



Department of
Justice

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**THE REVIEW TRIBUNAL (AMENDMENT)
RULES (NORTHERN IRELAND) 2019**

SUMMARY OF CONSULTATION RESPONSES

1. INTRODUCTION

- 1.1. This paper provides a summary of the responses received by the Department of Justice to the targeted consultation on the Review Tribunal (Amendment) Rules (Northern Ireland) 2019, which was launched on 1st July 2019 and closed on 26th August 2019.
- 1.2. The Mental Capacity Act (NI) 2016 (the 2016 Act) was passed by the Northern Ireland Assembly in May 2016. The 2016 Act will be partially commenced on 1 October 2019 by the Department of Health to provide a statutory framework for authorising deprivations of liberty. This requires the current Mental Health Review Tribunal to be transformed into the Review Tribunal to allow it to take on the additional role of considering appeals in relation to deprivations of liberty and applications relating to the appointment and removal of nominated persons. The Review Tribunal (Amendment) Rules (Northern Ireland) 2019 detail the procedure on appeal.
- 1.3. The existing Mental Health Review Tribunal is set up under the Mental Health (Northern Ireland) Order 1986 (the 1986 Order) and reviews the cases of patients who are compulsorily detained or are subject to guardianship under the Order. The 1986 Order will be retained until the 2016 Act has been fully commenced.

2. RESPONSES TO THE CONSULTATION

- 2.1. Four responses were received, all from organisations. A list of respondents is attached at Annex A. The Department is very grateful to all respondents for their interest in this consultation.
- 2.2. The responses were collated and carefully considered. This paper aims to summarise the key points raised by respondents.

3. KEY FINDINGS

- 3.1. The purpose of this consultation was to seek views on the procedural rules of the Review Tribunal. The consultation did not look at the wider policy issues concerned with the partial implementation of the 2016 Act, which have already been subject to earlier extensive public consultation. Some respondents expressed views relating to these wider policy issues or issues that are not directly related to the procedural rules which were the subject of this consultation exercise. These have not been included in this paper. However, the issues raised will be addressed separately with the relevant organisation.

- 3.2. All four respondents raised the provision in the Rules to allow an application under the Act to be determined by the Tribunal on the papers, with some raising concerns that an oral hearing would provide a more thorough view of all the issues and allow evidence to be fully investigated. One respondent suggested that an oral hearing would be especially necessary in cases involving 16 and 17 year olds. Another suggested the need for clear guidance regarding the determination as to whether a case should be heard on the papers or by oral hearing. As a result of the consultation, paragraph 19A of the amended Rules has been redrafted to provide that an application or referral **may** be determined on the papers but that it **shall** be dealt with by an oral hearing if the tribunal so directs or if a party to the proceedings objects to it being dealt with on the papers. At any time during consideration on the papers, the tribunal may direct that the proceedings are instead dealt with by an oral hearing. Additionally, a party to the proceedings can request an oral hearing at any time. The Department is, therefore, content that the Rules provide sufficient safeguards and flexibility and appropriate discretion to the Tribunal to ensure that each case is considered on its own merits to determine whether an oral hearing is deemed necessary.
- 3.3. One respondent expressed concern that a medical examination will be optional for applications under the Act (medical examinations will continue to be mandatory for applications under the Order). This provision reflects the possibility that medical examinations may not be required for all cases under the Act. The Department notes the concern but is content that the Rules provide the tribunal with sufficient discretion to carry out a medical examination where it is deemed necessary. Two respondents noted the appropriateness of recruiting medical members who are not psychiatrists for hearings under the Act.
- 3.4. One respondent queried the lack of consultation with children and young people. The 2016 Act has already been subject to a joint consultation by the Departments of Health and Justice in 2014. An easy read version of the consultation and a comic explaining the Mental Capacity Bill formed part of that consultation package and face to face consultation exercises with children and young people were carried out during this period by both Departments.
- 3.5. One respondent did not agree with the outcome of the equality screening exercise on the amending Rules and suggested that an Equality Impact Assessment (EQIA) should be carried out by the Department. They raised concerns that the information used in completing the screening exercise resulted in a lack of full consideration of the needs of children and young people. The Department is content that it has fulfilled its obligations under section 75 of the Northern Ireland Act 1998 and has concluded through the screening process that an EQIA is not required. It is considered that no section 75 categories will be adversely impacted by the making of these technical procedural Tribunal Rules,

rather that the proposals will enhance equality of opportunity for all section 75 categories by safeguarding access to justice for all individuals deprived of their liberty by means of a right of appeal to a Review Tribunal.

4. NEXT STEPS

4.1. The Department of Justice is grateful to consultees for their comments and has considered the draft of the Rules in light of these comments. Following amendments to the Rules, they will come into operation on 1st October 2019, to coincide with the partial commencement of the 2016 Act.

Annex A – List of Respondents

Children’s Law Centre

Royal College of Psychiatrists Northern Ireland

The Bar of Northern Ireland

The Law Society of Northern Ireland