



Human rights and section 59 of the Mental Health Act 2001

Summary¹

Amnesty International Ireland (AI) made a submission to the Minister for Health and Children on 4 March 2010. It sets out how the law should be changed to provide better human rights protection for people with mental health problems who may be given electro-convulsive therapy (ECT). AI is not a medical organisation and therefore cannot take a position on ECT itself as a form of treatment.

Currently, the law in Ireland allows ECT to be administered to an involuntary patient who is “*unwilling* or unable” to consent to ECT. Two consultant psychiatrists must give authorisation for this (Section 59 of the Mental Health Act 2001). This is not in line with human rights standards and needs to be changed. **Human rights standards state that a person who has the capacity to make decisions about their treatment should never be given ECT without informed consent.**

Human rights standards also require that the law protects people against any inappropriate use of ECT. These strict, legal safeguards are:

- Every decision to give ECT to a person should be reviewed by an independent external body (such as a mental health tribunal). This should happen *for both voluntary and involuntary patients*.
- The independent body should review:
 - Whether the person is able to make their own decision. (AI has recommended that the independent body must take account of the views of other members of the multi-disciplinary team in addition to the person’s consultant psychiatrist);
 - Whether they have given free and informed consent to ECT. This means the person must have freely agreed to the procedure without coercion and have been given enough information about the treatment, including possible side effects; and
 - Whether the ECT is necessary as a *last resort* and is the *least intrusive treatment* available to the patient. This must also be considered by an *independent* consultant psychiatrist).
- For people who are not able to make their own decisions (that is, where an independent external body has found that they lack capacity),

¹ This is a summary only. AI’s detailed submission is available at:
<http://amnesty.ie/reports/submission-department-health-and-children-relation-private-members-bill-2008-re-involuntary->

even where all of these safeguards have been met, the independent body should not allow ECT to be given to a person if doing so would conflict with either:

- A binding statement written in advance by the person expressing their wishes about ECT (this is called an 'advance directive'); or
- A refusal by a person appointed by the patient to make decisions on their behalf when they are not in a position to do so themselves.

AI has urged the Department of Health and Children to ensure that all of these safeguards are put in place through amendments to the Mental Health Act 2001.

The proposal to delete section 59B

There is currently a Bill before the Oireachtas that would delete part of the section on ECT in the Mental Health Act 2001 (Section 59B). However the simple deletion of Section 59B will not provide the safeguards outlined above.

If section 59B was deleted, with no other change to the law, the question of whether ECT may be given would be dealt with under the common law "doctrine of necessity". In short, this principle provides that if a person lacks the capacity to consent to a treatment, it may be given if the doctor feels it is in the patient's best interests, i.e. to save the person's life or protect their health. There is no requirement under the common law that a second independent opinion be obtained or that the matter be referred to an independent review body. This situation would not provide adequate protection of the human rights of individuals who lack capacity. In addition, it would fail to provide safeguards for people who consent to ECT. Therefore it is clear that the common law would not provide sufficient safeguards for patients against the inappropriate use of ECT. That is why AI is making recommendations for detailed amendments to Section 59B.

Other sections of the Mental Health Act 2001

AI has also urged the Department of Health and Children to review and amend section 60 of the Mental Health Act 2001. Section 60 relates to the administration of medication to an involuntary patient for a period in excess of three months and also raises human rights concerns.

There are other sections of the Mental Health Act 2001 that need to be changed so that they meet current human rights standards. The Government has committed to reviewing the Mental Health Act 2001 by November 2011. AI recommends that this review be commenced as soon as possible. It should review the whole Act against up to date human rights standards, including the Convention on the Rights of Persons with Disabilities. The Department of Health and Children should also consult with service users, family and friends, representative organisations and others as part of this review.

The proposed new mental capacity legislation

Government published an outline of a proposed new law on decision-making capacity in September 2008 (known as the "Scheme of the Mental Capacity

Bill 2008). However, a draft law (Bill) has not yet been published. It is important that the Government publishes its legislation on decision-making capacity without further delay and that this legislation meets the standards set out in the UN Convention on the Rights of Persons with Disabilities. The Government then needs to ratify that Convention at the earliest opportunity.

ENDS//