



Mental Health Reform

Promoting Improved Mental Health Services

Briefing note on the Mental Health (Amendment) Bill 2018

(Updated March 2021)

This Act was intended to update the Mental Health Act, 2001 in a few key ways. Introduced by Fianna Fáil TDs James Browne and Billy Kelleher on 23rd February 2017, was passed by Dáil Éireann on 14th July 2017, and by Seanad Éireann on 26th June 2018. Though enacted on 2nd July 2018, the Act was never commenced and was not yet in force at the time of writing (March 2021).

The Act contains certain significant changes to strengthen the rights of people when they are in hospital for mental health care.

It also provides support for the right of inpatients to make decisions about their own treatment by linking the Mental Health Act, 2001 with recent law that affirms everyone should be presumed to have capacity to make decisions.¹ This includes providing people with the supports they need to be able to make decisions.

The Act:

- Introduces a definition of a ‘voluntary patient’ to include only people who have capacity to make their own decisions (with support if required) and who do give their consent to admission to hospital.
At the moment, people who do not have the capacity to consent to admission and who do not object to admission are being considered voluntary patients, even though they are not able to consent to admission. They do not receive external review of their detention, nor the oversight protections provided to ‘involuntary patients’.
- Replaces the existing principle of ‘best interests’ under the Mental Health Act, 2001. This principle has been interpreted very paternalistically in the Courts and has sustained a culture where, at times, the views of the doctor have been given priority over the views of the service user. The Act replaces ‘best interests’ with the guiding principles of the Assisted Decision-Making (Capacity) Act 2015 (for example, respecting the will and preferences of the person). It empowers people to be the decision-makers over their own care.

The Act also introduces the other human rights principles of the right to the ‘highest attainable standard of mental health’ and the right to ‘least restrictive care’. The Irish Government is already signed up to these human rights standards.

- Retains the principle of ‘best interests’ in decisions made under the Act (about admission and treatment) for children and young people under the age of 18 years. This is important

¹ Assisted Decision-Making (Capacity) Act 2015.

because it is still appropriate for decisions about children's and adolescent's mental health care to be made with 'best interests' in mind, in keeping with international human rights law.² The 'best interests' principle should take account of the views of the child or adolescent, as well as their will and preferences.

- Affirms that voluntary patients cannot be given treatment without their consent. Affirms that involuntary patients cannot be given treatment without their consent except in certain circumstances. Currently, it is not clear under the Mental Health Act, 2001 that consent to treatment is required from both voluntary and involuntary patients.

In addition to making some valuable improvements, the Bill is also important because it provides an opportunity to highlight the need to amend the Mental Health Act, 2001 in full and the seriousness of continued human rights violations of people who are being treated in hospital for a mental health difficulty. To date, only two of the 165 recommendations of the Expert Group report on review of the Mental Health Act, 2001 have been implemented. Furthermore, the Department has repeatedly failed to meet its own timetable for updating the 2001 Act.

Commencing this legislation would be a positive step towards achieving full amendment of the Mental Health Act, 2001 in line with the recommendations of the Expert Group and Mental Health Reform's own recommendations. It could contribute, in some part, to the Irish Government's fulfillment of international human rights law, including under the European Convention on Human Rights and the UN Convention on the Rights of Persons with Disabilities (UNCRPD). Currently, the Mental Health Act, 2001 is clearly not compliant with either Convention.

For further information on the Mental Health (Amendment) Act 2018 please contact Yvonne Murphy, Policy and Research Officer at ymurphy@mentalhealthreform.ie or at 089 2549725.

Links to resources

- The Mental Health (Amendment) 2017 Bill can be accessed at this link – <http://www.irishstatutebook.ie/eli/2018/act/10/enacted/en/html>
- Mental Health Reform's analysis of the Report of the Expert Group on the Review of the Mental Health Act, 2001 can be accessed at this link - https://www.mentalhealthreform.ie/wp-content/uploads/2015/12/Mental-Health-Act-Review-Analysis_23.11.15.pdf

² UN Convention on the Rights of the Child.