Dear Member,

This legislation was the subject of a Report to the Board in January 2000, when it was at a Bill stage. This report is intended by way of update, following the passing of the Bill into legislation in July 2001.

When the Bill was introduced, the Minister for Health and Children stated that the Bill “will significantly improve existing provisions in relation to mentally disordered persons involuntarily admitted for psychiatric care and treatment and will bring Irish Mental Health Law into conformity with the European Convention for the Protection of Human Rights and Fundamental Freedom”.

The aims of the Act are to reform existing legislation pertaining to involuntary detention of persons, to provide for automatic and independent review of each decision to detain and to establish mechanisms by which the standards of care and treatment provided in psychiatric in-patient facilities can be supervised and regulated.

The Act brings a focus to the issue of patients admitted on an involuntary basis to the Mental Health services. It specifies the grounds upon which involuntary admissions can be made, i.e. solely on the basis of mental disorder and provides that a person cannot be admitted involuntarily by reason only of the fact that he or she is suffering from a personality disorder, is socially deviant or is addicted to drugs or intoxicants.

The Act provides a definition of what constitutes mental disorder, i.e. “mental illness, severe dementia or significant intellectual disability where there is serious likelihood of the person causing immediate and serious harm to himself or herself or to other persons or where, because of the severity of his or her condition, the judgement of the person is so impaired that
condition or prevent the administration of appropriate treatment and the reception, detention and treatment of the person concerned in an approved centre would be likely to benefit or alleviate the condition of that person to a material extent”

A. Principal Features of the Act

1. The Mental Health Commission

The Act provides for the establishment of an independent Mental Health Commission that will have two primary functions:

♦ To promote, encourage and foster high standards and good practices in the delivery of mental health services.

♦ To ensure that the interests of detained persons are protected.

Obligatory referral to the Commission will be required in the case of each decision to detain, or extend the duration of a patient detention, on an involuntary basis in an approved treatment centre.

2. Mental Health Tribunal

The Mental Health Commission will appoint one or more Mental Health Tribunals who will operate under its direction. Their function will be to arrange an independent review of admission and renewal orders of patients detained involuntary in designated treatment centres.

♦ Mental Health Tribunals will arrange, on behalf of a detained person, an independent assessment by a Consultant Psychiatrist.

♦ The Tribunal will be empowered to release a patient if considered that s/he does not warrant involuntary detention.

♦ All patients currently detained in psychiatric hospitals will have their cases reviewed by a Mental Health Tribunal within six months of the Act coming into effect.

3. Consent to Certain Categories of Treatment

The Act sets down new requirements for obtaining or dispensing with patient consent for certain categories of treatment (psycho-surgery, ECT, long-term medication). Patient consent will only be set aside, when in the opinion of the treating clinician the treatment is essential to the person’s health and well-being. This requirement brings Irish law into line with international norms in this area.

4. Supervisory and Regulatory Role of the Mental Health Commission and the Inspector of Mental Health

♦ The Commission will be the registration authority for all hospitals and in-patient facilities providing psychiatric care and treatment. The Commission will maintain a Register of Approved Centres.
Inspector of Mental Hospitals.

- The Commission will employ the Inspector and s/he will be required to visit and inspect all approved centres whenever he/she thinks it appropriate. The Inspector will carry out an annual review of mental health services at least once a year.

- The Inspector will make a report to the Commission on matters relating to its function. The Inspector’s report will be included in the Commission’s annual report.

- The Minister will be empowered to make regulations specifying standards to be maintained in all approved centres and the Inspector will enforce these.

B. Summary of the Mental Health Act 2001

The following is a summary of the key provisions of the Act, with reference to the Parts and Sections of the legislation:

Part 1: Preliminary & General (Sections 1 – 6)

Part one provides for the repeal, in part, of the Mental Treatment Act 1945. It defines key terms used throughout the Act, including ‘mental disorder’. In the Act, Mental disorder is interpreted as mental illness, severe dementia or significant intellectual disability. Each of these categories is defined, as in the Mental Health Bill 1999.

The best interests of the person must be the principle consideration in relation to any decision taken under the Act concerning care and treatment. The person must be informed and involved in decisions relating to them, and respect for the rights and dignity of the person is essential.

Part 2: Involuntary Admission of Persons to Approved Centres (Sections 8 – 30)

Part two sets out the criteria for, and the procedures to be followed in the event of, the involuntary detention of persons with a mental disorder to an approved centre for psychiatric care and treatment.

S. 8: Specifies mental disorder as the sole grounds for involuntary admission. The Commission will issue guidelines in relation to the provisions of this section.

SS. 9 – 15
Sets down the procedures to be followed where a person is to be detained for care and treatment.

