposes of this section a person is “serving a relevant sentence” if—

- (a) the person is detained under a custodial sentence (defined by section 247);
- (b) the person is committed to custody for failure to comply with an order to enter into a recognizance to keep the peace or to be of good behaviour or both; or
- (c) the person is committed by a court to a prison in default of payment of any sum adjudged to be paid on the person’s conviction.

(3) In subsection (2)(c) “prison” includes a young offenders centre or juvenile justice centre.

### Conditions for transfer under section 208

**209.**—(1) The conditions for giving a direction under section 208 in respect of a person (“A”) are—

- (a) that the Department of Justice is satisfied, on the required medical reports, of the matters mentioned in subsection (2);
- (b) that, having regard to the public interest and all the circumstances, and in particular to the matters mentioned in subsection (3), the Department of Justice considers that giving the direction is appropriate; and
- (c) that the Department is satisfied, on the written report of a person representing the managing authority of the hospital specified in the direction (“the hospital”), that arrangements have been made for the offender’s detention in the hospital in pursuance of the direction.

(2) The matters referred to in subsection (1)(a) are—

- (a) that A has a disorder requiring treatment;
- (b) that failure to provide treatment to A as an in-patient in a hospital would be substantially likely to result in serious harm to A or serious physical harm to other persons; and
- (c) that treatment appropriate to A’s case is available for A in the hospital.

(3) The matters referred to in subsection (1)(b) are—

- (a) the ways in which A might become an in-patient in a hospital if no direction under this section were given; and
- (b) how likely it is that, if such a direction is given and A is detained in hospital under the direction—
  - (i) consent to treatment will be given by A, or by a person with authority to give consent on behalf of A; or
  - (ii) treatment will be capable of being given to A by virtue of Part 2 of this Act (or, if A is under 16, under the Mental Health Order).

(4) In subsection (1)(a) “the required medical reports” means written reports from at least two medical practitioners, including—

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

**Effect of transfer under section 208**

**210.**—(1) Where a direction is given in respect of a person under section 208 (transfer of person serving custodial sentence etc to hospital), the managing authority of the hospital specified in the direction must—

- 5 (a) admit the person; and  
 (b) detain him or her in accordance with Chapter 5.

(2) In Chapter 5 (detention under a hospital direction), any reference to a hospital direction includes a reference to a direction under section 208.

*Civil prisoners and immigration detainees***10 Transfer of civil prisoner or immigration detainee to hospital**

**211.**—(1) Where—

- (a) a person is a civil prisoner or an immigration detainee, and  
 (b) the conditions for giving a direction under this section are met (see section 220),

15 the Department of Justice may by warrant direct that that person be removed to a hospital specified in the direction.

(2) The managing authority of the hospital specified in the direction must—

- (a) admit the person; and  
 (b) detain him or her in accordance with section 212.

20 (3) In this section—

“a civil prisoner” means a person committed by a court to prison for a limited term, other than a person serving a relevant sentence (as defined by section 208);

25 “an immigration detainee” means a person detained under the Immigration Act 1971 or under section 62 of the Nationality, Immigration and Asylum Act 2002.

**Detention in hospital on removal under section 211**

**212.**—(1) Where a person is admitted to a hospital under a direction given under section 211 (transfer of civil prisoners and immigration detainees), the person  
 30 continues to be liable to be detained in hospital under that direction until that direction ceases to have effect under section 213 or 234.

(2) In sections 199 to 201 (which relate to detention under hospital directions) any reference to a hospital direction includes a reference to a direction under section 211.

**35 Duration of direction under section 211**

**213.**—(1) This section applies where a direction is given in respect of a person (“A”) under section 211 (transfer of civil prisoner or immigration detainee to hospital).

40 (2) The direction (“the hospital transfer direction”) ceases to have effect, if it has not already done so, at the end of the period of liability to detention.



(3) If before the end of that period the Department of Justice receives a relevant notification—

- 5 (a) the Department of Justice may by warrant direct that A be removed to any place in which A might (but for the hospital transfer direction) be detained, to be dealt with there as if the hospital transfer direction had not been given; and
- (b) the hospital transfer direction ceases to have effect on A's arrival in that place.

(4) In this section a "relevant notification" means a written notification by a suitable medical practitioner that—

- 10 (a) in the practitioner's opinion A does not have, or no longer has, the disorder;
- 15 (b) in the practitioner's opinion it is not substantially likely that, if A were transferred under subsection (3), serious harm to A or serious physical harm to other persons would result from A's ceasing to be provided with treatment for the disorder as an in-patient in hospital; or
- (c) in the practitioner's opinion no effective treatment for the disorder can be given to A in the hospital where A is detained.

(5) In this section—

20 "the disorder" means the disorder in respect of which the hospital transfer direction was given;

"the period of liability to detention" means the period during which A would, if the hospital transfer direction had not been given, have been liable to be detained in the place from which A was removed to hospital;

25 "a suitable medical practitioner" means the responsible medical practitioner or—

- (a) if the disorder was mental disorder, an approved medical practitioner;
- (b) otherwise, any medical practitioner who appears to the Department of Justice to have special experience in the diagnosis or treatment of the disorder.

#### *Persons remanded in custody by magistrates' court*

#### **Transfer to hospital of person remanded by magistrates' court**

**214.**—(1) Where—

- 35 (a) a person is remanded in custody by a magistrates' court, and
- (b) the conditions for giving a direction under this section are met (see section 220),

the Department of Justice may by warrant direct that that person be removed to a hospital specified in the direction.

(2) The managing authority of the hospital specified in the direction must—

- 40 (a) admit the person; and
- (b) detain him or her in accordance with section 215.

**Detention in hospital on removal under section 214**

215.—(1) Where a person is admitted to a hospital under a direction given under section 214 (transfer of person remanded in custody by magistrates' court), the person continues to be liable to be detained in hospital under that direction until the direction ceases to have effect under—

- (a) section 216;
- (b) section 219 as applied by section 216(3); or
- (c) section 234.

(2) In sections 199 to 201 (which relate to detention under hospital directions) any reference to a hospital direction includes a reference to a direction under section 214.

**Duration of direction under section 214**

216.—(1) This section applies where a direction is given in respect of a person ("A") under section 214 (transfer of person remanded in custody by magistrates' court).

(2) The direction ("the hospital transfer direction") ceases to have effect at the end of the period of remand unless—

- (a) it has already ceased to have effect (see subsection (4)); or
- (b) A is committed in custody to the Crown Court for trial or to be otherwise dealt with.

(3) If A is committed to the Crown Court as mentioned in subsection (2) and the hospital transfer direction has not already ceased to have effect, section 219 (duration of transfer under section 217) applies as if the hospital transfer direction given in A's case had been given under section 217.

(4) If the magistrates' court is satisfied, on the written or oral evidence of the responsible medical practitioner—

- (a) that A does not have, or no longer has, the disorder in respect of which the hospital transfer direction was given, or
- (b) that it is not substantially likely that serious harm to A or serious physical harm to other persons would result from A's ceasing to be provided with treatment for the disorder as an in-patient in hospital, or
- (c) that no effective treatment for the disorder can be given to A in the hospital where A is detained,

that court may direct that the hospital transfer direction ceases to have effect.

(5) A direction under subsection (4) may be given even if the period of remand has not expired or the accused is committed to the Crown Court as mentioned in subsection (2).

(6) Subject to subsection (7), the power of further remanding A may be exercised by the magistrates' court without A's being brought before the court; and if the magistrates' court further remands A in custody (whether or not A is brought before the court) the period of remand is to be regarded for the purposes of this section as not having expired.

(7) The magistrates' court may under subsection (6) further remand A in A's absence only if A has appeared before the court within the previous 6 months.

(8) The magistrates' court may, in the absence of A, conduct a preliminary inquiry into an offence alleged to have been committed by A and commit A for trial in accordance with Article 37 of the Magistrates' Courts (Northern Ireland) Order 1981 if—

- (a) it is satisfied on the written or oral evidence of the responsible medical practitioner that A is unfit to take part in the proceedings; and
- (b) A is represented by counsel, or a solicitor, who is given an opportunity of being heard.

#### *Other detainees*

#### **Transfer of certain other detainees to hospital**

**217.**—(1) Where—

- (a) a person (“A”) is a relevant detainee, and
- (b) the conditions for giving a direction under this section are met (see section 220),

the Department of Justice may by warrant direct that A be removed to a hospital specified in the direction.

(2) The managing authority of the hospital specified in the direction must—

- (a) admit the person; and
- (b) detain him or her in accordance with section 218.

(3) In this section “a relevant detainee” means a person detained in a relevant place who is not—

- (a) a person serving a relevant sentence (as defined by section 208);
- (b) a civil prisoner or immigration detainee (as defined by section 211); or
- (c) a person remanded in custody by a magistrates' court.

(4) In this section “a relevant place” means—

- (a) a prison;
- (b) a remand centre;
- (c) a young offenders centre; or
- (d) a juvenile justice centre.

#### **Detention in hospital on removal under section 217**

**218.**—(1) Where a person is admitted to a hospital under a direction given under section 217 (transfer of certain detainees), the person continues to be liable to be detained in hospital under that direction until the direction ceases to have effect under section 219 or 234.

(2) In sections 199 to 201 (which relate to detention under hospital directions) any reference to a hospital direction includes a reference to a direction under section 217.

**Duration of direction under section 217**

**219.**—(1) This section applies where a direction under section 217 (transfer of certain detainees to hospital) is given in respect of a person (“A”).

5 (2) The direction (“the hospital transfer direction”) ceases to have effect, if it has not already done so, when A’s case is disposed of by the court; but this does not limit any power of the court under this Part in respect of A.

(3) If the Department of Justice receives a relevant notification before A’s case is disposed of by the court—

10 (a) the Department of Justice may by warrant direct that A be removed to any place in which A might (but for the hospital transfer direction) be detained, to be dealt with there as if the hospital transfer direction had not been given; and

(b) the hospital transfer direction ceases to have effect on A’s arrival in that place.

15 (4) In subsection (3) a “relevant notification” means a written notification by a suitable medical practitioner that—

(a) in the practitioner’s opinion A does not have, or no longer has, the disorder;

20 (b) in the practitioner’s opinion it is not substantially likely that, if A were transferred under subsection (3), serious harm to A or serious physical harm to other persons would result from A’s ceasing to be provided with treatment for the disorder as an in-patient in hospital; or

(c) in the practitioner’s opinion no effective treatment for the disorder can be given to A in the hospital where A is detained.

25 (5) Where no direction has been given under subsection (3) and the case has not been disposed of by the court, the court may, if it is satisfied on the written or oral evidence of the responsible medical practitioner that one or more of the relevant conditions is met—

30 (a) order A to be removed to any place in which A might (but for the hospital transfer direction) be detained, to be dealt with there as if the hospital transfer direction had not been given; or

(b) order A to be released on bail.

(6) The “relevant conditions” referred to in subsection (5) are—

(a) that A does not have, or no longer has, the disorder;

35 (b) that it is not substantially likely that, if the court made an order under subsection (5), serious harm to A or serious physical harm to other persons would result from A’s ceasing to be provided with treatment for the disorder as an in-patient in hospital;

40 (c) that no effective treatment for the disorder can be given to A in the hospital where A is detained.

(7) Where under subsection (5) the court orders A to be removed to a place or to be released on bail, the hospital transfer direction ceases to have effect on A’s arrival in that place or release on bail (as the case may be).

(8) In this section—

“the court” means the court having jurisdiction to try or otherwise deal with A;  
 “the disorder” means the disorder in respect of which the hospital transfer  
 direction was given;

“a suitable medical practitioner” means the responsible medical practitioner  
 or—

- (a) if the disorder was mental disorder, any approved medical practitioner;
- (b) otherwise, any medical practitioner who appears to the Department of  
 Justice to have special experience in the diagnosis or treatment of the  
 disorder.

*Conditions for transfer to hospital under section 211, 214 or 217*

**Conditions for transfer to hospital under section 211, 214 or 217**

**220.**—(1) In this section a “relevant transfer direction” means a direction  
 under—

- (a) section 211 (transfer of civil prisoner or immigration detainee to hospital);
- (b) section 214 (transfer to hospital of person remanded in custody by  
 magistrates’ court); or
- (c) section 217 (transfer of certain other detainees to hospital).

(2) The conditions for giving a relevant transfer direction in respect of a person  
 (“A”) are—

- (a) that the Department of Justice is satisfied, on the required medical reports,  
 of the matters mentioned in subsection (3);
- (b) that, having regard to all the circumstances and in particular the matters  
 mentioned in subsection (4), the Department of Justice considers that  
 giving the direction is appropriate; and
- (c) that the Department is satisfied, on the written report of a person  
 representing the managing authority of the hospital specified in the  
 direction, that arrangements have been made for the offender’s detention in  
 that hospital in pursuance of the direction.

(3) The matters referred to in subsection (2)(a) are—

- (a) that A urgently needs treatment for a disorder;
- (b) that failure to provide treatment to A as an in-patient in a hospital would be  
 substantially likely to result in serious harm to A or serious physical harm  
 to other persons; and
- (c) that treatment appropriate to A’s case is available for A in the hospital  
 specified in the direction.

(4) The matters referred to in subsection (2)(b) are—

- (a) the ways in which A might become an in-patient in a hospital if no  
 direction were given under this section; and
- (b) how likely it is that, if the direction is given and A is detained in hospital  
 under the direction—
  - (i) consent to treatment will be given by A, or by a person with authority to  
 give consent on behalf of A; or

(ii) treatment will be capable of being given to A by virtue of Part 2 of this Act (or, if A is under 16, under the Mental Health Order).

(5) In subsection (2)(a) “the required medical reports” means written reports from at least two medical practitioners, including—

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

*General provisions about hospital transfer directions*

**General provisions about hospital transfer directions**

- 10 **221.**—(1) In this Part “hospital transfer direction” means a direction under—  
 (a) section 208 (transfer of person serving custodial sentence etc to hospital);  
 (b) section 211 (transfer of civil prisoner or immigration detainee to hospital);  
 (c) section 214 (transfer to hospital of person remanded in custody by magistrates’ court); or  
 15 (d) section 217 (transfer of certain other detainees to hospital).

(2) If—

- (a) a hospital transfer direction is given in respect of a person, and  
 (b) the person has not been admitted to the hospital specified in the direction by the end of the period of 14 days beginning with the date of the  
 20 direction,

the direction ceases to have effect at the end of that period.

(3) Any question whether a person may be given any treatment while detained in hospital in pursuance of a hospital transfer direction is (subject to section 238) to be determined in the same way as if the person were not so detained.

25 (4) Subsection (5) applies if—

- (a) a hospital transfer direction is given in respect of a person; and  
 (b) the responsible medical practitioner is of the opinion that the person is likely to lack capacity in relation to whether an application under section 222 (applications to Tribunal) should be made.

30 (5) The responsible medical practitioner must as soon as practicable give the Attorney General—

- (a) notice of the matters mentioned in subsection (4)(a) and (b); and  
 (b) any prescribed information.

35 (6) Any power under this Chapter to direct that a person be removed to a hospital includes a power, if the person is already in a hospital, to direct that the person remain in the hospital.

## CHAPTER 8

## RIGHTS OF REVIEW OF DETENTION UNDER PART 10

*Applications and references to Tribunal: general***Right to apply to Tribunal**

5     **222.**—(1) Where the circumstances mentioned in the first column of the following table occur, a qualifying person (see section 223) may apply to the Tribunal within the period mentioned in the corresponding entry of the second column of the table.

	<i>Circumstances</i>	<i>Period for making application</i>
10	A public protection order is made or a hospital direction or hospital transfer direction is given	The period of 6 months beginning with the date of the order or direction (“the initial period”)
15	The period of a public protection order without restrictions is extended (under section 179 or 180 or Schedule 7)	The period— (a) beginning with the date when the period of the order is extended; and (b) ending with the end of the period for which the order is extended
20	A person is— (a) liable to be detained under a public protection order with restrictions, or	The relevant period
25	(b) liable to be detained in a hospital under a hospital direction or hospital transfer direction, at the beginning of a relevant period	

30     (2) In this section a “relevant period”, in relation to an order or direction, means—

- (a) the period of 6 months immediately following the initial period; or
- (b) any period of 12 months which begins with an anniversary of the date of the order or direction.

**Meaning of “a qualifying person”**

35     **223.**—(1) This section defines “a qualifying person”, in relation to a public protection order, hospital direction or hospital transfer direction, for the purposes of this Chapter.

(2) “A qualifying person” means the person (“A”) who is liable to be detained under the order or direction or—

- 40     (a) if A is 16 or over, any person who is A’s nominated person;
- (b) if A is under 16, a person with parental responsibility for A.

(3) If A is 16 or over and has capacity in relation to whether an application under this Chapter should be made, A's nominated person may make an application only with A's consent.

#### **Applications: visiting and examination**

- 5     **224.**—(1) This section applies in relation to a person (“A”) who—
- (a) is liable to be detained under a public protection order; or
  - (b) is liable to be detained in a hospital under a hospital direction or hospital transfer direction.
- (2) A medical practitioner who is authorised—
- 10     (a) by or on behalf of A, or
- (b) where A is 16 or over, by a person who is A's nominated person,
- may, for a purpose mentioned in subsection (3), do anything within section 264 (visiting etc powers) in relation to A.
- (3) The purposes are—
- 15     (a) the purpose of advising whether an application to the Tribunal under section 222 should be made by or in respect of A;
- (b) the purpose of providing information as to the condition of A for the purposes of an application.

#### **Power of certain persons to refer case to Tribunal**

- 20     **225.**—(1) A relevant person may at any time refer to the Tribunal the question whether a person who is liable to be detained under a public protection order should be discharged from being liable to be detained under the order.
- (2) A relevant person may at any time refer to the Tribunal the question whether a person who is liable to be detained in hospital under—
- 25     (a) a hospital direction, or
- (b) a hospital transfer direction,
- should cease to be liable to be detained in hospital under the direction.
- (3) For the purpose of providing information for the purposes of a reference under this section, any medical practitioner authorised by or on behalf of the
- 30     person to whom the reference relates may do anything within section 264 (visiting etc powers) in relation to the person.
- (4) In this section “relevant person” means—
- (a) the Attorney General;
  - (b) the Department;
  - 35     (c) the Master (Care and Protection), acting on the direction of the High Court.

#### **Duty of HSC trust to refer case to Tribunal**

- 226.**—(1) This section applies where—
- (a) on a relevant date, a person is—
  - 40     (i) liable to be detained under a public protection order; or



- (ii) liable to be detained in a hospital under a hospital direction or hospital transfer direction; and
- (b) the Tribunal has not considered the person's case within the period of two years (or, if the person is under 18, one year) ending with the relevant date.
- 5 (2) The relevant trust must as soon as practicable refer the person's case to the Tribunal.
- (3) For the purposes of subsection (1) a "relevant date" means—
- (a) in relation to a public protection order without restrictions, a date on which the period of the order is extended under section 179 or 180 or Schedule 7;
- 10 (b) in relation to a public protection order with restrictions, hospital direction or hospital transfer direction—
- (i) the first day after the end of the period of 6 months beginning with the date of the order or direction; or
- (ii) any anniversary of the date of the order or direction.
- 15 (4) For the purpose of providing information for the purposes of a reference under this section, any medical practitioner authorised by or on behalf of the person may do anything within section 264 (visiting etc powers) in relation to the person.
- (5) In this section—
- 20 "the person's case" means—
- (a) in relation to a public protection order, the question whether the person should be discharged from being liable to be detained under the order;
- (b) in relation to a hospital direction or hospital transfer direction, the question whether the person should cease to be liable to be detained in
- 25 hospital under the direction;
- "the relevant trust" means the HSC trust in whose area the hospital or other establishment in which the person is liable to be detained is situated.
- (6) The Department may by regulations amend subsection (1)(b) so as to alter any period mentioned there.

### 30 **Duty to notify the Attorney General**

- 227.**—(1) This section applies if—
- (a) immediately after the end of a relevant period, a person is—
- (i) liable to be detained under a public protection order; or
- 35 (ii) liable to be detained in a hospital under a hospital direction or hospital transfer direction;
- (b) no application or reference to the Tribunal was made in the relevant period; and
- (c) the responsible medical practitioner is of the opinion that the person is likely to lack capacity in relation to whether an application under section
- 40 222 (applications to Tribunal) should be made.
- (2) The responsible medical practitioner must as soon as practicable give the Attorney General—
- (a) notice of the matters mentioned in subsection (1)(a) to (c); and

- (b) any prescribed information.
- (3) The following are relevant periods for the purposes of this section—
  - (a) the period of 6 months beginning with the date of the order or direction;
  - (b) any period of 6 months immediately following another relevant period.

5 *Powers of Tribunal as to public protection orders*

**Powers of Tribunal as to public protection order without restrictions**

**228.**—(1) This section applies where an application or reference to the Tribunal is made under this Chapter by or in respect of a person who is liable to be detained under a public protection order without restrictions.

- 10 (2) The Tribunal must either—
- (a) discharge the person absolutely (that is, discharge the person from being liable to be detained under the order); or
  - (b) decide not to discharge the person.

15 (3) The Tribunal may decide as mentioned in subsection (2)(b) only if it is satisfied that the prevention of serious harm condition is met (see section 230).

(4) 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.

20 **Powers of Tribunal as to public protection order with restrictions**

**229.**—(1) This section applies where an application or reference to the Tribunal is made under this Chapter (other than section 233) by or in respect of a person who is liable to be detained under a public protection order with restrictions.

- (2) The Tribunal must do one of the following—
- 25 (a) discharge the person absolutely (that is, discharge the person from being liable to be detained under the order);
- (b) discharge the person from the establishment concerned subject to conditions (see further section 231);
  - (c) decide not to discharge the person.

30 (3) The Tribunal may decide as mentioned in subsection (2)(c) only if it is satisfied that the prevention of serious harm condition is met (see section 230).

(4) If the Tribunal is not satisfied that that condition is met, it must—

- (a) discharge the person absolutely, if it is satisfied that it would be inappropriate for the person to remain liable to be recalled;
- 35 (b) discharge the person subject to conditions, if it is not so satisfied.

(5) Where—

- (a) the Tribunal makes an order under this section discharging a person subject to conditions, and
- 40 (b) the Tribunal is satisfied that arrangements need to be made in connection with the conditions before the discharge takes effect,

the order may provide that it takes effect from a future date (specified in the order) which in the opinion of the Tribunal will allow those arrangements to be made.

(6) In this section “the establishment concerned” means the establishment in which, immediately before the discharge, the person is liable to be detained under the public protection order.

### **Sections 228 and 229: the prevention of serious harm condition**

**230.** For the purposes of sections 228 and 229, the prevention of serious harm condition is that—

- (a) there is an impairment, or disturbance in the functioning of, the person’s mind or brain;
- (b) releasing the person from detention in an appropriate establishment would create a risk, linked to the impairment or disturbance, of serious physical harm to other persons; and
- (c) the likelihood and seriousness of the harm concerned are such that detaining the person in an appropriate establishment in circumstances amounting to a deprivation of liberty is a proportionate response.

*Effect of conditional discharge from public protection order with restrictions*

### **Effect of conditional discharge**

**231.—**(1) Where a person liable to be detained under a public protection order with restrictions is conditionally discharged by the Tribunal under section 229—

- (a) section 190 (power of the Department of Justice to recall person who has been conditionally discharged) applies as if the person had been conditionally discharged under section 189; and
- (b) the person must comply with any conditions imposed at the time of discharge by the Tribunal or at any later time by the Department of Justice.

(2) The Department of Justice may from time to time vary any condition imposed under subsection (1) (whether imposed by the Tribunal or the Department of Justice).

(3) If—

- (a) a public protection order with restrictions provides that the order is to be treated as a public protection order with restrictions for a specified period (“the restricted period”), and
- (b) the restricted period ends at a time when the person has been conditionally discharged under section 229 and has not been recalled by virtue of this section,

the person is to be treated as absolutely discharged when the restricted period ends (and accordingly ceases at that time to be liable to be detained under the public protection order).

### **Applications and references to Tribunal where person recalled**

**232.—**(1) This section applies where a person liable to be detained under a public protection order with restrictions—

- (a) has been conditionally discharged under section 189 or 229; and

(b) is subsequently recalled under section 190.

(2) The Department of Justice must, within the period of one month beginning with the return date, refer to the Tribunal the question whether the person should be discharged from being liable to be detained under the public protection order.

5 (3) A qualifying person may apply to the Tribunal within any relevant period.

(4) Sections 225(3) and 224 (visiting and examination powers) apply in relation to references and applications under this section as they apply in relation to references under section 225 and applications under section 222.

(5) See also section 229 (Tribunal's powers on a reference or application).

10 (6) In this section—

“a qualifying person” has the meaning given by section 223;

“relevant period” means—

(a) the period of 6 months beginning with the return date (“the initial period”);

15 (b) the period of 6 months immediately following the initial period; or

(c) any period of 12 months which begins with an anniversary of the return date;

“the return date” means the date on which the person returns or is returned to the establishment specified in the warrant recalling the person.

#### 20 **Applications to Tribunal where person has not been recalled**

**233.**—(1) This section applies where a person liable to be detained under a public protection order with restrictions has been conditionally discharged under section 189 or 229 (and has not been recalled under section 190).

(2) A qualifying person (see section 223) may apply to the Tribunal—

25 (a) within the period of 12 months beginning with the date on which the person was conditionally discharged; and

(b) within any period of 12 months which begins with an anniversary of that date.

(3) On an application under this section the Tribunal must do one of the following (and may do things mentioned in both paragraphs (a) and (b))—

30 (a) vary any condition to which the person is subject in connection with the discharge;

(b) impose any condition that might have been imposed in connection with the discharge;

35 (c) discharge the person from liability to be detained under the public protection order;

(d) decide to take no action.

(4) No application under section 222 may be made in respect of the order.

*Powers of Tribunal as to hospital directions and hospital transfer directions***Powers of Tribunal as to hospital directions and hospital transfer directions**

5 **234.**—(1) This section applies where an application or reference to the Tribunal is made under this Chapter by or in respect of a person who is liable to be detained in hospital under a hospital direction or hospital transfer direction (“the relevant direction”).

(2) The Tribunal must—

- (a) decide whether it is satisfied that the prevention of serious harm condition is met; and
- 10 (b) notify the Department of Justice whether it is so satisfied.

(3) The prevention of serious harm condition is that—

- (a) the person has the disorder in respect of which the relevant direction was given;
- 15 (b) effective treatment for the disorder can be given to the person in the hospital where he or she is detained; and
- (c) it is substantially likely that, if the person were transferred to prison, serious harm to the person or serious physical harm to other persons would result from the person’s ceasing to be provided with treatment for the disorder as an in-patient in hospital.

20 (4) In this section the reference to “prison” is to be read, where the person would (but for the relevant direction) be liable to be detained in a place of any other description, as a reference to a place of that other description.

**Section 234: procedure where prevention of serious harm condition is not met**

25 **235.**—(1) This section applies where, under section 234, the Tribunal notifies the Department of Justice that it is not satisfied that the prevention of serious harm condition is met in respect of a person liable to be detained in a hospital.

(2) The Department of Justice must by warrant direct that the person be removed to any prison in which the person might (but for the relevant direction) be detained, to be dealt with there as if the relevant direction had not been given.

30 (3) The relevant direction ceases to have effect on the person’s arrival in prison.

(4) But subsections (2) and (3) do not apply if the Department of Justice directs that with effect from a specified date—

- 35 (a) the person 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 relevant direction is to cease to have effect.

(5) In this section—

- 40 (a) any reference to “prison” is to be read, where the person would (but for the relevant direction) be detained in a place of any other description, as a reference to a place of that other description;
- (b) “the relevant direction” has the same meaning as in section 234;
- (c) “the relevant provision” means—

- (i) section 16(2) of the Prison Act (Northern Ireland) 1953; or
- (ii) if the person would (but for the relevant direction) be detained in a juvenile justice centre, paragraph 3 of Schedule 2 to the Criminal Justice (Children) (Northern Ireland) Order 1998.

5

## CHAPTER 9

## SUPPLEMENTARY

*Provision of information***Provision of information**

10 **236.**—(1) Regulations may make provision requiring a prescribed person to give prescribed information to prescribed persons—

- (a) where a public protection order is made;
- (b) where a hospital direction or hospital transfer direction is given; or
- (c) in such other circumstances where a person is, or has been, detained by virtue of this Part as may be prescribed.

15 (2) The regulations may include provision as to when the information must be given.

(3) The information that may be prescribed by regulations made under this section, or by regulations made under any other provision of this Part which requires prescribed information to be given to a person, includes a copy of a prescribed document.

