

## Introduction

The Mental Health Act 2001 ('the Act') is about inpatient mental health care in Ireland. It includes information on:

- Involuntary detention
- The rights of service users who are involuntarily detained
- The Inspector of Mental Health Services
- Setting up the Mental Health Commission. This body regulates the services and tribunals that service users have when they are involuntarily detained

### 1. Review of the Act

A review by an Expert Group began in 2012, 6 years after all sections of the Act had been brought into force. This report was then published in 2015. It was made up of information from the public, information from experts in the group, and information from stakeholders.

The report had 165 recommendations. The recommendations cover:

- Guiding principles for children and adults
- Updated rules on involuntary detention
- Updated definitions of mental illness
- Informed consent for voluntary and involuntary treatment
- Mental healthcare wishes of service users that are made in advance, in case the person is not able to make that decision at the relevant time (Advance Healthcare Directive)
- A greater role for Authorised Officers
- A legal requirement for individual care/recovery plans
- Improved safeguards for people (including on seclusion and being restrained)
- Shorter times for review of detention orders by a tribunal
- Mental Health Commission's role will regulate 24-hour community residences
- Young people aged 16 and 17 should have to consent to or refuse admission and treatment.

In July 2015, government asked the Department of Health ('the Department') to draft a new Mental Health Act based on the recommendations in the report. You can read the full Expert Group Report [here](#).

## 2. New Mental Health Act

In July 2019, the Department sent a draft of the new act to the Mental Health Commission. This draft is known as 'The General Scheme'. The Mental Health Commission responded in detail in March 2020. The General Scheme was then updated and sent to the HSE for their advice in August 2020. Then, the HSE made its submission in February 2021. Finally, a public consultation was called on 1<sup>st</sup> March, 2021. This is where you come in -to have your voice heard.

## 3. How to make your submission

The review from the HSE has 15 headings. Your submission can be about any of these headings. Your submission can also be about any of the Expert Group recommendations mentioned above. The full report again is [here](#). It can also be about other legal matters relating to mental health in Ireland.

The Department has requested that submissions are limited to 300 words per heading.

You can submit by email or post.

- a) If sending by email, it's important to make sure that your submission is not written in the body of the email. Attach a word document or.pdf to the email. The subject line should be 'Mental Health Act review submission'. Send your email to [mentalhealthactreview@health.gov.ie](mailto:mentalhealthactreview@health.gov.ie)
- b) To post your submission, send your letter to Mental Health Unit, 50 – 58, Block 1, Miesian Plaza, Baggot Street Lower, Dublin 2, D02 XW14

## 4. Deadline

The deadline for submissions is [5pm Friday, 09 April 2021](#).

## 5. What will be done with your submission

The Department will review every submission. Next, it will publish a report on its website outlining the main themes raised, and publish submissions along with this. Your submissions will help inform the final version of The General Scheme.

## 6. Next Steps for the Bill

The Department expects to submit the General Scheme to Cabinet for approval by June 2021. Once approved by Cabinet, the General Scheme will be published. Once published, the Department work with the Attorney General's Office to introduce the bill to the Oireachtas.

## 7. Privacy Information

Any personal information that you send in your submission to the Department, will be treated with the highest standards of security and confidentiality. This is strictly in accordance with the General Data Protection Regulation 2016/67 and the Data Protection Act 2018. However, please be aware that:

- The Department expects to publish all submissions, as well as a report. This report will outline key themes that came from the public consultation. The Department may include a list of the names people who made submissions. Any personal or identifying information will be taken out before it is published.
- Information received by the Department is subject to the Freedom of Information Act 2014. This means that your submission may be considered for release under that Act. The Department will consult with you if this happens. Any personal information will be taken out before this is release.
- The information that is given in submissions may be shared with some Government Departments and State organisations. Any personal and identifying information will be taken out before it is shared.
- Giving a submission to the Department means that you consent to your data being processed by the Department. Your data will only be used to do with the review of the Mental Health Act. It will not be used for any other purpose. If, at any time, you wish to withdraw your submission please contact [mentalhealthactreview@health.gov.ie](mailto:mentalhealthactreview@health.gov.ie)
- The Department's Privacy Policy can be viewed [here](#).
- All submissions will be kept until the review process is completed, and any recommendations are carried out.

