



Mental Health Commission Code of Practice

Reference Number: COP-S33(3)/01/2006

**Code of Practice Relating to Admission of Children
under the Mental Health Act 2001**

1st November 2006

Preamble

The Mental Health Commission, since its establishment, has consistently highlighted the lack of sufficient Child and Adolescent in-patient and day hospital facilities.

The Commission is of the view that the provision of age appropriate approved centres for children and adolescents must be addressed as a matter of urgency.

The admission of children to units in approved centres providing care and treatment to adults is undesirable. In situations where there is no available alternative, such admissions may be necessary. In arriving at such a decision due consideration of the risks to the child, of not admitting him or her and the potential adverse effects of such an admission, should be made.

The admission of 16 and 17 year olds, pursuant to the Mental Treatment Act 1945, was to adult mental health in-patient units/hospitals. In the absence of appropriate facilities, it is unlikely that this situation will change in the immediate future upon full commencement of the Mental Health Act 2001. It is important, therefore, to ensure that appropriate interim arrangements are put in place to ensure the protection and safety of such children.



Code of Practice Relating to the Admission of Children under the Mental Health Act 2001

This Code of Practice has been prepared by the Mental Health Commission, in accordance with Section 33(3)(e) of the Mental Health Act 2001, for the guidance of persons working in the mental health services.

1st November 2006

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Glossary

Act

The “Act” means the Mental Health Act 2001.

Approved centre

A “centre” means a hospital or other in-patient facility for the care and treatment of persons suffering from mental illness or mental disorder. An “approved centre” is a centre that is registered pursuant to the Act. The Mental Health Commission establishes and maintains the register of approved centres pursuant to the Act.

Child

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

Children First Guidelines

Means Children First, National Guidelines for the Protection and Welfare of Children, published by the Department of Health and Children (1999).

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 of the Act.

Code

Means this “Code of Practice Relating to the Admission of Children under the Mental Health Act 2001”

Commission

The “Commission” means the Mental Health Commission.

Consultant psychiatrist

Means a consultant psychiatrist who is employed by the HSE 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.

Electroconvulsive therapy

A physical treatment used primarily for the treatment of severe depressive illness.

Examination

In relation to this Code, an examination 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 the behaviour of the person concerned in relation to a recommendation, an admission order or a renewal order.

Ex parte application to the District Court

An application to the Court by the HSE without informing any other interested party of the fact that they are making an application.

Health Service Executive

In this Code the Health Service Executive is referred to throughout as HSE.

“In loco parentis”

This term is not defined in the Act or elsewhere in Irish Legislation. There is reference to the term in both Irish caselaw and caselaw from other common law jurisdictions. The existing caselaw indicates that there are three overarching criteria for which there must be evidence to demonstrate that a person acts “in loco parentis”. These are:

- (a) An *intention* on the part of that person
- (b) To put himself *in the position of the lawful father* of a child; and
- (c) To make provision for that child in a *financial or economic* sense.

Mental Health Service

A service which provides care and treatment to persons suffering from a mental illness or a mental disorder under the clinical direction of a consultant psychiatrist.

Minister

Means the Minister for Health and Children.

Parent(s)

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. Includes also, in this Code, references to guardians and persons acting in loco parentis.

Patient

The term patient is to be construed in accordance with Section 14 of the Act. Section 14(1)(a) states, inter alia, that “*a person to whom an admission order relates is referred to in this Act as a patient*”. See paragraph 1.11 for discussion on sections where the definition of patient is expanded to include a child in respect of whom an order under Section 25 (an order for admission and detention for treatment in a specified approved centre) is in force.

Psychosurgery

Any surgical operation that destroys brain tissue or the functioning of brain tissue and which is performed for the purposes of ameliorating a mental disorder.

Registered medical practitioner

Means a person whose name is entered in the General Register of Medical Practitioners.

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.

Section 25 Order

Means an order made by the District Court pursuant to Section 25 of the Act that a child may be admitted and detained for treatment in a specified approved centre for a period not exceeding 21 days.

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.

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.

A reference in this Code to any legislation shall be construed as a reference to that legislation as amended or extended.

1. Introduction

Purpose of the Code

- 1.1 Section 33(3)(e) of the Act requires the Commission to:
“prepare and review periodically, after consultation with such bodies as it considers appropriate, a code or codes of practice for the guidance of persons working in the mental health services”.
- 1.2 The Act does not impose a legal duty on persons working in the mental health services to comply with codes of practice, but best practice requires that they be followed to ensure the Act is implemented consistently by persons working in the mental health services. A failure to implement or follow this Code could be referred to during the course of legal proceedings.
- 1.3 As required by Section 33(3)(e) of the Act the Commission shall review codes of practice periodically, after consultation with appropriate bodies.

Scope of the Code

- 1.4 The scope of the Code is prescribed for in the Act by the provisions of Section 33(3)(e). The Code is intended as guidance for persons working in the mental health services. The Code is intended to be complementary to the Act, which should always be referred to for its precise terms.
- 1.5 The Code does not purport to be all encompassing. Its intention is to provide guidance in straightforward language on matters of day to day practice. The Commission hopes that this will enable mental health professionals to work together on practical issues. It is not concerned with questions of professional judgment which are more appropriately dealt with in a profession’s knowledge base and by professional representative and regulatory bodies.
- 1.6 The Reference Guide to the Act published by the Commission in 2005 provides guidance relating to the Act and how it relates to children. This Code will supplement the information provided in the Reference Guide in relation to the admission of a child to an approved centre.

