EXPLANATORY MEMORANDUM TO

The Review Tribunal (Amendment No. 2) Rules (Northern Ireland) 2019

SR 2019 No.202

1. Introduction

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

1.2. The Statutory Rule is made under Articles 83(1) and (4) of the Mental Health (Northern Ireland) Order 1986 and is subject to the negative resolution procedure.

2. Purpose

2.1. The purpose of the Statutory Rule is to amend the Mental Health Review Tribunal (Northern Ireland) Rules 1986 ('the 1986 Rules') in consequence of (i) the renaming of the Mental Health Review Tribunal as the Review Tribunal; and (ii) the introduction of a right to appeal an authorisation of deprivation of liberty or apply for the appointment or revocation of a nominated person under the Mental Capacity Act (Northern Ireland) 2016.

3. Background

3.1. The Mental Capacity Act (Northern Ireland) 2016 applies to people aged 16 or over and considers their capacity to make decisions about their health, welfare or finances and the safeguards that must be put in place if they lack the capacity to do so. The Act also provides a framework for decision making by Health and Social Care Trusts in respect of various interventions in a person's life , including a deprivation of liberty. The framework includes a right of appeal against a decision authorising an intervention to a Review Tribunal.

3.2. The Mental Capacity Act (NI) 2016 will be partially commenced on 2 December 2019 to provide a statutory framework for authorising deprivations of liberty. This requires the current Mental Health Review Tribunal to be renamed as the Review Tribunal to allow it to take on the additional role of considering appeals against authorisations for deprivations of liberty and considering applications for the appointment or removal of nominated persons under the Mental Capacity Act (Northern Ireland) 2016.

3.3. The Review Tribunal (Amendment No. 2) Rules (Northern Ireland) 2019 amend the 1986 Rules in consequence of the above rights of appeal and detail the procedure on appeal.

3.4. Under Article 5(4) of the European Convention on Human Rights, everyone who is deprived of his or her liberty shall be entitled to take proceedings by which the lawfulness of that detention shall be decided speedily by a court and his or her release ordered if the detention is not lawful. There is, therefore, an obligation to ensure that a person deprived of liberty, whether under the Mental Health (Northern Ireland) Order 1986

or the Mental Capacity Act (Northern Ireland) 2016, is able to have the lawfulness of his or her detention reviewed speedily by the Review Tribunal.

4. Consultation

4.1. The Department issued a targeted consultation on the proposed rule changes in July 2019. Four responses were received. An analysis of the consultation responses is available on the Departments's website.

5. Equality Impact

5.1. The Department has carried out an equality screening exercise on the proposed legislation. No adverse impacts were identified. A full Equality Impact Assessment has, therefore, not been prepared for these Rules as it is considered that they do not raise any equality or good relations issues under section 75 of the Northern Ireland Act 1998.

6. Regulatory Impact

6.1. A regulatory impact assessment is not considered necessary as the amendment to the Rules will not lead to costs or savings for the wider business community.

7. Financial Implications

7.1. There will be additional costs arising from the estimated projected increase in Tribunal caseload.

8. Section 24 of the Northern Ireland Act 1998

8.1. The Department has considered its obligations under section 24 of the Northern Ireland Act 1998 and is satisfied that these Regulations are not incompatible with Convention rights, nor are they incompatible with EU law, do not discriminate against a person or class of person on the grounds of religious belief or political opinion, and do not modify an enactment in breach of section 7 of the Northern Ireland Act 1998.

9. EU Implications

9.1. Not applicable.

10. Parity or Replicatory Measure

10.1. There is no directly applicable measure, but it should be noted that the Mental Capacity (Amendment) Act 2019 which will amend the Mental Capacity Act 2005 received Royal Assent in May 2019.

11. Additional Information

11.1. Not applicable.