



Department of
Justice

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Building a fair, just and safer community

**REVIEW OF CERTAIN PROVISIONS IN
THE MENTAL HEALTH REVIEW TRIBUNAL
(NORTHERN IRELAND) 1986**

SUMMARY OF RESPONSES

1. INTRODUCTION

1.1 This paper provides a summary of the responses received by the Department of Justice to the consultation paper 'Review of Certain Provisions in the Mental Health Review Tribunal (Northern Ireland) Rules 1986' which was issued to targeted consultees in October 2015. The paper sought views on certain provisions in the Mental Health Review Tribunal (Northern Ireland) Rules 1986¹ ("the Rules") which relate to the time limits for complying with the Rules.

1.2 The Mental Health Review Tribunal ("the Tribunal") is an independent judicial body, set up under the Mental Health (Northern Ireland) Order 1986² ("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.

1.3 The Rules set out the procedure to be followed by the Tribunal. The Rules are made by the Department of Justice, after consultation with the Lord Chief Justice. They are subject to the Assembly's negative resolution procedure.

2. RESPONSES TO THE CONSULTATION

2.1 11 responses were received to the consultation; all from organisations. These came from a range of stakeholders representing the interests of parties to proceedings before the Tribunal – both applicants and the responsible authority under the Order. A full list of respondents is at Appendix A. The Department is very grateful to all respondents for their interest in this consultation.

¹ S.R. 1996/193.

² S.I. 1996/595 (NI) 4.

2.2 A response questionnaire was provided to consultees. This was completed by 8 respondents. Comments received from the remaining respondents correlated to the questions in the questionnaire.

2.3 All of the responses were collated in a data base and analysed carefully. Some comments required interpretation in order to ensure that as many of the respondents' submissions were considered in the analysis.

2.4 This paper aims to summarise the points raised by respondents. It is not, however, possible to give details of all the specific points made by respondents in this summary.

3. KEY FINDINGS

3.1 All respondents agreed that the Rules should be changed to allow the Tribunal to amend time limits under the Rules in order to ensure compliance with the European Convention on Human Rights.

3.2 However, consultation responses from the perspective of the responsible authority, whilst in favour of amending the Rules, expressed the view that the amendment would have significant resource implications for health and social care trusts with practitioners being diverted from other duties in order to prepare evidence and attend hearings within shorter time frames. These respondents also expressed the view that tighter time limits may mean that evidence may not be as comprehensive as under the current system and that there may be greater use of oral evidence at Tribunal hearings. The number of Tribunal hearings was also expected to increase.

3.3 On the question of whether the discretion should be exercised in urgent or exceptional cases or when in the interests of justice, most respondents either did not express a preference or did not express a view. Two respondents gave reasons for rejecting the urgent or exceptional ground in favour of the interests of justice criterion and one respondent gave reasons for the reverse view.

4. SUMMARY OF RESPONSES

Question 1

Do you think that the Tribunal should be given the discretion to abridge time limits in all proceedings? The Department particularly welcomes information from Tribunal users on the expected practical implications of a decision by the Tribunal to abridge time.

4.1 All respondents agreed that the Tribunal should be given this discretion, welcoming the proposal.

4.2 Respondents shared their expectations of the practical implications of abridgements of time:

- Resource implications for mental health services
 - Health and social care staff being diverted from other duties in order to submit reports and to provide information, especially on services for patients on discharge, within shorter time frames.
 - Health and social care staff being diverted from other duties in order to attend Tribunal hearings at short notice.
- Resource implications for the Tribunal
 - Increase in number of applications to the Tribunal.
 - Increase in number of applications which proceed to hearings as less time for patients' health to improve to enable re-grading, obviating the need for a hearing.
 - Increase in length of Tribunal hearings as greater reliance on oral evidence.
- Different standards of evidence
 - Less comprehensive reports due to clinicians having less time to acquire knowledge of patients and less information being available, particularly on discharge plans.
 - Greater use of oral evidence.

- Potentially detrimental impact on health of certain applicants
 - Earlier hearings may be more distressing for patients when they may be feeling particularly vulnerable or when their condition is most unstable, especially during detention in the initial assessment period.
- Timing
 - If abridged, sufficient time must still be allowed for all parties to prepare for the hearing to ensure its fairness and effectiveness.
- Applications during the assessment period
 - Tribunal to apply different legislative test for detention for assessment and for treatment.

Question 2

Option 1 - Do you think the discretion should be exercised in urgent or exceptional circumstances?

4.3 Most respondents did not distinguish between this ground and the interests of justice ground, discussed below. One respondent, however, was in favour of exercise in urgent or exceptional circumstances only as it was a narrower ground thus providing a greater degree of certainty. Several respondents commented that guidance should be provided on what would constitute an urgent or exceptional case.

