



Mental Health Commission

Consultation on the Code of Practice on the Mental Health Act 2001

March 2010

Please return feedback by post or email (preferably typed) by the **28th April 2010**.
If you would like us to send you a hard copy of this guide, please contact us.

Please return to:

Lisa O' Farrell

Policy Officer
Mental Health Commission
St. Martin's House
Waterloo Road
Dublin 4.
Phone: (01) 6362400
Emails: lisa.ofarrell@mhcirl.ie

The Closing date for Feedback is 28th April 2010

Name: Vanessa Hetherington Job Title (where relevant): Research and Policy Analyst Organisation (where relevant): Irish Medical Organisation Email address (optional): vhetherington@imo.ie									
Date of your comments (DD/MM/YYYY) 06 / 05 / 2010									
<p>If this is a joint response by a group please specify the number of respondents this submission is made on behalf of</p> <p style="text-align: center;"><input type="checkbox"/> <input type="checkbox"/> 6,683</p> <p>The category of professionals or individuals it represents (e.g. 2 x Consultant Psychiatrists, 1 x Psychologist, 1 x Service User):</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 20px;"></td> <td>Including 2050 General Practitioners</td> </tr> <tr> <td></td> <td>768 Consultants</td> </tr> <tr> <td></td> <td>219 Public Health Doctors</td> </tr> <tr> <td></td> <td>2998 NCHDs</td> </tr> </table>		Including 2050 General Practitioners		768 Consultants		219 Public Health Doctors		2998 NCHDs	<p>Please specify the mental health service area, where relevant, that you are principally working in:</p> <p>Child and Adolescent <input type="checkbox"/></p> <p>General Adult <input type="checkbox"/></p> <p>Forensic <input type="checkbox"/></p> <p>Later Life <input type="checkbox"/></p> <p>Intellectual Disability <input type="checkbox"/></p> <p>Other, please specify below <input type="checkbox"/></p>
	Including 2050 General Practitioners								
	768 Consultants								
	219 Public Health Doctors								
	2998 NCHDs								

1. Introduction

The Mental Health Commission carried out a review on the operation of Part 2 of the Mental Health Act 2001 in 2008. One of the recommendations from this review was for the Commission to develop a code of practice on the 2001 Act to guide people working in mental health services.

A code of practice on the Act would give guidance on the exercise of functions under the 2001 Act. In other words, it would explain how certain parts of the legislation are best put into practice.

The Commission is interested to hear your views on what parts of the Act, if any, further guidance should be provided on. The Commission has already produced some guidance on parts of the Mental Health Act. These include:

- rules on ECT under Sections 59 and rules on seclusion and mechanical restraint under Section 69;
- codes of practice under Section 33 on death notification and incident reporting; ECT; child admissions; physical restraint; admission, transfer and discharge to and from approved centres; and guidance for persons working in mental health services with people with intellectual disabilities; and
- procedural guidance and administrative protocols to Mental Health Tribunals.

The Commission also published a Quality Framework for Mental Health Services in 2007, which included minimum standards under the Mental Health Act 2001 (Approved Centres) Regulations 2006 as well as higher standards for approved centres and other mental health services.

We will be having several stages of consultation and this written consultation is the first. Here we are asking your initial views on the areas that you would welcome guidance on based on your experience. We have invited a number of stakeholders to feedback (appendix 1). If you know of anyone we might be leaving out, please let us know. The next stage of consultation will use other methods of consultation such as focus groups and we will further explore some of the issues raised in this consultation. After this consultation exercise, we will produce a consultation report and use it to develop a draft code of practice, which we will send to you for your views. We will have a third and final consultation stage in 2011.

Our goal is to produce an accessible and user friendly code of practice which makes a practical difference to services, staff and service users and promotes the effective, lawful and appropriate use of powers under the Act and the effective, lawful and appropriate treatment of people who have a mental illness or mental disorder.

2. Some Possible Areas

We started the consultation by asking staff in the Mental Health Commission what areas they thought services might find it useful to have guidance on. Below are some of the suggestions that came back. These may get you thinking about areas you feel it would be useful to have guidance on.

Take a look at them and then answer the questions in the next section.

1. Case law since the Act went live
2. General Practitioner forms
3. Admission
4. Assisted admissions
5. Admission of children
6. Information provided to patients
7. Operation of Mental Health Tribunals
8. Transfer
9. Holding powers
10. Discharge with leave
11. Absence without leave/ patients absent with pending Mental Health Tribunal
12. Discharge
13. Change of Legal Status
14. Issues of consent
15. Registration as an Approved Centre/ Definition and determination of a centre

3. Consultation Questions

Important: We would like to remind you before completing this section that the Mental Health Commission can only produce guidance on areas covered under the Mental Health Act (See appendix 2 for a list of these areas).

