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*Number 11 of 2026*

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**Mental Health Act 2026**

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**MENTAL HEALTH ACT 2026**

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[No. 11.]

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Social Welfare Consolidation Act 2005 (No. 26)

Taxes Consolidation Act 1997 (No. 39)





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*Number 11 of 2026*

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**MENTAL HEALTH ACT 2026**

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An Act to provide for the admission to, and discharge from, registered acute mental health centres, of adult persons in certain circumstances and, for the involuntary admission of adult persons who meet the criteria for involuntary admission to such centres; to provide for the criteria for, and review of, involuntary admission of adult persons to registered acute mental health centres; and, for those purposes, to provide for the establishment of mental health review boards; to provide for the care and treatment of adult persons in registered acute mental health centres and to provide that treatment, other than in certain limited circumstances, shall not be given to adult persons without consent being given for such treatment; to regulate the application, in certain limited circumstances, of restrictive practices in respect of adult persons who are admitted to registered acute mental health centres; to provide for the admission to and discharge from registered acute mental health centres of children on a voluntary basis and with parental consent; to provide for the involuntary admission to, and discharge from, registered acute mental health centres of children who meet the criteria for involuntary admission of children to registered acute mental health centres by way of application to the Family District Court or the District Court, as the case may be; to provide for the criteria for, and review of, involuntary admission of children to registered acute mental health centres; to provide for the treatment of children in registered acute mental health centres and to provide that treatment, other than in certain limited circumstances, shall not be given to children without consent being given for such treatment; to regulate the application, in certain limited circumstances, of restrictive practices and the prohibition on administration of electro-convulsive therapy in respect of children who are admitted to registered acute mental health centres; to provide for applications to be made to court to provide for the entitlements of persons admitted to registered acute mental health centres; to provide for the continuation in being of the Mental Health Commission and the Inspector of Mental Health Services; to provide for the establishment and maintenance of a register of acute mental health centres, a register of community mental health centres and a register of community mental health services for such centres and services registered under and in accordance with this Act; to provide for the regulation of mental health services including registered acute mental health centres, registered community mental health centres and registered community mental health services; to

provide for the monitoring and enforcement of compliance with the provisions of this Act by the Mental Health Commission; to repeal the Mental Health Act 2001 and certain other enactments; to provide for the amendment of the Assisted Decision-Making (Capacity) Act 2015 and certain other enactments; and to provide for related matters.

[7th May, 2026]

**Be it enacted by the Oireachtas as follows:**

## PART 1

### PRELIMINARY AND GENERAL

#### Short title and commencement

1. (1) This Act may be cited as the Mental Health Act 2026.
- (2) This Act shall come into operation on such day or days as the Minister may by order or orders appoint either generally or with reference to any particular purpose or provision, and different days may be so appointed for different purposes or different provisions and for the repeal of different provisions of the enactments effected by *section 5*.

#### Interpretation

2. (1) In this Act—
  - “Act of 1991” means the Child Care Act 1991;
  - “Act of 1997” means the European Parliament Elections Act 1997;
  - “Act of 2001” means the Mental Health Act 2001;
  - “Act of 2007” means the Medical Practitioners Act 2007;
  - “Act of 2014” means the Companies Act 2014;
  - “Act of 2015” means the Assisted Decision-Making (Capacity) Act 2015;
  - “Act of 2018”, other than in *Chapter 2 of Part 7*, means the Domestic Violence Act 2018;
  - “adult” means a person who is 18 years of age or older;
  - “Agency” means the Child and Family Agency;
  - “Assistant Inspector” means a person appointed under *section 137*;
  - “authorised officer” means an officer of the Executive who is of a prescribed rank or grade and who is authorised by the Director General of the Executive to exercise the powers conferred on authorised officers by or under this Act;
  - “Board” has the meaning assigned to it in *section 101*;

“capacity”, in relation to an adult or a child, has the same meaning as it has in section 2 of the Act of 2015, and shall be construed in accordance with section 3 of that Act;

“capacity assessment” means—

- (a) in relation to an adult, an assessment or a second capacity assessment carried out in accordance with *section 45*, and
- (b) in relation to a child aged 16 years or older, an assessment or a second capacity assessment carried out in accordance with *section 61*;

“care order” has the same meaning as it has in section 18 of the Act of 1991;

“care plan” means—

- (a) in relation to an adult, a plan prepared under *section 186* by a member of a person’s multidisciplinary team, and where possible, in consultation with the person the subject of the plan, and
- (b) in relation to a child, a plan prepared under *section 187* by a member of a child’s multidisciplinary team, and where possible, in consultation with the child where appropriate or the relevant consulted carers, if any, of the child the subject of the plan;

“Chief Executive Officer” means the chief executive officer of the Commission appointed in accordance with *section 110*;

“Chief Inspector” means the person who holds the office of Inspector of Mental Health Services in accordance with *section 134*;

“child” means a person who has not attained the age of 18 years;

“child aged 16 years or older lacking necessary capacity admitted with parental consent” means a child admitted to a registered acute mental health centre under *section 64*;

“civil partner” means a person in a civil partnership or legal relationship to which section 3 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 applies;

“clinical director” means a person appointed by the governing body of a registered acute mental health centre under *section 172*;

“code of practice” means a code of practice issued and published under this Act which is for the time being in force and includes part of such a code;

“cohabitant” means one of 2 adults (whether of the same or opposite sex) who live together as a couple in an intimate and committed relationship and who are not married to each other or civil partners of each other;

“Commission” means the Mental Health Commission established by the Act of 2001 and continued in being under *section 99*;

“consultant psychiatrist” means a registered medical practitioner who is registered in the Specialist Division under the medical specialty of “Psychiatry”;

“criteria for involuntary admission” shall be construed in accordance with *section 11*;

“criteria for involuntary admission of a child” shall be construed in accordance with *section 65*;

“decision” means, unless the context otherwise requires, a decision under this Act concerning the care and treatment of a person and includes, but is not limited to, a decision to make an involuntary admission order or a renewal order in relation to the person;

“decision-making representative” has the same meaning as it has in section 2 of the Act of 2015;

“designated centre”, other than in *section 153*, has the same meaning as it has in the Criminal Law (Insanity) Act 2006;

“direct application for a recommendation for involuntary admission” has the meaning assigned to it in *section 14*;

“emergency care order” has the meaning assigned to it in section 13 of the Act of 1991;

“examination”, in relation to a recommendation for involuntary admission, an involuntary admission order, a renewal order or a proposed transfer under *section 35*, of any person under this Act, means a personal examination carried out by a registered medical practitioner or a consultant psychiatrist of the process and content of thought, the perceptions, emotion and mood, judgment and the behaviour of the person concerned in order to make a diagnosis or a preliminary diagnosis;

“Executive” means the Health Service Executive;

“guardian” means, in relation to a child—

- (a) a guardian pursuant to the Guardianship of Infants Act 1964, or
- (b) the person acting in *loco parentis* to that child;

“guardian *ad litem*” means, in relation to a child, a guardian *ad litem* (within the meaning of section 35A of the Act of 1991) appointed for the child in accordance with Part VA of the Act of 1991;

“guiding principles” shall be construed—

- (a) in relation to an adult, in accordance with *section 8*, and
- (b) in relation to a child, in accordance with *section 9*;

“interim care order” has the meaning assigned to it in section 17 of the Act of 1991;

“involuntarily admitted child” means a child who fulfils the criteria for involuntary admission of a child and is subject to an involuntary admission order or a renewal order;

“involuntarily admitted person” means an adult who fulfils the criteria for involuntary admission in *section 11* and has been admitted to a registered acute mental health centre pursuant to an involuntary admission order or a renewal order;

“involuntary admission order” has the meaning assigned to it—

- (a) in relation to an adult, in *sections 21* and *37*, and
- (b) in relation to a child, in *section 66*;

“legal representative” means a practising barrister or a practising solicitor;

“local authority” has the same meaning as it has in the Local Government Act 2001;

“mechanical restraint” means the application of any mechanical means of bodily restraint to a person in which a garment or a mechanical device restricts, prevents or otherwise limits a person’s freedom of movement or access to his or her own body;

“medical specialty” means a medical specialty recognised by the Medical Council under section 89 of the Act of 2007;

“mental disorder” means, in relation to a person, any mental illness or mental health difficulty, whether of a continuous or intermittent nature, which seriously affects the person’s thinking, perception, emotion, mood or judgment leading to significant impairment of the mental function of the person;

“mental health services” means services which provide care and treatment to persons living with a mental disorder or other mental health difficulty, and includes registered mental health services;

“mental healthcare professional” means—

- (a) a consultant psychiatrist,
- (b) a registered nurse within the meaning of section 2(1) of the Nurses and Midwives Act 2011, or
- (c) a member of one or more of the following designated professions within the meaning of section 3 of the Health and Social Care Professionals Act 2005, namely:
  - (i) social worker;
  - (ii) occupational therapist;
  - (iii) speech and language therapist;
  - (iv) such other designated profession within the meaning of the said section 3 of the said Act as the Minister considers appropriate and may prescribe by regulations under *section 3*;

“Minister” means the Minister for Health;

“multidisciplinary team” means a team of mental healthcare professionals providing mental health services to a person;

“nominated person” means an adult nominated—

- (a) in relation to an adult, in accordance with *section 192*, and
- (b) in relation to a child aged 16 years or older, in accordance with *section 193*;

“parent” means—

- (a) in relation to a child, subject to *paragraph (b)*, the father or mother (both within the meaning of section 2 of the Guardianship of Infants Act 1964) of the child,
- (b) in relation to a child who is a donor-conceived child, the parent or parents of that child under section 5 of the Children and Family Relationships Act 2015, or
- (c) in relation to a child where one parent has the sole custody, charge or care of the child, that parent;

“parents or guardian or the Agency” means—

- (a) in relation to a child the subject of a care order, the Agency, and
- (b) in all other circumstances, the child’s parents, or either of them, or guardian;

“permitted absence” has the meaning assigned to it—

- (a) in relation to an adult, in *section 38*, and
- (b) in relation to a child, in *section 82*;

“pharmacological restraint” means the administration of medication to a person where the only purpose of such administration is to—

- (a) control the person’s behaviour, or
- (b) restrict, prevent or limit the person’s freedom of movement or access to his or her own body,

but does not include the administration of medication that is for the purposes of treating or ameliorating his or her mental disorder;

“physical restraint” means the application of any bodily restraint to a person where the intention is to restrict, prevent or otherwise limit a person’s freedom of movement or access to his or her own body;

“practising barrister” has the same meaning as it has in the Legal Services Regulation Act 2015;

“practising solicitor” has the same meaning as it has in the Legal Services Regulation Act 2015;

“premises” includes land, water and any fixed or moveable structures thereon and also includes vessels, vehicles, trains, aircraft and other means of transport;