S. 9: Provides that the application for a recommendation for involuntary admission is made to a registered medical practitioner. It sets out the categories of persons eligible and disqualified for making an application for involuntary admission. It clarifies “an authorised person” and the conditions appropriate to making an application for involuntary detention.

S.10: Provides for the medical practitioner to recommend that the person, who is the subject of the application, be detained as an involuntary patient at the Approved Centre specified by him/her. It sets down the timeframe within which this must take place.
S. 12: Gives powers to the Gardai to take a person, believed to be suffering from a mental disorder, into custody and make an application to a medical practitioner for a recommendation for involuntary admission.

S. 13: Provides for the removal of a person, who is the subject of a recommendation to the approved treatment centre, with, in certain circumstances, the assistance of the Garda Siochana.

S. 14: Provides that a person, received at an approved centre, shall be examined by a Consultant Psychiatrist who shall, within 24 hours, admit or refuse to admit whichever is appropriate.

S. 15: Provides that the admission order shall be valid for a period of 21 days, with a possible extension by renewal order. The initial renewal order will be valid for 3 months, further extensions will be for a period not exceeding 6 months, and thereafter by periods not exceeding 12 months.

SS. 16 – 19
Provide for the independent review of each case of involuntary detention.

S. 16: Provides for written notice to be given, within 24 hours, to the patient, the subject of the committal order, outlining his/her rights for medical and legal review and appeal.

S. 17: Provides, on being notified of the admission or renewal order, for the Mental Health Commission to refer the matter to the appropriate Mental Health Tribunal. The Commission will also arrange for an independent review and examination by a consultant psychiatrist and will also assign a legal representative to the patient. The consultant psychiatrist will report to the Tribunal within 14 days and provide a copy of this report to the patient’s legal representative.

S. 18: Sets out the procedures and the timeframe (21 days) within which a Mental Health Tribunal shall review and decide on an admission or renewal order. If the Tribunal is dissatisfied that the person is suffering from a mental disorder or that proper procedures have not been complied with, it must revoke the order and direct the discharge of the patient. The decision timeframe can be extended by two periods of 14 days each, if that is in the patient’s interest.

S. 19: Allows for an appeal to the Circuit Court against a decision of a Mental Health Tribunal. This hearing can be in the District Court where the Centre is situated, or in a location where the patient ordinarily resides.

SS. 20 – 22
Provide for the transfer of patients from and between approved centres. In each case where a patient is transferred to another centre, the Commission is notified. The provisions in relation to duration of admission order, and their regular review, continue in force as if they had not been transferred.

SS. 23 – 24
Provide for the involuntary detention of a person who has been receiving treatment in an approved centre as a voluntary patient.
receiving treatment as a voluntary patient from leaving the centre for a period up to 24 hours. In the case of a child, the provisions of the Child Care Act shall apply; the child will be placed in the custody of the health board, which must make an application to the District Court within 3 days.

S. 24: Provides that where a person has been detained under Section 23 the opinion of a second Consultant Psychiatrist must be sought, who must confirm the detention or direct the patient’s discharge.

S. 25: Deals with the involuntary admission of children (defined as a person under the age of 18 unless married). The involuntary admission of mentally disordered children is subject to parental consent, or where the parents cannot or will not consent to treatment, the health board may apply to the Courts for an order, permitting involuntary admission. An order will be renewed by the Court within 21 days and, on receipt of a report by a Consultant Psychiatrist, may be extended in each case by periods of 3 months, and 6-month periods thereafter.

SS. 26 – 27
Provide for absences from approved centres.

S. 26: Provides for permitted patient absences under the direction of the treating Consultant Psychiatrist.

S. 27: Provides for patient absences without leave. Where there is a cause for concern in relation to patient safety and well-being, The Clinical Director of the approved centre may arrange for the patient to be returned to the centre by the staff. If necessary, the assistance of the Gardai can be called upon.

S. 28
Provides for the discharge of patients.

S. 28: Provides for the discharge of patients. Requires the Consultant Psychiatrist, responsible for the patient’s treatment, and having notified the Commission, to discharge the patient and revoke the admission order if s/he believes the person is no longer suffering from a mental disorder.

S.29
Provides for Voluntary admission to approved centres.

S.29 Provides for voluntary admission and treatment at approved centres. It also provides for treatment to continue where the liability for detention ceases.


Part three of the Act establishes the mechanisms for an independent review of detention, under the auspices of the Mental Health Commission.

SS. 31 – 36
Provide for the establishment of the Mental Health Commission:
S. 35: Provides that the Commission will have 13 members, appointed by the Minister and representative of the legal, medical, psychiatric nursing, paramedical professions, recovered patient and patient interest (voluntary bodies) and a representative of the Chief Executives of the Health Boards.

