

Mental Health Commission

Mental Health Commission response to the Criminal Law (Insanity Bill) 2002.

Submission to the Minister for Justice, Equality and Law Reform, Mr. Michael McDowell.

Introduction

The Mental Health Act 2001 is the key civil legislative provision informing the delivery of mental health services in Ireland. It is expected that any other legislative proposals would be compliant with the provisions of the Mental Health Act 2001, (MHA 2001).

The Mental Health Commission was established by the Minister for Health and Children on April 5th 2002 under the provisions of the Mental Health Act 2001. The Commission, an independent statutory body, has two key objectives:

- to promote and foster high standards of care and good practices in the delivery of the mental health services and
- to ensure that the interests of those detained involuntarily are protected

The Commission is obliged to prepare and monitor codes of practice for those working in the mental health services, to arrange for the inspection of centres where mental health services are being delivered and to register and monitor the operation of approved centres.

Criminal Law (Insanity) Bill 2002

In the exercise of its independent functions as outlined in Section 33 of the MHA 2001 the Commission makes the following submission in relation to the Criminal Law (Insanity) Bill 2002.

The alignment of the civil and criminal law provision in regard to mental disorder implicit in this Bill is in general welcomed by the Commission. It is the view of the Commission that a number of significant amendments are required to the current Bill to ensure that the Bill is fully compliant with the provisions of the MHA 2001, the core legislative provision in relation to the mental health services.

It is considered that the use of the word "insanity" in the title of the Bill is not appropriate as such terminology is outdated. The Commission suggests the Bill be titled the Criminal Law (Mental Disorder) Bill 2002.

Section 1 - Definitions

"Mental Disorder" - as outlined in the Bill, the definition is not compatible with the definition in the MHA2001. In the Criminal Law (Insanity) Bill 2002 "mental disorder" includes "mental illness, mental handicap, dementia or any disease of the mind but does not include intoxication." The Mental Health Act 2001 in Section 3 provides a more detailed and comprehensive definition of mental disorder. There is an inconsistency in the Bill as some sections refer to the definition of mental disorder as

per the MHA 2001. As this definition underpins subsequent provisions in the Bill it is essential that the definition of mental disorder in the Bill is fully compliant with the definition in the MHA 2001 in all aspects of the proposed legislation.

Section 2

The MHA2001 (Sections 62 - 64) specifies the definition of an approved centre. A centre means a hospital or other in-patient facility for the care and treatment of persons suffering from mental illness or mental disorder. The Commission has the statutory responsibility for the establishment and maintenance of a list of approved centres that must meet the criteria for registration as specified by the Commission.

The Commission proposes that a designated centre, in addition to meeting the criteria specified for approved centres, must also meet additional criteria specified by the Commission. The Commission would be responsible for approving such designations and for the ongoing accreditation of the designated centre following consultation with the Minister for Health and Children.

Currently the majority of approved centres are units within general acute hospitals, which is in line with developments and best practice within modern mental health services. These are relatively small, open units and the staffing in general would not include personnel with the required levels of expertise in forensic psychiatry. These units are not designed to provide the medium and high levels of security that will be required. At this stage it is the view of the Commission that the Central Mental Hospital is the only unit that can meet the needs of those patients requiring medium or high levels of security.

The designation of a prison (or part thereof) as a designated centre for the care and treatment of people with a mental illness is not in the view of the Commission appropriate and appears to be in contravention of the UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care. In particular, Principle 1.1 states, "All persons have the right to the best available mental health care, which shall be part of the health and social care system."

Section 3.

The Commission is proposing a number of fundamental amendments to this section. As currently worded the Bill allows only one option to the judiciary i.e. committal to a designated centre if questions arise about the charged person's fitness to be tried.

