



2016 CHAPTER 18

PART 11

TRANSFER BETWEEN JURISDICTIONS

CHAPTER 1

REMOVAL OF PERSONS FROM NORTHERN IRELAND

Removal to other parts of UK of persons detained under Part 2

Removal of persons detained under Part 2 to England or Wales

254.—(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 is 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 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;
- (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.

(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) In subsection (3)(c) and (4) “hospital” has the same meaning as in the 1983 Act.

Removal of persons detained under Part 2 to Scotland

255.—(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 is 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—

- (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—
 - (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—

- (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) In subsections (3)(c) and (4) “hospital” has the same meaning as in the 2003 Act.

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

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

256.—(1) This section applies in relation to a person (“P”) who is—

- (a) detained under a public protection order; or
- (b) detained in a hospital under a hospital direction or a hospital transfer direction made under section 211, 214 or 220.

(2) If it appears to the Department of Justice that the conditions for removal to England or Wales are met in P’s case, that Department may authorise P’s removal to England or Wales and may give any necessary directions for P’s conveyance there.

Status: This is the original version (as it was originally enacted).

- (3) The conditions for removal to England or Wales are that—
- (a) failure to remove P to England or (as the case may be) Wales would be more likely than not to result in serious physical or psychological harm to P or serious physical harm to other persons; and
 - (b) arrangements have been made for admitting P to a hospital in England or Wales in which care or treatment which is appropriate in P's case is available for him or her.
- (4) Where P is removed from Northern Ireland under this section, the order or direction mentioned in subsection (1) ceases to have effect when P leaves Northern Ireland (within the meaning given by section 98 of the Northern Ireland Act 1998); but this is subject to subsection (6).
- (5) Subsection (6) applies where—
- (a) P is not admitted to a hospital in England or Wales, and
 - (b) P returns to Northern Ireland at any time before the end of period for which the order or direction mentioned in subsection (1) would have continued in force (but for P's removal).
- (6) Subsection (4) ceases to apply to the order or direction, so that (accordingly) the order or direction applies to P on P's return to Northern Ireland.
- (7) In subsections (3)(b) and (5)(a) "hospital" has the same meaning as in the 1983 Act.

Removal of certain persons detained under Part 10 to Scotland

- 257.**—(1) This section applies in relation to a person ("P") who is—
- (a) detained under a public protection order; or
 - (b) detained in a hospital under a hospital direction or a hospital transfer direction made under section 211, 214 or 220.
- (2) If it appears to the Department of Justice that the conditions for removal to Scotland are met in P's case, that Department may authorise P's removal to Scotland and may give any necessary directions for P's conveyance there.
- (3) The conditions for removal to Scotland are that—
- (a) failure to remove P to Scotland would be more likely than not to result in serious physical or psychological harm to P or serious physical harm to other persons; and
 - (b) arrangements have been made for admitting P to a hospital in Scotland in which care or treatment which is appropriate in P's case is available for him or her.
- (4) Where P is removed from Northern Ireland under this section, the order or direction mentioned in subsection (1) ceases to have effect when P leaves

Northern Ireland (within the meaning given by section 98 of the Northern Ireland Act 1998); but this is subject to subsection (6).

(5) Subsection (6) applies where—

- (a) P is not admitted to a hospital in Scotland, and
- (b) P returns to Northern Ireland at any time before the end of period for which the order or direction mentioned in subsection (1) would have continued in force (but for P's removal).

(6) Subsection (4) ceases to apply to the order or direction, so that (accordingly) the order or direction applies to P on P's return to Northern Ireland.

(7) In subsections (3)(b) and (5)(a) "hospital" has the same meaning as in the 2003 Act.

CHAPTER 2

PERSONS REMOVED FROM ENGLAND, WALES OR SCOTLAND TO NORTHERN IRELAND

Persons to be detained under Part 2

Persons to be detained under Part 2 after removal from England or Wales

258.—(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 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.

(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 (immediately 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 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 treatment.

(7) In this section—

“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.

(8) Expressions used in subsection (5) and in the 1983 Act have the same meaning in that subsection as in that Act.

Persons to be detained under Part 2 after removal from Scotland

259.—(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.

(2) In subsection (1) “a relevant person” means a person who is 16 or over and (immediately 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 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.

(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 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—

“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.

