

Strengthening Human Rights in Ireland's Mental Health Bill: Evidence and Recommendations

This document outlines areas where Mental Health Reform (MHR) believe the Mental Health Bill could be strengthened, drawing on evidence from international human rights standards and comparative legislative practice.

In particular, we reference the [United Nations Convention on the Rights of Persons with Disabilities](#) (UNCRPD), an international human rights treaty that Ireland has ratified and is therefore obligated to implement. We also reference the World Health Organisation and UN Office of the High Commissioner for Human Rights (WHO/OHCHR) [2023 guidance on mental health and human rights](#), which sets out best-practice standards for rights-based mental health laws.

We also highlight established statutory models that already provide rights-based safeguards, including advocacy and independent oversight. These frameworks collectively inform and support MHR's recommendations for strengthening rights protections within Irish mental health legislation.

1. Statutory right to advocacy

MHR's call: A statutory right to independent advocacy for all people accessing mental health services.

A statutory right to advocacy is already standard in neighbouring jurisdictions and aligns with UNCRPD obligations.

UNCRPD

- **Article 12 - Equal recognition before the law.** This requires States to recognise that persons with disabilities enjoy legal capacity on an equal basis with others and to provide access to the support they may require in exercising that capacity. Independent advocacy is a widely recognised form of "support to exercise legal capacity".
- **Article 13 - Access to justice.** This requires States to ensure effective access to justice, including through "procedural and age-appropriate accommodations". Independent advocacy is one such accommodation.

WHO/OHCHR mental health, human rights and legislation guidance (2023)

- The WHO - OHCHR guidance calls for mental health laws to guarantee access to independent support, including advocacy, to enable people to understand and exercise their rights and to challenge decisions about their care.

Comparative legislation (England, Scotland, Wales)

- **England and Wales - Mental Health Act 1983 (as amended):** Established Independent Mental Health Advocates (IMHAs) for certain detained and community-treated patients.



- **Scotland - Mental Health (Care and Treatment) (Scotland) Act 2003:** Created a statutory right to independent advocacy for people with mental health difficulties under section 259. This right was retained and reinforced by the **Mental Health (Scotland) Act 2015**, which introduced targeted reforms, strengthening advocacy, named persons and advance statements.

2. Independent complaints mechanism

MHR's call: A legal right to an independent complaints process, structurally separate from service providers, with clear powers, timelines and protection from retaliation.

UNCRPD

- **Article 13 - Access to justice.** This requires effective access to justice “on an equal basis with others”, which includes accessible, independent mechanisms to challenge rights violations in services.
- **Article 16 - Freedom from exploitation, violence and abuse.** This requires States to put in place “effective legislation and policies” and “independent authorities” to monitor facilities and programmes serving persons with disabilities. Independent complaints processes are a core part of this.

WHO/OHCHR guidance (2023)

- The guidance stresses that mental health legislation should provide independent oversight and complaints mechanisms with powers to investigate, make binding recommendations and protect complainants from reprisals, as part of preventing and remedying human rights violations in mental health settings. This directly supports MHR's call for a legally separate, time-bound, rights-based complaints mechanism.

3. Prevent the admission of children to adult units

MHR's call: The Mental Health Bill should prevent the admission of children to adult inpatient units.

- **United Nations Convention on the Rights of the Child (UNCRC) Concluding Observations (Ireland, 2023)** urge the Irish State to include an explicit legal prohibition on placing children with mental health difficulties in adult psychiatric units.
- **Article 7 CRPD** requires that children with disabilities enjoy all human rights on an equal basis with other children, that their best interests are a primary consideration, and that they receive age- and disability-appropriate assistance.
- **WHO/OHCHR Guidance (2023)** calls on States to ensure the provision of age-appropriate mental health care.



4. Capacity assessments

MHR's call: Capacity assessments should generally be completed before any decision to provide involuntary treatment; treatment before assessment only in rare/emergency situations and subject to external review. We also believe that capacity assessments should occur as regularly as possible and we welcome the Minister's commitment to look into potentially reducing the maximum window for regular formal capacity assessments below 14 days in advance of Report Stage.

Irish legislation and guidance

- **Assisted Decision-Making (Capacity) Act 2015 (as commenced)** Introduces a functional, time-specific test of capacity and a tiered system of decision-making supports (decision-making assistance, co-decision-making, decision-making representation), designed to enable people to make their own decisions with support rather than substitute decision-making.

UNCPRD

- **Article 12 – Equal recognition before the law.** This requires recognition of full legal capacity and access to support, and that safeguards relating to the exercise of legal capacity are “proportional and tailored to the person’s circumstances, apply for the shortest time possible and are subject to regular review”.
- **Committee on the Rights of Persons with Disabilities, General Comment No. 1 (2014).** This clarifies that disability or diagnosis alone can never justify removing legal capacity and that decisions about treatment must respect the person’s will and preferences, with support provided to express these.

WHO/OHCHR guidance (2023)

- Calls for replacing status based and diagnosis based approaches with capacity and rights based approaches, ensuring that any intervention is based on a careful assessment of the person’s will, preferences and decision making abilities and that coercive practices are eliminated or strictly limited and subject to independent review.

5. Timely access to decision-making supports

MHR's call: Applications to the Circuit Court for decision-making supports should be made before involuntary treatment begins or within a short, clearly specified timeframe (e.g. within 72 hours). Given the delays in Circuit Court's hearing applications for decision supports, it is essential that alternative supports (such as access to an independent advocate) are available to individuals being involuntarily treated while they await the Court's decision.

UNCPRD

- **Article 12(3)** Requires States to “take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity”.



- **General Comment No. 1** Emphasises that support to exercise legal capacity must be available and accessible in practice, not merely in law and accompanied by safeguards to prevent undue delay or denial of rights.

Irish legislation and guidance

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- **Mental Health Commission - Human Rights-Based Approach to Care and Treatment (2025)** Promotes a rights-based approach in Irish mental health services, stressing supported decision-making, respect for will and preferences and alignment with the UNCRPD and the Assisted Decision-Making (Capacity) Act.