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.
4.1 DEFINITION OF MENTAL DISORDER

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 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.”

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1 Mental Health Act 2001, S.3.
2 Mental Health Act 2001, S.3.
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.”

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. 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
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.”

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).

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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.

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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?

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) 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’.

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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)
4.1 Definition of Mental Disorder

**What is Socially Deviant?**

Socially deviant is a term that refers to any behaviour that does not conform to social norms. 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.

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.

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.

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) 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.

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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).
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.
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 \(^\text{and}\) 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.

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\(^1\) 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)
### 4.2.3 IN VOLUNTARY 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.

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**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 parentis\(^4\) 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.

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**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.

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\(^3\) 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 cannot 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.\(^1\)

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\(^1\) The Mental Health Act 2001, S25(16) 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. 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. 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. 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.

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.

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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.
10 The Mental Health Act 2001, S25(14) and the Child Care Act 1991, S22.
Health Service Executive concerned that a child who resides in or is found in its functional area:—
- Is suffering from a mental disorder, and
- Requires treatment which he/she is unlikely to receive unless an order is made under Section 25

HSE may apply to District Court for an order authorising detention of child in Approved Centre

If there is an urgent need to make an application the HSE may make an ex parte application to the District Court

Where the —

Parents of the child, or either of them or a person acting in loco parentis consent to the examination of the child by a Consultant Psychiatrist

Child must be examined by a Consultant Psychiatrist (who is not a relative of the child) prior to making the application

The HSE—
- Makes an application to the District Court for an order authorising the detention of the child in an Approved Centre
- Furnishes 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 either:
- Makes an order to admit and detain the child in a specified Approved Centre for a period not exceeding 21 days
- Refuses to make this order

Where the —

Parents of the child, or either of them or a person acting in loco parentis cannot be found by the HSE or

The parents of the child, or either of them or a person acting in loco parentis refuse to consent to the examination of the child

HSE may make an application to the District Court for an order authorising the detention of the child in an Approved Centre without any prior examination of the child by a Consultant Psychiatrist

If a court is satisfied that there is a reasonable cause to believe that the child is suffering from a mental disorder:—
- Direct the HSE to arrange for the examination of the child by a Consultant Psychiatrist (who is not a relative of the child)
- Direct that a report of the results of the examination be furnished to the court within such time as may be specified by the court

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

Section 25 Guidelines — Involuntary Admission of a child
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.
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.
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.
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).