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**An Bille Meabhair-Shláinte (Leasú), 2016**  
**Mental Health (Amendment) Bill 2016**

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*Meabhrán Minitheach agus Airgeadais*  
*Explanatory and Financial Memorandum*

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Explanatory and Financial Memorandum

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*Introduction*

Ireland's mental health legislation was overhauled in 2001 to bring it in line with international human rights standards. The principal Act passed was the Mental Health Act 2001. Concerns have been raised in a number of Government reports since its implementation. The Mental Health Commission has reported in every year since 2006 that at least 75 children were admitted to Adult Mental Health units. In 2015, that number increased to 95 children with approximately 9.5 percent of those children aged 16 or younger. This is despite the fact that the Mental Health Commission<sup>1</sup> issued guidelines in 2001 saying that by the end of that year there should be no more admissions of children under 18 to adult units.

The Inspector of Mental Health Services has aptly described this practice as “inexcusable, counter-therapeutic and almost purely custodial in that clinical supervision is provided by teams unqualified in child and adolescent psychiatry” (Mental Health Commission, Annual Report, 2008, p. 29).

The proposed Bill, if passed in time, would create a statutory basis by which this practice could no longer occur.

The difficulty presented by the current legislation is that there is no legislative provision preventing the detention of children in adult psychiatric units.

The legislation governing to the care of children in approved centres for psychiatric treatment is the Mental Health Act 2001. The natural and imprescriptible rights of the child are also protected by Article 42A of the Irish Constitution.

Under the 2001 Act, the standard procedure for detaining an adult (involuntarily) is under sections 9, 10 and 14. These sections cannot be used to detain a child involuntarily.

The involuntarily admission of a child to an approved centre for psychiatric treatment can only be effected under section 25 of the 2001 Act, or in the case of a child who is voluntarily resident at an approved centre, he or she can be temporarily detained under section 23(2) of the 2001 Act.

Under the 2001 Act, there is no legislative requirement that a child be detained in a child appropriate unit or, if a child is detained in an adult centre, that he or she be accommodated in an area separate from adults and

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<sup>1</sup> [http://childrensights.ie/sites/default/files/submissions\\_reports/files/CMHC-SubDeptHealthReviewMentalHealthAct2001\\_071011.pdf](http://childrensights.ie/sites/default/files/submissions_reports/files/CMHC-SubDeptHealthReviewMentalHealthAct2001_071011.pdf)

in an age-appropriate environment. Rather, the only requirement that exists under the Principal Act is for a person to be detained in an approved centre, in which case the Approved Centres Regulations must be followed.

These regulations are set out in the Mental Health Act 2001 (Approved Centres) Regulations 2006, S.I. No. 551 of 2006. <sup>iv</sup>These regulations do not provide for any child specific treatment, other than to protect the child or vulnerable adult from any instances of abuse. The Mental Health Commission also produced an Addendum to its Code of Practice relating to the admission of children under the Mental Health Act 2001. This was produced on the 1 July 2009 and provides that no child under the age of 16 shall be admitted to an adult psychiatric ward after the 1st July 2009 save in exceptional circumstances. A year after this was introduced, eleven 16 year-old children were admitted to adult psychiatric wards.

#### *Proposed Legislation*

A number of lobby groups and NGOs have recommended that the Act should provide that no child or young person shall be admitted to an adult inpatient unit (voluntarily or involuntarily) save where it is in his or her best interests to do so.

The Children's Rights Mental Health Coalition recommended that an amendment to the Principal Act should provide that where a child is admitted to an adult unit, he or she shall be accommodated in an area separate from adults and in an age-appropriate environment, with appropriate education, recreation and age-appropriate facilities. <sup>1</sup>Senator Freeman has incorporated this in the attached draft Amendment.

Admissions generally speaking are covered by section 14 of the 2001 Act and it is this provision that the Mental Health (Amendment) Bill 2016 intends to amend by inserting a new provision, section 14A into the Principal Act. As you will see from the draft, the proposed amendment provision reads as follows:

#### *Section 14A-*

- (1) This section applies in respect of any person who has not attained the age of 18 years who is detained either voluntarily pursuant to section 23(2) of the Principal Act or involuntarily pursuant to section 25 of the Principal Act.*
- (2) No admission order shall be made in respect of a child under the age of eighteen to an adult inpatient unit save in exceptional circumstances where it is in his or her best interests to do so.*
- (3) Where a child is admitted to an adult inpatient unit he or she shall be accommodated in an area separate from adults in an age-appropriate environment with age-appropriate facilities.*

#### *Other Jurisdictions:*

*Section 131A* of the Mental Health Act 1983 (England and Wales) provides that where a child is admitted or detained in hospital for treatment the hospital management must ensure that "the patient's environment in the hospital is suitable having regard to his age (subject to his needs)".

In light of this amendment, the Irish Jurisdiction is falling behind.

*Conclusion*

The passing of the proposed Bill would end the practice of admitting children to Adult Psychiatric Units as recommended by the Mental Health Commission, successive Governments and a number of child-focused and mental health focused NGOs. This Bill would also bring child psychiatry into line with the recommendations set out in 'A Vision for Change' and protected by a number of international obligations and specifically those relating to the Rights of the Child.

*Senator Joan Freeman,*

*Nollaig, 2016.*