

# Intersections between the ADMCA 2015 and the MHA 2001



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ADMCA 2015: Considerations for Mental Health Services

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## The Human Rights Context



Equality/non-discrimination

Autonomy

Dignity

Liberty

Bodily integrity

Privacy

Highest attainable  
standard of health



## Converging Goals/Converging Systems?

- Purpose of Mental Health law
  - Protect rights
  - Prevent harm
  - Protect others?
- Purpose of Mental Capacity law
  - Protect rights
  - Prevent harm

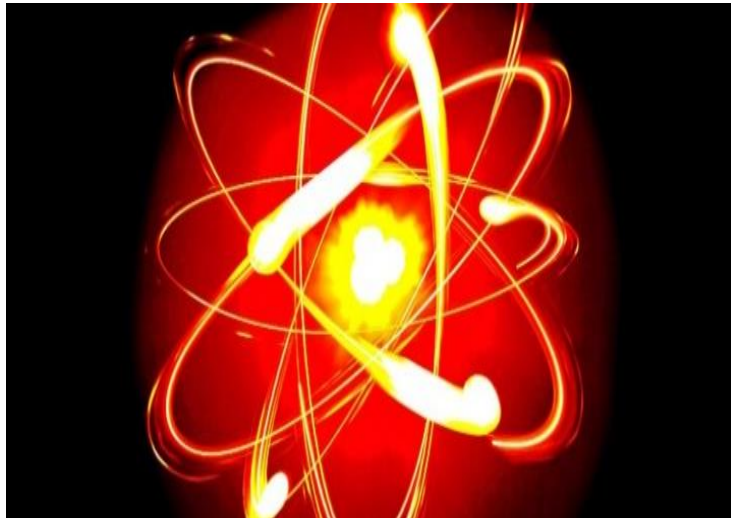


## The Fusion Experiment

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A model law fusing  
incapacity and mental  
health legislation

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- Mental Capacity Act (Northern Ireland) 2016
- Partially commenced 1 Oct 2019
  - Deprivation of liberty
  - Research offences
  - Money and Valuables

# Making Law



- MHA
- Pt 8 ADMCA



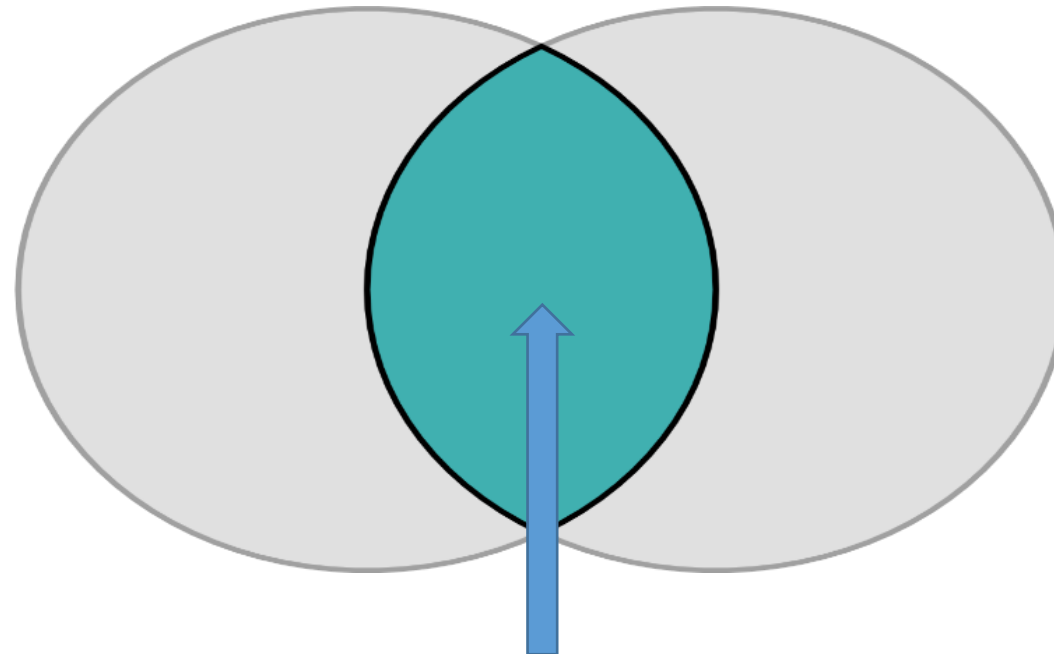
- ADMCA 2015 (except for Pt 8)

# ADMCA/MHA interaction

Approved Centre

Not to scale!!

