STATUTORY RULES OF NORTHERN IRELAND

2019 No. 202

MENTAL HEALTH AND MENTAL CAPACITY

The Review Tribunal (Amendment No. 2) Rules (Northern Ireland) 2019

Made - - - -	*17th October 2019*
Coming into operation	*2nd December 2019*

The Department of Justice makes the following Rules in exercise of the powers conferred by Article 83(1) and (4) of the Mental Health (Northern Ireland) Order 1986(**1**) and now vested in the Department of Justice(**2**) after consultation with the Lord Chief Justice.

Citation and commencement

1. These Rules may be cited as the Review Tribunal (Amendment No. 2) Rules (Northern Ireland) 2019 and shall come into operation on 2nd December 2019.

Interpretation

2. In these Rules-

"the 1986 Rules" means the Mental Health Review Tribunal (Northern Ireland) Rules 1986(**3**).

Amendment of the 1986 Rules

3.—(1) Rule 2 of the 1986 Rules is amended as follows.

(2) Before the definition of "the Board's statement" insert:—

""the Act" means the Mental Capacity Act (Northern Ireland) 2016(**4**);".

(3) In the definition of "the Board's statement" for "responsible Board" substitute "responsible authority or relevant HSC Trust".

(4) After the definition of "decision with recommendations" insert:—

""delivered" includes delivered by electronic mail;".

(**1**) S.I. 1986/595 (N.I. 4), as amended by section 15(2) of and paragraphs 74, 75 and 76 of Schedule 5 to the Constitutional Reform Act 2005 (c.5); S.I. 2010/976; S.R. 2011/44; and section 266 of and Schedule 8 to the Mental Capacity Act (Northern Ireland) 2016 (2016 c.18).
(**2**) S.I. 2010/976, Article 15 and paragraph 39 of Schedule 17.
(**3**) S.R. 1986/193.
(**4**) 2016 c.18.

(5) After the definition of "Department" insert:—

""hearing" includes a hearing conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication;

"HSC Trust" has the meaning assigned to it by section 306(1) of the Act;".

(6) After the definition of the "nearest relative" insert:—

""nominated person" means a person who has for the time being the functions under the Act of the nominated person of an individual who is detained under the Act in circumstances amounting to a deprivation of liberty;".

(7) After the definition of "the Order" insert:—

""other detained person" means an individual who is detained under the Act, but not the Order, in circumstances amounting to a deprivation of liberty;".

(8) For the definition of "party" substitute:—

""party" means any person who, as the case may be: —

(a) has brought an application under the Order or Act;

(b) is a person to whom the application under the Order or Act relates;

(c) has been given notice of the proceedings under these Rules;

(d) has been added as a party by the direction of the tribunal;".

(9) In the definition of "private guardian" omit "in relation to a patient".

(10) In the definition of "proceedings" omit "following an application or reference in relation to a patient".

(11) After the definition of "provisional decision" insert:—

""qualifying person" means a person or authority mentioned in section 80(5) of the Act, apart from an attorney under a lasting power of attorney or a deputy appointed by the court;".

(12) In the definition of "reference":—

(a) in paragraph (b), after "the Order" insert "or section 47(2) or 48(1) of the Act";

(b) after paragraph (c), insert:—

"(ca) in relation to rule 29A, a reference by any of the persons or bodies mentioned in section 47(2) of the Act;"; and

(c) in paragraph (d), after "the Order" insert "or section 48(1) of the Act".

(13) After the definition of "reference" insert:—

""2019 Regulations" means the Mental Capacity (Deprivation of Liberty) (No. 2) Regulations (Northern Ireland) 2019(**5**);

"relevant HSC Trust" means the HSC Trust responsible for the care or treatment of a person who is detained under the Act, but not the Order, in circumstances amounting to a deprivation of liberty;".

(14) For the definition of "responsible Board" substitute:—

""responsible authority" has the meaning assigned to it by Article 2(2) of the Order;".

(15) After the definition of "responsible Board" insert:—

""responsible body" means, as the case may be:—

(a) the responsible authority;

(b) the relevant HSC Trust;

(**5**) S.R. 2019/199.

(c) if a privately funded person is detained under the Act in a private facility, the managing authority of that facility;".

(16) In the definition of "the tribunal" omit "Mental Health".

4.—(1) Rule 3 of the 1986 Rules is amended as follows.

(2) In the heading, after "application" insert "under Article 71 of the Order or section 45 of the Act".

(3) In paragraph (2)(a), after "patient" insert "or other detained person".

(4) In paragraph (2)(b), after "patient's" insert "or other detained person's".

(5) In paragraph (2)(b)(i), after "hospital" insert "or other location" and after "patient" insert "or other detained person".

(6) In paragraph (2)(b)(ii), after "patient's" insert "or other detained person's".

(7) For paragraph (2)(b)(iii) substitute:—

"(iii) in the case of a conditionally discharged patient, patient or other detained person to whom leave of absence from a hospital or other location has been granted, the address of the hospital or other location where the patient or other detained person was last detained or liable to be detained, together with the patient's or other detained person's current address;".

(8) For paragraph (2)(c) substitute:—

"(c) where the application is made by a nearest relative or nominated person the name and address of the applicant and his or her relationship to the patient or other detained person;".

