



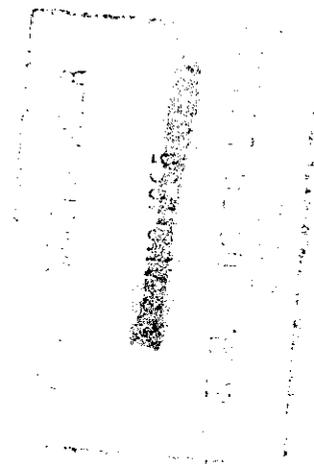
SUMMARY

WHITE PAPER

**A NEW MENTAL
HEALTH ACT**



**Department
of Health
An Roinn
Slainte**



A NEW MENTAL HEALTH ACT

Reason of Legislative change

The legislation will provide a modern framework for the care and treatment of the small number of persons with a mental disorder who refuse or who are incapable of seeking treatment or protection in their own interest or in the interest of others. In so doing, the legislation will narrow the criteria for detaining a mentally disordered patient as the criteria currently applying are considered to be too wide in scope. Another purpose of the proposed legislation is to bring Irish legislation in relation to the detention of mentally disordered patients into conformity with the **European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)**.

Background

Current procedures for detaining persons with a mental disorder for treatment and care are set out in the Mental Treatment Act, 1945 and amending Acts. While the 1945 Act contains a number of provisions designed to safeguard persons against improper detention in psychiatric hospitals and units, these provisions fall short of those required under this country's obligations as a signatory of the European Convention on the Protection of Human Rights and Fundamental Freedoms. **It is a serious breach of the state's international obligations if a violation of the Convention is established.**

European Convention

The changes in Irish law that are required to ensure full compliance with our obligations under the **European Convention** include a redefinition of the criteria for detention of mentally disordered persons, the introduction of procedures to review the decision to detain a person in a psychiatric hospital by a body independent both of the person who took the decision to detain and of the executive, an automatic review of long-term detention, and the introduction of greater safeguards for the protection of detained patients. These will be functions of a new Mental Health Review Board to be established on foot of the proposed legislation.

Consultative Process

The Green Paper on Mental Health was published in June 1992. It proposed options which would bring our legislation into conformity with the European Convention. The Green Paper initiated a process of consultation with the aim of reaching the consensus on the content of new legislation. Since its publication, a total of 100 written submissions have been received by the Department of Health from interested parties. Respondents included professional/ representative bodies of health service professionals, health boards, voluntary organisations engaged in the promotion of mental health and individuals. An extensive process of consultation took place with the main interest groups. The process has resolved many

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differences between key groups in the field of mental health care and the proposals in the White Paper reflect the consensus that has been achieved.

Main Features of New Legislation

The White Paper outlines the measures it is proposed to include in a new Mental Health Act to bring our procedures for the detention of mentally disordered patients into conformity with the European Convention and best international practice. The main changes proposed are:-

(i) **A narrowing of the criteria for detaining a mentally disordered patient.**

The criteria for detaining a mentally disordered person for treatment under the Mental Treatment Act 1945 are too wide in scope. Under current legislation a person of unsound mind may be detained indefinitely if he or she is not under proper care and control or neglected or cruelly treated. A person may also be detained under the Act if he or she is an addict, and is believed to require for recovery at least six months preventive and curative treatment.

It is no longer an acceptable practice to detain people whose primary problem is addiction or to detain a person of unsound mind because he or she is not receiving proper care or is neglected or cruelly treated. There are better

ways of caring for such people than by committal to a psychiatric hospital.

It is proposed that the following be the criteria which must be met before a person with a mental disorder may be detained:

A person may be involuntarily admitted to an approved centre if he or she is suffering from a mental disorder and

(a) because of that mental disorder there is a serious likelihood of that person causing immediate or imminent harm to himself/herself or to other persons;

or

(b) that in the case of a person whose mental disorder is severe and whose judgement is impaired, failure to admit or detain that person is likely to lead to serious deterioration in his or her condition or will prevent the giving of appropriate treatment that can only be given by admission to an approved centre.

Mental disorder will be defined as mental illness, significant mental handicap and severe dementia.

(ii) **Establishment of new Independent Mental Health Review Board.**

A core principle established under the European Convention is that if a decision to detain is taken by an

administrative body the patient is entitled to have the lawfulness of his or her detention reviewed 'judicially'. A 'judicial' body does not necessarily mean a court. It may be an administrative body but it must be independent from that person who originally requested involuntary admission to a psychiatric hospital or unit or decided the detention.

The Green Paper suggested that the function of review of decisions to detain could be carried out by the courts or by an independent body. There was overwhelming support expressed during the consultative process for the function to be carried out by an independent body.

It is proposed to establish an independent Mental Health Review Board with a function to review each decision to detain a person under mental health legislation. Members of the proposed Board will be appointed in a part-time capacity by the Government for a term of 3 years. It is proposed that the chairperson will be a lawyer of high standing in his/her profession. Other members of the Board will include psychiatrists, a general practitioner, a nurse, a psychologist, a social worker and representatives of voluntary organisations active on behalf of people with mental disorder and lay people. The Board will appoint panels of medical practitioners, lawyers and lay persons which will carry out functions in relation to appeals against detention and review of the detention of those on orders which permit detention for a year or over.

(iii) **An appeal against a decision to detain**

It is proposed that the Mental Health Review Board will hear appeals against detention.

(iv) **Review of the detention of persons detained for extended periods**

It is proposed that the Mental Health Review Board will review decisions to detain persons who are detained for periods in excess of 12 months.

(v) **Provision of safeguards in relation to consent by detained persons to treatment**

It is proposed that the administration of certain forms of treatment to detained patients will only take place with the informed consent of the patient and/or the provision of a second medical opinion by a consultant psychiatrist approved by mental Health Review Board for this purpose and acting on its behalf.

(vi) **Mentally disordered persons charged with offences**

It is proposed to introduce changes in new legislation to ensure that accused or convicted persons before the courts who may have a mental disorder are assessed and treated with the minimum formality according to the same standards as other citizens, whenever possible.

(vii) **Adult Care Orders**

It is proposed to provide for an adult care order to protect mentally disordered persons who are at risk or who are being abused, neglected or exploited.

(viii) **Legal Aid Assistance**

It is proposed to provide detained patients, without means to pay, with assistance in appealing a decision to detain.

(ix) The title of the post of Inspector of Mental Hospitals will change to Commissioner for Mental Health. The Commissioner will retain the powers of the Inspector to visit all hospitals and homes for the mentally ill and report to the Minister on his or her findings. In addition, the Commissioner will have an expanded role in quality assurance in the Mental Health Services.

(ix) **Role of Health Boards**

It is proposed to place a statutory duty on health boards to promote mental health and to provide an appropriate range of services directly or in association with voluntary organisations in line with policy for the development of services for persons with a mental disorder.

The Minister is anxious to proceed as soon as possible with the drafting of the heads and General Scheme of a Bill as a prelude to the enactment of new mental health legislation in 1996.