

# The Mental Health Act, 2012

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## BACKGROUND

The history of mental health is tainted with a bad reputation of people with mental health problems being treated as witches and as people possessed by evil spirits. Over the years there is documented evidence of people with mental health problems being unnecessarily held in prisons and in secluded places – asylums. In the 20<sup>th</sup> century considerable improvement was made in the care and treatment of mental health disorders and people were moved to hospitals. Still there was a lot of restrictive and ‘harsh’ treatment which was at times considered as brutal and inhuman. The new trends of care are to give acute treatment in hospital if necessary and to move towards a more community approach. The new law aims to see people with mental health problems as full and active members of the society.

## MENTAL HEALTH ACT, 2012

The new Mental Health Act, 2012 in the Maltese legislation is aimed to be in line and reflect changes in knowledge, medical and social developments in the field on a local level. The new law introduces the Commissioner as a monitoring body while it is the first Law in Malta of its kind which gives a legal backing to rights of users and their carers. It also aims to lead towards the necessary changes in perceptions and attitudes to ensure that people with mental health problems are considered ‘full citizens’. The law outlines practices which are to be followed to reduce the compulsory length of stay in hospital and fosters more community based services.

## LEGISLATIVE FRAMEWORK

The World Health Organisations (WHO, 2013) outlines the basis for sound legislation for the safeguarding of service provision in Mental Health mainly

*“Mental health legislation or mental health provisions integrated into other Laws (e.g. anti-discrimination, general health, disability, employment, social welfare, education, housing, and other areas). The relevant legislation may cover*

*a broad array of issues including access to mental health care and other services, quality of mental health care, admission to mental health facilities, consent to treatment, freedom from cruel, inhuman and degrading treatment, freedom from discrimination, the enjoyment of a full range of civil, cultural, economic, political and social rights, and provisions for legal mechanisms to promote and protect human rights (e.g. review bodies to oversee admission and treatment to mental health facilities, monitoring bodies to inspect human rights conditions in facilities and complaint mechanisms).”*

The Mental Health Act covers all these aspects within the 11 sections of the Law. Section 1, The Preliminary – gives a list of definitions and outlines several new concepts which are important to bring about the desired changes of improved care and quality of life for people with mental health problems and their families. It is worth pointing out a few of these definitions:

- Custodial Care: means non medical-care that helps a person with his or her activities of daily living and not requiring constant attention of healthcare professionals.
- Health Care Professional: This means all health care professionals involved in the care of the patient. These are those registered with Medical Council, Nursing and Midwifery council, Council for Professions Complimentary to Medicine regulated by the Health Care Professions Act, and those regulated by the Acts regulating the Social Work Profession and Psychology. This change is also reflected in the emphasis in the law about the Multidisciplinary team which means a group of different healthcare professionals working together as a team in giving treatment and care to the patient and the composition of the team varies according to the patients needs.
- Involuntary Patient: means a patient who is receiving treatment and/or care in a licensed facility or in the community against his/her own will.

New definitions are also given to 'Mental Capacity', 'Mental Disorder', 'Mental Health Licensed Facility', 'Mental Welfare Officer', 'Responsible Specialist' and 'Restrictive Care' amongst others. A major change worth noting is the new concept of 'Responsible Carer'.

The new concept of Responsible Carer goes beyond the next of kin or nearest relative. It gives the patient the right to choose a person of trust who will take a direct and active part, together with the multidisciplinary team and the patient, in care decisions whilst representing the patient's interest as required.

## **RIGHTS OF USERS AND CARERS**

The rights of users and carers are listed and defined in the third section of the law. The person with a mental health disorder shall have the right to exercise a number of civil, political, economic, social, religious, educational and cultural rights amongst others. The patients and their carers have the right to full respect of their dignity, the right to privacy and the right to receive quality treatment. The new law gives the right to the person to receive treatment of the same quality and standards as other individuals and to have their needs addressed holistically through a multidisciplinary care plan approach. Importance to care in the community is another right with the aim of facilitating the reintegration of the person in society. The right to receive timely information in an understandable form and manner together with the right to participate actively in own treatment are two new rights driven by the new legislation. Should the person lack mental capacity to understand his rights this information is given to the responsible carer within 24 hours from commencement of care episode. Another three important rights are the right to have access to clinical records; the right to communicate with the outside world and the right to receive visitors; for all three the safeguard of self and others is considered important prior to practicing the rights. Last but not least is the right to have a responsible carer of their choice.

