

Future Directions in Irish Mental Health Law

DSBA/IMHLA Mental Health Seminar

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Issues

- Context
- ADMCA and MHA
- Deprivation of Liberty
- Expert Group to Review the MHA
- Children and Adolescents
- Advance Mental Healthcare Directives
- International/European trends



Context for Change



- ▶ Mental Health Act 2001
 - ▶ Commenced 2006
- ▶ A Vision for Change 2006
- ▶ Assisted Decision-Making (Capacity) Act 2015
- ▶ Human rights developments
 - ▶ European Convention on Human Rights Act 2003 - case law from European Court of Human Rights
 - ▶ Convention on the Rights of Persons with Disabilities

ADMCA in Outline



Key Elements

Complex: 146 sections

Extensive provision for Regulations/Codes of Practice

Developed by National Disability Authority/Ministerial Working Group

Final Approval by DDSS

ADMCA and MHA: Express Interaction

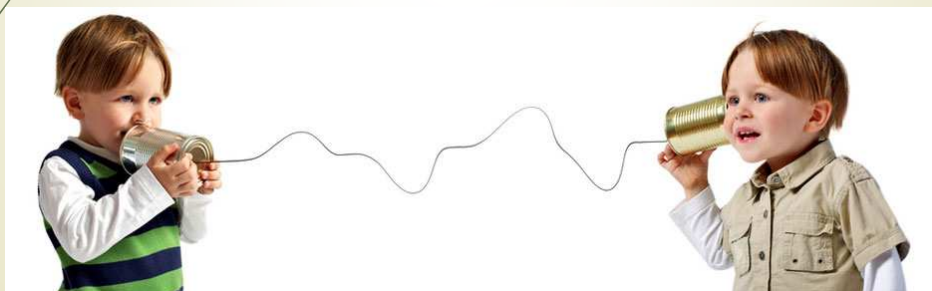
- One Amendment
- Two Disapplications:
 - nothing in the ADMCA authorises a person to give a patient treatment for a mental disorder or to consent to a patient being given such treatment where the patient's treatment is regulated by Part IV of the MHA
 - Exclusion of obligation to comply with advance healthcare directive made under the ADMCA where the person's treatment is regulated by the MHA



Conflicting Principles

MHA: 'best interests'

ADMCA: Participation/Will and preferences



ADMCA and Inherent Jurisdiction

Increased Utilisation where MHA does not apply

Survives ADMCA

Question re scope: *Re FD* [2015] IESC 83 (Laffoy J)
not to 'trespass on the legislative role of the Oireachtas'



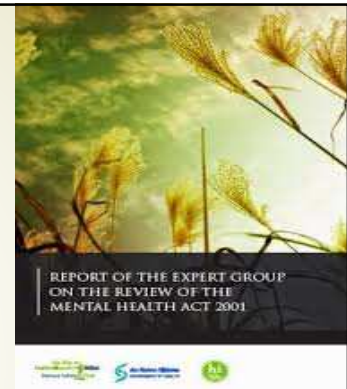
Deprivation of Liberty

- Points at which the DoLS come into effect
 - How is a deprivation of liberty defined?
 - When is a capacity assessment required?
- Nature of the safeguards?
 - Effectiveness of protection?
- Appeal structures
- Admission to approved centres



Expert Group Report

- ▶ Commitment in MHA 2001 to review
- ▶ Consultation
- ▶ Interim Report of the Steering Group on the Review of the Mental Health Act
- ▶ Report of Expert Group to review MHA 2001 (published March 2015)



Core recommendations: An overview

- ▶ Principles/scope
- ▶ Admissions
 - ▶ Changing the Context
 - ▶ Intermediate category
 - ▶ Reviews
- ▶ Treatment
 - ▶ Consent
 - ▶ Capacity
 - ▶ ECT
- ▶ Further work to do
 - ▶ Advance Decision-Making
 - ▶ Children



EG Based Law Reform Efforts

- ▶ Mental Health (Amendment) Act 2015:
 - ▶ Removal of 'unwilling' from ss. 59/6
- ▶ Mental Health (Amendment) Bill 2017 (Private Members Bill)
 - ▶ Second Stage completed



An Bille Meabhair-Shláinte (Leasú) (Uimh. 2), 2017
Mental Health (Amendment) (No. 2) Bill 2017

Mar a tionscnatodh

As initiated

Proposals in 2017 Bill

- ▶ Amendment of definition of 'voluntary' patient: only a person who has capacity and has consented
- ▶ Remove reference to best interests and replace with the following principles
 - ▶ In making a decision about the care and treatment [of a person admitted under the MHA] the principal considerations shall be the need to afford the person the highest attainable standard of mental health consistent with least restrictive care, autonomy, privacy, bodily integrity, dignity, equality and non-discrimination and with due respect for the person's own understanding of his or her mental health
 - ▶ Presumption of capacity
 - ▶ Person shall not be considered as unable to make a decision in respect of the matter concerned unless all practicable steps have been taken, without success, to help him or her to do so
 - ▶ person shall not be considered as unable to make a decision in respect of the matter concerned merely by reason of making, having made, or being likely to make, an unwise decision
- ▶ Amendment of the consent requirement in MHA s. 57 to extend to voluntary and involuntary patients

