EXPLANATORY MEMORANDUM TO

The Mental Capacity (Deprivation of Liberty) (Revocation) Regulations (Northern Ireland) 2019

2019 No 192

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 sections 14(4), 39, 42, 43, 50, 57, 58, 61(1), 79(4), 132, 276, 297 and 300 and paragraphs 5, 6, 7, 8, 14 and 19 of Schedule 1, paragraphs 1, 2, 3, 4, 7, 9, 11, 13 and 14 of Schedule 2 and paragraphs 3, 4, 5, 6, 7, and 9 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 the instrument is to revoke the Mental Capacity (Deprivation of Liberty) Regulations (Northern Ireland) 2019 and the Mental Capacity (Deprivation of Liberty) (Amendment) Regulations (Northern Ireland) 2019. The revocation is to allow for the implementation date for deprivation of liberty, offences and money and valuables provisions, which had been 1 October 2019, to be delayed until 2 December 2019.

3. Background

3.1. The UK Supreme Court has determined that a person who is not free to leave and is under continous control and supervision is deprived of liberty. All deprivations of liberty must be authorised prior to taking place. The Mental Capacity Act (Northern Ireland) 2016 provides a statutory framework for deprivation of liberty if certain safeguards and additional safeguards are met.

3.2. In order for the deprivation of liberty safeguards to operate a number of technical details needed to be provided. These details were provided in the principal Regulations, the Mental Capacity (Deprivation of Liberty) Regulations (Northern Ireland) 2019 and subsequent amending Regulations (noted at 2.1).

3.3. However, the decision was taken by the Department of Health (with the agreement of the Department of Justice) to delay implementation from 1 October 2019 to 2 December 2019 in relation to certain provisions (i.e. deprivation of liberty, offences and money and valuables).

3.4. Regulations to implement these provisions will be made and laid before the Assembly before 2 December 2019.

4. Consultation

4.1. The Department publically consulted on the Mental Capacity Bill in summer 2014. This set the policy intent for the instrument. The outcome of the consultation saw overwhelming support for the legislation.

4.2. The draft Mental Capacity (Deprivation of Liberty) Regulations 2019 were informally consulted on in spring/summer of 2019. The Department of Health also had a series of meetings on the regulations and other aspects of the deprivation of liberty safeguards. The meetings and consultation did not raise any significant issues that required changes to the overall approach.

4.3. The decision to revoke the Regulations was taken in consultation with key operational stakeholders.

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 Mental Capacity (Deprivation of Liberty) (Amendment) Regulations (Northern Ireland) 2019 were screened for equality impact and it was concluded that a full Equality Impact Assessment was 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. Overall, there will be negligible cost impact on businesses, charities, social economy enterprises or the voluntary sector in Northern Ireland.

7.2. There will be a cost to the statutory sector of an estimated £3.129m per year recurrent with additional costs of £885k in year 1 for training and other implementation costs.

7.3. The recurrent costs relate to short-term detention processes, trust panel authorisation and processes and costs to the health and social care sector of the Review Tribunal.

7.4. There are no costs associated with the revocation of the Mental Capacity (Deprivation of Liberty) Regulations (Northern Ireland) 2019 and associated amending Regulations.

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 in relation to deprivation of liberty. 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.