

PUBLIC CONSULTATION

Towards A Robust Human Rights and Equality Framework

Please find hereunder comments and proposed amendments from the Office of the Commissioner for Mental Health. This Office remains available to discuss and clarify further these proposals should the need arise.

Regards



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Commissioner

28th January 2016

General Comments

The comments below refer to the specific mandate of this Office to promote and protect the rights of person with mental disorders as enshrined in the Mental Health Act (Cap. 525).

The proposals below revolve around the following three guiding principles:

- a) The Equality Act should recognise “mental disorder” as defined in the Mental Health Act as a protected characteristic.
- b) The Human Rights and Equality Commission Act should reflect the inclusion of mental disorder as a protected characteristic.
- c) The Human Rights and Equality Commission Act should recognise the Commissioner for the Promotion of Rights of Persons with Mental Disorders established by the Mental Health Act.

The amendments below also ensure compatibility and harmonisation with the provisions of the new Mental Health Act.

Equality Act

1. Insert the definition of “mental disorder” in Article 2 in between the definitions of “marital status” and “Minister”:

“mental disorder” shall have the meaning assigned to it in the Mental Health Act; (Cap525)

2. Insert “mental disorder” as one of the “protected characteristics” in Article 2:

“protected characteristics” shall be age; belief, creed or religion; disability; family responsibilities; family or marital status; gender expression or gender identity; HIV status; maternity; **mental disorder**; pregnancy; race, colour or ethnic origin; sex or sex characteristics; and sexual orientation;

3. Insert “and persons with mental disorders” in Article 3, sub-article (3) (d):

(d) With regards to disabled persons **and persons with mental disorders**, measures taken at the workplace aimed at creating or maintaining provisions or facilities for safeguarding or promoting their integration into the working environment;

4. Insert “and mental disorder” in Article 3, sub-article (3) (h):

(h) Less favourable treatment on the grounds of age, ~~and~~ disability **and mental disorder** in the Armed Forces of Malta.

Human Rights and Equality Commission Act

1. In Part II, under section entitled Appointment and Composition, Article 4(1) to be amended as follows:

4. (1) The Commission shall be composed of a chairperson who shall be called the Commissioner for Human Rights and Equality and not less than six but not more than twelve other members who are suited to deal with issues of human rights and equality, and, or legal and administrative issues connected therewith. ~~One of the members of the Commission shall be the chairperson of the National Commission Persons with Disability.~~ **The chairperson of the National Commission Persons with Disability and the Commissioner for the Promotion of Rights of Persons with Mental Disorders shall be ex-officio members of the Commission.** The Commissioner and the other members of the Commission shall, in the performance of their functions under this Act, be officers of Parliament.

2. In Part II, under section entitled Disqualification, Article 5(1) (c) to be amended as follows:

(c) is legally interdicted or incapacitated **or has a valid Certificate of Lack of Mental Capacity (Cap.525);**

3. In Part III, under section entitled Functions of the Commission, sub-article (ix) to include reference to the governmental organisation responsible for the protection of persons suffering from mental disorders through the Mental Health Act:

(ix) to maintain consultation and, where it considers it so appropriate to better fulfil its functions, to co-operate with governmental organisations responsible for the protection of particularly vulnerable groups such as children, migrants, refugees, **persons with mental disorders** and persons with disability.

4. In Part III, under section entitled Complaints, sub-article 3 to be amended as follows in order to align this Act to the provisions of the new Mental Health Act:

(3) Notwithstanding any provision in any enactment, where any letter appearing to be written by a person in custody or on a charge or after conviction of any offence, ~~or by any patient of any hospital within the meaning of the Mental Health Act,~~ is addressed to the Commission, it shall be immediately forwarded, unopened, to the Commissioner by the person for the time being in charge of the place ~~or institution~~ where the writer of the letter is detained ~~or of which he is a patient.~~ Any letter written by the Commission to a person ~~or patient~~ so described shall be immediately

forwarded, unopened, to such person ~~or patient~~ by the person for the time being in charge of the place ~~of detention or institution~~.

5. In Part III, under section entitled Refusal to Investigate, insert a new sub-article immediately after sub-article referring to the Ombudsman Act as follows:

The Commission shall not proceed to investigate any complaint on the subject-matter of which an investigation is pending by the Commissioner for the Promotion of Rights of Persons with Mental Disorders in terms of the Mental Health Act, and shall suspend the investigation if any interested person shall file a complaint with the Commissioner for the Promotion of Rights of Persons with Mental Disorders on the subject-matter of the investigation.

Provided that the Commissioner for the Promotion of Rights of Persons with Mental Disorders shall be empowered to forward a complaint that he received, or even started investigating, to the Commission to deal with if in his opinion the Commission is in a better position to investigate such complaint.

Other Comments / Remarks not linked to the mandate of this Office

Equality Act

Article 2: Definitions:

“intersectional discrimination” – the term “multiple discrimination” would be a more appropriate term.

“marital status” – the definition misses out the status/condition of being “separated”.

“ordinary discrimination” – the term “ordinary” gives the connotation that discrimination can be common or unimportant. It is proposed to call it “single discrimination” to complement “multiple discrimination”.

“pregnancy” – This definition is inexact. Re-wording recommended as follows: “refers to the state of a person who is carrying a developing embryo or foetus inside the body”.

“self-employed workers” – line 5 mentions only the “spouses”. What about partners in civil unions or unmarried couples?

Article 4: Consider either defining the term “child/children” or else the term “minor” should be used instead. Consider also including text that gives a voice to the minor/child such as “whilst taking into account maturity and understanding of the minor/child”.

Following Article 6(3)(d), it is proposed to include a provision in respect of positive discrimination in educational settings for both disabled persons as well as persons with mental disorder.

Human Rights and Equality Commission Act

Annual Report – There should be an obligation to discuss the Annual Report either in the House of Representatives or in the Permanent Committee for Social Affairs (or any other relevant Permanent Committee).