## 8. Available supports

For face-to-face support contact your GP. For urgent help call 999 or 112 and ask for the ambulance service if you or someone you know needs emergency help. Other supports:

- YourMentalHealth information line – Freephone: 1800 111 888
- Samaritans – Freephone: 116 123
- Pieta House – Freephone: 1800 247 247
- Crisis textline – 50808

## The Department's Explanation of the Headings

The General Scheme has not yet been approved by Cabinet, so it will not be published before this public consultation is over. To provide some guidance for your submission, the Department has given headings for the review of the Mental Health Act. They are also considering more changes that are not under these headings.

Your submission can be about any of these headings. Your submission can also be about any of the Expert Group recommendations mentioned above. The full report again is [here](#). The Department has requested that submissions are limited to 300 words per heading.

### 1. Definitions

**The Department** plans to include revised definitions in the General Scheme.

**The Expert Group** recommended changes to definitions contained in the Act. These were;

- replacing the terms 'mental disorder' with a definition of 'mental illness'
- removing terms 'significant intellectual disability' and 'severe dementia'
- including an updated definition of treatment that includes secondary treatment and tests
- including a new definition for voluntary patient
- including a new category of patient

### 2. Guiding principles

**The Department** is considering new guiding principles for adults and for children. This comes from the Expert Group report, and principles of the [Assisted Decision-Making \(Capacity\) Act 2015](#) & [Mental Health \(Amendment\) Act 2018](#).

**The Expert Group** recommended that a set of guiding principles be included in the new Act.

### 3. Criteria for detention

**The Department** is considering where it stands on criteria for involuntary detention.

**The Expert Group** recommended:

- changes should be made to stop involuntary detention that is only based on:
  - a person's mental health difficulty
  - the person's views or behaviour that is different from social norms, or
  - the person being at risk of causing immediate and serious harm to themselves or others
- reception, detention and treatment should benefit the person and their condition
- that people with intellectual disabilities are excluded from involuntary detention based on their disability alone.

### 4. Authorised Officers

**The Department** is considering the role of Authorised Officers based on the Expert Group report.

**The Expert Group** recommended an expanded role for Authorised Officers,

- when deciding whether to make an application for involuntary detention
- to carry out an initial assessment as soon as possible when a person has been taken into Garda custody under section 12 of the Mental Health Act

**Note:** The [Programme for Government](#) includes a commitment to increase numbers of Authorised Officers.

### 5. Interdisciplinary approach to care and treatment

The Department is considering a more interdisciplinary approach to care and treatment. This is in line with the recommendations of the Expert Group. This includes that,

- before a service user is admitted or has a renewal order, a consultant psychiatrist must consult with a mental health professional from a different discipline
- the consultant psychiatrist must consult with another mental health professional from a different discipline about a service user's treatment plan.

## 6. Changing timeframes

**The Department** is considering revising timeframes in the Act. This is part of efforts to enhance protections for the service user.

**The Expert Group** recommended shorter timeframes in the involuntarily detention process, including

- reducing the length of renewal orders
- shortening tribunal hearings from 21 days to 14 days after an admission
- limiting Section 26 leave to 14 days (i.e. where the consultant psychiatrist can allow the person being involuntarily detained to leave the centre, for a set period of time)
- for a service user who is involuntarily detained and lacks decision-making capacity, they recommend shortening the length of time that medicine is administered from 3 months to 21 days.

**Note:** The issue of renewal orders was addressed in the Mental Health (Renewal Orders) Act 2018.

## 7. Enhancing safeguards for individuals

**The Department** recognises the importance of safeguards for service users, especially for those who are involuntarily detained. The Department is considering changes to these safeguards. This is in line with the Expert Group recommendations and consultation with key stakeholders.

**The Expert Group** recommended changes to enhance and improve safeguards for individuals. This included updating the provisions on seclusion and restraint, including

- emergency treatment for service users before their admission
- repeal of Section 73. Section 73 requires permission from the High Court to begin civil proceedings under the Mental Health Act.

## 8. Mental health tribunals

**The Department** has considered the recommendations of the Expert Group and has consulted with the Mental Health Commission and the HSE on this matter.

**The Expert Group** recommended changes to the running of mental health tribunals, including

- renaming them as Review Boards



- membership for tribunal members to be extended from 3 to 5 years
- shortening the timeframe for holding a tribunal from 21 to 14 days
- a psychosocial report must be carried out and given to the tribunal by a member of the care team
- the consultant psychiatrist responsible for the care and treatment of the service user must attend the tribunal.

## 9. Change of status from voluntary to involuntary

**The Department** has reflected on these recommendations and has consulted with the Mental Health Commission and the HSE on changing these.