Voluntary admissions



Mental Health Act admissions

ADMCA applies

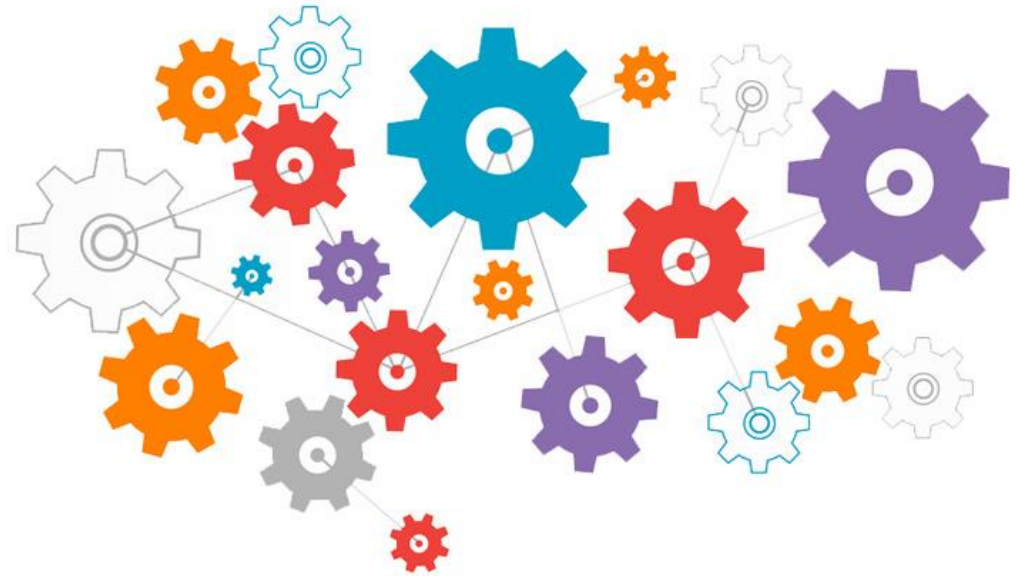
## Attempts at Integration

Minimal Attempts

Questions/uncertainties

Ongoing unsystematic efforts

Mental Health Act 2001 Reform



## Express References in ADMCA

- Amendment to MHA
  - From 'assign' a legal representative to 'arrange for the assignment'
- Detention provisions
- Dis-applications of ADMCA where MHA applies:
  - Limits on authorisation for bodily restraint/seclusion
  - Exclusion of obligation to comply with Advance Healthcare Directive made under the ADMCA where the person's treatment is regulated by the MHA
  - Nothing in the ADMCA authorises treatment where the patient's treatment is regulated by Part 4 of the MHA





## Detention provisions

- Where issue arises during application to Court/High Court as to whether person has mental disorder, MHA Act procedures to be covered (s. 106)
- Person detained in approved centre on order of wardship court (at commencement of ADMCA)
  - Review by wardship court
  - 3 month and then 6 month
  - Must hear views of consultant psychiatrist responsible for care and treatment **and** independent consultant psychiatrist selected by wardship court



## Detention: A much bigger issue

- *AC (A Ward) v Cork University Hospital and Ors* [2019] IESC 73
- Liberty Safeguards (to be published by DoH)
- Intermediate patient in approved centre: lacking capacity to consent to admission



## Bodily Restraint/Seclusion



- ADMCA: No authority for Decision-Making Representative/Donee of Welfare EPA to authorise bodily restraint/seclusion except in designated limited circumstances
- Prioritisation of MHA/MHC Rules on bodily restraint/seclusion