Key Terms

- 1.7 Section 25 of the Act makes provision for the involuntary admission in certain circumstances of children suffering from a “mental disorder”.

- 1.8** Section 25(1) of the Act states that where it appears to the HSE with respect to a child who lives in or is found in its functional area that the child is suffering from a mental disorder [Section 25(1)(a)] and the child requires treatment which he or she is unlikely to receive unless an order is made under Section 25 of the Act then, the HSE may make an application to the District Court for an order authorising the admission and detention for treatment of the child in a specified approved centre [Section 25 (1)(b)].
- 1.9** Section 3 of the Act defines “mental disorder”. This legal definition applies equally to children. Mental disorder means mental illness, severe dementia or significant intellectual disability where because of the aforementioned clinical condition, there is a serious likelihood of the child concerned causing immediate and serious harm to himself or herself or others. If the harm component is absent the definition of mental disorder can still be met if the severity of the clinical condition (mental illness, severe dementia, or significant intellectual disability) has severely impaired the judgement of the child and failure to admit the child would be likely to lead to a serious deterioration in his or her condition, or would prevent the administration of appropriate treatment that can only be given if the child is admitted and, the reception, detention and treatment of the child would be likely to benefit or alleviate the child’s condition to a material extent.
- 1.10** The Act does not define the terms “serious likelihood”, “immediate and serious harm”, “serious deterioration” or “material extent”. In the absence of case law which might assist in clarifying these terms it is currently a matter of professional clinical judgement.
- 1.11** Section 25 of the Act uses the term child not patient. The term patient is however used in Section 26(3) (absence with leave), Section 27(3) (absence without leave) and Section 69(4) (bodily restraint and seclusion) and refers to “a child in respect of whom an order under Section 25 is in force”.

[Note: Section 14 of the Act appears only to relate to adults, see glossary “patient”]

Principles

- 1.12** The Code must be read taking into account that the best interests of the child shall be the principal and overarching consideration.
- 1.13** The paramount principles underpinning the Act are enshrined in Section 4 of the Act. Section 4 refers to a “person” and as such is applicable to a child. Section 4 relates to making a decision under the Act concerning care and treatment. Section 4(1) states that 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. Subsection (2) provides for the statutory duty in relation to any proposal to administer treatment to a person, to properly notify such person of that proposal and to take due account of their representations before making any decision in that regard. Subsection (3) further states that in making a decision concerning care and treatment of a person due regard shall be given to the need to respect the right of the person to dignity, bodily integrity, privacy and autonomy.
- 1.14** It is a matter for the treating consultant psychiatrist to satisfy him or herself as to whether it is practicable and in the child’s best interests to notify him or her of the proposal to administer treatment in accordance with Section 4(2). Section 4 does not expressly refer to children nor does it exempt them from its application. The Commission’s legal advice is that Section 4 should be interpreted as applying to children.
- 1.15** All children receiving treatment pursuant to the Act should be involved, consistent with their identified needs and wishes, in the planning, implementation and evaluation of their care and treatment. Provision of information should be in a form and language that the child can understand. Interpretation services should be made available as required.

2. Admission to Approved Centres

Introduction

- 2.1** The Act provides for the admission of children to approved centres. Section 25 of the Act specifically sets out the position in relation to the involuntary admission of children. The Act makes no distinction between children up to and including 15 years of age and children aged 16 and 17 years.
- 2.2** The Mental Treatment Act 1945 provided that persons aged 16 years and older could submit themselves for treatment under the Mental Treatment Act 1945, as either a voluntary patient or under a reception order, as defined in the Mental Treatment Act 1945.
- 2.3** If an Order is made pursuant to Section 25 it will result in a child being admitted to a specified approved centre. The Act does not define specified approved centre.
- 2.4** The Commission will review the number of admissions of children to approved centres for adults from time to time.
- 2.5** If approved centres for adults are used of necessity the following should apply:
- a)** The approved centre should have policies and protocols in place relating to the admission of a child.
 - b)** Age-appropriate facilities and a programme of activities appropriate to age and ability should be provided.
 - c)** Provisions should be in place to:
 - (i)** Ensure the safety of the child.
 - (ii)** Respond to the child's special needs as a young person in an adult setting.
 - (iii)** Ensure the right of the child to have his/her views heard.
 - d)** Child protection issues:
 - (i)** Staff having contact with the child should have undergone Garda Síochána / police vetting.
 - (ii)** Copies of the Child Care Act 1991, Children Act 2001 and Children First Guidelines should be available to relevant staff.
 - (iii)** Appropriate accommodation should be designated which should include segregated (age and gender) sleeping and bathroom areas.
 - (iv)** Staff observation should acknowledge gender sensitivity. Observation arrangements, including the provision of a designated member of staff, should be provided as considered clinically appropriate.

- e) Staff should receive training relating to the care of children.
- f) Arrangements should be made for the continuation of the child's education if under 16 years and from 16 – 18 years if in receipt of education prior to admission to in-patient care, as considered clinically appropriate.
- g) These children should have access to age-appropriate advocacy services.
- h) These children should have his/her rights explained and information about the ward and facilities provided in a form and language that can be understood by the child. The clinical file should record his/her understanding of the explanation given.
- i) The approved centre should have a policy requiring each child to be individually risk assessed.
- j) Advice from the Child and Adolescent Mental Health Service should be available, when necessary, to the approved centre.
- k) Appropriate visiting arrangements for families should be available, including children.
- l) Policy and procedures should be in place with regard to family liaison, parental consent and confidentiality.
- m) The Commission should be notified of all children admitted to approved centres for adults within 24 hours of admission by using the associated Notification Form (see Forms, p26). Procedures should be in place to identify the person responsible for notifying the Commission.

