

REFERENCE GUIDE
MENTAL HEALTH ACT 2001
PART TWO – CHILDREN

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“admission order”

means the order authorising the reception, detention and treatment of the patient concerned and shall remain in force for a period of 21 days from the date of the making of the order in accordance with [Section 15](#);

“adult”

means any person who is not included in the definition of a ‘child’ in the Mental Health Act 2001;

“application”

means an application for a recommendation that a person be involuntarily admitted to an Approved Centre and ‘applicant’ shall be construed accordingly;

“approved centre”

means a hospital or other in-patient facility for the care and treatment of persons suffering from mental illness or mental disorders which is registered on the Register of Approved Centres in accordance with [Section 63](#);

“child”

means a person under the age of 18 years other than a person who is or has been married;

“clinical director”

means a consultant psychiatrist appointed in writing by the governing body of each Approved Centre to be the clinical director of the centre under [Section 71](#);

“Commission”

means the Mental Health Commission established under [Section 32](#);

“consultant psychiatrist”

means a consultant psychiatrist who is employed by the Health Service Executive or by an Approved Centre or a person whose name is entered on the division of psychiatry or the division of child and adolescent psychiatry of the Register of Medical Specialists maintained by the Medical Council in Ireland;

“establishment day”

means the day appointed by the Minister that the Mental Health Commission is established under [Section 31](#);

“examination”

in relation to a recommendation, an admission order or a renewal order, means a personal examination carried out by a registered medical practitioner or a consultant psychiatrist of the process and content of thought, the mood and behaviour of the person concerned;

“functional area”

means a functional area of the Health Service Executive as defined in the [Health Board Regulations, 1970 \(S.I. No. 170 of 1970\)](#) and in [Section 7 of the Health \(Eastern Regional Health Authority\) Act, 1999](#); as amended by Section 67 of the Health Act 2004;

“functions”

includes powers and duties and references to the performance of functions include, with respect to powers and duties, references to the exercise of the powers and the carrying out of duties;

“give”

includes send, whether by post or electronic or other means, and cognate words shall be construed accordingly;

“Health Service Executive”

means the body which has replaced the health boards and the Eastern Regional Health Authority as the overall national body for delivery of health services pursuant to the Health Act 2004;

“Inspector”

a consultant psychiatrist appointed by the Commission holding the office of the Inspector of Mental Health Services in accordance with [Section 50](#);

“legal representative”

means a barrister or a solicitor;

“mental health services”

mean services which provide care and treatment to persons suffering from a mental illness or a mental disorder under the clinical direction of a consultant psychiatrist;

“mental illness”

means a state of mind of a person which affects the person’s thinking, perceiving, emotion or judgement and which seriously impairs the mental function of the person to the extent that he or she requires care or medical treatment in his or her own interest or in the interest of other persons;

“Minister”

means the Minister for Health and Children;

“parents”

includes a surviving parent and, in the case of a child who has been adopted under the Adoption Acts, 1952 to 1998, or, where the child has been adopted outside the State, whose adoption is recognised by virtue of the law for the time being in force in the State, means the adopter or adopters or the surviving adopter;

“patient”

means a person to whom an admission order relates in accordance with [Section 14](#);

“prescribed”

means prescribed by regulations made by the Minister;

“recommendation”

means a recommendation made by a registered medical practitioner in a form specified by the Commission that a person be involuntarily admitted to a specified Approved Centre;

“register”

means the Register of Approved Centres established and maintained by the Mental Health Commission in accordance with [Section 64](#);

“registered nurse”

means a person whose name is entered in the register of nurses maintained by An Bord Altranais under [Section 27 of the Nurses Act, 1985](#);

“registered medical practitioner”

means a person whose name is entered in the General Register of Medical Practitioners;

“registered proprietor”

in relation to an Approved Centre, means the person whose name is entered in the register as the person carrying on the centre in accordance with [Section 62](#);

“regulations”

mean the regulations that the Minister shall make, after consultation with the Commission, for the purpose of ensuring proper standards in relation to Approved Centres, including adequate and suitable accommodation, food and care for residents while being maintained in centres, and the proper conduct of centres, make such regulations as he or she thinks appropriate pursuant to [Section 66](#) of the Mental Health Act 2001;

“relative”

in relation to a person, means a parent, grandparent, brother, sister, uncle, aunt, niece, nephew or child of the person or of the spouse of the person whether of the whole blood, of the half blood or by affinity;

“renewal order”

means an order made by a consultant psychiatrist responsible for the care and treatment of a patient extending the period of admission of that patient in accordance with [Section 15](#);

“resident”

means a person receiving care and treatment in a centre in accordance with [Section 62](#);

“severe dementia”

means a deterioration of the brain of a person which significantly impairs the intellectual function of the person thereby affecting thought, comprehension and memory and which includes severe psychiatric or behavioural symptoms such as physical aggression;

“significant intellectual disability”

means a state of arrested or incomplete development of mind of a person, which includes significant

impairment of intelligence and social functioning and abnormally aggressive or seriously irresponsible conduct on the part of the person;

“spouse”

means a husband or wife or a man or a woman who is cohabiting with a person of the opposite sex for a continuous period of not less than 3 years but is not married to that person; however for the purposes of [Section 9](#) of the Mental Health Act 2001, 'spouse' does not include a spouse of a person who is living separately and apart from the person or in respect of whom an application or order has been made under the Domestic Violence Act, 1996;

“treatment”

in relation to a patient, includes the administration of physical, psychological and other remedies relating to the care and rehabilitation of a patient under medical supervision, intended for the purposes of ameliorating a mental disorder;

“tribunal”

means the tribunal(s) which the Commission shall from time to time appoint which or each of which shall be known as a Mental Health Tribunal to determine such matter or matters as may be referred to it by the Commission;

“voluntary patient”

means a person receiving care and treatment in an Approved Centre who is not the subject of an admission order or a renewal order.

PURPOSE OF REFERENCE GUIDE 1.0



REFERENCE GUIDE MENTAL HEALTH ACT 2001 PART TWO – CHILDREN

1.0 PURPOSE OF REFERENCE GUIDE

The Mental Health Act 2001 addresses two main requirements in the provision of mental health care in a modern society. Firstly, the establishment of a legislative framework within which persons with a mental disorder may be admitted and treated involuntarily in an Approved Centre. Secondly, the promotion and maintenance of quality standards of care and treatment that are regularly inspected and properly regulated. Mental illness, severe dementia or significant intellectual disability may, in certain circumstances, amount to a mental disorder under the Mental Health Act 2001. The encompassing term “mental disorder”, for the first time in Irish mental health law is comprehensively defined.

The Reference Guide will assist all those whose work may bring them into contact with persons with mental disorders to provide the best possible care and treatment in the best interests of the person or patient. The Reference Guide is available in two parts – Part One (Adults) and Part Two (Children).

This Reference Guide – Part Two (Children) is written to provide mental health professionals, and all those whose work may bring them into contact with children with mental disorders with a clear and practical understanding of the major objectives and requirements of the Mental Health Act 2001.

The Reference Guide will also be of interest to service users, families, carers, advocates, the voluntary sector and members of the general public.

It is intended that this guide will be of particular interest to:

- Consultant Psychiatrists
- Clinical Psychologists
- General Medical Practitioners
- Mental Health Service Providers
- Psychiatric Nurses
- Social Workers
- Speech and Language Therapists
- Occupational Therapists
- Child Care Staff
- Authorised Officers
- Health Care Managers
- Members of the Garda Síochána
- Independent Hospitals
- Emergency Medical Technicians

The Mental Health Act 2001 replaces the procedures for involuntary admission that were provided for by the Mental Treatment Act 1945. The majority of health professionals will have spent their working careers under these provisions and it is vital that they understand and know the new procedures that are in place.

Therefore, this Reference Guide (Part Two) focuses on the procedures surrounding involuntary admission (Children), the functions of the Mental Health Commission, and the role of the Inspector of Mental Health Services.

The Mental Health Act 2001 is guided by the principle that the interests of all persons with mental disorders who are affected under the Mental Health Act 2001 is paramount. The Reference Guide sets out the requirements under the Mental Health Act 2001 in relation to the rights of mental health service users and the obligations placed on providers to ensure that such rights are promoted and upheld.

The 2001 Act creates a modern legislative framework for the admission and treatment of persons with a mental disorder in compliance with international standards and obligations.

The glossary is placed at the front of this Reference Guide. It is recommended that the reader refers to the glossary in the first instance.

The Health Act 2004 constitutes one part of the re-organisation of structures for delivery of health services. A main element of this re-organisation is:

- (a) the abolition of the health boards and the Eastern Regional Health Authority
- (b) the establishment of the Health Service Executive as the overall national body for delivery of health services.

As such, reference to Health Boards in the Mental Health Act 2001 are to be read as references to the Health Service Executive.

The Reference Guide contains sample copies of all the relevant forms that may be required from time to time under the 2001 Act.

This Reference Guide should not be relied on as a legal interpretation of the Mental Health Act 2001. It is not intended to be a complete or authoritative statement of the law and is not intended as legal advice or advice of any type. It is a Reference Guide only and must be read in conjunction with the provisions of the Mental Health Act 2001, any regulations made thereunder and any other relevant legislation. The Mental Health Act 2001 and regulations made under it may be ordered from the Government Publications Sales Office, Sun Alliance House, Molesworth Street, Dublin 2 or downloaded from the Government Information website at www.gov.ie or from the Mental Health Commission website at www.mhcirl.ie

1.1 BACKGROUND TO THE MENTAL HEALTH ACT 2001 (THE "2001 ACT")

The reform of mental health legislation in Ireland was long overdue. The 2001 Act replaces the majority of the provisions of the Mental Treatment Act 1945.¹

The 2001 Act replaces the Mental Treatment Act 1953; the Mental Treatment (Detention in Approved Institutions) Act 1961; the Mental Treatment Act 1961² and the Health (Mental Services) Act 1981.

The 2001 Act is the result of a long process of attempted legislative change and wide consultation in the area of mental health legislation. The Health (Mental Services) Act 1981 was never commenced by way of ministerial order.

The 2001 Act attracted much interest and debate during its passage through the Houses of the Oireachtas. As a result many amendments were debated and passed. The 2001 Act creates a modern legislative framework for the admission and treatment of persons with a mental disorder in compliance with international standards and obligations. The best interests of the person requiring admission and treatment are enshrined as paramount.

However, it is only one step in a process of the reform and modernisation of mental health care in our society.

Thus the Mental Health Act 2001 is just one element of ongoing reform of the entire mental health services. Further, the 2001 Act obliges

¹ Part VIII (Superannuation of officers and servants of mental hospital authorities) and S241 and S276, S283 and S284 of the Mental Treatment Act 1945 are not replaced and are still in force.
² S39 and S41 of the Mental Treatment Act 1961 are not replaced and are still in force.

the Minister of Health and Children to review the operation of the Mental Health Act 2001 not later than five years after establishment day and present a report to the Houses of the Oireachtas on the findings and conclusions of the review.³ This is an important feature of the 2001 Act as the formation of mental health legislation is an ongoing process rather than an event that occurs once in every few decades. It should be amended in response to advances in treatment of mental disorders and to developments in service delivery systems.⁴

1.2 OVERVIEW OF THE MENTAL HEALTH ACT 2001

The 2001 Act is described as *“an act to provide for the involuntary admission to Approved Centres of persons suffering from mental disorders, to provide for the independent review of the involuntary admission of such persons and, for those purposes, to provide for the establishment of a Mental Health Commission and the appointment of Mental Health Commission Tribunals and an Inspector of Mental Health Services, to repeal in part the Mental Treatment Act, 1945 and to provide for related matters.”*⁵

The 2001 Act is divided into six parts.

Part 1 – includes the short title, commencement provisions, interpretations and definitions and the principles relating to the 2001 Act.

Part 2 – outlines the procedures for involuntary admission to Approved Centres and the rights available to patients following admission, including right of review and right of appeal. Procedures regarding the transfer of patients

and the discharge of patients are also outlined. It includes certain provisions in relation to voluntary patients and children. The powers of the Garda Síochána are outlined in this part.