The patients have the right for their care and rehabilitation to be continued in the community so as to facilitate their social inclusion whilst they also have the right to receive information about their disorder and available services to cater for their needs. Confidentiality of all information about themselves and their condition is assured from being revealed to third parties unless there is an emergency situation which requires life saving intervention, it is in the interest of public safety or enforced legally. Environmental aspects are also rightfully protected specifically protection from cruel, inhuman and degrading treatment and assurance of safe and hygienic environment.

## **The Commissioner**

The Commissioner for the Promotion of Rights of Persons with Mental Disorders is established under the new Mental Health Act. The law highlights that the Commissioner is to promote and safeguard the rights of persons suffering from mental disorders and their carers and to review any policies and make the necessary recommendations to the competent authorities. The Commissioner has the authority to receive complaints and carry out investigations relevant to queries received. The new legislation specifically places the onus on the Commissioner of the inspection of all licensed mental health facilities to ascertain that patients' rights and all the provisions of the Act are upheld. The new legislation stipulates in Part 9 the criteria and regulation for the licensing of a mental health facility be it a hospital or a nursing home.

## **Care and Treatment**

The revision in treatment options includes that treatment is to be given in the least restrictive manner possible giving the option to the person suffering from mental disorder to seek voluntary admission. The fourth section of the new law specifically provides for voluntary admissions and elaborates provisions for written informed consent (including for seclusion), the right to self-discharge, the right to be informed at the outset about the possibility of being detained involuntarily if criteria for involuntary admission are met and consultation with the patient and the responsible carer in the formulation of a multidisciplinary care plan. In particular cases where police assistance is required for safety reasons, criteria set in part 11 of the Law are to be respected.

The law lays out provisions regulating mental capacity, with the overarching assumption that – a person suffering from a mental disorder is able and competent to make decisions unless otherwise certified by a psychiatrist. In cases where a person is considered to lack mental capacity the law provides for informed consent to be given by the responsible carer. Part 5 of the Law deals extensively with definitions and ways in which certification of mental capacity are to be conducted. In case of emergency where there is risk for self and others and the person refuses to give consent to treatment and the responsible carer cannot be identified, emergency treatment can be given to prevent further deterioration; however all decisions taken are to be backed with detailed and proper notes in person's clinical records. Admission in such urgent situations can be made even with just one signature of a medical practitioner; however the patient

**Table 1:** A comparison between the old and new Mental Health Act

MAXIMUM LENGTH OF STAY		
	Old law	New law
Involuntary Admission for Observation	28 days	15 days ( by day 10 a patient is discharged or becomes a voluntary patient or application for further treatment on an involuntary basis or community treatment order is to be made to Commissioner)
Involuntary Admission Treatment Order	1 year	10 weeks
Extension for Involuntary Admission for Treatment Order	1 year	5 weeks (application by responsible specialist to be made to Commissioner accompanied by reasons and modification of the care plan)
Continuing Detention Order	2 years renewable	6 months renewable (has to be accompanied by a modified multidisciplinary care plan)

has to be assessed within 24 hours by a psychiatrist to ensure that the patient’s rights are not compromised.

Significant changes in the new law are the time-frames for observation and involuntary detentions; there is a reduction in length of stay and specific procedures and documentation is necessary between one stage and another including relevant schedules with information to be submitted to the Commissioner for Mental Health (Table 1).

A community treatment order is introduced by the new law to provide for care and treatment in the community for those patients where treatment in a licensed facility is not required but meet the criteria for compulsory treatment in the community. The law outlines various parameters which need to be respected for the successful implementation of the community treatment order including a multidisciplinary care plan and the appointment of a key healthcare professional responsible for co-ordinating the necessary treatment. Rehabilitation of patients with mental health problems includes their active involvement in their own treatment plans while a more holistic multidisciplinary approach in care is being established. The law defines the term ‘informed consent’ whereby patients or their carers actively participate in the treatment after being given all the necessary information in an understandable language and manner.

