



Changes in Mental Health Law in Northern Ireland 2021

A Little Bit of Context Can be Important..

NI has a history of civil conflict, intergenerational trauma and socio-economic deprivation

Highest levels of mental illness and suicide in UK [19.9 per 100 000] but circa 25% lower mental health funding

Lowest CAMHS funding of any jurisdiction, 20% lower than NHSE and in NI 7.9% of lifespan MH expenditure but 25% of population

Relevant Legislation and Declarations

- Mental Health Order 1986
- Children Order [NI] 1995
- Human Rights Act 1998
- Age of Majority [NI] 1969
- Mental Capacity Act 2006
- Case Law – Capacity [Gillick Competence]
- Criminal Justice Act 1966
- UNCRC
- UNCRD

Mental Health Order [NI] 1986

Utilises the presence of 'mental disorder' or 'severe impairment'

AND

'Risk' as criterion for involuntary treatment

Certain conditions were excluded – personality disorder, ASD, substance dependence disorders and sexual deviancy

Mental Capacity Act [NI] 2016

‘Fusion’ legislation

A generic law applicable across all of health and social care – where an intervention is proposed and a person has impaired decision making capability – two stages

Diagnostic – is there an impairment of, or a disturbance in the functioning of mind

Functional

- *understand* the information relevant to the decision
- *retain* the information long enough to make the decision
- *appreciate* the relevance of information and
- *use* the information as part of decision making process
- *communicate* the decision



2017 to 2020

PANDEMIC 2020.....

Comparing MHO 1986 with MCA 2016

	MHO 1986	MCA 2016
Detention for Treatment Criteria	Mental Illness/Severe impairment and Risk	Diagnosis and Functional Capacity
Application – Civil Section	Lifespan	Over 16 only
Application – Criminal Section	Lifespan	Lifespan
Cognitive Impairment Related Criterion	Severe Impairment	Functional Capacity
Diagnoses of Exclusion	<ul style="list-style-type: none"> • Personality disorder • ASD • Substance dependence disorders • Sexual deviancy 	<ul style="list-style-type: none"> • Substance dependence disorders • Sexual deviancy

Progress?

- No legal framework in Northern for DoL.
- Professionals/decisions vulnerable to legal challenge.
- No money.
- Result
 - DoH decided on a staged introduction of MCA.
 - Commence DoL safeguards for those not covered by MHO 1986.

Results

- Over 4,000 legacy cases (dementia or ID in care homes).
- Enormous bureaucracy.
- Medical assessment requiring 3 hours per case minimum.
- Irony – we are now in a position where we have in fact separate capacity and mental health legislation in place i.e. not fusion!

Future plans

- The DoH has decided to pause the progress of MCA 2016 implementation for now.
- Should the “fusion” eventually be achieved – what will happen for under 16’s.

With thanks to Professor Gerry Lynch & Dr Phil Anderson