

**EXPLANATORY MEMORANDUM TO**  
**The Mental Capacity (Deprivation of Liberty) (Amendment) (Revocation)**  
**Regulations (Northern Ireland) 2020**

**SR 2020 No. 106**

**1. Introduction**

- 1.1. This Explanatory Memorandum has been prepared by the Department of Health to accompany the Statutory Rule (details above) which is laid before the Northern Ireland Assembly.
- 1.2. The Statutory Rule is made under s14(4), 297(3) and 302(4) of, and paragraphs 5(1)(a) of Schedule 1, paragraphs 1(2) and 3(1)(a) of Schedule 2 and paragraphs 3(1)(a) of Schedule 3 to the Mental Capacity Act (Northern Ireland) 2016 and is subject to the negative resolution procedure.

**2. Purpose**

- 2.1. The purpose of these Regulations is to revoke temporary modifications made to the Mental Capacity (Deprivation of Liberty) (No. 2) Regulations (Northern Ireland) 2020 as a result of reducing pressures due to the Coronavirus.

**3. Background**

- 3.1. The Mental Capacity (Deprivation of Liberty) Regulations (Northern Ireland) (No. 2) 2019 (2019 No. 199) (the principal Regulations) were made on 7 November 2019 and provide technical details in relation to the first phase commencement of the Mental Capacity Act (Northern Ireland) 2016 for the purpose of deprivation of liberty.
- 3.2. The Deprivation of Liberty Safeguards, as contained in the Act, provide a statutory framework for deprivation of liberty (DoL). A DoL is one of the most serious infringements in a person's life, and the right to liberty is enshrined in the European Convention of Human Rights. It is important that the framework works in all situations, even when the situation is an emergency.
- 3.3. The purpose of the statutory rule S.R. 2020 No. 57 - The Mental Capacity (Deprivation of Liberty) (Amendment) Regulations (Northern Ireland) 2020 - was to make temporary modifications to the principal Regulations in the case of a widespread unavailability of the health and social care workforce due to a pandemic emergency. The reporting requirement imposed by these Regulations clarified their infrequent use.
- 3.4. The Regulations are now deemed unnecessary and revocation is required.

**4. Consultation**

- 4.1. The Department has consulted with the HSC Trusts, the HSC Board, PHA, professional bodies and others. The consultation clarified the use of temporary modifications was significantly lower than expected and informed the decision to revoke.

## **5. Equality Impact**

- 5.1. In accordance with guidance produced by the Equality Commission for Northern Ireland and in keeping with Regulation 75 of the Northern Ireland Act 1998, the proposals for the Order have been screened for equality impact and it is concluded that a full Equality Impact Assessment is not required.

## **6. Regulatory Impact**

- 6.1. A Regulatory Impact Assessment (RIA) screening was carried out prior to consultation. The screening concluded that the Statutory Rule will have negligible cost impact on businesses, charities, social economy enterprises or the voluntary sector in Northern Ireland and will not otherwise adversely affect these groups. The Department considers that a full RIA is not required.

## **7. Financial Implications**

- 7.1. There will be no cost impact on businesses, charities, social economy enterprises or the voluntary sector in Northern Ireland.

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

- 8.1. The Statutory Rule is not deemed to breach Section 24 of the Northern Ireland Act 1998 as it is considered to be compatible with any of the Convention rights or community law and does not discriminate against a person on the grounds of religious belief or political opinion.

## **9. EU Implications**

- 9.1. Not applicable.

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

- 10.1. Not applicable.
- 10.2. Other statutory frameworks exist in other jurisdictions. However, these other frameworks are significantly different and the technical details in this instrument are not relevant to other systems.

## **11. Additional Information**

- 11.1. Not applicable.