## DEALING WITH MINORS

Part 6 of the law provides special clauses with regards to treatment of individuals under 18 years old – referred to as minors. The facilities providing care for minors are required to have a specific license whilst it foresees that a minor can also give informed consent if required, so long as the minor has sufficient maturity and understanding. In the case of minors deemed to lack sufficient maturity and understanding to provide informed consent, consent shall be elicited from the responsible carer with the necessary safeguard in a situation of emergency or physical or mental deterioration of the minor. Whilst the law fosters for healthy relations between parents and minor, if there are instances where the minor’s interests are not being safeguarded the Commissioner may intervene to ensure that the minor receives the required treatment and care. Periods of treatment of minors are considerably reduced and are subject to more frequent reviews (Table 2).

## Special Treatments and Research

Part 7 of the Law outlines practices and procedures required for Special Treatments, Restrictive Care and Clinical Trials or other Medical or Scientific Research. Within all medical specialities, no major medical or surgical procedures can be carried out on a patient suffering from a

**Table 2:** A comparison between lengths of stay for adults and minors

LENGTHS OF STAY ADULTS VS MINORS		
	Old law	New law
Involuntary admission for Treatment order	10 weeks	4 weeks
Extension of Involuntary Admission for Treatment Order	5 weeks	4 weeks for a maximum stay of 12 weeks from initial date of admission
Continuing Detention Order	6 months	3 months renewable (has to be accompanied by a modified multidisciplinary care plan)

mental disorder unless such person gives a written consent. In instances where the person lacks mental capacity such consent may be signed by the responsible carer. The same criteria apply for the involvement of a patient with mental health problems in clinical trials and research. With regards to specialised mental health treatment such as Electro Convulsive Therapy, this cannot be performed unless there is the specific agreement of its benefits of two specialists and the informed consent of the patient. The Article regulates the practice of restrictive care such that it is used only as a last resort and for the shortest possible time and in the least restrictive manner possible, in the best interest of the patient. The Commissioner is to ensure that guidelines and protocols for least restrictive care are adhered to by licenced facilities.

### Patients Concerned in Criminal Proceedings

Part 8 of the Law establishes practices for mental health care of persons charged with criminal offence or undergoing proceedings and/or people detained under court orders. Within this section there are minimal changes to the old law mainly in change in terminology where the term mental capacity replaces insanity and the fact that person under such conditions has to be kept within the forensic section of a licensed facility rather than openly in the mental health facility itself. The new law caters for prisoners with mental health disorders whereby it stipulates that if a person in prison develops mental health problems, if this person cannot be treated adequately in prison the person is admitted for treatment in the forensic unit and unless criteria for involuntary admission are met the patient is put on a voluntary treatment regime while prison regulations continue to apply.

### Promotion of Social inclusion

People with a mental health problem fall within the definition of Vulnerable group as defined by WHO in 2013. *“Certain groups have an elevated risk of developing mental disorders. This vulnerability is brought about by societal factors and the environments in which they live. Vulnerable groups in society will differ across countries, but in general they share common challenges related to their social and economic status, social supports, and living conditions, including:*

- *Stigma and discrimination;*
- *Violence and abuse;*
- *Restrictions in exercising civil and political rights;*
- *Exclusion from participating fully in society;*
- *Reduced access to health and social services;*
- *Reduced access to emergency relief services;*
- *Lack of educational opportunities;*
- *Exclusion from income generation and employment opportunities;*
- *Increased disability and premature death.”*

### Reference

Mental Health Act (Cap. 525) – 2012. [online] Available at: [https://ehealth.gov.mt/HealthPortal/others/officeofthecommissionerformentalhealth/mental\\_health\\_act/cap\\_525\\_mental\\_health\\_act\\_2012.aspx](https://ehealth.gov.mt/HealthPortal/others/officeofthecommissionerformentalhealth/mental_health_act/cap_525_mental_health_act_2012.aspx) [Accessed 15 August 2014]

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