(4) Regulations under this section must, in particular, include provision for the purposes of ensuring—

- (a) that, where a person is detained by virtue of this Part, the person is made aware as soon as practicable of—
  - 25 (i) the provisions of this Part by virtue of which he or she is detained, and the effect of those provisions; and
  - (ii) what rights are available under Chapter 8 (review by the Tribunal);
- (b) that, where a person who has been detained by virtue of this Part is discharged from being liable to be so detained, the person is informed in writing of that discharge.

30

**Ways in which information must be provided**

**237.**—(1) Regulations may make provision about the way in which relevant information must be given to prescribed persons.

(2) In this section “relevant information” means information which is—

- 35 (a) required to be given by any provision of this Part or of regulations made under this Part; and
- (b) specified by the regulations under this section.

(3) Regulations under this section may in particular require information to be given orally as well as in writing.

*Detention under Part 10: further provision***Section 22 may apply to person detained under Part 10**

238.—(1) This section applies in relation to any provision of this Part which provides that the question whether a person may be given any treatment while  
5 detained in pursuance of a remand, order or direction under this Part is to be determined in the same way as if the person were not so detained.

(2) The provision—

- (a) does not prevent the person from falling within the reference in section 23 to a person detained by virtue of this Act in circumstances amounting to a  
10 deprivation of liberty; and
- (b) accordingly, does not prevent section 22 (authorisation needed for treatment with serious consequences where person lacks capacity and is detained etc) from applying in relation to the person.

**Absence without permission**

239.—(1) This section applies where a person liable to be detained under a public protection order, or liable to be detained in a hospital under a hospital  
15 direction or hospital transfer direction—

- (a) absents himself or herself from the establishment concerned, without permission given under the relevant section;
- 20 (b) fails to return to the establishment concerned at the end of an occasion or period for which he or she was given permission under the relevant section to be absent, or on being recalled under that section; or
- (c) absents himself or herself, without permission, from any place where he or she is required to be by conditions imposed on the grant of a permission  
25 under the relevant section.

(2) The person may be taken into custody and returned to that establishment or place by—

- (a) any person on the staff of the establishment concerned;
- (b) any constable;
- 30 (c) any approved social worker; or
- (d) any person authorised in writing by the managing authority of the establishment concerned.

(3) In this section—

“the relevant section” means—

- 35 (a) in relation to a person liable to be detained under a public protection order without restrictions, section 185;
- (b) in relation to a person liable to be detained under a public protection order with restrictions or liable to be detained in a hospital under a hospital direction or hospital transfer direction, section 193;

40 “the establishment concerned” means the hospital or other establishment where the person is liable to be detained under the order or direction.

**Effect of court order or direction on previous authority for hospital detention**

240.—(1) Where a person is admitted to a hospital or other establishment in pursuance of a public protection order or hospital direction, any previous relevant authority by virtue of which the person was liable to be detained ceases to have effect.

(2) Each of the following is a “relevant authority” for the purposes of subsection (1)—

- (a) a public protection order;
- (b) an authorisation under Part 2.

(3) But if the public protection order or hospital direction mentioned in subsection (1), or any conviction to which it relates, is quashed on appeal—

- (a) that subsection does not apply; and
- (b) where the previous relevant authority was a public protection order without restrictions, section 187 (effect of custodial sentence) has effect as if, during any period for which the person was liable to be detained under the quashed order or direction, the person had been detained in custody.

(4) Where the person mentioned in subsection (1) is under 16—

- (a) the reference in subsection (1) to a relevant authority includes an application or medical report under the Mental Health Order; and
- (b) in subsection (3)—
  - (i) the reference to a public protection order without restrictions includes a reference to such an application or medical report; and
  - (ii) the reference to section 187 includes a reference to Article 31 of that Order.

*Appeals***Appeals: general**

241.—(1) This section applies where any of the following is made by a court in respect of a person—

- (a) a public protection order;
- (b) a hospital direction;
- (c) a supervision and treatment order.

(2) Where the person appeals to any court against the order or direction, that court has the same powers as if the appeal were also against any further order made in respect of the person by the court mentioned in subsection (1).

(3) Where the person is a child, any appeal (whether in respect of the order or direction or any finding upon which it was made) may be brought—

- (a) by the child; or
- (b) on behalf of the child, by anyone with parental responsibility for the child or any guardian.



**Appeals against orders made on finding of unfitness to plead etc**

**242.**—(1) This section applies where, by virtue of Chapter 6 (unfitness to be tried etc), a court makes a public protection order or supervision and treatment order in respect of a person.

5 (2) The person has the same right of appeal as if the order had been made on the person's conviction, and accordingly—

(a) for the purposes of section 8 of the Criminal Appeal (Northern Ireland) Act 1980 and Article 140 of the Magistrates' Courts (Northern Ireland) Order 1981, the order is treated as if it were an order made on conviction;

10 (b) for the purposes of Article 146 of that Order, the order is a determination of the proceedings in which the order was made.

(3) On any appeal against the order, the Court of Appeal or county court has the same powers as if the appeal had been against both finding and sentence.

*Other supplementary provision***15 Requirements as to written evidence**

**243.**—(1) This section applies for the purposes of any provision of this Part under which a court may act on the written evidence of a medical practitioner or a medical practitioner of any description.

20 (2) A report in writing purporting to be signed by a medical practitioner or a medical practitioner of such a description may, subject to the provisions of this section, be received in evidence—

(a) without proof of the signature of the practitioner; and

(b) without proof that he or she has the required qualifications or is of the required description.

25 (3) But the court may require the signatory of any such report to be called to give oral evidence.

(4) Where in pursuance of a direction of the court any such report is tendered in evidence otherwise than by or on behalf of the person who is the subject of the report, then—

30 (a) if that person is represented by counsel or a solicitor, a copy of the report must be given to that counsel or solicitor;

(b) if that person is not so represented, the substance of the report must be disclosed to him or her or, where the person is a child, to his or her parent or guardian if present in court; and

35 (c) that person may require the signatory of the report to be called to give oral evidence, and evidence to rebut the evidence contained in the report may be called by or on behalf of that person.

**Interpretation of Part 10: children**

**244.**—(1) In this Part—

40 “child” has the same meaning as in the Criminal Justice (Children) (Northern Ireland) Order 1998;

“guardian” has the same meaning as in that Order.

(2) Article 62 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (determination of age of a person brought before the court) applies for the purposes of this Part as it applies for the purposes of that Order.

5 (3) Section 174 of the Children and Young Persons Act (Northern Ireland) 1968 (which also makes provision about determination of age for certain purposes) applies for the purposes of this Part as it applies for the purposes of that Act.

(4) Any reference in this Part to an offence punishable with imprisonment, or to an offence punishable on summary conviction with imprisonment, is to be construed without regard to any prohibition or restriction imposed by or under any  
10 statutory provision on the imprisonment of children.

### **Interpretation of Part 10: impairment of or disturbance in the functioning of the mind or brain**

15 **245.**—(1) This section applies for the purposes of interpreting any reference in this Part to an impairment of, or disturbance in the functioning of, a person’s mind or brain.

(2) For those purposes, it does not matter—

(a) whether the impairment or disturbance is permanent or temporary;

(b) what the cause of the impairment or disturbance is.

(3) In particular, it does not matter whether the impairment or disturbance is  
20 caused by a disorder or otherwise.

### **Interpretation of Part 10: references to disorder**

**246.**—(1) In this Part “disorder” (without more) includes any disorder or disability, whether mental or physical.

25 (2) For the purposes of this Part a disorder of a person “requires” treatment if it, or any of its symptoms or manifestations, could be alleviated or prevented from worsening by treatment.

(3) Where—

(a) a hospital direction or hospital transfer direction has been given in respect of a person, and

30 (b) the disorder in respect of which the direction was given was mental disorder (of any form),

any reference in this Part to the disorder in respect of which the direction was given is to be read as a reference to mental disorder (and not as a reference to mental disorder of a particular form).

### **35 Interpretation of Part 10: general**

**247.**—(1) In this Part—

“appropriate care or treatment”, in relation to a person, means care or treatment which is (or care and treatment which are) appropriate in that person’s case;

40 “appropriate establishment” has the meaning given by section 165;

“approved medical practitioner” means a medical practitioner approved by RQIA for the purposes of this Part;

- “custodial sentence” has the same meaning as in Chapter 2 of Part 2 of the Criminal Justice (Northern Ireland) Order 2008 (see Article 4(1) of that Order);
- “disorder” has the meaning given by section 246;
- 5 “hospital direction” has the meaning given by section 172;
- “hospital transfer direction” has the meaning given by section 221;
- “interim detention order” has the meaning given by section 175;
- “juvenile justice centre” has the meaning given by Article 51(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998;
- 10 “the period” of a public protection order without restrictions has the meaning given by section 179;
- “prison” has the same meaning as in the Prison Act (Northern Ireland) 1953;
- “public protection order” has the meaning given by section 165;
- “public protection order with restrictions” has the meaning given by that
- 15 section;
- “public protection order without restrictions” has the meaning given by that section;
- “remand centre” has the meaning given by section 2(b) of the Treatment of Offenders Act (Northern Ireland) 1968;
- 20 “the responsible medical practitioner”, in relation to a person liable to be detained in a hospital or other establishment by virtue of this Part, means the medical practitioner who is in charge of the person’s care (see also subsection (2));
- “substantially likely” means more likely than not;
- 25 “supervision and treatment order” has the same meaning as in section 205;
- “young offenders centre” has the meaning given by section 2(a) of the Treatment of Offenders Act (Northern Ireland) 1968.
- (2) Regulations may provide that the medical practitioner in charge of a person’s care may carry out prescribed functions of the responsible medical practitioner
- 30 under this Part only if—
- (a) the practitioner is an approved medical practitioner; or
  - (b) any other prescribed condition is met.
- (3) Any reference in this Part to an offence punishable on summary conviction with imprisonment includes a reference to an indictable offence which may be
- 35 tried summarily.
- (4) For the avoidance of doubt, a remand, order or direction of a court under this Part is not to be regarded for the purposes of section 2 or any other purpose of this Act as an act done or decision made for or on behalf of a person.
- (5) See also sections 291 to 293 (definitions for purposes of Act).

PART 11

TRANSFER BETWEEN JURISDICTIONS

*Removal of persons from Northern Ireland to England, Wales or Scotland*

**Removal of detained persons from Northern Ireland to England or Wales**

5     **248.**—(1) This section applies if it appears to the Department that the conditions for removal to England or Wales are met in the case of a person (“P”) who by virtue of this Act is liable to be detained in a hospital in circumstances amounting to a deprivation of liberty in pursuance of an authorisation under paragraph 15 of Schedule 1.

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

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

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

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

   (5) The powers conferred by this section are subject to any regulations made under section 252 relating to removals under this section.

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

**Removal of detained persons from Northern Ireland to Scotland**

30     **249.**—(1) This section applies if it appears to the Department that the conditions for removal to Scotland are met in the case of a person (“P”) who by virtue of this Act is liable to be detained in a hospital in circumstances amounting to a deprivation of liberty in pursuance of an authorisation under paragraph 15 of Schedule 1.

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

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

- 35     (a) P lacks capacity in relation to the question whether he or she should be removed to Scotland;
- (b) it would be in P’s best interests to remove P to Scotland; and
- (c) arrangements have been made—
  - 40     (i) for admitting P to a hospital in Scotland in which care or treatment which is appropriate in P’s case is available for P; or

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

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

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

(5) The powers conferred by this section are subject to any regulations made under section 252 relating to removals under this section.

10 (6) In subsections (3)(c) and (4) "hospital" has the same meaning as in the 2003 Act.

*Persons removed from England, Wales or Scotland to Northern Ireland*

**Persons removed from England or Wales to Northern Ireland**

15 **250.**—(1) This section applies where under Part 6 of the 1983 Act a person ("P") who is 16 or over and liable to be detained in pursuance of an application made under Part 2 of that Act is removed from England or Wales to Northern Ireland.

(2) Immediately after P's admission to a hospital in Northern Ireland in pursuance of arrangements made for the purposes of his or her removal from  
 20 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 an appropriate medical practitioner and given to the relevant trust within the period of 28 days beginning with the date when P is admitted to the hospital.

25 (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) If (before being removed from England or Wales) P is liable to be detained in hospital in pursuance of an application for admission for treatment made under Part 2 of the 1983 Act, a corresponding authorisation is to be treated as having  
 30 been granted on P's arrival in Northern Ireland.

(6) In subsection (5) "a corresponding authorisation" means an authorisation under paragraph 15 of Schedule 1 authorising P's detention in circumstances amounting to a deprivation of liberty, in the hospital to which P is admitted on arrival in Northern Ireland, for the purposes of the provision to P of care or  
 35 treatment.

(7) In this section—

"appropriate medical practitioner" means a medical practitioner who is a person unconnected with P and meets any prescribed conditions;

40 "relevant trust" means the HSC trust in whose area the hospital to which P is admitted is situated.

(8) Expressions used in subsection (5) and in the 1983 Act have the same meaning in that subsection as in that Act.

**Persons removed from Scotland to Northern Ireland**

**251.**—(1) This section applies where under regulations made under section 290 of the 2003 Act a relevant person (“P”) is removed from Scotland to Northern Ireland.

5 (2) In subsection (1) “a relevant person” means a person who is 16 or over and (before being removed from Scotland) is liable to be detained by virtue of a compulsory treatment order under section 64 of the 2003 Act.

(3) Immediately after P’s admission to a hospital in Northern Ireland in pursuance of arrangements made for the purposes of his or her removal from  
10 Scotland, the relevant trust must notify RQIA of P’s admission.

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

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

(6) A corresponding authorisation is to be treated as having been granted on P’s arrival in Northern Ireland.

(7) In subsection (6) “a corresponding authorisation” means an authorisation  
20 under paragraph 15 of Schedule 1 authorising P’s detention in circumstances amounting to a deprivation of liberty, in the hospital to which P is admitted on arrival in Northern Ireland, for the purposes of the provision to P of care or treatment.

(8) In this section—

25 “appropriate medical practitioner” means a medical practitioner who is a person unconnected with P and meets any prescribed conditions;

“relevant trust” means the HSC trust in whose area the hospital to which P is admitted is situated.

*Transfer between jurisdictions: further provision***30 Removal from Northern Ireland: power to make further provision**

**252.**—(1) Regulations may make provision—

(a) in connection with the removal of a person by virtue of this Part to England, Wales or Scotland;

35 (b) in connection with any removal of a person by virtue of Part 2 to a place outside Northern Ireland (whether or not a place in the United Kingdom);

(c) enabling the Department to authorise, and to give directions in connection with, the removal to a place outside Northern Ireland (whether or not a place in the United Kingdom) of a person where—

(i) the person is subject in Northern Ireland to prescribed measures;

40 (ii) the person lacks capacity in relation to the removal; and

(iii) the removal would be in that person’s best interests.

(2) Regulations under this section may prescribe steps to be taken before a person may be removed, and may in particular apply, or make provision similar to, any provision of Part 2 (with or without modifications).

5 (3) The Department must exercise its powers to make regulations under this section so as to ensure that, where under this Part the Department authorises the removal of a person from Northern Ireland—

(a) notice of the authorisation and proposed removal must be given to prescribed persons at least a prescribed period before the date of the proposed removal; and

10 (b) there is a right to apply to the Tribunal in respect of the authorisation.

#### **Persons 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—

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

(b) providing for the person to be treated as if an authorisation of a prescribed description had been granted in respect of him or her.

20 (2) Subsection (1)(b) permits the regulations to provide for a person to be treated as if an authorisation 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.

25 (3) Regulations may make provision about the application of this Act to persons who are removed to Northern Ireland under a relevant provision and in respect of whom an authorisation is, by virtue of section 250 or 251 or regulations under subsection (1), to be treated as having been granted.

(4) In this section—

“authorisation” means an authorisation under Part 2;

“a relevant provision” means—

30 (a) Part 6 of the 1983 Act; or

(b) regulations made under section 289 or 290 of the 2003 Act.

## PART 12

### CHILDREN

#### **In-patients under 18: duties of hospital managers**

35 **254.**—(1) This section applies in relation to a person who—

(a) is 16 or over, but under 18; and

(b) is an in-patient in a hospital for the purposes of the assessment or treatment of mental disorder under this Act.

40 (2) The managing authority of the hospital must ensure that (subject to the person’s needs) the person’s environment in the hospital is suitable having regard to his or her age.

(3) For the purpose of deciding how to fulfil the duty under subsection (2), the managing authority must consult a person who appears to that authority to have knowledge or experience which makes that person suitable to be consulted.

### **Amendments of Mental Health Order: children etc**

- 5     **255.**—(1) Schedule 8—
- (a) restricts the application of Part 2 of the Mental Health Order to children;
  - (b) amends that Order so as to—
    - (i) make provision for independent advocates for children; and
    - (ii) require persons making certain decisions to have a child’s best interests as their primary consideration;
  - (c) makes other amendments of that Order.
- 10     (2) In this section “children” means children under 16.

## PART 13

### OFFENCES

#### 15     **Ill-treatment or neglect**

- 256.**—(1) A person (“X”) who—
- (a) ill-treats, or
  - (b) wilfully neglects,
- another person (“P”) where this section applies commits an offence.
- 20     (2) This section applies where—
- (a) X has the care of P, and P lacks capacity in relation to all or any matters concerning his or her care or is believed by X to lack capacity in relation to all or any such matters; or
  - (b) X is an attorney under a lasting power of attorney granted by P; or
  - 25     (c) X is a deputy appointed for P by the court.
- (3) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - 30     (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years or a fine or both.

#### **Forgery, false statements etc**

- 257.**—(1) A person commits an offence if the person—
- (a) makes, in a relevant document, an entry or statement which is false; and
  - (b) does so knowing that the entry or statement is false or being reckless as to whether it is false.
- 35     (2) A person commits an offence if—
- (a) with intent to deceive, the person makes use of an entry or statement in a relevant document;



- (b) the entry or statement is false; and
- (c) the person knows it to be false.
- (3) In this section “relevant document” means any of the following—
  - (a) a statement of incapacity for the purposes of section 13;
  - 5 (b) a relevant certificate (as defined by section 18) for the purposes of section 16 or 17 (second opinions);
  - (c) a report under section 39 or any provision of Schedule 1, 2 or 3 (medical reports etc);
  - (d) an application under Schedule 1, an authorisation granted by a panel under that Schedule, or an extension by a panel of such an authorisation;
  - 10 (e) an application under paragraph 4 of Schedule 4 or paragraph 4 of Schedule 5 (applications for registration of lasting powers of attorney and enduring powers of attorney);
  - (f) a report under any provision of Part 10 (criminal justice).
- 15 (4) A person guilty of an offence under this section is liable—
  - (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;
  - (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.
- 20 (5) The Department may by regulations amend subsection (3).

#### **Unlawful detention of persons lacking capacity etc**

- 258.**—(1) A person (“R”) commits an offence if—
- 25 (a) R knowingly receives and detains, in circumstances amounting to a deprivation of liberty, a person (“P”) who is 16 or over and lacks capacity in relation to whether he or she should be so detained; and
  - (b) P is not liable to be so detained by virtue of this Act or any other statutory provision.
- (2) Where—
- 30 (a) a person has been detained in any place, in circumstances amounting to a deprivation of liberty, by virtue of this Act, and
  - (b) the person continues to be detained in the place, in circumstances amounting to a deprivation of liberty, at a time when the person is no longer liable to be so detained by virtue of this Act or any other statutory provision,
- 35 any person who is responsible for that continued detention commits an offence.
- (3) But no offence under this section is committed where—
- (a) the person who is detained is under 18; and
  - (b) the detention gives effect to a decision made by a parent or guardian of the person which is effective under any rule of law.
- 40 (4) A person guilty of an offence under this section is liable—
- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

- (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.

**Assisting persons to absent themselves without permission**

5 **259.**—(1) Subsections (2) to (5) apply where a 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.

(2) A person commits an offence if he or she induces or knowingly assists P to absent himself or herself without permission from the relevant place.

10 (3) If P has absented himself or herself without permission from the relevant place, it is an offence for a person—

- (a) to allow P to live or stay with him or her, knowing that P absented himself or herself without permission from the relevant place; or  
 (b) to give P any assistance with the intention of preventing, delaying, or interfering with P’s being returned to detention.

15 (4) In subsections (2) and (3) references to P absenting himself or herself without permission from the relevant place include—

(a) P failing to return to the relevant place at the end of an occasion or period for which he or she was given permission to be absent, or on being recalled from a permitted absence; and

20 (b) P absenting himself or herself, without permission, from a place where he or she is required to be by conditions imposed on the grant of a permission for absence from the relevant place.

(5) Where P is being taken to the relevant place, a person who induces or knowingly assists P to escape commits an offence.

25 (6) A person guilty of an offence under this section is liable—

- (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;  
 (b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.

30 **Assisting persons to breach community residence requirement**

**260.**—(1) Subsections (2) and (3) apply where a person (“P”) is required by a community residence requirement, imposed under Part 2, to live at a particular place (“the relevant place”).

35 (2) It is an offence for a person to induce or knowingly assist P to stop living at the relevant place.

(3) If P has stopped living at the relevant place, it is an offence for a person to give P any assistance with the intention of preventing, delaying, or interfering with P’s being returned to live at the relevant place.

(4) A person guilty of an offence under this section is liable—

40 (a) on summary conviction, to imprisonment for a term not exceeding 6 months or a fine not exceeding the statutory maximum or both;

(b) on conviction on indictment, to imprisonment for a term not exceeding 2 years or a fine or both.

(5) In this section “community residence requirement” has the meaning given by section 31.

## 5 **Obstruction**

**261.**—(1) It is an offence for a person—

- (a) to refuse to allow the visiting or examination of any person by a person who is authorised by virtue of a relevant provision to carry out the visit or examination;
- 10 (b) to refuse to produce any record the production of which is required by virtue of a provision mentioned in subsection (4)(a) or (b); or
- (c) otherwise to obstruct a person who is—
  - (i) carrying out a visit or examination by virtue of a relevant provision; or
  - 15 (ii) exercising any other function by virtue of a provision mentioned in subsection (4)(a) or (b).

(2) Without prejudice to the generality of subsection (1), it is an offence for a person to insist on being present when requested to withdraw by a person authorised by virtue of a relevant provision to visit or examine a person.

20 (3) A person guilty of an offence under this section is liable on summary conviction to imprisonment for a term not exceeding 3 months or a fine not exceeding level 4 on the standard scale or both.

(4) In this section “relevant provision” means—

- (a) section 18(2), 90, 120, 125 or 129;
- (b) section 46, 47, 48, 224, 225 or 226 (read with section 264); or
- 25 (c) section 39 or 124 or any provision of Schedule 1, 2 or 3.

## **Offences by bodies corporate**

**262.**—(1) Where an offence under this Act or under any regulations made under this Act is committed by a body corporate and is proved to have been committed with the consent or connivance of or to be attributable to any neglect on the part of—

- (a) any director, manager, secretary or other similar officer of the body corporate, or
  - (b) any person who was purporting to act in any such capacity,
- 35 that person (as well as the body corporate) commits the offence and is liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with that member’s functions of management as if the member were a director of the body corporate.

40 (3) Section 20(2) of the Interpretation Act (Northern Ireland) 1954 (offences committed by a body corporate) does not apply to offences under this Act or under regulations made under this Act.



- (b) permit the relevant authority to spend that money or dispose of those valuables for the benefit of P;
- (c) impose requirements as to the way in which money or valuables received under the regulations is to be held;
- 5 (d) require the relevant authority to keep prescribed accounts and records in relation to the management of P’s money and valuables;
- (e) require the relevant authority to make an annual return containing prescribed information to RQIA.
- (3) Sections 1, 2, 5 and 7 (principles) apply in relation to regulations made  
10 under subsection (2) as they apply in relation to this Act.
- (4) Regulations under subsection (2) may not—
- (a) permit the relevant authority to receive or hold on behalf of any one person money or valuables exceeding £20,000 in total without the consent of RQIA;
- 15 (b) permit the relevant authority to receive from a person (“B”), and hold on P’s behalf, money or valuables which B does not have power to give to the relevant authority to hold on P’s behalf;
- (c) permit the relevant authority to do anything which is inconsistent with a relevant decision.
- 20 (5) The Department may by regulations amend subsection (4)(a) so as to alter the sum mentioned there.
- (6) In consequence of this section, the following are not acts to which section 9 (protection from certain liability) applies—
- (a) the receiving and holding by a relevant authority of money and valuables  
25 on behalf of P;
- (b) the spending of that money, or the disposing of those valuables, by a relevant authority for the benefit of P.
- (7) In this section—
- “relevant authority” means—
- 30 (a) in relation to a person in a hospital or care home, the managing authority of the hospital or care home;
- (b) in relation to a person in an establishment of a description prescribed under subsection (1)(c)(iii), the prescribed person.
- “relevant decision” means a decision concerning P’s property or affairs  
35 which—
- (a) is made by the court on P’s behalf under section 112(2)(a);
- (b) is made by an attorney under a lasting power of attorney granted by P and is within the scope of the attorney’s authority; or
- 40 (c) is made by a deputy appointed for P by the court and is within the scope of the deputy’s authority.

### **Contravention of regulations under section 265**

**266.**—(1) Regulations under section 265 may provide that a contravention of any prescribed provision of the regulations is an offence.

(2) A person guilty of an offence under the regulations is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

(3) Proceedings in respect of an offence under the regulations may be taken by any person other than RQIA only if that person has the consent of the Director of Public Prosecutions for Northern Ireland.

(4) Proceedings for an offence under the regulations may be brought within a period of 6 months from the date on which evidence sufficient in the opinion of the prosecution to warrant the proceedings came to its knowledge; but no proceedings may be brought by virtue of this subsection more than 3 years after the commission of the offence.

### **Expenditure**

**267.**—(1) This section applies where—

(a) an act mentioned in section 9(1) is (because of compliance with section 9(1)(c) and (d) and any of the additional safeguard provisions that are relevant) an act to which section 9(2) applies; and

(b) the act involves expenditure.

(2) It is lawful for D—

(a) to pledge P’s credit for the purpose of the expenditure; and

(b) to apply money in P’s possession for meeting the expenditure.

(3) If the expenditure is borne for P by D, it is lawful for D—

(a) to reimburse himself or herself out of money in P’s possession; or

(b) to be otherwise indemnified by P.

(4) Subsections (1) to (3) do not affect any power under which (apart from those subsections) a person—

(a) has lawful control of P’s money or other property; and

(b) has power to spend money for P’s benefit.

(5) In this section “additional safeguard provisions” has the same meaning as in section 9.

### **Payment for necessary goods and services**

**268.**—(1) If necessary goods or services are supplied to a person who lacks capacity to contract for the supply, that person must pay a reasonable price for them.

(2) In subsection (1) “necessary” means suitable to a person’s condition in life and to that person’s actual requirements at the time when the goods or services are supplied.

### *Miscellaneous functions of HSC trusts*

#### **Appointment of approved social workers**

**269.**—(1) In this Act “approved social worker” means a social worker appointed by an HSC trust under this section.

(2) An HSC trust must appoint a sufficient number of social workers under this section for the purpose of performing the functions conferred on approved social workers by or under this Act.

5 (3) An HSC trust may appoint a person under this section only if the person is approved by the trust as having appropriate competence in dealing with people who lack capacity.

(4) In determining whether to approve a person as having such competence, an HSC trust must have regard to such matters as the Department may direct.

10 (5) Any power under this Act to prescribe a description of person includes power to prescribe approved social workers or approved social workers of a particular description.

### Miscellaneous functions of HSC trusts

**270.** An HSC trust may, to such extent as may be prescribed or approved by the Department—

- 15 (a) pay to persons who lack capacity, and who are receiving care or treatment in any place, such amounts as the trust considers appropriate in respect of those persons' occasional personal expenses where it appears to the trust that those persons would otherwise be without resources to meet those expenses;
- 20 (b) provide financial assistance for any person who, in pursuance of permission, is absent from any place in which he or she is liable to be detained by virtue of this Act, where the needs of the person are such that such assistance is necessary to give full effect to treatment provided to the person or to provide for the person's settlement or resettlement in the
- 25 (c) contribute to the maintenance of persons who are subject to community residence requirements (as defined by section 31);
- (d) pay to persons who by virtue of this Act are subject to requirements to attend for the purpose of any treatment, education, occupation or training
- 30 amounts in respect of those persons' expenses in complying with such requirements;
- (e) provide, or co-operate in the provision of, suitable training or occupation (whether in premises provided by the Department or elsewhere) for persons who lack capacity.

35 *Direct payments in place of provision of care services*

### Direct payments in place of provision of care services

**271.**—(1) Section 8 of the Carers and Direct Payments Act (Northern Ireland) 2002 (direct payments in place of provision of care services) is amended as follows.

