

## **EXPLANATORY MEMORANDUM TO**

### **The Supervision and Treatment Orders (Maximum Period) Order (Northern Ireland) 2011**

**SR 2011 no. 115**

#### **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 powers conferred by paragraph 1(2) and (3) of Schedule 2A to the Mental Health (Northern Ireland) Order 1986 ("the 1986 Order") and is subject to the negative resolution procedure.

#### **2. Purpose**

- 2.1. This Statutory Rule will extend the maximum period for supervision and treatment orders from two to three years. Such orders are designed to secure access to supervision and assistance in the community, including medical treatment, for persons who are unfit to stand trial but who have been found to have committed the act or made the omission with which they are charged, or who are acquitted on the ground that they were insane at the time of the act or omission.
- 2.2. The current two-year maximum period for such orders is considered insufficient to secure longer-term access, where required, to supervision and assistance in the community. Extending this period should enhance the medical treatment, oversight and support offered to supervised persons, thus reducing the likelihood of further offending and better enabling them to lead settled lives in the community.

#### **3. Background**

- 3.1. Supervision and treatment orders are non-punitive measures available to the court where an accused has been assessed as unfit to be tried and found to have committed the act or made the omission with which they are charged, or who are acquitted on the ground that they were insane at the time of the act or omission.
- 3.2. Extension of the maximum period from two to three years will go some way to addressing judicial concerns about the limitations of the current provisions which arose in the recent case in Donagh.
- 3.3. The power to make changes under Schedule 2A to the 1986 Order transferred from the Secretary of State to the Department of Justice by the Northern Ireland Act 1998 (Devolution of Policing and Justice Functions) Order 2010.

#### **4. Consultation**

- 4.1. The Department of Justice has discussed and consulted on the proposed extension with officials from the Department of Health and Social Services and Public Safety, Probation Board for Northern Ireland and health and

social care professionals. All were in support. The proposal has also been presented to and discussed with the Assembly Committees for Justice and Health in their consideration of the McDermott case. In addition, Minister Ford advised the Assembly on 21st September 2010, during questions for urgent answer, of the intention to proceed on this basis.

- 4.2. Supervision and treatment orders have been issued in a very small number of cases (eleven in total between 2006 and mid 2010). Given that this proposed change is relatively minor in nature, should act to the benefit of the few people affected, has attracted support from the Assembly, the Health Minister, relevant professionals and service providers, and should go some way to addressing judicial and public concerns, a period of formal consultation has not been considered necessary.

## **5. Equality Impact**

- 5.1. Since the proposed change is relatively minor in nature, would have no adverse impact on any of the Section 75 groups, and should act to the benefit of the few people affected, it has been screened out for equality purposes. Accordingly, an equality impact assessment has not been considered necessary in relation to this proposal.
- 5.2. Supervision and treatment orders are non-punitive measures available to the court where an accused has been assessed as unfit to be tried and found to have committed the act or made the omission with which they are charged, or who are acquitted on the ground that they were insane at the time of the act or omission. All supervised persons will have been clinically assessed as having either a mental disorder or a learning disability that is susceptible to treatment.
- 5.3. For the few people subject to these orders (eleven in total between 2006 and mid-2010, all of whom were male), this would secure longer-term access, where required, to supervision and assistance in the community, including medical treatment. The extension is designed to: improve the supervision and treatment framework; help reduce the likelihood of further offending by supervised persons; and to better enable such people to lead settled lives in the community.

## **6. Regulatory Impact**

- 6.1. As the proposal will not impact on business, charities, social economy enterprises or voluntary bodies, a Regulatory Impact Assessment is not considered necessary.

## **7. Financial Implications**

- 7.1. Since very few supervision and treatment orders are made each year (eleven in total between 2006 and mid-2010), and only a subset of these is likely to extend to three years, the proposal should result in negligible additional costs for the criminal justice system and health and social care.

## **8. Section 24 of the Northern Ireland Act 1998**

- 8.1. The proposal is considered compliant with section 24 of the Northern Ireland Act 1998.

## **9. EU Implications**

9.1. Not applicable.

## **10. Parity or Replicatory Measure**

10.1. Whereas the maximum period for the equivalent supervision orders in England and Wales is two years, the proposed extension to three years will bring Northern Ireland into line with the maximum period for supervision and treatment orders in Scotland.

## **11. Additional Information**

11.1. Not applicable.