Mental Health Reform Update, Concerns and Recommendations for the Report Stage of the Mental Health Bill 2024

July 2025

Mental Health Reform

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Wednesday 2 July 2025

The Mental Health Bill represents a landmark effort to modernise Ireland's mental health legislation in line with human rights principles and international best practice. Throughout the legislative process, Mental Health Reform (MHR) continues to play a central role in advocating for stronger protections for people experiencing mental health difficulties. This advocacy has spanned several years and included key milestones such as appearing before the Oireachtas Joint Committee on Health to present concerns and recommendations directly to policymakers.

The legislative process began with a comprehensive review of the existing Mental Health Act 2001. Over recent years, the Bill has progressed through various stages of parliamentary scrutiny, including public consultations, pre-legislative scrutiny, and, most recently, Committee Stage in the Oireachtas. Unlike the typical process where Committee Stage takes place within an Oireachtas Committee setting, the Mental Health Bill 2024 advanced through this stage directly in the Dáil chamber. While this approach allowed for Minister-led discussion and debate, it also meant that the opportunity for more focused scrutiny, broader stakeholder input, and expert engagement at this stage of a Bill is more limited than usual. We recognise the commitment to prioritise the Mental Health Bill while acknowledging this concern.

MHR notes the completion of the Committee Stage of the Bill which now moves on to Report Stage. We further note and welcome the recently approved amendment to review the Act every five years instead of ten years, a progressive and important step toward ensuring that the legislation remains current and responsive. However, MHR has concerns in respect of some amendments to the Bill that have been recently agreed at Committee Stage. We are raising these concerns with the Minister's office, and we would urge their reconsideration at the Report Stage of the Bill. As the Bill nears its final stages, there remains a crucial opportunity to adopt key changes to align the legislation more closely with the UN Convention on the Rights of Persons with Disabilities (UNCRPD). The recently approved amendments to the Mental Health Bill that concern MHR and our recommendations for amendment are as follows:

1 Involuntary treatment can begin before a capacity assessment is completed[1] [2].

While previous versions of the Bill clearly outlined an expectation that involuntary treatment should generally only occur after a capacity assessment was completed[3], recent amendments have removed this explicit expectation, meaning that involuntary treatment can commence without a capacity assessment. This is of concern in light of the recently widened criteria for involuntary treatment (see point 4 below). We are further concerned that there is not a clear timeline for when a capacity assessment must occur once involuntary treatment has commenced, nor is there a requirement for repeated capacity assessments throughout the involuntary detention period. As capacity is dynamic and can fluctuate, timely assessment and regular review are essential to ensure that individuals' will and preferences are actively sought and respected throughout the course of their care.

Recommendations:

- Mandate that a comprehensive capacity assessment must occur within a short, clearly defined timeframe (e.g. 72 hours) from the initiation of involuntary treatment. If this cannot be done, the capacity assessment should be completed at the earliest possible opportunity and the reasons for the delay should be clearly documented.
- Introduce mandatory periodic reassessments of capacity throughout the involuntary detention period, with a requirement that all assessments be clearly documented and reviewed by the multidisciplinary team.
- Each capacity assessment should include a written record of how an individual's will and preferences were identified and respected, or why they could not be followed.
- The Mental Health Commission should establish procedures for independent audit and review of all involuntary treatment given before a capacity assessment was completed.

[1] Dáil Éireann debate - Wednesday, 11 Jun 2025 Vol. 1068 No. 5
"A new Section 47 which allows for treatment to be administered to an involuntarily admitted person who has been assessed as lacking capacity, or who is undergoing capacity assessments, for a period of 21 days or 42 days following admission. A person must meet criteria for treatment set out in this section."
[2] Mental Health (Amendment) Bill 2024, as passed by Committee Stage
[3] Section 47 of the Mental Health Bill 2024, as initiated, was explicitly titled "Treatment without consent following capacity assessment finding of no capacity"

2 The timeframe for involuntary treatment can be doubled from 21 to 42 days[4] [5]. This increases the risk of prolonged, involuntary interventions. The doubling of the original timeframe and the fact it has been introduced at such a late stage in the Bill's progress without adequate discussion or consensus is a matter of concern. Furthermore, the additional 21-day extension for involuntary treatment appears to proceed without necessitating a new capacity assessment, only a continued determination that the individual meets the criteria for involuntary detention. This is particularly troubling given, as noted above, that capacity is fluid and could have changed considerably after 21 days.

