EXPLANATORY MEMORANDUM TO

THE MENTAL HEALTH REVIEW TRIBUNAL (AMENDMENT) RULES (NORTHERN IRELAND) 2010

2010 No. 76

1. 1.1 This explanatory memorandum has been prepared by the Ministry of Justice (Northern Ireland Court Service) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument makes a minor amendment to the Mental Health Review Tribunal (Northern Ireland) Rules 1986 ("the principal Rules") to allow the chairman to approve legal members to serve as president of the Mental Health Review Tribunal for consideration of applications relating to restricted patients after consulting the Lord Chancellor.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 The principal Rules set out the procedure to be followed in proceedings before the Mental Health Review Tribunal ("the Tribunal"). Rule 8 of the principal Rules deals with the appointment of members to the Tribunal. Rule 8(3) provides for the appointment of the president of the Tribunal in cases dealing with restricted patients. The persons qualified to serve as president of the Tribunal for the consideration of an application or reference relating to a restricted patient shall be restricted to those legal members who have been approved for that purpose by the Lord Chancellor.

4.2 This instrument makes an amendment to the Rule 8(3) of the principal Rules to allow the chairman to approve those members who are qualified to serve as president of tribunal for the consideration of an application or reference relating to a restricted patient after consulting the Lord Chancellor.

5. Territorial Extent and Application

5.1 This instrument applies to Northern Ireland.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 The Mental Health (Northern Ireland) Order 1986 ("the 1986 Order") sets out the framework for the compulsory admission and treatment of patients suffering from a mental illness. The Mental Health Review Tribunal is an independent judicial body set up under the 1986 Order to review cases of patients who are compulsorily detained under the Order.

7.2 Article 83(1) of the 1986 Order gives the Lord Chancellor power to make rules with respect to the making of applications to the Tribunal and with respect to the proceedings of the Tribunal. In particular, Article 83(4) provides that rules may make provision for restricting the persons qualified to serve as president of the Tribunal for the consideration of an application or reference relating to a restricted patient.

7.3 Restricted patients are those who are subject to a restriction order. Where a person has been convicted of an offence punishable by imprisonment and is detained in a hospital, a restriction order will be imposed where there is a risk of that person committing further offences if in the community or where there is a risk to the public of serious harm. The effect of a restriction order is that a patient may not be allowed to leave the hospital or be transferred without the authority of the Secretary of State and may not be discharged from hospital except by the Secretary of State or the Tribunal.

7.4 Rule 8(3) of the principal Rules states that the persons qualified to serve as president of the Tribunal for the consideration of an application or reference relating to a restricted patient shall be restricted to those legal members who have been approved for that purpose by the Lord Chancellor.

7.5 This instrument makes an amendment to Rule 8(3) to instead allow the chairman to approve those members who are qualified to serve as president of tribunal for the consideration of an application or reference relating to a restricted patient after consulting the Lord Chancellor.

8. Consultation outcome

8.1 No consultation on these Rules was necessary.

9. Guidance

9.1 These Rules will be published on the Northern Ireland Court Service website.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies.

10.2 There is no impact on the public sector.

10.3 An Impact Assessment has not been prepared for this instrument.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The operation of the Rules will be kept under review by the Northern Ireland Court Service.

13. Contact

13.1 Maria Dougan at the Northern Ireland Court Service (Civil Policy Division) Tel: 028 90728956 or email: MariaDougan@courtsni.gov.uk can answer any queries regarding the instrument.