Voluntary Admission of a Child

- 2.6** The majority of children requiring care and treatment from a mental health service will do so on an out-patient basis.
- 2.7** When in-patient care and treatment is indicated, the majority of children will receive such care and treatment in an approved centre with the consent of their parent(s). The legal status of the child is that of a voluntary patient, as defined in Section 2 of the Act.
- 2.8** As referred to in the glossary, pursuant to the Act a child means a person under the age of 18 years other than a person who is or has been married. As such, in order for treatment to be administered to a child who is a voluntary patient, an effective consent must have been obtained on the child's behalf from one or both parents.

- 2.9** The definition of child in the Act raises an issue which arises in relation to children aged 16 and 17 years in the context of Section 23 of the Non-Fatal Offences Against the Person Act 1997 (Section 23 NFOAP Act 1997) which provides at Section 23(1) *“the consent of a minor who has attained the age of 16 years to any surgical, medical or dental treatment which, in the absence of consent, would constitute a trespass to his or her person, shall be as effective as if it would be if he or she were of full age; and where a minor has by virtue of this Section given an effective consent to any treatment it shall not be necessary to obtain any consent for it from his or her parent(s) or guardian”*. Section 23(2) NFOAP Act 1997 provides that treatment includes any diagnostic procedure and any procedure ancillary to that treatment.
- 2.10** There is a question as to whether Section 23 NFOAP Act 1997 enables children aged 16 and 17 years to admit themselves voluntarily to an approved centre for treatment. The Commission’s legal advice is that attempts to reconcile Section 23 NFOAP Act 1997 with the provisions of the Act give rise to significant difficulty. While it may be that the definition of medical treatment under the NFOAP Act 1997 would include psychiatric treatment, and one commentator has interpreted it to be so, the Act does not appear to contemplate the giving of consent to treatment by a “child”, a term which, because of the way it is defined in the Act, includes Section 23 NFOAP Act 1997 minors.
- 2.11** The Commission’s legal advice is that while there are cogent arguments in favour of applying Section 23 NFOAP Act 1997 to the Act, the position is not so clear as to enable the Commission to proceed, or advise others to proceed, on that basis. The Commission has been advised that there is significant uncertainty as to whether Section 23 NFOAP Act 1997 has any application in relation to admission for and provision of treatment for mental illness. Medical and health professionals may need to obtain legal advice in relation to individual cases.
- 2.12** The present position, therefore, is that the Commission cannot advise mental health professionals to operate on the assumption that Section 23 NFOAP Act 1997 means that the consent of children aged 16 and 17 is effective to permit treatment under the Act. It appears that, as a matter of fundamental principle, the more extensive and/or far-reaching the intervention proposed, the more cautious the treating professional should be in relying exclusively on a child’s consent. Such caution would be particularly indicated where the parent(s) of the child are opposed to the intervention. The Commission’s legal advice is that irrespective of whether children aged 16 and 17 years are capable as a matter of law or fact of providing an effective consent to treatment, the views of 16 and 17 year olds as to their treatment should be sought as a matter of course.
- 2.13** The Commission has also been advised that the existence of consent to treatment does not, of itself, impose an obligation to treat on a health professional. Where there is disagreement as between child and parent(s), particularly in respect of some significant aspect of treatment, it is open to the professional involved to decline to give that treatment (where, for instance, the cooperation of the patient

would be an important factor in whether the treatment is successful or not) or to seek guidance from the High Court as to how to proceed.

- 2.14** The issue of capacity to give a valid consent may arise in any given case. Just as an adult may not be competent to give a valid consent, a 16 or 17 year old (assuming that Section 23 NFOAP Act 1997 is applicable), may not be competent to give such consent. Capacity to provide consent is dealt with more fully at Section 3 (Treatment).

Voluntary Admission to Involuntary Admission

- 2.15** The Commission's legal advice is that where a child who is 16 years or older is being treated as a voluntary patient in an approved centre on the basis of consent given by his or her parent(s), it would appear that the child would not have a right to leave as such (it may be the case that, from a clinical viewpoint, if the child withdraws co-operation effective voluntary treatment will be difficult).
- 2.16** Pursuant to Section 23(2) of the Act, if a child is receiving care and treatment as a voluntary patient in an approved centre [with the consent of parent(s)], and the parent(s) of the child indicate a wish to remove the child from the approved centre, the parent(s) is/are entitled to do so unless a Consultant Psychiatrist (CP), Registered Medical Practitioner (RMP) or Registered Nurse (RN) on the staff of the approved centre is of the opinion that the child is suffering from a mental disorder. In such instances, the child may only be detained by the CP, RMP or RN and placed in the custody of the HSE in accordance with Section 23(2) and Section 25 of the Act, referred to in more detail at paragraph 2.17 and subsequent paragraphs below. The associated Clinical Practice Form should be completed and retained in the child's clinical file.
- 2.17** The Commission provides the following guidance to assist clinicians in relation to the manner in which detention under Section 23(2) of the Act should be conducted and shall, from time to time, furnish additional guidance.
- (i) The best interests of the child 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 a decision under the Act is not made. In making a decision in accordance with Section 23(2) due regard shall be given to the need to respect the right of the child to dignity, bodily integrity, privacy and autonomy. The principle to be adhered to is that the degree of intervention used should be the minimum necessary to preserve safety for all concerned.
 - (ii) Risk should be assessed and appropriate risk management strategies should be in place to reduce the likelihood of harm and deterioration in the voluntary child's well-being.