Other Aspects of EG Report

- ▶ Amendments to reinforce involuntary admission as a last resort
- ▶ Amendments to procedural requirements/timelines
- ▶ More multi-disciplinary approach
- ▶ Expansion of scope of tribunals

Limiting Detention

- ▶ Change the context
- ▶ Prioritise alternatives
- ▶ Detention as a last resort



Defining Mental Illness

Mental illness means a complex and changeable condition where the state of mind of a person affects the person's thinking, perceiving, emotion or judgment and seriously impairs the mental function of the person to the extent that he or she requires treatment.



Criteria for Detention

MHA 2001

- (a) because of the illness, disability or dementia, there is a serious likelihood of the person concerned causing immediate and serious harm to himself or herself or to other persons, or
- (b) (i) because of the severity of the illness, disability or dementia, the judgment of the person concerned is so impaired that failure to admit the person to an approved centre would be likely to lead to a serious deterioration in his or her condition or would prevent the administration of appropriate treatment that could be given only by such admission, and
- (ii) the reception, detention and treatment of the person concerned in an approved centre would be likely to benefit or alleviate the condition of that person to a material extent

EG Proposals

- the individual is suffering from mental illness of a nature or degree of severity which makes it necessary for him or her to receive treatment in an approved centre which cannot be given in the community; and
- it is immediately necessary for the protection of life of the person, for protection from a serious and imminent threat to the health of the person, or for the protection of other persons that he or she should receive such treatment and it cannot be provided unless he or she is detained in an approved centre under the Act; and
- the reception, detention and treatment of the person concerned in an approved centre would be likely to benefit the condition of that person to a material extent.
- Once any criterion not met – order revoked

Who initiates ?

MHA

Table 12 - Analysis of applicant: involuntary admissions 2015 (adults)

FORM	TYPE	TOTAL 2015	%
1	Spouse,Civil Partner,Relative	831	47%
2	Authorised Officer	231	13%
3	Garda Síochána	404	23%
4	Any Other Person	289	17%
	TOTAL	1755	100%

Proposal

- Authorised Officer only
 - Includes all change of status (regrades)
- Direct entitlement to seek Garda assistance
- Provision for second opinion AO

Changes to Time Limits



- Authorised officer application to remain in place for 7 days
- Tribunal hearings within 14 days
- Abolition of 12 month renewal orders - maximum order 6 months
- Note: no recommendation for amendment to 'slip-rule' procedure

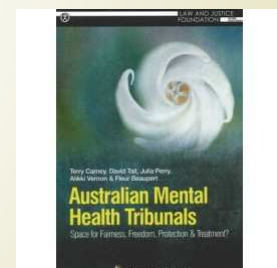
Multi-disciplinary Care

Admission certified by Consultant Psychiatrist following consultation with at least one other Professional of a different discipline involved in the person's care



(Tribunal) Reviews

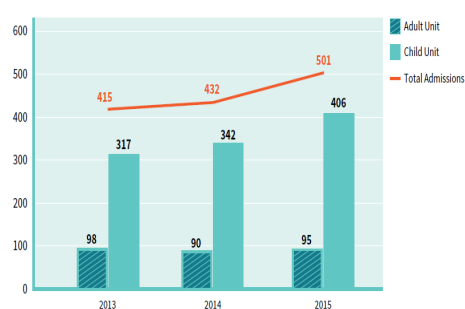
- Mental Health Review Board
- Extend authority to establish whether individual care plan in place and if compliant with law
- Extension of multi-disciplinary evidence



Children and Young People

Admissions

Figure 22 - Admissions of children. Unit Type. 2013, 2014, 2015. Numbers



Involuntary admissions

Figure 23 - Section 25 Orders (involuntary admission of children) by Unit Type. 2013, 2014, 2015. Numbers.



Immediate changes needed

EG Recommendations

- Children aged 16 or 17 should be presumed to have capacity to consent / refuse admission and treatment.
- For an admission of a 16 or 17 year old to proceed on a voluntary basis, the child must consent or at least must not object - Where objection – heard by “child friendly District Family Law Court”
- Specific Children's rights section in MHA

Further Recommendations

- Automatic GAL in s. 25 applications



Advance Decision-Making

EG Recommendation to revisit – if not covered in ADMCA

Key Issues:

The same as ADMCA?

Link to admission?

Link to planning?

When/whether to allow any overriding?

Life?

Severe risk to health?



International/European Human Rights

Convention on the Rights of Persons with Disabilities

- Into Force: 3 May 2008
- Signatories: 160
- Ratifications: 174

- Report of the Special Rapporteur on the right of everyone to the right to the highest attainable standard of physical and mental health (28 March 2017)
- ECHR Right to Life: *Reynolds v UK* [2012]