Recommendations:

- We recommend that the involuntary treatment window be reduced back to 21 days.
- At a minimum, we believe there must be a statutory requirement for continued capacity assessments, particularly in cases where a person is subject to involuntary treatment for a period exceeding 21 days.

3 There is a risk of individuals undergoing prolonged involuntary treatment without timely access to decision-making supports[6]. An application to the Circuit Court to put decision-making supports in place for someone who lacks capacity, or who is waiting for a capacity assessment, can be made at any time within the involuntary treatment window (21 to 42 days), raising the risk of delays in accessing the supports necessary to protect an individual's rights and preferences. Involuntary treatment can continue while awaiting the Court's decision, even beyond the 42-day window.

Recommendations:

- To ensure people get decision-making supports in a timely way, we recommend that an application to the Circuit Court be made within a short and clearly specified time period (e.g. no more than five days from the commencement of involuntary treatment. At the very least, this application should be in place before any treatment continues past the first 21 days. Having access to an independent advocate would help ensure these supports are provided in a timely manner (see point 5 below).

4 The criteria for involuntary treatment have been significantly expanded[7]. Section 48 of the Bill, as presently amended, broadens the criteria for involuntary treatment to include circumstances where a psychiatrist believes treatment is immediately required and the suggested treatment would be "likely to benefit" the person's condition. We are concerned that this change could potentially grant excessive discretion to impose forced

[4] Dáil Éireann debate - Wednesday, 11 Jun 2025 Vol. 1068 No. 5
"Amendments to section 47 provide for treatment of involuntarily admitted people lacking capacity following their admission. Such people may be treated for a period of up to 42 days, increasing from 21 days in the Bill as initiated. An initial 21-day treatment window is provided for in the amendments, which can be extended by one further period of 21 days where it is approved by a second consultant psychiatrist."

[5] Mental Health (Amendment) Bill 2024, as passed by Committee Stage

[6] Dáil Éireann debate - Wednesday, 11 Jun 2025 Vol. 1068 No. 5
"A new section 48 which provides for an application to be made to the Circuit Court to seek the appointment of a decision-making representative or the making of a decision-making order where a person lacks capacity and does not have a valid substitute decision-making arrangement. The application to the Circuit Court must be made at any point within the 21 or 42 days following admission, and treatment may be administered before the application is made to the Court."

[7] Mental Health (Amendment) Bill 2024, as passed by Committee Stage

treatment based on presumed benefit – a threshold that virtually all recommended treatments could meet.

Recommendations:

- Instead of the term "likely to benefit", we recommend clearer and more precise language to ensure the legislation reflects that involuntary treatment may only be administered in urgent circumstances where the delay or absence of such treatment would pose a serious impact to the health or safety of the individual.
- The requirement under the Bill to record the absence of consent and details of treatment in medical records is a welcome provision. However, it is essential to introduce mandatory review mechanisms and ensure access to an independent complaints process (see point 5 below). This would allow individuals to challenge treatment decisions once they regain capacity, providing a necessary safeguard for their rights.
- The Mental Health Commission should establish procedures for independent audit and review of involuntary treatment decisions.

We also note general concerns relating to the Bill:

5 A key omission from the Bill is the continued **absence of a commitment to an independent complaints process and a statutory right to independent advocacy** for those who experience involuntary detention and treatment. These measures, long advocated for by MHR, are essential to uphold the rights and dignity of those placed in such inherently vulnerable and coercive circumstances, particularly where treatment is administered without consent. Their importance is only amplified by the Bill's recent amendments, which significantly broaden the scope and duration of involuntary interventions. In the absence of these safeguards, individuals remain at risk of being subject to prolonged, coercive interventions without an independent advocate to amplify their voice, without a pathway to meaningfully challenge decisions, and without an accessible pathway to seek redress for inappropriate care.

Recommendations:

- Introduce a statutory right to independent advocacy[8] for all individuals subject to involuntary detention from the moment of admission. This right should include the option to decline advocacy support (opt-out), as well as the ability to re-engage with advocacy services (opt-in) at any stage during their detention.
- Introduce a right of access to an independent complaints mechanism for reviewing individual complaints by persons accessing mental health services, particularly those who are involuntarily detained. This mechanism must be legally separate from service providers, with defined timeframes for investigating complaints, clear investigatory powers, and protections against retaliation.