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

260.—(1) This section applies where—

- (a) a person (“P”) is removed from England and Wales to Northern Ireland by virtue of Part 6 of the 1983 Act; and
- (b) immediately before being removed, P is subject to—
 - (i) a hospital order;
 - (ii) a hospital direction (within the meaning of the 1983 Act); or
 - (iii) a transfer direction.

(2) Immediately after P’s admission to an appropriate establishment in Northern Ireland in pursuance of arrangements made for the purposes of his or her removal from England or Wales, the relevant trust must notify RQIA of P’s admission.

(3) The relevant trust must also arrange for a report in the prescribed form, containing prescribed information, to be made by the responsible medical practitioner and given to the relevant trust within the period of 28 days beginning with the day P is admitted to the appropriate establishment.

(4) Where a report under subsection (3) is given to the relevant trust, that trust must as soon as practicable give RQIA a copy of the report.

(5) Where (immediately before being removed from England or Wales) P is of a description mentioned in the first column of the following table, an order or direction of a kind mentioned in the corresponding entry of the second column of the table, specifying the appropriate establishment, is treated as having been made or given in respect of P.

<i>Description of person</i>	<i>Order or direction treated as made</i>
Person subject to a hospital order and a restriction order	Public protection order with restrictions that provides as mentioned in section 167(4)(b)(i) (no time limit for treating the order as a PPO with restrictions)
Person subject to a hospital order but not a restriction order	Public protection order without restrictions
Person subject to a hospital direction (within the meaning of the 1983 Act)	Hospital direction under section 174
Person subject to a transfer direction given by virtue of section 47(1) of the 1983 Act	Hospital transfer direction under section 211

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

<i>Description of person</i>	<i>Order or direction treated as made</i>
Person subject to a transfer direction given by virtue of section 48(2)(a) of the 1983 Act	Hospital transfer direction under section 220
Person subject to a transfer direction given by virtue of section 48(2)(c) or (d) of the 1983 Act	Hospital transfer direction under section 214

(6) An order or direction is to be treated as having been made or given under subsection (5), for the purposes mentioned in the first column of the following table, on the date mentioned in the corresponding entry in the second column of the table.

<i>Purpose</i>	<i>Date on which order or direction treated as made</i>
Duration for which P may be detained under section 179 and calculation of the “initial period” for the purposes of section 181 (where P is treated as being subject to a public protection order without restrictions)	Date of P’s arrival in Northern Ireland
Calculation of the “release date” within the meaning given by section 199 (where P is treated as being subject to a hospital direction made under section 174)	Date on which the hospital direction (within the meaning of the 1983 Act) was made
Right to apply to the Tribunal under the first entry in the table in section 225(1)	Date on which the hospital order, hospital direction (within the meaning of the 1983 Act) or transfer direction was made
Calculation of the “relevant date” for the purposes of section 229(3) (referral of case to the Tribunal)	Date on which the hospital order, hospital direction (within the meaning of the 1983 Act) or transfer direction was made

(7) The first report under section 193 (where P is treated as being subject to a public protection order with restrictions) must be made—

- (a) if the most recent report on P under section 41(6) of the 1983 Act was made more than 6 months before P’s arrival in Northern Ireland, not later than 6 months after P’s arrival there, or
- (b) otherwise, not later than 12 months after the most recent report under that section.

(8) Section 224(2) (direction ceasing to have effect if person not admitted within 14 days) does not apply to a hospital transfer direction which is treated as having been given under subsection (5).

(9) The date of P's arrival in Northern Ireland is to be treated as being the end of a relevant period for the purposes of section 230 (duty to notify Attorney General).

(10) Where (immediately before being removed) P is subject to—

- (a) a hospital direction (within the meaning of the 1983 Act), or
- (b) a transfer direction made because P was serving a sentence of imprisonment (within the meaning of section 47 of that Act),

P is to be treated as if the sentence, order or committal in relation to which the direction has effect were a similar or corresponding sentence, order or committal imposed or made by a court in Northern Ireland.

(11) In this section—

- “hospital order” has the same meaning as in the 1983 Act;
- “relevant trust” means the HSC trust in whose area the appropriate establishment is situated;
- “restriction order” has the same meaning as in the 1983 Act;
- “transfer direction” has the same meaning as in the 1983 Act.