“prescribed” means prescribed by regulations made by the Minister;

“recommendation for involuntary admission” has the meaning assigned to it in *section 15*;

“register” means—

- (a) in relation to a registered acute mental health centre, the Register of acute mental health centres,

(b) in relation to a registered community mental health centre, the Register of community mental health centres, and

(c) in relation to a registered community mental health service, the Register of community mental health services;

“Register of acute mental health centres” has the meaning assigned to it in *section 146*;

“Register of community mental health centres” has the meaning assigned to it in *section 147*;

“Register of community mental health services” has the meaning assigned to it in *section 148*;

“registered acute mental health centre” means any acute mental health centre registered by the Commission in accordance with *Chapter 2 of Part 6* where acute mental health care and treatment are offered;

“registered community mental health centre” means any community-based residential centre (other than a registered acute mental health centre) registered by the Commission in accordance with *Chapter 2 of Part 6* which—

(a) provides specialist mental health care and treatment for persons with an enduring mental disorder or other mental health difficulty, and

(b) is staffed on a 24 hour basis;

“registered community mental health service” means any community-based service registered by the Commission in accordance with *Chapter 2 of Part 6* providing care and treatment for persons with a mental disorder or other mental health difficulty other than in a registered acute mental health centre or a registered community mental health centre;

“registered medical practitioner” means a person who is a registered medical practitioner within the meaning of section 2 of the Act of 2007;

“registered mental health service” means—

(a) a registered acute mental health centre,

(b) a registered community mental health centre, or

(c) a registered community mental health service;

“registered proprietor” means, in relation to a registered mental health service, the person whose name is entered in the register as the person carrying on the business of the registered mental health service;

“relative” means, in relation to a person, a parent, grandparent, son, daughter, grandchild, sibling, aunt or uncle of the person by blood, adoption, marriage or civil partnership;

“relevant advocacy service” means a service which assists or supports a person in expressing his or her will and preferences, or otherwise in making his or her views known, in relation to mental health services being provided to the person;

“relevant carer” means—

- (a) in relation to a child the subject of a care order, a voluntary care arrangement, an emergency care order or an interim care order, the Agency, and
- (b) in all other circumstances, the child’s parents, or either of them, or guardian;

“relevant consulted carers” means—

- (a) in relation to a child the subject of a care order, the Agency,
- (b) in relation to a child the subject of a voluntary care arrangement, an emergency care order or an interim care order—
  - (i) where the child concerned is a voluntarily admitted child under 16 years of age or a child aged 16 years or older lacking necessary capacity admitted with parental consent—
    - (I) the Agency, and
    - (II) his or her parents, or either of them, or guardian,
  - (ii) where the child concerned is a voluntarily admitted child aged 16 years or older, at the child’s request—
    - (I) the Agency,
    - (II) his or her parents, or either of them, or guardian, or
    - (III) the persons in *clauses (I) and (II)*,
  - (iii) where the child concerned is an involuntarily admitted child under 16 years of age or is under 16 years of age and the subject of an application for involuntary admission under *section 66*—
    - (I) the Agency, and
    - (II) his or her parents, or either of them, or guardian,and
  - (iv) where the child concerned is an involuntarily admitted child aged 16 years or older or is aged 16 years or older and the subject of an application for involuntary admission under *section 66*, at the child’s request or where, in the opinion of the responsible consultant psychiatrist, it is in the child’s best interests—
    - (I) the Agency,
    - (II) his or her parents, or either of them, or guardian, or
    - (III) the persons in *clauses (I) and (II)*,and

- (c) where *paragraph (a) or (b)* does not apply—
- (i) where the child concerned is a voluntarily admitted child under 16 years of age or a child aged 16 years or older lacking necessary capacity admitted with parental consent, his or her parents, or either of them, or guardian,
  - (ii) where the child concerned is a voluntarily admitted child aged 16 years or older, at the child’s request, his or her parents, or either of them, or guardian,
  - (iii) where the child concerned is an involuntarily admitted child under 16 years of age or is under 16 years of age and the subject of an application for involuntary admission under *section 66*, his or her parents, or either of them, or guardian, and
  - (iv) where the child concerned is an involuntarily admitted child aged 16 years or older or is aged 16 years or older and the subject of an application for involuntary admission under *section 66*, at the child’s request or where, in the opinion of the responsible consultant psychiatrist, it is in the child’s best interests, his or her parents, or either of them, or guardian;

“relevant health professional” means—

- (a) a registered medical practitioner, or
- (b) a registered nurse or registered midwife within the meaning of the Nurses and Midwives Act 2011,

who is appropriately trained to order or initiate the application of, or apply, a restrictive practice;

“relevant notified carers” means—

- (a) in relation to a child the subject of a care order, the Agency,
- (b) in relation to a child the subject of a voluntary care arrangement, an emergency care order, an interim care order or a supervision order, his or her parents, or either of them, or guardian and the Agency, and
- (c) where *paragraph (a) or (b)* does not apply, the child’s parents, or either of them, or guardian;

“renewal order” has the meaning assigned to it—

- (a) in relation to an adult, in *section 22*, and
- (b) in relation to a child, in *section 67*;

“responsible consultant psychiatrist” means, in relation to a person receiving care and treatment in a registered acute mental health centre under this Act, a consultant psychiatrist who is responsible for that person at any given time;

“responsible person” has the meaning assigned to it in *section 171*;

“restrictive practice” means physical restraint, mechanical restraint, pharmacological restraint or seclusion;

“review board” has the meaning assigned to it in *section 26*;

“review panel” has the meaning assigned to it in *section 26*;

“seclusion” means the placing or leaving of a person in any room in which he or she is prevented from leaving freely or cannot otherwise leave freely;

“service provider” has the meaning assigned to it in *section 19*;

“Specialist Division” has the same meaning as it has in the Act of 2007;

“specified person” means a person who—

- (a) is appropriately trained to carry out any restrictive practice,
- (b) applies a restrictive practice under the direct supervision of a consultant psychiatrist or a relevant health professional, and
- (c) is employed by or otherwise works in a registered acute mental health centre or a designated centre;

“spouse” means, in relation to a person—

- (a) the husband or wife, as the case may be, of the person,
- (b) the civil partner of the person, or
- (c) the cohabitant of the person;

“supervision order” has the meaning assigned to it in section 19 of the Act of 1991;

“treatment” in relation to a person, other than in sections 36 and 79, includes the administration of physical, psychological and other remedies relating to the care and rehabilitation of the person under clinical supervision, intended for the purposes of ameliorating a mental disorder or other mental health difficulty, and includes any relevant ancillary treatment and tests required for the purposes of safeguarding the person’s life or ameliorating the person’s condition;

“voluntarily admitted child” means a child who—

- (a) is receiving care and treatment in a registered acute mental health centre,
- (b) is not subject to an involuntary admission order or a renewal order, and
- (c) is not a child aged 16 years or older lacking necessary capacity admitted with parental consent;

“voluntarily admitted person” means an adult who is receiving care and treatment in a registered acute mental health centre and who is not subject to an involuntary admission order or a renewal order;

“voluntary care arrangement” means a care arrangement under section 4 of the Act of 1991.

- (2) In this Act, until such time as *section 249* comes into operation, the following modifications shall apply:

- (a) a reference to the Family High Court shall be construed as a reference to the High Court with any necessary modifications;
- (b) a reference to the Family Circuit Court shall be construed as a reference to the Circuit Court;
- (c) a reference to—
  - (i) the Family District Court, or
  - (ii) the Family District Court or the District Court,shall be construed as a reference to the District Court with any necessary modifications;
- (d) a reference to—
  - (i) the Family District Court district, or
  - (ii) the Family District Court district or District Court district,shall be construed as a reference to the District Court district with any necessary modifications;
- (e) in *section 71(5)*—
  - (i) *paragraph (a)(ii)* shall not apply, and
  - (ii) in *paragraph (d)*, the words “a sitting of the Family District Court or” are deleted;
- (f) in *section 88(3)*—
  - (i) *paragraph (a)(ii)* shall not apply, and
  - (ii) in *paragraph (d)*, the words “a sitting of the Family District Court or” are deleted.

### Regulations

3. (1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed.
- (2) Without prejudice to any provision of this Act, regulations under this section may contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.
- (3) Every regulation made by the Minister under this Act shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation is passed by either such House within the next 21 days on which that House sits after the regulation is laid before it, the regulation shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

**Service of documents**

4. (1) A notice or other document that is required to be served on or given to a person under this Act shall be addressed to the person concerned by name, and may be so served on or given to the person in one of the following ways:
- (a) by delivering it to the person;
  - (b) by leaving it at the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, at that address;
  - (c) by sending it by post in a prepaid registered letter to the address at which the person ordinarily resides or, in a case in which an address for service has been furnished, to that address;
  - (d) by electronic means, in a case in which the person has given notice in writing to the person serving or giving the notice or document concerned of his or her consent to the notice or document (or notices or documents of a class to which the notice or document belongs) being served on, or given to, him or her in that manner.
- (2) For the purpose of this section, a company formed and registered under the Act of 2014 or an existing company within the meaning of that Act is deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.

**Repeals**

5. The following Acts are repealed:
- (a) the Act of 2001;
  - (b) the Mental Health (Amendment) Act 2018.

**Expenses**

6. The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, be paid out of moneys provided by the Oireachtas.

**Review of operation of Act**

7. (1) The Minister shall, not later than 5 years after the commencement of this section, carry out a review of the operation of this Act.
- (2) In carrying out a review under *subsection (1)*, the Minister may consult with such and so many persons as he or she considers appropriate.

