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Psychiatric Bulletin (2007), **31**, 21–24

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The Irish Mental Health Act 2001

The Mental Health Act 2001 was formally enacted by the Irish Houses of Oireachtas (parliament) on 8 July 2001 and implemented in full on 1 November 2006. The Mental Health Act 2001 replaces and updates a number of older pieces of legislation, including the Mental Treatment Act 1945. The purpose of this paper is to outline the central provisions of the Mental Health Act 2001 as they relate to psychiatric practice in Ireland. This paper does not aim to examine the issues surrounding delays in the implementation of the Act; these issues are well explored elsewhere (Daly, 2005; Ganter, 2005; Lawlor, 2005; Owens, 2005).

The Mental Health Act 2001 is chiefly concerned with two aspects of psychiatric services in Ireland: (a) involuntary detention of persons with mental disorder in approved psychiatric centres; (b) mechanisms for assuring standards of mental healthcare. The Act is divided into six parts:

- Preliminary and general
- Involuntary admission of persons to approved centres
- Independent review of detention
- Consent to treatment
- Approved centres
- Miscellaneous.

Preliminary and general

The preliminary section of the Mental Health Act 2001 is primarily concerned with definitions. The term 'mental disorder' is used throughout the Act and includes 'mental illness, severe dementia or significant intellectual disability'. Mental illness is defined as 'a state of mind of a person which affects the person's thinking, perceiving, emotion or judgment and which seriously impairs the mental function of the person to the extent that he or she requires care or medical treatment in his or her own interest or in the interest of other persons'. Severe dementia is defined as 'a deterioration of the brain of a person which significantly impairs the intellectual function of the person thereby affecting thought, comprehension and memory and which includes severe psychiatric or behavioural symptoms such as physical

aggression'. Significant intellectual disability is defined as 'a state of arrested or incomplete development of mind of a person which includes significant impairment of intelligence and social functioning and abnormally aggressive or seriously irresponsible conduct on the part of the person'.

Mental health services are defined as 'services which provide care and treatment to persons suffering from a mental illness or a mental disorder under the clinical direction of a consultant psychiatrist'. Treatment is defined as 'the administration of physical, psychological and other remedies relating to the care and rehabilitation of a patient under medical supervision, intended for the purposes of ameliorating a mental disorder'.

For the purposes of the Act, a child is defined as 'a person under the age of 18 years other than a person who is or has been married'. A relative is 'a parent, grandparent, brother, sister, uncle, aunt, niece, nephew or child of the person or of the spouse of the person whether of the whole blood, of the half blood or by affinity'. A spouse is a 'husband or wife or a man or a woman who is cohabitating with a person of the opposite sex for a continuous period of not less than 3 years but is not married to that person'; same-gender cohabitants are, therefore, excluded from the definition of spouse. For the purposes of making an application for involuntary admission, the term spouse 'does not include a spouse of a person who is living separately and apart from the person or in respect of whom an application or order has been made under the Domestic Violence Act 1996'.

Involuntary admission of persons to approved centres

A person can be involuntarily admitted to an 'approved centre' on the grounds that the person is suffering from a 'mental disorder'; a person cannot be so admitted solely on the grounds that the person: '(a) is suffering from a personality disorder, (b) is socially deviant, or (c) is addicted to drugs or intoxicants'. The Act does not



provide a definition of the term 'socially deviant'. An application for involuntary admission of a person can be made by a spouse, relative, 'authorised officer' (which is defined in the Act) or member of the Garda Síochána (Irish police force); in circumstances where no one in these categories can be found to make an application, an application can be made by anyone else who fulfils certain conditions outlined in section 9, subsection 2 of the Act. The applicant must have observed the patient within 48 h of making the application.

The next step involves examination of the patient by a registered medical practitioner (e.g. a general practitioner). This examination 'shall be carried out within 24 hours of the receipt of the application and the registered medical practitioner concerned shall inform the person of the purpose of the examination unless in his or her view the provision of such information might be prejudicial to the person's mental health, well-being or emotional condition'. If the general practitioner makes a 'recommendation' for involuntary admission, a copy of the recommendation 'shall be sent by the registered medical practitioner concerned to the clinical director of the approved centre concerned and a copy of the recommendation shall be given to the applicant concerned'. Such a recommendation 'shall remain in force for a period of 7 days'.

Following the 'recommendation' for involuntary admission, 'the applicant concerned shall arrange for the removal of the person to the approved centre'. If the applicant is unable to do so, 'the clinical director of the approved centre . . . or a consultant psychiatrist acting on his or her behalf shall, at the request of the registered medical practitioner who made the recommendation, arrange for the removal of the person to the approved centre by members of staff of the approved centre'. If 'there is a serious likelihood of the person concerned causing immediate and serious harm to himself or herself or to other persons, the clinical director or a consultant psychiatrist acting on his or her behalf may, if necessary, request the Garda Síochána to assist the members of the staff of the approved centre in the removal by the staff of the person to that centre and the Garda Síochána shall comply with any such request'. Under such circumstance, the Garda Síochána can, if necessary, enter the person's dwelling by force and ensure the removal of the person to the approved centre.

