

**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(a) and now vested in the Department of Justice(b) 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(c).

**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(d);”.

(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;”.

(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;”.

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(a) 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).

(b) S.I. 2010/976, Article 15 and paragraph 39 of Schedule 17.

(c) S.R. 1986/193.

(d) 2016 c.18.

- (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;”;
  - (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(a);
- “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;
  - (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”.

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(a) S.R. 2019/199.

- (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.

(2) For “responsible Board’s” in both places where it occurs substitute “responsible authority’s or relevant HSC Trust’s”.

(3) In paragraph (a), after “patient” insert “or other detained person”.

(4) In paragraph (b), after “patient’s” insert “or other detained person’s”.

(5) In paragraph (c), omit “patient’s” and after “nearest relative” insert “or nominated person”.

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

(2) For paragraph (1) substitute:—

“(1) Unless the application belongs to a class or group of proceedings for which members have already been appointed, the chairman may make arrangements for determining which members of the tribunal are to constitute a panel to determine the application.”.

(3) In paragraph (2)(a), for “responsible Board” substitute “responsible authority or relevant HSC Trust”.

(4) For paragraph (2)(b) substitute:—

“(b) he or she has a personal connection with:—

- (i) the patient;
- (ii) the other detained person;
- (iii) the person who is the subject of an application under section 80 of the Act; or
- (iv) the person who makes an application under section 83(2) of the Act;

or has recently treated or cared for that person in a professional capacity.”.

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

(2) In paragraph (1), after “patient” in both places where it occurs insert “or other detained person”.

(3) In paragraph (2), after “patient” in both places where it occurs insert “or other detained person”.

(4) After paragraph (3)(a) insert:—

“(aa) an application under section 45(1) of the Act in respect of an extension of the period of an authorisation for detention for a period of 6 months, unless the previous application or reference was made to the tribunal more than 3 months after the other detained person’s detention;”.

(5) In paragraph (6), after “patient” in both places where it occurs insert “or other detained person”.

(6) In paragraph (7), after “detention” insert “of a patient or other detained person”.

(7) At the end of paragraph (7)(c), insert “or” and after that paragraph insert:—

“(d) following an authorisation relating to a deprivation of his or her liberty by virtue of Schedule 2 of the Act.”.

**12.**—(1) Rule 10 of the 1986 Rules is amended as follows.

(2) In paragraph (1), after “detained” insert “under the Order or the Act”.

(3) In paragraph (3), for “patient” substitute “person” and after “case” insert “or is unable to appoint or instruct a representative”.

(4) In paragraph (6), for “a patient” substitute “an applicant or person to whom the application relates”.

**13.** Renumber rule 11 of the 1986 Rules as rule 11(1) and at the end insert:—

“(2) At any time before the hearing of an application, the medical member or, where the tribunal includes more than one, at least one of them may examine the other detained person, the person to whom the application under section 80 of the Act relates or the person making an application under section 83(2) of the Act and take such steps as he or she considers necessary to form an opinion of that person’s medical condition; and for this purpose that person may be seen in private and all his or her medical records may be examined by the medical member, who may take such notes and copies as required, for use in connection with the application.”.

**14.**—(1) Rule 12 of the 1986 Rules is amended as follows.

(2) In paragraph (1):—

(a) after “patient” insert “or the person to whom the application relates”; and

(b) for “responsible Board” substitute “responsible body or other respondent”.

(3) In paragraph (2), after “patient” in both places where it occurs insert “or the person to whom the application relates”.

(4) In paragraph (3), after “patient” in both places where it occurs insert “or the person to whom the application relates”.

**15.**—(1) Rule 16 of the 1986 Rules is amended as follows.

(2) In paragraph (1), after “hearing” insert “or a determination on the papers under rule 19A”.

(3) In paragraph (2), after “hearing” in both places where it occurs insert “or a determination on the papers under rule 19A”.

(4) In paragraph (3):—

(a) for “patient (where he is not the applicant)” substitute “person to whom the application relates”;

- (b) for “responsible Board” substitute “responsible body or other respondent”;
- (c) after “hearing” in both places where it occurs insert “or a determination on the papers under rule 19A”; and
- (d) for “patient” substitute “person to whom the application relates”.

(5) In paragraph (4), after “hearing” in the first and third places where it occurs insert “or a determination on the papers under rule 19A” and omit “hearing” in the second place where it occurs.

**16.** In rule 17 of the 1986 Rules omit “in relation to a patient”.

**17.**—(1) Rule 18 of the 1986 Rules is amended as follows.

- (2) In paragraph (1), for “patient” substitute “person”.
- (3) In paragraph (2), for “patient” substitute “person”.