## PART 2

## GUIDING PRINCIPLES

**Guiding principles to apply in respect of adults**

8. (1) The principles specified in *subsections (2) to (8)* (in this Act referred to as the “guiding principles”) shall apply in respect of the making of any decision relating to a voluntarily admitted person or an involuntarily admitted person (in this section referred to as an “applicable person”) in a registered acute mental health centre.
- (2) It shall be presumed that an applicable person has capacity to make decisions affecting himself or herself unless the contrary is shown in accordance with—
- (a) *Part 3*, or
- (b) the provisions of the Act of 2015.
- (3) An applicable person shall not be considered as unable to make a decision affecting himself or herself unless all practicable steps have been taken, without success, to help him or her to do so, including by giving the applicable person concerned an opportunity, if he or she so wishes, to consult with a person or persons of his or her choosing prior to making such a decision.
- (4) An applicable person shall not be considered as unable to make a decision merely by reason of making, having made, or being likely to make, an unwise decision.
- (5) Where an applicable person lacks capacity in respect of the making of a decision then the provisions of the Act of 2015 shall apply in respect of the making of that decision except where provided for in *Chapter 3 of Part 3*.
- (6) Where it is proposed to make a decision in respect of an applicable person—
- (a) the applicable person shall be notified of the proposed decision in a form and language that may reasonably be understood by him or her,
- (b) the applicable person shall be entitled to make representations in relation to the proposed decision,
- (c) the applicable person shall be encouraged and facilitated to participate, or to improve his or her ability to participate, as fully as possible, in the decision, and
- (d) all representations made by the applicable person to the person making the decision shall be taken into account before any decision is made.
- (7) In making a decision in relation to an applicable person, the person making the decision—
- (a) shall act at all times in good faith,
- (b) may, with the consent of the applicable person concerned, consider the views of—
- (i) any person engaged in caring for the applicable person, and

- (ii) any other mental healthcare professional who is not a member of the person's multidisciplinary team or who is otherwise not involved in the person's care and treatment,
  - (c) shall not seek to obtain information that is not reasonably required for the making of the decision,
  - (d) shall not use information for a purpose other than in relation to the proposed decision, and
  - (e) shall take all necessary steps to ensure that information—
    - (i) is kept secure from unauthorised access, use or disclosure, and
    - (ii) is safely disposed of when he or she believes it is no longer required.
- (8) A decision made in respect of an applicable person shall—
- (a) be made in a manner that minimises any restrictions of that person's rights and freedoms,
  - (b) respect the right of the applicable person to dignity, bodily integrity, privacy and autonomy,
  - (c) be proportionate to the significance and urgency of the matter the subject of the decision,
  - (d) be limited in duration, in so far as is practicable, after taking into account the particular circumstances of the matter the subject of the decision,
  - (e) be made in a manner that promotes the highest attainable standard of mental health, subject to the availability of resources, and
  - (f) be made with due regard to the person's will and preferences in relation to the decision.

### **Guiding principles to apply in respect of children**

9. (1) In making any decision under *Part 4* concerning the admission, detention and care and treatment of an involuntarily admitted child, a voluntarily admitted child or a child aged 16 years or older lacking necessary capacity admitted with parental consent in a registered acute mental health centre, including the making of an application under *section 66* and any decision of the Family District Court or District Court under that section, the following principles (in this Act referred to as “guiding principles”) shall apply:
- (a) that the best interests and the welfare of the child shall be the primary consideration;
  - (b) that every child should have access to health services that have as the aim of those services, the delivery of the highest attainable standard of mental health, subject to the availability of resources;
  - (c) that in the case of a child who is aged 16 years or older—

- (i) it shall be presumed that the child has the necessary maturity and capacity to make decisions affecting himself or herself in relation to his or her admission, care and treatment under this Act, and
  - (ii) the views of the parents or guardian or the Agency shall be recorded;
  - (d) that in the case of a child who is under 16 years of age and is capable of forming his or her own views, where practicable—
    - (i) the child shall be consulted at each stage of diagnosis and treatment,
    - (ii) the views and will and preferences of the child shall be recorded and given due regard, and
    - (iii) regard shall be given to the age and maturity of the child;
  - (e) in so far as is practicable, that care and treatment shall be provided—
    - (i) in an age-appropriate environment, and
    - (ii) in close proximity to the child’s home or family, as appropriate;
  - (f) that the child shall receive the least intrusive treatment possible in the least restrictive environment practicable;
  - (g) that the welfare and dignity of the child, including the child’s right to privacy, bodily integrity and autonomy, shall be respected;
  - (h) that information shall be provided to the child and his or her parents or guardian in a manner that should reasonably be understood by the child.
- (2) The requirement for a court to give due regard to the guiding principles in *subsection (1)* shall be in addition to the requirement under section 24 of the Act of 1991 for a court to regard the best interests of the child as the paramount consideration in the resolution of proceedings under this Act to which that provision applies.
- (3) In so far as is practicable, a child and adolescent consultant psychiatrist shall carry out the functions of the consultant psychiatrist under *Part 4*.

### PART 3

#### INVOLUNTARY ADMISSION

#### CHAPTER 1

#### *Involuntary admission*

#### **Definitions (*Part 3*)**

#### **10.** In this Part—

“advance healthcare directive” has the same meaning as it has in section 2 of the Act of 2015;

“application for a recommendation for involuntary admission” has the meaning assigned to it in *section 13*;

“designated healthcare representative” has the same meaning as it has in section 2 of the Act of 2015;

“direct applicant” has the meaning assigned to it in *section 14*;

“Garda request for an application for a recommendation for involuntary admission” has the meaning assigned to it in *section 17*;

“independent consultant psychiatrist” has the meaning assigned to it in *section 27*;

“panel of independent consultant psychiatrists” has the meaning assigned to it in *section 27*;

“psychosocial assessment” means, in relation to a person, a personal assessment carried out by a mental healthcare professional (other than a consultant psychiatrist) to assess—

- (a) the psychological condition of the person,
- (b) the environmental and social factors that have contributed to his or her condition,
- (c) the ability of the person to care for himself or herself if he or she were to be not admitted to, or discharged from, as the case may be, a registered acute mental health centre, and
- (d) the supports that may be required and available to that person outside of the registered acute mental health centre;

“relevant person” has the meaning assigned to it in *section 14*;

“request for an application for a recommendation for involuntary admission” has the meaning assigned to it in *section 12*;

“requester” has the meaning assigned to it in *section 12*.

### **Criteria for involuntary admission to registered acute mental health centre**

**11.** (1) A person may be involuntarily admitted to a registered acute mental health centre pursuant to an involuntary admission order and detained there if he or she fulfils each of the criteria (in this Act referred to as the “criteria for involuntary admission”) specified in either *paragraph (a)* or *(b)*, namely:

- (a) the person has a mental disorder, the nature and degree of which is such that—
  - (i) the life of the person, or that of another person, is at risk, or the health of the person, or that of another person, is at risk of immediate and serious harm, and
  - (ii) if the first-mentioned person were to be admitted to and detained in a registered acute mental health centre—
    - (I) his or her admission and detention would be likely to reduce the risk he or she poses to himself or herself or others due to his or her mental disorder,

- (II) he or she would be likely to benefit from care and treatment that cannot be given to that person other than in a registered acute mental health centre, or
  - (III) his or her admission and detention would be likely to benefit the condition of that person;
- or
- (b) the person has a mental disorder, the nature and degree of which is such that—
    - (i) he or she requires care and treatment immediately,
    - (ii) the care and treatment required to be given to the person cannot be given to that person other than in a registered acute mental health centre, and
    - (iii) the reception, detention and care and treatment of the person concerned in a registered acute mental health centre would be likely to materially benefit the condition of that person.
- (2) Nothing in *subsection (1)* shall be construed as authorising the involuntary admission of a person to a registered acute mental health centre by reason only of the fact that the person—
- (a) has a mental disorder that does not fulfil the criteria for involuntary admission,
  - (b) has an intellectual disability,
  - (c) has a personality disorder,
  - (d) is addicted to drugs or intoxicants,
  - (e) may behave in such a manner or hold views that are contrary to, deviate from or transgress cultural, religious, social or traditional norms or customs of appropriate behaviour, or
  - (f) requires to reside in a safe environment provided by a registered acute mental health centre.
- (3) The Commission shall prepare and issue a code of practice for staff working in registered acute mental health centres in relation to the provisions of this section.

**Request for application for recommendation for involuntary admission where made to authorised officer**

- 12.** (1) Subject to *subsection (3)*, where a person reasonably believes that another person (other than a child) has a mental disorder that fulfils the criteria for involuntary admission, the first-mentioned person (in this Part referred to as a “requester”) may—
- (a) request an authorised officer, or
  - (b) request the Executive to nominate an authorised officer,
- to make an application (in this Part referred to as a “request for an application for a recommendation for involuntary admission”) for a recommendation for the person the

subject of the request to be involuntarily admitted to a registered acute mental health centre.

- (2) A person shall be disqualified from making a request for an application for a recommendation for involuntary admission where he or she—
- (a) is a child,
  - (b) has an interest in the payments (if any) to be made in respect of the taking care of the person concerned in the registered acute mental health centre concerned,
  - (c) is a spouse of the person, the subject of the application—
    - (i) who is living separately and apart from the person concerned, or
    - (ii) in respect of whom—
      - (I) an application for an order has been made but not yet determined under the Act of 2018, or
      - (II) an order has been made under the Act of 2018,
- or
- (d) is a spouse or relative of any of the persons specified in *paragraph (b)*.
- (3) A person who, for the purposes of or in relation to a request for an application for a recommendation for involuntary admission, makes any statement which is to his or her knowledge false or misleading in any material particular shall be guilty of an offence and shall be liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 6 months, or to both.
- (4) A request for an application for a recommendation for involuntary admission shall be made in the form and manner specified by the Commission.

**Making of application for recommendation for involuntary admission to be made by authorised officer**

- 13.** (1) Where an authorised officer receives a request in that behalf under *section 12(1)* for an application for a recommendation for involuntary admission, the authorised officer shall, as soon as practicable following receipt of such a request, assess whether to make an application to a registered medical practitioner for a recommendation for involuntary admission (in this Part referred to as an “application for a recommendation for involuntary admission”), and, for that purpose, shall—
- (a) meet with, speak to and observe the person who is the subject of the request,
  - (b) consult, where possible and appropriate, with that person’s spouse, relative or carer, as the case may be, and
  - (c) take account of whether the care and treatment required to be given to the person can be given other than in a registered acute mental health centre, with a view to ensuring an application for a recommendation for involuntary admission is made only where necessary and appropriate.

- (2) In considering a request for an application for a recommendation for involuntary admission, an authorised officer shall request such information on the circumstances and medical history of the person, the subject of the request, as the authorised officer may reasonably require from the requester, and where he or she does so, that requester shall, to the best of his or her ability, comply with such a request.
- (3) Where, following an assessment under *subsection (1)*, an authorised officer has reasonable grounds for believing that the person, the subject of the request, has a mental disorder which fulfils the criteria for involuntary admission, the authorised officer shall make an application for a recommendation for involuntary admission, and shall provide a copy of that application to the person concerned.
- (4) Where an application for a recommendation for involuntary admission is made, the application shall contain a statement of the reasons why the authorised officer considers that the criteria for involuntary admission have been fulfilled, and the circumstances in which the application is made.
- (5) Where an authorised officer does not have reasonable grounds for believing that the person has a mental disorder which fulfils the criteria for involuntary admission, the authorised officer shall refuse to make an application for a recommendation for involuntary admission.
- (6) Where an authorised officer refuses to make an application for a recommendation for involuntary admission under *subsection (5)*, the authorised officer shall inform in writing the requester and the person, the subject of the request—
  - (a) of that decision and the reasons for it, and
  - (b) that the requester may, subject to *subsection (10)*, request another authorised officer to consider the request, the subject of the refusal, or, as the case may be, make a new request for an application for a recommendation for involuntary admission to another authorised officer under *section 12*.
- (7) Subject to *subsection (10)*, the provisions of this section shall apply, with any necessary modifications, to the assessment of a request for an application for a recommendation for involuntary admission by an authorised officer following a refusal by an authorised officer to make such an application as they apply to the authorised officer who refused to make an application for a recommendation for involuntary admission.
- (8) In requesting another authorised officer to consider a request for an application for a recommendation for involuntary admission following the refusal of a previously appointed authorised officer to make such an application, and in any subsequent application to a registered medical practitioner, the requester shall comply with *section 16(1)*.
- (9) An authorised officer shall make an application for a recommendation for involuntary admission as soon as possible after an assessment under *subsection (1)* which application shall be valid for 7 days from the date of its making and shall then expire.
- (10) A person may make only one request under *subsection (6)(b)* in respect of the refusal concerned under *subsection (5)*.