- (iii) Before preventing the voluntarily admitted child from leaving the approved centre best efforts should be made to encourage the child and the parent(s) to agree to the child remaining voluntarily at the approved centre for care and treatment.
- (iv) There is no right under the Act to give any treatment to the child without consent. In the absence of consent treatment can only be given under the common law doctrine of necessity, or with a Court Order authorising same.

2.18 If the decision is taken pursuant to Section 23(2) to detain and place the child in the custody of the HSE, once placed in the custody of the HSE, the HSE must make an application under Section 25 of the Act, unless it returns the child to the parent(s). An application under Section 25 must be made within three days of the date on which the child is placed in the care of the HSE. The application must be made at the next sitting of the District Court in the same District Court district. If such a sitting is not due to be held within 3 days of the date the child is placed in the care of the HSE, a special sitting of the District Court must be arranged and held within the said 3 days. This child remains in the custody of the HSE pending the hearing of the application [Section 23(3)]. (See paragraph 2.24 and subsequent paragraphs).

2.19 The provisions of Section 13(4) of the Child Care Act 1991 apply to the making of an application in respect of the child under Section 25 of the Act [Section 23(4)]. This does not mean that an application for an emergency care order is made under the Child Care Act 1991. It means that the provisions of Section 13(4) shall have effect in relation to the making of an application by the HSE under Section 25 of the Act (pursuant to Section 23(3) of the Act) as follows:

- S.13(4) (a) any such order shall, subject to paragraph (b) be made by the District Court in the area in which the child resides or is for the time being;
- S.13(4) (b) where the District Court for the district in which the child resides or is for the time being is not immediately available, an order may be made by any District Court;
- S.13(4) (c) if the District Court is satisfied that the urgency of the matter so requires, an application may be made *ex parte* (without any other party being informed) and,
- S.13(4) (d) an application for any such order may, if the justice is satisfied that the urgency of the matter so requires, be heard and an order made thereon elsewhere than at a public sitting of the District Court.

2.20 The HSE should have a policy and procedures in place that clearly specify who are the persons within the HSE, that are authorised by the HSE, to return the child to his or her parent(s) or who otherwise makes the application under Section 25 to

the District Court (either course of action must be informed by a psychiatric opinion) (See further paragraphs 2.21 to 2.31 below). Details regarding the procedures to be followed at any time (24 hours a day, 7 days a week) should be available at all times in approved centres. The policy should include full contact details to enable an accessible service.

Involuntary Admission of a Child

2.21 Section 4.2.3 of the Reference Guide advises that “in considering an involuntary admission of a child the following principles should be considered:

- (i) *The least restrictive form of care should be used initially.*
- (ii) *The involuntary admission and treatment should be for the minimum period in line with best interests of the child.*
- (iii) *Consideration of the child’s view should extend in line with age and maturity.”*

2.22 An application for an involuntary admission of a child can only be made by the HSE [Section 25(1)].

2.23 A Section 25 application by a person, authorised by the HSE to carry out said function, can be made where it appears to the HSE that a child residing in or found in its functional area is suffering from a mental disorder and requires treatment which he or she is unlikely to receive unless a Section 25 Order is made [Section 25(1)].

2.24 There are two processes that may be followed in relation to a Section 25 application.

- (i) The first process is followed where the parent(s) of the child consent to the examination of the child concerned by a consultant psychiatrist (who is not a relative of the child). The examination is carried out prior to the making of an application to the District Court and the subsequent application to the District Court includes the provision of the consultant psychiatrist’s report [Section 25(2)].
- (ii) The second process is followed where the parent(s) of the child refuse to consent to an examination of the child by a consultant psychiatrist or following reasonable enquiries by the HSE the parent(s) cannot be found [Section 25(3)]. In such circumstances the HSE makes an application [under Section 25(1)] to the District Court without a prior examination of the child by a consultant psychiatrist. If the District Court is satisfied that there is reasonable cause to believe that the child is suffering from a mental disorder, it will direct that the HSE arrange for an examination of

the child by a consultant psychiatrist (who is not a relative of the child) and furnish a report of the examination to the District Court within such time as may be specified by the Court [Section 25(4)]. If the District Court is satisfied that the urgency of the matter so requires, an *ex parte* application may be made [Section 25(7)].