**18.** In rule 19(2) of the 1986 Rules, for “patient” in both places where it occurs substitute “person”.

**19.** After rule 19 of the 1986 Rules insert:—

### “PART IIIA

#### DETERMINATION OF THE APPLICATION OR REFERRAL ON THE PAPERS

**19A.**—(1) An application under section 80 or 83(2) of the Act or an application or a referral made in relation to another detained person’s case may be determined by the tribunal on the papers.

(2) The application or referral shall not be determined by the tribunal on the papers and shall instead be dealt with by an oral hearing if the tribunal so directs or there is an objection to the matter being dealt with on the papers by a party to the proceedings.

(3) The tribunal shall give at least 14 days’ notice of the date and time for the determination on the papers to all the parties.

(4) At any time before the application or referral is determined, the tribunal or any one or more of its members may interview the person to whom the application or referral relates in private, and shall interview him or her if he or she requests, and the interview may, and shall if the person so requests, take place in the absence of any other person.

(5) At any time before the determination by the tribunal on the papers, the medical member or, where the tribunal includes more than one, at least one of them may examine the person to whom the application or referral relates and take such other steps as he or she considers necessary to form an opinion of the person’s medical condition; and for this purpose the person may be seen in private and all his or her medical records may be examined by the medical member, who may take such notes and copies as required, for use in connection with the application.

(6) At any time before the application or referral is determined, the tribunal may call for such further information or reports as it may think desirable, and may give directions as to the manner in which and the persons by whom such material is to be furnished.

(7) At any time during which the tribunal is considering the proceedings on the papers, it may direct that the proceedings are instead to be dealt with by an oral hearing.”.

**20.**—(1) Rule 21 of the 1986 Rules is amended as follows.

(2) In paragraph (1), for “patient” in the first place where it occurs substitute “person to whom the application relates” and for “the interests of the patient”, substitute “his or her interests”.

(3) In paragraph (2), for “patient” substitute “person to whom the application relates”.

(4) In paragraph (4):—

- (a) for “patient” in both places where it occurs substitute “person to whom the application relates”; and
- (b) for “responsible Board” substitute “responsible body or other respondent”.

**21.**—(1) Rule 22 of the 1986 Rules is amended as follows.

- (2) In paragraph (1), for “patient” substitute “person to whom the application relates”.
- (3) In paragraph (2), for “patient” in each place where it occurs substitute “person to whom the application relates”.
- (4) In paragraph (4):—
  - (a) after “rule 21(4)” insert “and rule 22(6)”;
  - (b) for “patient” substitute “person to whom the application relates”; and
  - (c) for “responsible Board” substitute “responsible body or other respondent”.
- (5) In paragraph (5), at the beginning insert “Subject to rule 22(6),” and for “patient” substitute “person to whom the application relates”.
- (6) After paragraph (5) insert:—
  - “(6) If a person to whom the application relates is unable to participate in a hearing the tribunal shall afford an opportunity for his or her representative to be heard.”

**22.**—(1) Rule 23 of the 1986 Rules is amended as follows.

- (2) For paragraph (2), substitute:—
  - “(2) The decision by which the tribunal determines an application shall be recorded in writing by the tribunal, the record shall be signed by the president and shall give the reasons for the decision and, in particular:—
    - (a) where the tribunal relies on any of the matters set out in Article 77(1) or (3) or Article 78(1) or (2) of the Order, it shall state its reasons for being satisfied as to those matters;
    - (b) it shall state whether the tribunal is satisfied that the criteria for authorisation are met in accordance with section 51(2) or (3) of the Act or that the condition is met in accordance with section 52(2) of the Act and its reasons for that decision; and
    - (c) where the tribunal is satisfied as to the matters referred to in section 81(2) or 83(3) and (4) of the Act, it shall state its reasons for being so satisfied.”.

**23.**—(1) Rule 24 of the 1986 Rules is amended as follows.

- (2) In paragraph (1), for “hearing” in the first place where it occurs substitute “conclusion” and after “hearing” in the second place where it occurs insert “or determination on the papers under rule 19A”.
- (3) In paragraph (2), for “patient” in each place where it occurs substitute “person to whom the application relates” and after “hearing” insert “or determination by the tribunal on the papers under rule 19A”.

**24.**—(1) Rule 25 of the 1986 Rules is amended as follows.

- (2) In paragraph (1), after “hearing” insert “or determination on the papers under rule 19A”.
- (3) In paragraph (2):—
  - (a) for “responsible Board” substitute “responsible body”;
  - (b) at the end insert “or the date and time of the determination on the papers under rule 19A”.