Part 3 – outlines the functions and powers of the Mental Health Commission and Mental Health Tribunals. The establishment of the Inspector of Mental Health Services and related functions are outlined.

Part 4 – outlines specific requirements for consent to treatment and the circumstances where second opinions are required.

Part 5 – outlines various rules and regulations in relation to the registration, operation and monitoring of Approved Centres.

Part 6 – outlines various miscellaneous provisions including restriction on bodily restraint and seclusion, participation in clinical trials, restriction on civil proceedings, provisions in relation to offences and the review of the 2001 Act.

³ Mental Health Act 2001, S75.

⁴ World Health Organisation - “Mental Health Policy and Service Guidance Package 2003”.

⁵ Mental Health Act 2001 – long title.



REFERENCE GUIDE
MENTAL HEALTH ACT 2001
PART TWO – CHILDREN

2.0 GENERAL ISSUES

2.1 UNITED NATIONS CONVENTION ON THE RIGHTS OF THE CHILD

The Convention on the Rights of the Child was adopted unanimously by the United Nations General Assembly on 20th November, 1989. This Convention is viewed as a landmark for childrens' rights.

Ireland signed the Convention on 30th September, 1990 and ratified it on 21st September 1992. The Convention is binding in Ireland as a state only but does not form part of domestic Irish law.¹ The Mental Health Commission is of the view that due consideration should be given to the Articles of the Convention, as appropriate, when taking actions under the provisions of the Mental Health Act 2001.

The Convention has, as its guiding spirit, the best interests of the child.

The following Articles of the Convention are considered to be particularly relevant to the 2001 Act.

- **Article 2** states that the rights of each child as set out in the Convention should be respected without discrimination. Article 2 also states that the State shall take all appropriate measures to ensure the child is protected against all forms of discrimination or punishment on the basis of status, activities or expressed opinions or beliefs.
- **Article 3 (1)** provides that in all actions concerning children, the best interests of the child shall be of primary consideration.
- **Article 3 (3)** states that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.
- **Article 5** states that the State shall respect the responsibilities, rights and duties of parents or legal guardians to provide appropriate direction and guidance in the exercise by the child of the rights recognised by the Convention.
- **Article 9 (1)** states that parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.
- **Article 12** states the child's rights to express an opinion in matters affecting the child and to have that opinion heard. This is important in terms of treatment. A child of a certain age may be able to express an opinion on treatment. Article 12 also states that the child shall be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child.
- **Article 13** provides for the right to freedom of expression, which includes the freedom to seek, receive and impart information and ideas of all kinds.

¹ Article 29(6) of the Constitution states that International Treaties ratified by Ireland are binding on the State but not within it.

- **Article 17** provides the right of access to appropriate information, especially information aimed at the promotion of the child's social, spiritual and moral well-being and physical and mental health.
- **Article 19** provides that the State is to protect children from all forms of abuse, neglect and exploitation by parents or others, and to undertake preventive and treatment programs in this regard.
- **Article 23** recognises the right of a mentally or physically disabled child to enjoy a full life in conditions, which ensure dignity and promote self-reliance.
- **Article 24** provides for the right of the child to the highest attainable standard of health and access to medical services.
- **Article 25** states the right of children placed by the State for reasons of care, protection or treatment of his or her physical or mental health, to have all aspects of that placement reviewed regularly.
- **Article 27** provides for the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.
- **Article 37 (b)** states that no child shall be deprived of his or her liberty unlawfully or arbitrarily and that the admission of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time.
- **Articles 37 (c) and 37 (d)** refer to the child's right, if deprived of liberty, to be treated with humanity and respect and have the right to prompt access to legal and other appropriate assistance.

2.2 UNITED NATIONS' PRINCIPLE FOR THE PROTECTION OF PERSONS WITH A MENTAL ILLNESS AND THE IMPROVEMENT OF MENTAL HEALTH CARE

These core principles in the field of mental health care were adopted by the General Assembly on 17th December, 1991.

Principle Two refers specifically to minors and states that special care should be given within the overall principles to the protection of the rights of minors.

2.3 THE CONVENTION OF HUMAN RIGHTS AND BIOMEDICINE (OVIEDO CONVENTION) 1997

This Convention is concerned with safeguarding human dignity and fundamental freedoms and rights of persons' with regard to the application of biology and medicine. Article 6 (2) refers to minors and states that if a minor does not have the capacity to consent to an intervention, this intervention can only be carried out with the authorisation of a person/body/authority as provided for by law.



REFERENCE GUIDE
MENTAL HEALTH ACT 2001
PART TWO – CHILDREN

3.0 LEGISLATIVE PROVISION IN IRELAND

3.1 CONSTITUTION OF IRELAND

Fundamental rights in relation to personal rights¹, the family², education³, private property⁴ and religion⁵ are enshrined in the Constitution of Ireland.

Article 40 addresses Personal Rights. Section 1 states *“all citizens shall, as human persons, be held equal before the law”*. Section 4(1) states that *“no citizen shall be deprived of his personal liberty save in accordance with law”*.

Article 41 addresses the family. Section 1(1) *“...the State recognises the family as the natural primary and fundamental unit group of society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law”*. Section 1(2) *“the State guarantees to protect the family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the Nation and the State”*.

Article 42 addresses the area of education. In Section 1, *“the State acknowledges that the primary and natural educator of the child is the family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children*. Section 5 states that, *“In exceptional cases, where the parents for physical or moral reasons fail in their duty to their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with*

due regard for the natural and imprescriptible rights of the child”.

When making interventions as per the Mental Health Act 2001 a number of other Irish legislative provisions are of relevance.

3.2 CHILD CARE ACT 1991

Section 23(4) of the Mental Health Act 2001 states that Section 13(4) of the Child Care Act 1991 applies with necessary modifications. This sets out therefore that if the parents of a child, who is being treated in an Approved Centre voluntarily, wish to remove the child from the Approved Centre, and a consultant psychiatrist, registered medical practitioner or registered nurse on the staff of the Approved Centre feel that the child is suffering from a mental disorder, the child may be admitted and placed in the custody of the Health Service Executive. The Health Service Executive must then make an application to the District Court under Section 25 of the 2001 Act.

This application is subject to the provision of Section 13(4) of the Child Care Act 1991. As such the application must be made by a judge of the district in which the child resides or is for the time being (or if he or she is not available, by any justice of the District Court). The application to admit the child involuntarily may, if the justice is satisfied that the urgency of the matter so requires, be made ex parte and may be heard and an order made in relation to the matter elsewhere than at a public sitting of the District Court.

¹ Constitution of Ireland, Article 40.

² Constitution of Ireland, Article 41.

³ Constitution of Ireland, Article 42.

⁴ Constitution of Ireland, Article 43.

⁵ Constitution of Ireland, Article 44.

Section 25(14) of the Mental Health Act 2001 states that Sections 21, 22, 24 to 35, 37 and 47 of the Child Care Act 1991 shall apply to proceedings under Section 25 of the Mental Health Act 2001 with necessary modifications. These sections are as follows:

- (a) *Section 21 and 22 of the Child Care Act 1991 – Effect of Appeals from Orders and variation or discharge of Orders*

This provides that if any order of the court is appealed, the fact of that appeal will delay operation of that order until the appeal is heard. Furthermore, the court can act either of its own volition or pursuant to an application from any other person vary or discharge any order it makes.

- (b) *Section 24 of the Child Care Act 1991 – Welfare of the Child is Paramount*

This situation provides that in any proceedings under Section 25 of the Mental Health Act 2001, a court, while taking into consideration the rights and duties of parents, must accord paramount importance to the welfare of the child and in so far as practicable the court should give due consideration to the wishes of the child, having regard to his or her age and understanding. This is consistent with Articles 3 and 12 of the United Nations Convention on the Rights of the Child.

- (c) *Section 25 of the Child Care Act 1991 – Joining a Child to Proceedings*

This section provides that a court may decide, where it is satisfied having regard

to the age, understanding and wishes of a child and the circumstances of the case, that it is necessary in the interests of the child and justice to order that the child may be joined as a party to proceedings under the 2001 Act. The costs of a child as a party and his or her legal representation as appropriate shall be borne by the Health Service Executive, although the court can order any other party to the proceedings to pay such costs.

- (d) *Section 26 of the Child Care Act 1991 – Guardian ad Litem*

This provides for the appointment of guardian ad litem⁶ for a child if in any proceedings the child to whom the proceedings relates is not a party and in the interests of justice and of the child it is necessary to do so. Any costs incurred by such a person shall be borne by the Health Service Executive, although the court can order any other party to the proceedings to pay such costs.

- (e) *Section 27 of the Child Care Act 1991 – Reports*

This provides for the power of the court to order the furnishings of a report on any question affecting the welfare of the child. A copy of this report must be made available to each party to these proceedings.

- (f) *Section 28 of the Child Care Act 1991 – Jurisdiction*

This provides that the District Court and

⁶ This is not defined in the 1991 Act but a guardian ad litem is an independent person appointed by a judge to represent the best interests of a child and the child's own views regarding his/her welfare and future needs.

on appeal to the Circuit Court, shall have jurisdiction to hear proceedings under Section 25 of the 2001 Act and that these proceedings may be brought, heard and determined before and by a justice of the District Court for the time being assigned to the District Court district where the child resides or is for the time being.

prohibition on publication or broadcast of certain matters that would lead members of the public to identify a child who is the subject of the proceedings, and that persons shall be liable to a fine or term of imprisonment if they contravene this prohibition. However, the court may, if it sees fit, lift this prohibition.

(g) *Section 29 of the Child Care Act 1991 – In Camera*

This section refers to the hearing of proceedings under Section 25 of the 2001 Act and states that they shall be heard otherwise than in public and shall be as informal as is practicable and consistent with justice.

(j) *Section 32 of the Child Care Act 1991 – Presumption and Determination of Age*

This section provides that the court will inquire as to the age of the person to whom the application relates and the age declared or presumed will be the true age unless the contrary is proven.

(h) *Section 30 of the Child Care Act 1991 – Presence of Child during Hearing*

This section provides that a case relating to a child under the 2001 Act may proceed in the absence of the child unless the court is satisfied that the presence of the child is necessary for the proper disposal of the case. If the child requests to be present during the hearing, the court shall grant the request unless it appears to the court that it would not be in the child's interest to accede to the request having regard to the age of the child or the nature of the proceedings.

(k) *Section 33 of the Child Care Act 1991 – Rules of Court*

This section provides that, for the purposes of expediting the hearing of matters under Section 25 of the Mental Health Act 2001, the rules of the court may make provision for the service of documents otherwise than is normally required under Section 7 of the Courts Act 1964 (as amended by Section 22 of the Courts Act 1971).⁷

(i) *Section 31 of the Child Care Act 1991 – Publicity*

This section provides that there shall be a

(l) *Section 34 of the Child Care Act 1991 – Failure or Refusal to Deliver Up Child*

This section provides for a fine or a term of imprisonment for a person who, having been given or shown an order that a child be placed or maintained in the care of the Health Service Executive, fails to give up the child to the Health Service Executive.

⁷ This refers to the service of court documents by post.

A person shall be deemed to have notice of the order if they were present at the sitting of the court at which such an order was made.

(m) *Section 35 of the Child Care Act 1991 – Execution of a Warrant*

This section provides that upon making an order that a child be placed or maintained in the care of the Health Service Executive, a judge may for the purposes of executing that order issue a warrant authorising the Garda Síochána to enter a house or building or other structure where the child is or is reasonably believed to be and to deliver the child into the custody of the Health Service Executive.

(n) *Section 37 of the Child Care Act 1991 – Access to Children in Care*

This section makes provision requiring the Health Service Executive to allow ‘reasonable access’ for a parent or person acting in loco parentis (or any other person who in the opinion of the Health Service Executive has a bona fide interest in the welfare of the child).