The Commission proposes that this section be amended to allow the judiciary a wider range of options and to ensure that the most appropriate intervention is offered to the person. The Bill should be amended to facilitate remand of the person on bail (thereby integrating this Bill with the Bail Act 1997) to attend for assessment on an outpatient basis. The inclusion of this option is in line with best practise in mental health care and treatment. It would also ensure compliance with the relevant UN Principles - Principle 7.1 "Every patient shall have the right to be treated and cared for, as far as possible, in the community in which he or she lives" and Principle 9.1 "Every patient shall have the right to be treated in the least restrictive environment and with the least restrictive or intrusive treatment appropriate to the patient's health needs and the need to protect the physical safety of others"

The Third Report of the Interdepartmental Committee on Mentally Ill and Maladjusted Persons (Henchy Report 1978) also supports this amendment. In the Introduction the Committee state "But the powers of the courts shall be such that, having regard to the expert opinion that may be called on, out-patient treatment and community care will be the primary consideration, so that only those whose condition so requires will be detained in a designated centre".

The Bill should also be amended to allow for an initial and immediate examination of the person by a consultant psychiatrist from the designated centre.

The maximum period of committal to a designated centre should be reduced from 28 days to 8 days again to ensure that nobody is detained inappropriately or for longer than is absolutely necessary. The eight-day period should be subject to renewal to a maximum period of 28 days if recommended by the consultant psychiatrist.

The Bill should also facilitate the discharge of the person from the designated centre by the consultant psychiatrist before the next court hearing, on condition that the consultant psychiatrist reports to the court on the reason for the decision to discharge.

Section 10 and Schedule 1 – Mental Health Review Board.

Schedule 1 should be amended to specify exactly the required numbers and levels of expertise of the members of the Mental Health Review Boards. As currently worded the composition of the Review Boards could vary both in terms of numbers and expertise at each sitting. This could lead to a lack of consistency in the proceedings and different standards as between different Mental Health Review Boards. This could give rise to a complaint of lack of equal treatment. The Commission recommends that the Mental Health Review Board should consist of two consultant psychiatrists and two people with nursing/health professional expertise, plus the chairman.

Section 12

In the event that the Commission's recommendation that a prison would not be a designated centre is rejected, the Commission is seeking an amendment to Section 12 so that the prison governor will be obliged to act in accordance with the advice of the approved medical officer

Other Amendments

As currently worded not all the protections afforded to patients under the Mental Health Act 2001 are provided to those people who would be receiving care and treatment under the provisions of this Bill. This, in our view, is a serious omission. Therefore the provisions of Part 5 and 6 of the Mental Health Act 2001 should also be incorporated into this Bill.

It is acknowledged that this Bill is concerned with persons who appear before the courts on criminal charges. However we know that prisoners while serving sentences may also require care and treatment for a mental disorder. This Bill should include provisions relating to the transfer of persons requiring treatment to the Central Mental

Hospital. This is a core element in determining the response of the criminal justice system to those prisoners requiring care and treatment in relation to their mental health.

Forensic Mental Health Services in Ireland.

Current provision of forensic mental health services in Ireland is limited. There is an absence of regional facilities that would allow the detention of patients committed under this Bill or those presenting with severe and persistent aggressive and disturbed behaviours. It is the view of the Commission that an adequate number of regional units (psychiatric intensive care units) will be required to implement the provisions of this Bill. These units should be purposely designed and staffed to facilitate effective but discreet security systems. The multidisciplinary teams in such units would be expected to have training and expertise in forensic psychiatry and there would be close liaison with the Central Mental Hospital. Until such facilities are in place it is the view of the Commission, as stated above, that current approved centres are not appropriate for the committal of patients under this Bill. The majority of approved centres are units within general hospitals, and it is neither feasible nor appropriate to introduce the security measures that would be required to detain patients committed under this Bill.

There is also a need to provide separate facilities for those aged under 18 who could be committed under the provisions of the Bill. The placement of those under 18 in centres for adults is at variance with best practice. This issue has been highlighted in Reports of the Inspector for Mental Hospitals.
