

## **EXPLANATORY MEMORANDUM TO**

### **The Review Tribunal (Revocation) Rules (Northern Ireland) 2019**

#### **SR 2019 No. 191**

#### **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 revoke the Review Tribunal (Amendment) Rules (Northern Ireland) 2019 in consequence of the decision of the Department of Health to delay the partial commencement of the Mental Capacity Act (Northern Ireland) 2016 beyond the original commencement date of 1 October 2019.

#### **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 (Northern Ireland) 2016 ("the 2016 Act") was due to be partially commenced by the Department of Health on 1 October 2019, with the aim of providing a statutory framework for authorising deprivations of liberty. The Mental Health Review Tribunal, which currently deals with appeals against detention in psychiatric facilities under the Mental Health (Northern Ireland) Order 1986 ('the 1986 Order'), would then have been renamed the Review Tribunal. The Review Tribunal (Amendment) Rules (Northern Ireland) 2019 amend the 1986 Rules in consequence of the above rights of appeal and detail the procedure on appeal.
- 3.3. In order to amend the Mental Health Review Tribunal (Northern Ireland) Rules 1986 to take account of the changes to the jurisdiction of the tribunal that are provided for by the Mental Capacity Act (Northern Ireland) 2016, the Review Tribunal (Amendment) Rules (Northern Ireland) 2019 were made on 6th September 2019 and were due to come into operation on 1st October 2019. Their purpose was to allow the tribunal to hear appeals relating to the deprivation of liberty of individuals who have been detained

under the 2016 Act and applications to appoint or remove nominated persons.

- 3.4. However, the Department of Health has taken the decision to delay the partial commencement of the 2016 Act to allow Health and Social Care Trusts to make further preparations to manage their responsibilities under the Act. Therefore, the revocation of the Review Tribunal (Amendment) Rules (Northern Ireland) 2019 is now necessary

#### **4. Consultation**

- 4.1. The Department consulted with the Lord Chief Justice who has confirmed that he is content with the revocation of the amending procedural Rules.

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

- 5.1. It is not considered that an Equality Impact Assessment is necessary. The revocation of the amending procedural Rules will have no adverse impact on any groups under section 75 of the Northern Ireland Act 1998.

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

- 6.1. The Department does not consider that a regulatory impact assessment is necessary as the revocation of the amended procedural Rules will not have a direct or indirect impact on businesses.

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

- 7.1. There will be no additional costs arising from the revocation of the amended procedural Rules.

#### **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.

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

- 11.1. Not applicable.