- (11) An authorised officer shall be disqualified from acting as an authorised officer in respect of a person, where the authorised officer—
- (a) has an interest in the payments (if any) to be made in respect of the taking care of the person concerned in the registered acute mental health centre concerned,
  - (b) is a member of the governing body or staff of the registered acute mental health centre concerned, or
  - (c) is a spouse or relative of the person concerned.
- (12) An authorised officer who, for the purposes of, or in relation to, an application for a recommendation for involuntary admission of a person, makes any statement which is to his or her knowledge false or misleading in any material particular shall be guilty of an offence and shall be liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 6 months, or to both.
- (13) An application for a recommendation for involuntary admission of a person made under this section shall be made in the form and manner specified by the Commission.
- (14) In *subsection (1)*, “spouse”, in relation to a person, does not include a spouse who is living separately and apart from the person or a spouse in respect of whom—
- (a) an application for an order has been made but not yet determined under the Act of 2018, or
  - (b) an order has been made under the Act of 2018.

**Making of application for recommendation for involuntary admission by person other than authorised officer**

14. (1) Without prejudice to the generality of *section 13* but subject to *subsection (2)*, a relevant person (in this Part referred to as a “direct applicant”) may make an application for a recommendation for involuntary admission in respect of a person directly to a registered medical practitioner (in this Act referred to as a “direct application for a recommendation for involuntary admission”) where he or she believes that the person the subject of the application has a mental disorder that fulfils the criteria for involuntary admission.
- (2) A person shall be disqualified from making a direct application for a recommendation for involuntary admission where he or she—
- (a) is a child,
  - (b) has an interest in the payments (if any) to be made in respect of the taking care of the person concerned in the registered acute mental health centre concerned,
  - (c) is a member of the governing body or staff of the registered acute mental health centre concerned,
  - (d) is a spouse or relative of any of the persons specified in *paragraph (b)* or *(c)*, or
  - (e) is a member of An Garda Síochána acting in the course of his or her duties.

- (3) Prior to making a direct application for a recommendation for involuntary admission, a direct applicant shall, not more than 24 hours before the date of the making of the application—
  - (a) meet with, speak to, and observe the person, the subject of the application, and
  - (b) consider, to the best of his or her ability, whether there are reasonable grounds for believing that the person, the subject of the application, has a mental disorder which fulfils the criteria for involuntary admission.
- (4) A person who, for the purposes of or in relation to a direct application for a recommendation for involuntary admission, makes any statement which is to his or her knowledge false or misleading in any material particular shall be guilty of an offence and shall be liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 6 months, or to both.
- (5) A direct application for a recommendation for involuntary admission shall be made in the form and manner specified by the Commission.
- (6) In this section and *section 17*, “relevant person” means a person who—
  - (a) is a spouse of the person, the subject of the application, but does not include a spouse who is living separately and apart from the person or in respect of whom—
    - (i) an application for an order has been made but not yet determined under the Act of 2018, or
    - (ii) an order has been made under the Act of 2018,
  - (b) is a relative of the person, the subject of the application,
  - (c) has a *bona fide* interest in the mental health, safety and welfare of the person concerned, or
  - (d) is a mental healthcare professional (other than a consultant psychiatrist).

### **Making of recommendation for involuntary admission**

- 15.** (1) A registered medical practitioner to whom—
- (a) an application for a recommendation for involuntary admission, or
  - (b) a direct application for a recommendation for involuntary admission,
- is made in respect of a person shall, within 24 hours of the receipt of the application, carry out an examination of the person concerned to assess whether that person has a mental disorder which fulfils the criteria for involuntary admission.
- (2) Before carrying out an examination under *subsection (1)*, the registered medical practitioner shall inform the person, the subject of the application, of the purpose of the examination unless the provision of such information would, in the opinion of the registered medical practitioner concerned, seriously endanger the life or health of the person, the subject of the application concerned, or the life or health of another person or persons.

- (3) Where, following an examination of a person under *subsection (1)*, the registered medical practitioner is of the opinion that the person has a mental disorder which fulfils the criteria for involuntary admission, the registered medical practitioner shall within 24 hours of the examination make a recommendation to the clinical director of a registered acute mental health centre (other than the Central Mental Hospital) that the person be involuntarily admitted to that registered acute mental health centre (in this Act referred to as a “recommendation for involuntary admission”).
- (4) Where, following an examination of a person under *subsection (1)*, the registered medical practitioner is of the opinion that the person does not have a mental disorder which fulfils the criteria for involuntary admission, the registered medical practitioner shall refuse to make a recommendation for involuntary admission.
- (5) In making a recommendation for involuntary admission under *subsection (3)* or refusing to make a recommendation for involuntary admission under *subsection (4)*, the registered medical practitioner shall, in that recommendation or refusal, as the case may be, certify the basis on which he or she is of the opinion that the person has or does not have a mental disorder which fulfils the criteria for involuntary admission and shall provide a copy of the certification to the person who made the application and the person the subject of the application.
- (6) Notwithstanding the generality of *subsection (1)*, an examination of a person which is carried out by a registered medical practitioner prior to receipt of an application for a recommendation for involuntary admission or a direct application for a recommendation for involuntary admission shall be valid for the purposes of this section if—
  - (a) the examination was carried out within a period of not more than 24 hours prior to the receipt of the application concerned, and
  - (b) the decision to make a recommendation for involuntary admission or to refuse to make such a recommendation made by the registered medical practitioner concerned is made after the receipt of the application concerned and within 24 hours of the examination.
- (7) A registered medical practitioner shall be disqualified from examining a person under *subsection (1)* where the registered medical practitioner—
  - (a) has an interest in the payments (if any) to be made in respect of the taking care of the person concerned in the registered acute mental health centre concerned,
  - (b) is a member of the governing body or staff of the registered acute mental health centre concerned,
  - (c) is a spouse or a relative of the person concerned, or
  - (d) is the direct applicant.
- (8) A registered medical practitioner shall, no later than 24 hours after making a recommendation for involuntary admission—

- (a) send or cause to be sent the recommendation in writing to the clinical director of the registered acute mental health centre specified in the recommendation concerned,
  - (b) provide a copy of the recommendation to the requester or the direct applicant, as the case may be, and the person who is the subject of the request, and
  - (c) provide a copy of the recommendation to the Commission.
- (9) A recommendation for involuntary admission shall be valid for a period of 7 days from the date of its making under *subsection (3)* and shall then expire.
- (10) A recommendation for involuntary admission shall be made in the form and manner specified by the Commission.

### **Disclosure of previous application for involuntary admission**

- 16.** (1) In making a request for an application for a recommendation for involuntary admission or a direct application for a recommendation for involuntary admission, as the case may be, the requester or the direct applicant, as the case may be, shall, in so far as he or she is aware, disclose to the authorised officer or, in the case of a direct applicant, to the registered medical practitioner—
- (a) any previous refusal by a registered medical practitioner to make a recommendation for the involuntary admission of the person, the subject of the request or the direct application concerned, under—
    - (i) *section 15(4)*, or
    - (ii) section 10 of the Act of 2001,
  - (b) the date of and circumstances relating to any such previous refusal, and
  - (c) any previous refusal by an authorised officer to make an application for a recommendation for involuntary admission under *section 13* and the date and circumstances relating to any such previous refusal.
- (2) A person who contravenes *subsection (1)* shall be guilty of an offence and shall be liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 6 months, or to both.

### **Powers of Garda Síochána in respect of involuntary admissions**

- 17.** (1) Where a member of An Garda Síochána has reasonable grounds for believing that a person has a mental disorder that fulfils *paragraph (a)* of the criteria for involuntary admission the member may, either alone or with any other member or members of An Garda Síochána—
- (a) take all reasonable measures necessary to take the person into custody and arrange for the matters specified in *subsections (3) and (5)*, subject to and in accordance with *subsections (6) and (7)*, as applicable, to be carried out as soon as practicable, but no later than 6 hours after the time that the person is taken into custody, and

- (b) enter if needs be by force any dwelling or other premises or any place if he or she has reasonable grounds for believing that the person is to be found there.
- (2) The period referred to in *subsection (1)(a)* may be extended by one additional period of 6 hours under the authorisation of a member of An Garda Síochána not below the rank of inspector if he or she has reasonable grounds for believing that any such additional period is necessary in order that the matters specified in *subsections (3) and (5)* may be carried out, subject to and in accordance with *subsections (6) and (7)*, as applicable.
- (3) Where a member of An Garda Síochána takes a person into custody under *subsection (1)*, he or she or any other member or members of An Garda Síochána shall request—
- (a) an authorised officer, or
- (b) the Executive to nominate an authorised officer,
- to make an application to a registered medical practitioner for a recommendation for involuntary admission for the person, the subject of the request, to be involuntarily admitted to a registered acute mental health centre (in this section referred to as a “Garda request for an application for a recommendation for involuntary admission”).
- (4) Where an authorised officer or the Executive, as the case may be, receives a Garda request for an application for a recommendation for involuntary admission, the authorised officer or the Executive, as the case may be, shall comply with that request as soon as practicable.
- (5) Where, following the making of reasonable efforts by the Executive, it has not been possible for an authorised officer to assess whether to make an application for a recommendation for involuntary admission in respect of the person the subject of the request, under *subsection (3)*, the member of An Garda Síochána who is responsible for the person who is taken into custody under *subsection (1)* shall request a relevant person to—
- (a) carry out each of the steps specified in *section 14(3)*, and
- (b) decide whether or not to make a direct application for a recommendation for involuntary admission in respect of the person concerned.
- (6) *Sections 13, 14 and 16* shall, with all necessary modifications, apply to a Garda request for an application for a recommendation for involuntary admission as they apply to a direct application for a recommendation for involuntary admission and an application for a recommendation for involuntary admission.
- (7) *Section 15* shall apply to a Garda request for an application for a recommendation for involuntary admission with the following modifications:
- (a) that the registered medical practitioner to whom an application is made shall, not later than 6 hours from the time that the person is taken into custody or, where the period of custody has been extended under *subsection (2)*, not later than 12 hours from the time that the person has been taken into custody—