Persons to be detained under Part 10 after removal from Scotland

261.—(1) This section applies where—

- (a) a person (“P”) is removed from Scotland to Northern Ireland under regulations made under section 290 of the 2003 Act; and
- (b) immediately before being removed, P is subject to—
 - (i) a relevant compulsion order;
 - (ii) a hospital direction (within the meaning of the 1995 Act); or
 - (iii) a transfer for treatment direction.

(2) Immediately after P's admission to an appropriate establishment in Northern Ireland in pursuance of arrangements made for the purposes of his or her removal from Scotland, the relevant trust must notify RQIA of P's admission.

(3) The relevant trust must also arrange for a report in the prescribed form, containing prescribed information, to be made by the responsible medical practitioner and given to the relevant trust within the period of 28 days beginning with the day P is admitted to the appropriate establishment.

(4) Where a report under subsection (3) is given to the relevant trust, that trust must as soon as practicable give RQIA a copy of the report.

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

(5) Where (immediately before being removed from Scotland) P is of a description mentioned in the first column of the following table, an order or direction of a kind mentioned in the corresponding entry of the second column of the table, specifying the appropriate establishment, is treated as having been made or given in respect of P.

<i>Description of person</i>	<i>Order or direction treated as made</i>
Person subject to a relevant compulsion order and a restriction order	Public protection order with restrictions that provides as mentioned in section 167(4)(b)(i) (no time limit for treating the order as a PPO with restrictions)
Person subject to a relevant compulsion order but not a restriction order	Public protection order without restrictions
Person subject to a hospital direction (within the meaning of the 1995 Act)	Hospital direction under section 174
Person subject to a transfer for treatment direction	Hospital transfer direction of a description specified in P's case in a direction given by the Department of Justice under this subsection

(6) An order or direction is to be treated as having been made or given under subsection (5), for the purposes mentioned in the first column of the following table, on the date mentioned in the corresponding entry in the second column of the table.

<i>Purpose</i>	<i>Date on which order or direction treated as made</i>
Duration for which P may be detained under section 179 and calculation of the "initial period" for the purposes of section 181 (where P is treated as being subject to a public protection order without restrictions)	Date of P's arrival in Northern Ireland
Calculation of the "release date" within the meaning given by section 199 (where P is treated as being subject to a hospital direction made under section 174)	Date on which the hospital direction (within the meaning of the 1995 Act) was made
Right to apply to the Tribunal under the first entry in the table in section 225(1)	Date on which the relevant compulsion order, hospital direction (within the

<i>Purpose</i>	<i>Date on which order or direction treated as made</i>
	meaning of the 1995 Act) or transfer for treatment direction was made
Calculation of the “relevant date” for the purposes of section 229(3) (referral of case to the Tribunal)	Date on which the relevant compulsion order, hospital direction (within the meaning of the 1995 Act) or transfer for treatment direction was made

(7) The first report under section 193 (where P is treated as being subject to a public protection order with restrictions) must be made—

- (a) if the most recent report on P under section 183 of the 2003 Act was made more than 6 months before P’s arrival in Northern Ireland, not later than 6 months after P’s arrival there, or
- (b) otherwise, not later than 12 months after the most recent report under that section.

(8) Section 224(2) (direction ceasing to have effect if person not admitted within 14 days) does not apply to a hospital transfer direction which is treated as having been given under subsection (5).

(9) The date of P’s arrival in Northern Ireland is to be treated as being the end of a relevant period for the purposes of section 230 (duty to notify Attorney General).

(10) Where (immediately before being removed) P is subject to—

- (a) a hospital direction (within the meaning of the 1995 Act), or
- (b) a transfer for treatment direction made because P was serving a sentence of imprisonment (within the meaning of section 136(1) of the 2003 Act),

P is to be treated as if the sentence, order or committal in relation to which the direction has effect were a similar or corresponding sentence, order or committal imposed or made by a court in Northern Ireland.

(11) In this section—

“relevant compulsion order” means a compulsion order (within the meaning of the 1995 Act) that authorises the detention of the person in a hospital (within the meaning of that Act);

“relevant trust” means the HSC trust in whose area the appropriate establishment is situated;

“restriction order” has the same meaning as in the 1995 Act;

“transfer for treatment direction” has the same meaning as in the 2003 Act.

