



2016 CHAPTER 18

PART 10 CRIMINAL JUSTICE

PROSPECTIVE

CHAPTER 1 REMAND TO HOSPITAL

Remand to hospital

162.—(1) Where—

- (a) the Crown Court or a court of summary jurisdiction has power to remand an accused person (“A”) in custody,
- (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—

- (a) the medical report condition (see section 164(1));
- (b) the treatment condition (see section 165(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.

Status: This version of this chapter contains provisions that are prospective.

Changes to legislation: Mental Capacity Act (Northern Ireland) 2016, CHAPTER 1 is up to date with all changes known to be in force on or before 08 May 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

(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
- (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 163.

Section 162: meaning of “an accused person”

163.—(1) In section 162 “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,

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.

Section 162: the medical report condition

164.—(1) For the purposes of section 162 “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;
- (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

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(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—

(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 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 162(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.

Section 162: the treatment condition

165.—(1) For the purposes of section 162 “the treatment condition” is that—

(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 more likely than not to result in serious physical or psychological harm to A or serious physical harm to other persons; and

(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;

(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

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(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—

- (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 162(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

166.—(1) Where a person is remanded under section 162—

- (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
 - (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 243) 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 162 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).

(4) If a person remanded under section 162 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

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(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 162.

(5) The power of further remanding a person under section 162 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 162 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.

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Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 285(2)(a)-(c) substituted for s. 285(2)(a)(b) by [2022 c. 18 \(N.I.\) Sch. 3 para. 77\(b\)](#)