



Submission to the Department of Health on draft legislation to update the Mental Health Act, 2001

April 2021



Executive Summary

St Patrick's Mental Health Services (SPMHS) is Ireland's largest independent, not-for-profit mental health service provider. St Patrick's Mental Health Services' vision is a society where all citizens are empowered to live mentally healthy lives. SPMHS works to provide the highest quality mental healthcare, to promote mental wellbeing and mental health awareness, and to advocate for the rights of those experiencing mental health difficulties. SPMHS achieves this through a human rights-based approach, through the enhancement of evidence-based knowledge, and by striving to be at the cutting edge of new initiatives and advances in the field. SPMHS is committed to furthering the development of the competencies of those choosing to work in mental health and of the organisations providing mental health care services, and to enhancing partnership with service users. Our strategic plan for 2018-2022 – ['Changing Minds. Changing Lives'](#), is firmly rooted in these principles and commitments.

While SPMHS supports the overall recommendations of the 2015 Expert Group on the Review of the Mental Health Act 2001¹, this submission highlights key areas within the legislation that SPMHS would strongly advocate for reform – namely:

- **Inclusion of guiding principles (for children)**
- **Information and individual care/ recovery planning**
- **Advocacy and information**
- **Provisions related to children (Capacity to consent for 16 and 17 year olds)**
- **Capacity and advance healthcare directives**



Introduction

The publication of the new national mental health policy *Sharing the Vision* in 2020, and the emphasis on a rights-based approach to mental health services therein were most welcome.² In order for a human rights-based and recovery-focused national mental health service to be realised, a human rights-based and recovery-oriented national mental health legislative framework will be essential. Furthermore with Ireland's ratification of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) in 2018, and imminent first State review by the Committee on the Rights of Persons with Disabilities, the need for a national mental health act that is fully compliant with international human rights standards is now more urgent than ever.

Since the publication of the Expert Group Report in 2015, only two of the 165 of the report recommendations have been implemented.³ A fully comprehensive updating is thus required from this review to meaningfully progress the breadth of recommendations contained therein. While SPMHS support the recommendations of the Expert Group Report overall, we have focussed below on pertinent issues requiring urgent reform under the reviewed legislation.

- **Inclusion of guiding principles (for children)**

The provisions of the Mental Health Act 2001 which apply to children are unclear. The Expert Group on the Review of the Mental Health Act 2001 recommended that the reformed Act should include a separate section on children under 18 years, with its own set of guiding principles, including the best interests of the child.⁴ The Mental Health Act 2001 does not provide a mechanism for the voice of the child to be heard in relation to treatment or admission procedure.⁵ The UNCRPD creates an obligation to support children using mental health services to exercise their will and preferences and have their voice heard:

States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.⁶

The Expert Group recommended that the child's right to be heard be included in the guiding principles of the child-specific part of the reformed Mental Health Act, and that consultation with the child be required at each and every stage of diagnosis and treatment.⁷



Recommendation:

- **The State should amend the Mental Health Act 2001 to provide for a stand-alone part on children, incorporating the principles of the best interest of the child, voice of the child and non-discrimination.**

- **Information and individual care/ recovery planning**

SPMHS recognises the importance of a collaborative and recovery-focused care or recovery plan as being a foundational element of person-centred healthcare. The Expert Group report made several recommendations pertinent to individual care planning, including their renaming to 'recovery plans'. SPMHS fully supports the recommendations of the Expert Group as regards strengthening the rights of service users to meaningful care planning.

Recommendation:

- **The Mental Health Act 2001 should be amended to provide for the rights of all services users to a recovery plan, and should implement the related recommendations of the Expert Group.**

- **Advocacy and information**

The Report of the Expert Group recognised the need for children, their families and guardians to have access to advocacy services where needed, something SPMHS has advocated for some time. The Report further recommends that all patients should be supported in decision-making where needed, and in line with the related capacity legislation, and notes that this role may be assumed by an 'advocate'.⁸ SPMHS would further support that a right to independent advocacy support be made explicit within the legislation.

