AlcoholAction Ireland

PUBLIC CONSULTATION ON DRAFT LEGISLATION TO UPDATE THE MENTAL HEALTH ACT, 2001

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Alcohol Action Ireland (AAI) is the national independent advocate for reducing alcohol harm. Given the significant overlap between alcohol harm and mental health issues, AAI is pleased to make this submission. AAI is also a member of Mental Health Reform, a national coalition of organisations campaigning to drive reform of mental health services and supports in Ireland.

The Mental Health Act 2001 sets out the care and treatment of people with mental health challenges who need mental health inpatient care, with a particular focus on procedures for involuntary detention.

Currently, the Act is significantly out of line with international human rights law and does not adequately protect the rights of people who attend mental health services.

Despite Ireland ratifying the United Nations Convention on the Rights of Persons with Disabilities in 2018, the Act is not in compliance with the United Nations Convention on the Rights of the Child (UNCRC) or the UNCRPD.

AAI welcomes the government's commitment to reforming the Act and bringing Ireland's mental health legislation into line with international obligations without further delay.

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1.0 GUIDING PRINCIPLES

As recommended by the Expert Group Review on the Mental Health,[1] a rights-based approach should be adopted throughout any revised mental health legislation.

This requires a substantial shift away from the often-paternalistic interpretation of mental health legislation by the Courts in order to comply with the European Convention on Human Rights (ECHR) and the United Nations Convention on the Rights of Persons with Disabilities (CRPD).

AAI supports the recommendation of the Expert Group that guiding principles should include definitions such as autonomy and self-determination, bodily integrity, least restrictive care and recovery.

AAI supports Mental Health Reform's recommendation that 'insofar as practicable' is not to be included in the proposed legislation as it appears to misunderstand human rights as being in conflict with practicality.

2.0 DETENTION

Detention of a person with a mental health challenge cannot be permitted simply by virtue of the fact that the person may experience such challenges or because his or her views or behaviour deviate from the norms of the prevailing society.

AAI concurs that as per the expert group, the recommended new criteria for detention must be:

a. the individual is experiencing mental health challenges of a nature or degree of severity which makes it necessary for him or her to receive treatment in an approved centre which cannot be given in the community;
b. it is immediately necessary for the protection of life of the person, for protection from a serious and imminent threat to the health of the person, or for the protection of other persons that he or she should receive such treatment and it cannot be provided unless he or she is detained in an approved centre under the Act;
c. the reception, detention and treatment of the person concerned in an approved centre would be likely to benefit the mental health challenges being experienced by a person to a material extent.

[1] https://www.gov.ie/en/publication/637ccf-report-of-the-expert-group-review-of-the-mental-health-act-2001/

3.0 TREATMENT

AAI supports the Expert group recommendation that 'treatment' be clearly defined in revised mental health legislation, including a focus on recovery, and that clinical guidelines should be further developed for the administration of various forms of treatment. The Expert Group also recommends that "people experiencing mental health challenges should be supported and enabled to make informed decisions regarding their treatment, and 'consent' as defined in Section 56 relating to consent to treatment should include consent given by the person with the support of a family member, friend or an appointed 'carer', 'advocate' or a support decision maker appointed under the proposed capacity legislation". AAI supports this recommendation.

4.0 CARE PLANNING

Currently, there is no legal right to an individual care or recovery plan under the Act.

The Expert Group recommends that Individual Care Planning should be placed on a statutory footing and extended to all persons in receipt of mental health services.

Specifically, it recommends that:

- Recovery plans should be reviewed on a regular basis and the timing of the reviews should be decided based on the person's individual needs
- People with lived experience of mental health challenges must be an active participant in the coproduction of their recovery plans and this must be recorded
- Evaluation and feedback should form part of the review of a recovery plan and there should be a need to show evidence of the undertaking of a review
- Wording of the legislation should be amended to ensure that it is the multi-disciplinary team, inclusive of peer support, that has responsibility for the clinical 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.

In addition, the Group recommends that each child should have an individual care plan and all necessary information relating to admission, detention and treatment should be provided as appropriate.