- 2.25** The Act does not require that the report referred to in paragraph 2.24 is provided by a child and adolescent consultant psychiatrist. However, in light of the seriousness of an application for involuntary admission to an approved centre of a child, in particular for those under 16 years of age, the Commission recommends, that in as far as is practicable, the HSE should arrange for such a report to be made by a child and adolescent consultant psychiatrist.
- 2.26** The consultant psychiatrist's report (under 2.24/2.25 above) shall indicate to the District Court whether he or she is satisfied that the child is suffering from a mental disorder as defined in Section 3 of the Act [Section 25(5)].
- 2.27** Where the District Court is satisfied (following review of the consultant psychiatrist's report and any other evidence presented before it) that the child is suffering from a mental disorder, the District Court shall make an order that the child be admitted and detained in a specified approved centre for a period not exceeding 21 days [under Section 25(6)].
- 2.28** Between the making of an application for an order under Section 25 of the Act and its determination by the District Court, the District Court may give such directions as it sees fit as to the care and custody of the child. Any such direction shall cease to have effect once the application has been determined [Section 25(8)].
- 2.29** Where an order under Section 25(6) of the Act is in force (for a period not exceeding 21 days) an application for an extension of the period of detention may be made to the District Court by the HSE for a period not exceeding three months [Section 25(9)].
- 2.30** On or before the expiration of the period of detention referred to in paragraph 2.29, a further order of detention for a period not exceeding 6 months may be made by the District Court on the application of the HSE and thereafter for periods not exceeding 6 months [Section 25(10)]. In each case the provisions outlined in paragraph 2.31 (a) and (b) must apply.
- 2.31** The District Court cannot make an order extending the period of detention unless:
- a)** the child has been examined by a consultant psychiatrist (who is not a relative of the child) and a report of the results of the examination is furnished to the District Court by the HSE **and**

- b) having considered the aforementioned report the District Court is satisfied that the child is still suffering from a mental disorder [Section 25(11)]. [Note: See paragraph 2.20 above]

2.32 Section 25(14) of the Act refers to provisions of the Child Care Act 1991 that apply to proceedings under Section 25 of the Act. Such sections relate to procedural matters that are taken into consideration when an application under Section 25 of the Act is made to the District Court. These provisions are as follows:

- (i) Section 21 of the Child Care Act 1991 as applied to Section 25 of the Act – *Appeals*: An appeal from a Section 25 Order shall, if the Court that made the Section 25 Order or the Court to which the appeal is brought so determines (but not otherwise), stay the operation of the Section 25 Order on such terms (if any) as may be imposed by the Court making the determination.
- (ii) Section 22 of the Child Care Act 1991 as applied to Section 25 of the Act – *Variation or discharge of orders etc*: The Court, of its own motion, or on the application of any person, may vary or discharge a Section 25 order or vary or discharge any condition or direction attaching to the order.
- (iii) Section 24 of the Child Care Act 1991 as applied to Section 25 of the Act – *Welfare of Child to be paramount*: In any proceedings before a Court under Section 25 in relation to the care and protection of a Child, the Court having regard to the rights and duties of parent(s), whether under the Constitution or otherwise, shall regard the welfare of the child as the first and paramount consideration, and in so far as is practicable, give due consideration, having regard to age and understanding, to the wishes of the child.
- (iv) Section 25 of the Child Care Act 1991 as applied to Section 25 of the Act – *Power of court to join child as a party to proceedings*: The child is generally not a party to the proceedings. However, in certain circumstances, where the parent(s) 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 proceedings (in a full or limited capacity) and to afford him / her separate legal representation. In those circumstances the situation might arise if the child has strong views that differ to the parents and is of sufficient maturity to articulate those views. Where a solicitor is appointed by the Court the costs and expenses incurred on behalf of the child must be paid by the HSE. The Court may, on an application to it by the HSE order any other party to the proceedings in question to pay the HSE any costs or expenses payable by the HSE.
- (v) Section 26 of the Child Care Act 1991 as applied to Section 25 of the Act – *Guardian ad litem*: If the child is not made a party to proceedings the Court may if satisfied that it is necessary in the interests of the child and in

the interests of justice to do so appoint a guardian ad litem (a specified person, directed by the Court on behalf of the child). Such person may in appropriate circumstances be legally represented. Any costs incurred by the Guardian ad Litem, shall be paid by the HSE unless the Court orders otherwise.

- (vi) Section 27 of the Child Care Act 1991 as applied to Section 25 of the Act – *Power to Procure Reports on Children*: The Court may of its own motion or on application of any party procure a report from any person it may nominate on any question affecting the welfare of the child. A copy of any such report will be made available to the legal representatives for all parties concerned. The Court shall if it sees fit, or any party to the proceedings may call the person making the report as a witness. The Court will take account of the wishes of the parties in determining whether a report should be ordered.
- (vii) Section 28 of the Child Care Act 1991 as applied to Section 25 of the Act – *Jurisdiction*: The District Court and the Circuit Court on appeal from the District Court has the jurisdiction to hear and determine proceedings.
- (viii) Section 29 of the Child Care Act 1991 as applied to Section 25 of the Act – *Hearing of Proceedings*: Proceedings will be heard in camera, that is not in public.
- (ix) Section 30 of the Child Care Act 1991 as applied to Section 25 of the Act – *Power to proceed in the absence of child*: it shall not be necessary for the child to be brought to Court unless the Court is satisfied that this is necessary for the proper disposal of the case. 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.
- (x) Section 31 of the Child Care Act 1991 as applied to Section 25 of the Act – *Prohibition on publication or broadcast of certain matters*: Restrictions are placed on the reporting and broadcasting of 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.
- (xi) Section 32 of the Child Care Act 1991 as applied to Section 25 of the Act – *Presumption of Age*: In any application for an order, the Court shall enquire as to the age of the person to whom the application relates and the age presumed or declared by the Court to be the age of that person shall until the contrary is proved, be deemed to be the true age of that person.
- (xii) Section 33 of the Child Care Act 1991 as applied to Section 25 of the Act – *Rules of Court*: For the purposes of ensuring expeditious hearing of applications, Rules of Court may make provision for the service of

documents or the furnishing of information by parties to proceedings to each other or to solicitors acting for them.