# AHDs: Core Elements of the ADMCA Approach



- Refusal of treatment: legally binding if valid and applicable
- Request for treatment: not legally binding but:
  - Must be taken into consideration in deciding most appropriate treatment (if relevant)
  - Reasons for not complying must be provided to DHR (within 7 days)
- Designated Healthcare Representatives (DHRs):
  - Power to ensure conditions of AHD complied with
  - Can be empowered to advise/interpret D-M's will and preferences in accordance with AHD/Consent to/refuse treatment: can include life-sustaining treatment

## Disapplication

An AHD shall be complied with ... unless at the time when it is proposed to treat the directive-maker, his or her treatment is regulated by:

Pt 4 of MHA 2001 **or** s. 13A Criminal Law (Insanity) Act 2006

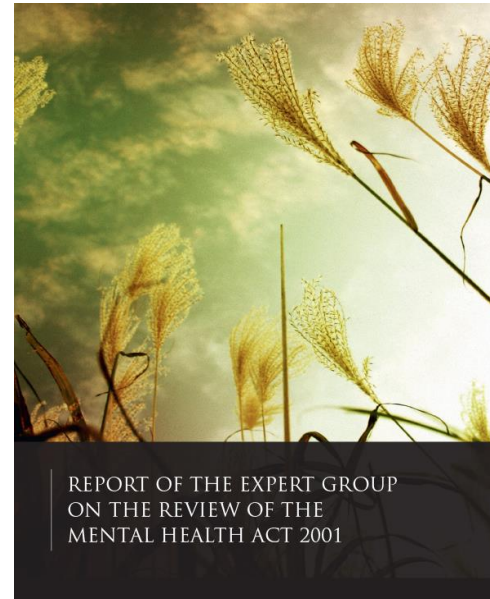
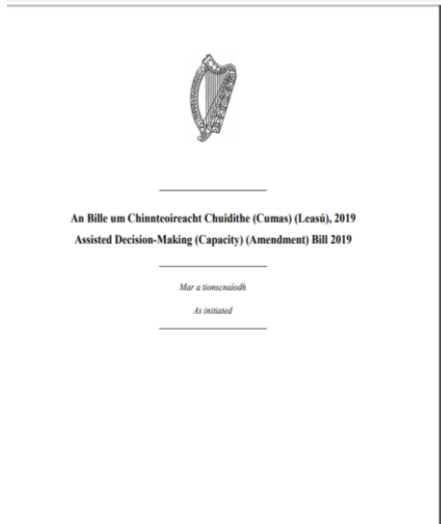
**ADMCA, s. 85(7)(a)**

But where the refusal relates to treatment for a physical illness not related to the amelioration of a mental disorder, the refusal shall be complied with.

**ADMCA, s. 85(7)(b)**



## Change?



- Affirmation of application of AHD for persons whose treatment covered by Pt 4 MHA
- Ongoing Disapplication of AHD for persons covered by Criminal Law Insanity Act 2006

### Recommendations:

126. The introduction of legislation providing for advance healthcare directives which should apply to mental health on an equal basis with general health is recommended.
127. Notwithstanding the introduction of legislation on advance healthcare directives as part of the Assisted Decision-Making (Capacity) Bill, the Group recommends that when revised mental health legislation is being framed, it either amends the Assisted Decision-Making (Capacity) Bill if necessary or introduces provisions in mental health law to deal in a more complete and comprehensive manner with the operation of advance healthcare directives in the area of mental health in the longer term.
128. In particular, the authority to override a treatment refusal where a person's health as opposed to life is at risk, should be re-visited again when mental health legislation is being framed.
129. An advance healthcare directive should state in clear and unambiguous terms the specific treatments to which it relates and also the particular situations in which the treatment decisions are intended to apply.
130. Advance healthcare directives should be recorded in the person's recovery plan.