- 40 (2) After subsection (2) insert—
- “(2A) Regulations may make provision for and in connection with requiring or authorising an authority in the case of a person who falls within subsection (2B) (“P”) to make to a suitable person, with the appropriate consent, such payments as the authority may determine in

accordance with the regulations in respect of that person's securing the provision for P of the service mentioned in subsection (2B)(a).

(2B) A person falls within this subsection if—

- (a) the authority has decided under the 1972 Order that his or her needs call for the provision by it of a particular social care service;
- (b) he or she lacks capacity to consent to the making of payments, under regulations under this section, in respect of securing the provision for him or her of that service or is reasonably believed by the authority to lack that capacity; and
- (c) he or she is of a prescribed description.

(2C) In subsection (2A) “a suitable person” means—

- (a) where there is an attorney or deputy for P—
  - (i) the attorney or deputy; or
  - (ii) any individual or other person (other than P) who is considered by the attorney or deputy and by the authority to be suitable to receive the payments in respect of securing the provision for P of the service concerned;
- (b) where there is no attorney or deputy for P, any individual or other person (other than P) who is considered by the authority to be suitable to receive those payments.

(2D) In subsection (2A) “the appropriate consent” means—

- (a) the consent of the person to whom the payments are made by the authority; and
- (b) where there is an attorney or deputy for P and the person mentioned in paragraph (a) is not the attorney or deputy, the consent of the attorney or deputy.

(2E) In subsection (2B) “lacks capacity” has the same meaning as in the Mental Capacity Act (Northern Ireland) 2015 (“the Mental Capacity Act”); and sections 1 and 5 of that Act (principles relating to capacity) apply in relation to regulations under subsection (2A) as they apply in relation to that Act.

(2F) For the purposes of subsections (2C) and (2D)—

- (a) there is an attorney for P if there is at least one person who is an attorney under a lasting power of attorney granted by P under the Mental Capacity Act and whose powers as attorney consist of or include such powers as may be prescribed;
- (b) there is a deputy for P if there is at least one person who is a deputy appointed for P under section 112(2)(b) of that Act and whose powers as deputy consist of or include such powers as may be prescribed.

(2G) Where there are two or more persons each of whom is an attorney for P for the purposes of subsections (2C) and (2D), references in those subsections to “the attorney” are to be read—

- (a) if the powers prescribed under subsection (2F)(a) are exercisable by the attorneys jointly and severally, as meaning any of the attorneys;
- (b) otherwise, as meaning the attorneys.

(2H) Where there are two or more persons each of whom is a deputy for P for the purposes of subsections (2C) and (2D), references in those subsections to “the deputy” are to be read—



- (a) if the powers prescribed under subsection (2F)(b) are exercisable by the deputies jointly and severally, as meaning any of the deputies;
- (b) otherwise, as meaning the deputies.”.

5 (3) In subsection (3)—

(a) in paragraph (a)—

- (i) for “to a person” substitute “to or in respect of a person”; and
- (ii) after “(2)(a) or (b)” insert “or (2B)(a)”;

10 (b) in paragraph (c)(i) after “the payee’s means” insert “(in the case of payments under subsection (1)) or the means of P (in the case of payments under subsection (2A))”;

(c) in paragraph (d), after “payee” insert “(in the case of payments under subsection (1)) or P or the payee (in the case of payments under subsection (2A))”;

15 (d) in paragraph (e), for “repayment (whether by the payee or otherwise) of the whole or part of the direct payments)” substitute “the whole or part of the direct payments to be repaid, whether by the payee (in the case of payments under subsection (1)) or by P or the payee (in the case of payments under subsection (2A)) or otherwise”;

20 (e) in paragraph (g) after “(2)(a) or (b)” insert “or (2B)(a)”;

(f) after paragraph (h) insert—

“(j) requiring or authorising the authority to have regard to prescribed matters when making a decision for the purposes of a provision of the regulations;

25 (k) requiring or authorising the authority to take prescribed steps before or after the authority makes a decision for the purposes of a provision of the regulations;

(l) specifying circumstances in which a person who fell within paragraph (b) of subsection (2B) but no longer does so must or may be treated as falling within that paragraph for the purposes of this section or of the regulations.”.

(4) In subsection (4)(b) after “the payee” insert “(in the case of payments under subsection (1)) or P (in the case of payments under subsection (2A))”.

(5) In subsection (5)—

35 (a) in paragraph (a), for “the payee will himself” substitute “the payee (in the case of payments under subsection (1)) or P (in the case of payments under subsection (2A)) will”;

(b) in paragraph (b), after “the payee” insert “or P”.

(6) After subsection (6) insert—

40 “(6A) Conditions that for the purposes of subsection (3)(d) are to be taken to be conditions in relation to direct payments include, in particular, conditions relating to—

- (a) the securing of the provision of the service concerned;
- (b) the provider of the service;

45 (c) the person to whom payments are made in respect of the provision of the service; or

(d) the provision of the service.”.

*International protection of adults*

**International protection of adults**

272. Schedule 9—

- 5 (a) gives effect in Northern Ireland to the Convention on the International Protection of Adults signed at the Hague on 13 January 2000 (in so far as this Act does not otherwise do so); and
- (b) makes related provision as to the private international law of Northern Ireland.

10 *Matters excluded from Act*

**Family relationships etc**

273.—(1) Nothing in this Act permits a decision on any of the following matters to be made on behalf of a person—

- (a) consenting to marriage or a civil partnership;
- 15 (b) consenting to have sexual relations;
- (c) consenting to a decree of divorce being granted on the basis of two years' separation;
- (d) consenting to a dissolution order being made in relation to a civil partnership on the basis of two years' separation;
- 20 (e) agreeing for any purposes of the Adoption (Northern Ireland) Order 1987 to the making of an adoption order;
- (f) discharging parental responsibilities in matters not relating to a child's property;
- (g) giving a consent under the Human Fertilisation and Embryology Act 1990;
- 25 (h) giving a consent under the Human Fertilisation and Embryology Act 2008.

(2) In subsection (1)(e) “adoption order” means—

- (a) an order under Article 12(1) of the Adoption (Northern Ireland) Order 1987; or
- 30 (b) any other order referred to by the definition of “adoption order” in Article 2(2) of that Order.

**Voting rights**

274.—(1) Nothing in this Act permits a decision on voting at an election for any public office, or at a referendum, to be made on behalf of a person.

- 35 (2) In this section “referendum” means a referendum or other poll held, in pursuance of any statutory provision, on one or more questions specified in or in accordance with any such provision.

*Declaratory provision***Relationship of Act with law relating to murder etc**

275. For the avoidance of doubt, it is hereby declared that nothing in this Act is to be taken to affect the law relating to murder or manslaughter or the operation of section 13 of the Criminal Justice Act (Northern Ireland) 1966 (encouraging or assisting suicide).

## PART 15

## SUPPLEMENTARY

*Codes of practice*10 **Codes of practice**

276.—(1) The Department must prepare and issue one or more codes of practice—

- (a) for the guidance of persons assessing whether a person who is 16 or over has capacity in relation to any matter;
- 15 (b) for the guidance of persons acting in connection with the care, treatment or personal welfare of another person who is 16 or over;
- (c) for the guidance of nominated persons;
- (d) for the guidance of independent advocates;
- (e) for the guidance of panels constituted under Part 2 of this Act;
- 20 (f) for the guidance of persons appointed as attorneys, or as replacements for attorneys, by a lasting power of attorney or an instrument executed with a view to creating such a power;
- (g) for the guidance of deputies appointed by the court;
- (h) for the guidance of persons carrying out research in reliance on any provision made by or under this Act (and otherwise with respect to Part 8);
- 25 (i) with respect to such other matters concerned with this Act as the Department considers appropriate.

(2) A code under subsection (1)(a) must include guidance in relation to sections 1(4) and 5 (help and support to enable a person to make a decision).

30 (3) A code under subsection (1)(b) may in particular include guidance—

- (a) for HSC trusts, medical practitioners, staff of hospitals and care homes, approved social workers and members of other professions, in relation to—
  - 35 (i) serious interventions, or serious interventions of particular descriptions, in respect of persons lacking capacity;
  - (ii) anything falling to be done where such an intervention is proposed;
- (b) with respect to sections 62 to 64 (emergency situations).

(4) The Department may from time to time revise a code issued under this section.

(5) The Department may delegate the preparation or revision of the whole or any part of a code under this section so far as the Department considers appropriate.

5 (6) Before preparing or making any alteration in a code under this section, the Department must consult such bodies as appear to it to be concerned.

(7) The Department must lay before the Assembly copies of any code under this section and of any alteration in such a code; and if within the statutory period the Assembly passes a resolution requiring the code or alteration to be withdrawn the Department must withdraw the code or alteration and, where it withdraws the code, must prepare a code in substitution for the one withdrawn.

(8) The Department must publish any code prepared or revised under this section.

(9) In this section “serious intervention” is to be read in accordance with section 60.

### 15 **Effect of code**

**277.**—(1) A person acting in any of the ways mentioned in subsection (2) in relation to a person who is 16 or over and lacks capacity must have regard to any relevant code of practice.

(2) The ways of acting are—

- 20 (a) in a professional capacity;
- (b) for remuneration;
- (c) as an independent advocate;
- (d) as an attorney under a lasting power of attorney;
- (e) as a deputy appointed by the court;
- 25 (f) as a person carrying out research in reliance on any provision made by or under this Act (see Part 8).

(3) If it appears to a court or tribunal conducting any criminal or civil proceedings that—

- (a) a provision of a code of practice, or
- 30 (b) a failure to comply with a code of practice,

is relevant to a question arising in the proceedings, the provision or failure must be taken into account in deciding the question.

(4) In this section “code of practice” means a code of practice under section 276.

### 35 *Warrants*

#### **Warrants**

**278.**—(1) This section applies if it appears to a justice of the peace, on complaint on oath made by an officer of an HSC trust or a constable—

- 40 (a) that there is reasonable cause to believe that a person who by virtue of this Act is liable to be taken to a relevant place is to be found on any premises;

(b) that admission to the premises has been refused or that a refusal of such admission is apprehended; and

(c) that it is reasonable in the circumstances to issue a warrant.

(2) The justice may issue a warrant authorising any constable accompanied by a medical practitioner to enter the premises, if need be by force, and remove the person.

(3) It is not necessary to name the person concerned in any complaint or warrant under this section.

(4) In this section “relevant place” means any place where the person is liable to be detained in circumstances amounting to a deprivation of liberty.

### **Warrants: persons liable to be detained under 1983 Act or 2005 Order**

**279.**—(1) This section applies if it appears to a justice of the peace, on complaint on oath made by an authorised person—

(a) that there is reasonable cause to believe that a person who may be taken into custody by virtue of a provision mentioned in subsection (3)(a) or (b) is to be found on any premises, and

(b) that admission to the premises has been refused or that a refusal of such admission is apprehended.

(2) The justice may issue a warrant authorising any constable accompanied by a medical practitioner to enter the premises, if need be by force, and remove the person liable to be so taken.

(3) In this section “authorised person” means a person authorised by or under—

(a) section 88 of the 1983 Act, or

(b) article 8 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005,

to take into custody in Northern Ireland any person who may be so taken.

### *Custody, detention etc*

#### **Provisions as to custody, detention etc**

**280.**—(1) A person who is—

(a) being removed from any place, or taken to or detained in any place, by virtue of Part 9 (power of police to remove person to place of safety), or

(b) being taken to or detained in any place by virtue of Part 10 (criminal justice),

is to be treated as being in legal custody.

(2) Subsection (3) applies to a constable or other person (“the relevant person”) who is required or authorised by virtue of Part 9 or 10 to—

(a) take a person into custody;

(b) take a person to any place; or

(c) detain a person in any place.

(3) For the purposes of—

(a) taking the person into custody,

(b) taking the person to the place, or

(c) detaining the person in the place,

the relevant person has all the powers, authorities, protections and privileges which a constable has within the area for which he or she acts as constable.

#### 5 **Retaking of persons escaping from legal custody**

**281.**—(1) Where a person (“P”) who is in legal custody by virtue of section 280 escapes, P may be retaken into legal custody by any person mentioned in subsection (2).

(2) The persons are—

10 (a) the person who had custody of P immediately before the escape;

(b) any constable or approved social worker;

(c) if P was liable to be detained in an appropriate establishment by virtue of Part 9 or 10 at the time of the escape (or was, under Part 9 or 10, being taken to or from an appropriate establishment)—

15 (i) any person on the staff of the appropriate establishment;

(ii) any person authorised in writing by the managing authority of the appropriate establishment.

(3) But P may not be retaken under this section after P has ceased to be liable to be detained by virtue of Part 9 or 10.

20 (4) Nothing in subsection (3) prevents section 137 (power to remove person from public place to place of safety) from applying in relation to P at any time after the escape.

(5) In this section “appropriate establishment” has the meaning given by section 165.

#### 25 *Special accommodation*

##### **Special accommodation**

**282.**—(1) A relevant department may provide such accommodation as appears to it to be necessary for persons who—

(a) are liable to be detained by virtue of this Act; and

30 (b) in the opinion of the relevant department, require care or treatment under conditions of special security for the protection of other persons from serious physical harm.

(2) In this section “relevant department” means—

(a) the Department;

35 (b) the Department of Justice.

#### *Panels*

##### **Panels constituted to decide applications: general provision**

**283.**—(1) In this section “a panel” means a panel constituted under—

(a) Schedule 1 (applications for authorisation);

40 (b) Schedule 3 (applications for extension of period of authorisation);

- (c) Schedule 7 (applications for extension of period of public protection order without restrictions).
- (2) A panel must have 3 members.
- (3) Regulations may make further provision about the membership of a panel.
- 5 (4) Regulations may make provision about the procedure of such a panel, including—
- (a) provision requiring the panel to afford prescribed persons the opportunity to make representations;
- 10 (b) provision enabling the panel to request prescribed persons to provide information to the panel or attend before the panel to give oral evidence;
- (c) provision about steps that the panel is, or is not, to be regarded as required by section 7 to take where it has to make a determination of what would be in a person’s best interests;
- (d) provision for cases where the panel cannot reach a unanimous decision.
- 15 (5) The Department may by regulations amend any of the following—
- (a) the definition of “the permitted period” in paragraph 19(2) of Schedule 1;
- (b) any period mentioned in paragraph 20(2)(b) or (3)(b) of that Schedule;
- (c) the definition of “the permitted period” in paragraph 9(2) of Schedule 3;
- (d) the definition of “the permitted period” in paragraph 9(2) of Schedule 7.

20 *Protection from proceedings*

**Protection for acts done in pursuance of Part 9 or 10**

**284.**—(1) No civil proceedings may be brought against a person in any court in respect of a relevant act without the leave of the High Court.

25 (2) No criminal proceedings may be brought against a person in any court in respect of a relevant act except by, or with the permission of, the Director of Public Prosecutions for Northern Ireland.

(3) This section does not apply to proceedings against the Department, the Regional Board or an HSC trust.

(4) In this section—

30 “relevant act” means any act purporting to be done in pursuance of any provision of Part 9 or 10.

*Other supplementary provision*

**Risk of serious physical harm to others**

35 **285.**—(1) Subsection (2) applies where for any purpose of this Act a determination falls to be made of whether doing a particular thing, or failure to do a particular thing, in relation to a person would create a risk, or any particular level of risk, of serious physical harm to other persons.

(2) In determining that question, regard may be had only to evidence—

- (a) that the person has behaved violently towards other persons; or

- (b) that the person has behaved himself or herself in such a way that other persons were placed in reasonable fear of serious physical harm to themselves.

### **Medical practitioners who may make certain medical reports**

- 5 **286.**—(1) In this section a “medical report” means—
- (a) a report under section 39;
  - (b) a report under section 181;
  - (c) a medical report under paragraph 7 of Schedule 1;
  - (d) a medical report under paragraph 4 of Schedule 2;
  - 10 (e) a medical report under paragraph 5 of Schedule 3;
  - (f) a medical report under paragraph 5 of Schedule 7.
- (2) Regulations may make provision prescribing the descriptions of medical practitioners who may make medical reports.
- (3) The regulations may in particular do any of the following—
- 15 (a) prescribe conditions that must be met by a medical practitioner making a medical report;
  - (b) provide that, except in any prescribed circumstances, the medical practitioner who makes a medical report—
    - (i) must be of a prescribed description; or
    - 20 (ii) must not be of a prescribed description.
- (4) Where any provision of this Act confers power to prescribe conditions that must be met by a medical practitioner making a report or certifying any matter, a condition that may be prescribed is that the practitioner is a person approved by RQIA for prescribed purposes.

### 25 **Documents appearing to be duly made**

**287.** Regulations may make provision enabling documents of a prescribed description which appear to be duly made in pursuance of a prescribed provision of this Act to be acted on without further proof of prescribed matters.

### **Power to make further provision**

- 30 **288.**—(1) The Department may by regulations make—
- (a) such transitional, transitory or saving provision as it considers appropriate in connection with the coming into operation of any provision of this Act;
  - (b) such incidental, supplementary or consequential provision as it considers appropriate for the purposes of, or in consequence of, or for giving full effect to, any provision made by or under this Act.
  - 35
- (2) The provision which may be made under subsection (1) includes provision which amends or modifies any statutory provision (including this Act).
- (3) Provision which may be made under this section includes in particular—
- (a) provision modifying any provision of Part 2 in relation to cases where—
    - 40 (i) an act is proposed to be done in respect of a person and the proposed act would be done after the person has reached the age of 16; but



- (ii) at the time the act is proposed, the person is not yet 16;
- (b) provision enabling prescribed authorisations, or other prescribed documents, which are found to be incorrect or defective within a prescribed period from being made—
- 5 (i) to be rectified within a prescribed period; and
- (ii) to have effect as if originally made as rectified.

### Regulations

289.—(1) Regulations under a relevant provision may be made only if a draft of the regulations has been laid before, and approved by a resolution of, the

10 Assembly.

(2) Regulations under any other provision of this Act are subject to negative resolution.

(3) In this section “relevant provision” means section 10(5), 17(6), 20(2), 22(1), 48(5), 60(3), 94, 96(8), 116(11), 136, 144(2), 158(2), 205(8), 226(5), 257(5),

15 265(5), 283(5), 288(3)(b) or 293(3) or paragraph 31 of Schedule 9;

(4) Regulations under this Act may contain incidental, supplementary, transitional, transitory or saving provision.

### Consequential amendments and repeals

290.—(1) Schedule 10 contains consequential amendments.

20 (2) The provisions listed in Schedule 11 are repealed to the extent specified there.

### Definitions

#### Persons “unconnected with” a person

291.—(1) For the purposes of this Act a person (“B”) is “unconnected with”

25 another person (“A”) unless—

- (a) B receives any payments made on account of A’s maintenance, or has an interest in the receipt of any such payments;
- (b) B is A’s spouse, civil partner, parent, child, brother, sister, mother-in law, father-in law, son-in-law, daughter-in-law, sister-in-law or brother-in-law;
- 30 (c) B is living with A as if he or she were A’s spouse or civil partner and has been so living for a period of at least 6 months;
- (d) B is someone with whom A lives and has been living for a period of at least 5 years; or
- (e) A is living in a relevant place and, at the time when A started living in the
- 35 relevant place—
- (i) B had been living with A as if he or she were A’s spouse or civil partner for a period of at least 6 months; or
- (ii) B was a person with whom A had been living for a period of at least 5 years.

40 (2) In subsection (1)(e) “relevant place” means—

- (a) a hospital;

- (b) a care home; or
- (c) a place of a prescribed description.

### Meaning of “mental disorder”

5 **292.**—(1) In this Act “mental disorder” means any disorder or disability of the mind.

(2) Dependence on alcohol or drugs is not to be considered a disorder or disability of the mind for the purposes of subsection (1) (but this does not prevent a disorder or disability of the mind that is related to alcohol or drugs, but is not dependence, from being so considered).

### 10 Definitions for purposes of Act

**293.**—(1) In this Act—

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

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

15 “the 2003 Order” means the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003;

“approved social worker” has the meaning given by section 269;

“the area” of an HSC trust means the area prescribed by regulations as the area of that trust for the purposes of this Act;

20 “bankrupt”: references to an individual’s being bankrupt include the individual’s being subject to a bankruptcy restrictions order, or interim bankruptcy restrictions order, under the Insolvency (Northern Ireland) Order 1989;

“best interests”—

25 (a) in relation to a person who is 16 or over, is to be read in accordance with section 7 (subject to paragraph (b));

(b) in Part 9, is to be read in accordance with section 155;

“capacity”: see “lacks capacity”;

“care home” means—

30 (a) a residential care home, as defined by Article 10 of the 2003 Order, in respect of which a person is registered under Part 3 of that Order; or

(b) a nursing home, as defined by Article 11 of that Order, in respect of which a person is registered under Part 3 of that Order;

“care or treatment” includes care and treatment;

35 “condition”, in the context of any reference to treatment for a condition or medication for a condition, includes pain;

“the court” (except in Part 10) means the High Court;

“Court Visitor” has the meaning given by section 128;

“the Department” means the Department of Health;

40 “deprivation of liberty” means a deprivation of liberty within the meaning of Article 5(1) of the Human Rights Convention (and for the purposes of any

reference to a deprivation of liberty, it does not matter whether the deprivation of liberty is done by a public authority or not);

“deputy” is to be read in accordance with section 112(2)(b);

“enduring power of attorney” has the meaning given by Schedule 5;

5 “examination”, in relation to a person, includes an interview with the person for the purpose of ascertaining the person’s mental or physical condition or of ascertaining any other matter for the purposes of this Act;

“harm”—

10 (a) except in references to physical harm, means harm of any kind whether physical or non-physical; and

(b) includes harm to a person resulting from that person’s harming others;

“health record” has the meaning given by section 68 of the Data Protection Act 1998 (read with section 69 of that Act);

15 “hospital” means any establishment whose main purpose is to provide treatment to people with illness and which—

(a) receives such people as in-patients; and

(b) is managed by an HSC trust or is an independent hospital in respect of which a person is registered under Part 3 of the 2003 Order;

20 “HSC trust” means a Health and Social Care trust established under Article 10 of the Health and Personal Social Services (Northern Ireland) Order 1991 (but does not include the Northern Ireland Ambulance Service Health and Social Care Trust);

“the Human Rights Convention” has the same meaning as “the Convention” in the Human Rights Act 1998;

25 “illness” includes any injury, disorder or disability requiring treatment or nursing (see subsection (4));

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

“independent hospital” has the same meaning as in the 2003 Order;

30 “lacks capacity”: any reference to a person who is 16 or over lacking capacity in relation to a matter is to be read in accordance with sections 1 and 3 to 6, and any reference to such a person having capacity in relation to a matter is to be read accordingly;

“lasting power of attorney” has the meaning given by section 95;

35 “life-sustaining treatment” means treatment that in the view of a person providing health care for the person concerned is necessary to sustain life;

“the managing authority”, in relation to a hospital or care home, means—

(a) in relation to a hospital managed by an HSC trust, that trust;

(b) in relation to an independent hospital, a person registered under Part 3 of the 2003 Order in respect of the hospital;

40 (c) in relation to a care home, a person registered under Part 3 of the 2003 Order in respect of the care home;

“making decisions”: references to making decisions, in relation to an attorney under a lasting power of attorney or a deputy appointed by the court, include (where appropriate) acting on decisions made;

- “medical practitioner” means a fully registered person within the meaning of the Medical Act 1983 who holds a licence to practise under that Act;
- “mental disorder” has the meaning given by section 292;
- 5 “the Mental Health Order” means the Mental Health (Northern Ireland) Order 1986;
- “nominated person” has the meaning given by section 67;
- “parental responsibility” has the same meaning as in the Children (Northern Ireland) Order 1995 (see Article 6 of that Order);
- “prescribed” is to be read in accordance with subsection (6);
- 10 “property” includes any thing in action and any interest in real or personal property;
- “psychosurgery” means any surgical operation for destroying brain tissue or for destroying the functioning of brain tissue;
- “public authority” has the same meaning as in the Human Rights Act 1998;
- 15 “Public Guardian” has the same meaning as in section 123;
- “purchaser” means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property;
- 20 “the Regional Board” means the Regional Health and Social Care Board established by section 7 of the Health and Social Care (Reform) Act (Northern Ireland) 2009;
- “regulations” is to be read in accordance with subsection (6);
- “RQIA” means the Health and Social Care Regulation and Quality Improvement Authority;
- 25 “rules of court” means rules of court made under section 55 of the Judicature (Northern Ireland) Act 1978;
- “statutory provision” has the meaning given by section 1(f) of the Interpretation Act (Northern Ireland) 1954;
- “taking” a person to a place includes returning or transferring the person to that place;
- 30 “treatment” includes any examination, any procedure (diagnostic or otherwise), and any therapy;
- “the Tribunal” means the Review Tribunal constituted under Article 70 of the Mental Health Order;
- 35 “trust corporation” has the same meaning as in the Trustee Act (Northern Ireland) 1958;
- “unconnected with”, in relation to a person, is to be read in accordance with section 291;
- “working day” means a day that is not—
- 40 (a) a Saturday or Sunday; or
- (b) a public holiday.

(2) Regulations prescribing the area of an HSC trust for the purposes of this Act may prescribe, as that area, a specified area and specified premises which are outside that specified area.

(3) The Department may by regulations amend the definition of “HSC trust” in subsection (1).

(4) For the purposes of the definition of “illness” in subsection (1), a disorder, disability or injury of a person “requires” treatment or nursing if it, or any of its symptoms or manifestations, could be alleviated or prevented from worsening by treatment or nursing.

(5) Any reference in this Act to a person who “lacks capacity” (without more) is to be read, in relation to a person who is 16 or over, as a reference to a person who lacks capacity in relation to a matter that is relevant for the purposes of the provision containing the reference.

(6) In this Act “regulations”—

(a) in section 124, Part 9 and Part 10 (except section 226), means regulations made by the Department of Justice, and

(b) in any other provision of this Act (except section 289 and this subsection) means regulations made by the Department,

and “prescribed”, in any provision, means prescribed by regulations within the meaning of that provision.

(7) For the avoidance of doubt, the definition of “act” in section 46(2) of the Interpretation Act (Northern Ireland) 1954 does not apply for the purposes of this Act.

### *Final provisions*

#### **Commencement**

**294.**—(1) Sections 288, 289 and 291 to 293, this section and section 295 come into operation on the day after Royal Assent.

(2) The other provisions of this Act come into operation on such day or days as the Department may by order appoint.

#### **Short title**

**295.** This Act may be cited as the Mental Capacity Act (Northern Ireland) 2015.

# *Mental Capacity*

## SCHEDULES

### SCHEDULE 1

Sections 19,22,25,28 and 30.

#### AUTHORISATION BY PANEL OF CERTAIN SERIOUS INTERVENTIONS

5

#### PART 1

#### PRELIMINARY

1.—(1) In this Schedule—

10 “appropriate care or treatment”, in relation to a person, means care or treatment which is (or care and treatment which are) appropriate in that person’s case;

“community residence requirement”: see section 31;

“the criteria for authorisation”, in relation to a measure mentioned in paragraph 2(2), has the meaning given in relation to that measure by Part 3 of this Schedule;

15 “proposed”, in relation to a measure, includes proposed to be carried out if particular circumstances arise;

“the relevant trust” has the meaning given by paragraph 2(4).

(2) For the purposes of this Schedule a medical report is made when the completed report is signed by the person making it.

20

#### PART 2

#### APPLICATIONS FOR AUTHORISATION

##### *Applications for authorisation*

25 2.—(1) An application under this Schedule may be made where one or more measures mentioned in sub-paragraph (2) are proposed in relation to a person who is 16 or over (“P”).

(2) Those measures are—

(a) the provision to P of particular treatment which is relevant treatment (as defined by paragraph 4);

30 (b) the detention of P in circumstances amounting to a deprivation of liberty in a particular place in which appropriate care or treatment is available for P;

(c) the imposition on P of a requirement to attend at a particular place at particular times or intervals for the purpose of being given particular treatment which would be likely to be treatment with serious consequences (“an attendance requirement”);

(d) the imposition on P of a community residence requirement.

(3) An application under this Schedule is an application to the relevant trust for authorisation of one or more measures mentioned in sub-paragraph (2) which are proposed.

5 (4) In this Schedule “the relevant trust” means—

(a) if the application requests authorisation of the detention of P in a particular place in circumstances amounting to a deprivation of liberty, the HSC trust in whose area the place is situated;

10 (b) if the application requests authorisation of the provision of particular treatment or authorisation of an attendance requirement, and head (a) does not apply, the HSC trust in whose area the treatment would be provided;

15 (c) if the application requests authorisation of a community residence requirement and head (b) does not apply, the HSC trust in whose area the place where P would be required by the community residence requirement to live is situated.