Recommendation:

- **The Mental Health Act 2001 should be amended to provide for the rights of all services users to access advocacy support.**

- **Provisions related to children (Capacity to consent for 16 and 17 year olds)**

Children have no legal entitlement to consent to or refuse mental health care, as the age of consent is set at 18 years⁹, while it is possible for young people from age 16 years to consent to or refuse physical health care.¹⁰ Calls have been made that the same age would apply to both physical and mental health¹¹, with unsuccessful efforts made in 2018 to progress a Bill which would have rectified this discrepancy.¹² The Expert Group Report on the Mental Health Act 2001 recommended that the law be amended so that 16 and 17



year olds are presumed to have capacity to consent to or refuse mental health treatment.¹³

Recommendation:

- **The Mental Health Act 2001 should be amended to allow for the right of young people aged 16 years and over to consent to mental health care.**

- **Capacity and advance healthcare directives**

The Expert Group report recommended that provisions be introduced into the legislation to more completely and comprehensively address the important role of Advance Healthcare Directives (AHD) in the context of a person's mental health care, and recommended their inclusion in recovery plans amongst other recommendations.¹⁴ SPMHS fully supports these recommendations, and further advocates that the current exclusion of people who are involuntarily detained from having their AHDs respected be remedied in this review of the Mental Health Act. The current exclusion has been highlighted as at odds with the provisions of the UNCRPD¹⁵.

Recommendation:

- **The recommendations of the Expert Group Report as they pertain to the application of Advance Healthcare Directives (AHDs) should be implemented within the review, and AHDs should apply to people who are both involuntarily detained within mental services and those who are voluntarily admitted.**

Submission Ends

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References

- ¹ Department of Health (2015) *Report of the Expert Group on the Review of the Mental Health Act 2001*, Dublin Available at: <https://assets.gov.ie/15986/af32aee7c6ce4747aef4962b11d716d8.pdf>
- ² Government of Ireland (2020) *Sharing the Vision, A Mental Health Policy for Everyone*. Available at: [file:///C:/Users/loleary/Downloads/76770_b142b216-f2ca-48e6-a551-79c208f1a247%20\(13\).pdf](file:///C:/Users/loleary/Downloads/76770_b142b216-f2ca-48e6-a551-79c208f1a247%20(13).pdf)
- ³ Mental Health Reform (2021) Briefing Note: Reform of the Mental Health Act, 2001. Available at: https://www.mentalhealthreform.ie/wp-content/uploads/2021/03/2021Feb_MentalHealthAct2001_MHRBriefingNote.pdf
- ⁴ Department of Health (2015) *Report of the Expert Group on the Review of the Mental Health Act 2001*, Dublin, p. 73. Available at: <https://assets.gov.ie/15986/af32aee7c6ce4747aef4962b11d716d8.pdf>
- ⁵ UN Committee on the Rights of the Child (2009) *General Comment No. 12: The right of the child to be heard*, CRC/C/GC/12, para. 36.
- ⁶ UN General Assembly, *Convention on the Rights of Persons with Disabilities : resolution / adopted by the General Assembly*, 24 January 2007, p. 8, A/RES/61/106. Available at: <https://www.refworld.org/docid/45f973632.html> [accessed 29 March 2021]
- ⁷ Department of Health (2015) *Report of the Expert Group on the Review of the Mental Health Act 2001*, Dublin Available at: <https://assets.gov.ie/15986/af32aee7c6ce4747aef4962b11d716d8.pdf>
- ⁸ Department of Health (2015) *Report of the Expert Group on the Review of the Mental Health Act 2001*, Dublin Available at: <https://assets.gov.ie/15986/af32aee7c6ce4747aef4962b11d716d8.pdf>
- ⁹ Mental Health Act, 2001, s. 2. Available at: <http://www.irishstatutebook.ie/eli/ResultsTitle.html?q=mental+health+act+2001>
- ¹⁰ Non-Fatal Offences Against the Person Act, 1997, s. 23 (1). Available at: <http://www.irishstatutebook.ie/eli/ResultsTitle.html?q=non-fatal+offences+against+the+person+act>
- ¹¹ Mental Health Commission (2011) *Submission on the Review of the Mental Health Act 2001*, Dublin: Mental Health Commission, p. 32.
- ¹² Houses of the Oireachtas website. (2020) Mental Health (Capacity to Consent to Treatment) Bill 2018. Available at: <https://www.oireachtas.ie/en/bills/bill/2018/51/> [Accessed: 29 March 2021]
- ¹³ Department of Health (2015) *Report of the Expert Group on the Review of the Mental Health Act 2001*, Dublin: Department of Health, p. 71. Available at: <https://assets.gov.ie/15986/af32aee7c6ce4747aef4962b11d716d8.pdf>
- ¹⁴ Ibid
- ¹⁵ Mental Health Reform (2021) Briefing Note: Reform of the Mental Health Act, 2001. Available at: <https://www.mentalhealthreform.ie/wp->