After receiving a recommendation for involuntary admission, a consultant psychiatrist on the staff of the approved centre 'shall, as soon as may be, carry out an examination of the person' and shall either (a) complete an 'admission order' if 'he or she is satisfied that the person is suffering from a mental disorder' or (b) refuse to make such an order. The patient cannot be detained for more than 24 h without such an examination taking place and such an order being made or refused. If an admission order is made it authorises 'the reception, detention and treatment of the patient concerned and shall remain in force for a period of 21 days'; this period may be extended by a 'renewal order' for a period of up to 3 months; this may be further extended by a period of

up to 6 months; and this may be further extended by a period of up to 12 months.

Following the completion of an involuntary admission order, the consultant psychiatrist must inform the Mental Health Commission of the order and the Mental Health Commission will then (a) refer the matter to a mental health tribunal; (b) assign a legal representative to the patient, 'unless he or she proposes to engage one'; and (c) direct that an independent psychiatrist examine the patient, interview the patient's consultant psychiatrist and review the patient's records. Within 21 days of an involuntary admission, a mental health tribunal shall review the detention of the patient and, 'if satisfied that the patient is suffering from a mental disorder' and that appropriate procedure has been followed, shall affirm the order; if the tribunal is not so satisfied, the tribunal shall 'revoke the order and direct that the patient be discharged from the approved centre concerned'.

Part 2 of the Mental Health Act 2001 also goes on to address a range of other areas, including provisions for appeal to the Circuit Court, applications for transfer of detained patients between approved centres, and powers to prevent voluntary patients from leaving approved centres for up to 24 h, to allow either their treating consultant psychiatrist to discharge them or the opinion of another consultant psychiatrist to be sought.

Independent review of detention

The Mental Health Act 2001 makes provision for the appointment of a 'Mental Health Commission' the principal functions of which are 'to promote, encourage and foster the establishment and maintenance of high standards and good practices in the delivery of mental health services and to take all reasonable steps to protect the interests of persons detained in approved centres under this Act'. More specifically, the Mental Health Commission will:

- appoint persons to serve on mental health tribunals
- establish a panel of psychiatrists to perform independent medical examinations
- assist in organising free legal aid for patients
- provide appropriate advice to the Minister for Health and Children
- 'prepare and review periodically, after consultation with such bodies as it considers appropriate, a code or codes of practice for the guidance of persons working in the mental health services'.

The Commission shall comprise 13 members, including:

- one barrister or solicitor (of not less than 10 years' experience)
- three registered medical practitioners (including two consultant psychiatrists)
- two representatives of registered psychiatric nurses
- one representative of social workers
- one representative of psychologists
- one person representative of the general public



- three persons representing relevant voluntary groups (including two who have, or have had mental illness)
- one person to represent the chief executives of the health boards (which administer the delivery of healthcare in Ireland).

No fewer than four members shall be women; no fewer than four members shall be men; and members will hold office for no more than 5 years. The Freedom of Information Act 1997 applies to the Commission.

One of the central functions of the Commission is to appoint mental health tribunals 'to determine such matter or matters as may be referred to it by the Commission'. One of the chief functions of tribunals will be to review the detentions of patients involuntarily admitted to approved centres under the Act. Each tribunal shall comprise three members, including one consultant psychiatrist, one barrister or solicitor (of not less than 7 years' experience) and one other person. Decisions will be made by majority voting. A tribunal can direct a patient's treating psychiatrist that the patient must appear at a tribunal at a given place and time; direct any persons to appear at a tribunal to give evidence; direct any person to produce any documents relevant to the work of the tribunal; and 'give any other directions for the purpose of the proceedings concerned that appear to the tribunal to be reasonable and just'.

The Mental Health Commission shall direct that an independent psychiatrist examine each patient detained under the Act, interview the patient's consultant psychiatrist and review the patient's records. Then, within 21 days of the detention, a mental health tribunal shall review the detention of the patient and, 'if satisfied that the patient is suffering from a mental disorder' and that appropriate procedure has been followed, shall affirm the order; if the tribunal is not so satisfied, the tribunal shall 'revoke the order and direct that the patient be discharged from the approved centre concerned'.

The Mental Health Act 2001 also makes provision for the establishment of an Inspector of Mental Health Services, which will replace the existing Inspector of Mental Hospitals. The functions of the Inspector of Mental Health Services are 'to visit and inspect every approved centre at least once in each year . . . and to visit and inspect any other premises where mental health services are being provided as he or she thinks appropriate'. Each year, the inspector shall 'carry out a review of mental health services in the State' and 'furnish a report in writing to the Commission'.