- (xiii) Section 34 of the Child Care Act 1991 as applied to Section 25 of the Act – *Failure or refusal to deliver up a child*: Where the District Court has made a Section 25 order directing that a child be placed or maintained in the care of the HSE, any person having actual custody of the child who refuses to give up the child to the HSE, having been given or shown a copy of the order, shall be guilty of an offence. A person will have been deemed to have been given or shown a copy of the order if that person was present at the sitting of the Court at which the order was made.
- (xiv) Section 35 of the Child Care Act 1991 as applied to Section 25 of the Act – *Warrant to search for and deliver up a child*: Where a Court has made a Section 25 order directing that a child be placed or maintained in the care of the HSE, the Court may for the purposes of executing that order issue a warrant authorising the Garda Síochána, accompanied by such other persons as may be necessary to enter (if need be by force) any house or other place specified in the warrant and deliver the child into the custody of the HSE.
- (xv) Section 37 of the Child Care Act 1991 as applied to Section 25 of the Act – *Access to children in care*: Where the child is in the care of the HSE by virtue of a Section 25 order the HSE shall facilitate reasonable access to the child by his parent(s), any person acting in loco parentis, or any other person who in the opinion of the HSE has a bona fide interest in the child. Any person who is dissatisfied with such arrangements may apply to the District Court, and the Court may make such order as it thinks appropriate regarding access to the child by that person.
- (xvi) Section 47 of the Child Care Act 1991 as applied to Section 25 of the Act – *Application for directions*: Where a child is in the care of the HSE, the District Court, may give directions and make such order on any question affecting the welfare of the child as it thinks proper and may vary or discharge any such direction or order.

2.33 References in the following sections of the Child Care Act 1991 to psychiatric examination, treatment or assessment do not include references to treatment under the Act: Section 13(7) emergency care order, Section 18(3) care order, and Section 19(4) supervision order.

3. Treatment

Voluntary admission of children

- 3.1 Part 4 of the Act relates to consent to treatment. Part 4, Section 56 defines “consent” in terms of consent obtained freely in circumstances where the responsible consultant psychiatrist is satisfied that the patient “*is capable of understanding the nature, purpose and likely effects of the proposed treatment*” and the patient has been given adequate information, in a form and language that he or she can understand. The Commission’s legal advice is that it would appear that Section 56 only applies to adults and not to children.
- 3.2 The legal position therefore is that parental consent is required before a child can be treated while admitted as a voluntary patient. The three key components of consent – provision of adequate information, decisional capacity and voluntarism should apply.
- 3.3 With regard to children aged 16 and 17 years, the reader is referred to paragraphs 2.11 to 2.13 above in relation to the difficulties in applying Section 23 NFOAP Act 1997 to the Act. The Commission’s legal advice is that, irrespective of whether a 16 or 17 year old is capable, as a matter of law or fact, of providing an effective consent to treatment, his or her views as to their treatment should be sought as a matter of course. It will then be a matter for the treating health professional to judge the weight (if any) to be accorded to such views in all the circumstances.

Involuntary admission of Children

- 3.4 A child may be involuntarily admitted to an approved centre for treatment pursuant to Section 25 of the Act. Please refer to paragraphs 2.21 – 2.33 above.
- 3.5 Section 61 (Administration of medicine to a child) is an important provision relating to the treatment of a child in respect of whom a Section 25 order is in force. Section 61 provides that where a child who is the subject of a Section 25 order has been receiving medicine “*for a continuous period of three 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 the 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 three 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.”

The Commission’s legal advice is that the reference in this Section to consent is not comprehensive and appears to be inadequate. In the absence of an amendment to this Section or clarification from the courts, the Commission advises that both the approval of the consultant psychiatrist responsible for the care and treatment of the child and authorisation from another consultant psychiatrist are sought.

As mentioned previously (paragraph 1.14), Section 4(2) provides that a person shall, so far as is reasonably practicable, be notified of the proposal to administer treatment and be entitled to make representations in relation to it and before deciding the matter due consideration shall be given to any representations made.

- 3.6** Electroconvulsive Therapy shall not be administered to a child detained under Section 25 of the Act without the prior approval of the District Court [S.25(13)].
- 3.7** Psychosurgery shall not be performed on a child detained under Section 25 of the Act without the approval of the District Court [S.25(12)].

4. Leave Provisions

- 4.1** The provisions of Section 26 of the Act (Absence with leave) and Section 27 of the Act (Absence without leave) apply to a child in respect of whom a Section 25 order is in force.
- 4.2** Sections 26 and 27 of the Act do not make any reference to the parent(s) of the child. As a matter of good clinical practice, and if it is in the best interests of the child, the necessary arrangements should be made, by way of condition attached to the permission granted, to ensure the safe custody and welfare of the child.

Absence with leave

- 4.3** The consultant psychiatrist responsible for the care and treatment of a child detained pursuant to a Section 25 order may grant permission in writing to the child to be absent from the approved centre for a specified period of time.

The permission must be for a period of less than the unexpired period provided for under the Section 25 order (for example, if there are 10 days of the order remaining the period of absence with leave must be for less than 10 days). The consultant psychiatrist can attach any condition(s) he or she considers appropriate. Any such conditions are specified in writing [Section 26(1)].

- 4.4** The consultant psychiatrist may withdraw permission for absence with leave if he or she is of the opinion that this is in the child's best interests and direct the child in writing to return to the approved centre [Section 26(2)].

