**Mental Health (Capacity to Consent to Mental Health Treatment) Bill 2018**

**Briefing paper**

**Background:**

In a meeting with a representative of St. Patricks Mental hospital Youth Advisory Panel, the issue of the anomaly in Irish law around the age of consent for Mental Health treatment was initially raised with us.

After conducting much research, it appears that indeed currently under Irish law, adolescents aged 16 and 17 years can consent to physical and dental health treatment, but do not have this explicit right for consenting to mental health treatment.

**The problem being addressed:**

In section 23 of the [Non- Fatal Offences against the Person’s Act 997](http://www.irishstatutebook.ie/eli/1997/act/26/section/23/enacted/en/html), persons over the age of 16 years can give consent for medical, surgical and dental procedures.

The [Child Care Act 1991](http://www.irishstatutebook.ie/eli/1991/act/17/enacted/en/html), the [Children’s Act 2001](http://www.irishstatutebook.ie/eli/2001/act/24/enacted/en/html) and the [Mental Health Act 2001](http://www.irishstatutebook.ie/eli/2001/act/25/enacted/en/html) defines a “child” as a service user under the age of 18 years “other than a service user who is or has been married”

Section 25 of the Mental Health Act deals with “involuntary admission of children”.

Currently, according to the [Children’s mental Health coalition](http://www.childrensmentalhealth.ie/wp-content/uploads/2009/12/Submission-from-the-Childrens-Mental-Health-Coalition-Oct%E2%80%A6.pdf), a child of 16 years may consent or refuse to consent medical treatment without parental input as if they were full age. However, the Mental Health Act of 2001 appears to remove this right for children under the age of 18 who have been involuntarily detained.

**Purpose of this legislation**

To allow 16 and 17 year olds the same legal right to consent for mental health treatment, as they have for physical and dental health.

**Justification for this legislative change:**

1. [The Law reform Commission recommended this legislative change in 2011](http://www.lawreform.ie/_fileupload/Reports/r103.htm).
2. HSE document entitled National Consent Policy Part two: Children and Minors:

*“There is an uncertain relationship between the 2001 Act and the Non- Fatal Offences against the persons Act 1997. This has created confusion over the capacity of 16 and 17 year olds who have been admitted under the 2001 Act to make mental healthcare decisions and it remains unclear whether 16 and 16 year olds in this situation can consent to treatment without parental/legal guardian consent.”* (Section 9, page 60)

1. [Children’s Mental Health Coalition](Irish%20Legal%20Framework’%20Childrensmentalhealth.ie/children-and-mental-health/irish-legal-framework/%20%20accessed%2012/06/2017):

*“The Act [Mental Health Act 2001] gives little voice to children to have a say in their administration or treatment- consent is given or withheld by the parent in the case of all children up to the age of 18 years”* (‘Irish Legal Framework’ Childrensmentalhealth.ie/children-and-mental-health/irish-legal-framework/ accessed 12/06/2017)

1. [Report of the expert group on the review of the Mental Health Act 2001](http://health.gov.ie/blog/publications/report-of-the-expert-group-review-of-the-mental-health-act-2001/):

*“Children aged 16 or 17 should be presumed to have capacity to consent/ refuse admission and treatment”* (Recommendation 114, p73)

*“For an admission of a 16 or 17 year old to proceed on a voluntary basis, the child therefore must also consent or at least must not object to his/her voluntary admission”* (recommendation 115 p73)

*“It has long been unclear, however, how this Act* [Child Care Act 1991] *interacts with the provisions of the Mental Health Act 2001. The apparent inconsistency between the two Acts has led to confusion over the status of consent or refusal given by adolescents.”* (p71)

*“Children aged 16 and 17 years should be presumed to have capacity to consent or to refuse admission and treatment and that this needs to be expressly stated in any revised mental health legislation”* (p71)