EXPLANATORY MEMORANDUM TO

The Mental Capacity (Deprivation of Liberty) (Amendment) Regualtions (Northern Ireland) 2020

2020 No. 57

1. Introduction

1.1. This Explanatory Memorandum has been prepared by the Department of Health to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.

1.2. The Statutory Rule is made under s14(4), 297(3) and 302(4) of, and paragraphs 5(1)(a) of Schedule 1, paragraphs 1(2) and 3(1)(a) of Schedule 2 and paragraphs 3(1)(a) of Schedule 3 to the Mental Capacity Act (Northern Ireland) 2016 and is subject to the negative resolution procedure.

2. Purpose

2.1. The purpose of these Regulations is to provide temporary modifications to the Mental Capacity (Deprivation of Liberty) (No. 2) Regulations (Northern Ireland) 2020 as a result of pressures because of the Coronavirus.

3. Background

3.1. The Mental Capacity (Deprivation of Liberty) Regulations (Northern Ireland) (No. 2) 2019 (2019 No. 199) (the principal Regulations) were made on 7 November 2019 and provide technical details in relation to the first phase commencement of the Mental Capacity Act (Northern Ireland) 2016 for the purpose of deprivation of liberty.

3.2. Among other things the principal Regulations provide the specifications of who is a suitably qualified person to carry out certain statutory functions under the Act, the definition of responsible medical practitioners, who can make applications and reports and the membership of a trust panel.

3.3. The Deprivation of Liberty Safeguards, as contained in the Act, provide a statutory framework for deprivation of liberty (DoL). A DoL is one of the most serious infringements in a person's life, and the right to liberty is enshrined in the European Convention of Human Rights. It is important that the framework works in all situations, even when the situation is an emergency.

3.4. The purpose of the statutory rule is to make temporary modifications to the principal Regulations in the case of a widespread unavailability of the health and social care workforce due to a pandemic emergency. The Regulations will modify who can do certain duties, but imposes a reporting requirement when this the modifications are used.

3.5. The Regulations relaxes some additional safeguards and procedures and allows a wider group of professionals to carry out functions and extends some timelines.

3.6. The amendments in the Regulations are only in force as long as the modifications in section 10(4) of and paragraphs 3, 4, 5, 6, 7, 8, 9 and 10 of Schedule 11 to the Coronavirus Act 2020 are in force.

4. Consultation

4.1. The Department has consulted with the HSC Trusts, the HSC Board, PHA, professional bodies and others. The meetings and consultation did not raise any significant issues that required changes to the overall approach. There is broad support for the amendment considering the current pressures.

5. Equality Impact

5.1. In accordance with guidance produced by the Equality Commission for Northern Ireland and in keeping with Regulation 75 of the Northern Ireland Act 1998, the proposals for the Order have been screened for equality impact and it is concluded that a full Equality Impact Assessment is not required.

6. Regulatory Impact

6.1. A Regulatory Impact Assessment (RIA) screening was carried out prior to consultation. The screening concluded that the Statutory Rule will have negligible cost impact on businesses, charities, social economy enterprises or the voluntary sector in Northern Ireland and will not otherwise adversely affect these groups. The Department considers that a full RIA is not required.

7. Financial Implications

7.1. There will be no cost impact on businesses, charities, social economy enterprises or the voluntary sector in Northern Ireland.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Statutory Rule is not deemed to breach Section 24 of the Northern Ireland Act 1998 as it is considered to be compatible with any of the Convention rights or community law and does not discriminate against a person on the grounds of religious belief or political opinion.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. Not applicable.

10.2. Other statutory frameworks exists in other jursdictions. However, these other frameworks are significantly different and the technical details in this instrument are not relevant to other systems.

11. Additional Information

11.1. Not applicable.