- (i) carry out the examination of the person in the custody of An Garda Síochána, and
    - (ii) make a recommendation for involuntary admission under *section 15(3)* or refuse to make a recommendation for involuntary admission under *section 15(4)*;
  - (b) any other necessary modifications.
- (8) A person taken into custody under this section shall be released from custody immediately if—
- (a) following an assessment of the person concerned, an authorised officer refuses to make an application under *section 13(5)*,
  - (b) having carried out each of the steps specified in *section 14(3)*, a relevant person contacted under *subsection (5)* decides not to make a direct application for a recommendation for involuntary admission, or
  - (c) following an examination of the person concerned, a registered medical practitioner refuses to make a recommendation for involuntary admission under *section 15(4)*,
- unless the person the subject of the application concerned is charged or caused to be charged with an offence or his or her detention is authorised otherwise than under this section.
- (9) Where, in an application for a recommendation for involuntary admission under this section, a registered medical practitioner makes a recommendation for involuntary admission under *section 15(3)*, a member or members of An Garda Síochána shall bring the person to the registered acute mental health centre specified in the recommendation, or a member of An Garda Síochána shall contact the clinical director of the registered acute mental health centre or a consultant psychiatrist acting on that clinical director's behalf to arrange for the person to be brought to the registered acute mental health centre by its members of staff or a service provider as soon as practicable but not later than 6 hours after the time the recommendation is made in respect of the person.
- (10) The Minister may, after consultation with the Minister for Justice, Home Affairs and Migration and the Commission, make regulations prescribing the procedures to be followed when a member or members of An Garda Síochána perform functions under this section or under *section 18, 39, 73, 74, 83 or 138*.
- (11) Where a recommendation for involuntary admission is made by a registered medical practitioner under this section, a copy of the recommendation shall be provided by the registered medical practitioner to the member of An Garda Síochána who is responsible for the person who is taken into custody under *subsection (1)*, or another member on his or her direction, for inclusion in the custody record (within the meaning of Regulation 6 of the Criminal Justice Act 1984 (Treatment of Persons in Custody in Garda Síochána Stations) Regulations 1987 (S.I. No. 119 of 1987)) in respect of the person the subject of the recommendation for involuntary admission.

**Bringing of persons to registered acute mental health centre**

- 18.** (1) Subject to *subsection (2)*, where a recommendation for involuntary admission is made in relation to a person, the requester or direct applicant, as the case may be, shall arrange for the person the subject of the recommendation to be brought to the registered acute mental health centre specified in the recommendation as soon as practicable after the time the recommendation is made in respect of the person.
- (2) Where the requester, or direct applicant, as the case may be, is unable to arrange for the person, the subject of the recommendation for involuntary admission, to be brought to the registered acute mental health centre in accordance with *subsection (1)*, the requester or direct applicant, as the case may be, or the registered medical practitioner who made the recommendation shall request—
- (a) the clinical director of the registered acute mental health centre specified in the recommendation, or
  - (b) a consultant psychiatrist acting on that clinical director's behalf,
- to arrange for the person concerned to be brought to the registered acute mental health centre.
- (3) A person referred to in *subsection (2)(a)* or *(b)* shall arrange for the person, the subject of the recommendation for involuntary admission, to be brought to the registered acute mental health centre by members of the staff of the centre or a service provider as soon as practicable.
- (4) A person referred to in *subsection (2)(a)* or *(b)* may request a member of An Garda Síochána to assist in bringing the person the subject of the recommendation for involuntary admission to the registered acute mental health centre where—
- (a) the person referred to in *subsection (2)(a)* or *(b)*, and
  - (b) the registered medical practitioner who made the recommendation for involuntary admission,
- are of the opinion that such assistance is necessary to protect the health of the person or other persons from the threat of immediate and serious harm.
- (5) Where a request is made to An Garda Síochána under *subsection (4)*, a member or members of An Garda Síochána—
- (a) shall comply with that request as soon as practicable, and
  - (b) may—
    - (i) enter if needs be by force any dwelling or other premises or any place if the member has reasonable cause to believe that the person concerned is to be found there, and
    - (ii) take all reasonable measures necessary to bring the person the subject of the recommendation to the registered acute mental health centre including the detention or restraint of the person concerned.

- (6) A member of An Garda Síochána who under *subsection (5)(b)(ii)* detains or restrains a person the subject of a recommendation shall cease the detention or restraint immediately upon the detention or restraint no longer being necessary, in the opinion of the member of An Garda Síochána applying the restraint, in order to protect the health of the person or other persons from the threat of immediate and serious harm.

### **Bringing and bringing back of persons to registered acute mental health centre by a service provider**

- 19.** (1) The registered proprietor of a registered acute mental health centre may enter into an arrangement with a person (in this Part and *Part 4* referred to as a “service provider”) for the purposes of arranging for members of the staff of that service provider to provide services relating to any or all of the following matters, namely:
- (a) the bringing of persons, other than children, to the registered acute mental health centre pursuant to *section 18* or *20*;
  - (b) the bringing of children to the registered acute mental health centre pursuant to *sections 74* or *78*;
  - (c) the bringing back of persons, other than children, to the registered acute mental health centre pursuant to *section 20* or *39*;
  - (d) the bringing back of children to the registered acute mental health centre pursuant to *section 83*.
- (2) Where an arrangement referred to in *subsection (1)* has been entered into—
- (a) the clinical director of the registered acute mental health centre concerned may authorise such and so many members of the staff of that service provider to provide the services the subject of that arrangement, and
  - (b) any such authorisation shall be in writing and shall be valid for a period not exceeding 12 months as is specified in the authorisation.
- (3) The Commission shall prepare and issue a code of practice for the purpose of requirements for the bringing and bringing back of persons to registered acute mental health centres under this section, *sections 18, 20, 39, 74, 78* and *83*.

### **Emergency treatment before admission**

- 20.** (1) Where, following the making of a recommendation for involuntary admission in respect of a person but before an involuntary admission order has been made under *section 21(2)(a)* in respect of the person—
- (a) the registered medical practitioner who made the recommendation,
  - (b) the clinical director of the registered acute mental health centre specified in the recommendation, or
  - (c) a consultant psychiatrist on the staff of the registered acute mental health centre specified in the recommendation,

reasonably believes that the person the subject of the recommendation for involuntary admission requires emergency treatment, he or she may arrange for the person the subject of the recommendation to be brought to a hospital for such emergency treatment as soon as practicable.

- (2) Where, for whatever reason, a person the subject of a recommendation for involuntary admission is not admitted to hospital, the person who arranged for the person the subject of the recommendation to be brought to the hospital under *subsection (1)* shall arrange for that person to be brought or brought back, as the case may be, to the registered acute mental health centre as soon as may be.
- (3) If, upon the proposed discharging from hospital of a person the subject of a recommendation for involuntary admission—
  - (a) the recommendation for involuntary admission remains valid under *section 15(9)*, the clinical director of the registered acute mental health centre specified in the recommendation shall arrange for the person to be brought or brought back to the registered acute mental health centre by members of the staff of that centre or a service provider for an examination and assessment under *section 21* as soon as practicable, or
  - (b) the recommendation for involuntary admission has expired under *section 15(9)*—
    - (i) the person shall be discharged unless his or her detention is authorised otherwise than under this Act, and
    - (ii) a new request for an application for a recommendation for involuntary admission or a new direct application for a recommendation for involuntary admission may be made, as the case may be.
- (4) A person who is brought (whether or not he or she is admitted) to a hospital for emergency treatment under this section is not the subject of an involuntary admission order and accordingly his or her care and treatment whilst at such a hospital shall not be subject to the provisions of this Act.
- (5) Nothing in this section shall operate to affect any enactment or rule of law relating to consent to medical treatment.
- (6) In this section, “emergency treatment” means, in relation to a person the subject of a recommendation for involuntary admission, any medical or dental treatment provided in a hospital other than a registered acute mental health centre which is urgent and immediately necessary to avoid significant harm, injury or death to the person.

### **Involuntary admission order**

21. (1) Where a clinical director receives a recommendation for involuntary admission under *section 15* in respect of a person, the clinical director shall as soon as may be arrange for a consultant psychiatrist on the staff of the registered acute mental health centre to carry out an examination of the person the subject of the recommendation.
- (2) Following an examination under *subsection (1)*, the consultant psychiatrist shall—

- (a) if satisfied that the person the subject of the recommendation has a mental disorder which fulfils the criteria for involuntary admission, make an order (in this Act referred to as an “involuntary admission order”) for the reception, detention and care and treatment of the person in the registered acute mental health centre concerned, or
  - (b) if not satisfied that the person the subject of the recommendation has a mental disorder which fulfils the criteria for involuntary admission, refuse to make such an involuntary admission order.
- (3) A consultant psychiatrist, a registered medical practitioner or a registered nurse who is a member of staff of the registered acute mental health centre shall be entitled to take charge of the person concerned and detain him or her for a period not exceeding 24 hours for the purpose of carrying out an examination under *subsection (1)* and for the purpose of making or refusing to make an involuntary admission order or not, as the case may be, in relation to the person concerned.
- (4) The following persons shall be disqualified from carrying out an examination under *subsection (1)* or making or refusing to make an involuntary admission order under *subsection (2)*:
- (a) a spouse or relative of the person, the subject of a recommendation for involuntary admission;
  - (b) the requester or direct applicant, as the case may be, concerned.
- (5) An involuntary admission order shall be made in the form and manner specified by the Commission.

### **Duration and renewal of involuntary admission orders**

- 22.** (1) An involuntary admission order shall—
- (a) authorise the reception, detention and care and treatment of the involuntarily admitted person concerned, and
  - (b) subject to *subsections (2) and (3)* and *section 31* remain in force for 21 days after the date of its making, and then expire.
- (2) A responsible consultant psychiatrist may extend by order (in this Act referred to as a “renewal order”) the period referred to in *subsection (1)* for a further period not exceeding 3 months commencing on the expiration of the involuntary admission order made in respect of the involuntarily admitted person.
- (3) The further period referred to in *subsection (2)* may be extended by order made by a consultant psychiatrist for periods each of which does not exceed 3 months (each of which orders is also referred to in this Act as “a renewal order”).
- (4) Where a responsible consultant psychiatrist proposes to extend an involuntary admission order under *subsection (2)* or *(3)*, the responsible consultant psychiatrist shall—

- (a) carry out an examination not more than 48 hours before the making of the proposed renewal order of the involuntarily admitted person, and
  - (b) consult with a mental healthcare professional (other than a consultant psychiatrist) on the staff of the registered acute mental health centre who is or will be involved in the care and treatment of the involuntarily admitted person regarding the proposed renewal order.
- (5) Following an examination under *subsection (4)(a)*, the consultant psychiatrist shall—
- (a) if satisfied that the involuntarily admitted person continues to have a mental disorder which fulfils the criteria for involuntary admission, make a renewal order, or
  - (b) if not satisfied that the person has a mental disorder which fulfils the criteria for involuntary admission, refuse to make a renewal order.
- (6) A renewal order shall be made in the form and manner specified by the Commission.