**25.** In rule 29 of the 1986 Rules after “reference” in the first place where it occurs insert “under the Order”.

**26.** After rule 29 of the 1986 Rules insert:—



**“References by the Attorney-General, the Department and the Master (Care and Protection)”**

**29A.** The tribunal shall consider a reference under the Act by the Attorney-General, the Department and the Master (Care and Protection) as if there had been an application by the other detained person and the provisions of these Rules shall apply with the following modifications—

- (a) rules 3, 4, 9 and 19 shall not apply;
- (b) the tribunal shall, on receipt of the reference, send notice thereof to the other detained person and:—
  - (i) the relevant HSC Trust; or
  - (ii) if a privately funded person is detained under the Act in a private facility, the managing authority of that facility;
- (c) rules 5, 6 and 7 shall apply as if rule 6(1) referred to the notice of reference;
- (d) rule 24 shall apply as if “party” includes, as appropriate, the Attorney-General, the Department and the Master (Care and Protection);
- (e) any reference to which this rule relates may be withdrawn by the person or body making it at any time before it is determined by the tribunal, and, where a reference is so withdrawn, the tribunal shall inform the other detained person and the other parties that the reference has been withdrawn.”

**27.—**(1) Rule 30 of the 1986 Rules is amended as follows.

(2) In the heading, for “responsible Boards” substitute “responsible authority or relevant HSC Trust”.

(3) For “responsible Board” in the first and second place where it occurs substitute “responsible authority or relevant HSC Trust” and in the last place where it occurs substitute “responsible body”.

(4) After “patient” in both places where it occurs insert “or other detained person”.

(5) For “Board’s” in both places where it occurs substitute “responsible authority’s or relevant HSC Trust’s”.

(6) After “hearing” insert “or determination on the papers under rule 19A”.

**28.—**(1) The Schedule to the 1986 Rules is amended as follows.

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

(3) After Part A of the Schedule insert:—

**“PART A1**

**INFORMATION RELATING TO OTHER DETAINED PERSONS**

- 1.** The full name of the other detained person.
- 2.** The age of the other detained person.
- 3.** The date of admission of the other detained person to the hospital or other premises in which he or she is currently detained or liable to be detained.
- 4.** Details of the authorisation of the detention of the other detained person, including the statutory provision by reference to which the detention was authorised and details of any subsequent renewal or change in the authorisation for detention.

5. An explanation of the reason for the detention, together with copies of forms prescribed by Regulation 37 of and the Schedule to the 2019 Regulations which relate to the detention.

6. The name of the medical practitioner who is or has recently been largely concerned in the treatment or care of the other detained person and the period which the other detained person has spent under his or her care.

7. The dates of all previous tribunal hearings in relation to the other detained person, the decisions reached at such hearings and the reasons given.

8. Details of any proceedings in the High Court in relation to the other detained person's property and affairs and of any order for the appointment of a controller made in respect of the other detained person.

9. The name and address of the other detained person's nominated person.

10. The name and address of any other person who takes a close interest in the other detained person.

11. Details of any change of residence of the other detained person during the previous 2 years, including the duration of such a change and particulars of the arrangements made for his or her care and treatment while living there.”.

(4) After Part B of the Schedule, insert:—

## “PART B1

### REPORTS RELATING TO OTHER DETAINED PERSONS

1. An up-to-date report prepared for the tribunal including:—

- (a) any relevant medical history;
- (b) a full report on the other detained person's health;
- (c) consideration of the other detained person's capacity to make the particular decision which is to be considered during the proceedings;
- (d) a determination of the other detained person's best interests;
- (e) consideration of the views of the nominated person;
- (f) the other detained person's home and family circumstances;
- (g) the outcomes available to the other detained person if he or she was no longer detained, including housing facilities, community support, medical facilities and employment opportunities; and
- (h) the financial circumstances of the other detained person.

2. A report containing any other information or observation on the application which the relevant HSC Trust wishes to make.”.

Sealed with the Official Seal of the Department of Justice on 17th October 2019



*Peter May*  
A senior officer of the Department of Justice

## **EXPLANATORY NOTE**

*(This note is not part of the Order)*

These Rules amend the Mental Health Review Tribunal (Northern Ireland) Rules 1986 (“the 1986 Rules”) to take account of the changes to the jurisdiction of the tribunal that are provided for by the Mental Capacity Act (Northern Ireland) 2016 (“the Act”). The tribunal’s jurisdiction under the Mental Health (Northern Ireland) Order 1986 remains unchanged.

The 1986 Rules are amended to allow the tribunal to hear applications and referrals relating to the deprivation of liberty of individuals who have been detained under the Act (see amendments to rule 3 of the 1986 Rules and rule 29A) and applications to appoint or remove nominated persons under sections 80 and 83 of the Act (see rules 3A and 3B).

Rule 19A makes provision for applications and referrals under the Act to be determined by the tribunal on the papers.

These Rules also update tribunal procedure by facilitating delivery of documents by electronic mail and permitting hearings to be conducted in whole or in part by video link, telephone or other means of instantaneous two-way electronic communication (see rule 3).

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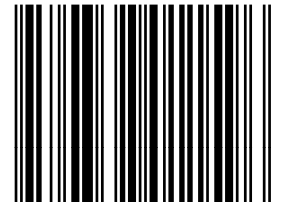
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