*Applications: supplementary*

3.—(1) An application may not be made for authorisation of the detention of P in a hospital where the proposed detention could be authorised under Schedule 2 (short-term detention for examination etc).

20 (2) But sub-paragraph (1) does not apply if the application also requests authorisation of another measure or measures mentioned in paragraph 2(2).

(3) An application may be made in respect of a person who is under 16 but who will be 16 or over when the proposed measure would be carried out.

25 (4) An application may be made in respect of a measure or measures mentioned in paragraph 2(2) where the measure, or any of the measures, has already begun (for example, because it was begun in an emergency) and is proposed to be continued.

30 (5) For the purposes of paragraph 2(2)(b) it does not matter whether P is or is not already resident in the place (or, if the place is a hospital, an in-patient in the hospital) at the time when the detention is proposed.

(6) Regulations may provide that an application for authorisation of the detention of P in circumstances amounting to a deprivation of liberty in a particular place—

(a) may be made only if the place is of a prescribed description; or

35 (b) may not be made if the place is of a prescribed description.

(7) In this paragraph “application” means an application under this Schedule.

*Paragraph 2: meaning of “relevant treatment”*

4. For the purposes of paragraph 2 treatment which is proposed to be provided to P is “relevant treatment” if—

40 (a) it would be, or would be likely to be, treatment with serious consequences (see section 20);

(b) the applicant reasonably believes that P lacks capacity in relation to the treatment; and

- (c) either of the following applies—
- (i) P's nominated person has reasonably objected to the proposal to provide the treatment and has not withdrawn that objection; or
  - (ii) the applicant reasonably believes that it is likely that the provision of the treatment would be such that authorisation is needed by reason of section 22 (resistance etc by P to provision of certain treatment).

*Who may make application*

5.—(1) Any application under this Schedule must be made by a person who—

- (a) is of a prescribed description; and
- (b) is unconnected with P (see section 291).

(2) Regulations under sub-paragraph (1)(a) may in particular prescribe, as a description of persons who may make an application under this Schedule—

- (a) an approved social worker;
- (b) a person of a prescribed description who is designated by the managing authority of a hospital or care home in which P is an in-patient or resident as a person who may make applications under this Schedule;
- (c) a person of a prescribed description who is designated by an appropriate person (as defined by the regulations) as a person who may make applications under this Schedule.

*Contents of application*

6.—(1) An application under this Schedule must—

- (a) be in the prescribed form;
- (b) include a medical report (see paragraph 7);
- (c) include a care plan (see paragraph 8);
- (d) include prescribed information about the views, on prescribed matters, of P's nominated person and any prescribed person; and
- (e) include any other prescribed information.

(2) If—

- (a) the application requests authorisation of a measure within paragraph 2(2) (b) or (d) (deprivation of liberty or community residence requirement), and
- (b) in the opinion of the person making the application, if the measure were authorised under paragraph 15, P would be likely to lack capacity in relation to whether an application under section 45 in respect of the authorisation should be made,

the application must contain a statement of that opinion.

*Medical report*

7.—(1) The medical report must be in the prescribed form and must—

- (a) be made by a medical practitioner who is unconnected with P and is permitted by regulations under section 286 to make the report;
- (b) include the required statement; and
- (c) include any prescribed information.



(2) The “required statement” is a statement by the person making the medical report that—

- (a) in that person’s opinion, the criteria for authorisation are met in relation to the measure for which the application requests authorisation; or
- 5 (b) if the application requests authorisation for more than one measure, in that person’s opinion the criteria for authorisation are met in relation to each such measure.

(3) The criteria for authorisation are set out in Part 3 of this Schedule.

10 (4) The maker of the medical report must have examined P not more than two days before the date when the report is made.

(5) See also sections 52 and 53 (involvement of nominated person and independent advocate).

#### *Care plan*

8. The care plan must be in the prescribed form and must include—

- 15 (a) prescribed information about the measure or measures for which the application requests authorisation;
- (b) such other information relating to what is proposed as may be prescribed.

### PART 3

#### THE CRITERIA FOR AUTHORISATION

##### 20 *Criteria for treatment*

9.—(1) In relation to the provision to P of particular treatment, the criteria for authorisation are—

- (a) that P lacks capacity in relation to the treatment;
- (b) that it would be in P’s best interests to have the treatment; and
- 25 (c) if P’s nominated person has reasonably objected to the proposal to provide the treatment and has not withdrawn that objection, that the prevention of serious harm condition is met.

(2) The prevention of serious harm condition is—

- 30 (a) that failure to provide the treatment to P would create a risk of serious harm to P or of serious physical harm to other persons; and
- (b) that carrying out the treatment would be a proportionate response to—
  - (i) the likelihood of harm to P, or of physical harm to other persons; and
  - (ii) the seriousness of the harm concerned.

35 (3) Subsections (2) and (3) of section 21 (situations where there is a choice of treatments) apply for the purposes of sub-paragraph (2).

##### *Criteria for detention amounting to deprivation of liberty*

10. In relation to detention of P in a place in circumstances amounting to a deprivation of liberty, the criteria for authorisation are that—

- (a) appropriate care or treatment is available for P in the place in question;

- (b) failure to detain P in circumstances amounting to a deprivation of liberty in a place in which appropriate care or treatment is available for P would create a risk of serious harm to P or of serious physical harm to other persons;
- 5 (c) detaining P in the place in question in circumstances amounting to a deprivation of liberty would be a proportionate response to—
- (i) the likelihood of harm to P, or of physical harm to other persons; and
  - (ii) the seriousness of the harm concerned;
- 10 (d) P lacks capacity in relation to whether he or she should be detained in the place in question; and
- (e) it would be in P's best interests for P to be so detained.

*Criteria for requirement to attend for treatment*

11. In relation to the imposition on P of a requirement to attend at a particular place at particular times or intervals for the purpose of being given particular

15 treatment which would be likely to be treatment with serious consequences, the criteria for authorisation are that—

- (a) failure to impose such a requirement would be more likely than not to result in P's not receiving the treatment;
- 20 (b) P lacks capacity in relation to whether he or she should attend for the purpose of being given the treatment at the place and times or intervals concerned; and
- (c) a requirement to attend for that purpose at the place and times or intervals concerned would be in P's best interests.

*Criteria for community residence requirement*

25 12. In relation to the imposition on P of a community residence requirement, the criteria for authorisation are that—

- (a) failure to impose a community residence requirement would create a risk of harm to P;
- (b) imposing such a requirement would be a proportionate response to—
- 30 (i) the likelihood of harm to P; and
- (ii) the seriousness of the harm concerned;
- (c) P lacks capacity in relation to the matters covered by the community residence requirement;
- (d) any services which, under regulations under section 33, are required to be
- 35 available to people subject to community residence requirements are available in the area in which P would be required by the community residence requirement to live; and
- (e) the community residence requirement would be in P's best interests.

*Measures proposed to be carried out only if particular circumstances arise*

40 13. In applying the criteria in this Part of this Schedule in a case where a measure is proposed to be carried out only if particular circumstances arise, any question—

- (a) whether the measure would be in P's best interests,

(b) whether failure to carry out the measure would create a particular risk, or  
 (c) whether carrying out the measure would be a proportionate response,  
 is to be decided on the basis of what the situation would be if those circumstances  
 arose.

5

## PART 4

## DECISION ON APPLICATION

*Panel to consider application*

14.—(1) Where the relevant trust receives an application duly made under this  
 Schedule, it must as soon as practicable—

- 10 (a) give prescribed information to P and any prescribed person; and  
 (b) constitute a panel to consider the application.

(2) See also section 283 (general provision about panels).

*Decision on application*

15.—(1) Having considered the application, the panel must—

- 15 (a) authorise the measure mentioned in paragraph 2(2)(a) to (d) for which the  
 application requests authorisation (or, if the application requests  
 authorisation of more than one such measure, authorise each of those  
 measures or such one or more of them as may be specified in the  
 authorisation); or

- 20 (b) refuse to grant an authorisation under this paragraph.

(2) If a measure authorised under sub-paragraph (1)(a) is the provision to P of  
 particular treatment, the authorisation may also include authorisation of a measure  
 mentioned in paragraph 2(2)(b) to (d) authorisation of which was not requested by  
 the application.

- 25 (3) Sub-paragraph (2) applies whether or not the application requested  
 authorisation of any other measure mentioned in paragraph 2(2)(b) to (d).

(4) Paragraphs 16 to 18 contain provision supplementing this paragraph.

(5) The panel may authorise a measure under this paragraph only if it considers  
 that the criteria for authorisation are met in relation to that measure.

- 30 (6) An authorisation granted under this paragraph—

- (a) takes effect from the time when the authorisation is granted; and  
 (b) expires (unless previously revoked) at the end of the period of 6 months  
 beginning with the date when the authorisation is granted;

35 but this is subject to Chapter 6 of Part 2 of this Act (extension of period of  
 authorisation).

(7) An authorisation under this paragraph may be expressed so as to authorise a  
 measure to be carried out if circumstances specified in the authorisation arise.

- 40 16.—(1) This paragraph applies where an authorisation under paragraph 15  
 authorises P's detention in a place in circumstances amounting to a deprivation of  
 liberty.

(2) The authorisation must specify—

- (a) the purposes for which P may be detained in circumstances amounting to a deprivation of liberty; and
- (b) the place in which P may be so detained.

5 (3) The authorisation may authorise P to be detained for a specified purpose in one place and for other specified purposes in another place.

(4) Any purpose specified under this paragraph must relate to the risk mentioned in paragraph 10(b) (for example, if that risk is of serious harm to P from a disorder, a purpose specified may be the purpose of ensuring that P receives treatment for the disorder).

*Specifying requirement to attend for treatment*

17. Where an authorisation under paragraph 15 authorises the imposition on P of a requirement to attend at a particular place at particular times or intervals for the purpose of being given specified treatment, the authorisation—

- 15 (a) may either specify the place or authorise it to be such place as the medical practitioner in charge of the treatment may direct;
- (b) may either specify the times or intervals or authorise them to be such times or intervals as that medical practitioner may direct.

*Specifying community residence requirement*

20 18.—(1) This paragraph applies where an authorisation under paragraph 15 authorises the imposition on P of a community residence requirement.

(2) A community residence requirement which is in accordance with the authorisation may (subject to the provisions of this Act) be imposed on P by the HSC trust to which the application under this Schedule was made (“the trust”).

25 (3) The authorisation must specify, in accordance with the following provisions of this paragraph, the terms of the community residence requirement that may be imposed by the trust under the authorisation.

(4) The authorisation must provide either—

- 30 (a) that the trust may require P to live at a place specified by the authorisation; or
- (b) that the trust may require P to live at such place as may be specified by the trust.

(5) The authorisation may include either or both of the following provisions—

- 35 (a) provision that if the trust imposes the requirement authorised under subparagraph (4), the trust may also require P to allow a healthcare professional specified by the trust access to P, at reasonable times required by that professional, at a place where P is living;
- 40 (b) provision that if the trust imposes the requirement authorised under subparagraph (4), the trust may also require P to attend at particular places and times or intervals for the purpose of training, education, occupation or treatment.

(6) Where by virtue of sub-paragraph (5)(b) the authorisation includes provision authorising a requirement for P to attend at a particular place at particular times or intervals, the authorisation—

- 5 (a) may either specify the place or authorise it to be such place as the trust may specify; and  
(b) may either specify the times or intervals or authorise them to be such times or intervals as the trust may specify.

(7) In this paragraph—

10 “healthcare professional” means a person of a description prescribed under section 31(3);

“treatment” is to be read in accordance with section 31(4).

*Time limit for panel’s decision, and duty to notify decision*

19.—(1) The panel must comply with paragraph 15(1) as soon as practicable and in any case no later than the end of the permitted period.

15 (2) The “permitted period” is (subject to paragraph 20) the period of 7 working days beginning with the day on which the application is received by the trust (or, if that day is not a working day, beginning with the first working day after that).

(3) As soon as practicable after granting or refusing an authorisation under paragraph 15, the panel must give to P and any prescribed person—

- 20 (a) written notice of the grant or refusal; and  
(b) any prescribed information.

(4) Regulations under sub-paragraph (3) must ensure that the Attorney General is given notice in any case where—

- 25 (a) the panel grants an authorisation that authorises a measure within paragraph 2(2)(b) or (d) (deprivation of liberty or community residence requirement); and  
(b) the application under this Schedule contained the statement mentioned in paragraph 6(2) (statement that P likely to lack capacity in relation to making of Tribunal application).

30 *Interim authorisations*

20.—(1) If at any time before the end of the period mentioned in paragraph 19(2) the panel considers in respect of the measure, or any of the measures, proposed in the application—

- 35 (a) that a decision that the panel considers the criteria for authorisation are met will not be possible within that period, but  
(b) that it is more likely than not that the criteria for authorisation are met, the panel may grant an interim authorisation.

(2) The power of the panel to grant an interim authorisation is power to grant an authorisation which—

- 40 (a) does as mentioned in paragraph 15(1)(a); but  
(b) is expressed to have effect only until the end of the period of 28 days beginning with the date on which the interim authorisation is granted.

(3) Accordingly, an interim authorisation—

(a) takes effect from the time when the authorisation is granted; and

(b) expires (unless previously revoked) at the end of the period of 28 days beginning with the date on which it is granted.

5 (4) Paragraphs 15(2), (3) and (7) and 16 to 18 apply in relation to an interim authorisation as they apply in relation to an authorisation under paragraph 15.

(5) Where the panel grants an interim authorisation in relation to an application under this Schedule—

10 (a) the period within which the panel must grant or refuse an authorisation under paragraph 15 in respect of the application is 28 days beginning with the date on which the interim authorisation is granted; and

(b) the grant or refusal of an authorisation under paragraph 15 in respect of the application revokes the interim authorisation.

15 (6) As soon as practicable after granting an interim authorisation, the panel must give written notice of the grant, and any prescribed information, to P and any prescribed person.

(7) Regulations under sub-paragraph (6) must ensure that the Attorney General is given notice in any case where—

20 (a) the panel grants an interim authorisation that authorises a measure within paragraph 2(2)(b) or (d) (deprivation of liberty or community residence requirement); and

(b) the application under this Schedule contained the statement mentioned in paragraph 6(2) (statement that P likely to lack capacity in relation to making of Tribunal application).

25

## PART 5

### MATTERS COVERED BY AUTHORISATION ETC

#### *Treatment: what is covered by authorisation*

21.—(1) Sub-paragraph (2) applies where an authorisation under this Schedule authorises the provision to P of treatment specified by the authorisation.

30 (2) As well as authorising the provision of that treatment to P, the authorisation authorises the provision to P of—

(a) any part of the treatment concerned;

35 (b) the treatment concerned, or any part of it, with such modifications as the medical practitioner in charge of P's treatment may reasonably consider to be in P's best interests.

(3) Sub-paragraph (4) applies where an authorisation under this Schedule authorises the imposition on P of a requirement to attend at a particular place at particular times or intervals for the purpose of being given treatment specified by the authorisation.

40 (4) As well as authorising the imposition of such a requirement, the authorisation authorises the imposition on P of a requirement to attend at a

particular place at particular times or intervals for the purpose of being given treatment mentioned in sub-paragraph (2)(a) or (b).

(5) Any reference in this Part of this Act to treatment “specified by” an authorisation is to be read as including treatment mentioned in sub-paragraph (2) (a) or (b).

*Detention: what is covered by authorisation*

22.—(1) This paragraph applies where an authorisation under this Schedule authorises the detention of P in a specified place for specified purposes.

(2) As well as authorising that detention, the authorisation authorises any related detention that may occur while the authorisation is in force.

(3) In sub-paragraph (2) “related detention” means—

- (a) any detention of P in the specified place at a time when the detention is partly for the purposes specified in the authorisation and partly for other purposes relating to P’s care or treatment;
- (b) any detention of P while P is being taken to the specified place; and
- (c) any detention of P while P is absent from the specified place, if—
  - (i) the detention is in pursuance of a condition imposed on P that relates to permission given to P to be absent from the specified place for a particular period or a particular occasion;
  - (ii) the imposition of the condition is an act to which section 9(2) applies; and
  - (iii) the detention is for no longer than 7 days.

(4) In this paragraph “detention” means detention in circumstances amounting to a deprivation of liberty.

(5) Nothing in the authorisation or this paragraph affects the operation of this Part of this Act in relation to any detention of P in circumstances not amounting to a deprivation of liberty.

*Effect of discharge from detention*

23.—(1) Where—

- (a) P is liable by virtue of an authorisation under this Schedule to be detained in circumstances amounting to a deprivation of liberty, and
- (b) P is discharged from detention,

P ceases to be liable to be detained by virtue of the authorisation (and accordingly the authorisation does not authorise any detention of P after that discharge).

(2) For the purposes of this paragraph P is “discharged from detention” if a person with authority to discharge P from detention informs P in writing that he or she is discharged from detention.

*Power to vary or revoke requirements etc imposed under authorisation*

24. Any power conferred by virtue of an authorisation under this Schedule to impose a requirement or give a direction includes power to vary or revoke the requirement or direction (but not in such a way as to result in a requirement that is not permitted by the authorisation).

*Effect of authorisation on previous authorisations*

25.—(1) The grant of an interim authorisation under this Schedule revokes any authorisation under Schedule 2 in respect of P which is in force immediately before the grant of the interim authorisation; but this is subject to sub-paragraph (2).

(2) The panel which grants the interim authorisation may, when it makes the grant, also decide that the authorisation under Schedule 2 is not revoked by the grant.

26.—(1) The grant of an authorisation under paragraph 15 (“the later authorisation”), as well as revoking any interim authorisation relating to the same application, revokes any relevant earlier authorisation; but this is subject to sub-paragraph (3).

(2) In this paragraph a “relevant earlier authorisation” means—

(a) any authorisation under Schedule 2 in respect of P, or

(b) any authorisation under paragraph 15 in respect of P, which is in force immediately before the grant of the later authorisation.

(3) The panel which grants the later authorisation may, when it makes the grant, also decide that—

(a) a relevant earlier authorisation specified by the panel, or

(b) a specified provision of such an authorisation, is not revoked by the grant.

*Relationship with other conditions*

27. For the avoidance of doubt, the fact that a particular measure is authorised by an authorisation under this Schedule does not affect the need for the other conditions of this Part of this Act that apply to be met in respect of any act that is, or is part of, that measure.

## SCHEDULE 2

Section 25.

## AUTHORISATION OF SHORT-TERM DETENTION IN HOSPITAL FOR EXAMINATION ETC

## PART 1

## PRELIMINARY

1.—(1) In this Schedule—

“the criteria for authorisation” has the meaning given by paragraph 2(3);

“the responsible medical practitioner”, in relation to a person who is an in-patient in a hospital, means the medical practitioner who is in charge of the person’s care in the hospital (see also sub-paragraphs (2) and (3)).

(2) Regulations may provide that the medical practitioner in charge of a person’s care in a hospital may carry out prescribed functions of the responsible medical practitioner under this Schedule only if prescribed conditions are met.



(3) A condition that may be prescribed under sub-paragraph (2) is that the practitioner is approved by RQIA for prescribed purposes.

(4) For the purposes of this Schedule a report is made when the completed report is signed by the person making it.

5 (5) Where a report under paragraph 2 is made in respect of a person who is already an in-patient in the hospital specified in the report, the person is to be treated for the purposes of this Schedule as if admitted to the hospital at the time the report was made.

## PART 2

### 10 THE AUTHORISATION

#### *Authorisation of detention in hospital for examination etc*

2.—(1) The detention of a person in a hospital in circumstances amounting to a deprivation of liberty, for the purposes of examination (or of examination followed by other treatment or care), may be authorised by the making of a report under this  
15 paragraph.

(2) An appropriate healthcare professional (as defined by paragraph 3) may make a report under this paragraph in respect of a person who is 16 or over (“P”) if, in the opinion of the appropriate healthcare professional, the criteria for authorisation are met.

20 (3) The criteria for authorisation are that—

- (a) P has an illness or there is reason to suspect that P has an illness;
- (b) failure to detain P in a hospital in circumstances amounting to a deprivation of liberty, for the purposes of examination or of examination followed by other treatment or care, would create a risk of serious harm to  
25 P or of serious physical harm to other persons;
- (c) detaining P in the hospital in circumstances amounting to a deprivation of liberty, for those purposes, would be a proportionate response to—
  - (i) the likelihood of harm to P, or of physical harm to other persons; and
  - (ii) the seriousness of the harm concerned;
- (d) P lacks capacity in relation to whether he or she should be so detained; and
- (e) it would be in P’s best interests for him or her to be so detained.

30 (4) A report under this paragraph must be in the prescribed form and must—

- (a) include a medical report (see paragraph 4);
- (b) include a statement by the appropriate healthcare professional that in his or  
35 her opinion the criteria for authorisation are met;
- (c) include prescribed information about the views, on prescribed matters, of P’s nominated person and any prescribed person;
- (d) include any other prescribed information; and
- (e) state that the report authorises the detention, in circumstances amounting  
40 to a deprivation of liberty, of P in a specified hospital for the purposes of examination or of examination followed by other treatment or care.

(5) If the appropriate healthcare professional is of the opinion that P is likely to lack capacity in relation to whether an application under section 45 (applications to Tribunal) should be made in respect of the authorisation granted by the making of the report under this paragraph, the report must contain a statement of that opinion.

5 (6) In this paragraph “examination” includes further examination.

*Who may make a report under paragraph 2*

3.—(1) In paragraph 2 “an appropriate healthcare professional” means a person who—

- (a) is of a prescribed description; and
- 10 (b) is unconnected with P (see section 291).

(2) The descriptions of person who may be prescribed under this paragraph include in particular—

- (a) an approved social worker;
- 15 (b) a person of a prescribed description who is designated by the managing authority of the hospital specified in the report under paragraph 2 as a person who may make reports under that paragraph.

*Medical report*

4.—(1) The medical report included in a report under paragraph 2 must be in the prescribed form and must—

- 20 (a) be made by a medical practitioner who is unconnected with P and is permitted by regulations under section 286 to make the report;
- (b) include a statement by the person making the medical report that in that person’s opinion the criteria for authorisation are met; and
- (c) include any prescribed information.

25 (2) The maker of the medical report must have examined P not more than two days before the date when the medical report is made.

(3) See also sections 52 and 53 (involvement of nominated person and independent advocate).

*Consultation required before report authorising detention is made*

30 5. A person may make a report under paragraph 2 only if the person has personally seen P not more than two days before the date on which that report is made.

6.—(1) Where—

- (a) it is proposed to make a report under paragraph 2, and
  - 35 (b) P’s nominated person objects to the making of the report,
- a person may make a report under paragraph 2 in respect of P only if the person has consulted an approved social worker.

(2) This applies even if the person making the report under paragraph 2 is an approved social worker.

*Information to be given where report authorising detention is made*

7.—(1) Where a report under paragraph 2 is made, the person who made the report must as soon as practicable give prescribed information to—

- (a) the managing authority of the hospital specified in the report; and
- 5 (b) any prescribed person.

(2) Regulations under sub-paragraph (1) must ensure that where a report containing the statement mentioned in paragraph 2(5) is made, the Attorney General is notified of that fact.

*Duration of authorisation: preliminary*

10 8.—(1) An authorisation granted by the making of a report under paragraph 2—

- (a) takes effect from the time the report is made; and
- (b) expires (if not previously revoked) when an event which terminates the authorisation occurs (or, if more than one such event occurs, on the occurrence of the first of those events).

15 (2) “An event which terminates the authorisation” is to be read in accordance with Part 3 of this Schedule.

## PART 3

## EVENTS TERMINATING THE AUTHORISATION

*Expiry where failure to admit P within period required*

20 9.—(1) If—

- (a) at the time when a report under paragraph 2 is made P is not already an in-patient in the hospital specified in the report, and
- (b) at the end of the period allowed for admission P has not been admitted to that hospital,

25 the expiry of that period is an event which terminates the authorisation.

(2) In this paragraph “the period allowed for admission” means—

- (a) two days beginning with the date when the medical report under paragraph 4 was made; or
- 30 (b) such longer period, not exceeding 14 days beginning with that date, as a medical practitioner who meets prescribed conditions may (before the end of the period mentioned in head (a)) certify to be necessary because of exceptional circumstances.

(3) A certificate under sub-paragraph (2)(b) must be in the prescribed form and include prescribed information.

*Expiry where failure to give P certain information*

35 10.—(1) This paragraph applies if—

- (a) pursuant to a report under paragraph 2, P is admitted to the hospital specified in the report; or
- (b) P is treated under paragraph 1(5) as so admitted.

(2) If P is not given prescribed information by the managing authority of the hospital as soon as practicable after the admission or deemed admission, the failure to give P that information is an event which terminates the authorisation.

*Expiry where failure to examine and report on P on admission*

5 11.—(1) This paragraph applies where—

- (a) pursuant to a report under paragraph 2, P is admitted to the hospital specified in the report; or
- (b) P is treated under paragraph 1(5) as so admitted.

10 (2) If at the end of the initial period a medical practitioner has not examined P and made a report in accordance with this paragraph, the expiry of the initial period is an event which terminates the authorisation.

(3) In this paragraph—

- 15 (a) “the initial period” means the period, beginning with P’s admission or deemed admission, within which it would have been practicable to examine P and make a report in accordance this paragraph;
- (b) references to examining P and making a report in accordance with this paragraph are to carrying out an examination of P, and making a report, in accordance with sub-paragraphs (4) to (7).

(4) An examination under this paragraph must be carried out by—

- 20 (a) the responsible medical practitioner;
- (b) another medical practitioner who meets prescribed conditions; or
- (c) any other medical practitioner who is on the staff of the hospital.

(5) An examination under this paragraph must not be carried out by the medical practitioner who made the medical report under paragraph 4.

25 (6) A medical practitioner carrying out an examination under this paragraph must immediately make a report in the prescribed form of the examination.

(7) The report must include a statement by the person making the report as to whether, in that person’s opinion, the condition in paragraph 12 is met.

30 (8) If the report states that in the opinion of the person making the report that condition is not met, the making of the report is an event which terminates the authorisation.

(9) A person who makes a report under this paragraph must immediately give the report to the managing authority of the hospital.

*The condition for detention*

35 12.—(1) This paragraph applies for the purposes of paragraphs 11, 13 and 14.

(2) The condition referred to in those paragraphs is that—

- (a) failure to detain P in the hospital in circumstances amounting to a deprivation of liberty, for the purposes of further care, would create a risk of serious harm to P or of serious physical harm to other persons;
- 40 (b) detaining P in the hospital in circumstances amounting to a deprivation of liberty, for those purposes, is a proportionate response to—
  - (i) the likelihood of harm to P, or of physical harm to other persons; and

- (ii) the seriousness of the harm concerned;
- (c) P lacks capacity in relation to whether he or she should be so detained; and
- (d) it would be in P's best interests for him or her to be so detained.

(3) In sub-paragraph (2) "further care" means such one or more of the following  
5 as are appropriate in P's case—

- (a) further examination;
- (b) the provision to P of other treatment or care.

*Expiry where no examination and report by suitable medical practitioner within  
required time*

10 13.—(1) This paragraph applies where—

- (a) a report under paragraph 11 (an "admission report") has been made;
- (b) the admission report was not such as to terminate the authorisation; and
- (c) the admission report was made by a practitioner within paragraph 11(4)(c)  
(and not within paragraph 11(4)(a) or (b)).

15 (2) If, at the end of 48 hours from the time when the admission report was  
made, a suitable medical practitioner has not examined P and made a report in  
accordance with sub-paragraphs (4) and (5), the expiry of that period is an event  
which terminates the authorisation.

(3) In this paragraph "a suitable medical practitioner" means—

- 20 (a) the responsible medical practitioner; or
- (b) if it is not practicable for that practitioner to carry out the examination  
under this paragraph, another medical practitioner who meets prescribed  
conditions.

25 (4) A medical practitioner carrying out an examination under this paragraph  
must immediately make a report in the prescribed form of the examination.

(5) The report must include a statement by the person making the report as to  
whether, in that person's opinion, the condition in paragraph 12 is met.

30 (6) If the report states that in the opinion of the person making the report that  
condition is not met, the making of the report is an event which terminates the  
authorisation.

(7) A person who makes a report under this paragraph must immediately give  
the report to the managing authority of the hospital.

*Expiry where no further examination and report on P within 14 days*

14.—(1) This paragraph applies where—

- 35 (a) either of the following has been made—
- (i) a report under paragraph 11 by a practitioner within paragraph 11(4)(a)  
or (b); or
  - (ii) a report under paragraph 13; and
- (b) the report was not such as to terminate the authorisation.