This section also provides for the court to make an order, on application from the Health Service Executive, to prevent access by persons to safeguard the child’s welfare. If a person is dissatisfied with the access arrangements they may apply to the court for an order of access or variation of an existing order of access.

(o) *Section 47 of the Child Care Act 1991 – Application for Directions*

This section provides that where a child is in the care of the Health Service Executive, the District Court may of its own motion or on the application of any person, give such directions or orders and make, vary or discharge an order or direction on any question affecting the welfare of the child.

3.3 NON-FATAL OFFENCES AGAINST THE PERSON ACT 1997 (NFOAP ACT 1997)

Section 23 of the Non-Fatal Offences Against the Person Act 1997 refers to consent by a minor over 16 years to surgical, medical and dental treatment. This section provides that a **minor** who has attained the age of 16 (in other words, a person 16 years of age up to their 18th birthday) can give consent to a medical procedure, which in the absence of such consent would constitute trespass. This consent shall be as valid as if the person was aged 18 or over. In such a situation where the minor has given consent, it is not necessary to obtain consent from their parents or guardians.

It is important to note that this provision does not apply to psychiatric treatment. Therefore, the consent of the parent/guardian or courts will be required for any psychiatric procedure or intervention where consent is required.

MENTAL HEALTH ACT 2001 – PROVISIONS RELATED TO CHILDREN 4.0



REFERENCE GUIDE MENTAL HEALTH ACT 2001 PART TWO – CHILDREN

4.0 MENTAL HEALTH ACT 2001 – PROVISIONS RELATED TO CHILDREN

- **Section 2** - defines a 'child' as a person under the age of 18 years other than a person who is or has been married. This definition is in line with the definition of a child in the Child Care Act 1991.
- **Section 4** - states that when making a decision under the 2001 Act regarding the care and treatment of a person, the best interests of the person shall be the principal consideration with due regard being given to other persons who may be at risk of harm.

Although this section does not specifically refer to children, neither does it exempt them. This section, more importantly, is in line with Section 3(2)(b)(i) and Section 24 of the Child Care Act 1991 i.e. to regard the welfare of the child as "the first and paramount consideration". The principle enunciated in Section 4 of the Mental Health Act 2001 also adheres to Article 3(1) the United Nations Convention on the Rights of the Child.

The Mental Health Commission recommends that the principle of best interests as expressed in Section 4 of the Mental Health Act 2001 informs all actions undertaken in relation to children under the Mental Health Act 2001.

The Mental Health Act 2001 Section 2 – defines a 'child' as a person under the age of 18 years other than a person who is or has been married. This definition is in line with the definition of a child in the Child Care Act 1991.

DEFINITION OF MENTAL DISORDER 4.1



REFERENCE GUIDE
MENTAL HEALTH ACT 2001
PART TWO – CHILDREN

4.1 DEFINITION OF MENTAL DISORDER¹

This definition of mental disorder applies to children in relation to involuntary admissions.

The term “mental disorder”, as defined in the Mental Health Act 2001, means mental illness, severe dementia or significant intellectual disability where either:

- because of the illness, dementia or intellectual disability there is a serious likelihood of the person concerned causing immediate and serious harm to himself or herself or to other persons,

or

- because of the severity of the illness, dementia or disability, the judgement of the person concerned is so impaired that failure to admit the person to an Approved Centre would be likely to lead to a serious deterioration in his or her condition or would prevent the administration of appropriate treatment that could be given only by such an admission **and that** the reception, detention and treatment of the person in an Approved Centre would be likely to benefit or alleviate the condition of the person to a material extent.

For the first time in Irish mental health law a definition is provided of mental disorder for which a person may be involuntarily admitted and treated. In some respects, the definition is clinical in nature in that it is defined as being mental illness, severe dementia or significant intellectual disability. *Mental illness, severe*

dementia, or significant intellectual disability are crucial to but not sufficient in themselves for a person to have a mental disorder and thereby admitted involuntarily.

The clinical condition may be such that there is a serious likelihood of the person causing serious and immediate harm to self or others. In such cases a person may be involuntarily admitted for his or her own safety or for the safety of others. This is not a new concept. However, where such potential harm to self or others is not an issue a person may nonetheless be involuntarily admitted on the other grounds of mental disorder.

Such an admission may occur where the severity of the illness, dementia or intellectual disability is such that the judgment of the person is so impaired that failure to admit the person would be likely to cause a serious deterioration in his or her condition or would prevent the administration of appropriate treatment that could be given only by such an admission. In such circumstances involuntary admission may be warranted, but only where such admission would be likely to benefit or alleviate the condition of that person to a material extent.

HOW IS MENTAL ILLNESS DEFINED?

The 2001 Act defines mental illness as:

“... a state of mind of a person which affects the person’s thinking, perceiving, emotion or judgement and which seriously impairs the mental function of the person to the extent that he or she requires care or medical treatment in his or her own interest or in the interest of other persons.”²

Mental illness, severe dementia, or significant intellectual disability are crucial to but not sufficient in themselves for a person to have a mental disorder and thereby admitted involuntarily.

¹ Mental Health Act 2001, S3.

² Mental Health Act 2001, S3.

WHAT IS A MENTAL DISORDER IN THE CONTEXT OF MENTAL ILLNESS?

In addition to the clinical presentation of mental illness as described above, to fulfil the criteria for involuntary admission one of the following two criteria must also be met:

- because of the mental illness there is a serious likelihood of the person concerned causing immediate and serious harm to himself or herself or to other persons,

or

- because of the severity of mental illness, the judgement of the person concerned is so impaired that failure to admit the person to an Approved Centre would be likely to lead to a serious deterioration in his or her condition, **or** would prevent the administration of appropriate treatment that could only be given by such admission, **and that** the reception, admission and treatment of the person concerned in an Approved Centre would be likely to benefit or alleviate the condition of that person to a material extent.

HOW IS SEVERE DEMENTIA DEFINED?

The 2001 Act defines severe dementia as:

“...a deterioration of the brain of a person which significantly impairs the intellectual function of the person thereby affecting thought, comprehension and memory and which includes severe psychiatric or behavioural symptoms such as physical aggression.”³

The definition in the 2001 Act therefore, places the emphasis on the presence of severe psychiatric or behavioural symptoms in addition to the severity of the cognitive impairment as clinically defined in accordance with ICD-10 and DSM-IV-TR.⁴ *Thus a person may present with varying levels of cognitive impairment within a diagnosis of dementia but, to fulfil the criteria for involuntary admission, the person must also present with severe psychiatric or behavioural symptoms such as aggressive behaviour. The symptoms could also include delusions or hallucinations – the 2001 Act does not limit the symptoms to aggressive behaviour.*

WHAT IS A MENTAL DISORDER IN THE CONTEXT OF SEVERE DEMENTIA?

In addition to the clinical presentation of severe dementia as described above, to fulfil the criteria for involuntary admission one of the following two criteria must also be met:

- because of the dementia there is a serious likelihood of the person concerned causing immediate and serious harm to himself or herself or to other persons,

or

- because of the severity of dementia, the judgement of the person concerned is so impaired that failure to admit the person to an Approved Centre would be likely to lead to a serious deterioration in his or her condition, **or** would prevent the administration of appropriate treatment that could only be given by such admission, **and that** the reception, detention and treatment

³ Mental Health Act 2001, S3.

⁴ World Health Organisation (1992). The ICD-10 “Classification of Mental and Behavioural Disorders”; American Psychiatric Association (1996). “Diagnostic and Statistical Manual of Mental Disorder” – Text Revision (1994).

of the person concerned in an Approved Centre would be likely to benefit or alleviate the condition of that person to a material extent.

HOW IS SIGNIFICANT INTELLECTUAL DISABILITY DEFINED?

The Mental Health Act, 2001 defines significant intellectual disability as:

“...a state of arrested or incomplete development of mind of a person which includes significant impairment of intelligence and social functioning and abnormally aggressive or seriously irresponsible conduct on the part of the person.”⁵

In order to establish a mental disorder through a finding of significant intellectual disability, in accordance with the 2001 Act, a state of arrested or incomplete development of the mind includes:

- significant impairment of intelligence

and

- significant impairment of social functioning

and

- abnormally aggressive or seriously irresponsible conduct

all of the above criteria must be established separately.

WHAT DO THE TERMS OF THE DEFINITION MEAN AND HOW CAN THEY BE ESTABLISHED?

The Mental Health Commission provides the following guidance in relation to Significant Intellectual Disability, and shall, from time to time, furnish additional guidance.

SIGNIFICANT IMPAIRMENT OF INTELLIGENCE

The principal method for determining levels of intellectual functioning is psychometric assessment. Assessment of intellectual functioning should be obtained by using an individually administered standardised test, which is recognised as reliable and valid. The assessor should have training and experience in the administration of standardised psychological instruments. An Intelligence Quotient (IQ) level of under 69 is an indication of significant intellectual disability rather than conclusive evidence and the test employed in any given case must be appropriate for the person's age; cultural; linguistic; and social background (The British Psychological Society, 2001). It is acknowledged that formalised assessment may not always be possible due to the individual's level of functioning. Best practice also advises that allowance should be made for the possibility of measurement error and IQ figures should only be quoted with explicit confidence limits based on the standard error of measurement.

Assessment findings should be interpreted in the light of knowledge of the uses and limitations of such assessment findings. It is advised that the psychometric assessment would have been completed within the past five years (or as best practice dictates).

⁵ Mental Health Act 2001, S3.

SIGNIFICANT IMPAIRMENT OF SOCIAL FUNCTIONING

An assessment of impairment of social functioning is related to a person's performance in coping on a day-to-day basis with the demands of his or her environment. It is related to a person's age and the socio-cultural expectancies associated with his/her environment at any given time. It is concerned with what a person does (i.e. actual behaviour/performance).

Impairment of adaptive/social functioning may range from occasional to pervasive, i.e. needing support intermittently to continuously in such areas as self-care; communication; home living; self-direction; occupational; social; and interpersonal skills.

The British Psychological Society (2001) notes that impairment of social functioning is usually measured by direct observation and/or in conjunction with at least one informant who knows the person well (e.g. a parent, carer or friend). While standardised assessments of adaptive and social functioning may be helpful, the British Psychological Society (2001) is of the opinion that there is not, as yet, sufficient consensus within the area for one single assessment to be recommended.⁶

ABNORMALLY AGGRESSIVE OR SERIOUSLY IRRESPONSIBLE CONDUCT

The criterion of abnormally aggressive or seriously irresponsible conduct is behaviour which must be associated with 'a state of arrested or incomplete development of mind'. Any assessment of *abnormally aggressive conduct* should be based on observations of behaviour which lead to a conclusion that

the actions are outside the usual range of aggressive behaviour – unpredictability or unreasonableness under the circumstances will be factors which may establish the criterion. *Irresponsible conduct* is that which shows a lack of responsibility and/or a disregard of the consequences of the action – it does not necessarily require the person to be capable of judging these consequences. In certain circumstances failure to act can also be evidence of irresponsibility.

The assessment of 'abnormally aggressive or seriously irresponsible conduct' can be seen to have both observational (i.e. the actual behaviour) and judgement (i.e. the abnormality and/or seriousness component). To meet the criteria for each, abnormally aggressive and seriously irresponsible conduct should result in actual damage and/or real distress (in some cases to the self), and should occur either recently or persistently or with excessive severity.

HOW DOES ONE DECIDE WHEN ABNORMALLY AGGRESSIVE OR SERIOUSLY IRRESPONSIBLE CONDUCT HAS CEASED?

In order to act in the best interest of the person, it would not be appropriate to continue to regard a person as having 'significant intellectual disability' under the terms of the Mental Health Act, 2001, if remission or treatment has eliminated their abnormally aggressive or seriously irresponsible conduct. In arriving at such a decision, account should be taken of the extent to which the current environment and social context may reduce the possibility of such conduct occurring. Observation is the recommended tool of assessment and judgement is likely to be most readily optimised by drawing upon **clinical experience** of similar profiles.

⁶ British Psychological Society (2001) "Learning Disability: Definitions and Contents".