#### **Copy of order to be sent to Commission**

23. The responsible consultant psychiatrist shall, as soon as is practicable but not later than 24 hours after the making of an involuntary admission order and any renewal order in respect of an involuntarily admitted person, send, or cause to be sent, a copy of the order concerned to the Commission.

#### **Provision of information to persons involuntarily admitted to registered acute mental health centre**

24. (1) The responsible consultant psychiatrist shall, as soon as is practicable but not later than 24 hours after the making of an involuntary admission order or any subsequent renewal order in respect of an involuntarily admitted person, give or cause to be given to the involuntarily admitted person concerned a copy of the involuntary admission order or renewal order, as the case may be.
- (2) The responsible consultant psychiatrist shall, as soon as practicable after making the involuntary admission order and any subsequent renewal order, give or cause to be given to the person who is the subject of the involuntary admission order or renewal order, as the case may be, a notice in writing of the making of the order concerned.
- (3) A notice under *subsection (2)* shall include a statement in writing and in a form and language that may reasonably be understood by the involuntarily admitted person concerned, to the effect that he or she—
- (a) is entitled to legal representation,
  - (b) will be given a general description of the proposed care and treatment to be administered to him or her during the period of involuntary admission,
  - (c) is entitled to receive information on any aspect of his or her proposed care and treatment at any time during the period of involuntary admission,

- (d) will be provided with an explanatory note on the guiding principles in relation to all decisions regarding his or her care and treatment,
  - (e) subject to the provisions of *Chapter 3*, is entitled to consent to or refuse treatment during the period of involuntary admission, where he or she has capacity to make such decisions,
  - (f) is informed of the complaints procedure for the registered acute mental health centre and of his or her entitlement to bring a complaint under that procedure,
  - (g) is informed of any relevant advocacy services,
  - (h) is entitled to communicate with the Chief Inspector,
  - (i) will have his or her involuntary admission reviewed by a review board in accordance with *section 31*,
  - (j) is entitled to appeal to the Circuit Court against a decision of a review board under *section 32*,
  - (k) is entitled to make an application under *section 33* to be transferred to another registered acute mental health centre,
  - (l) may be admitted to the registered acute mental health centre concerned as a voluntarily admitted person if he or she indicates a wish to be so admitted,
  - (m) is entitled to discuss discharge planning with a member of his or her multidisciplinary team, and
  - (n) is entitled to have a nominated person accompany him or her to meetings and to consult with him or her on decisions regarding the proposed care and treatment to be administered during the period of involuntary admission.
- (4) A nominated person under *subsection (3)(n)* shall be entitled to—
- (a) receive a copy of the notice given under *subsection (2)*,
  - (b) receive any information subsequently provided under *paragraph (b), (c) or (d) of subsection (3)*, and
  - (c) accompany the involuntarily admitted person to meetings and consult with him or her on decisions regarding the proposed care and treatment to be administered during the period of involuntary admission.
- (5) A notice given under *subsection (2)* and any information subsequently provided under *paragraph (b), (c) or (d) of subsection (3)* shall be in a form and language that the person in receipt of the information can understand.
- (6) Where the involuntarily admitted person has an enduring power of attorney (within the meaning of the Act of 2015) or a relevant, valid decision-making representative is for the time being in place, any information provided to the person under this section shall also be given to any person empowered by law to give consent, make a decision or exercise a legal power on behalf of the person.

**Psychosocial assessment of involuntarily admitted person**

25. (1) Where an involuntary admission order has been made in relation to an involuntarily admitted person, a mental healthcare professional (other than a consultant psychiatrist) on the staff of the registered acute mental health centre who is involved in the care and treatment of the person concerned shall carry out a psychosocial assessment of the person concerned no later than 2 working days after the date of the making of the order.
- (2) The conclusions of a psychosocial assessment of an involuntarily admitted person carried out under *subsection (1)* shall be recorded in that person's medical records.
- (3) A psychosocial assessment shall not be carried out by a relative or spouse of the person concerned.

## CHAPTER 2

*Review of involuntary admission***Mental Health Review Board**

26. (1) The Commission shall establish 3 panels of suitable persons (each of which panel in this Act shall be referred to as a “review panel”) from which the Commission shall appoint persons from time to time to sit as a board (each of which board shall be known as a Mental Health Review Board and in this Act is referred to as “a review board”) to hear and determine such matter or matters as may be referred to it by the Commission under *section 30*.
- (2) The 3 review panels shall be as follows:
- (a) a review panel comprising consultant psychiatrists (in this section referred to as a “consultant psychiatrist review panel”);
- (b) a review panel comprising practising barristers or practising solicitors each of whom has not less than a cumulative total of 7 years' experience as a practising barrister or practising solicitor (in this section referred to as a “legal practitioners review panel”);
- (c) a review panel (in this section referred to as a “community review panel”) comprising persons other than—
- (i) a person referred to in *paragraph (a)* or *(b)*,
- (ii) a registered medical practitioner, or
- (iii) a person who was previously a practising solicitor or a practising barrister but is not currently practising (whether in the State or otherwise).
- (3) A review board shall consist of 3 members comprising—
- (a) one person who is a member of the consultant psychiatrist review panel,
- (b) one person who is a member of the legal practitioners review panel and who shall also be the chair of the review board, and

- (c) one person who is a member of a community review panel.
- (4) At a sitting or hearing of a review board, each member of the review board shall have a vote and every question shall be determined by a majority of the votes of the members.
- (5) A member of the Board shall be disqualified from being appointed to a review panel or a review board.
- (6) A person shall not be eligible for appointment to a review panel or a review board and shall cease to be a member of a review panel if he or she is—
- (a) nominated as a member of Seanad Éireann,
  - (b) elected as a member of either House of the Oireachtas or of the European Parliament,
  - (c) regarded, pursuant to Part XIII of the Second Schedule to the Act of 1997 as having been elected to be a member of the European Parliament, or
  - (d) elected or co-opted as a member of a local authority,
- and he or she shall thereupon cease to be a member of any review board to which he or she is appointed.
- (7) A review panel member shall be appointed by the Commission for such period not exceeding 5 years and on such other terms and conditions as the Commission may determine when appointing him or her.
- (8) A review panel member may resign from his or her position by letter addressed to the Commission and the resignation shall take effect from a date specified therein or upon receipt of the letter by the Commission, whichever is the later.
- (9) Each review panel member shall be paid such remuneration, if any, and allowances for expenses incurred by him or her, if any, as the Commission may, with the consent of the Minister and the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, determine.
- (10) The Commission may at any time remove a person from a review panel if, in the Commission's opinion—
- (a) the person has become incapable through ill-health of performing his or her functions,
  - (b) the person has committed stated misbehaviour, or
  - (c) the person's removal is necessary for the effective and efficient performance of the review panel.
- (11) If a review panel member is removed under *subsection (10)*, the Commission shall provide the person with a statement of reasons for the removal.
- (12) A review panel member shall be disqualified for appointment to a review board and shall cease to be a review panel member or a member of a review board if he or she—
- (a) is adjudicated bankrupt and such bankruptcy has not been annulled or discharged,

- (b) makes a composition or arrangement with creditors,
  - (c) is sentenced by a court of competent jurisdiction to a term of imprisonment,
  - (d) is convicted on indictment of an offence,
  - (e) is convicted of an offence involving fraud or dishonesty,
  - (f) has a declaration under section 819 of the Act of 2014 made against him or her or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act,
  - (g) is subject, or is deemed to be subject, to a disqualification order, within the meaning of Chapter 4 of Part 14 of the Act of 2014, whether by virtue of that Chapter or any other provision of that Act, or
  - (h) is removed by a competent authority for any reason (other than failure to pay a fee) from any register established for the purpose of registering members of a profession in the State or another jurisdiction.
- (13) A review panel member whose period of membership expires or is due to expire shall be eligible for re-appointment as a member of a review panel but he or she shall be required to re-apply for membership of the panel.
- (14) A member of a review board shall be disqualified from taking part in a review under *section 31* if he or she is the spouse or relative of the person the subject of the review.
- (15) If a person ceases to be a member of a review board in any way other than on the expiry of his or her term or is disqualified from taking part in a review under *subsection (14)*, the Commission shall, as soon as is practicable, appoint another suitably qualified panel member to that review board.

#### **Panel of independent consultant psychiatrists**

27. (1) The Commission shall establish a panel of independent consultant psychiatrists (in this Part referred to as the “panel of independent consultant psychiatrists”) from which it shall appoint persons (each of whom in this Part is referred to as an “independent consultant psychiatrist”) for the purpose of *section 30*.
- (2) *Subsections (5) to (15) of section 26* shall with any necessary modifications apply to the panel of independent consultant psychiatrists and independent consultant psychiatrists as they apply in relation to a review panel and review panel members.

#### **Powers of review board**

28. (1) A review board shall hold hearings of the review board for the purposes of hearing and determining a review by it under this Act or an application for a transfer to the Central Mental Hospital under *section 35* and may for those purposes receive submissions and such evidence as it thinks fit.
- (2) Without prejudice to the generality of *subsection (1)*, a review board may receive submissions and evidence in relation to matters, including the attendance of witnesses and access to medical or other records, in advance of a hearing of a matter referred to

in *subsection (1)* and make decisions in relation to those matters in advance of the hearing concerned.

- (3) A review board may, for the purposes referred to in *subsection (1)*—
- (a) direct in writing any person whose evidence is required by the review board to attend before the review board on a date and at a time and place specified in the direction to give evidence and to produce any document or thing in his or her possession or power specified in the direction,
  - (b) direct any person in attendance before the review board to give evidence to the review board or produce any document or thing in his or her possession or power specified in the direction,
  - (c) direct in writing any person to send to the review board by a specified date any document or thing in his or her possession or power specified in the direction, and
  - (d) give any other directions for the purpose of the review board hearing concerned that appear to the review board to be reasonable and just in relation to the functions of the review board including to require that the evidence to be given by any person should be given on oath or affirmation and to administer an oath or affirmation for that purpose.
- (4) The reasonable expenses of witnesses directed to attend before a review board under *subsection (3)(a)* shall be paid by the Commission out of moneys at the disposal of the Commission.
- (5) A person who—
- (a) having been directed under *subsection (3)(a)* to attend before a review board, having had tendered to him or her any sum in respect of the expenses of his or her attendance which a witness summoned to attend before the High Court would be entitled to have tendered to him or her, without just cause or excuse fails to comply with the direction,
  - (b) being in attendance before a review board pursuant to a direction under *paragraph (a)* of *subsection (3)*, refuses to give evidence on oath or affirmation on being required by the review board to do so or refuses to answer any question to which the review board may legally require an answer or refuses to produce any document or thing in his or her possession or power legally required by the review board to be produced by the person,
  - (c) fails or refuses to send to the review board any document or thing legally required by the review board under *paragraph (c)* of *subsection (3)* to be sent to it by the person or without just cause or excuse fails to comply with a direction under *paragraph (b), (c)* or *(d)* of that subsection, or
  - (d) does any other thing in relation to the proceedings before the review board which, if done in relation to proceedings before a court by a witness in the court, would be contempt of that court,

shall be guilty of an offence and shall be liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 6 months, or to both.