1. Do you think it would be **useful to have a code of practice** on the Mental Health Act? If no, please explain why.

Yes

2. Are there **areas mentioned** in Section 2 that you think it would be useful to have guidance on?

IMO recommend that a review of the following areas should be carried out and then guidance issued on

- Admissions
- Assisted admissions
- Admission of children
- Operation of Mental Health Tribunals
- Transfer
- Issues of Consent

3. Are there **other areas** under the Mental Health Act 2001 that you would like to see further guidance on which are not included in Section 2?

IMO General Practitioner members would also like to see a review and guidance issued on

- The role of the GP in terms of medico-legal implications as they pertain to the Mental Health Act 2001

Another area that Consultant Psychiatrists would like to see clarified is

- The role of the Authorised Officer

4. If you answered yes to question 1 or 2, please **explain why** guidance on this area/ areas would be useful so that we understand what **kind of guidance** you are looking for.

In March 2010, the IMO carried out a survey of General Practitioner and Consultant Psychiatrist members to find out the major issues affecting the treatment of patients with mental health illness. Amongst the Issues raised were

- Admissions procedures under the Mental Health Act 2001 are impractical, complicated and time consuming.
- These procedures delay timely access to treatment and act as a barrier to the treatment of patients with acute mental health illness.
- Some members felt that referral procedures for Children should be made easier.
- Other members have also expressed the opinion that once the paperwork is complete the system focuses too much on having the involuntary patient's status changed to voluntary rather than treating the patient.
- Many doctors have experienced difficulties in relation to the transfer of patients (adults and minors) to acute facilities.

Issues in relation to the Mental Health Act 2001 have also been raised in recent years at the Annual General Meetings of the IMO.

At the recent 2010 IMO AGM, the GP Meeting passed a motion calling on the Mental Health Commission to review the role of the GP in terms of medico-legal implications as they pertain to the Mental Health Act and additionally review the cost implications for GPs in respect of the Mental Health Act (ref motion 10/G26).

In 2008 IMO members passed a motion drawing attention to the inordinate length of time in accessing assisted admission facilities, calling on the HSE and the Mental Health Commission to work jointly to remedy this. (ref motion 08/05)

With regard to the admission of children the IMO passed the following motions in 2006
The IMO calls on the Mental Health Commission to ensure that the judiciary which will adjudicate on applications for detention of children in mental health facilities, under the Mental Health Act 2001, in the District Court has training and knowledge of the psychiatric and psychological issues of children. (ref motion 06/09)

The IMO calls on the Government to review the provisions of the Mental Health Act 2001 in regard to children to ensure that children have the same provisions under the Act as are afforded to adults by having an automatic review of their detention under the Act, as will be afforded to adults. (ref motion 06/10)

Other issues raised by Consultant Psychiatrists in relation to the Mental Health Act 2001 include:

- The role of the Authorised Officer and how these officers can be accessed.
- Clarification is also required on how to proceed with a patient who is admitted on a voluntary basis but refuses treatment and as a consequence their condition increasingly declines.

5. What **impact**, if any, do you think a Code on the Act would have for staff, mental health services and other relevant organisations/people?

The IMO believe that a review of these areas may highlight procedures that could be improved. The subsequent issue of a Code on the Act should clarify duties, roles and responsibilities in a comprehensive, practical and useful fashion.

6. We want to develop a code that is user friendly and easy to use. Have you any thoughts on what **format or formats(s)** would be helpful to have the code in? Tick all that apply.

Full Hard copy

Quick Reference Guide hard copy

Web version

Other, please specify:

7. Have you any **other comments or suggestions** you wish to make?

Other Comments the IMO would like to include:

- It would be important that needs of patients in addiction services, with dual diagnosis of addiction and mental illness, are offered the same protections as other mental health patients.

Also in addressing issues of consent in the planned Code of Practice, clarifications and distinctions should be included in relation to 'capacity to consent' (i.e. a legal objective) and issues relevant to 'informed consent' (i.e. a healthcare objective).

- In The Croke Park Agreement (Sectoral Agreement page 1) it is stated that the government intends to “reconfigure” Vision for Change. The IMO seeks clarification of the Governments plans and what impact this may have in relation to the Mental Health Act 2001.

