



## **Mental Health Commission Response to Consultation on Code of Practice on the Mental Health Act 2001**

**April 2011**

The Mental Health Commission undertook an external consultation exercise as part of the process to develop a code of practice on the Mental Health Act 2001 between March and May 2010. Sixty-seven submissions were received as part of this consultation process. Participants identified a number of key themes for which they felt guidance would be useful. We include below the response of the Commission to the requests for guidance on these areas.

- **Voluntary Admission Process**

The Commission considered that guidance requested in relation to the voluntary admission process is already adequately addressed in the *Code of Practice on Admission, Transfer and Discharge to and from an Approved Centre* which came into effect in January 2010.

- **Assisted Admissions**

The HSE has developed a policy in this area: *Assisted Admission (Removal of the Person to the Approved Centre Section 13 Mental Health Act 2001) and Assisted Return (Return of a person to the Approved Centre Section 27 Mental Health Act 2001)*. This policy came into effect following the consultation process in September 2010. In addition, the HSE and An Garda Síochána jointly developed a *Memorandum of Understanding on Removal to or Return of a person to an Approved Centre in accordance with Section 13 & Section 27, and the Removal of a person to an Approved Centre in accordance with Section 12, of the Mental Health Act 2001*. The Memorandum of Understanding also came into effect in September 2010. The Commission considers that both documents provide guidance to persons involved in the assisted admissions process. The Commission will continue to

keep the area of assisted admissions under review and may develop further guidance in this area, bearing in mind its functions under Section 33(3)(e) of the 2001 Act.

- **Admission of Children**

The issues highlighted during the consultation will be considered during the review of the *Code of Practice Relating to Admission of Children under the Mental Health Act 2001*. This review forms part of the Mental Health Commission work programme for 2011 and is outlined in the 2011 Business Plan.

- **Case Law**

The Commission publishes a summary of relevant case law on its website.

- **Issues of Consent**

The *Report on the Operation of Part 2 of the Mental Health Act 2001* which was published in 2008 in line with Section 42(4) of the Act recommended the development of a Code of Practice on Part 2 of the Act.

As consent to treatment is included under Part 4 of the 2001 Act (Ss 56-61), the Commission considered that the issue of consent was outside the scope of the project to develop a Code of Practice on Part 2 of the 2001 Act.

The Commission also reviewed guidance on consent which has been issued by relevant professional regulatory bodies and considered that it was prudent not to duplicate work in this area. However, the introduction of capacity legislation will impact on issues of consent and the Commission will then review whether or not additional guidance is needed.

- **Information for Patients/Carers & Families**

Section 33(3)(e) of the 2001 Act makes it clear that a code of practice issued by the Mental Health Commission is “*for the guidance of persons working in the mental health services*”. Therefore, the provision of information to patients, carers or families is outside the scope of this particular project. However, the Commission produced a range of information resources for service users, carers and families in a number of different formats in 2010 and will continue to do so as appropriate in 2011. We also created a new Service User Information section on our website in 2010. Furthermore, the Commission is rolling out an action plan to increase public and service user involvement in the Commission’s work during 2011. This initiative will involve working collaboratively with service user

representatives and organisations, where the need to produce additional information for these key groups will be considered.

- **GP Involvement**

Any Mental Health Commission code of practice would not apply to GPs as they are not “*persons working in the mental health services*” as outlined in the Act. However, it became clear through the consultation exercise and through contact with the Irish College of General Practitioners (ICGP) that GPs would benefit from the preparation of guidance on their functions under the Act. The Commission has been exploring this issue further with the ICGP and the ICGP is preparing guidance for GPs in this area.

- **Role of Gardai**

The Commission considers that issues relating to the role of Gardai under the 2001 Act have been addressed in the Memorandum of Understanding between An Garda Síochána and the HSE, which came into effect in September 2010.

- **Transfer of Patients**

The Commission produced detailed guidance on the issue of transfer in the *Code of Practice on Admission, Transfer & Discharge to and from an Approved Centre* last year. This code addresses issues highlighted by respondents to the consultation such as the need for communication between the approved centre and receiving facility and information transfer.

- **Mental Health Tribunals**

The document: *Mental Health Tribunals Procedural Guidance & Administrative Protocols* is an existing source of guidance in this area. It explains the provisions of the Mental Health Act 2001 that relate to the powers and the procedural and decision making requirements placed on a Mental Health Tribunal. Details are also provided of the Commission’s administrative arrangements for supporting Mental Health Tribunals. The content of the guidance document is delivered to all tribunal panel members at training seminars organised after they are appointed to these panels. A hard copy of guidance is also issued to them. The document was revised in February 2010.

- **Absence without Leave**

The Commission considers that guidance on some aspects of this issue are already addressed in the Memorandum of Understanding between An Garda Síochána and the HSE and in the HSE policy: *Assisted Admission (Removal of the Person to the Approved Centre Section 13 Mental Health Act 2001) and Assisted Return (Return of a person to the Approved Centre Section 27 Mental Health Act 2001)*.

In relation to the issue of patients who are absent without leave in another jurisdiction, it is not possible for the Commission to develop a Code of Practice relating to mental health services in another jurisdiction.

- **Legal Status**

Participants requested guidance regarding the management of residents admitted as voluntary patients whose condition has deteriorated and where the approved centre is of the view that they meet the criteria for mental disorder but are not indicating a wish to leave the centre. Sections 23 & 24 of the 2001 Act outline the circumstances in which a voluntary patient's legal status can be changed from voluntary to involuntary. It is not possible to change a resident's legal status from voluntary to involuntary other than in the circumstances outlined in the Act.

- **Conclusion**

After reviewing the submissions received, it became clear that all of the main themes highlighted in the consultation:

- (a) Had already been addressed or would be reviewed in future by the MHC; or
- (b) Had already been addressed or would be addressed by other organisations; or
- (c) Were outside the scope of a code of practice.

Therefore, the Steering Group that was established to oversee the development of a Code of Practice on the 2001 Act, recommended to the Commission that it would be inappropriate to proceed with the development of a Code of Practice at this time. This recommendation was accepted by the Commission. The Commission also decided that it would review this decision following the Department of Health and Children review of the 2001 Act and/or any future amendment of the 2001 Act.