WHAT IS A MENTAL DISORDER IN THE CONTEXT OF SIGNIFICANT INTELLECTUAL DISABILITY?

In addition to the clinical presentation of significant intellectual disability, as described above, to fulfil the criteria for mental disorder (involuntary admission) one of the following two criteria must also be met:

- because of the significant intellectual disability there is a serious likelihood of the person concerned causing immediate and serious harm to himself or herself or to other persons,

or

- because of the significant intellectual disability, the judgement of the person concerned is so impaired that failure to admit the person to an Approved Centre would be likely to lead to a serious deterioration in his or her condition, or would prevent the administration of appropriate treatment that could only be given by such an admission, **and that** the reception, admission and treatment of the person concerned in an Approved Centre would be likely to benefit or alleviate the condition of that person to a material extent.

ARE THERE ANY EXCLUSION CRITERIA FOR MENTAL DISORDER?⁷

Yes.

The Mental Health Act 2001 outlines three exclusions from the definition of mental disorder. These exclusions are behaviour, conditions or circumstances that **cannot on**

their own be considered mental disorder.

Section 8(2) of the 2001 Act states that it is not lawful to admit a person involuntarily in an Approved Centre solely because that person is:

- (a) suffering from a personality disorder,
- (b) is socially deviant, or
- (c) is addicted to drugs or intoxicants.

The 2001 Act does not define personality disorder, socially deviant or addiction to drugs or intoxicants. The Mental Health Commission provides the following guidance for general practitioners, the Garda Síochána and staff in Approved Centres, to assist them in relation to the provisions of this section.

WHAT IS A PERSONALITY DISORDER?

Personality disorders are described in the *International Classification of Mental and Behavioural Disorders* (ICD-10)⁸ as 'deeply ingrained and enduring behaviour patterns, manifesting themselves as inflexible responses to a broad range of personal and social situations'; they represent either extreme or significant deviations from the way an average individual in a given culture perceives, thinks, feels and particularly relates to others and are 'developmental conditions, which appear in childhood or adolescence and continue into adulthood'.⁹

⁷ Mental Health Act 2001, S8.

⁸ World Health Organisation (1992), "International Classification of Mental and Behavioural Disorders" (ICD-10).

⁹ World Health Organisation (1992)

WHAT IS SOCIALLY DEVIANT?

Socially deviant is a term that refers to any behaviour that does not conform to social norms.¹⁰ What is perceived as deviant behaviour is subject to change as it is culturally determined and depends on the values and beliefs of society. Different cultures have different perceptions of social order, therefore making what may be perceived as deviant behaviour in one culture wholly acceptable in another.

Difficulty in adapting to

- moral;
- social;
- political; or
- other values,

in itself, should not be considered a mental disorder.¹¹

Non conformity with

- moral;
- social;
- cultural; or
- political values, or
- religious beliefs prevailing in a person's community,

shall never be a determining factor in diagnosing mental illness.¹²

The explicit exclusion of a person who is socially deviant from the definition of mental disorder brings Irish mental health law into conformity with international standards.

WHAT IS ADDICTION TO DRUGS OR INTOXICANTS?

Addiction to drugs or intoxicants is clinically defined as '*dependence syndrome*' in the ICD-10 Classification of Mental and Behavioural Disorders or '*substance dependence*' in the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR).

The Mental Health Act 2001 prohibits the involuntary admission of a person whose primary diagnosis is addiction to drugs or intoxicants.¹³

It should be noted that a person who is suffering from a personality disorder, who is socially deviant or is addicted to drugs or intoxicants may nonetheless require involuntary admission from time to time if he/she develops a mental disorder as defined in the 2001 Act.

WHY ARE THERE EXCLUSION CRITERIA?

These exclusions bring Irish mental health law into conformity with the United Nations *Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care* (1991)¹⁴ and are essential protection to ensure that a person's moral; social; cultural; religious; or political values shall never be the sole determining factor in diagnosing mental disorder. They bring Irish legislation in line with most other countries in respect of substance abuse and addictions. The rationale generally behind having exclusion criteria is to protect against political abuse and to encourage the idea of individual responsibility.

¹⁰ Giddens A., (2001), "Sociology", 4th Edition.

¹¹ Council of Europe Recommendation No. R(83)2 of the Committee of Ministers to Member States concerning the legal protection of persons suffering from mental disorders placed as involuntary patients (1983).

¹² "The UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care", Principle 4.3(1991).

¹³ Mental Health Act 2001 S8(2)(c).

¹⁴ "The UN Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care", Principle 4.3(1991).

These exclusions ensure that the application of the legislation is confined to persons with a mental disorder as defined in the 2001 Act. In the absence of mental disorder as defined in the 2001 Act, a person cannot be involuntarily admitted solely in order to prevent criminal behaviour. Even if admission to an Approved Centre is likely to be of benefit, in the absence of mental disorder as defined in the 2001 Act, a person cannot be involuntarily admitted. Similarly, in the absence of mental disorder as defined in the 2001 Act, a person cannot be involuntarily admitted if a failure to admit would be likely to lead to a serious deterioration in his or her condition.



REFERENCE GUIDE
MENTAL HEALTH ACT 2001
PART TWO – CHILDREN

4.2 ADMISSION OF CHILDREN

4.2.1 VOLUNTARY ADMISSION OF CHILDREN

The majority of children requiring in-patient treatment for a mental illness or a mental disorder will be admitted at the request of their parent(s)/guardian(s). The Mental Health Commission is of the view that a minority of children will be admitted involuntarily and in such instances the procedures outlined in either section 4.2.2 or 4.2.3 below will apply.

4.2.2 VOLUNTARY STATUS TO INVOLUNTARY STATUS

The parent of a child, or a person acting in loco parentis, wishing to remove a child who is being treated in an Approved Centre as a voluntary patient from an Approved Centre may not be permitted to do so if, in the opinion of a consultant psychiatrist, registered medical practitioner or registered nurse on the staff of the Approved Centre, the child has a mental disorder.¹

In such circumstances the child may be detained in the Approved Centre in the custody of the Health Service Executive.

The Health Service Executive will arrange for the child to be examined by a consultant psychiatrist who is not a relative of the child. If, following the results of this examination, the Health Service Executive is satisfied that the child is a person with a mental disorder requiring treatment that he or she is unlikely to receive unless they are admitted involuntarily, the Health Service Executive will make an application to the District Court for the involuntary admission of the child.

Such an application must be made within 3 days of the date on which the child was placed in the custody of the Health Service Executive. The application is made in the same manner as a first time involuntary admission of a child pursuant to Section 25. It should be noted that Section 25 sets out that an application to the District Court may be made where the child is suffering from a mental disorder **and** requires treatment which he or she is unlikely to receive unless an order is made under Section 25. The District Court has the power to order an emergency care order in respect of the child.²

If on application the District Court is not satisfied that the child has a mental disorder requiring treatment that he or she is unlikely to receive unless they are admitted involuntarily, it shall order the release of the child back into the custody of a parent or a person acting in loco parentis.

¹ Mental Health Act 2001, S23.

² Pursuant to the Child Care Act 1991 S13(4) – the Mental Health Act 2001 S23(4).

The parents of a child, or either of them, or a person acting in loco parentis wishes to remove a child who is being treated as a voluntary patient from an Approved Centre

Section 23(2)

If a Consultant Psychiatrist, Registered Medical Practitioner or Registered Nurse on the staff of the Approved Centre is of the opinion that the child is suffering from a mental disorder then pursuant to Section 23(2) he or she may be detained in the Approved Centre in the custody of the Health Service Executive (HSE)

Section 23(2)

- *HSE makes an application for the involuntary admission of the child under Section 25, at the next sitting of the District Court*
- *Such Application must be made within 3 days of the date on which the child was placed in the custody of the HSE*
- *HSE shall retain custody of the child pending the hearing of the application*

Section 23(3)

HSE returns the child to his/her parents, or either of them, or a person acting in loco parentis

Section 23(3)

The application takes the same form as an application to involuntarily admit a child pursuant to Section 25

The District Court also has the power to make an emergency care order keeping the child in the custody of the HSE pending the decision on the application

Section 23(4)

Section 23 Guidelines — Power to prevent a child being treated as a voluntary patient from leaving an Approved Centre

4.2.3 INVOLUNTARY ADMISSION OF CHILDREN

In considering an involuntary admission of a child the following principles should be considered:–

- the least restrictive form of care should be used initially
- the involuntary admission and treatment should be for the minimum period in line with best interests of the child
- consideration of the child's view should extend in line with age and maturity.

An application for the involuntary admission of a child may be made, in specific circumstances, by the Health Service Executive. Unlike applications for an adult, which are made to a registered medical practitioner, applications in relation to a child must be made to a District Court.

In considering any application to admit a child or extend such an admission the best interest and welfare of the child is paramount, having regard to the rights and duties of the parents and, in so far as is practicable, the age, understanding and wishes of the child.³

The Health Service Executive may seek to have a child, who resides in or is found in its functional area, admitted involuntarily to an Approved Centre where it appears that the child has:

a mental disorder

and

requires treatment that he or she is unlikely to receive unless admitted to an Approved Centre.

APPLICATION FOR INVOLUNTARY ADMISSION WITH PARENTAL CONSENT FOR EXAMINATION BY A CONSULTANT PSYCHIATRIST

Where the parents of the child, or either of them, or a person acting in loco parentis⁴ consent to an examination of the child the following procedure is required:

- The child must be examined by a consultant psychiatrist (who is not a relative of the child).
- An application must be made to the District Court by the Health Service Executive for an order authorising the admission of the child in an Approved Centre.
- The Health Service Executive must furnish a written report of the results of the examination by the consultant psychiatrist to the District Court.
- Having considered the report of the consultant psychiatrist, and any other evidence presented before it, if satisfied that the child is suffering from a mental disorder the court makes an order to admit the child in a specified Approved Centre for a period not exceeding 21 days.

APPLICATION FOR INVOLUNTARY ADMISSION WITHOUT PARENTAL CONSENT FOR EXAMINATION BY A CONSULTANT PSYCHIATRIST

When seeking a court order admitting a child involuntarily, the Health Service Executive must ensure the child is examined by a consultant psychiatrist.

³ The Mental Health Act 2001, S25(14) and the Child Care Act 1991 S24.

⁴ The Mental Health Act 2001, S25(3).

Where the parents of the child, or either of them, or a person acting in loco parentis refuses to consent to the examination, or following the making of reasonable inquiries by the Health Service Executive, a parent or person acting in loco parentis cannot be found, the following procedure is required:

- An application must be made by the Health Service Executive to the District Court for an order authorising the admission of the child in an Approved Centre.
- No prior examination by a consultant psychiatrist is necessary.
- The District Court, may, if it is satisfied that there is reasonable cause to believe that the child has a mental disorder, direct that the Health Service Executive arrange for an examination of the child by a consultant psychiatrist (who is not a relative of the child).
- The District Court will specify a time within which the report of the consultant psychiatrist will be furnished to the court. Such a report must detail the results of the examination and indicate whether or not the consultant psychiatrist is satisfied that the child has a mental disorder.
- The consultant psychiatrist who carries out the examination shall:
 - Report to the court on the results of the examination, and
 - Shall indicate whether he or she is satisfied that the child is suffering from a mental disorder.
- Having considered the report of the consultant psychiatrist, and any other evidence presented before it, if satisfied that the child is suffering from a mental disorder the court makes an order to admit the child in a specified Approved Centre for a period not exceeding 21 days.

Until a report on the examination by the consultant psychiatrist of the child (either under Section 25(1), with consent of the parents, or under Section 25(4) where such examination is ordered by the court) is produced to the court, an order admitting the child involuntarily to an Approved Centre under Section 25 can not be made by the court. However, it should be noted that pursuant to subsection 25(8), in the period between the initial application for the order and its final determination, the court may give any such directions as it sees fit as to the care and custody of the child who is the subject of that application pending such determination. That direction will automatically cease when the final determination of the court is made.

