



Number 10 of 2018

Mental Health (Amendment) Act 2018



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MENTAL HEALTH (AMENDMENT) ACT 2018

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[No. 10.]

Mental Health (Amendment) Act 2018.

[2018.]

ACTS REFERRED TO

Assisted Decision-Making (Capacity) Act 2015 (No. 64)

Mental Health Act 2001 (No. 25)



Number 10 of 2018

MENTAL HEALTH (AMENDMENT) ACT 2018

Bill

entitled

An Act to amend and extend the Mental Health Act 2001; to make further and better provision relating to the treatment of persons under the Mental Health Act 2001; to improve the provision of mental health services; to promote the rights of persons subject to the Mental Health Act 2001; and to provide for related matters. [2nd July, 2018]

Be it enacted by the Oireachtas as follows:

Definition

1. In this Act “Principal Act” means the Mental Health Act 2001.

Amendment of section 2 of Principal Act

2. Section 2 of the Principal Act is amended in subsection (1) by—

(a) the insertion of the following definitions:

(i) “ ‘Act of 2015’ means Assisted Decision-Making (Capacity) Act 2015;”,

(ii) “ ‘guiding principles’ shall be construed—

(a) in relation to a person, other than a child, in accordance with section 4,

(b) in relation to a child, in accordance with section 4A;”,

and

(b) the substitution of the following definition for the definition of ‘voluntary patient’:

“ ‘voluntary patient’ means a person who—

(a) has capacity (within the meaning of section 3 of the Act of 2015),

(b) has been admitted to an approved centre, and

(c) has given consent to his or her admission.”.

Guiding principles to apply in respect of adults

3. The Principal Act is amended by the substitution of the following section for section 4:

“4. (1) Where it is proposed to make a decision in respect of a person the subject of the decision under this Act, the person shall, so far as is reasonably practicable, be notified of the proposal and entitled to make representations in relation to it and before deciding the matter due consideration shall be given to any representations duly made under this section.

(2) The principles specified in subsections (3) to (11) (in this Act referred to as the ‘guiding principles’) shall apply in respect of the making of a decision.

(3) It shall be presumed that a person in respect of whom a decision is being made has capacity in respect of the matter concerned unless the contrary is shown in accordance with the provisions of the Act of 2015.

(4) A 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.

(5) A 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.

(6) There shall be no decision taken in respect of a person unless it is necessary to do so having regard to the individual circumstances of that person.

(7) A decision taken in respect of a person shall—

(a) be made in a manner that minimises—

(i) the restriction of the person’s rights, and

(ii) the restriction of the person’s freedom of action,

(b) have due regard to the need to respect the right of the person to dignity, bodily integrity, privacy, autonomy,

(c) be proportionate to the significance and urgency of the matter the subject of the decision, and

(d) have due regard to the need to have access to health services that have as the aim of those services the delivery of the highest attainable standard of mental health as well as the person’s right to his or her own understanding of his or her mental health.

(8) Notwithstanding the generality of subsection (1), in making a decision—

(a) the person in respect of whom the decision concerned is being

made shall be permitted, encouraged and facilitated, in so far as is practicable, to participate, or to improve his or her ability to participate, as fully as possible, in the decision,

- (b) effect shall be given, in so far as is practicable, to the person's past and present will and preferences, in so far as that will and those preferences are reasonably ascertainable,
 - (c) account shall be taken of—
 - (i) the beliefs and values of the person (in particular those expressed in writing), in so far as those beliefs and values are reasonably ascertainable, and
 - (ii) any other factors which the person would be likely to consider if he or she were able to do so, in so far as those other factors are reasonably ascertainable,
 - (d) unless the person making the decision in respect of the person concerned reasonably considers that it is not appropriate or practicable to do so, he or she shall consider the views of any other person named by the person as a person to be consulted on the matter concerned or any similar matter,
 - (e) the person making the decision shall act at all times in good faith and for the benefit of the person in respect of whom the decision is being made, and
 - (f) the person making the decision shall consider all other circumstances of which he or she is aware and which it would be reasonable to regard as relevant to the making of the decision concerned.
- (9) In making a decision, the person making the decision in respect of the person concerned may consider the views of—
- (a) any person engaged in caring for the person,
 - (b) any person who has a *bona fide* interest in the welfare of the person, or
 - (c) any other healthcare professionals.
- (10) In the case of a decision in respect of a person who lacks capacity, regard shall be had to—
- (a) the likelihood of the recovery of the person's capacity in respect of the matter concerned, and
 - (b) the urgency of making the decision prior to such recovery.
- (11) In making a decision, the person making the decision—
- (a) shall not seek to obtain information that is not reasonably required for making a decision,

- (b) shall not use information for a purpose other than in relation to a decision, and
 - (c) shall take reasonable steps to ensure that information—
 - (i) is kept secure from unauthorised access, use or disclosure, and
 - (ii) is safely disposed of when he or she believes it is no longer required.
- (12) Section 4 shall not apply to a person who at the time of the decision is a child.
- (13) In this section—
- ‘capacity’ has the same meaning as it has in section 3 of the Act of 2015;
- ‘decision’, means, in relation to a person, a decision under this Act concerning the care or treatment of the person (including a decision to make an admission order in relation to the person).”.

Guiding principles in respect of children

4. The Principal Act is amended by the insertion of the following section after section 4:

- “4A. (1) In making a decision under this Act concerning the care or treatment of a child (including the making of a specific application under section 25(1) and a decision of the Court to make an order under section 25(6) authorising the detention of a child in an approved centre), the best interests of the child shall be the paramount consideration.
- (2) Notwithstanding the generality of subsection (1), in making a decision under this Act concerning the care or treatment of a child (including the making of a specific application under section 25(1) and a decision of the Court to make an order under section 25(6) authorising the detention of a child in an approved centre), due regard shall also be given to the following principles (in this Act referred to as ‘guiding principles’), namely the need—
- (a) for every child to have access to health services that have as the aim of those services, the delivery of the highest attainable standard of child mental health,
 - (b) in the case of a child who is capable of forming his or her own views, to consult, where practicable, the child at each stage of diagnosis and treatment and give due weight to—
 - (i) his or her views, and
 - (ii) his or her will or preferences,having regard to the age and maturity of that child,
 - (c) in so far as is practicable, to provide care and treatment—

- (i) in an age-appropriate environment, and
- (ii) in close proximity to the child’s home or family, as appropriate,
- (d) for the child to receive the least intrusive treatment possible in the least restrictive environment practicable, and
- (e) to respect the right of the child to dignity, bodily integrity, privacy and autonomy.”.

Short title, commencement and collective citation

5. (1) This Act may be cited as the Mental Health (Amendment) Act 2018.
- (2) The Mental Health Act 2001 and this Act may be cited together as the Mental Health Acts 2001 and 2018 and shall be construed together as one.
- (3) This Act shall come into operation on such day or days as the Minister for Health may by order or orders appoint either generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.