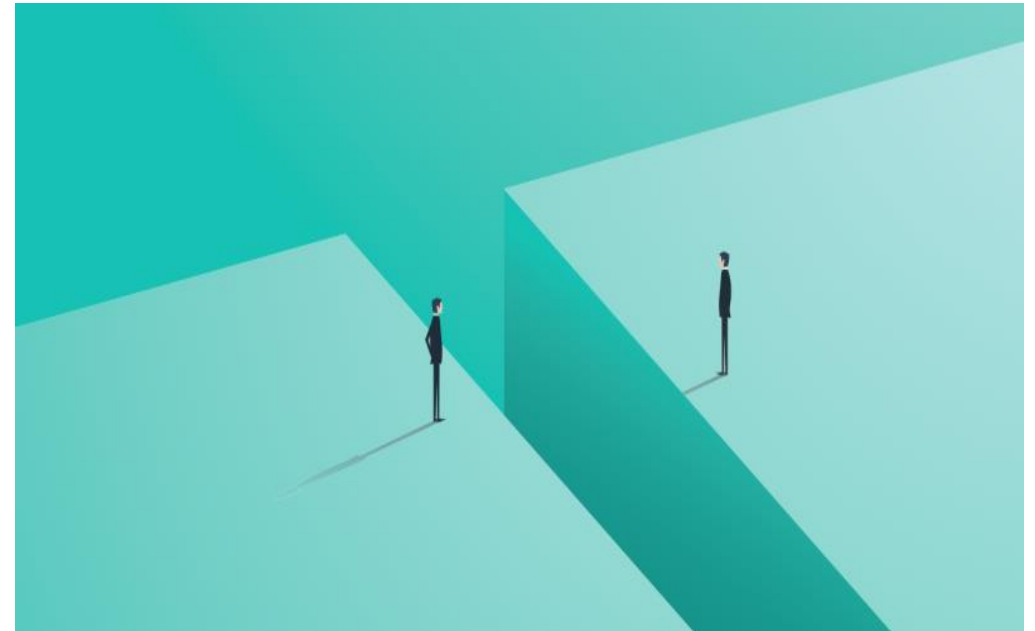
## Understanding the Part 4 Exemption

Nothing in [ADMCA] authorises a person –

- (a) To give a patient treatment for a mental disorder or
- (b) To consent to a patient's being given treatment for a mental disorder

if, at the time when it is proposed to treat the patient, his or her treatment is regulated by Part 4 of the MHA

- Does not say that ADMCA does not apply – very specific in scope
- Role of decision-making supporters
- What about refusal?



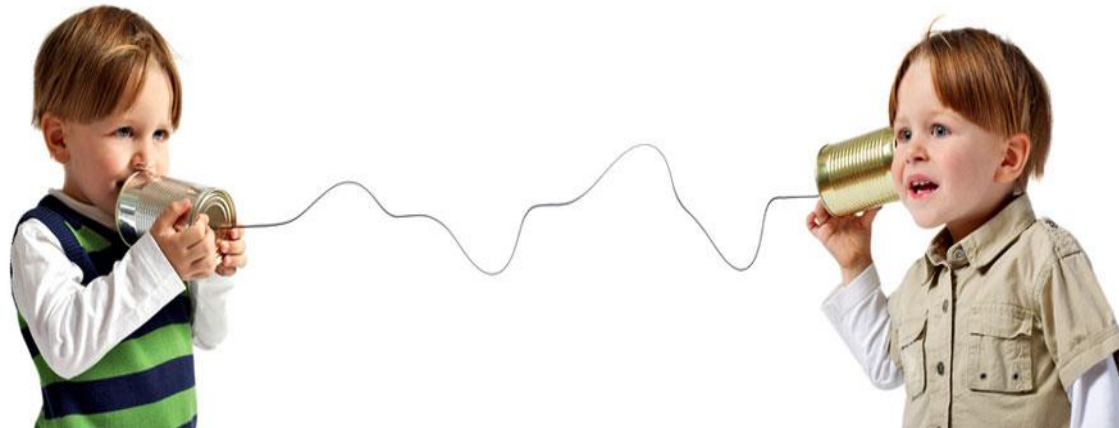
## Conflicting Principles?

MHA: s. 4 'Best Interests' as interpreted by Irish courts

ADMCA: s.8: Principles including Participation/Will and preferences

Mental Health (Amendment) Act 2018

- Substitution of ADMCA principles for MHA
- Not commenced
- No mechanism for resolution







## Where we are?

- Fragmentation
- Uncertainty
- Many moving parts

## What we need?

- Human rights focus
- Centrality of the person
- Close rigorous engagement with legal context