[8] We note that the absence of a statutory right to independent advocacy for people being involuntarily detained puts Ireland significantly out of step with international best practice, including in the examples of our neighbours England, Scotland and Wales. We would also note a clause that has recently been introduced to the UK Mental Health Bill requiring that, in order to learn from those with lived experience, a person detained must be offered a consultation with an independent mental health advocate to review their experiences of hospital treatment within 30 days of their discharge.

- Require that individuals are informed of their right to both an independent advocate and to submit a complaint in accessible formats, with advocates supported to represent individuals' expressed wishes and concerns.

6 The Bill continues to allow for the admission of children to adult units. Although the decrease in the number of such admissions in recent years is recognised and certainly welcome, the absence of legislative safeguards leaves children vulnerable to this practice becoming more widespread again in the future. Notably, concluding observations from the Committee of the UN Convention on Rights of a Child state that they are seriously concerned about Ireland's practice of admitting children to adult units.

Recommendations:

- The Bill should explicitly prohibit the admission of children to adult units.
- In cases where emergency admission of a child to an adult unit is deemed unavoidable, at a minimum, the Bill should ensure there is clearly defined maximum timeframe (e.g. 72 hours) in which children may be treated in an age-inappropriate environment.

7 The term "Mental Disorder" still needs to be replaced. We continue to advocate for the term "mental disorder" in the legislation to be replaced by "mental health difficulties" in line with Sharing the Vision, the national mental health policy in Ireland or "psychosocial disability" in line with the UNCRPD. At a minimum, we contend that the term "mental disorder" should be replaced with the term "mental illness" which, while still problematic, is generally agreed to be less stigmatising than the term "mental disorder" and is in line with the recommendation of the Expert Review Group[9].

8 Chemical Restraint. The Bill provides no specific safeguards or statutory provisions governing the use of chemical restraint against persons subject to involuntary detention and treatment. Earlier drafts included a comprehensive section on chemical restraint but all references to and protections against the use of chemical restraint were subsequently removed. This omission is troubling, given that this practice is not covered under existing regulations or Codes of Practice and is not reviewed by the Mental Health Commission. It should be noted that the Mental Health Commission had requested that a section on chemical restraint be included in the Bill.

Recommendations:

- Reintroduce a dedicated section under Chapter 4 (Restrictive Practices) of the Bill explicitly regulating the use of chemical restraint.
- Chemical restraint must be governed by the same clear rules and subjected to the same oversight as other restrictive practices already outlined in the Bill.

[9] https://assets.gov.ie/static/documents/report-of-the-expert-group-review-of-the-mental-health-act-2001.pdf

Conclusion

The Mental Health Bill presents a unique and vital opportunity to uphold the rights and dignity of some of the most vulnerable individuals in our society – those experiencing serious mental health difficulties – and to bring Irish legislation in line with the progressive aims of the UNCRPD. There is still an opportunity to introduce key changes that would significantly strengthen the Bill. By addressing the concerns outlined above, the Bill can more fully reflect a rights-based approach to mental health – one that respects dignity, autonomy, and the voices of those with lived experience.

MHR continues to carefully review the changes in the Mental Health Bill. We reserve the right to alter our comments and observations in the light of new information and further changes to the Bill and we welcome feedback from our members.

Recommendation on Funding including an Independent Advocacy Service: As a matter of particular urgency MHR continues to advocates for the establishment of an independent advocacy service (see Point 5) – initially for those who experience involuntary admission and or treatment but further expanded as resources allow. Such a service has been successfully operating in England for a number of years. MHR will be developing an advocacy paper on this issue. It is also essential that the authorised officer role is sufficiently funded to ensure that they can carry out their vital role in upholding individual rights and reduce reliance on Gardaí in crisis response – ensuring that individuals in crisis are met with appropriately trained personnel. Without clear and sustained financial commitment, the objectives of the Bill cannot be fully realised and its implementation risks being undermined.

To support public understanding of the Mental Health Bill and its implications, Mental Health Reform developed a Plain English Guide of the Mental Health Bill 2024 to make complex legal language more accessible to individuals with lived experience, families, and the wider public. We have also produced a range of other supporting materials including reports and webinars that are all accessible on our webpage Reform the Mental Health Act.