



Department of
**Health, Social Services
and Public Safety**

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By email:
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27 October 2015

Dear Kathryn

MENTAL CAPACITY BILL

Thank you for your email of 20 October, setting out the Committee's initial position on Part 12 and the related Schedule 8 of the Bill.

DHSSPS considers that its comprehensive response will require Ministerial clearance as it includes substantive policy matters. As such, we will not be able to respond to the letter before close of play on Tuesday 27 October. However, we will do our very best to provide a response as soon as possible.

In relation to the DOJ matters (Access to the Tribunal by under 16s), clause 255 of, and Schedule 8 to, the Bill seeks to make amendments to Part V of the Mental Health (Northern Ireland) Order 1986 ("the 1986 Order"). Part V of 1986 Order contains provisions relating to applications and references to the Review Tribunal and it is intended that it will in future apply only to those aged under 16 who are detained under Part II of the 1986 Order. It should be noted that provisions in Part V that relate to individuals detained under Part III of the 1986 Order (patients concerned in criminal proceedings) will be repealed. These provisions are replaced by Chapter 8 of Part 10 of the Bill and are age neutral in effect.

There are various ways for a person under the age of 16 to access the Tribunal under Part V of the 1986 Order.

First, under Article 71(1) of the 1986 Order, if a person is detained in hospital for examination as a result of any report made under Article 9 of the 1986 Order, the person can apply to the Tribunal within a period of 6 months, beginning with the date of admission to hospital.

Second, also under Article 71(1) of the 1986 Order, if a person is detained in hospital for treatment under Article 12(1) of the 1986 Order, he or she can apply to the Tribunal within a period of 6 months, beginning with the date of admission to hospital.

Third, under Article 71(3) of the 1986 Order, where the authority to detain the person has been renewed under Article 13 of the 1986 Order, the person may apply to the Review Tribunal at any time before the period of the extension expires.

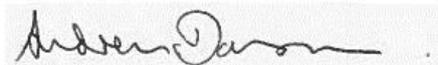
The nearest relative of the person can also apply to the Tribunal on behalf of the detained person by virtue of Article 71(4) of the 1986 Order. If a report is issued under Article 14(4), that is to say a report that prevents the nearest relative from discharging the person, then the nearest relative can apply to the Tribunal within 28 days, beginning with the day on which he or she learns that the order that prevents discharge has been made.

Additionally, if the county court makes an order appointing a nearest relative, then by virtue of Article 71(5) of the 1986 Order, that nearest relative can apply to the Tribunal in respect of a patient within twelve months beginning with the date of the court order and in any subsequent 12 month period during which the court order remains in effect.

Article 72 of the 1986 Order makes provision for the Attorney General, DHSSPS or, on direction of the High Court, the Master of Care and Protection, to refer a person's case to the Tribunal at any time.

Article 73 of the 1986 Order places a duty on HSC Trusts to refer a person's case to the Tribunal if the authority for detention in hospital is renewed under Article 13 of the 1986 Order and a period of a year has passed since the case was last considered by the Tribunal. There is a regulation making power in Article 73(3) which allows DHSSPS to vary the period mentioned above.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Andrew Dawson", is centered on a light grey rectangular background.

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