40 (2) If at the end of 14 days beginning with the date of admission a suitable  
medical practitioner has not examined P and made a further report in accordance

with sub-paragraphs (5) and (6), the expiry of that period is an event which terminates the authorisation.

(3) In this paragraph “the date of admission” means the date when the report under paragraph 11 was made (whether or not that report was made as mentioned in sub-paragraph (1)(a)(i)).

(4) In this paragraph “a suitable medical practitioner” means—

(a) the responsible medical practitioner; or

(b) if it is not practicable for that practitioner to carry out the examination under this paragraph, another medical practitioner meeting prescribed conditions.

(5) A medical practitioner carrying out an examination under this paragraph must immediately make a report in the prescribed form of the examination.

(6) The report must include a statement by the person making the report as to whether, in that person’s opinion, the condition in paragraph 12 is met.

(7) If the report states that in the opinion of the person making the report that condition is not met, the making of the report is an event which terminates the authorisation.

(8) A person who makes a report under this paragraph must immediately give the report to the managing authority of the hospital.

#### *Expiry 14 days after date of further report*

15.—(1) This paragraph applies where a report under paragraph 14 has been made and the report was not such as to terminate the authorisation.

(2) The expiry of the remaining period allowed is an event which terminates the authorisation.

(3) “The remaining period allowed” is the period of 14 days beginning with the day after the date the report under paragraph 14 is made.

#### *Discharge*

16.—(1) If—

(a) pursuant to a report under paragraph 2, P is admitted to the hospital specified in the report, or

(b) P is treated under paragraph 1(5) as so admitted,

and P is subsequently discharged from detention, that discharge is an event which terminates the authorisation.

(2) For the purposes of this paragraph P is “discharged from detention” if P is informed in writing by the responsible medical practitioner that he or she is discharged from detention.

#### *Unreasonable delay in taking certain steps*

17.—(1) If—

(a) pursuant to a report under paragraph 2, P is admitted to the hospital specified in the report, or

(b) P is treated under paragraph 1(5) as so admitted,

and subsequently there is an unreasonable delay in taking a relevant step, the start of that delay is an event which terminates the authorisation.

- 5 (2) In this paragraph a “relevant step” means making an application under Schedule 1 where a measure that would need authorisation under that Schedule is proposed in relation to P.

## PART 4

### SUPPLEMENTARY PROVISIONS

#### *Detention covered by authorisation*

18.—(1) This paragraph applies where a report is made under paragraph 2.

- 10 (2) The authorisation granted by the making of the report authorises—
- (a) the detention (at any time when the authorisation is in force) of P in the hospital specified in the report for the purposes of examination, or of any treatment or care following examination;
  - (b) any related detention which may occur while the authorisation is in force.
- 15 (3) In sub-paragraph (2) “related detention” means—
- (a) any detention of P while P is being taken to the hospital specified in the report;
  - (b) any detention of P while P is absent from the hospital, if the detention—
    - 20 (i) is in pursuance of a condition imposed in accordance with section 27 (permission for absence from hospital); and
    - (ii) is for no longer than 7 days.

(4) In sub-paragraphs (2) and (3) “detention” means detention in circumstances amounting to a deprivation of liberty.

- 25 (5) Nothing in the authorisation or this paragraph affects the operation of this Part of this Act in relation to any detention of P in circumstances not amounting to a deprivation of liberty.

#### *Relationship with other conditions*

19. For the avoidance of doubt, the fact that a particular measure is authorised by an authorisation under this Schedule does not affect the need for the other conditions of this Part of this Act that apply to be met in respect of any act which is, or is part of, that measure.

#### *Rectification of reports*

- 20.—(1) Where at any time before the end of the permitted period—
- 35 (a) a medical report under paragraph 4 or a report under paragraph 11, 13 or 14 is found to be in any respect incorrect or defective, the report may be amended by the person who signed it;
  - (b) any part of a report under paragraph 2 (except the medical report) is found to be in any respect incorrect or defective, the report under paragraph 2 may be amended by the person who signed it.
- 40 (2) But an amendment under this paragraph may be made only—

- (a) with the consent of the managing authority of the hospital specified in the report; and
- (b) before the end of the permitted period.

5 (3) Where an amendment under this paragraph is made to a report, the report is to have effect, and to be treated as always having had effect, as if it had been originally made as so amended.

(4) In this paragraph “the permitted period” means the period of 28 days beginning with the date of admission (as defined by paragraph 14(3)).

21.—(1) This paragraph applies where—

- 10 (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 the medical report included in the authorisation report, or a report made under paragraph 11, 13 or 14 in respect of P, does not comply with the provisions of this Schedule that apply to reports of that description.

(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.

20 (3) Where any such notice is given, the medical report or report under paragraph 11, 13 or 14 as respects which the notice is given is to be disregarded.

(4) But the authorisation report is valid, and is to be treated as always having been valid, if a fresh medical report or (as the case may be) report under paragraph 11, 13 or 14—

- 25 (a) is made before the end of the permitted period; and
- (b) complies with the provisions of this Schedule that apply to reports of that description, other than the provisions relating to the time within which such reports must be made.

(5) This paragraph is without prejudice to paragraph 20.

(6) In this paragraph—

- 30 “the managing authority” means the managing authority of the hospital specified in the authorisation report;
- “the permitted period” has the same meaning as in paragraph 20.

### SCHEDULE 3

Section 40.

#### 35 EXTENSION BY PANEL OF PERIOD OF AUTHORISATION

##### *Preliminary*

1. In this Schedule—

- “authorisation” is defined by section 37;
- “authorised measure” and “measure” are defined by section 41(1) and (2);
- 40 “the criteria for continuation” is defined by section 41(3) and (4);



“the current period” of an authorisation means the period of the authorisation at the time the application under this Schedule is made;

“the period” and “the initial period” of an authorisation are defined by section 37;

5 “the relevant trust” has the meaning given by paragraph 2(3).

#### *Applications for extension*

2.—(1) An application under this Schedule may be made where—

- (a) an authorisation in respect of a person (“P”) has been granted (and has not been revoked);
- 10 (b) the period of the authorisation has not ended;
- (c) it has been proposed that the period of the authorisation should be extended under section 37 or 38; and
- (d) an extension under that section is not possible, because the person who is the responsible person for the purposes of section 39 is not of the opinion
- 15 that the criteria for continuation are met in relation to each authorised measure that is proposed to be continued after the end of the current period.

(2) An application under this Schedule is an application to the relevant trust for an extension of the period of the authorisation.

20 (3) In this Schedule “the relevant trust” means—

- (a) where the proposed extension would be wholly or partly for the purposes of continuing P’s detention in a place, the HSC trust in whose area that place is situated;
- 25 (b) where the proposed extension would be wholly or partly for the purposes of continuing the provision to P of treatment specified by the authorisation or a requirement to attend for such treatment, and head (a) does not apply, the HSC trust in whose area the treatment is provided;
- (c) where the proposed extension would be for the purposes of continuing a community residence requirement and head (b) does not apply, the HSC
- 30 trust in whose area the place where P is required by the community residence requirement to live is situated.

#### *Who may make application*

3.—(1) Any application under this Schedule must be made by a person who—

- (a) is of a prescribed description; and
- 35 (b) is unconnected with P (see section 291).

(2) Regulations under sub-paragraph (1)(a) may in particular prescribe, as a description of persons who may make an application under this Schedule—

- (a) an approved social worker;
- 40 (b) a person of a prescribed description who is designated by the managing authority of a hospital or care home in which P is an in-patient or resident as a person who may make applications under this Schedule;

- (c) a person of a prescribed description who is designated by an appropriate person (as defined by the regulations) as a person who may make applications under this Schedule.

*Contents of application*

- 5 4.—(1) An application under this Schedule must—
- (a) be in the prescribed form;
  - (b) specify the authorised measure (or, if more than one, each authorised measure) that is proposed to be continued after the end of the current period;
  - 10 (c) include a medical report (see paragraph 5);
  - (d) include a care plan (see paragraph 6);
  - (e) include prescribed information about the views, on prescribed matters, of P's nominated person and any prescribed person; and
  - (f) include any other prescribed information.
- 15 (2) If—
- (a) the application specifies a measure within section 41(2)(b) or (d) (deprivation of liberty or community residence requirement), and
  - (b) the person making the application is of the opinion that, if the period of the authorisation were extended, P would be likely to lack capacity in relation
  - 20 to whether an application under section 45 (applications to Tribunal) should be made,
- the application must contain a statement of that opinion.

*Medical report*

- 25 5.—(1) The medical report must be in the prescribed form and must—
- (a) be made by a medical practitioner who is unconnected with P and is permitted by regulations under section 286 to make the report;
  - (b) include a statement by the medical practitioner that, in his or her opinion, the criteria for continuation are met in respect of each measure specified under paragraph 4(1)(b); and
  - 30 (c) include any prescribed information.
- (2) The medical practitioner must have examined P not more than two days before the date when the report is made.
- (3) See also sections 52 and 53 (involvement of nominated person and independent advocate).

35 *Care plan*

6. The care plan must be in the prescribed form and must include such information relating to what is proposed as may be prescribed.

*Panel to consider application*

- 40 7.—(1) Where the relevant trust receives an application duly made under this Schedule, it must as soon as practicable—
- (a) give prescribed information to P and any prescribed person; and

- (b) constitute a panel to consider the application.  
 (2) See also section 283 (general provision about panels).

*Decision on application*

- 8.—(1) Having considered the application, the panel must either—
- 5 (a) extend the period of the authorisation in accordance with sub-paragraph (2); or  
 (b) refuse the application.
- (2) An extension under sub-paragraph (1)(a) must be—
- 10 (a) if the period of the authorisation has not previously been extended, for the period of 6 months beginning immediately after the end of the initial period;  
 (b) if the period of the authorisation has previously been extended under section 37 or 38 or this Schedule, for the period of one year beginning immediately after the end of the current period.
- 15 (3) The panel may extend the period of the authorisation only if—
- (a) where there is one specified measure, the panel considers that the criteria for continuation are met in respect of that measure;  
 (b) where there are two or more specified measures, the panel considers that the criteria for continuation are met in respect of at least one of those measures.
- 20 (4) Where the panel extends the period of the authorisation and either—
- (a) there is a specified measure as respects which the panel does not consider that the criteria for continuation are met, or  
 (b) there is a measure authorised by the authorisation which is not specified,
- 25 the panel must cancel the provision of the authorisation which authorises that measure.
- (5) A cancellation under sub-paragraph (4) takes effect from the end of the current period.
- (6) If the current period ends without the period of the authorisation having been
- 30 extended, the period of the authorisation may not be extended.
- (7) In this paragraph references to a “specified” measure are to a measure specified under paragraph 4(1)(b).

*Time limit for panel’s decision, and duty to notify decision*

- 9.—(1) The panel must comply with paragraph 8(1) as soon as practicable and
- 35 in any case no later than the end of the permitted period.
- (2) The “permitted period” is the period of 7 working days beginning with the day on which the application is received by the trust (or, if that day is not a working day, beginning with the first working day after that).
- (3) As soon as practicable after granting or refusing an extension under
- 40 paragraph 8, the panel must give to P and any prescribed person—
- (a) written notice of the grant or refusal; and  
 (b) any prescribed information.

(4) Regulations under sub-paragraph (3) must ensure that the Attorney General is given notice in any case where—

- (a) the panel extends the period of an authorisation;
- 5 (b) the authorisation authorises a measure within section 41(2)(b) or (d) (deprivation of liberty or community residence requirement), and will do so after the end of the current period; and
- (c) the application under this Schedule contained the statement mentioned in paragraph 4(2) (statement that P likely to lack capacity in relation to making of Tribunal application).

10

## SCHEDULE 4

Section 95.

## LASTING POWERS OF ATTORNEY: FORMALITIES

## PART 1

## MAKING INSTRUMENTS

15

*General requirements as to making instruments*

1.—(1) An instrument is made in accordance with this Schedule only if—

- (a) it is in a form specified by regulations or by the Public Guardian in accordance with regulations;
- (b) it complies with paragraph 2; and
- 20 (c) any prescribed requirements in connection with its execution are met.

(2) Regulations may make different provision according to whether the instrument relates to—

- (a) care, treatment and personal welfare (or any of those matters); or
- (b) property and affairs; or
- 25 (c) matters within both head (a) and head (b).

(3) Regulations may also make different provision according to whether only one or more than one attorney or replacement attorney is to be appointed (and if more than one, whether jointly or jointly and severally).

(4) In this Schedule—

- 30 (a) “intended attorney”, in relation to an instrument, means a person who if the instrument were registered and a lasting power of attorney were created would be an attorney under the lasting power;
- (b) “replacement attorney” means a person appointed under section 101(1)(b) to replace a person appointed as an attorney.

35 (5) In paragraphs 7, 14, 15, 17 and 25, references to a person appointed as an attorney or replacement attorney do not include a person whose appointment has terminated.

*Requirements as to content of instruments*

2.—(1) The instrument must include—

- (a) the prescribed information about the purpose of the instrument and the effect of a lasting power of attorney;
- (b) a statement by the donor to the effect that the donor—
- 5 (i) has read the prescribed information or a prescribed part of it (or has heard it read); and
- (ii) intends the authority conferred by the instrument to include authority to make decisions on the donor's behalf in circumstances where the donor no longer has capacity;
- (c) a statement by the donor—
- 10 (i) naming a person or persons whom the donor wishes to be notified of any application for the registration of the instrument; or
- (ii) stating that there are no persons whom the donor wishes to be notified of any such application;
- (d) a statement by each person appointed as attorney, and each person (if any) appointed as replacement attorney, to the effect that he or she—
- 15 (i) has read the prescribed information or a prescribed part of it (or has heard it read); and
- (ii) understands the duties imposed by sections 1, 2, 5 and 7 (principles, best interests) on an attorney under a lasting power of attorney; and
- (e) a certificate by a person of a prescribed description that, in that person's
- 20 opinion, at the time when the donor executes the instrument—
- (i) the donor understands the purpose of the instrument and the scope of the authority conferred by it;
- (ii) no fraud or undue pressure is being used to induce the donor to create a
- 25 lasting power of attorney; and
- (iii) there is nothing else which would prevent a lasting power of attorney from being created by the instrument.
- (2) Regulations may prescribe a maximum number of persons who may be named under sub-paragraph (1)(c).
- 30 (3) The persons who may be named under sub-paragraph (1)(c) do not include a person who is appointed as attorney or replacement attorney by the instrument.
- (4) A certificate under sub-paragraph (1)(e)—
- (a) must be made in a form specified by regulations or by the Public Guardian in accordance with regulations; and
- 35 (b) must include any prescribed information.
- (5) The certificate may not be given by a person appointed as attorney or replacement attorney by the instrument.

*Failure to comply with required form*

- 3.—(1) If an instrument differs in an immaterial respect in form or mode of
- 40 expression from the form specified under paragraph 1(1)(a), it is to be treated by the Public Guardian as sufficient in point of form and expression.
- (2) The court may declare that an instrument which is not in the form specified under paragraph 1(1)(a) is to be treated as if it were in that form, if the court is
- 45 satisfied that the persons executing the instrument intended it to create a lasting power of attorney.

## PART 2

## REGISTRATION

*Applications and procedure for registration*

- 5 4.—(1) An application to the Public Guardian for the registration of an instrument intended to create a lasting power of attorney—
- (a) must be made in a form specified by regulations or by the Public Guardian in accordance with regulations; and
  - (b) must include any prescribed information.
- (2) The application may be made—
- 10 (a) by the donor;
  - (b) by the intended attorney or intended attorneys; or
  - (c) if there are two or more intended attorneys who are to act jointly and severally in respect of any matter, by any of them.
- (3) The application must be accompanied by—
- 15 (a) the instrument; and
  - (b) any fee provided for under section 116 of the Judicature (Northern Ireland) Act 1978.
- 20 5. Subject to paragraphs 10 to 14, on an application under paragraph 4 the Public Guardian must register the instrument as a lasting power of attorney at the end of the prescribed period.

*Notification requirements*

6. A person (or persons) about to make an application under paragraph 4 must notify any persons named under paragraph 2(1)(c) that the application is about to be made.
- 25 7.—(1) As soon as practicable after receiving an application under paragraph 4, the Public Guardian must notify the persons within sub-paragraph (2) that the application has been received.
- (2) The persons to be notified are all of the following (except the person or persons who have made the application)—
- 30 (a) the donor;
  - (b) each person appointed as attorney;
  - (c) each person (if any) appointed as replacement attorney.
- 8.—(1) A notice under paragraph 6 must be in a form specified by regulations or by the Public Guardian in accordance with regulations.
- 35 (2) A notice under paragraph 6 or 7 must include any prescribed information.

*Power to dispense with notification requirements*

- 9.—(1) A person proposing to make an application under paragraph 4 may apply to the court for an order dispensing with the requirement to notify under paragraph 6.

(2) The court may make such an order if satisfied that the notification would serve no useful purpose.

*Instrument not properly made*

10. If it appears to the Public Guardian that an instrument accompanying an  
5 application under paragraph 4 is not made in accordance with this Schedule, the Public Guardian must not register the instrument unless directed to do so by the court.

*Instrument containing ineffective provision*

11.—(1) Sub-paragraph (2) applies if it appears to the Public Guardian that an  
10 instrument accompanying an application under paragraph 4 contains a provision which—

- (a) would be ineffective as part of a lasting power of attorney; or
- (b) would prevent the instrument from operating as a valid lasting power of attorney.

15 (2) The Public Guardian—

- (a) must apply to the court for it to determine the matter under section 109(1); and
- (b) pending the determination by the court, must not register the instrument.

(3) Sub-paragraph (4) applies if the court determines under section 109(1)  
20 (whether or not on an application by the Public Guardian) that an instrument executed with a view to creating a lasting power of attorney contains a provision which—

- (a) would be ineffective as part of a lasting power of attorney; or
- (b) would prevent the instrument from operating as a valid lasting power of attorney.

25 (4) The court must—

- (a) notify the Public Guardian that it has severed the provision; or
- (b) direct the Public Guardian not to register the instrument.

(5) Where the court notifies the Public Guardian that it has severed a provision,  
30 the Public Guardian must register the instrument with a note to that effect attached to it.

*Deputy already appointed*

12.—(1) Sub-paragraph (2) applies if it appears to the Public Guardian that—

- (a) there is a deputy appointed by the court for the donor; and
- 35 (b) the powers conferred on the deputy would, if the instrument were registered, to any extent conflict with the powers conferred on the attorney.

(2) The Public Guardian must not register the instrument unless directed by the court to do so.

*Objection by attorney, replacement attorney or named person*

40 13.—(1) Sub-paragraph (2) applies if a person other than the donor—

- (a) is notified under paragraph 6 or 7 of an application for the registration of an instrument; and
- (b) before the end of the prescribed period, gives notice to the Public Guardian of an objection to the registration on the ground that the instrument has been revoked.

(2) If the Public Guardian is satisfied that the ground for making the objection is established, the Public Guardian must not register the instrument unless the court, on the application of the person applying for the registration—

(a) is satisfied that the ground is not established; and

(b) directs the Public Guardian to register the instrument.

(3) Sub-paragraph (4) applies if a person other than the donor—

(a) is notified under paragraph 6 or 7 of an application for the registration of an instrument; and

(b) before the end of the prescribed period—

(i) makes an application to the court objecting to the registration on a prescribed ground; and

(ii) notifies the Public Guardian of the application.

(4) The Public Guardian must not register the instrument unless directed by the court to do so.

#### *Objection by donor*

14.—(1) This paragraph applies if the donor—

(a) is notified under paragraph 7 of an application for the registration of an instrument; and

(b) before the end of the prescribed period, gives notice to the Public Guardian of an objection to the registration.

(2) The Public Guardian must not register the instrument unless the court, on the application of a person appointed as attorney or replacement attorney—

(a) is satisfied that the donor lacks capacity to object to the registration; and

(b) directs the Public Guardian to register the instrument.

#### *Notification of registration*

15. Where an instrument is registered under this Schedule, the Public Guardian must give notice of the fact in the prescribed form to—

(a) the donor;

(b) each person appointed as attorney; and

(c) each person (if any) appointed as replacement attorney.

#### *Evidence of registration*

16.—(1) A document purporting to be an office copy of an instrument registered under this Schedule is evidence of—

(a) the contents of the instrument; and

(b) the fact that it has been registered.



(2) Sub-paragraph (1) is without prejudice to section 3 of the Powers of Attorney Act 1971 (proof by certified copy) and to any other method of proof authorised by law.

### PART 3

#### 5 CANCELLATION OF REGISTRATION AND NOTIFICATION OF SEVERANCE

##### *Cancellation of registration by Public Guardian following revocation*

17.—(1) The Public Guardian must cancel the registration of an instrument as a lasting power of attorney on being satisfied that the power has been revoked.

10 (2) If the Public Guardian cancels the registration of an instrument, the Public Guardian must notify—

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

##### 15 *Court to require Public Guardian to cancel registration in certain cases*

18. The court must direct the Public Guardian to cancel the registration of an instrument as a lasting power of attorney if it—

- (a) determines under section 108(2)(a) that a requirement for creating the lasting power of attorney was not met;
- 20 (b) determines under section 108(2)(b) that the lasting power of attorney has been revoked or has otherwise come to an end; or
- (c) revokes the lasting power of attorney under section 108(4)(b) (fraud etc).

##### *Notification by court of ineffective provision etc in instrument*

19.—(1) Sub-paragraph (2) applies if the court determines under section 109(1) 25 that a lasting power of attorney contains a provision which—

- (a) is ineffective as part of a lasting power of attorney; or
- (b) prevents the instrument from operating as a valid lasting power of attorney.

(2) The court must—

- (a) notify the Public Guardian that it has severed the provision; or
- 30 (b) direct the Public Guardian to cancel the registration of the instrument as a lasting power of attorney.

##### *Delivery up of instrument on cancellation*

20. On the cancellation of the registration of an instrument, the instrument and any office copies of it must be delivered up to the Public Guardian to be cancelled.

PART 4

RECORDS OF ALTERATIONS IN REGISTERED POWERS

*Partial revocation or suspension of power as a result of bankruptcy*

21. If in the case of a registered instrument it appears to the Public Guardian  
5 that under section 104 or 105 a lasting power of attorney is revoked, or suspended,  
in relation to the donor's property and affairs (but not in relation to other matters),  
the Public Guardian must attach to the instrument a note to that effect.

*Termination of appointment of attorney which does not revoke power*

22. If in the case of a registered instrument it appears to the Public Guardian  
10 that an event has occurred which—

(a) has terminated the appointment of the attorney, but

(b) has not revoked the instrument,

the Public Guardian must attach to the instrument a note to that effect.

*Replacement of attorney*

23. If in the case of a registered instrument it appears to the Public Guardian  
15 that a person appointed as attorney has been replaced under the terms of the  
instrument, the Public Guardian must attach to the instrument a note to that effect.

*Severance of ineffective provisions*

24. If in the case of a registered instrument the court notifies the Public  
20 Guardian under paragraph 19(2)(a) that it has severed a provision of the  
instrument, the Public Guardian must attach to the instrument a note to that effect.

*Notification of alterations*

25. If the Public Guardian attaches a note to an instrument under any of  
paragraphs 21 to 24, the Public Guardian must give notice of the note to—

25 (a) each person appointed as attorney; and

(b) each person (if any) appointed as replacement attorney.

SCHEDULE 5

Section 110(3).

EXISTING ENDURING POWERS OF ATTORNEY

30

PART 1

ENDURING POWERS OF ATTORNEY

*Enduring power of attorney to survive mental incapacity of donor*

1.—(1) Where an individual has created a power of attorney which is an  
enduring power within the meaning of this Schedule—

35 (a) the power is not revoked by any subsequent mental incapacity of that  
individual;

- (b) upon such incapacity supervening, the donee of the power may not do anything under the authority of the power except as provided by sub-paragraph (2) unless or until the instrument creating the power is registered under paragraph 13; and
- 5 (c) if and so long as head (b) operates to suspend the donee's authority to act under the power, section 4 of the Powers of Attorney Act (Northern Ireland) 1971 (protection of donee and third persons), so far as applicable, applies as if the power had been revoked by the donor's mental incapacity.
- (2) Despite sub-paragraph (1)(b), where the attorney has made an application  
10 for registration of the instrument then, until it is registered, the attorney may take action under the power—
- (a) to maintain the donor or prevent loss to the donor's estate; or
- (b) to maintain himself or herself or other persons in so far as paragraph 3(2) permits the attorney to do so.
- 15 (3) Where the attorney purports to act as provided by sub-paragraph (2) then, in favour of a person who deals with the attorney without knowledge that the attorney is acting otherwise than in accordance with sub-paragraph (2)(a) or (b), the transaction between them is as valid as if the attorney were acting in accordance with sub-paragraph (2)(a) or (b).

20 *Characteristics of an enduring power of attorney*

- 2.—(1) Subject to sub-paragraphs (4) to (6) and paragraph 20, a power of attorney is an enduring power within the meaning of this Schedule if the instrument which creates the power—
- (a) is in the prescribed form;
- 25 (b) was executed, before the commencement day, in the prescribed manner by the donor and the attorney; and
- (c) incorporated at the time of execution by the donor the prescribed explanatory information.
- (2) In this paragraph, "prescribed" means prescribed by the Enduring Powers of  
30 Attorney Regulations (Northern Ireland) 1989.
- (3) An instrument in the prescribed form purporting to have been executed in the prescribed manner is to be taken, in the absence of evidence to the contrary, to be a document which incorporated at the time of execution by the donor the prescribed explanatory information.
- 35 (4) A power of attorney cannot be an enduring power unless, when the attorney executes the instrument creating it, the attorney is—
- (a) an individual who has reached 18 and is not bankrupt; or
- (b) a trust corporation.
- (5) A power of attorney which gives the attorney a right to appoint a substitute  
40 or successor cannot be an enduring power.
- (6) A power of attorney under section 26 of the Trustee Act (Northern Ireland) 1958 (power to delegate trusts etc by power of attorney) cannot be an enduring power.
- (7) An enduring power is revoked by the bankruptcy of the donor or attorney.

(8) But where the donor or attorney is bankrupt merely because an interim bankruptcy restrictions order has effect in respect of the donor or the attorney, the power is suspended for so long as the order has effect.

(9) An enduring power is revoked if the court—

- 5 (a) exercises a power under section 112 in relation to the donor; and  
 (b) directs that the enduring power is to be revoked.

(10) No disclaimer of an enduring power, whether by deed or otherwise, is valid unless and until the attorney gives notice of it to—

- 10 (a) the donor (except where paragraph 4 or 15(1) applies); or  
 (b) the Public Guardian (where either paragraph 4 or paragraph 15(1) applies).

*Scope of authority etc of attorney under enduring power*

3.—(1) If the instrument which creates an enduring power of attorney is expressed to confer general authority on the attorney, the instrument operates to confer, subject to—

- 15 (a) the restriction imposed by sub-paragraph (3), and  
 (b) any conditions or restrictions contained in the instrument,

authority to do on behalf of the donor anything which the donor could lawfully do by an attorney at the time when the donor executed the instrument.

(2) Subject to any conditions or restrictions contained in the instrument, an attorney under an enduring power, whether general or limited, may (without obtaining any consent) act under the power so as to benefit himself or herself or persons other than the donor to the following extent but no further—

- 25 (a) the attorney may so act in relation to himself or herself or in relation to any other person if the donor might be expected to provide for the attorney's or that person's needs respectively; and  
 (b) the attorney may do whatever the donor might be expected to do to meet those needs.

(3) Without prejudice to sub-paragraph (2) but subject to any conditions or restrictions contained in the instrument, an attorney under an enduring power, whether general or limited, may (without obtaining any consent) dispose of the property of the donor by way of gift to the following extent but no further—

- 30 (a) the attorney may make gifts of a seasonal nature or at a time, or on an anniversary, of a birth, a marriage or the formation of a civil partnership, to persons (including the attorney) who are related to or associated with the donor, and  
 35 (b) the attorney may make gifts to any charity to whom the donor made or might be expected to make gifts,

provided that the value of each such gift is not unreasonable having regard to all the circumstances and in particular the size of the donor's estate.

- 40 (4) Subject to any conditions or restrictions contained in the instrument, an attorney under an enduring power (whether general or limited) may execute or exercise any of the powers or discretions vested in the donor as a tenant for life within the meaning of the Settled Land Act 1882.

## PART 2

## ACTION ON ACTUAL OR IMPENDING INCAPACITY OF DONOR

*Duties of attorney in event of actual or impending incapacity of donor*

5 4.—(1) This paragraph applies if the attorney under an enduring power has reason to believe that the donor is or is becoming mentally incapable.

(2) The attorney must, as soon as practicable, make an application to the Public Guardian for the registration of the instrument creating the power.