Consent to treatment

The Mental Health Act 2001 provides detailed guidelines in relation to 'consent obtained freely without threats or inducements' and specifies that 'the consent of a patient shall be required for treatment except where, in the opinion of the consultant psychiatrist responsible for the care and treatment of the patient, the treatment is necessary to safeguard the life of the patient, to restore

his or her health, to alleviate his or her condition, or to relieve his or her suffering, and by reason of his or her mental disorder the patient concerned is incapable of giving such consent'.

Psychosurgery can only be carried out if the patient consents in writing and the surgery is authorised by a mental health tribunal. Electroconvulsive therapy shall be administered only if either: (a) the patient consents in writing, or (b) if the patient is 'unable or unwilling' to provide consent, the treatment is approved by the treating consultant psychiatrist and one other psychiatrist. Similarly, if 'medicine has been administered to a patient for the purposes of ameliorating his or her mental disorder for a continuous period of 3 months, the administration of that medication shall not be continued' unless either: (a) the patient consents in writing, or (b) if the patient is 'unable or unwilling' to provide consent, the treatment is approved by the treating consultant psychiatrist and one other psychiatrist.

Approved centres

The Mental Health Act 2001 provides detailed guidelines in relation to 'approved centres' which are hospitals or other in-patient facilities 'for the care and treatment of persons suffering from mental illness or mental disorder'. The Mental Health Commission will maintain a register of approved centres and the period of registration will be 3 years. The Commission may attach conditions to the registration of specific centres, including the performance of maintenance or refurbishment, and the specification of minimum staffing numbers and/or maximum resident numbers.

Miscellaneous

The final part of the Mental Health Act 2001 addresses a range of remaining miscellaneous issues, including the use of bodily restraint and seclusion, participation in clinical trials, the appointment of clinical directors, provisions for the transition to the new legislation, and the instigation of civil proceedings.

In relation to seclusion and bodily restraint, the Act specifies that 'a person shall not place a patient in seclusion or apply mechanical means of bodily restraint to the patient unless such seclusion or restraint is determined, in accordance with the rules made under subsection (2), to be necessary for the purposes of treatment or to prevent the patient from injuring himself or herself or others, and unless the seclusion or restraint complies with such rules'.

Regarding clinical trials, the Act states that 'notwithstanding section 9 (7) of the Control of Clinical Trials Act 1987, a person suffering from a mental disorder who has been admitted to an approved centre under this Act shall not be a participant in a clinical trial'. It is understood that, in this section of the Act, the term 'patient' refers to patients admitted on an involuntary basis under the Act.

Regarding the instigation of civil proceedings, the Act states that 'no civil proceedings shall be instituted in



respect of an act purporting to have been done in pursuance of this Act save by leave of the High Court and such leave shall not be refused unless the High Court is satisfied: (a) that the proceedings are frivolous or vexatious, or (b) that there are no reasonable grounds for contending that the person against whom the proceedings are brought acted in bad faith or without reasonable care'.

The Act also contains several sections relating specifically to children, where a 'child' is defined as 'a person under the age of 18 years other than a person who is or has been married'. A more detailed consideration of the position of children under this Act is beyond the scope of the present paper; the comments of the Irish College of Psychiatrists in relation to children, and other aspects of the Mental Health Act 2001, are available from their website (<http://www.irishpsychiatry.com/comments.html>).

Discussion

The Mental Health Act 2001 has stimulated responses from a range of stakeholders in Ireland's mental health services. In general, there is broad acceptance of the need to update existing legislation in order to provide better protection of patients' rights and to increase adherence to the United Nations' Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (United Nations, 1991).

However, although the idea of reforming mental health legislation has received a general welcome, concern has been expressed about several aspects of the Act, including:

- the resource implications for Irish mental health services (Ganter, 2005)
- the ongoing difficulties of providing escorts for patients (Daly, 2005)
- the timing of mental health tribunals, which may not occur until just before the patient is discharged (O'Neill, 2005)
- the need to ensure that tribunals are conducted in a fashion that takes account of the therapeutic implications of proceedings (Whelan, 2004)
- the fact that the definition of mental disorder in the Mental Health Act 2001 differs from that in the Criminal Law (Insanity) Bill 2002 (O'Neill, 2005).

A detailed comparison of Ireland's Mental Health Act 2001 with similar pieces of legislation elsewhere is

beyond the scope of the present paper. However, it is interesting to note that Ireland's new legislation does not address in detail the process of voluntary admission to approved psychiatric centres, does not clearly establish a minimum standard of care to which patients are entitled (Kelly, 2002; O'Shea, 2002), does not contain provision for involuntary treatment as an out-patient, and does not allow for shorter periods of detention explicitly for assessment purposes. In addition, unlike Scotland's Mental Health (Care and Treatment) (Scotland) Act 2003 (Thomson, 2005), Ireland's Act does not include personality disorder as a form of mental disorder (for the purposes of involuntary admission).

Overall, although the Mental Health Act 2001 undoubtedly represents an important and critical advance for the rights of detained patients, the resource implications of full implementation are likely to represent a substantial challenge to Irish psychiatric services for many years to come.

Declaration of interest

None.

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