EX PARTE APPLICATIONS BY THE HEALTH SERVICE EXECUTIVE TO THE DISTRICT COURT

If there is an urgent need to make an application the Health Service Executive may make an *ex parte* application to the District Court, that is, they may make an application without informing any other interested party (such as the parent of the child) of the fact that they are making the application.

PROCEEDINGS BEFORE THE DISTRICT COURT

Proceedings will be heard *in camera*, that is not in public, and restrictions are placed on the reporting of such proceedings to protect the identity of the child, although these restrictions may be dispensed with by the court if it is in the interests of the child.⁵

⁵ The Mental Health Act 2001, S25(14) and the Child Care Act 1991, S29 & S31.

The court will consider the report of the consultant psychiatrist and any other evidence that may be before the court.

The court may itself, or on application to it, order a direction for any report to be made and furnished to the court concerning any aspect of the welfare of the child deemed relevant to the application.⁶ The author of any such report may be called to testify before the court. Copies of any such reports will be made available to all parties concerned.

The child is generally not a party to the proceedings. However, in certain circumstances, where the parents are not able to be located and there is no one in *loco parentis* the court has a discretion to make the child a party to the proceedings (in a full or limited capacity) and afford them separate legal representation.⁷ Any such decision will be based on the best interests of the child and the circumstances of the case.

The child is not necessarily required to be present in court. If a child requests to be present the court may only exclude the presence of the child if it is of the view that it would not be in the child's interest to be present, having regard to the age of the child and the nature of the proceedings.⁸ If the child is not made a party to the proceedings as set out above, the court may appoint a guardian *ad litem*, that is, a specified person directed by the court on behalf of the child; such person may, in appropriate circumstances be legally represented.⁹

DECISION OF THE DISTRICT COURT

If the court is satisfied that the child has a mental disorder it shall make an order that the child be admitted for treatment in a specified Approved Centre for a period of up to 21 days. The District Court, acting in its own right or in consideration of an application brought before it, has the power to vary or discharge this order, or give any direction in respect of the order.¹⁰

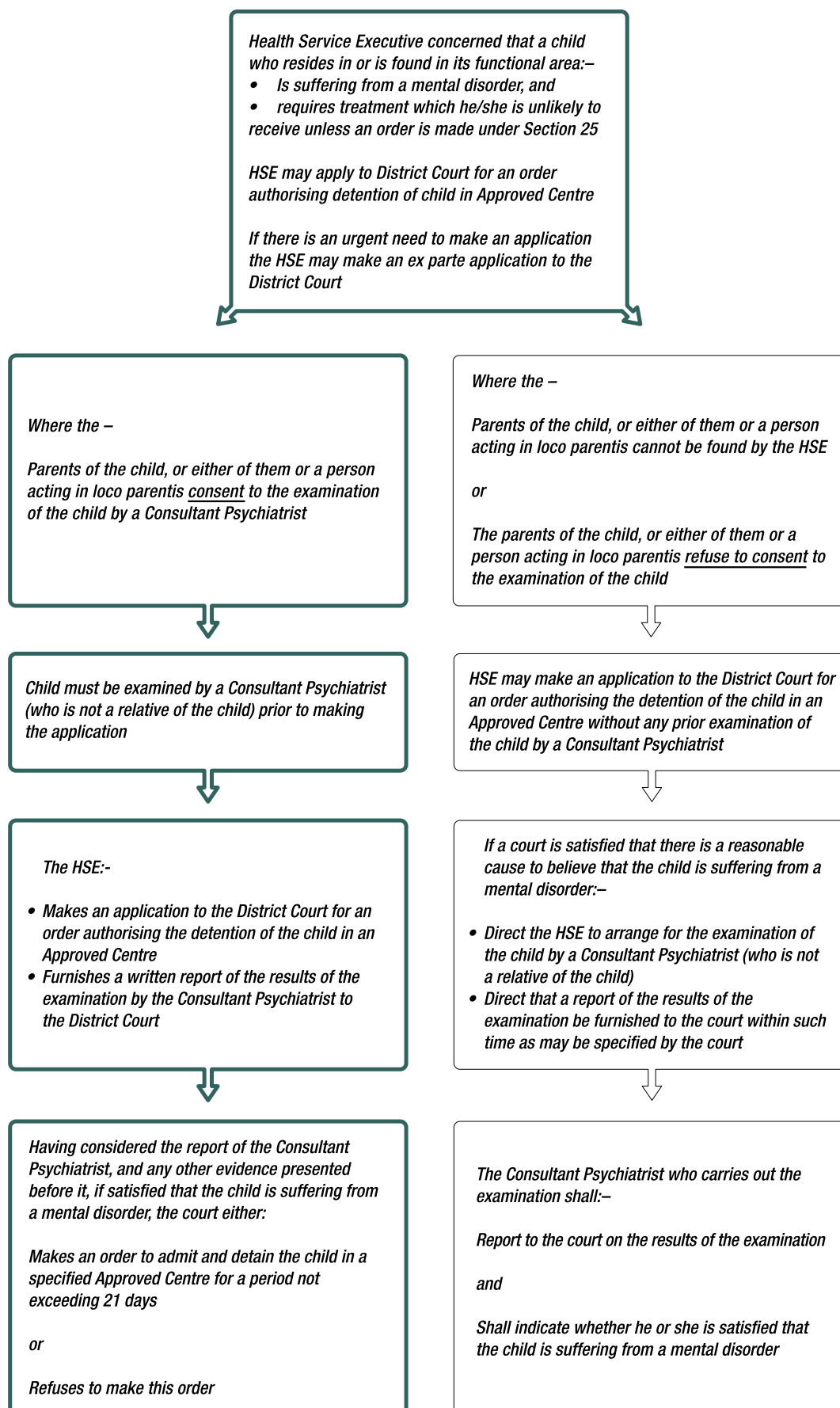
⁶ The Mental Health Act 2001, S25(14) and the Child Care Act 1991, S27.

⁷ The Mental Health Act 2001, S25(14) and the Child Care Act 1991, S25.

⁸ The Mental Health Act 2001, S25(14) and the Child Care Act 1991, S30.

⁹ The Mental Health Act 2001, S25(14) and the Child Care Act 1991, S26.

¹⁰ The Mental Health Act 2001, S25(14) and the Child Care Act 1991, S22.



Section 25 Guidelines – Involuntary Admission of a child



REFERENCE GUIDE
MENTAL HEALTH ACT 2001
PART TWO – CHILDREN

4.3 APPEALS

A decision of the District Court may be appealed to the Circuit Court. The Circuit Court will rehear the application in its entirety. Pending the appeal hearing the order of the District Court may continue to be in force or it may be “stayed”, that is, the operation of the order will be postponed pending the decision of the Circuit Court. Either the District Court that made the decision or the Circuit Court that will hear the appeal may postpone the operation of the order on such terms as it sees fit.¹ So, for example, where the District Court makes an order authorising the admission of a child in an Approved Centre and such order is appealed, the District Court, or the Circuit Court, may place a “stay” on the order but direct that the child be placed in the care and custody of the Health Service Executive pending the hearing of the appeal.

¹ The Mental Health Act 2001, S25(14) and the Child Care Act 1991, S21.

APPLICATION TO THE COURT AND THE MAKING OF A COURT ORDER 4.4



REFERENCE GUIDE
MENTAL HEALTH ACT 2001
PART TWO – CHILDREN

4.4 APPLICATION TO THE COURT AND THE MAKING OF A COURT ORDER

The court may itself, or on the application of any person, give any such directions as it sees fit as to the care and custody of the child pending the making of a court order. Such directions shall be given at the discretion of the District Court but may be relevant in circumstances where the child is at risk of self-harm or harm to others. In making any such directions the welfare and best interests of the child shall be paramount. Any such directions will remain in force until the court has made a final decision.

The 21 day period of admission may be extended by the District Court, on application to it by the Health Service Executive, for an initial period of up to 3 further months.

On or before the expiration of this 3 month period, the Health Service Executive may apply to the District Court to have the admission extended for up to a further 6 months and thereafter for further periods provided that no one period exceeds 6 months in duration.

However in making such an application to the court the Health Service Executive concerned must arrange for a consultant psychiatrist (who is not a relative of the child) to examine the child. A report of this examination must be furnished to the court by the Health Service Executive. The District Court will consider this report and if it is satisfied that the child continues to have a mental disorder may order the extension of the admission for the relevant period.



REFERENCE GUIDE
MENTAL HEALTH ACT 2001
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4.5 INDEPENDENT REVIEW OF DETENTION

There is no equivalent of a Mental Health Tribunal for children admitted involuntarily. However a review mechanism exists in that a District Court may only make an order admitting a child for a maximum period of 21 days. Extensions of periods of admission may only be granted by the District Court on consideration of a report from a consultant psychiatrist who has examined the child and indicated to the court whether or not they are satisfied that the child continues to have a mental disorder.

CHILD ADMITTED INVOLUNTARILY ON REACHING HIS/HER 18TH BIRTHDAY 4.6



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4.6 CHILD ADMITTED INVOLUNTARILY ON REACHING HIS/HER 18TH BIRTHDAY

In situations where a child admitted as an involuntary patient reaches the age of 18 years a number of options should be considered.

In the first instance the person (now an adult) could be asked to consent to remain in the centre as a voluntary patient.

or

In the absence of such consent, the person could be admitted involuntarily under the provisions of the Mental Health Act 2001 as they relate to adults (see **section 2.2 of the Reference Guide to the Mental Health Act 2001 Part I – Adults**).

If the person reaching the age of 18 was admitted and treated voluntarily, pursuant to Section 23 if this person wishes to leave the Approved Centre and a consultant psychiatrist, medical practitioner or a registered nurse on the staff of the Approved Centre is of the opinion that the person is suffering from a mental disorder, he or she may admit the person for a period not exceeding 24 hours. The procedures pursuant to Section 24 are then instituted (see **section 2.2 of the Reference Guide to the Mental Health Act 2001 Part I – Adults**).



REFERENCE GUIDE
MENTAL HEALTH ACT 2001
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4.7 LEAVE PROCEDURES

The provisions relating to the leave procedures for patients admitted involuntarily also apply to children admitted involuntarily pursuant to Section 25 of the Mental Health Act 2001.

4.7.1 MAY AN INVOLUNTARY PATIENT LEAVE THE APPROVED CENTRE FOR ANY PERIOD OF TIME?

Yes.

ABSENCE WITH LEAVE¹

The consultant psychiatrist responsible for the care and treatment of the patient may grant permission in writing to the patient to be absent from the Approved Centre concerned for a specified period of time. However the specified period of time must be less than the unexpired period of time on the relevant admission order or renewal order. So, for example, if the admission order is still valid for 10 days, the consultant psychiatrist may only grant permission for the patient to be absent for a period of less than 10 days.

The consultant psychiatrist may attach any conditions that he or she considers appropriate and these must be specified in writing to the patient.

If the consultant psychiatrist is of the opinion that it is in the interest of the patient to return to the Approved Centre he or she may withdraw the permission

granted and direct the patient to return. Such a direction must be made in writing to the patient.

ABSENCE WITHOUT LEAVE²

A patient will be considered to be absent without permission if he or she:–

- i leaves an Approved Centre without permission,
- ii was absent from the Approved Centre with permission and fails to return within the specified time permitted,
- iii was absent from the Approved Centre with permission and fails to return to the centre in compliance with a written direction from the consultant psychiatrist (responsible for the care and treatment of the patient) that he or she should so return, or
- iv fails, in the opinion of the consultant psychiatrist (responsible for the care and treatment of the patient), to comply with any condition specified in writing to the patient when he or she was granted leave to be absent.

In any of the above circumstances the clinical director³ of the Approved Centre may arrange for members of the staff of the centre to bring the patient back to the Approved Centre. If the staff are unable to bring the patient back, the assistance of the Garda Síochána may be requested, if the clinical director (or a consultant psychiatrist acting on his or her behalf) is of the opinion that there is a serious likelihood of the patient causing serious and immediate harm to self or others. In such

¹ Mental Health Act 2001, S26.