(9) For paragraph (2)(d) substitute:—

"(d) the provision of the Order or Act under which the patient or other detained person is detained or is liable to be detained or the provision of the Order under which the patient is subject to guardianship;".

(10) In paragraph (3), for "responsible Board" substitute "responsible body".

5. After rule 3 of the 1986 Rules insert:—

"Making an application under section 80 of the Act

3A.—(1) An application shall be made to the tribunal in writing, signed by or on behalf of the qualifying person.

(2) The application shall wherever possible include the following information:—

(a) the name of the person to whom the application relates;

(b) the address of the person to whom the application relates;

(c) the name and address of the qualifying person and his or her relationship to the person to whom the application relates;

(d) the basis on which the qualifying person is making the application under section 80 of the Act;

(e) evidence relating to the medical condition of the person to whom the application relates; and

(f) the name and address of any representative authorised in accordance with rule 10, or if none has yet been authorised, whether the qualifying person intends to authorise a representative or wishes to conduct his or her own case.

(3) If any of the information specified in paragraph (2) is not included in the application, it shall insofar as practicable be provided by the relevant HSC Trust, at the request of the tribunal.

(4) On receipt of an application from a qualifying person, the tribunal shall give notice of the proceedings:—

(a) to the person to whom the application relates;

(b) the relevant HSC Trust or the managing authority of any facility in which the applicant or person to whom the application relates is receiving care or treatment;

(c) where the person to whom the application relates is subject to the guardianship of a private guardian, to the guardian;

(d) where the financial affairs of the person to whom the application relates are under the control of the Office of Care and Protection, to the Master (Care and Protection);

(e) where there is a nominated person, to that person; and

(f) to any other person who, in the opinion of the tribunal, should have an opportunity of being heard.

Making an application under section 83(2) of the Act

3B.—(1) An application shall be made to the tribunal in writing, signed by or on behalf of the applicant.

(2) The application shall wherever possible include the following information:—

(a) the name and address of the applicant;

(b) the name and address of the nominated person;

(c) the basis on which the applicant is making the application under section 83(2) of the Act;

(d) evidence relating to the applicant's medical condition; and

(e) the name and address of any representative authorised in accordance with rule 10, or if none has yet been authorised, whether the applicant intends to authorise a representative or wishes to conduct his or her own case.

(3) If any of the information specified in paragraph (2) is not included in the application, it shall insofar as practicable be provided by the relevant HSC Trust, at the request of the tribunal.

(4) On receipt of an application, the tribunal shall give notice of the proceedings:—

(a) to the nominated person;

(b) the relevant HSC Trust or the managing authority of any facility in which the applicant or person to whom the application relates is receiving care or treatment;

(c) where the applicant is subject to the guardianship of a private guardian, to the guardian;

(d) where the applicant's financial affairs are under the control of the Office of Care and Protection, to the Master (Care and Protection); and

(e) to any other person who, in the opinion of the tribunal, should have an opportunity of being heard.".

6.—(1) Rule 4 of the 1986 Rules is amended as follows.

(2) In the heading, after "application" insert "under Article 71 of the Order or section 45 of the Act".

(3) In paragraph (1)(a), for "responsible Board" substitute "responsible body".

(4) In paragraph (1)(b), after "patient" insert "or other detained person".

7.—(1) Rule 5 of the 1986 Rules is amended as follows.

(2) Renumber rule 5 as rule 5(1).

(3) After "hearing of an application" insert "or a determination on the papers under rule 19A".

(4) After "tribunal" in the third place where it occurs insert "as the case may be,".

(5) Before "6" insert "3A(4), 3B(4)," and after "10," insert "11," and after "19," insert "19A(4), 19A(5),".

(6) After rule 5(1) insert:—

"(2) At any time up to the hearing of an application or a determination on the papers under rule 19A by the tribunal, a president of a tribunal sitting alone or any member so directed by the chairman for the purpose may:—

(a) deal with an issue in the proceedings as a preliminary issue, including a case management issue;

(b) decide any question of whether proceedings are to be dealt with by way of an oral hearing or by a determination on the papers;

(c) permit or require a party to amend a document;

(d) require a party to produce a bundle of documents relevant to the proceedings; or

(e) stay or dismiss proceedings:—

(i) because of a change in circumstances since the proceedings were started the tribunal no longer has jurisdiction in relation to the proceedings; or

(ii) it is considered that another court or tribunal is a more appropriate forum for the determination of the case.".

8.—(1) Rule 6 of the 1986 Rules is amended as follows.

(2) In the heading, for "responsible Board" substitute "responsible authority or relevant HSC Trust".

(3) In paragraph (1):—

(a) in both places where it occurs, for "responsible Board" substitute "responsible authority or relevant HSC Trust";

(b) after "notice of application" insert "under rule 4";

(c) after "Part A" insert "or Part A1";

(d) after "Part B" in both places where it occurs insert "or Part B1".

(4) Paragraph (4) is amended as follows.

(a) for "responsible Board's" in both places where it occurs substitute "responsible authority's or relevant HSC Trust's".

(b) for "responsible Board" substitute "responsible authority or relevant HSC Trust".

(c) after "patient" in both places where it occurs insert "or other detained person".

(5) In paragraph (5), after "patient" insert "or other detained person".

9.—(1) Rule 7 of the 1986 Rules is amended as follows.