Absence without leave

- 4.5** Where a child, the subject of a Section 25 Order:

- (a) leaves an approved centre without permission obtained under Section 26,
- (b) fails to return to the approved centre in accordance with any direction given under Section 26 or, on the expiration of the period for which absence or leave was permitted under Section 26, or
- (c) fails in the opinion of the consultant psychiatrist responsible for the care and treatment of the child to comply with any condition specified in Section 26,

the clinical director of the approved centre concerned may arrange for members of staff of the approved centre to bring the child back to the approved centre. If they are unable to do so and the clinical director is of the opinion that there is a serious likelihood of the child concerned causing immediate and serious harm to himself herself or the other persons, the clinical director or consultant psychiatrist acting on his/her behalf may, if necessary, request the Garda Síochána to assist the members of the staff of the approved centre in the removal of the person to that approved centre and the Garda Síochána shall comply with any such request [Section 27(1)]. The HSE and the child's parent(s) should be immediately notified if the child absconds.

- 4.6** For the purposes of returning the child to the approved centre, a member of the Garda Síochána may enter if need be by force any dwelling or other premises where he or she has reasonable cause to believe that the child may be and take all reasonable measures necessary for the return of the child to the approved centre. This may include where necessary the detention or restraint of the child [Section 27(2)].

References

- Government of Ireland (2001) *Mental Health Act 2001* Dublin: Stationery Office.
- Government of Ireland (2001) *Children Act 2001* Dublin: Stationery Office.
- Government of Ireland (1997) *Non-Fatal Offences Against the Person Act 1997* Stationery Office.
- Government of Ireland (1991) *Child Care Act 1991*. Dublin: Stationery Office.

Bibliography

- Department of Health and Social Services (1992) *Mental Health (Northern Ireland) Order 1986 Code of Practice*. Belfast: HMSO
- Department of Health and Welsh Office (1999) *Code of Practice Mental Health Act 1983*. London: The Stationery Office
- Mental Health Act Commission (2004) *Safeguarding Children and Adolescents detained under the Mental Health Act 1983 on Adult Psychiatric Wards – report on the notification and visiting programme by the Mental Health Act Commission between April 2002 and September 2003*. London: T.S.O
- Mental Welfare Commission for Scotland (2006) *Mental Welfare Commission Guidance on the Admission of Young People to Adult Mental Health Wards*.
- O’ Neill, A.M. (2005) *Irish Mental Health Law*. Dublin. First Law Limited.
- Welsh Assembly Government (2005) *Mental Health Policy, Implementation Guidance for Child and Adolescent Mental Health Services – Commissioning the NHS – funded component of Child and Adolescent Mental Health Services*.
- White R., Harbour A., Williams R. (2004). *Safeguards for Young Minds, Young People and Protective Legislation* (2nd.Edition). ISBN 1904671020. Royal College of Psychiatrists.

Forms

Notification Form: Notification to the Commission of the admission of a child to an approved centre for adults.

Clinical Practice Form Power to Detain Voluntary Patient (Child) in an approved centre

Notification to the Mental Health Commission of the admission of a child to an approved centre for adults



Clinical Practice Form

ADMC1

Instructions

The following form is to be used:

where a child (a person under the age of 18 years other than a person who is or has been married Section 2 Mental Health Act 2001) is admitted to an approved centre for adults

Please complete this section (**page 1**) **for every child admission** only complete **page 2** **the first time** an adult unit has a child admission

Please write clearly in the boxes in **BLOCK CAPITALS** in **BLACK** ink

Patient Details	
Surname:	
First Name(s):	
PPSN	<input type="checkbox"/>
DOB:	<input type="checkbox"/> <input type="checkbox"/> / <input type="checkbox"/> <input type="checkbox"/> / <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> (dd/mm/yyyy)
Gender (tick <input checked="" type="checkbox"/> as appropriate):	<input type="checkbox"/> Male <input type="checkbox"/> Female
Home Address	
County	

Notification completed by	
Surname	First Name
Date:	<input type="checkbox"/> <input type="checkbox"/> / <input type="checkbox"/> <input type="checkbox"/> / <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> (dd/mm/yyyy)

I confirm that the above mentioned child was admitted to:

Approved Centre	
Ward/Unit	
On the following date	<input type="checkbox"/> <input type="checkbox"/> / <input type="checkbox"/> <input type="checkbox"/> / <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> (dd/mm/yyyy)
Legal Status	Voluntary <input type="checkbox"/> Involuntary <input type="checkbox"/>
Type of Admission	First Admission <input type="checkbox"/> Re-Admission <input type="checkbox"/>
Signed	
Job Title	
Date	<input type="checkbox"/> <input type="checkbox"/> / <input type="checkbox"/> <input type="checkbox"/> / <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> (dd/mm/yyyy)

Consultant Psychiatrist responsible for the care and treatment of the child
Name (print):

This form should be completed and faxed within 72 hours of admission to:

Standards and Quality Assurance Division
Mental Health Commission

Tel: 00353 1 636 2401/02 Fax: 00 353 1 636 2440

Notification to the Mental Health Commission of the admission of a child to an approved centre for adults



Clinical Practice Form

ADMC1

Only complete this section (page 2) the first time that an adult unit has a child admission