² Mental Health Act 2001, S27.

³ A consultant psychiatrist who is appointed as clinical director by the governing body of an Approved Centre. A consultant psychiatrist may be the clinical director of more than one Approved Centre – the Mental Health Act 2001, S71.

circumstances the Garda Síochána are obliged to assist members of staff of the Approved Centre in the removal of the person to the centre concerned. Members of the Garda Síochána are empowered to use any reasonable force, if necessary, to enter any premises where they reasonably believe the patient may be. Further, they are empowered to take all reasonable measures necessary for the return of the patient to the Approved Centre including, where necessary, the detention or restraint of the patient.⁴

⁴ Mental Health Act 2001, S27(1).

TREATMENT OF CHILDREN IN APPROVED CENTRES 4.8



REFERENCE GUIDE
MENTAL HEALTH ACT 2001
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4.8 TREATMENT OF CHILDREN IN APPROVED CENTRES

4.8.1 ADMINISTRATION OF MEDICINE

A child admitted under Section 25 of the 2001 Act may be administered medication with or without consent for the purposes of ameliorating his or her mental disorder for a period of three months. On the expiration of the three month period the administration of the medication may only be continued where either the consultant psychiatrist responsible for the care and treatment of the child approves the administration **and** refers the matter to a second consultant psychiatrist who authorises it.

Both consultant psychiatrists must complete FORM 18 (Treatment without Consent – Administration of Medicine for more than 3 Months (Child)) stating that they have examined the child, and are of the opinion that the administration of the medication would be of benefit to the child and giving reasons for their opinion.

The approval and authorisation by the consultant psychiatrists for the continuation of the administration of medication will be valid for a period of three months. If it is considered appropriate and necessary to administer the medication for a further period after the expiration of the three months, the above procedure must be followed once more and a new FORM 18 (Treatment without Consent – Administration of Medicine for more than 3 Months (Child)) must be completed.

4.8.2 TREATMENT THAT MAY ONLY BE ADMINISTERED WITH THE APPROVAL OF THE DISTRICT COURT

PSYCHO-SURGERY

It is NOT PERMISSABLE to perform psycho-surgery on a detained child without the approval of the District Court.¹

ELECTRO-CONVULSIVE THERAPY

It is NOT PERMISSABLE to administer electro-convulsive therapy on a detained child without the approval of the District Court.²

¹ Mental Health Act 2001, S25(12).

² Mental Health Act 2001, S25(13).



REFERENCE GUIDE
MENTAL HEALTH ACT 2001
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4.9 APPROVED CENTRES¹

4.9.1 WHAT IS AN APPROVED CENTRE?

The Mental Health Commission has a statutory responsibility to establish and maintain a *Register of Approved Centres* ("the Register").² Such centres are defined as hospitals or other in-patient facilities for the care and treatment of persons suffering from mental illness or mental disorder.³ The name of the person who carries on the Approved Centre is entered on the Register of Approved Centres and he or she is known as the "registered proprietor".⁴

4.9.2 CAN CENTRES THAT ARE NOT APPROVED OPERATE IN THE STATE?

No. It is an offence for any person to operate a hospital or other in-patient facility for the care and treatment of persons suffering from a mental illness or a mental disorder (as defined in the 2001 Act) if it is not entered on the Register of Approved Centres.⁵

4.9.3 HOW MAY A CENTRE BE ENTERED IN THE REGISTER?

A person proposing to operate a centre applies by way of application on the relevant form to the Mental Health Commission to have the centre entered on the Register. The Mental Health Commission may register or refuse to register the centre.⁶ Where a centre is already

registered the Mental Health Commission may attach such conditions to the registration as may be appropriate.

The Commission may request an applicant for registration (or the existing registered proprietor, as the case may be) to provide information the Commission considers necessary. It is an offence to knowingly furnish information that is false or misleading in any material respect.⁷

Where the centre is registered it becomes an Approved Centre and the Mental Health Commission issues a certificate of registration to the registered proprietor.⁸

Where the Commission proposes to refuse the application, or to attach, revoke or amend conditions it must notify the applicant in writing of its intention and of the reasons for it. The applicant must also be notified in writing of his or her right to make representations in writing to the Commission, within 21 days of the receipt of such notification. The Commission is obliged to take these matters into consideration before making its final decision whereupon it shall notify the applicant in writing of its decision and of the reasons for it, together with a statement that he or she may appeal this decision to the District Court within 21 days of receipt of the notification of the decision.⁹

Approved Centres are defined as hospitals or other in-patient facilities for the care and treatment of persons suffering from mental illness or mental disorder.

¹ Mental Health Act 2001, Part 5.

² Mental Health Act 2001, S64.

³ Mental Health Act 2001, S62.

⁴ Mental Health Act 2001, S62.

⁵ A person guilty of such an offence shall be liable on summary conviction to a fine not exceeding €1,875 or to imprisonment not exceeding 12 months or to both. A person guilty of such an offence shall be liable following conviction on indictment to a fine not exceeding €62,500 or to imprisonment not exceeding 2 years or to both – the Mental Health Act 2001 S68.

⁶ Mental Health Act 2001, S64(3)(a) & S64(6)(a).

⁷ Mental Health Act 2001, S64(8) – A person guilty of such an offence shall be liable on summary conviction to a fine not exceeding €1,875 or to imprisonment not exceeding 12 months or to both. A person guilty of such an offence shall be liable following conviction on indictment to a fine not exceeding €62,500 or to imprisonment not exceeding 2 years or to both.

⁸ Mental Health Act 2001, S64(3)(c).

⁹ Mental Health Act 2001, S64(11)(a) & (b) & S64(12).

In fulfilment of the Mental Health Commission's statutory obligation to promote, encourage and foster the establishment and maintenance of high standards and good practices in the delivery of mental health services and to take all reasonable steps to protect the interests of persons detained in Approved Centres, the Commission may attach any conditions it considers appropriate to the registration of Approved Centres.

4.9.4 WHAT DETAILS APPEAR IN THE REGISTER?¹⁰

The following details are entered in the Register in respect of every Approved Centre:

- The name of the registered proprietor, that is, the name of the person carrying on the business of the centre
- The address of the premises
- A statement of the number of patients who can be accommodated in the centre
- The date of registration, that is the date on which the registration is to take effect
- Any other particulars that may be prescribed by the Minister in regulations.

4.9.5 CAN THE MENTAL HEALTH COMMISSION ATTACH CONDITIONS TO THE REGISTRATION OF AN APPROVED CENTRE?

Yes. The Mental Health Commission has a statutory obligation to promote, encourage and foster the establishment and maintenance of high standards and good practices in the delivery of mental health services and to take all reasonable steps to protect the interests of persons detained in Approved Centres. In fulfilment of this obligation the Commission may attach any conditions it considers appropriate to the registration of Approved Centres.¹¹ Different conditions may attach to different centres. For example the Commission may:

- Specify measures to be taken to ensure that patients and residents¹² are informed of their rights under the Mental Health Act 2001.

- Require the carrying out of essential maintenance or refurbishment of a centre or specified areas within a centre.
- Require the closure, temporarily or permanently, of a specified area or areas within a centre.
- Specify the maximum number of residents which may be accommodated in a centre, or in a specified area or areas within a centre.
- Specify the minimum number of staff required to be employed in a centre.
- Require the introduction or review of specified policies, protocols and procedures relating to the care and welfare of patients and residents.
- Require the introduction or review of specified policies, protocols and procedures relating to the ordering, prescribing, storing and administration of medicines.

Where the Commission proposes to *attach any conditions, or that conditions previously imposed* be varied or revoked, the registered proprietor of the Approved Centre shall be notified in writing of such intention and the reasons for it. The registered proprietor must also be notified in writing of his or her right to make representations in writing to the Commission within 21 days of the receipt of such notification. The Commission is obliged to take these matters into consideration before making its final decision whereupon it shall notify the registered proprietor in writing of its decision and of the reasons for it together with a statement that he or she may appeal

¹⁰ Mental Health Act 2001, S64(2)(a).

¹¹ Mental Health Act 2001, S64(6).

¹² Residents are any persons receiving care and treatment in an Approved Centre, be it in a voluntary or involuntary capacity – the Mental Health Act 2001, S62.

this decision to the District Court within 21 days of receipt of its notification.¹³

If any of the conditions attached to registration are contravened the registered proprietor shall be guilty of an offence.¹⁴

4.9.6 MAY ANY PERSON OTHER THAN THE REGISTERED PROPRIETOR CARRY ON THE OPERATION OF THE CENTRE?¹⁵

No. Where someone, other than the registered proprietor, operates the centre, the centre will automatically cease to be registered. The person purporting to operate the centre must apply to the Commission for registration within four weeks from the date on which the centre ceased to be registered. Failure to apply for registration of the centre is an offence, as the person will be operating a centre that is not approved. If the Commission registers the centre, it will be considered to have been operating as an Approved Centre from the date on which it ceased to be registered and all conditions attached to the previous registration will apply.

4.9.7 MAY A CENTRE BE REMOVED FROM THE REGISTER?

Yes. The Mental Health Commission may remove a centre from the Register.¹⁶ The Commission must notify the registered proprietor in writing of the proposal to remove the centre from the Register and of the reasons for it. The registered proprietor must also be notified in writing of his or her right

to make representations in writing to the Commission within 21 days of the receipt of such notification. The Commission is obliged to take these matters into consideration before making its final decision whereupon it shall notify the registered proprietor in writing of its decision and of the reasons for it together with a statement that he or she may appeal this decision to the District Court within 21 days of receipt of its notification.¹⁷

4.9.8 IN WHAT CIRCUMSTANCES MAY THE MENTAL HEALTH COMMISSION REFUSE TO REGISTER A CENTRE OR REMOVE A CENTRE FROM THE REGISTER?¹⁸

The Mental Health Commission may not refuse to register a centre or remove a centre from the Register unless it is of the opinion that:

- The premises will not or do not, as the case may be, comply with the regulations.
- The manner in which the centre is operated is not or will not be in compliance with the regulations.
- The registered proprietor has, in the previous 12 months, contravened any conditions of registration.
- The registered proprietor has failed or refused to furnish the Mental Health Commission with information requested by it, which the Commission considers necessary for the carrying out of its functions.

¹³ Mental Health Act 2001, S64(11)(a) & (b) & S64(12).

¹⁴ Mental Health Act 2001, S64(13) – A person guilty of such an offence shall be liable on summary conviction to a fine not exceeding €1,875 or to imprisonment not exceeding 12 months or to both. A person guilty of such an offence shall be liable following conviction on indictment to a fine not exceeding €62,500 or to imprisonment not exceeding 2 years or to both – the Mental Health Act 2001, S68.

¹⁵ Mental Health Act 2001, S64(10).

¹⁶ Mental Health Act 2001, S64(4).

¹⁷ Mental Health Act 2001, S64(11)(a) & (b) & S64(12).

¹⁸ Mental Health Act 2001, S64(5).

- The registered proprietor has furnished the Commission with information that is false or misleading in a material respect.
- The registered proprietor has within one year from the date of the purported refusal or removal contravened any condition that the Commission may have attached to the carrying on of the centre.
- The registered proprietor has been convicted of an offence under Part V of the Mental Health Act 2001.

4.9.9 FOR HOW LONG IS REGISTRATION VALID?¹⁹

Registration shall be valid for 3 years from the date of registration provided the centre has not been removed from the Register within in the meantime.

4.9.10 HOW MAY A CENTRE BE RE-REGISTERED?

The registered proprietor of the centre must, two months prior to the expiry of registration, apply by way of the relevant form to the Commission to have the centre re-registered. If the Commission proposes to re-refuse to register the centre but does not inform the registered proprietor of this before the expiration of the registration then the Commission is obliged to register the centre.

4.9.11 CAN ANY PERSON INSPECT THE REGISTER?²⁰

Yes. Any person may inspect the register, free of charge, at any reasonable time.