The Expert Group recommended that

- independent consultant psychiatrists and Authorised Officers have a role in the change of status process
- the person being detained should not have to request to leave the centre before a change of status process can begin
- the process for involuntary admission should be the same as the procedures in place under Sections 9, 10, 11 and 14. These relate to,
  - who can make an application for involuntary detention
  - who can recommend involuntary detention
  - who has access to previous applications for involuntary detention, and
  - the making of an admission order by a consultant psychiatrist.

## 10. Capacity

**The Department** has reviewed the Group's recommendations on capacity. It is guided by principles of the Assisted Decision-Making (Capacity) Act 2015. It has also taken into account the presumption of capacity set out in the 2015 Act.

**The Expert Group** issued its report before the Assisted Decision-Making (Capacity) Act 2015 was passed by the Dáil and Seanad, but recommended that

- the issue of capacity should be revisited after the 2015 Act was passed
- capacity assessments are carried out when a mental health care worker believes the service user may lack capacity



- the Mental Health Commission should make rules on how capacity assessments will be carried out
- the process of involuntary detention should include information about capacity
- information about capacity should be included in sections on consent to treatment.

## 11. Consent to treatment

**The Department** is considering its position on capacity and consent to treatment for service users receiving treatment under the Mental Health Act 2001. This is based on the Expert Group recommendations and on the Assisted Decision-Making (Capacity) Act 2015.

**The Expert Group** recommended changes to consent to treatment, including that

- voluntary patients have the right to refuse treatment
- involuntary patients who have capacity should be able to refuse treatment
- decision-making supports should be available for all those who need them
- treatment refusal by the person can be overridden in certain scenarios. For example where the consultant psychiatrist believes treatment is needed immediately
  - for the protection of life of the person
  - for the protection from a serious threat to the health of the person, or
  - for the protection of other people
- Advance Healthcare Directives should be given to people using mental health services on an equal standing to physical health. These are defined in the Assisted Decision-Making (Capacity) Act 2015.
- consent should be given by the service user before electro-convulsive therapy
- many changes should be made to giving medicine, including
  - the length of time of treatment without consent should be shortened from 3 months to 21 days

**Note: The Mental Health (Amendment) Act 2015 has addressed some of the Expert Group's recommendations. This included removing the word 'unwilling' from sections 59 and 60.**

**This means that service users with capacity cannot**

- **be given ECT treatment,**
- **or have medicines administered to them after an initial period of 3 months**

**without giving their consent.**

**Other recommendations have since been overtaken by the Assisted Decision-Making (Capacity) Act 2015.**



## 12. Information and individual care/recovery planning

**The Department** is considering the Expert Group recommendations about strengthening safeguards for people.

**The Expert Group** recommended that

- Recovery plans should be regularly reviewed, based on service user needs
- Service users must have the chance to sign off on their recovery, and this must be recorded
- Evaluation and feedback should be a part of the review of a recovery plan. There should be evidence of this review
- The legal wording should be changed so that the multi- disciplinary team has responsibility for the content of recovery plans, rather than the proprietor
- Care plans should be renamed as recovery plans and should refer to the person rather than the patient
- Discharge plans must form part of a person's individual recovery plan.

## 13. Inspection, regulation and registration of mental health services

**The Department** is considering these recommendations in the context of the review of the Act.

**The Expert Group** recommended that the Mental Health Commission's inspection powers should be extended. They should include,

- inspections of 24-hour mental health community residences and community mental health services
- inspections of approved centres should be changed to a three-year cycle
- the Commission should be granted the power to request a "statutory regulation report" from an approved centre before attaching a condition to registration

## 14. Provisions related to children

**The Department** is considering the above recommendations, and others included in the Expert Group report. The Department also consulted with the Commission, the HSE, the Ombudsman for Children and the College of Psychiatrists of Ireland.

**The Expert Group** set out many recommendations about the care and treatment of children. Among these recommendations, the following were included:

- Information related to children should be included in a standalone Part of the Act,
- A child should be defined as a person under 18 years of age,
- There should be a set of guiding principles for children (as noted in 4.2 above),
- Children aged 16 and 17 years should be allowed to refuse admission or treatment,
- Information about voluntary and involuntary detention should be revised,
- Advocacy services should be available to children and their families.

## **15. Provisions related to the Mental Health Commission**

**The Department has consulted with the Mental Health Commission. The Department will seek to respect the Expert Group recommendations and other good governance arrangements.**

**The Expert Group** recommended changes to the Mental Health Commission. Many of these recommendations are about the Commission board, and governance matters. The Expert Group recommended that responsibility for setting standards in mental health facilities should be set out on a statutory basis.