S. 36: Provides that the term of office of the Commission will be 5 years.

SS. 37 – 47
Provide for the structure and operations of the Commission, including the appointment of a Chief Executive Officer, Chairperson and staff, the preparation of an annual report and annual accounts.

SS. 48 – 49
Provide for the Mental Health Tribunals:

S. 48: Provides that the Tribunals will consist of three members and will hold office for 3 years. A Tribunal will be comprised of a practicing barrister/solicitor, who will act as Chairperson, a Consultant Psychiatrist, and one other. Its decisions will be by majority vote.

S. 49: Sets out the powers of a Tribunal, including the power to call witnesses, request documents and hear oral evidence. The person involuntarily admitted will have the right to attend any hearing and put his/her case in person or through a legal representative who will have the same privileges as in a court of law. The sittings of the Tribunal will be held in private.

SS. 50 – 55
Provide for the office of the Inspector of Mental Health Services. The Inspector will be a Consultant Psychiatrist appointed by the Commission.

S. 51: Provides that his/her principal functions will be to inspect all approved centres at least once a year, carry out an annual review of mental health services and submit a report to the Commission. Such advisors will accompany the Inspector, as s/he deems necessary.

S.52: Sets out the duties of the Inspector to meet with every patient and to be satisfied that the approved centre is adhering to the provisions as set down by this Act.

S. 54: Provides for the appointment of Assistant Inspectors.

S. 55: Allows the Commission to request the Inspector to carry out a special inquiry.

Part 4: Consent to Treatment (Sections 56 – 61)

Part four sets out the requirements for obtaining or dispensing with the consent of detained patients to certain categories of treatment.

S.56: Deals with informed consent, offered freely on the basis of adequate information, which is understood.
S. 57: Patient consent may be set aside in circumstances where treatments are necessary and are carried out in the patient’s interest under the direction of the appropriate consultant psychiatrist.

S. 58: Provides that, where the performing of psycho-surgery on a patient is proposed, the patient’s written consent and the authorisation of a Tribunal must be obtained.

S. 59: Provides that ECT cannot be performed on a patient without the patient’s written consent and where the patient cannot give such consent, two consultant psychiatrists must approve the treatment. The Commission will issue rules in relation to the use of ECT.

S. 60: Provides for circumstances where a patient has been on continuous medication for more than 3 months. In such a circumstance, the medication cannot continue without the patient’s consent, and where the patient cannot give consent the treatment must be approved by the treating consultant and authorised, on the approved form, by a second consultant. This approval and authorisation shall be valid for a 3-month period and thereafter for periods of three months while medication is continued.

S. 61: Contains similar provision with respect to children who are on medication.

Part 5: Approved Centres (Sections: 62 – 68)

Part five provides for the registration of psychiatric in-patient facilities and the regulation of standards, accommodation and practices in such facilities.

S. 64: Provides that the Mental Health Commission will establish a ‘Register of Approved Centres’ and sets out the circumstances in which the Commission may refuse to register a Centre. Approved Centres may also have conditions attached in relation to the environment, staffing and numbers of residents. Registration of Centres shall be valid for 3 years.

S. 65: Provides the right of appeal to the District Court in the event of a refusal to grant registration or renewal of registration.

S. 66: Empowers the Minister to make regulations setting down standards in relation to Centres, including individualised care planning, which will be executed and enforced by the Inspector.

Part 6: Miscellaneous (Sections: 69 – 74)

Part six contains miscellaneous provisions, including transitional provisions.

S. 68: Provides that patients shall not be placed in seclusion or under restraint except in accordance with rules set down by the Commission.

S. 70: Provides that an involuntary patient be excluded from inclusion in clinical trials.

S. 71: Provides that the governing body of each approved centre shall appoint in writing a Clinical Director of the centre/s.
S. 72: Requires that all patients currently detained in psychiatric hospitals will have their cases reviewed by a Tribunal within six months of the Act coming into operation. It also provides that for the first 3 years after commencement of the Act, existing hospitals and facilities will be deemed to be approved Centres.

S. 73: Requires the approval of the High Court to institute legal proceedings under this Act. The High Court will refuse such leave in cases where it is satisfied that such litigation is vexatious, or in cases where persons, against whom proceedings are brought, acted in good faith and with reasonable care.

S.75: Provides for a Ministerial review of the operation of this Act and a Ministerial report to each House of the Oireachtas.

**Conclusion**

The Act will involve considerable change for the Board, the implications of which have not been fully assessed. It will be some time (possibly one year and most likely more than this) before the legislation comes into force. The Regulations associated with the legislation have yet to be drawn up.

The Board will develop an implementation plan in due course, and I will keep the Board informed.

Copies of the Mental Health Act 2001 are available to Members upon request.

Yours Sincerely,

*Tom Hourigan*

Tom Hourigan,
A/Assistant Chief Executive Officer