- (6) The procedure of a review board in relation to a review heard by it under this Act shall, subject to the provisions of this Act, be such as shall be determined by the review board and the review board shall, without prejudice to the generality of the foregoing, make provision in relation to procedures for—
- (a) notifying—
    - (i) the person, the subject of the review,
    - (ii) the legal representative assigned to the person the subject of the review under *section 30(1)(c)* or, where the person, the subject of the review has engaged his or her own legal representative at his or her own expense, that person, and
    - (iii) the responsible consultant psychiatrist,  
of the time and date for the review hearing set under *section 30(1)(b)* by the Commission,
  - (b) the attendance of the responsible consultant psychiatrist at the hearing of the review board,
  - (c) where a legal representative is assigned under *section 30(1)(c)*, or engaged by the person the subject of the review, the attendance of the legal representative at the hearing of the review board,
  - (d) giving the person, the subject of the review, or his or her legal representative a copy of any report furnished to the review board under *section 30* and an indication in writing of the nature and source of any information relating to the matter which has come to the notice of the review board in the course of the review,
  - (e) providing such supports as are reasonably necessary to enable the person, the subject of the review, to be present at the hearing and to present his or her case to the review board in person or through a legal representative, including the making of directions to the registered acute mental health centre concerned and to any other person requested by the person, the subject of the review, to facilitate same,
  - (f) informing the person the subject of the review or his or her legal representative of his or her entitlement to not attend a hearing of the review board under this section if the person does not wish to so attend,
  - (g) enabling written statements to be admissible as evidence by the review board with the consent of the person the subject of the review or his or her legal representative,
  - (h) enabling any signature appearing on a document produced before the review board to be taken, in the absence of evidence to the contrary, to be that of the person whose signature it purports to be,

- (i) the examination by or on behalf of the review board and by or on behalf of the person the subject of the review (on oath or affirmation or otherwise as it may determine) of witnesses called before the hearing by the review board or by or on behalf of the person the subject of the review,
  - (j) the determination by a witness as to whether the evidence he or she gives to the review board should be given on oath or affirmation,
  - (k) the administration by the review board of the oath or affirmation to witnesses before the review board, and
  - (l) the recording of a sufficient record of a hearing of the review board.
- (7) A witness whose evidence has been, is being or is to be given before the review board in a hearing under this Act shall be entitled to the same privileges and immunities as a witness in a court.
- (8) A legal representative appearing before the review board in a hearing under this Act shall be entitled to the same privileges and immunities as a legal representative in a court.
- (9) The review board shall exclude during a hearing of the review board all persons except persons directly concerned in the matter before the review board and such other persons (if any) as the review board may in its discretion permit to remain.
- (10) The following shall be absolutely privileged:
- (a) documents of the review board and documents of its members connected with the review board or its functions, wherever published;
  - (b) reports of the review board, wherever published;
  - (c) statements made in any form at hearings of the review board by its members and such statements wherever published subsequently.
- (11) A person the subject of a review shall be entitled to attend any hearing concerning his or her involuntary admission but shall not be required to attend if he or she or his or her legal representative states that the person does not wish to so attend.
- (12) Subject to *subsection (13)*, the Commission shall publish on its website on a quarterly basis and in such form and manner as it considers appropriate, anonymised versions of every decision of a review board under *section 31*.
- (13) Where the Commission is of the view that, notwithstanding *subsection (12)*, due to the existence of exceptional circumstances, the publication of a case under *subsection (12)* would nonetheless identify the parties in relation to whom the decision relates, it may make a determination that the decision should not be published by the Commission.

### **Provision of information to legal representatives**

29. A legal representative assigned to a person under *section 30(1)(c)* or otherwise engaged by the person to represent him or her at a review or on an appeal to the Circuit Court under *section 32* shall, with the prior consent of the person concerned, be entitled to

access to the person's medical records.

### Referral to review board

30. (1) Following the receipt by the Commission of an involuntary admission order or a renewal order, the Commission shall, as soon as possible—
- (a) refer the matter to a review board for hearing,
  - (b) set the time and date for the hearing,
  - (c) assign a legal representative to represent the involuntarily admitted person concerned unless he or she has engaged or proposes to engage one at his or her own expense,
  - (d) request the clinical director of the registered acute mental health centre to arrange for a mental healthcare professional (other than a consultant psychiatrist) on the staff of the registered acute mental health centre who is or will be involved in the care and treatment of the person concerned to carry out a psychosocial assessment of the person concerned, and
  - (e) direct in writing an independent consultant psychiatrist from the panel of independent consultant psychiatrists to—
    - (i) examine the person concerned,
    - (ii) interview the responsible consultant psychiatrist and another mental healthcare professional (other than a consultant psychiatrist) who is involved in the care and treatment of the person, and
    - (iii) review the medical records relating to the person,in order to determine whether the person continues to fulfil the criteria for involuntary admission.
- (2) A mental healthcare professional who carries out a psychosocial assessment of a person under *subsection (1)(d)* shall prepare and submit his or her report to the Commission in the form specified by the Commission not less than 3 working days prior to the hearing by the review board.
- (3) An independent consultant psychiatrist who examines a person under *subsection (1)(e)* shall submit his or her report in the form specified by the Commission on—
- (a) the results of the examination under *subparagraph (i)* of that subsection,
  - (b) the interviews under *subparagraph (ii)* of that subsection, and
  - (c) the review under *subparagraph (iii)* of that subsection,
- to the Commission not less than 3 working days prior to the hearing by the review board.
- (4) Where the Commission gives a direction to an independent consultant psychiatrist under *subsection (1)(e)*, the clinical director of the registered acute mental health

centre concerned shall, upon presentation of the direction, admit the independent consultant psychiatrist to the registered acute mental health centre and facilitate the—

- (a) examination under *subsection (1)(e)(i)*,
  - (b) interviews under *subsection (1)(e)(ii)*, and
  - (c) review under *subsection (1)(e)(iii)*.
- (5) If the independent consultant psychiatrist to whom a direction has been given under *subsection (1)(e)* is unable to fulfil a direction under *subsection (1)*, he or she shall so notify the Commission in writing and the Commission shall give a direction under *subsection (1)* to another member of the panel of independent consultant psychiatrists.
- (6) The responsible consultant psychiatrist may, but is not obliged to, submit a report to the Commission as soon as may be and in any event no later than 3 working days prior to the review board hearing.
- (7) A person who obstructs or interferes or fails to cooperate with an independent consultant psychiatrist in the performance of his or her functions under this section shall be guilty of an offence and shall be liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 6 months, or to both.
- (8) The Commission shall provide the review board and the legal representative of the person concerned with the reports submitted to it under *subsections (2)* and *(3)* and any report submitted to it under *subsection (6)*, as soon as may be prior to the review board hearing.

#### **Review by review board of involuntary admission order or renewal order**

- 31.** (1) Following a referral by the Commission of an involuntary admission order or a renewal order to a review board under *section 30*, the review board shall review the involuntary admission of the person concerned, having regard to the documents provided to it under *section 30(8)*.
- (2) Where a review board has reviewed the involuntary admission of a person under *subsection (1)*, the review board shall either—
- (a) affirm the involuntary admission order or renewal order, as the case may be, if the review board is satisfied that the person has a mental disorder which fulfils the criteria for involuntary admission and either of the following applies—
    - (i) the provisions of *sections 8, 11 to 25 and 37*, where applicable, have been complied with, or
    - (ii) if there has been a failure to comply with any such provision, that the failure does not affect the substance of the order concerned and does not cause an injustice,
  - or
  - (b) revoke the involuntary admission order or renewal order the subject of the review, as the case may be, if the review board is not so satisfied.

- (3) Subject to *subsection (4)*, the review board shall carry out the steps under *subsections (1) or (2)*, as the case may be, as soon as may be, but in any event not later than 21 days, or such shorter period as may be prescribed, after the date of making of the order concerned.
- (4) The period referred to in *subsection (3)*—
  - (a) shall be extended by order by the review board for a period of up to 7 days upon the request of the involuntarily admitted person or his or her legal representative, and
  - (b) may be extended by order by the review board—
    - (i) of its own motion, for a period of up to 7 days, or
    - (ii) either of its own motion or at the request of the involuntarily admitted person or his or her legal representative, for a further period of up to 7 days from the date of the expiry of an order made under *paragraph (a) or (b)(i)* where the review board is satisfied, on the basis of the issue or issues raised and the facts presented, that a further extension is reasonable having regard to the guiding principles.
- (5) Where an involuntary admission order or a renewal order, as the case may be, is affirmed under *subsection (2)(a)*, the chair of the review board shall, as soon as may be after the decision is made on the day of the hearing, notify its decision and the reasons for it in the form specified by the Commission to each of the following persons:
  - (a) the involuntarily admitted person and, where applicable, his or her legal representative;
  - (b) the Commission;
  - (c) the responsible consultant psychiatrist;
  - (d) any other person to whom, in the opinion of the review board, such notice should be given.
- (6) Where an involuntary admission order or a renewal order, as the case may be, is revoked under *subsection (2)(b)*—
  - (a) the chair of the review board shall, as soon as may be after the decision has been made on the day of the hearing, notify in writing its decision and the reasons for it in the form specified by the Commission to the parties specified in *paragraphs (a) to (d) of subsection (5)*, and
  - (b) immediately upon notification under *paragraph (a)*, the clinical director of the registered acute mental health centre shall discharge the involuntarily admitted person in accordance with *section 40* unless his or her detention is authorised otherwise than under this Act.
- (7) In addition to providing written notification of a decision to an involuntarily admitted person under *subsection (5)(a) or (6)(a)*, the review board shall also notify an

involuntarily admitted person of its decision in person at the hearing unless the person requests otherwise.

- (8) The decision of a review board to affirm a decision under this section shall set out in writing the reasons for each matter which it was required to consider when considering whether or not to affirm that decision.
- (9) In this section, references to an involuntary admission order shall include references to the recommendation for involuntary admission and the application for a recommendation for involuntary admission to which the admission order concerned relates.

