

## **EXPLANATORY MEMORANDUM TO**

### **Mental Health Review Tribunal (Amendment) Rules (Northern Ireland) 2016**

#### **2016 No. 57**

#### **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 Article 83(1) and 83(4) of the Mental Health (Northern Ireland) Order 1986, after consultation with the Lord Chief Justice and is subject to the negative resolution procedure.

#### **2. Purpose**

- 2.1. The purpose of the Statutory Rule is to provide the Tribunal with the power to abridge (shorten) or extend the time appointed for doing an act under the Mental Health Review Tribunal (Northern Ireland) Rules 1986 when in the interests of justice to do so.

#### **3. Background**

- 3.1. The Mental Health Review Tribunal (“the Tribunal”) is an independent judicial body, set up under the Mental Health (Northern Ireland) Order 1986 (“the Order”), which reviews the cases of patients who are compulsorily detained or are subject to guardianship under the Order. For patients detained under the Order, the Tribunal’s function is to provide them with a safeguard against unlawful detention under the Order by means of a review of their cases from both the medical and non-medical points of view. After considering all of the evidence submitted at the hearing, the Tribunal decides whether or not the patient should continue to be detained under the Order. The Mental Health Review Tribunal (Northern Ireland) Rules 1986 (“the 1986 Rules”) set out the procedure to be followed by the Tribunal.
- 3.2. Under the 1986 Rules, the time appointed by the Rules for doing any act may, in the particular circumstances of the case, be extended, or abridged by the Tribunal on such terms, if any, as the Tribunal thinks fit. However, that power to abridge time does not apply to the notice periods required under the Rules for hearings, the resumption of adjourned hearings, and reconvened hearings.
- 3.3. Under Article 5(4) of the European Convention, 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 under the Order is able to have the lawfulness of his or her detention reviewed speedily by the Tribunal, that is, as soon as reasonably practicable having regard to the individual circumstances of the case.

- 3.4. As the Tribunal does not have the power to abridge time for notice periods for hearings, there is concern that there may be a risk that an individual case may not be heard as soon as is reasonably practicable, having regard to the relevant circumstances of the case.
- 3.5. The Statutory Rule, therefore, amends the 1986 Rules to allow the Tribunal to abridge or extend time limits under the Rules when in the interests of justice to do so.

#### **4. Consultation**

- 4.1. The Department issued a consultation on the proposed rule changes in October 2015. Eleven responses were received. All were in favour of amending the rules.

#### **5. Equality Impact**

- 5.1. The Department has carried out an equality screening exercise on the proposed legislation. No adverse impacts for any of the nine categories in section 75 of the Northern Ireland Act 1998 were identified. A full Equality Impact Assessment was, therefore, not required.

#### **6. Regulatory Impact**

- 6.1. A Regulatory Impact Assessment is not considered necessary.

#### **7. Financial Implications**

- 7.1. There may be some costs associated with these amendments. It is expected that they will lead to an increase in applications for review during the initial stage of detention resulting in a rise in legal aid and Tribunal costs. Respondents to the consultation also anticipate resource implications for mental health services. These costs are, however, a consequence of ensuring compliance with the European Convention.

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

- 8.1. The Statutory Rule complies with section 24 of the Northern Ireland Act 1998.

#### **9. EU Implications**

- 9.1. Not applicable.

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

- 10.1. The Statutory Rule will broadly align the rules governing the Tribunal's powers to amend the time appointed for doing an act under the 1986 Rules with the corresponding rules governing the equivalent tribunals in the other UK jurisdictions.

#### **11. Additional Information**

- 11.1. Not applicable.