4.9.12 APPEALS TO THE DISTRICT COURT AGAINST DECISIONS OF THE COMMISSION²¹

A decision of the Commission to refuse to register a centre, to remove a centre from the register or to attach, amend or revoke a condition of registration may be appealed to the District Court by the registered proprietor or the person intending to be the registered proprietor, as the case may be.

On appeal the District Court may:

- confirm the decision

or

- direct the Commission, as appropriate, to:
 - register the centre, or
 - restore the registration of the centre, or
 - withdraw the condition or the amendment or revocation of a condition of registration, or
 - attach a specified condition to the registration or make a specified amendment to the condition of the registration.

The appeal must be brought within 21 days of receipt of notification of the Commission's decision before the District Court in which the centre is situated. The decision of the District Court on issues of fact is final. The Commission must be notified of the appeal and shall be entitled to be heard and give evidence before the District Court. Where the centre concerned was, prior to the decision, an Approved Centre, the centre shall not be removed from the register until the appeal has been determined in full or until such time

¹⁹ Mental Health Act 2001, S64(3)(b).

²⁰ Mental Health Act 2001, S64(2)(b).

²¹ Mental Health Act 2001, S65.

as the District Court considers reasonable. Furthermore, any conditions to the registration of the centre imposed or varied by the Commission in a decision shall not take effect until the appeal has been determined in full or until such time as the District Court considers reasonable.

4.9.13 REGULATIONS IN RELATION TO APPROVED CENTRES²²

The Minister is required to make appropriate regulations in relation to Approved Centres. Such regulations may only be made following consultation with the Commission. The purpose of any such regulations is to ensure proper standards and conduct in relation to Approved Centres.

Regulations made by the Minister may include requirements in relation to:

- Drawing up and carrying out by centres, so far as is practicable in consultation with each resident, of an individual care plan for that resident, including the setting of appropriate goals
- Maintenance, care and welfare of residents
- Staffing requirements and requirements as to the suitability of members of staff of centres
- Design, maintenance, repair, cleaning and cleanliness, ventilation, heating and lighting of centres
- Accommodation
- Establishment and maintenance of a register of residents
- Record keeping
- Information to be provided to the Inspector of Mental Health Services

- Record keeping in relation to the examination and copying of records and extracts by the Inspector of Mental Health Services
- Enforcement and execution by the Commission of any regulations.

The regulations are not limited to the above areas. It is an offence for any person to refuse to comply with a provision of the regulations. Further, the registered proprietor of an Approved Centre shall be guilty of an offence if there is a failure or refusal to comply with a provision of the regulations in his or her centre.²³ Where a person or registered proprietor is convicted, the Commission may bring an application before the Circuit Court to have the person concerned disqualified from operating the centre concerned or any centre for a specified period of time. The application must be brought within six months of the conviction, before the Circuit Court in which the premises concerned are situated or, in circumstances where that conviction is appealed, within six months of either the withdrawal of that appeal or the final confirmation by the court of conviction. Notice of any such application must be given to the person concerned who shall be entitled to be heard and give evidence before the Circuit Court.

²² Mental Health Act 2001, S66.

²³ A person or registered proprietor guilty of such an offence shall be liable on summary conviction to a fine not exceeding €1,875 or to imprisonment not exceeding 12 months or to both or, following conviction on indictment, to a fine not exceeding €62,500 or to imprisonment not exceeding 2 years or to both – the Mental Health Act 2001, S68.



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4.10 THE MENTAL HEALTH COMMISSION

The Mental Health Commission was established in April 2002.

4.10.1 MEMBERSHIP OF THE MENTAL HEALTH COMMISSION¹

There are 13 members of the Mental Health Commission. The members are appointed by the Minister for Health and Children. The membership reflects the experience of both those providing and those using mental health services.

The 13 members must include:

- A practising barrister or solicitor of 10 or more years' experience
- Three registered medical practitioners (of which two shall be consultant psychiatrists) with a special interest in or expertise in the provision of mental health services
- Two registered nurses whose names are entered in the division applicable to psychiatric nurses in the register of nurses maintained by An Bord Altranais under Section 27 of the Nurses Act 1985
- A social worker with a special interest in or expertise in the provision of mental health services
- A psychologist with a special interest in or expertise in the provision of mental health services
- A representative of the interest of the general public
- Three representatives of voluntary bodies that promote the interests of persons with mental illness (of which two will be persons who are suffering from or who have suffered from a mental illness)

- A representative of the Chief Executive of the Health Service Executive.

Representatives of the registered medical practitioners, registered nurses, social workers and psychologists are nominated for appointment by such organisations as the Minister considers to be representative of those professions.

Representatives of voluntary bodies that promote the interests of persons with mental illness are nominated for appointment by such organisations as the Minister considers representative of such voluntary bodies.

The Minister for Health and Children appoints one of the members of the Commission to act as Chairperson.²

The membership must comprise of at least four women and at least four men.

Members are appointed for a term not exceeding five years after which time they may be eligible for reappointment. A member may resign at any stage within the five years or be removed by the Minister for Health and Children in certain specified circumstances.³

A member of the Mental Health Commission may not also be a member of either House of the Oireachtas or of the European Parliament.⁴

4.10.2 CHIEF EXECUTIVE AND STAFF⁵

The Chief Executive is appointed by the Mental Health Commission to carry on, manage and control the administration and business of the

¹ Mental Health Act 2001, S35.

² Mental Health Act 2001, S37.

³ Mental Health Act 2001, S36.

⁴ Mental Health Act 2001, S43(1).

⁵ Mental Health Act 2001, S38 & S39.

Mental Health Commission. He or she cannot be a member of the Commission.

The Commission acts through, and its functions are performed in the name of the Commission by, the Chief Executive Officer.

The Mental Health Commission has appointed a number of additional persons to executive positions to help fulfil its mandate. These persons include:

- Director Corporate Services
- Director Mental Health Tribunals
- Director Standards and Quality Assurance
- Inspector of Mental Health Services

4.10.3 FUNCTIONS OF THE MENTAL HEALTH COMMISSION

The Mental Health Commission is an independent statutory body established under the Mental Health Act 2001. It has a dual mandate to:

1. Protect the interests of any person admitted involuntarily in an Approved Centre, and
2. Promote, encourage and foster the establishment and maintenance of high standards and good practices in the delivery of mental health services.⁶

In the carrying out of its functions the Mental Health Commission is committed to respecting and upholding the best interests of any person who may be affected by the provisions of the Mental Health Act 2001.

The Mental Health Commission is charged with the following functions:⁷

- Establishing Mental Health Tribunals, which includes the appointment of members of the tribunals and the provision of staff and facilities
- Establishing a panel of consultant psychiatrists who will carry out independent medical examinations of any person admitted involuntarily (either by way of an admission order or a renewal order) and who will prepare a report for a tribunal
- Establishing a legal aid scheme for patients wishing to be represented before a tribunal
- Advising the Minister for Health and Children on matters or functions related to the work of the Mental Health Commission
- Preparing codes of practice for the guidance of persons working in the mental health services. Such codes of practice will be prepared after consultation with appropriate bodies and shall be reviewed periodically by the Mental Health Commission
- Carrying out any additional functions that may be specified by the Minister for Health and Children.⁸

The Mental Health Commission's remit incorporates the broad spectrum of mental health services. This includes mental health services for children and adolescents, adults, persons with an intellectual disability and a mental illness and a range of additional specialist areas including forensic services. The Mental Health Commission actively

⁶ Mental Health Act 2001, S33(1).

⁷ Mental Health Act 2001, S33(3).

⁸ Mental Health Act 2001, S34.

promotes and services research through the establishment of regional and national networks and infrastructure in the mental health services in Ireland. It has an active role in the dissemination of information to persons having an interest in mental health.

4.10.4 THE PUBLISHING OF REPORTS

The Mental Health Commission must submit an annual report on its activities to the Minister for Health and Children. The report includes the annual report of the Inspector of Mental Health Services. The Minister must lay the report before the Houses of the Oireachtas within one month of its submission.

The Mental Health Commission also has an important function in overseeing the effective implementation of Part 2 of the Mental Health Act 2001, in relation to the involuntary admission of persons to Approved Centres. Within 18 months of the commencement of this section the Mental Health Commission must prepare a report on the operation of this part of the 2001 Act together with any findings, conclusions or recommendations in relation to its operation. This report is submitted to the Minister for Health and Children.

The Mental Health Commission may also publish any other reports it considers relevant and appropriate.

4.10.5 FUNDING OF THE MENTAL HEALTH COMMISSION⁹

The Minister for Health and Children may make grants to the Commission in relation to expenditure incurred in the carrying out of its functions. Any such grants must be sanctioned by the Minister for Finance.

The Mental Health Commission may accept gifts of money or land and property. Such gifts may be invested by the Commission in accordance with any trusts and conditions that may be specified by the donor provided they are not inconsistent with the functions of the Commission.

4.10.6 ACCOUNTS AND AUDITS OF THE COMMISSION¹⁰

The Chief Executive is the accountable person in relation to the accounts of the Commission. Estimates of accounts and expenditure shall be submitted to the Minister for Health and Children on request.

4.10.7 FREEDOM OF INFORMATION ACTS 1997 AND 2003¹¹

The Freedom of Information Acts 1997 and 2003 apply to the Commission. Certain records kept by the Commission may therefore be accessible to the public on request. The Commission is required by the Freedom of Information Act to comply with any request by an individual for access to personal information held by the Commission in respect of that individual. However, the Commission will refuse to disclose any personal information about an individual to any other individual or entity.

⁹ Mental Health Act 2001, S44 & S45.

¹⁰ Mental Health Act 2001, S47.

¹¹ Mental Health Act 2001, S47(8).



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4.11 INSPECTOR OF MENTAL HEALTH SERVICES¹

The Mental Health Act 2001 also establishes the Office of the Inspector of Mental Health Services. The Mental Health Commission has appointed a consultant psychiatrist to be the Inspector of Mental Health Services. This post replaces the Inspector of Mental Hospitals who was appointed by the Minister for Health and Children.

The Mental Health Commission has appointed Assistant Inspectors of Mental Health Services to assist the Inspector in the carrying out of his or her functions. Subject to any directions given by the Commission, Assistant Inspectors shall have the same duties and powers as the Inspector.

The Mental Health Commission has appointed Assistant Inspectors drawn from consultant psychiatry, psychiatric nursing, clinical psychology, occupational therapy and social work.

Mental health services are defined in the Mental Health Act 2001 as services that provide care and treatment to persons suffering from a mental illness or a mental disorder under the clinical direction of a consultant psychiatrist.²

4.11.1 FUNCTIONS OF THE INSPECTOR OF MENTAL HEALTH SERVICES

- **Visits and Inspections** – the Inspector is required to visit and inspect every Approved Centre at least once a year, and, where and when he or she thinks appropriate, any other premises where mental health services are provided.

- **Review of Mental Health Services** – the Inspector carries out a review of mental health services and furnishes a written report to the Mental Health Commission at least once a year.

- **Report on Mental Health Services** – the written report to the Mental Health Commission includes the following:

- the quality of care and treatment given to persons in receipt of mental health services
- any information the Inspector has ascertained following visits and inspections to Approved Centres or other premises where mental health services are being provided
- the degree and extent of compliance by Approved Centres with any code of practice prepared by the Commission, and
- arising out of the review, any other matters that the Inspector considers appropriate to report on.

4.11.2 DUTIES OF THE INSPECTOR WHEN MAKING AN INSPECTION³

When making an inspection the Inspector is obliged to perform the following duties:

- **Duty to residents** – the Inspector must see any individual resident at the request of that resident or at the request of another person. A resident is defined as any person

¹ Mental Health Act 2001, S50 – S54.

² Mental Health Act 2001, S2.