(3) Before making an application for registration the attorney must comply with the provisions as to notice set out in Part 3 of this Schedule.

10 (4) An application for registration—

(a) must be made in the prescribed form; and

(b) must contain such statements as may be prescribed.

(5) The attorney—

15 (a) may, before making an application for the registration of the instrument, apply to the court for its determination of any question as to the validity of the power; and

(b) must comply with any direction given to the attorney by the court on that determination.

20 (6) No disclaimer of the power is valid unless and until the attorney gives notice of it to the Public Guardian; and the Public Guardian must notify the donor of the receipt of a notice under this sub-paragraph.

## PART 3

## NOTIFICATION PRIOR TO REGISTRATION

*Duty to give notice to relatives*

25 5. Subject to paragraph 7, before making an application for registration the attorney must give notice of intention to do so to all those persons (if any) who are entitled to receive notice by virtue of paragraph 6.

6.—(1) Subject to sub-paragraphs (2) to (4), persons of the following classes (“relatives”) are entitled to receive notice under paragraph 5—

30 (a) the donor’s spouse or civil partner;

(b) the donor’s children;

(c) the donor’s parents;

(d) the donor’s brothers and sisters, whether of the whole or half blood;

(e) the widow, widower or surviving civil partner of a child of the donor;

35 (f) the donor’s grandchildren;

(g) the children of the donor’s brothers and sisters of the whole blood;

(h) the children of the donor’s brothers and sisters of the half blood;

(i) the donor’s uncles and aunts of the whole blood;

- (j) the children of the donor’s uncles and aunts of the whole blood.
- (2) A person is not entitled to receive notice under paragraph 5 if—
  - (a) that person’s name or address is not known to the attorney and cannot be reasonably ascertained by the attorney; or
  - 5 (b) the attorney has reason to believe that that person has not reached 18 or is mentally incapable.
- (3) Except where sub-paragraph (4) applies—
  - (a) no more than 3 persons are entitled to receive notice under paragraph 5; and
  - 10 (b) in determining the persons who are so entitled, persons falling within the class in sub-paragraph (1)(a) are to be preferred to persons falling within the class in sub-paragraph (1)(b), those falling within the class in sub-paragraph (1)(b) are to be preferred to those falling within the class in sub-paragraph (1)(c), and so on.
- 15 (4) Despite the limit of 3 persons specified in sub-paragraph (3), where—
  - (a) there is more than one person falling within any of classes (a) to (j) of sub-paragraph (1), and
  - (b) at least one of those persons would be entitled to receive notice under paragraph 5,
- 20 then, subject to sub-paragraph (2), all the persons falling within that class are entitled to receive notice under paragraph 5.

7.—(1) An attorney is not required to give notice under paragraph 5—

- (a) to himself or herself, or
  - (b) to any other attorney under the power who is joining in making the application,
- 25 even though the attorney or, as the case may be, the other attorney is entitled to receive notice by virtue of paragraph 6.

(2) In the case of any person who is entitled to receive notice by virtue of paragraph 6, the attorney, before applying for registration, may make an application to the court to be dispensed from the requirement to give that person notice; and the court must grant the application if it is satisfied—

- (a) that it would be undesirable or impracticable for the attorney to give that person notice; or
- (b) that no useful purpose is likely to be served by giving that person notice.

35 *Duty to give notice to donor*

8.—(1) Subject to sub-paragraph (2), before making an application for registration the attorney must give notice of intention to do so to the donor.

(2) Paragraph 7(2) applies in relation to the donor as it applies in relation to a person who is entitled to receive notice under paragraph 5.

40 *Contents of notices*

9. A notice under paragraph 5 must—

- (a) be in the prescribed form;

- (b) state that the attorney proposes to make an application to the Public Guardian for the registration of the instrument creating the enduring power in question;
- (c) inform the person to whom it is given of that person's right to object to the registration under paragraph 13(4); and
- (d) specify, as the grounds on which an objection to registration may be made, the grounds set out in paragraph 13(9).
10. A notice under paragraph 8 must—
- (a) be in the prescribed form;
- (b) state that the attorney proposes to make an application to the Public Guardian for the registration of the instrument creating the enduring power in question; and
- (c) inform the donor that, while the instrument remains registered, any revocation of the power by the donor will be ineffective unless and until the revocation is confirmed by the court.

*Duty to give notice to other attorneys*

- 11.—(1) Subject to sub-paragraph (2), before making an application for registration an attorney under a joint and several power (“the applicant”) must give notice of intention to do so to any other attorney under the power who is not joining in making the application; and paragraphs 7(2) and 9 apply in relation to attorneys entitled to receive notice by virtue of this paragraph as they apply in relation to persons entitled to receive notice by virtue of paragraph 6.
- (2) An attorney is not entitled to receive notice by virtue of this paragraph if—
- (a) the attorney's address is not known to the applicant and cannot reasonably be ascertained by the applicant; or
- (b) the applicant has reason to believe that the attorney has not reached 18 or is mentally incapable.

*Supplementary*

12. Despite section 24(1) of the Interpretation Act (Northern Ireland) 1954 (service of documents), a notice under this Part of this Schedule that is given by post is to be regarded as given on the date on which it was posted.

PART 4

REGISTRATION

*Registration of instrument creating power*

- 13.—(1) If an application is made in accordance with paragraph 4(3) and (4) the Public Guardian may, subject to the provisions of this paragraph, register the instrument to which the application relates.
- (2) If it appears to the Public Guardian that—
- (a) there is a deputy appointed for the donor of the power created by the instrument, and

(b) the powers conferred on the deputy would, if the instrument were registered, to any extent conflict with the powers conferred on the attorney, the Public Guardian must not register the instrument except in accordance with the court's directions.

5 (3) The court may, on the application of the attorney, direct the Public Guardian to register an instrument even though notice has not been given as required by paragraph 4(3) and Part 3 of this Schedule to a person entitled to receive it, if the court is satisfied—

(a) that it was undesirable or impracticable for the attorney to give notice to  
10 that person; or

(b) that no useful purpose is likely to be served by giving that person notice.

(4) Sub-paragraph (5) applies if, before the end of the period of 5 weeks beginning with the date (or the latest date) on which the attorney gave notice under paragraph 5 of an application for registration, the Public Guardian receives a valid  
15 notice of objection to the registration from a person entitled to notice of the application.

(5) The Public Guardian must not register the instrument except in accordance with the court's directions.

(6) Sub-paragraph (7) applies if, in the case of an application for registration—

20 (a) it appears from the application that there is no one to whom notice has been given under paragraph 5; or

(b) the Public Guardian has reason to believe that appropriate inquiries might bring to light evidence on which the Public Guardian could be satisfied that one of the grounds of objection set out in sub-paragraph (9) was  
25 established.

(7) The Public Guardian—

(a) must not register the instrument; and

(b) must undertake such inquiries as the Public Guardian considers appropriate in all the circumstances.

30 (8) If, having complied with sub-paragraph (7)(b), the Public Guardian is satisfied that one of the grounds of objection set out in sub-paragraph (9) is established—

(a) the attorney may apply to the court for directions; and

(b) the Public Guardian must not register the instrument except in accordance  
35 with the court's directions.

(9) A notice of objection under this paragraph is valid if made on one or more of the following grounds—

(a) that the power purported to have been created by the instrument was not valid as an enduring power of attorney;

40 (b) that the power created by the instrument no longer subsists;

(c) that the application is premature because the donor is not yet becoming mentally incapable;

(d) that fraud or undue pressure was used to induce the donor to create the power;



(e) that, having regard to all the circumstances and in particular the attorney's relationship to or connection with the donor, the attorney is unsuitable to be the donor's attorney.

5 (10) If any of those grounds is established to the satisfaction of the court it must direct the Public Guardian not to register the instrument, but if not so satisfied it must direct its registration.

(11) If the court directs the Public Guardian not to register an instrument because it is satisfied that the ground in sub-paragraph (9)(d) or (e) is established, it must by order revoke the power created by the instrument.

10 (12) If the court directs the Public Guardian not to register an instrument because it is satisfied that any ground in sub-paragraph (9) except the ground in head (c) is established, the instrument must be delivered up to be cancelled unless the court otherwise directs.

#### *Register of enduring powers*

15 14. The Public Guardian must establish and maintain a register of enduring powers.

### PART 5

#### LEGAL POSITION AFTER REGISTRATION

##### *Effect and proof of registration*

20 15.—(1) The effect of the registration of an instrument under paragraph 13 is that—

(a) no revocation of the power by the donor is valid unless and until the court confirms the revocation under paragraph 16(3);

25 (b) no disclaimer of the power is valid unless and until the attorney gives notice of it to the Public Guardian;

(c) the donor may not extend or restrict the scope of the authority conferred by the instrument and no instruction or consent given by the donor after registration, in the case of a consent, confers any right and, in the case of an instruction, imposes or confers any obligation or right on or creates any liability of the attorney or other persons having notice of the instruction or consent.

(2) Sub-paragraph (1) applies for so long as the instrument is registered under paragraph 13 whether or not the donor is for the time being mentally incapable.

35 (3) A document purporting to be an office copy of an instrument registered under this Schedule is evidence of—

(a) the contents of the instrument; and

(b) the fact that it has been so registered.

40 (4) Sub-paragraph (3) is without prejudice to section 3 of the Powers of Attorney Act 1971 (proof by certified copies) and to any other method of proof authorised by law.

*Functions of court with regard to registered power*

16.—(1) This paragraph applies in relation to an instrument that has been registered under paragraph 13.

(2) The court may—

- 5 (a) determine any question as to the meaning or effect of the instrument;
- (b) give directions with respect to—
- 10 (i) the management or disposal by the attorney of the property and affairs of the donor;
- (ii) the rendering of accounts by the attorney and the production of the records kept by the attorney for the purpose;
- 15 (iii) the remuneration or expenses of the attorney whether or not in default of or in accordance with any provision made by the instrument, including directions for the repayment of excessive remuneration or the payment of additional remuneration;
- (c) require the attorney (“A”) to supply information or produce documents or things in A’s possession as attorney;
- (d) give any consent or authorisation to act which the attorney would have to obtain from a mentally capable donor;
- 20 (e) authorise the attorney to act so as to benefit himself or herself or persons other than the donor otherwise than in accordance with paragraph 3(2) and (3) (but subject to any conditions or restrictions contained in the instrument);
- (f) relieve the attorney wholly or partly from any liability which the attorney has or may have incurred on account of a breach of a duty as attorney.

25 (3) On application made for the purpose by or on behalf of the donor, the court must confirm the revocation of the power if satisfied that the donor—

- (a) has done whatever is necessary in law to effect an express revocation of the power; and
- 30 (b) was mentally capable of revoking a power of attorney when the donor did so (whether or not the donor is so when the court considers the application).

(4) The court must direct the Public Guardian to cancel the registration of the instrument in any of the following circumstances—

- 35 (a) on confirming the revocation of the power under sub-paragraph (3);
- (b) on directing under paragraph 2(9)(b) that the power is to be revoked;
- (c) on being satisfied that the donor is, and is likely to remain, mentally capable;
- (d) on being satisfied that the power has expired or has been revoked by the mental incapacity of the attorney;
- 40 (e) on being satisfied that the power was not a valid and subsisting enduring power when registration was effected;
- (f) on being satisfied that fraud or undue pressure was used to induce the donor to create the power;

(g) on being satisfied that, having regard to all the circumstances and in particular the attorney's relationship to or connection with the donor, the attorney is unsuitable to be the donor's attorney.

5 (5) If the court directs the Public Guardian to cancel the registration of an instrument on being satisfied of the matters specified in sub-paragraph (4)(f) or (g) it must by order revoke the power created by the instrument.

(6) If the court directs the cancellation of the registration of an instrument under sub-paragraph (4) except head (c), the instrument must be delivered up to the Public Guardian to be cancelled, unless the court otherwise directs.

10 *Cancellation of registration by Public Guardian*

17. The Public Guardian must cancel the registration of an instrument creating an enduring power of attorney—

- (a) on receipt of a disclaimer signed by the attorney;
- 15 (b) if satisfied that the power has been revoked by the death or bankruptcy of the donor or attorney or, if the attorney is a body corporate, by its winding up or dissolution;
- (c) on receipt of notification from the court that the court has revoked the power;
- (d) on confirmation from the court that the donor has revoked the power.

20 PART 6

PROTECTION OF ATTORNEY AND THIRD PARTIES

*Protection of attorney and third persons where power is invalid or revoked*

18.—(1) Sub-paragraphs (2) and (3) apply where an instrument which did not create a valid power of attorney has been registered under paragraph 13 (whether or not the registration has been cancelled at the time of the act or transaction in question).

25

(2) An attorney who acts in pursuance of the power does not incur any liability (either to the donor or to any other person) because of the non-existence of the power unless at the time of acting the attorney knows—

- 30 (a) that the instrument did not create a valid enduring power;
- (b) that an event has occurred which, if the instrument had created a valid enduring power, would have had the effect of revoking the power; or
- (c) that, if the instrument had created a valid enduring power, the power would have expired before that time.

35 (3) Any transaction between the attorney and another person is, in favour of that person, as valid as if the power had then been in existence, unless at the time of the transaction that person has knowledge of any of the matters mentioned in sub-paragraph (2).

40 (4) If the interest of a purchaser depends on whether a transaction between the attorney and another person was valid by virtue of sub-paragraph (3), it is

conclusively presumed in favour of the purchaser that the transaction was valid if—

- (a) the transaction between that person and the attorney was completed within 12 months of the date on which the instrument was registered; or
- 5 (b) that person makes a statutory declaration, before or within 3 months after the completion of the purchase, that that person had no reason at the time of the transaction to doubt that the attorney had authority to dispose of the property which was the subject of the transaction.

(5) For the purposes of section 4 of the Powers of Attorney Act (Northern Ireland) 1971 (protection where power is revoked) in its application to an enduring power, knowledge of—

- (a) the doing by the donor of anything within paragraph 16(3) of this Schedule in relation to the power (act sufficient to effect express revocation) in the circumstances mentioned in paragraph 16(3)(b) (capacity to revoke), or
- 15 (b) the confirmation under paragraph 16(3) of the revocation of the power by the court,

is treated as knowledge of the revocation of the power.

*Further protection of attorney and third persons*

19.—(1) If—

- 20 (a) an instrument framed in a form prescribed as mentioned in paragraph 2(2) creates a power which is not a valid enduring power, and
  - (b) the power is revoked by the mental incapacity of the donor,
- sub-paragraphs (2) and (3) apply, whether or not the instrument has been registered.

25 (2) An attorney who acts in pursuance of the power does not, by reason of the revocation, incur any liability (either to the donor or to any other person) unless at the time of acting the attorney knows—

- (a) that the instrument did not create a valid enduring power; and
- (b) that the donor has become mentally incapable.

30 (3) Any transaction between the attorney and another person is, in favour of that person, as valid as if the power had then been in existence, unless at the time of the transaction that person knows—

- (a) that the instrument did not create a valid enduring power; and
- (b) that the donor has become mentally incapable.

35 (4) Paragraph 18(4) applies for the purpose of determining whether a transaction was valid by virtue of sub-paragraph (3) as it applies for the purpose of determining whether a transaction was valid by virtue of paragraph 18(3).

## PART 7

## JOINT ATTORNEYS AND JOINT AND SEVERAL ATTORNEYS

*Application to joint attorneys and joint and several attorneys*

- 20.—(1) An instrument which appoints more than one person to be an attorney  
5 cannot create an enduring power unless the attorneys are appointed to act—
- (a) jointly; or
  - (b) jointly and severally.
- (2) This Schedule, in its application to joint attorneys, applies to them  
collectively as it applies to a single attorney but subject to the modifications  
10 specified in paragraph 21.
- (3) This Schedule, in its application to joint and several attorneys, applies with  
the modifications specified in sub-paragraphs (4) to (7) and in paragraph 22.
- (4) A failure, as respects any one attorney, to comply with the requirements for  
the creation of enduring powers—
- 15 (a) prevents the instrument from creating such a power in that attorney’s case;  
but
  - (b) does not affect its efficacy for that purpose as respects the other or others  
or its efficacy in that attorney’s case for the purpose of creating a power of  
attorney which is not an enduring power.
- (5) If one or more but not both or all the attorneys makes or joins in making an  
20 application for registration of the instrument—
- (a) an attorney who is not an applicant as well as one who is may act pending  
the registration of the instrument as provided in paragraph 1(2);
  - (b) notice of the application must also be given under Part 3 of this Schedule  
25 to the other attorney or attorneys; and
  - (c) objection may validly be taken to the registration on a ground relating to  
an attorney or to the power of an attorney who is not an applicant as well  
as to one or the power of one who is an applicant.
- (6) The Public Guardian is not precluded by paragraph 13(5) or (8) from  
30 registering an instrument and the court must not direct the Public Guardian not to  
do so under paragraph 13(10) if an enduring power subsists as respects some  
attorney who is not affected by the ground or grounds of the objection in question;  
and where the Public Guardian registers an instrument in that case, the Public  
Guardian must make against the registration an entry in the prescribed form.
- (7) Sub-paragraph (6) does not preclude the court from revoking a power in so  
35 far as it confers a power on any other attorney in respect of whom the ground in  
paragraph 13(9)(d) or (e) is established; and where any ground in paragraph 13(9)  
affecting any other attorney is established the court must direct the Public  
Guardian to make against the registration an entry in the prescribed form.
- (8) In sub-paragraph (4), “the requirements for the creation of enduring powers”  
40 means the provisions of—
- (a) paragraph 2(1) to (6); and

(b) the regulations mentioned in paragraph 2.

*Joint attorneys*

21.—(1) In paragraph 2(4), the reference to the time when the attorney executes the instrument is to be read as a reference to the time when the second or last attorney executes the instrument.

(2) In paragraph 2(5), (7) and (8), references to the attorney are to be read as references to any attorney under the power.

(3) Paragraph 13 has effect as if the ground of objection to the registration of the instrument specified in sub-paragraph (9)(e) applied to any attorney under the power.

(4) In paragraph 16(2), references to the attorney are to be read as including references to any attorney under the power.

(5) In paragraph 16(4), references to the attorney are to be read as including references to any attorney under the power.

(6) In paragraph 17, references to the attorney are to be read as including references to any attorney under the power.

*Joint and several attorneys*

22.—(1) In paragraph 2(7), the reference to the bankruptcy of the attorney is to be read as a reference to the bankruptcy of the last remaining attorney under the power; and the bankruptcy of any other attorney under the power causes that person to cease to be an attorney under the power.

(2) In paragraph 2(8), the reference to the suspension of the power is to be read as a reference to its suspension in so far as it relates to the attorney in respect of whom the interim bankruptcy restrictions order has effect.

(3) The restriction upon disclaimer imposed by paragraph 4(6) applies only to those attorneys who have reason to believe that the donor is or is becoming mentally incapable.

PART 8

REPEAL OF THE 1987 ORDER: TRANSITIONAL PROVISIONS AND SAVINGS

*Orders, determinations, etc*

23.—(1) Any order or determination made, or other thing done, under the 1987 Order which has effect immediately before the commencement day continues to have effect despite the repeal of that Order.

(2) In so far as any such order, determination or thing could have been made or done under any provision of Parts 1 to 7 of this Schedule if this Schedule had then been in operation—

(a) it is to be treated as made or done under that provision; and

(b) the powers of variation and discharge exercisable by the court apply accordingly.

(3) Any instrument registered under the 1987 Order is to be treated as having been registered by the Public Guardian under this Schedule.

(4) This paragraph is without prejudice to section 28(2) of the Interpretation Act (Northern Ireland) 1954 (effect of repeal).

5 *Pending proceedings*

24.—(1) An application for the exercise of a power under the 1987 Order which is pending immediately before the commencement day is to be treated, in so far as a corresponding power is exercisable under any provision of Parts 1 to 7 of this Schedule, as an application for the exercise of that power.

10 (2) For the purposes of sub-paragraph (1)—

(a) a pending application under Article 6(2) of the 1987 Order for the registration of an instrument is to be treated as an application to the Public Guardian under paragraph 4 of this Schedule and any notice given in connection with that application under Schedule 1 to the 1987 Order is to be treated as given under Part 3 of this Schedule;

(b) a notice of objection to the registration of an instrument is to be treated as a notice of objection under paragraph 13 of this Schedule; and

(c) pending proceedings under Article 7 of the 1987 Order are to be treated as proceedings on an application for the exercise by the court of a power which would become exercisable in relation to an instrument under paragraph 16(2) of this Schedule on its registration.

## PART 9

### INTERPRETATION

25.—(1) In this Schedule—

25 “the 1987 Order” means the Enduring Powers of Attorney (Northern Ireland) Order 1987;

“the commencement day” means the day on which section 110(1) (repeal of the 1987 Order) comes into operation;

“enduring power” is to be construed in accordance with paragraph 2;

30 “mentally incapable” or “mental incapacity” (except where it refers to revocation at common law) means, in relation to any person, that the person is incapable by reason of mental disorder of managing and administering the person’s property and affairs and “mentally capable” and “mental capacity” are to be construed accordingly;

35 “notice” means notice in writing.

(2) In sub-paragraph (1) “mental disorder” has the same meaning as in Article 3 of the Mental Health Order.

(3) Any question arising under or for the purposes of this Schedule as to what the donor of the power might at any time be expected to do is to be determined by assuming that the donor had full mental capacity at the time but otherwise by reference to the circumstances existing at that time.

(4) Nothing in Part 1 of this Act (principles) applies in relation to enduring powers.

## SCHEDULE 6

Section 114(4).

## 5 PROPERTY AND AFFAIRS: SUPPLEMENTARY PROVISIONS

*Wills: introductory*

1 Paragraphs 2 to 4 apply in relation to the execution of a will on behalf of P by virtue of section 114.

*Provision that may be made in will*

10 2. The will may make any provision (whether by disposing of property or exercising a power or otherwise) which could be made by a will executed by P if P had capacity to make it.

*Wills: requirements relating to execution*

15 3.—(1) Sub-paragraph (2) applies if under section 112 the court makes an order or gives directions requiring or authorising a person (“the authorised person”) to execute a will on behalf of P.

(2) Any will executed in pursuance of the order or direction—

- 20 (a) must state that it is signed by P acting by the authorised person;
- (b) must be signed by the authorised person with the name of P and the authorised person’s own name, in the presence of two or more witnesses present at the same time;
- (c) must be attested and subscribed by those witnesses in the presence of the authorised person; and
- (d) must be sealed with the official seal of the court.

25 *Wills: effect of execution*

4.—(1) This paragraph applies where a will is executed in accordance with paragraph 3.

30 (2) The Wills and Administration Proceedings (Northern Ireland) Order 1994 (“the 1994 Order”) has effect in relation to the will as if it were signed by P by P’s own hand, except that—

- 35 (a) Article 5 of the 1994 Order (formalities for execution) does not apply; and
- (b) in the subsequent provisions of the 1994 Order any reference to execution in accordance with Article 5 or execution in the manner in which a will is required to be executed is to be read as a reference to execution in the manner in which a will is required to be executed under paragraph 3(2).

(3) The will has the same effect for all purposes as if—

- (a) P had had the capacity to make a valid will; and
- (b) the will had been executed by P in the manner required by the 1994 Order.

(4) But sub-paragraph (3) does not have effect in relation to the will—

- 40 (a) in so far as it disposes of immovable property outside Northern Ireland; or



(b) in so far as it relates to any property or matter other than immovable property if, when the will is executed—

- (i) P is domiciled outside Northern Ireland; and
- (ii) the condition in sub-paragraph (5) is met.

5 (5) The condition is that, under the law of P's domicile, any question of P's testamentary capacity would fall to be determined in accordance with the law of a place outside Northern Ireland.

*Vesting orders ancillary to settlement etc*

5.—(1) If provision is made by virtue of section 114 for—

- 10 (a) the settlement of any property of P, or
- (b) the exercise of a power vested in P of appointing trustees or retiring from a trust,

the court may also make as respects the property settled or the trust property such consequential vesting or other orders as the case may require.

15 (2) The power under sub-paragraph (1) includes, in the case of the exercise of such a power, any order which could have been made in such a case under Part 4 of the Trustee Act (Northern Ireland) 1958.

*Variation of settlements*

20 6.—(1) If a settlement has been made by virtue of section 114, the court may by order vary or revoke the settlement if—

- (a) the settlement makes provision for its variation or revocation;
  - (b) the court is satisfied that a material fact was not disclosed when the settlement was made; or
  - (c) the court is satisfied that there has been a substantial change of
- 25 circumstances.

(2) Any such order may give such consequential directions as the court considers appropriate.

(3) Section 112(7) (variation and discharge of court orders) is subject to this paragraph.

30 *Transfer of stock to appointee outside Northern Ireland*

7.—(1) Sub-paragraph (2) applies if the court is satisfied—

- (a) that under the law prevailing in a place outside Northern Ireland a person (“M”) has been appointed to exercise powers in respect of the property or affairs of P on the ground (however formulated) that P lacks capacity to
- 35 make decisions with respect to the management and administration of P's property and affairs; and
- (b) that, having regard to the nature of the appointment and to the circumstances of the case, it is appropriate for the court to exercise its powers under this paragraph.

40 (2) The court may direct—

- (a) any stocks standing in the name of P, or
- (b) the right to receive dividends from the stocks,

to be transferred into M's name or otherwise dealt with as required by M, and may give such directions as the court considers appropriate for dealing with accrued dividends from the stocks.

(3) In this paragraph "stocks" includes—

- 5 (a) shares, and  
 (b) any funds, annuity or security transferable in the books kept by any body corporate or unincorporated company or society or by an instrument of transfer either alone or accompanied by other formalities,  
 and "dividends" is to be construed accordingly.

10 *Preservation of interests in property disposed of on behalf of person lacking capacity*

8.—(1) Sub-paragraphs (2) and (3) apply if—

- (a) P's property has been disposed of by virtue of section 114;  
 15 (b) under P's will or intestacy, or by a gift perfected or nomination taking effect on P's death, any other person would have taken an interest in the property but for the disposal; and  
 (c) on P's death, any property belonging to P's estate represents the property disposed of.

20 (2) The person takes the same interest, if and so far as circumstances allow, in the property representing the property disposed of.

(3) If the property disposed of was real property, any property representing it is to be treated, so long as it remains part of P's estate, as if it were real property.

(4) The court may direct that, on a disposal of P's property—

- (a) which is made by virtue of section 114, and  
 25 (b) which would apart from this paragraph result in the conversion of personal property into real property,  
 property representing the property disposed of is to be treated, so long as it remains P's property or forms part of P's estate, as if it were personal property.

(5) References in sub-paragraphs (1) to (4) to the disposal of property are to—

- 30 (a) the sale, exchange, charging of or other dealing (otherwise than by will) with property other than money,  
 (b) the removal of property from one place to another,  
 (c) the application of money in acquiring property,  
 (d) the transfer of money from one account to another,

35 and references to property representing property disposed of are to be construed accordingly and as including the result of successive disposals.

(6) The court may give such directions as appear to it appropriate for the purpose of facilitating the operation of sub-paragraphs (1) to (3), including the carrying of money to a separate account and the transfer of property other than  
 40 money.

9.—(1) Sub-paragraph (2) applies if the court has ordered or directed the expenditure of money—

- (a) for carrying out permanent improvements on any of P's property; or

(b) otherwise for the permanent benefit of any of P's property.

(2) The court may order that—

(a) the whole of the money expended or to be expended, or

(b) any part of it,

5 is to be a charge on the property either without interest or with interest at a specified rate.

(3) An order under sub-paragraph (2) may provide for excluding or restricting the operation of paragraph 8(1) to (3).

10 (4) A charge under sub-paragraph (2) may be made in favour of such person as may be just and, in particular, where the money charged is paid out of P's general estate, may be made in favour of a person as trustee for P.

(5) No charge under sub-paragraph (2) may confer any right of sale or foreclosure during P's lifetime.

## SCHEDULE 7

15

Section 179.

### EXTENSION BY PANEL OF PUBLIC PROTECTION ORDER WITHOUT RESTRICTIONS

#### *Preliminary*

1. In this Schedule, in relation to a public protection order without restrictions—  
 20 “the criteria for continuation” has the meaning given by section 183;  
 “the establishment concerned” has the meaning given by paragraph 2(3);  
 “the person concerned” means the person to whom the order relates;  
 “the relevant trust” has the meaning given by paragraph 2(3);  
 “the responsible social worker” means the approved social worker who is in  
 25 charge of the person concerned's case.

#### *Applications for extension of public protection order without restrictions*

2.—(1) An application under this Schedule may be made where—

(a) a public protection order without restrictions has been made;

(b) the person concerned is still liable to be detained under the order;

30 (c) it has been proposed that the period of the order should be extended under section 179 or 180; and

(d) an extension under that section is not possible, because the responsible social worker does not consider that the criteria for continuation are met.