AAI supports that these important measures are placed on a statutory footing.

5.0 VOLUNTARY PATIENTS

Under the current Act, people admitted on a voluntary capacity do not have basic rights to information and advocacy.

In line with the Expert group and Mental Health Reform, AAI recommends that all voluntary admissions to an approved centre should be fully informed of their rights, including information relating to their proposed treatment as well as their rights regarding consent or refusal of treatment and their right to leave the approved centre at any time.

A person admitted in a voluntarily should be defined as a person who has the capacity (with support if required) to make a decision regarding admission to an approved centre and who, where the person retains capacity, formally gives his/her informed consent to such admission, and subsequent continuation of voluntary status and treatment on an ongoing basis as required. This provision should also apply equally to children and their parents or persons as required acting in loco parentis.

6.0 CAPACITY

People admitted involuntarily currently do not have the right to have their advance wishes about treatment respected. AAI backs the call of Mental Health Reform that advance directives must apply to people who are involuntarily detained under the Mental Health Act.

7.0 RESTRAINT

The definition of restraint under the Act should be extended to include chemical restraint. The use of chemical restraint should be governed by clear rules and subjected to the same oversight as other means of restraint.

8.0 INDEPENDENT COMPLAINTS MECHANISM

An independent body should be given a direct role in receiving, investigating and resolving complaints about mental health service delivery.

9.0 RECOGNISING THE ROLE OF FAMILY MEMBERS

As per the recommendation of Mental Health Reform, the revised legislation should place a duty on the health service to provide information of a general nature on mental health to the family members of a person experiencing a mental health challenge upon request and with the permission of that person.

Furthermore, the legislation should place a duty on the health service to assess the support needs of family members of a person receiving treatment for a mental health challenge upon request of the family member and with the permission of their loved one. The Act should be amended to place a duty on the clinical director to collaborative with the family in discharge planning where the individual concerned is being discharged to the family's home and the individual has given their permission. AAI believes it is vitally important that where the family members include children or adolescents under the age of 18, there should be a duty on the health service to assess the needs of the children and provide appropriate supports. Growing up with a parent who has a mental health challenge is an adverse childhood experience that can have consequences for the child into adulthood if it is not recognised and addressed.

10.0 CHILDREN

Under the current Act there are no specific guiding principles or provisions for children.

Both the Expert group and the Children's Mental Health Coalition have made a number of recommendations in this regard.

AAI supports these recommendations and calls for:

- A separate section on children within the Act to guarantee specific protections.
- No child or young person shall be admitted to an adult inpatient unit (voluntarily or involuntarily) save in exceptional circumstances.
- Advocacy services to children and to the families of children in the mental health service should be available.
- Young people between the age of 16 and 18 years shall be presumed to have capacity to make decisions regarding admission and treatment unless proven otherwise.
- Persons under 16 years may consent to, and refuse treatment or admission where it is established that he or she has the maturity and understanding to appreciate the nature and consequences of the specific treatment.
- An appropriate forum for the review of admissions and detention of children in addition to the development of appropriate procedures.
- A prohibition on the use of psycho-surgery and ECT in the case of children below the age of 18 years.

11.0 MENTAL HEALTH AND ADDICTION ISSUES

It is imperative that people suspected of having a mental health need coexisting with substance misuse have access to timely mental health services nationally.

Ireland's new mental health policy 'Sharing the Vision' advises that it is no longer the case that specialist mental health services should exclude people with addictions. The policy states that:

'Individuals with co-existing mental health difficulties and addiction to either alcohol or drugs should not be prevented from accessing mental health services. Consequently, it will not be necessary to establish whether a mental health difficulty is 'primary' for an individual to access the support of a mental health team.'

The policy goes on to comment that a shared case management approach may be required particularly for those with complex needs.

Given that people with mental health and addiction challenges are the norm rather than the exception, consideration should be given to supporting this by making the spirit of policy objective clear in legislation.

Both services (Addiction and mental health), should have professionals with expertise in the other. Or at least, e.g. mental health services, should cease referring people back out of their service on the basis of having an addiction issue.