³ Mental Health Act 2001, S52.

receiving care and treatment in a hospital, or other in-patient facility, for the care and treatment of persons with mental illness or a mental disorder.⁴ Therefore a resident may be a person voluntarily admitted or a person who is the subject of an admission order or a renewal order and is admitted involuntarily.⁵

- **Duty to patients** – the Inspector must see every patient the propriety of whose admission he or she has reason to doubt. A patient is defined by the 2001 Act as a person to whom an admission order relates⁶ and is therefore a person who is admitted involuntarily in an Approved Centre.
- **Duty to ensure compliance with the Mental Health Act 2001** – and in particular compliance with:
 - regulations in relation to Approved Centres,
 - rules in relation to the provision of electro-convulsive therapy,
 - rules in relation to the use of bodily restraint and seclusion, and
 - provisions relating to consent to treatment generally.

A report shall be made to the Commission in relation to the findings as appropriate.

4.11.3 POWERS OF THE INSPECTOR OF MENTAL HEALTH SERVICES

The Mental Health Act 2001 provides that the Inspector has all such powers as are necessary or expedient for the performance of his or her functions. In particular the Inspector is

empowered to:

- Visit and inspect at any time any Approved Centre, or other premises where mental health services are being provided, and to be accompanied by any consultants or advisors as he or she thinks appropriate.
- Require the production of any information, records or documents needed for the carrying out of his or her functions. The Inspector may examine and take copies of any record or document and may remove any record or document from the premises for a reasonable period of time.
- Require a person to attend before him or her who may have information or documents relevant to an inspection, and it shall be an offence for such a person not to do so.
- Where necessary the Inspector may take evidence on oath. The Inspector is empowered to administer an oath in this regard.
- No person may claim that a document is privileged or immune from production to the Inspector.

Any persons to whom the Inspector directs to produce documents or attend before the Inspector, is entitled to the same privileges or immunities that would apply in respect of court proceedings.

⁴ Mental Health Act 2001, S62.

⁵ Or a person who was originally involuntarily admitted under the Mental Treatment Act 1945.

⁶ Mental Health Act 2001, S2 & S14.

4.11.4 PENALTY FOR OBSTRUCTION OF THE INSPECTOR

It is an offence⁷ for any person to obstruct or interfere with the functions of the Inspector. This includes the failure by any person to give any information that is within his or her knowledge that may be reasonably required by the Inspector.

4.11.5 INQUIRIES⁸

The Mental Health Commission may, at its own discretion, or shall if so requested by the Minister for Health and Children, cause the Inspector to make inquiries into:

- The operation of any Approved Centre or other premises where mental health services are provided. Mental health services are defined as services that provide care and treatment to persons suffering from a mental illness or a mental disorder under the clinical direction of a consultant psychiatrist.⁹
- The care and treatment provided to a specified patient or a specified person admitted voluntarily.
- Any other matter which may be appropriate having regard to the provisions of the Mental Health Act 2001 or having regard to any rules or regulations which are made under the Mental Health Act 2001, or to any other enactment.

Such inquiries may be carried out by the Inspector of Mental Health Services or by any

other person specified by the Commission. The person carrying out the inquiry must submit a written report of the results of the inquiry to the Commission. Absolute privilege attaches to any such report, that is, the content of the report and its author is absolutely immune from any liability that may be claimed in respect of the report.

Further, the President of the High Court¹⁰ may order the Inspector to visit and examine a person admitted involuntarily (as a person of unsound mind) and to report to the President on the condition of such a person. The President of the High Court may also appoint a barrister-at-law who has been in practice for at least six years to assist in any visit or investigation by the Inspector, or any person appointed to make such a visit or investigation, where the President is of the opinion that such assistance is necessary.¹¹ The Minister for Health and Children shall remunerate the barrister in respect of his or her costs.¹²

As stated in section 1.2 of this Reference Guide, the Mental Health Act 2001 replaces the majority of the provisions of the Mental Treatment Act 1945. However, the above-mentioned power of the President of the High Court in relation to visiting and examining a person of unsound mind is one of the unrepealed sections of the Mental Treatment Act 1945.

⁷ A person guilty of such an offence shall be liable on summary conviction to a fine not exceeding €1,875 or to imprisonment for up to 12 months or both – the Mental Health Act 2001, S53.

⁸ Mental Health Act 2001, S55.

⁹ Mental Health Act 2001, S2.

¹⁰ Mental Treatment Act 1945, S241.

¹¹ Mental Treatment Act 1945, S276.

¹² Mental Treatment Act 1945, S276.



REFERENCE GUIDE
MENTAL HEALTH ACT 2001
PART TWO – CHILDREN

4.12 MISCELLANEOUS PROVISIONS

4.12.1 SECLUSION¹

As a general rule a person being treated for a mental disorder in an Approved Centre should not be placed in seclusion. However, if it is determined to be necessary for the purposes of treatment or to prevent the person from injuring him or herself or others then seclusion may be permitted. This applies to a person admitted involuntarily or a person admitted in a voluntary capacity as well as to children. The Mental Health Commission is required to make rules providing for the use of seclusion and these must be fully complied with. It is an offence to place a person in seclusion otherwise than in accordance with the rules.²

4.12.2 BODILY RESTRAINT³

As a general rule no form of bodily restraint should be applied to a person being treated in an Approved Centre. However, if it is determined to be necessary for the purposes of treatment or to prevent the person from injuring him or herself or others then mechanical means of bodily restraint may be applied. This applies to a person admitted involuntarily or a person admitted in a voluntary capacity, as well as to children. The Mental Health Commission is required to make rules providing for the use of bodily restraint and these must be fully complied with. It is an offence to place a person under bodily restraint otherwise than in accordance with the rules.⁴

4.12.3 PARTICIPATION IN CLINICAL TRIALS⁵

Notwithstanding Section 9(7) of the control of Clinical Trials Act 1987, persons who suffer from a mental disorder and who are admitted to an Approved Centre, whether voluntarily or involuntarily, shall not be permitted to participate in clinical trials.

4.12.4 RESTRICTION ON THE INSTITUTING OF CIVIL PROCEEDINGS⁶

Permission of the High Court is required before any civil proceedings may be instituted in respect of any act done in carrying out the functions of the Mental Health Act 2001.

The High Court must **not refuse** leave to bring such proceedings unless it is satisfied that the proceedings are either frivolous or vexatious or that there are no reasonable grounds for contending that the person against whom the proceedings are brought acted in bad faith or without reasonable care. A further limitation is placed on the outcome of the proceedings by Section 73(3) of the Mental Health Act 2001 in that the court is not permitted under that section to determine the proceedings in favour of the patient unless it is satisfied that the person against whom the proceedings are brought acted in bad faith or without reasonable care.

¹ Mental Health Act 2001, S69.

² Mental Health Act 2001, S69(3) – a person who contravenes this section or a rule made under this section shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €1,875.

³ Mental Health Act 2001, S69.

⁴ Mental Health Act 2001, S69(3).

⁵ Mental Health Act 2001, S70.

⁶ Mental Health Act 2001, S73.



REFERENCE GUIDE
MENTAL HEALTH ACT 2001
PART TWO – CHILDREN

TREATMENT WITHOUT CONSENT ADMINISTRATION OF MEDICINE FOR MORE THAN 3 MONTHS (CHILD)

FORM 18

MENTAL HEALTH
ACT 2001
SECTION 61

PAGE 1 OF 3

To be completed by the consultant psychiatrist responsible for the care and treatment of the child:

BLOCK CAPITALS (Before completing this form please read the notes overleaf)

In accordance with Part 2 of the Mental Health Act 2001

1. Full Name of child being administered medication without consent

Gender M ☐ F ☐

2. Date of Birth

<input type="text"/>	<input type="text"/>	/	<input type="text"/>	<input type="text"/>	/	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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3. Name and Address of Approved Centre to which child was admitted

was involuntarily admitted pursuant to an order under Section 25 of the 2001 Act to

Ward:	Centre Record No:

on

4. Date:

<input type="text"/>	<input type="text"/>	/	<input type="text"/>	<input type="text"/>	/	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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5. Full Name and Professional Address of Responsible Consultant Psychiatrist

<input type="text"/>	<input type="text"/>	/	<input type="text"/>	<input type="text"/>	/	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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I have examined the above named child on (date)

and I am of the opinion that it would be to the benefit of the child to be administered medication without consent for the following reasons.

6. Give details of medication and how it will benefit the child

I have given the child adequate information, in a form and language that the child can understand, on the nature, purpose and likely effects of the proposed treatment.

Signed:

(Responsible Consultant Psychiatrist)

Date:

<input type="text"/>	<input type="text"/>	/	<input type="text"/>	<input type="text"/>	/	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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Date:

(24 hr clock e.g. 14.21) :

The notes are for guidance only and do not constitute an exact statement of the provisions of the Mental Health Act 2001.

"Consent", in relation to a patient, means consent obtained freely without threats or inducements, where—

- (a) the consultant psychiatrist responsible for the care and treatment of the patient is satisfied that the patient is capable of understanding the nature, purpose and likely effects of the proposed treatment; and
- (b) the consultant psychiatrist has given the patient adequate information, in a form and language that the patient can understand, on the nature, purpose and likely effects of the proposed treatment.

The Health Act 2004 dissolves Health Boards. References to Health Boards in the Mental Health Act 2001 are to be read as references to the Health Service Executive.

SECTIONS OF THE MENTAL HEALTH ACT 2001

- 4.— (1) In making a decision under this Act concerning the care or treatment of a person (including a decision to make an admission order in relation to a person), the best interests of the person shall be the principal consideration with due regard being given to the interests of other persons who may be at risk of serious harm if the decision is not made.
- (2) Where it is proposed to make a recommendation or an admission order in respect of a person, or to administer treatment to a person, under this Act, the person shall, so far as is reasonably practicable, be notified of the proposal and be 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 subsection.
- (3) In making a decision under this Act concerning the care or treatment of a person (including a decision to make an admission order in relation to a person) due regard shall be given to the need to respect the right of the person to dignity, bodily integrity, privacy and autonomy.
- 57.—(1) The consent of a patient shall be required for treatment except where, in the opinion of the consultant psychiatrist responsible for the care and treatment of the patient, the treatment is necessary to safeguard the life of the patient, to restore his or her health, to alleviate his or her condition, or to relieve his or her suffering, and by reason of his or her mental disorder the patient concerned is incapable of giving such consent.
- (2) This section shall not apply to the treatment specified in *section 58, 59 or 60*.
- 61.— Where medicine has been administered to a child in respect of whom an order under *section 25* is in force for the purposes of ameliorating his or her mental disorder for a continuous period of 3 months, the administration of that medicine shall not be continued unless either—
- (a) the continued administration of that medicine is approved by the consultant psychiatrist responsible for the care and treatment of the child, and
 - (b) the continued administration of that medicine is authorised (in a form specified by the Commission) by another consultant psychiatrist, following referral of the matter to him or her by the first-mentioned psychiatrist, and the consent or, as the case may be, approval and authorisation shall be valid for a period of 3 months and thereafter for periods of 3 months, if, in respect of each period, the like consent or, as the case may be, approval and authorisation is obtained.

TREATMENT WITHOUT CONSENT ADMINISTRATION OF MEDICINE FOR MORE THAN 3 MONTHS (CHILD)

FORM 18

MENTAL HEALTH
ACT 2001
SECTION 61

PAGE 3 OF 3

This part to be completed by another consultant psychiatrist following referral by the first-mentioned psychiatrist.

**7. Full Name and Professional
Address of Consultant
Psychiatrist**

I have examined the above named child on (date)

<input type="text"/>	<input type="text"/>	/	<input type="text"/>	<input type="text"/>	/	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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and I am of the opinion that it would be to the benefit of the child to be administered medication without consent for the following reasons

**8. Give details of how this
treatment will benefit
the child**

This child is; (*tick as appropriate)

*unable ☐ or *unwilling ☐ to give consent to this treatment.

I authorise the continued administration of medication without consent. ☐

Signed:

(Consultant Psychiatrist)

Date:

<input type="text"/>	<input type="text"/>	/	<input type="text"/>	<input type="text"/>	/	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
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Time:

(24 hr clock e.g. 14.21) :

This approval and authorisation shall be valid for a period of 3 months.