35 (2) An application under this Schedule is an application to the relevant trust for an extension of the period of the order.

(3) In this Schedule—

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

“the establishment concerned” means the establishment in which the person concerned would be liable to be detained if the period of the order were extended.

*Who may make application*

- 5 3.—(1) Any application under this Schedule must be made by a person who—
- (a) is of a prescribed description; and
  - (b) is unconnected with the person concerned.
- (2) Regulations under sub-paragraph (1)(a) may in particular prescribe, as a description of persons who may make an application under this Schedule—
- 10 (a) an approved social worker;
- (b) a person of a prescribed description who is designated by the managing authority of the establishment concerned as a person who may make applications under this Schedule.

*Contents of application*

- 15 4. An application under this Schedule must—
- (a) be in the prescribed form;
  - (b) include a medical report (see paragraph 5);
  - (c) include a care plan (see paragraph 6);
  - (d) include prescribed information about the views of any prescribed person;
  - 20 and
  - (e) include any prescribed information.

*Medical report*

- 5.—(1) The medical report must be in the prescribed form and must—
- 25 (a) be made by a medical practitioner who is unconnected with the person concerned and is permitted by regulations under section 286 to make the report;
- (b) include a statement by the person making the medical report that, in that person’s opinion, the criteria for continuation are met; and
- (c) include any prescribed information.
- 30 (2) The maker of the medical report must have examined the person concerned not more than two days before the date when the report is made.

*Care plan*

6. The care plan must be in the prescribed form and must include such information relating to what is proposed as may be prescribed.

*Panel to consider application*

- 35 7.—(1) Where the relevant trust receives an application duly made under this Schedule, it must as soon as practicable—
- (a) give prescribed information to the person concerned and any prescribed person; and
  - 40 (b) constitute a panel to consider the application.

(2) Section 283 (general provision about panels) applies to a panel constituted under this paragraph.

*Decision on application*

8.—(1) Having considered the application, the panel must do one of the following—

- (a) extend the period of the order in accordance with sub-paragraph (2);
- (b) refuse the application.

(2) The panel may only extend the period of the order as follows—

- (a) where the period of the order has not previously been extended, the extension must be 6 months beginning immediately after the date when the period of the order would otherwise end;
- (b) where the period of the order has previously been extended under section 179 or 180 or this Schedule, the extension must be one year beginning immediately after the date when the period of the order would otherwise end.

(3) The panel may extend the period of the order only if it considers that the criteria for continuation are met.

(4) No extension of the period of the order may be made at a time after the person concerned has ceased to be liable to be detained under the order.

*Time limit for panel's decision, and duty to notify decision*

9.—(1) The panel must comply with paragraph 8(1) as soon as practicable and in any case no later than the end of the permitted period.

(2) The “permitted period” is 7 working days beginning with the day on which the application is received by the trust (or, if that day is not a working day, beginning with the first working day after that).

(3) As soon as practicable after granting or refusing an extension under paragraph 8, the panel must give written notice of the grant or refusal, and any prescribed information, to the person concerned and any prescribed person.

SCHEDULE 8

Section 255.

AMENDMENTS OF MENTAL HEALTH ORDER

1. The Mental Health Order is amended as follows.

2. Before Article 2 insert—

*“Interpretation of Order”.*

3.—(1) Article 2 (interpretation) is amended as follows.

(2) Amend paragraph (2) of that Article in accordance with sub-paragraphs (3) to (9).

(3) Insert the following at the appropriate places—

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

““best interests”: any determination of what would be in the best interests of a patient who is under 16 is to be made in accordance with Article 3B;”;

““independent advocate” has the same meaning as in Article 3C;”.

(4) Omit the definitions of “guardianship application”, “hospital order” and “guardianship order”, “interim hospital order”, “restriction direction”, “restriction order” and “transfer direction”.

(5) In the definition of “the applicant” omit the words from “and, in relation” to the end.

(6) In the definition of “patient” omit “(except in Part VIII)”.

(7) In the definition of “responsible authority” omit paragraph (b).

(8) In the definition of “responsible medical officer” for paragraph (b) substitute—

“(b) in relation to a patient liable to be detained under Part 10 of the 2016 Act, means the responsible medical practitioner within the meaning of that Part;”.

(9) In the definition of “the Review Tribunal” for “the Mental Health Review Tribunal for Northern Ireland” substitute “the Review Tribunal constituted under Article 70”.

(10) In paragraph (2A) of that Article—

(a) after “Articles” insert “3D;”;

(b) omit “107(1B),” and “, 123(1)”.

(11) Omit paragraph (3) of that Article.

4. After Article 3 insert—

*“General provisions about patients under 16*

**Best interests of patient under 16**

3A.—(1) This Article applies to a person responsible for the treatment or care (or both) of a patient under 16.

(2) The person’s primary consideration, when making decisions about the patient’s treatment or care, must be the patient’s best interests.

(3) In this Article—

(a) “treatment” means any treatment relating to mental disorder;

(b) “care” means any care given where the patient is being assessed or treated for mental disorder.

(4) In this paragraph references to assessment or treatment are to any assessment or treatment, whether or not under Part 2.

**Determination of a patient’s best interests**

3B.—(1) This Article applies where for any purpose of this Order it falls to a person to determine what treatment or care would be in the best interests of a patient (“C”) who is under 16.

(2) In determining what would be in C’s best interests, the person must take into account C’s age but must not make the determination merely on the basis of—

(a) C’s age or appearance; or

(b) any other characteristic of C's, including any condition that C has, which might lead others to make unjustified assumptions about what might be in C's best interests.

(3) The person—

(a) must consider all the relevant circumstances (that is, all the circumstances of which the person is aware which it is reasonable to regard as relevant); and

(b) must in particular take the following steps.

(4) The person—

(a) must consider whether it is likely that C will, when he or she reaches the age of 16, have capacity in relation to the matter in question; and

(b) if it appears likely that C will, must consider when C will reach that age.

(5) The person must, so far as reasonably practicable—

(a) encourage and help C to participate, or to improve C's ability to participate, as fully as possible in any decision about C's treatment or care; and

(b) in particular, ensure that C is provided in an appropriate way with information and advice about the treatment or care.

(6) The person must have special regard to (so far as they are reasonably ascertainable)—

(a) C's past and present wishes and feelings (and, in particular, any relevant written statement made by C); and

(b) C's beliefs and values.

(7) The person must—

(a) so far as it is practicable and appropriate to do so, consult the relevant people about what would be in C's best interests and in particular about the matters mentioned in paragraph (6); and

(b) take into account the views of those people (so far as ascertained from that consultation or otherwise) about what would be in C's best interests and in particular about those matters.

For the definition of "the relevant people" see paragraph (9).

(8) The person must, in relation to anything proposed to be done, have regard to whether the same purpose can be as effectively achieved in a way that is less restrictive of C's rights and freedoms of action.

(9) In paragraph (7) "the relevant people" means—

(a) every person who has parental responsibility for C;

(b) C's nearest relative;

(c) if at the time of the determination there is an independent advocate instructed to represent and provide support to C, the independent advocate;

(d) any other person named by C as someone to be consulted on the matter in question or on matters of that kind;

(e) anyone engaged in caring for C or interested in C's welfare.

### **Independent Advocates**

3C.—(1) The Department must make regulations about independent advocates.

(2) An “independent advocate” means a person who has been appointed by an HSC trust, in accordance with the regulations, to be a person to whom the trust may from time to time offer instructions to represent and provide support to a patient who is under 16 in relation to matters specified in the instructions.

(3) The regulations may in particular—

- (a) require HSC trusts to make arrangements for the purpose of ensuring that independent advocates are available to be instructed;
- (b) make provision about such arrangements (including provision providing that a person may be appointed as mentioned in paragraph (2) only if the person meets prescribed conditions);
- (c) make provision for the purpose of securing the independence of independent advocates;
- (d) make provision in relation to the instruction of independent advocates (including provision permitting or requiring a prescribed person, in prescribed circumstances, to request an HSC trust to instruct an independent advocate);
- (e) make provision about the functions of independent advocates.

(4) The conditions that may be prescribed by virtue of paragraph (3)(b) include—

- (a) a condition that the person is approved, or belongs to a description of persons approved, in accordance with the regulations;
- (b) a condition that the person has prescribed qualifications or skills or has undertaken prescribed training.

(5) The regulations must make provision for the purpose of securing that, except in prescribed circumstances, an independent advocate is instructed—

- (a) where a patient under 16 is admitted to a hospital (whether under Part 2 or otherwise) for the assessment or treatment of mental disorder; or
- (b) where it is proposed to give a patient under 16 a form of medical treatment to which Article 63 or 63B applies.

(6) The regulations may apply, or make provision corresponding to, any provision within paragraph (7) (with or without modifications).

(7) The provisions are—

- (a) any provision of Part 4 of the 2016 Act;
- (b) any provision of regulations made under that Part;
- (c) any provision that could be made by regulations under that Part.

### **In-patients under 16: duties of hospital managers**

3D.—(1) This Article applies in relation to a patient who—

- (a) is under 16; and
- (b) is an in-patient in a hospital for the purposes of the assessment or treatment of mental disorder (whether by virtue of Part 2 or otherwise).

(2) The responsible authority of the hospital must ensure that (subject to the patient’s needs) the patient’s environment in the hospital is suitable having regard to his or her age.

(3) For the purposes of deciding how to fulfil the duty under paragraph (2), the responsible authority must consult a person who appears to that



authority to have knowledge or experience which makes that person suitable to be consulted.”.

5. In the heading of Part 2 for “AND GUARDIANSHIP” substitute “: CHILDREN UNDER 16”.

6.—(1) Article 4 (admission for assessment) is amended as follows.

(2) In paragraph (1) after “patient” insert “who is under 16”.

(3) In paragraph (2) after “patient” insert “who is under 16”.

7. In Article 8 (effect of application for assessment) omit paragraph (3).

8. In Article 12 (detention for treatment) omit paragraph (3).

9. In Article 13(1) (renewal of authority for detention) after “discharged” insert “or reached the age of 16”.

10. After Article 14 insert—

**“Liability to detention under Part 2 ends at the age of 16**

14A.—(1) A patient who, immediately before his or her 16th birthday, is liable to be detained under this Part ceases to be so liable when he or she reaches the age of 16.

(2) Nothing in paragraph (1) affects any liability of the patient to be detained by virtue of the 2016 Act.”

11. Omit Articles 18 to 26 (guardianship).

12. In the italic heading before Article 27 omit “or guardianship”.

13.—(1) Article 27 (duty of authority to give information to patients and nearest relatives) is amended as follows.

(2) In paragraph (1) omit—

(a) each “or subject to guardianship”;

(b) in sub-paragraph (b) “or guardianship”;

(c) “or the commencement or renewal of the authority for his guardianship”.

(3) In paragraph (2) omit—

(a) each “or subject to guardianship”;

(b) in sub-paragraph (a)(i) “, 24”;

(c) “or his reception into guardianship”.

(4) In paragraph (4)—

(a) omit “or subject to guardianship”;

(b) for “the patient,” substitute “the patient and”;

(c) omit the words from “and, in” to “guardian of the patient”.

14. In Article 28 (transfer of patients) omit—

(a) paragraphs (5) to (7);

(b) in paragraph (9) the words from “and, in” to “guardian of the patient”.

15. In Article 29 (return and readmission of patients absent without leave) omit—

(a) paragraph (2);

(b) in paragraph (3) “or subject to guardianship, as the case may be,”.

16.—(1) Article 30 (special provisions as to patients absent without leave) is amended as follows.

(2) In paragraph (1) omit—

- 5 (a) “or subject to guardianship”;  
 (b) the second “or subject”.

(3) In paragraph (2)—

- (a) omit “or subject to guardianship”;  
 (b) for “, 13 or 23” substitute “or 13”.

10 (4) In paragraph (3) omit “or guardianship”.

17.—(1) Article 31 is amended as follows.

(2) In paragraph (1) omit—

- (a) “or subject to guardianship”;  
 (b) the second “or subject”.

15 (3) In paragraph (2) omit—

- (a) each “or subject to guardianship”;  
 (b) the last “or subject”.

18. In Article 32(3) (definition of “nearest relative”) omit “or his reception into guardianship”.

20 19. In Article 33 (children and young persons in care) omit “who is a child or young person”.

20.—(1) Article 34 (minors under guardianship, etc) is amended as follows.

(2) In paragraph (1)—

- 25 (a) for “a person who has not attained the age of 18 years” substitute “a patient”;  
 (b) for “such a person” substitute “a patient”.

(3) Omit paragraph (3).

21. In Article 35(1) (assignment of functions by nearest relative) omit “or subject to guardianship”.

30 22.—(1) Article 36 (appointment by county court of acting nearest relative) is amended as follows.

(2) In paragraph (1) for the words from “the applicant” to the end substitute “a person specified in the order who—

- 35 (a) is either the applicant or another person specified in the application (and is not the patient);  
 (b) in the opinion of the court is a proper person to act as the patient’s nearest relative; and  
 (c) is willing to do so.”.

40 (3) In paragraph (2) after “on the application of—” insert—  
 “(za) the patient;”.

(4) In paragraph (3)—

(a) in sub-paragraph (c) omit “or a guardianship application”;

(b) omit the word “or” after sub-paragraph (c);

(c) in sub-paragraph (d) omit “or guardianship”;

5 (d) after sub-paragraph (d) insert “or

(e) that the nearest relative of the patient is otherwise not a suitable person to act as such.”.

(5) In paragraph (4) for “(3)(a) or (b)” substitute “(3)(a), (b) or (e)”.

10 23.—(1) Article 37 (discharge and variation of orders under Article 36) is amended as follows.

(2) In paragraph (1)—

(a) after “application made—” insert—

“(za) by the patient;”;

(b) in sub-paragraph (b) for “or (b)” substitute “, (b) or (e)”.

15 (3) After paragraph (1) insert—

“(1A) But in the case of an order made on the ground specified in Article 36(3)(e), an application may not be made under paragraph (1)(b) by the person who was the nearest relative of the patient when the order was made except with the leave of the county court.”.

20 (4) In paragraph (2)—

(a) after “or on the application of” insert “the patient or of”;

(b) for the words from “for the first-mentioned person” to the end substitute “for the person having those functions another person (other than the patient) who—

25 (a) in the opinion of the court is a proper person to exercise those functions; and

(b) is willing to do so.”.

(5) In paragraph (4) omit—

(a) “or subject to guardianship”;

30 (b) the second, third and fourth “or subject”.

24. In Article 39 (special provision as to wards of court) omit paragraph (3).

25. In Article 40 (duty of approved social worker to make application for assessment or guardianship) omit—

(a) in the heading “or guardianship”;

35 (b) in paragraph (1) “or a guardianship application”;

(c) in paragraph (2) “or guardianship (as the case may be)”;

(d) in paragraph (5) “or Article 19(3) to (6)”.

26. In Article 41 (applications, recommendations and reports under Part 2) omit “guardianship application,”.

40 27. Omit Part 3 (patients concerned in criminal proceedings or under sentence).

28. In the heading of Part 4, at the end insert “: CHILDREN UNDER 16”.

29. For Article 62 substitute—

**“Patients to whom the provisions of this Part apply**

62.—(1) Articles 63 to 63B and, so far as relevant to those Articles, Articles 65, 66 and 68 apply to all patients who are under 16.

(2) The other provisions of this Part apply to any patient who is under 16 and is liable to be detained under this Order or Part 10 of the 2016 Act except the following—

(a) a patient who is liable to be detained by virtue of Article 7(2) or (3), 7A(2) or 129 of this Order;

(b) a patient who has been conditionally discharged under section 189 or 229 of the 2016 Act (and has not been recalled).”.

30.—(1) Article 63 (treatment requiring consent and a second opinion) is amended as follows.

(2) In paragraph (2) for the first “Article” substitute “Articles 63A and”.

(3) For paragraph (3) substitute—

“(3) Before giving a certificate under paragraph (2), the medical practitioner must consult—

(a) such person or persons as appear to the medical practitioner to be principally concerned with the patient’s medical treatment; and

(b) the independent advocate instructed to represent and provide support to the patient.”.

31. After Article 63 insert—

**“Treatment within Article 63: procedure where patient incapable of consenting**

63A.—(1) Medical treatment to which Article 63 applies may be given to a patient under 16 if paragraphs (2) to (4) apply.

(2) This paragraph applies if a medical practitioner appointed for the purposes of this Part by RQIA (not being the responsible medical officer) has certified in the prescribed form—

(a) that the patient is not capable of understanding the nature, purpose and likely effects of the treatment in question; and

(b) that having regard to the likelihood of the treatment alleviating or preventing a deterioration of the patient’s condition, the treatment should be given.

(3) This paragraph applies if two persons appointed for the purposes of this paragraph by RQIA (not being medical practitioners) have certified in the prescribed form that the patient is not capable of understanding the nature, purpose and likely effects of the treatment in question.

(4) This paragraph applies if—

(a) an application is made to the court for an order authorising the giving of the treatment in question to the patient;

(b) the application is made by the medical practitioner principally concerned with the patient’s medical treatment (or, if there is more than one, any of them); and

(c) the court makes an order authorising the giving of the treatment.

(5) Before giving a certificate under paragraph (2), the medical practitioner must consult—

- (a) such person or persons as appear to the medical practitioner to be principally concerned with the patient’s medical treatment; and
- (b) the independent advocate instructed to represent and provide support to the patient.

5 (6) A person appointed under paragraph (3) may at any reasonable time, for the purpose of exercising his or her functions under that paragraph, in private visit and interview any patient.

(7) A person who gives a certificate under this Article must immediately forward a copy of it to RQIA.

10 **Electro-convulsive therapy etc**

63B.—(1) This Article applies to the following forms of medical treatment for mental disorder—

- (a) electro-convulsive therapy; and
- (b) such other forms of treatment as may be prescribed for the purposes of this Article.

15 (2) Subject to Article 68 (urgent treatment), a patient must not be given any form of treatment to which this Article applies unless paragraph (3) or (4) applies.

(3) This paragraph applies if—

- 20 (a) the patient has consented to the treatment in question; and
- (b) a medical practitioner appointed for the purposes of this Part by RQIA (not being the responsible medical officer) has certified in the prescribed form—
  - 25 (i) that the patient is capable of understanding the nature, purpose and likely effects of the treatment in question and has consented to it; and
  - (ii) that having regard to the likelihood of the treatment alleviating or preventing a deterioration of the patient’s condition, the treatment should be given.

30 (4) This paragraph applies if a medical practitioner appointed for the purposes of this Part by RQIA (not being the responsible medical officer) has certified in the prescribed form—

- (a) that the patient is not capable of understanding the nature, purpose and likely effects of the treatment in question; and
- 35 (b) that having regard to the likelihood of the treatment alleviating or preventing a deterioration of the patient’s condition, the treatment should be given.

(5) Before giving a certificate under this Article, the medical practitioner must consult—

- 40 (a) such person or persons as appear to the medical practitioner to be principally concerned with the patient’s medical treatment; and
- (b) the independent advocate instructed to represent and provide support to the patient.

45 (6) A person who gives a certificate under this Article must immediately forward a copy of it to RQIA.

(7) Before making regulations for the purposes of this Article, the Department must consult such bodies as appear to it to be concerned.”.

32. In Article 64(1)(b) (treatment requiring consent or second opinion) after “63” insert “or 63B”.

33. In Article 65 (plans of treatment)—

- (a) for “Article 63 or 64” substitute “any of Articles 63 to 64”;
- (b) for “that Article” substitute “Article 63, 63B or 64”.

34. In Article 66(1) (withdrawal of consent) after “63” insert “, 63B”.

5 35.—(1) Article 67 (review of treatment) is amended as follows.

(2) In paragraph (1) after “63(2)” insert “, 63A, 63B”.

(3) In paragraph (2)—

- (a) for “subject to a restriction order or restriction direction” substitute “liable to be detained by virtue of an order or direction under Part 10 of the 2016 Act”;
- (b) in sub-paragraph (b) for the words from “the responsible medical officer” to the end substitute “a relevant report is made in respect of the patient.”.

(4) After that paragraph insert—

15 “(2A) In paragraph (2)(b) “relevant report” means a report under any of the following provisions of the 2016 Act—

- (a) section 181 or paragraph 5 of Schedule 7 (reports extending public protection orders without restrictions);
- (b) section 191 (reports on persons subject to public protection orders with restrictions);
- 20 (c) section 199 (reports on persons subject to hospital directions and hospital transfer directions).”.

(5) In paragraph (3)—

- (a) after “63(2)” insert “, 63A, 63B”;
- (b) for “63 and 64” substitute “63 to 64”.

25 36.—(1) Article 68 (urgent treatment) is amended as follows.

(2) In paragraph (1) for the first “and” substitute “to”.

(3) In paragraph (2) for “Article 63 or 64” substitute “any of Articles 63 to 64”;

37. In Article 69 (treatment not requiring consent) after “63” insert “, 63B”.

38. For the heading of Part 5 substitute—

30 ““THE REVIEW TRIBUNAL”.

39. In Article 70(1) (constitution of the Review Tribunal) for “Mental Health Review Tribunal for Northern Ireland” substitute “Review Tribunal”.

40.—(1) Article 71 (applications to the tribunal under Part 2) is amended as follows.

35 (2) Omit paragraph (2).

(3) In paragraph (3) omit the words from “or the authority” to “Article 23”.

(4) In paragraph (4) omit—

- (a) sub-paragraph (b);
- (b) the words “or, as the case may be, Article 24(7)”.

40 (5) In paragraph (5) omit “or subject to guardianship”.

41. In Article 72(1) (reference of cases of Part 2 patients to tribunal) omit “or subject to guardianship”.

42.—(1) Article 73 (duty on Boards to refer cases to the tribunal) is amended as follows.

5 (2) In paragraph (1)—

(a) omit “or his guardianship”;

(b) omit “or 23”;

(c) for “2 years (or, if the patient has not attained the age of 16 years, one year)” substitute “one year”.

10 (3) In paragraph (3) for “periods” substitute “period”.

43. Omit Articles 74 to 76 (applications and references concerning Part 3 patients).

44.—(1) Article 77 (power to discharge patients other than restricted patients) is amended as follows.

15 (2) In the heading omit “other than restricted patients”.

(3) Omit paragraph (3).

(4) In paragraph (4) for “to (3)” substitute “and (2)”.

(5) Omit paragraph (5).

45. Omit Articles 78 to 80 (discharge of restricted patients etc).

20 46. In Article 81 (visiting and examination of patients) omit “or subject to guardianship”.

47. For Article 82 substitute—

**“Applications to the tribunal**

25 82.—(1) Applications to the Review Tribunal may be made only in such cases and at such times as are expressly provided by virtue of this Order, the 2016 Act or any other statutory provision.

(2) Where any statutory provision authorises an application to be made to the Review Tribunal within a specified period, not more than one such application relating to the same matter may be made within that period; but for this purpose any application withdrawn in accordance with rules made under Article 83 is to be disregarded.

30

(3) Any application to the Review Tribunal is to be made by notice in writing addressed to the tribunal (but this is subject to any statutory provision which provides otherwise).

35 (4) The Department of Justice may make regulations about what is, or is not, to be regarded as the same matter for the purposes of paragraph (2).

(5) Regulations under paragraph (4) may be made only if a draft of the regulations has been laid before, and approved by a resolution of, the Assembly.”.

40 48.—(1) Article 83 (procedure of Tribunal) is amended as follows.

(2) In paragraph (2)(a) and (i) omit “under this Order”.

(3) In paragraph (4)—

- (a) for “restricted patients” substitute “persons within paragraph (4A)”;
- (b) for “restricted patient” substitute “person within paragraph (4A)”.
- (4) After that paragraph insert—
- 5 “(4A) A person is within this paragraph if any of the following is in force in respect of the person—
- (a) a public protection order with restrictions (within the meaning of the 2016 Act);
- (b) a hospital direction (within the meaning of that Act);
- (c) a direction under section 208 of that Act.”.
- 10 (5) In paragraph (5)—
- (a) omit “by this Order or by rules under this Article”;
- (b) at the end insert “(but this is subject to any rules under this Article)”.
- (6) After paragraph (8) insert—
- 15 “(9) Any reference in this Article to a patient includes a person by or in respect of whom an application or reference to the Review Tribunal is made under the 2016 Act or any other statutory provision.”.
49. Omit Article 84 (interpretation of Part 5).
50. For the heading of Part 6 substitute—

“FUNCTIONS OF RQIA”.

- 20 51.—(1) Article 86 (functions of RQIA) is amended as follows.
- (2) In paragraph (2) omit—
- (a) in sub-paragraph (a) “or reception into guardianship”;
- (b) in sub-paragraph (c)(iii) “or reception into guardianship”.
- (3) In paragraph (3) omit—
- 25 (a) in sub-paragraph (a) “or subject to guardianship”;
- (b) in sub-paragraph (b) “or any person subject to guardianship under this Order”;
- (c) in sub-paragraph (c) the words from “or relating to any person” to the end.
- (4) In paragraph (5) omit the words from “and of the guardian” to “this Order”.
- 30 52. Omit Part 8 (management of property and affairs of patients).
53. In Article 111(1) (code of practice)—
- (a) in sub-paragraph (a) omit “and the reception of patients into guardianship”;
- (b) in sub-paragraph (b) after “patients” insert “under 16”.
- 35 54. In Article 113(1) (miscellaneous powers of the Board etc) omit sub-paragraph (c).
- 55.—(1) Article 116 (powers of the Board etc in relation to property of patients) is amended as follows.
- (2) In paragraph (1) after the first “patient” insert “under 16”.



(3) In paragraph (5) for the words from “controller” to the end substitute “deputy (within the meaning of the 2016 Act) has the power to control and manage the patient’s property.”.

5 56.—(1) Article 118 (provision information by Department etc) is amended as follows.

(2) In paragraph (1)—

(a) after each “persons” insert “under 16”;

(b) omit sub-paragraph (a).

(3) In paragraph (2) omit paragraph (a).

10 (4) In paragraph (4)(a) for “18” substitute “16”.

57.—(1) Article 120 (unlawful detention of patients) is amended as follows.

(2) In paragraph (1) after the second “person” insert “under 16”;

(3) In paragraph (2) after “patient” insert “under the age of 16”.

58.—(1) Article 121 (ill-treatment of patients) is amended as follows.

15 (2) In paragraph (1)—

(a) in sub-paragraph (a) after “patient” insert “who is under 16 and is”;

(b) in sub-paragraph (b) after “patient” insert “who is under 16 and is”.

(3) In paragraph (2) for the words from “for” to “otherwise” substitute “under 16 and is”.

20 59. In Article 124(1)(a) (assist patients to absent themselves without leave) omit “or being subject to guardianship under this Order.”.

60. In Article 127 (voluntary use of services) omit paragraph (2).

25 61. In Article 128(2) (pay etc of patients) for the words from “controller” to the end substitute “deputy (within the meaning of the 2016 Act) has the power to control and manage the patient’s property.”.

62.—(1) Article 129 (warrants) is amended as follows.

(2) In paragraph (1) after the first “person” insert “under 16”.

(3) Omit paragraph (3).

63. Omit Article 130 (mentally disordered persons found in public places).

30 64. In Article 131(1) (custody, conveyance and detention) omit “or at any place to which he is taken under Article 48(5)”.

65.—(1) Article 132 (retaking of patients escaping from custody) is amended as follows.

(2) In paragraph (1)(b) omit “or subject to guardianship”.

35 (3) In paragraph (2) omit—

(a) “or subject to guardianship”;

(b) the words from “(not being” to “such an order)”.

(4) In paragraph (3) omit “or Article 130”.

(5) In paragraph (4) for the words from “who escapes” to the end of paragraph (b) substitute “who escapes while being taken to or from a hospital in pursuance of Article 28”.

(6) Omit paragraph (6).

5 66.—(1) Article 133 (protection for acts done in pursuance of Order) is amended as follows.

(2) Omit paragraph (1).

(3) In paragraph (2) for each “such act” substitute “relevant act”.

(4) After that paragraph insert—

10 “(2A) In paragraph (2) “relevant act” means any act purporting to be done in pursuance of this Order (or any regulations or rules made under it).”.

67.—(1) Article 134 (patients removed to or from Northern Ireland) is amended as follows.

15 (2) In paragraph (1)—

- (a) after the first “patient” insert “under 16”;
- (b) omit “or received into guardianship there”;
- (c) omit “or reception”.

(3) In paragraph (2) omit “or received into guardianship”.

20 (4) In paragraph (3) after “patients” insert “under 16”.

(5) In paragraph (4)—

- (a) omit “Subject to paragraph (5),”;
- (b) for the words from “or subject” to “45)” substitute “by virtue of an application or report under Part 2”;
- 25 (c) for the second “, report, order or direction” substitute “or report”;
- (d) omit “or placed under guardianship”.