Question 3

Option 2 - Do you think the discretion should be exercised when in the interests of justice?

4.4 As mentioned, most respondents did not distinguish between urgent and exceptional and the interests of justice. Two respondents were in favour of exercise in the interests of justice as it is a wider ground, encapsulating urgent and exceptional cases. Again, several respondents commented that guidance should be given on the interpretation of 'in the interests of justice'.

Question 4

Do you think the discretion should be exercised on another ground? If so, what?

4.5 Three responses were received to this question. Two respondents thought that the Tribunal should abridge time in all cases involving children and young people, especially as the requirement to declare detention for treatment for certain purposes may have long-standing adverse implications for children's life opportunities. (The requirement to declare does not arise if a person is only detained for assessment.) One respondent was in favour of imposing fixed time limits for hearings rather than allowing any discretion, suggesting a statutory duty on the Tribunal to hear a review applied for within the 14 day assessment period within a minimum of one working day and/or within the 14 day assessment period. This respondent was also of the view that only allowing the Tribunal the discretion to abridge time in certain circumstances would mean natural justice is denied in those applications where time is not abridged.

Other Comments

4.6 The consultation also sought views on the Department's duties under section 75 of the Northern Ireland Act 1998. Two respondents had concerns about how the Department was fulfilling its section 75 obligation to have due regard to promote equality of opportunity between people of different ages, specifically in relation to children and young people. They criticised the length of the consultation on the proposed rule changes, expressing the view that that it was too short and that circumstances did not exist which would merit the Department departing from the minimum consultation period of twelve weeks referred to in the Department's Equality Scheme (July 2015). The Department, however, is of the view that on-going legal proceedings related to the provisions on time limits in the Rules warrant the shorter consultation period. The Department has liaised separately with these respondents to explain its position.

4.7 These two respondents also criticised the Department's lack of direct engagement with children and young people on the consultation. Again, the Department has liaised separately with these respondents explaining why, given the related litigation, it targeted its consultation to groups representing the interests of children and young people. Should the Department consider making substantial

amendments to the Rules in the future then it would seek views directly from children and young people during a longer consultation period.

5. NEXT STEPS

5.1 Having carefully analysed the responses, the Department proposes to amend the Rules to allow the Tribunal the discretion to abridge time limits in all proceedings when it is in the interests of justice to do so. It is considered that this ground provides the Tribunal with the greatest flexibility to respond to the relevant circumstances of individual cases to ensure that review hearings are effective, fair and heard as soon as reasonably practicable. This will help to ensure compliance with the European Convention on Human Rights. The Tribunal already has the power under the Rules to give such directions as it thinks fit to ensure the speedy and just determination of applications. The Tribunal, therefore, is equipped to direct how applications should proceed to give parties adequate time to prepare their case and effectively participate in the hearing and to enable the Tribunal to adequately and fairly determine applications.

5.2 It is not considered appropriate for the Department to devise guidance on the exercise of this discretion. The Tribunal, which is independent of the Department, should develop its own approach in accordance with the law, taking into account the relevant circumstances of each case.

5.3 As outlined earlier, any amendment to the Rules is made after consultation with the Lord Chief Justice, and is subject to the Assembly's negative resolution procedure. It is intended that the amendment to the Rules should be in place before the end of this Assembly mandate, if Assembly time permits. The practical operation of the amendment will be kept under review and consideration will be given to any further measures which may be required.

Additional copies and alternative formats

5.4 An electronic copy of this document is available to view and download from the consultation section of the Department of Justice website (<http://www.dojni.gov.uk>).

5.5 You may make copies of this document without seeking permission and if you require further printed copies, we would invite you to access the document through our website. If you do not have access to the internet and require us to provide you with further copies, please contact us with your specific request.

5.6 Copies in other formats, including Braille, large print or audio cassette may be made available on request. If it would assist you to access the document in an alternative format, or a language other than English, please let us know and we will do our best to assist you.

Complaints

5.7 Any comments, queries or concerns about the way this exercise has been conducted should be sent to the following address:

Standards Unit
Department of Justice
Block 5
Knockview Buildings
Stormont Estate
Belfast
BT4 3SL

or e-mail to Standardsunit@dojni.x.gsi.gov.uk

Appendix 1 – Respondents to the Consultation

Attorney General's Office

Children's Law Centre

Directorate of Legal Services

Northern Ireland Health & Social Care Board

Southern Health & Social Care Trust

South Eastern Health & Social Care Trust

Law Centre (NI)

Mental Health Review Tribunal for Northern Ireland

Mindwise

Northern Ireland Commissioner for Children and Young People (NICCY)

Royal College of Psychiatrists in Northern Ireland