Does the ward/unit have:	
Policies and protocols in place relating to the admission of a child	Yes <input type="checkbox"/> No <input type="checkbox"/>
Age appropriate facilities and a programme of activities appropriate to age and ability	Yes <input type="checkbox"/> No <input type="checkbox"/>
Provisions to ensure the safety of the child	Yes <input type="checkbox"/> No <input type="checkbox"/>
Provisions to respond to the child's special needs as a young person in an adult setting	Yes <input type="checkbox"/> No <input type="checkbox"/>
Provisions to ensure the right of the child to have his/her views heard	Yes <input type="checkbox"/> No <input type="checkbox"/>
Have staff having contact with the child undergone Garda Síochána /police vetting?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Are copies of the Child Care Act 1991, Children Act 2001 and Children First Guidelines available to relevant staff?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Does the child have appropriate accommodation which includes segregated sleeping and bathroom areas?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Do observation arrangements acknowledge gender sensitivity?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Have staff received training relating to the care of children?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Does the child have access to appropriated education provision?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Does the child have access to an age appropriate advocacy service?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Does the child have his/her rights explained and did the clinical file record his/her understanding of the explanation given?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Was the child individually risk assessed?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Is there a Child and Adolescent Psychiatrist advice available?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Was the child admitted to a ward with seclusion or intensive care facilities?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Are there appropriate visiting arrangements for families available?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Has information been given to the child on his/her rights, the ward / unit and facilities in a form and language he/she could understand?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Are there policy and procedures in place with regard to family liaison, parental consent and confidentiality	Yes <input type="checkbox"/> No <input type="checkbox"/>

Signed:	Print name:
Job Title	
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"/> (dd/mm/yyyy)

This form should be completed and faxed within 72 hours of admission to:

Standards and Quality Assurance Division
 Mental Health Commission
 St Martin's House
 Waterloo Road
 Dublin 4

Tel: 00353 1 636 2401/02 Fax: 00 353 1 636 2440

CLINICAL PRACTICE FORM

MENTAL HEALTH ACT SECTION 23(2) and 23(3)

POWER TO DETAIN VOLUNTARY PATIENT (CHILD)
IN AN APPROVED CENTRE



Before completing this form please read the notes overleaf
PLEASE COMPLETE IN BLOCK CAPITALS AND FILE IN THE CHILD'S CLINICAL FILE

PART A Section 23(2)

1) Full Name and Address of Child detained:	<input type="text"/> <input type="text"/> <input type="text"/>
2) Date of Birth & Gender:	<input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> (dd/mm/yyyy) M <input type="checkbox"/> F <input type="checkbox"/>
3) Personal Public Service Number (PPSN):	<input type="text"/>
4) Approved Centre Name and Address:	<input type="text"/> <input type="text"/> <input type="text"/>
5) Date & Time Child is detained at Approved Centre	<input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> / <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> <input type="text"/> : <input type="text"/> <input type="text"/> (24 hr clock e.g. 2.21pm as 14:21) (d d / m m / y y y y)
6) Designation of staff member detaining Child at Approved Centre	Consultant Psychiatrist <input type="checkbox"/> Registered Medical Practitioner <input type="checkbox"/> Registered Nurse <input type="checkbox"/>
7) Name of staff member detaining Child	<input type="text"/>
8) Was Risk Assessment used?	<input type="checkbox"/> YES (if yes, please provide details below) <input type="checkbox"/> NO <input type="text"/> <input type="text"/>

Signed: _____

Date: / / (dd/mm/yyyy) Time: : (24 hr clock e.g. 2.21pm as 14:21)

PART B Section 23(3)

9) Was the above named child returned to his or her parents or either of them or a person acting in loco parentis?	<input type="checkbox"/> YES <input type="checkbox"/> NO
10) Was an application made under Section 25 at the next sitting of the District Court?	<input type="checkbox"/> YES <input type="checkbox"/> NO
11) Was the child placed in the custody of the Health Service Executive?	<input type="checkbox"/> YES <input type="checkbox"/> NO
12) If applicable, who made the application to the District Court?	_____

Signed: _____

Date: / / (dd/mm/yyyy) Time: : (24 hr clock e.g. 2.21pm as 14:21)

NOTES

Care should be taken when completing this form. When completed, it is to be filed in the person's clinical file at the Approved Centre. This form may be inspected by the Inspector of Mental Health Services, requested by a Mental Health Tribunal or by the Mental Health Commission.

SECTIONS OF THE MENTAL HEALTH ACT (2001)**Section 23 (2) and Section 23 (3) of the Mental Health Act (2001) state:**

23. —(2) Where the parents of a child who is being treated in an approved centre as a voluntary patient, or either of them, or a person acting in *loco parentis* indicates that he or she wishes 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 is of opinion that the child is suffering from a mental disorder, the child may be detained and placed in the custody of the Health Service Executive.
23. —(3) Where a child is detained in accordance with this section, the Health Service Executive shall, unless it returns the child to his or her parents, or either of them, or a person acting in *loco parentis*, make an application under *section 25* at the next sitting of the District Court held in the same district court district or, in the event that the next such sitting is not due to be held within 3 days of the date on which the child is placed in the care of the health board, at a sitting of the District Court, which has been specially arranged, held within the said 3 days, and the Health Service Executive shall retain custody of the child pending the hearing of that application.

Definition of a Child:

"child" means a person under the age of 18 years other than a person who is or has been married; (Section 2 Mental Health Act 2001)

FLOWCHART**POWER TO PREVENT A CHILD BEING TREATED AS A VOLUNTARY PATIENT FROM LEAVING AN APPROVED CENTRE**