(6) Omit paragraph (5).

(7) In paragraph (6) after the first “patient” insert “who is under 16,”.

68. Omit Schedule 2 (application of Part 2 to patients detained etc under Part 3).

30 69. Omit Schedule 2A (supervision and treatment orders).

70.—(1) Schedule 3 (the Tribunal) is amended as follows.

(2) For the title substitute—

“THE REVIEW TRIBUNAL”.

(3) In paragraph 4(1)—

- 35 (a) after “sub-paragraph (2)” insert “and paragraph 7”;
- (b) omit “under this Order”.

(4) In paragraph 5 omit “under this Order”.

(5) After paragraph 6 insert—

“7. In any proceedings which are to be heard and determined by the Review Tribunal constituted as mentioned in paragraph 4(1) or (2)(a), the proceedings may with the consent of the parties be heard and determined in the absence of any one member other than the president, and in that event the tribunal is to be treated as properly constituted.”.

SCHEDULE 9

Section 272.

INTERNATIONAL PROTECTION OF ADULTS

PART 1

PRELIMINARY

*Introduction*

1. Paragraphs 2 to 5 apply for the purposes of this Schedule.

*The Convention*

2.—(1) “Convention” means the Convention on the International Protection of Adults signed at the Hague on 13th January 2000.

(2) “Convention country” means a country in which the Convention is in force.

(3) A reference to an Article or Chapter is to an Article or Chapter of the Convention.

(4) Subject to paragraph 4, an expression which appears in this Schedule and in the Convention is to be construed in accordance with the Convention.

*Countries, territories and nationals*

3.—(1) “Country” includes a territory which has its own system of law.

(2) Where a country has more than one territory with its own system of law, a reference to the country, in relation to one of its nationals, is to the territory with which the national has the closer, or the closest, connection.

*Adults with incapacity*

4. “Adult” means a person who—

(a) as a result of an impairment or insufficiency of the person’s personal faculties, cannot protect his or her interests; and

(b) is 16 or over.

*Protective measures*

5.—(1) “Protective measure” means a measure directed to the protection of the person or property of an adult; and it may deal in particular with any of the following—

(a) the determination of incapacity and the institution of a protective regime;

(b) placing the adult under the protection of an appropriate authority;

(c) guardianship, curatorship or any corresponding system;

- (d) the designation and functions of a person having charge of the adult's person or property, or representing or otherwise helping the adult;
- (e) placing the adult in a place where protection can be provided;
- (f) administering, conserving or disposing of the adult's property;
- 5 (g) authorising a specific intervention for the protection of the person or property of the adult.

(2) Where a measure of like effect to a protective measure has been taken in relation to a person while the person is under 16, this Schedule applies to the measure in so far as it has effect in relation to the person once the person is 16 or  
10 over.

#### *Application of this Schedule*

6.—(1) This Schedule does not apply to a relevant person where either of the following applies—

- 15 (a) the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-Operation in respect of Parental Responsibility and Measures for the Protection of Children that was signed at the Hague on 19 October 1996;
- (b) Council Regulation (EC) No. 2201/2003 concerning jurisdiction and the  
20 recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility.

(2) In this paragraph “relevant person” means a person who is 16 or over but under 18.

#### *Central Authority*

7.—(1) Any function under the Convention of a Central Authority is exercisable  
25 in Northern Ireland by the Department of Justice.

(2) A communication may be sent to the Central Authority in relation to Northern Ireland by sending it to the Department of Justice.

## PART 2

### JURISDICTION

30 *Scope of jurisdiction*

8.—(1) The court may exercise its functions under this Act (in so far as it cannot otherwise do so) in relation to—

- (a) an adult habitually resident in Northern Ireland;
- (b) an adult's property in Northern Ireland;
- 35 (c) an adult present in Northern Ireland or who has property there, if the matter is urgent; or
- (d) an adult present in Northern Ireland, if a protective measure which is temporary and limited in its effect to Northern Ireland is proposed in relation to the adult.

(2) An adult present in Northern Ireland is to be treated for the purposes of this paragraph as habitually resident there if—

- (a) the habitual residence of the adult cannot be ascertained;
- (b) the adult is a refugee; or
- 5 (c) the adult has been internationally displaced as a result of disturbance in the country of the adult's habitual residence.

9.—(1) The court may also exercise its functions under this Act (in so far as it cannot otherwise do so) in relation to an adult if sub-paragraph (2) or (3) applies in relation to that adult.

10 (2) This sub-paragraph applies in relation to an adult if—

- (a) the adult is a British citizen;
- (b) the adult has a closer connection with Northern Ireland than with any other part of the United Kingdom; and
- (c) Article 7 has, in relation to the matter concerned, been complied with.

15 (3) This sub-paragraph applies in relation to an adult if the Department of Justice, having consulted such persons as it considers appropriate, agrees to a request under Article 8 in relation to the adult.

#### *Exercise of jurisdiction*

20 10.—(1) This paragraph applies where jurisdiction is exercisable under this Schedule in connection with a matter which involves a Convention country other than Northern Ireland.

(2) Any Article on which the jurisdiction is based applies in relation to the matter in so far as it involves the other country (and the court must, accordingly, comply with any duty conferred on it as a result).

25 (3) Article 12 also applies, so far as its provisions allow, in relation to the matter in so far as it involves the other country.

11. A reference in this Schedule to the exercise of jurisdiction under this Schedule is to the exercise of functions under this Act as a result of this Part.

### PART 3

#### 30 APPLICABLE LAW

##### *Applicable law*

35 12. In exercising jurisdiction under this Schedule, the court may, if it considers that the matter has a substantial connection with a country other than Northern Ireland and having regard to the interests of the adult, apply the law of that other country.

13. Where a protective measure is taken in one country but implemented in another, the conditions of implementation are governed by the law of the other country.

*Lasting powers of attorney, etc*

14.—(1) If the donor of a lasting power is habitually resident in Northern Ireland at the time of granting the power, the law applicable to the existence, extent, modification or extinction of the power is—

- 5 (a) the law of Northern Ireland; or  
(b) if the donor specifies in writing the law of a connected country for the purpose, that law.

(2) If the donor is habitually resident in another country at that time, but Northern Ireland is a connected country, the law applicable in that respect is—

- 10 (a) the law of the other country; or  
(b) if the donor specifies in writing the law of Northern Ireland for the purpose, that law.

(3) A country is connected, in relation to the donor, if it is a country—

- (a) of which the donor is a national;  
15 (b) in which the donor was habitually resident before the grant of the power;  
or  
(c) in which the donor has property.

(4) Where this paragraph applies as a result of sub-paragraph (3)(c), it applies only in relation to the property which the donor has in the connected country.

20 (5) The law applicable to the manner of the exercise of a lasting power is the law of the country where it is exercised.

(6) In this Part, “lasting power” means—

- (a) a lasting power of attorney (see section 95);  
(b) an enduring power of attorney within the meaning of Schedule 5; or  
25 (c) any other power of like effect.

15.—(1) Where a lasting power is not exercised in a manner sufficient to guarantee the protection of the person or property of the donor, the court, in exercising jurisdiction under this Schedule, may disapply or modify the power.

30 (2) Where, in accordance with this Part, the law applicable to the power is, in one or more respects, that of a country other than Northern Ireland, the court must, so far as possible, have regard to the law of the other country in that respect (or those respects).

16. Regulations may provide for Schedule 4 (lasting powers of attorney: formalities) to apply with modifications in relation to a lasting power which comes within paragraph 14(6)(c).  
35

*Protection of third parties*

17.—(1) This paragraph applies where a person (a “representative”) in purported exercise of an authority to act on behalf of an adult enters into a transaction with a third party.

40 (2) The validity of the transaction may not be questioned in proceedings, nor may the third party be held liable, merely because—

- (a) where the representative and third party are in Northern Ireland when entering into the transaction, sub-paragraph (3) applies;
- (b) where they are in another country at that time, sub-paragraph (4) applies.
- (3) This sub-paragraph applies if—
- 5 (a) the law applicable to the authority in one or more respects is, as a result of this Schedule, the law of a country other than Northern Ireland; and
- (b) the representative is not entitled to exercise the authority in that respect (or those respects) under the law of that other country.
- (4) This sub-paragraph applies if—
- 10 (a) the law applicable to the authority in one or more respects is, as a result of this Part, the law of Northern Ireland; and
- (b) the representative is not entitled to exercise the authority in that respect (or those respects) under that law.
- (5) This paragraph does not apply if the third party knew or ought to have
- 15 known that the applicable law was—
- (a) in a case within sub-paragraph (3), the law of the other country;
- (b) in a case within sub-paragraph (4), the law of Northern Ireland.

#### *Mandatory rules*

18. Where the court is entitled to exercise jurisdiction under this Schedule, the
- 20 mandatory provisions of the law of Northern Ireland apply, regardless of any system of law which would otherwise apply in relation to the matter.

#### *Public policy*

19. Nothing in this Part requires or enables the application in Northern Ireland
- 25 of a provision of the law of another country if its application would be manifestly contrary to public policy.

### PART 4

## RECOGNITION AND ENFORCEMENT

#### *Recognition*

- 20.—(1) A protective measure taken in relation to an adult under the law of a
- 30 country other than Northern Ireland is to be recognised in Northern Ireland if it was taken on the ground that the adult is habitually resident in the other country.
- (2) A protective measure taken in relation to an adult under the law of a Convention country other than Northern Ireland is to be recognised in Northern Ireland if it was taken on a ground mentioned in Chapter 2 (jurisdiction).
- 35 (3) But the court may disapply this paragraph in relation to a measure if it considers that—
- (a) the case in which the measure was taken was not urgent;
- (b) the adult was not given an opportunity to be heard; and
- (c) that omission amounted to a breach of natural justice.

(4) The court may also disapply this paragraph in relation to a measure if it considers that—

- (a) recognition of the measure would be manifestly contrary to public policy;
- 5 (b) the measure would be inconsistent with a mandatory provision of the law of Northern Ireland; or
- (c) the measure is inconsistent with one subsequently taken, or recognised, in Northern Ireland in relation to the adult.

10 (5) The court may also disapply this paragraph in relation to a measure taken under the law of a Convention country in a matter to which Article 33 applies, if the court considers that that Article has not been complied with in connection with that matter.

21.—(1) An interested person may apply to the court for a declaration as to whether a protective measure taken under the law of a country other than Northern Ireland is to be recognised in Northern Ireland.

15 (2) No permission is required for an application to the court under this paragraph.

22. For the purposes of paragraphs 20 and 21, any finding of fact in relation to jurisdiction relied on when the measure was taken is conclusive.

#### *Enforcement*

20 23.—(1) An interested person may apply to the court for a declaration as to whether a protective measure taken under the law of, and enforceable in, a country other than Northern Ireland is enforceable, or to be registered, in Northern Ireland.

(2) The court must make the declaration if—

- (a) the measure comes within sub-paragraph (1) or (2) of paragraph 20; and
- 25 (b) the paragraph is not disapplied in relation to it as a result of sub-paragraph (3), (4) or (5) of that paragraph.

(3) A measure to which a declaration under this paragraph relates is enforceable in Northern Ireland as if it were a measure of like effect taken by the court.

#### *Measures taken in relation to under 16s*

30 24.—(1) This paragraph applies where—

- (a) provision giving effect to, or otherwise deriving from, the Convention in a country other than Northern Ireland applies in relation to a person who is under 16; and
- (b) a measure is taken in relation to that person in reliance on that provision.

35 (2) This Part applies in relation to that measure as it applies in relation to a protective measure taken in relation to an adult under the law of a Convention country other than Northern Ireland.

#### *Supplementary*

40 25. The court may not review the merits of a measure taken outside Northern Ireland except to establish whether the measure complies with this Schedule in so far as it is, as a result of this Schedule, required to do so.



PART 5

CO-OPERATION

*Proposal for cross-border placement*

26.—(1) This paragraph applies where a public authority proposes to place an  
5 adult in an establishment in a Convention country other than Northern Ireland.

(2) The public authority must consult an appropriate authority in that other  
country about the proposed placement and, for that purpose, must send it—

(a) a report on the adult; and

(b) a statement of its reasons for the proposed placement.

10 (3) If the appropriate authority in the other country opposes the proposed  
placement within a reasonable time, the public authority may not proceed with it.

27. A proposal received by a public authority under Article 33 in relation to an  
adult is to proceed unless the authority opposes it within a reasonable time.

*Adult in danger etc*

15 28.—(1) This paragraph applies if a public authority is told that an adult—

(a) who is in serious danger, and

(b) in relation to whom the public authority has taken, or is considering taking,  
protective measures,

is, or has become resident, in a country other than Northern Ireland.

20 (2) The public authority must tell an appropriate authority in that other country  
about—

(a) the danger; and

(b) the measures taken or under consideration.

25 29. A public authority may not request from, or send to, an appropriate authority  
in a country other than Northern Ireland information in accordance with Chapter 5  
(co-operation) in relation to an adult if it considers that doing so—

(a) would be likely to endanger the adult or the adult's property; or

(b) would amount to a serious threat to the liberty or life of a member of the  
adult's family.

30 PART 6

GENERAL

*Certificate*

35 30. A certificate given under Article 38 by an authority in a Convention country  
other than Northern Ireland is, unless the contrary is shown, proof of the matters  
contained in it.

*Powers to make further provision as to private international law*

31.—(1) Regulations may make provision—

- (a) giving further effect to the Convention; or
- (b) otherwise about the private international law of Northern Ireland in relation to the protection of adults.
- (2) The regulations may—
- 5 (a) confer functions on the Department of Justice, the court or another public authority;
- (b) amend this Schedule;
- (c) provide for this Schedule to apply with specified modifications;
- (d) make provision relating to countries other than Convention countries.

10 *Exceptions*

32. Nothing in this Schedule applies, and no provision made under paragraph 31 is to apply, to any matter to which the Convention, as a result of Article 4, does not apply.

15 SCHEDULE 10

Section 290(1).

CONSEQUENTIAL AMENDMENTS

*Judicature (Northern Ireland) Act 1978 (c. 23)*

1.—(1) In Schedule 1 (appeals to Supreme Court in certain criminal matters), paragraph 4 is amended as follows.

- 20 (2) In sub-paragraph (3)—
- (a) for the words from “the Mental Health” to “45)” substitute “Part 10 of the Mental Capacity Act (Northern Ireland) 2016 (except an order under section 160 of that Act or an interim detention order within the meaning of Part 10 of that Act)”;
- 25 (b) for each “the said Order” substitute “that Act”;
- (c) for “renewal of authority for detention” substitute “extension of the period of an order”;
- (d) for “patients” substitute “persons”.
- (3) In sub-paragraph (3A)—
- 30 (a) for the words from the first “interim” to “1986” substitute “interim detention order within the meaning of Part 10 of the Mental Capacity Act (Northern Ireland) 2016”;
- (b) in paragraph (b)—
- 35 (i) for “Part III of that Order” substitute “Part 10 of that Act”;
- (ii) for “transfer direction together with a restriction direction” substitute “direction under section 217 of that Act”;
- (c) in paragraph (c) for the words from “paragraph (2)” to the end substitute “section 176(6) of that Act (power of court to make public protection order in absence of person subject to an interim detention order) applies as if the
- 40 defendant were still subject to an interim detention order.”.

*Criminal Appeal (Northern Ireland) Act 1980 (c. 47)*

2.—(1) Section 7 (supplementary provisions as to retrial) is amended as follows.

(2) In subsection (3)—

5 (a) for the words from “under Part III” to “of that Order” substitute “under Part 10 of the Mental Capacity Act (except an order under section 160 of that Act or an interim detention order)”;

(b) in paragraph (b) for “the said Part III” substitute “Part 10 of that Act”.

(3) In subsection (3A)—

10 (a) for the words from “remand” to “that Order” substitute “remand under section 160 of the Mental Capacity Act or an interim detention order”;

(b) for “Part III of the Mental Health Order” substitute “Part 10 of that Act”;

(c) for “transfer direction together with a restriction direction” substitute “direction under section 217 of that Act”.

3. In section 10(5) (appeals against interim hospital orders) for “interim hospital order under Article 45 of the Mental Health Order” substitute “interim detention order”.

4. In section 11 (appeal against conviction: substitution of finding of insanity etc) for each “Article 50A(2) of the Mental Health Order” substitute “section 205(2) of the Mental Capacity Act”.

20 5. In section 12(1) (appeal against finding of not guilty on ground of insanity) for “Article 50(1) of the Mental Health Order” substitute “section 204 of the Mental Capacity Act”.

6.—(1) Section 13 (disposal of appeal allowed under section 12) is amended as follows.

25 (2) In subsection (5A) for “Article 50A(2) of the Mental Health Order” substitute “section 205(2) of the Mental Capacity Act”.

(3) Omit subsection (6).

7.—(1) Section 13A (appeal against finding of unfitness to be tried) is amended as follows.

30 (2) In subsection (1) for “Article 49 of the Mental Health Order” substitute “section 202 of the Mental Capacity Act”.

(3) In subsection (6) for “the Mental Health Order” substitute “Part 10 of the Mental Capacity Act”.

(4) In subsection (7)—

35 (a) for “the Mental Health Order, Part III of that Order” substitute “Part 10 of the Mental Capacity Act, that Part”;

(b) for “transfer direction together with a restriction direction” substitute “direction under section 217 of that Act”.

8.—(1) Section 29A (effect of interim hospital orders) is amended as follows.

40 (2) In subsection (1) for each “interim hospital order” substitute “interim detention order”.

(3) In subsection (2) for “Article 45(6) of the Mental Health Order” substitute “section 176(7) of the Mental Capacity Act”.

9.—(1) Section 30(1) (interpretation of Part 1) is amended as follows.

(2) In the definition of “sentence” at the end insert “, and any hospital direction  
5 under Part 10 of the Mental Capacity Act”.

(3) After “any such order or recommendation” insert “or direction”.

10.—(1) Section 36 (detention of defendant pending appeal by the Crown) is amended as follows.

(2) In subsection (3)—

10 (a) for “the Mental Health Order (otherwise than under Article 42, 43 or 45 of that Order)” substitute “Part 10 of the Mental Capacity Act (except an order under section 160 of that Act or an interim detention order)”;

(b) for the second “that Order” substitute “that Act”;

15 (c) for “renewal of authority for detention” substitute “extension of the period of an order”;

(d) for “patients” substitute “persons”.

(3) In subsection (3A)—

(a) for the words from “Article 43” to “Article 45 of that Order” substitute “section 160 of the Mental Capacity Act or an interim detention order”;

20 (b) in paragraph (b)—

(i) for “Part III of the Mental Health Order” substitute “Part 10 of that Act”;

(ii) for “transfer direction together with a restriction direction” substitute “direction under section 217 of that Act”;

25 (c) in paragraph (c)—

(i) for the first “interim hospital order” substitute “interim detention order”;

30 (ii) for the words from “paragraph (2)” to the end substitute “section 176(6) of that Act (power of court to make public protection order in absence of person subject to an interim detention order) applies as if the defendant were still subject to an interim detention order.”.

11. In section 45(3ZA) (powers of court exercisable by single judge) for “interim hospital order” substitute “interim detention order”.

12.—(1) Section 50 (interpretation) is amended as follows.

35 (2) In subsection (1) insert at the appropriate places—

““interim detention order” has the meaning given by section 175 of the Mental Capacity Act;”;

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

40 (3) Omit subsection (1A).

13. Omit Schedule 2 (consequences and effect of order under section 13(6) for detention in hospital).

*County Courts (Northern Ireland) Order 1980 (NI 3)*

14.—(1) Article 28 (appeals and applications to county courts) is amended as follows.

(2) In paragraph (3A) for “interim hospital order under the Mental Health (Northern Ireland) Order 1986” substitute “interim detention order under Part 10 of the Mental Capacity Act (Northern Ireland) 2016”.

(3) In paragraph (3B)—

- (a) for “an interim hospital order under the powers referred to in paragraph (3)” substitute “an interim detention order under Part 10 of that Act”;
- (b) for “Article 45(6) of the said Order of 1986” substitute “section 176(7) of that Act”.

## SCHEDULE 11

Section 290.

## REPEALS

Short Title	Extent of Repeal
The Sale of Goods Act 1979 (c.54)	In section 3(2), the words “mental incapacity or”.
The Mental Health (Northern Ireland) Order 1986	In Article 2— (a) in paragraph (2)— (i) the definitions of “guardianship application”, “hospital order” and “guardianship order”, “interim hospital order”, “restriction direction”, “restriction order” and “transfer direction”; (ii) in the definition of “the applicant” the words from “and, in relation” to the end; (iii) in the definition of “patient” the words “(except in Part VIII)”; (iv) in the definition of “responsible authority” paragraph (b); (b) in paragraph (2A) the words “107(1B),” and “, 123(1)”; (c) paragraph (3).
	Article 8(3). Article 12(3). Articles 18 to 26. In the italic heading before Article 27 the words “or guardianship”.

5  10  15  20	<p>In Article 27—</p> <ul style="list-style-type: none"><li>(a) in paragraph (1)—<ul style="list-style-type: none"><li>(i) the words “or subject to guardianship” in each place;</li><li>(ii) in sub-paragraph (b) the words “or guardianship”;</li><li>(iii) the words “or the commencement or renewal of the authority for his guardianship”;</li></ul></li><li>(b) in paragraph (2)—<ul style="list-style-type: none"><li>(i) the words “or subject to guardianship” in each place;</li><li>(ii) in sub-paragraph (a)(i) the words “, 24”;</li><li>(iii) the words “or his reception into guardianship”;</li></ul></li><li>(c) in paragraph (4)—<ul style="list-style-type: none"><li>(i) the words “or subject to guardianship”;</li><li>(ii) the words from “and, in” to “guardian of the patient”.</li></ul></li></ul>
25	<p>In Article 28—</p> <ul style="list-style-type: none"><li>(a) paragraphs (5) to (7);</li><li>(b) in paragraph (9) the words from “and, in” to “guardian of the patient”.</li></ul> <p>In Article 29—</p> <ul style="list-style-type: none"><li>(a) paragraph (2);</li><li>(b) in paragraph (3) the words “or subject to guardianship, as the case may be,”.</li></ul>
30  35	<p>In Article 30—</p> <ul style="list-style-type: none"><li>(a) in paragraph (1)—<ul style="list-style-type: none"><li>(i) the words “or subject to guardianship”;</li><li>(ii) the words “or subject” in the second place where they occur;</li></ul></li><li>(b) in paragraph (2) the words “or subject to guardianship”;</li><li>(c) in paragraph (3) the words “or guardianship”.</li></ul>
40  45	<p>In Article 31—</p> <ul style="list-style-type: none"><li>(a) in paragraph (1)—<ul style="list-style-type: none"><li>(i) the words “or subject to guardianship”;</li><li>(ii) the words “or subject” in the second place they occur;</li></ul></li><li>(b) in paragraph (2)—<ul style="list-style-type: none"><li>(i) the words “or subject to guardianship” in each place;</li><li>(ii) the words “or subject” in the last place they occur.</li></ul></li></ul>

5	<p>In Article 32(3) the words “or his reception into guardianship”.</p> <p>In Article 33 the words “who is a child or young person”.</p> <p>Article 34(3).</p> <p>In Article 35(1) the words “or subject to guardianship”.</p>
10	<p>In Article 36(3)—</p> <ul style="list-style-type: none"> <li>(a) in sub-paragraph (c) the words “or a guardianship application”;</li> <li>(b) the word “or” after sub-paragraph (c);</li> <li>(c) in sub-paragraph (d) the words “or guardianship”.</li> </ul>
15	<p>In Article 37(4)—</p> <ul style="list-style-type: none"> <li>(a) the words “or subject to guardianship”;</li> <li>(b) the words “or subject” in the second, third and fourth places where they occur.</li> </ul> <p>Article 39(3).</p>
20  25	<p>In Article 40—</p> <ul style="list-style-type: none"> <li>(a) in the heading the words “or guardianship”;</li> <li>(b) in paragraph (1) the words “or a guardianship application”;</li> <li>(c) in paragraph (2) the words “or guardianship (as the case may be)”;</li> <li>(d) in paragraph (5) the words “or Article 19(3) to (6)”.</li> </ul>
30	<p>In Article 41 the words “guardianship application,”.</p> <p>Part 3.</p>
35  40	<p>In Article 71—</p> <ul style="list-style-type: none"> <li>(a) paragraph (2);</li> <li>(b) in paragraph (3) the words from “or the authority” to “Article 23”;</li> <li>(c) in paragraph (4)— <ul style="list-style-type: none"> <li>(i) sub-paragraph (b);</li> <li>(ii) the words “or, as the case may be, Article 24(7)”;</li> </ul> </li> <li>(d) in paragraph (5) the words “or subject to guardianship”.</li> </ul>
	<p>In Article 72(1) the words “or subject to guardianship”.</p>

	<p>In Article 73(1)—</p> <ul style="list-style-type: none"> <li>(a) the words “or his guardianship”;</li> <li>(b) the words “or 23”.</li> </ul> <p>Articles 74 to 76.</p>
<p>5</p> <p>10</p>	<p>In Article 77—</p> <ul style="list-style-type: none"> <li>(a) in the heading the words “other than restricted patients”;</li> <li>(b) paragraph (3);</li> <li>(c) paragraph (5).</li> </ul> <p>Articles 78 to 80.</p> <p>In Article 81 the words “or subject to guardianship”.</p>
<p>15</p>	<p>In Article 83—</p> <ul style="list-style-type: none"> <li>(a) in paragraph (2)(a) and (i) the words “under this Order”;</li> <li>(b) in paragraph (5) the words “by this Order or by rules under this Article”.</li> </ul> <p>Article 84.</p>
<p>20</p> <p>25</p> <p>30</p>	<p>In Article 86—</p> <ul style="list-style-type: none"> <li>(a) in paragraph (2)— <ul style="list-style-type: none"> <li>(i) in sub-paragraph (a) the words “or reception into guardianship”;</li> <li>(ii) in sub-paragraph (c)(iii) the words “or reception into guardianship”;</li> </ul> </li> <li>(b) in paragraph (3)— <ul style="list-style-type: none"> <li>(i) in sub-paragraph (a) the words “or subject to guardianship”;</li> <li>(ii) in sub-paragraph (b) the words “or any person subject to guardianship under this Order”;</li> <li>(iii) in sub-paragraph (c) the words from “or relating to any person” to the end;</li> </ul> </li> <li>(c) in paragraph (5) the words from “and of the guardian” to “this Order”.</li> </ul>
<p>35</p>	<p>Part 8.</p> <p>In Article 111(1)(a) the words “and the reception of patients into guardianship”.</p> <p>Article 113(1)(c).</p>
<p>40</p>	<p>In Article 118—</p> <ul style="list-style-type: none"> <li>(a) paragraph (1)(a);</li> <li>(b) paragraph (2)(a).</li> </ul> <p>In Article 124(1)(a) the words “or being subject to guardianship under this Order”.</p>



5		<p>Article 127(2).          Article 129(3).          Article 130.          In Article 131(1) the words “or at any place to which he is taken under Article 48(5)”.</p>
10  15		<p>In Article 132—</p> <ul style="list-style-type: none"> <li>(a) in paragraph (1)(b) the words “or subject to guardianship”;</li> <li>(b) in paragraph (2)—             <ul style="list-style-type: none"> <li>(i) the words “or subject to guardianship”;</li> <li>(ii) the words from “(not being” to “such an order”;</li> </ul> </li> <li>(c) in paragraph (3) the words “or Article 130”;</li> <li>(d) paragraph (6).</li> </ul>
20  25		<p>Article 133(1).          In Article 134—</p> <ul style="list-style-type: none"> <li>(a) in paragraph (1)—             <ul style="list-style-type: none"> <li>(i) the words “or received into guardianship there”;</li> <li>(ii) the words “or reception”;</li> </ul> </li> <li>(b) in paragraph (2) the words “or received into guardianship”;</li> <li>(c) in paragraph (4)—             <ul style="list-style-type: none"> <li>(i) the words “Subject to paragraph (5),”;</li> <li>(ii) the words “or placed under guardianship”;</li> </ul> </li> <li>(d) paragraph (5).</li> </ul>
30		<p>Schedules 2 and 2A.          In Schedule 3—</p> <ul style="list-style-type: none"> <li>(a) in paragraph 4(1) the words “under this Order”;</li> <li>(b) in paragraph 5 the words “under this Order”.</li> </ul>
35	The Enduring Powers of Attorney (Northern Ireland) Order 1987 (NI 16)	The whole Order.
40	The Civil Partnership Act 2004 (c. 33)	In Schedule 29, paragraphs 76 to 78.