4. Appendices

Appendix 1: Stakeholders to Whom Consultation Invitations Have Been Issued

Amnesty International

An Bord Altranais

An Garda Siochana

Association of Occupational Therapists of Ireland

Bodywhys

College of Psychiatry of Ireland

Department of Health & Children

GROW

Health and Social Care Professionals Council

Health Information and Quality Authority

Health Service Executive

HSE Mental Health Service Providers (including Registered Proprietors, Clinical Directors, Directors of Nursing, Mental Health Act Administrators)

Irish Hospital Consultants Association

Irish Human Rights Commission

Irish Medical Organisation

Irish Nurses Organisation

IMPACT

Independent Mental Health Service Providers (including Registered Proprietors, Clinical Directors, Directors of Nursing, Mental Health Act Administrators)

Irish Advocacy Network

Irish Association of Social Workers

Irish College of General Practitioners

Law Reform Commission

Mental Health Nurse Managers Ireland

National Council for the Professional Development of Nursing and Midwifery

National Disability Authority

National Service User Executive

Office for Disability & Mental Health

Psychiatric Nurses Association

Psychological Society of Ireland

SIPTU

Shine

Simon Communities of Ireland

Steer

The Equality Authority

Appendix 2: Sections of the Mental Health Act 2001

Number 25 of 2001

MENTAL HEALTH ACT, 2001

ARRANGEMENT OF SECTIONS

PART 1

PRELIMINARY AND GENERAL

1. Short title, collective citation, construction and commencement.
2. Interpretation.
3. “Mental disorder”.
4. Best interests, etc., of person.
5. Regulations.
6. Repeals.
7. Expenses.

PART 2

INVOLUNTARY ADMISSION OF PERSONS TO APPROVED CENTRES

8. Criteria for involuntary admission to approved centres.
9. Persons who may apply for involuntary admission.
10. Making of recommendation for involuntary admission.
11. Disclosure of previous application for involuntary admission.
12. Powers of Garda Síochána to take person believed to be suffering from mental disorder into custody.
13. Removal of persons to approved centres.

14. Admission order.
15. Duration and renewal of admission orders.
16. Provision of information for persons admitted to approved centres.
17. Referral of admission order and renewal order to a tribunal.
18. Review by a tribunal of admission orders and renewal orders.
19. Appeal to Circuit Court.
20. Application for transfer of patient.
21. Transfer of patient.
22. Transfer of patient to hospital.
23. Power to prevent voluntary patient from leaving approved centre.
24. Power to detain voluntary patients.
25. Involuntary admission of children.
26. Absence with leave.
27. Absence without leave.
28. Discharge of patients.
29. Voluntary admission to approved centres.
30. Penalties under *Part 2*.

PART 3

INDEPENDENT REVIEW OF DETENTION

31. Establishment day.
32. Establishment of Mental Health Commission.
33. Functions of Commission.
34. Conferral of additional functions on Commission.
35. Membership of Commission.
36. Terms of office of members of Commission.

37. Chairperson of Commission.
38. Chief Executive of Commission.
39. Staff of Commission.
40. Superannuation of staff of Commission.
41. Borrowing by Commission.
42. Reports and information to Minister.
43. Membership of either House of Oireachtas or European Parliament.
44. Grants to Commission.
45. Gifts.
46. Seal of Commission.
47. Accounts and audits of Commission.
48. Mental Health Tribunals.
49. Powers of tribunals.
50. Inspector of Mental Health Services.
51. Functions of Inspector.
52. Duties of Inspector when making inspection.
53. Penalty for obstruction of Inspector.
54. Assistant Inspectors of Mental Health Services.
55. Inquiries.

PART 4

CONSENT TO TREATMENT

56. Definition (*Part 4*).
57. Treatment not requiring consent.
58. Psycho-surgery.
59. Electro-convulsive therapy.

60. Administration of medicine.

61. Treatment of children in respect of whom an order under *section 25* is in force.

PART 5

APPROVED CENTRES

Section

62. Definitions (*Part 5*).

63. Prohibition of unregistered centres.

64. Registration of approved centres.

65. Appeals.

66. Regulations in relation to approved centres.

67. Restriction on admission of patients.

68. Penalties under *Part 5*.

PART 6

MISCELLANEOUS

69. Bodily restraint and seclusion.

70. Participation in clinical trials.

71. Clinical directors.

72. Transitional provisions.

73. Leave of High Court for certain proceedings.

74. Provisions in relation to offences.

75. Review of operation of Act.

Number 25 of 2009

HEALTH (MISCELLANEOUS PROVISIONS) ACT 2009

ARRANGEMENT OF SECTIONS

PART 1

Preliminary and General

63. Amendment of the Mental Health Act 2001

Thank you for taking the time to take part in this first round of consultation.

Please return feedback by post or email by the **28th April 2010.**

Please return to:

Lisa O' Farrell

Policy Officer
Mental Health Commission
St. Martin's House
Waterloo Road
Dublin 4.

Phone: (01) 6362400

Emails: lisa.ofarrell@mhcirl.ie