CHAPTER 3
SUPPLEMENTARY

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

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

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

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

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

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

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

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

- (a) in subsection (2)(a), persons in respect of whom an authorisation under Part 2 has been granted authorising a particular measure (within the meaning given by section 41);
- (b) in subsection (3)(a), persons in respect of whom an order or direction has been made or given under Part 10 (including persons in respect of whom a warrant under section 191(1)(b) or an order under section 232(2)(b) is in effect).

(6) Regulations under this section—

- (a) may prescribe steps to be taken before a person may be removed or transferred, or prescribe other conditions which must be met before a person may be removed or transferred,
 - (b) may provide that, where a person is removed or transferred, any prescribed measure to which the person is subject ceases to have effect, and
 - (c) may apply, or make provision similar to, any provision of Part 2 or Part 10 (with or without modifications).
- (7) The powers to make regulations under this section must be exercised so as to ensure that, where under this Part the removal or transfer of a person from Northern Ireland is authorised—
- (a) notice of the authorisation and proposed removal or transfer must be given to—
 - (i) the person to be removed or transferred, and
 - (ii) any prescribed person,at least a prescribed period before the date of the proposed removal or transfer; and
 - (b) there is a right to apply to the Tribunal in respect of the authorisation (except where the Tribunal approved the removal or transfer before the authorisation was given).
- (8) Regulations under this section may amend this Part, and may make supplementary or consequential amendments to other provisions of this Act.
- (9) In this section “regulations” means—
- (a) in relation to provision concerning the removal or transfer of a Part 10 transferee, regulations made by the Department of Justice;
 - (b) in any other case, regulations made by the Department.
- (10) In subsection (9) a “Part 10 transferee” is a person—
- (a) who is detained by virtue of Part 10 or (if not detained under this Act) in respect of whom an order or direction has been made or given under Part 10, or
 - (b) (in the case of a person who does not fall within paragraph (a)) whose removal is authorised on the ground that either of the conditions set out in subsection (3)(b) is met.

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

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

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

- (b) providing for the person to be treated as if he or she were a person of a prescribed description subject to measures under this Act.
- (2) The reference in subsection (1)(b) to persons subject to measures under this Act includes, in particular—
- (a) persons in respect of whom an authorisation under Part 2 has been granted authorising a particular measure (within the meaning given by section 41), and
 - (b) persons in respect of whom an order or direction has been made or given under Part 10 (including persons in respect of whom a warrant under section 191(1)(b) or an order under section 232(2)(b) is in effect).
- (3) Subsection (1)(b) permits the regulations to provide for a person to be treated as if an authorisation under Part 2 authorising a particular measure had been granted only where the person (before being removed to Northern Ireland) was subject under the law of England and Wales or Scotland to a corresponding or similar measure.
- (4) Subsection (1)(b) permits the regulations to provide for a person to be treated as if an order or direction had been made or given under Part 10 only where the person (before being removed to Northern Ireland) was subject under the law of England and Wales or Scotland to an order, direction or other measure having corresponding or similar effect.
- (5) Regulations may make provision about the application of this Act to persons who are removed to Northern Ireland under a relevant provision and who are treated, by virtue of this Part, as if they were subject to particular measures under this Act.
- (6) In this section “a relevant provision” means—
- (a) Part 6 of the 1983 Act;
 - (b) regulations made under section 289 or 290 of the 2003 Act; or
 - (c) any provision of the law of a country or territory other than the United Kingdom which is similar or corresponds to this Part or Part 2 or 10 of this Act.
- (7) Regulations under this section may amend this Part, and may make supplementary or consequential amendments to other provisions of this Act.
- (8) In this section “regulations” means—
- (a) in relation to provision concerning a Part 10 arrival, regulations made by the Department of Justice;
 - (b) in any other case, regulations made by the Department.
- (9) In subsection (8) a “Part 10 arrival” is a person who (by virtue of this Part or the regulations) is to be treated as if an order or direction under Part 10 had been made or given in respect of him or her.

Interpretation of Part 11

264. In this Part—

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

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

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

“appropriate establishment” has the same meaning as in Part 10 (see section 167);

“hospital direction”, except where otherwise provided, has the same meaning as in Part 10 (see section 253(1));

“hospital transfer direction” has the same meaning as in Part 10 (see section 253(1));

“public protection order”, “public protection order with restrictions” and “public protection order without restrictions” have the same meaning as in Part 10 (see section 167);

“the responsible medical practitioner” has the same meaning as in Part 10 (see section 253(1)).