### Appeal to Circuit Court

- 32.** (1) An involuntarily admitted person may appeal to the Circuit Court against a decision of a review board to affirm an involuntary admission order or a renewal order, as the case may be, made in respect of him or her on the grounds that—
- (a) he or she does not meet the criteria for involuntary admission, or
  - (b) the provisions of *sections 8, 11 to 25 and 37*, where applicable, were not complied with, and the failure affected the substance of the order and caused an injustice and the failure to comply with the provisions concerned was such as to render the detention invalid.
- (2) An appeal under this section shall be brought by the involuntarily admitted person by notice within 28 days of the date of receipt by him or her or by his or her legal representative of the written notice under *section 31* of the decision concerned.
- (3) The jurisdiction conferred on the Circuit Court by this section may be exercised by the judge of the circuit in which the registered acute mental health centre concerned is situated or, at the option of the involuntarily admitted person, in which the person is ordinarily resident.
- (4) On appeal to it under *subsection (1)(a)*, the Circuit Court shall—
- (a) if it is shown by the registered acute mental health centre to the satisfaction of the Court that the person fulfils the criteria for involuntary admission, affirm the order, or
  - (b) if the registered acute mental health centre has not shown to the satisfaction of the Court that the person fulfils the criteria for involuntary admission, revoke the order.
- (5) On appeal to it under *subsection (1)(b)*, the Circuit Court shall—
- (a) if it is shown by the registered acute mental health centre to the satisfaction of the Court that the provisions the subject of the appeal were complied with or that any failure to comply did not affect the substance of the order and did not cause an injustice, affirm the order, or
  - (b) if the registered acute mental health centre has not shown to the satisfaction of the Court that the provisions the subject of the appeal were complied with or that

any failure to comply did not affect the substance of the order and did not cause an injustice, revoke the order.

- (6) An order under *subsection (4)* or *(5)* may contain such consequential or supplementary provisions as the Circuit Court considers appropriate.
- (7) Notice of an appeal under *subsection (1)* and a copy of the proceedings shall be served by the person bringing the appeal on—
  - (a) the review board,
  - (b) the registered proprietor of the registered acute mental health centre concerned,
  - (c) the responsible consultant psychiatrist, and
  - (d) any other person specified by the Circuit Court.
- (8) Before making an order under this section, the Circuit Court may have regard to any submission made to it in relation to any matter by or on behalf of a party to the proceedings concerned or any other person having an interest in the proceedings.
- (9) The Circuit Court shall exclude from the Court during the hearing of an appeal under this section all persons except officers of the Court, persons directly concerned in the hearing, *bona fide* representatives of the press and such other persons (if any) as the Court may in its discretion permit to remain.
- (10) No matter that is likely to lead members of the public to identify a person who is or has been the subject of proceedings under this section shall be published or broadcast.
- (11) Without prejudice to *subsection (9)*, the Circuit Court may, in any case where it is satisfied that it is appropriate to do so in the interests of the involuntarily admitted person the subject of the appeal, by order dispense with the prohibitions of that subsection in relation to him or her to such extent as may be specified in the order.
- (12) If any matter is published or broadcast in contravention of *subsection (10)*, each of the following persons, namely:
  - (a) in the case of publication in a newspaper or periodical, any proprietor, any editor and any publisher of the newspaper or periodical;
  - (b) in the case of any other publication, the person who publishes it;
  - (c) in the case of a broadcast, any person who transmits or provides the programme in which the broadcast is made and any person having functions in relation to the programme corresponding to those of an editor of a newspaper,shall be guilty of an offence and shall be liable on summary conviction to a class A fine or to imprisonment for a term not exceeding 6 months, or to both.
- (13) Nothing in this section shall affect the law as to contempt of court.
- (14) In any proceedings under this section a document purporting to be a report prepared pursuant to *section 30* concerning an involuntarily admitted person shall be evidence of the matters stated in the document without further proof and shall, unless the contrary is proved, be deemed to be such a report.

- (15) The Court shall notify the Commission of the appeal and the outcome of the proceedings.
- (16) No appeal shall lie against an order of the Circuit Court under this section other than an appeal on a point of law to the High Court.
- (17) In this section—
  - “broadcast” has the same meaning as it has in section 2 of the Broadcasting Act 2009;
  - “publish” means publish, other than by way of broadcast or in an indictment or other document prepared for use in particular legal proceedings, to the public or a portion of the public.

### **Transfer of person on application of person**

- 33.** (1) Subject to *subsection (2)*, where an involuntarily admitted person applies to the clinical director of a registered acute mental health centre for a transfer to another registered acute mental health centre, the clinical director of the first-mentioned registered acute mental health centre may arrange for the transfer of the person to the second-mentioned registered acute mental health centre, with the consent of the clinical director of that second-mentioned registered acute mental health centre.
- (2) Before making a decision on whether to arrange for a transfer of an involuntarily admitted person to another registered acute mental health centre under *subsection (1)*, the clinical director concerned shall consult with the person the subject of the application and the members of staff who are involved with the care and treatment of the involuntarily admitted person at the registered acute mental health centre.
  - (3) The clinical director shall, within 7 days of receiving a request from an involuntarily admitted person for a transfer under *subsection (1)*—
    - (a) make his or her decision on whether or not to arrange for the transfer,
    - (b) provide a copy in writing of that decision to the involuntarily admitted person who made the application which shall include, where the clinical director declines a request, the reasons for declining the request, and
    - (c) provide a copy of the request and his or her decision to the Commission.
  - (4) Where an involuntarily admitted person is transferred to a registered acute mental health centre under *subsection (1)*, the clinical director of the registered acute mental health centre from which the person has been transferred shall give notice in writing of the transfer to the Commission within 24 hours of the transfer having taken place.
  - (5) An involuntarily admitted person may be detained in a registered acute mental health centre to which he or she has been transferred under *subsection (1)* until the date of the expiration of the involuntary admission order or any subsequent renewal order, as the case may be, pursuant to which he or she was detained in the registered acute mental health centre from which he or she was transferred.
  - (6) The detention of an involuntarily admitted person in another registered acute mental health centre under this section shall be deemed for the purposes of this Act to be

detention in the registered acute mental health centre to which he or she has been transferred.

**Transfer of person by clinical director in certain circumstances**

34. (1) Where, in relation to an involuntarily admitted person, the clinical director of a registered acute mental health centre is of the opinion that—

- (a) it would be for the benefit of the involuntarily admitted person in that registered acute mental health centre to be transferred to another registered acute mental health centre (other than the Central Mental Hospital), or
- (b) it is necessary for the purpose of obtaining special treatment, the details of which shall be specified in writing, for the person to be transferred to another registered acute mental health centre (other than the Central Mental Hospital),

the clinical director of the first-mentioned registered acute mental health centre may arrange for the transfer of the involuntarily admitted person to the other registered acute mental health centre, with the consent of the clinical director of that second-mentioned registered acute mental health centre.

- (2) Where an involuntarily admitted person is transferred to a registered acute mental health centre under *subsection (1)*, the clinical director of the registered acute mental health centre from which the involuntarily admitted person has been transferred shall give notice in writing of the transfer to the Commission within 24 hours of the transfer having taken place.
- (3) An involuntarily admitted person may be detained in a registered acute mental health centre to which he or she has been transferred under *subsection (1)(a)* until the date of the expiration of the involuntary admission order pursuant to which he or she was detained in the registered acute mental health centre from which he or she was transferred.
- (4) A person who is transferred under *subsection (1)(b)* to another registered acute mental health centre may be kept there so long as is necessary for the purpose of the specified special treatment and shall then be taken back to the registered acute mental health centre from which he or she was transferred, which may not, in any event, be later than the date of the expiration of the involuntary admission order pursuant to which he or she was detained in the registered acute mental health centre from which he or she was transferred.
- (5) The detention of an involuntarily admitted person in another registered acute mental health centre under this section shall be deemed for the purposes of this Act to be detention in the registered acute mental health centre from which he or she has been transferred.
- (6) In this section, references to an involuntary admission order include references to a renewal order.

**Transfer of involuntarily admitted person to Central Mental Hospital**

35. (1) Where the clinical director of a registered acute mental health centre is of the opinion that—

- (a) it would be for the benefit of an involuntarily admitted person to be transferred to the Central Mental Hospital, or
- (b) it is necessary for the purpose of obtaining special treatment, the details of which shall be specified in writing, for the involuntarily admitted person to be transferred to the Central Mental Hospital,

he or she shall send a proposal for the transfer of the involuntarily admitted person concerned to that hospital (in this section referred to as a “proposal”) to the Commission.

(2) Where the clinical director sends a proposal to the Commission under *subsection (1)*, he or she shall also notify the clinical director of the Central Mental Hospital that a proposal has been sent to the Commission in respect of the person, the subject of the proposal concerned.

(3) A proposal under *subsection (1)* shall be made in the form and manner specified by the Commission and shall specify the reasons for the proposed transfer of the person concerned.

(4) Where the Commission receives a proposal, the Commission shall—

- (a) refer the proposal to a review board,
- (b) set the time and date for the review to be heard in accordance with *subsection (9)*, and
- (c) direct in writing (referred to in this section as a “direction”) an independent consultant psychiatrist from the panel of independent consultant psychiatrists to—
  - (i) examine the person concerned, the subject of the proposal,
  - (ii) interview the responsible consultant psychiatrist and another mental healthcare professional (other than a consultant psychiatrist) who is involved in the care and treatment of the person, and
  - (iii) review the medical records relating to the person,

in order to determine whether the transfer of the person, the subject of the proposal, to the Central Mental Hospital should proceed.

(5) In so far as possible, the independent consultant psychiatrist directed under *subsection (4)* to examine a person, the subject of a proposal, shall be a forensic consultant psychiatrist.

(6) An independent consultant psychiatrist directed under *subsection (4)(c)* shall submit a report in the form specified by the Commission on the results of the examination under *subparagraph (i)*, the interviews under *subparagraph (ii)* and the review under *subparagraph (iii)* of that subsection to the Commission, and to the review board to

which the matter has been referred not less than 3 working days prior to the date of the review board hearing.

- (7) The Commission shall provide a copy of the report referred to in *subsection (6)* to the legal representative of the person concerned as soon as may be prior to the review board hearing.
- (8) If the independent consultant psychiatrist to whom a direction has been given under *subsection (4)(c)* is unable to fulfil the direction, he or she shall so notify the Commission in writing and the Commission shall give a direction to another member of the panel of independent consultant psychiatrists.
- (9) A review board which has received a proposal under *subsection (4)* and a report under *subsection (6)*, shall review the proposal and report as soon as may be but not later than 14 days after receipt of the proposal and shall—
  - (a) if it is satisfied that the proposed transfer would be for the benefit of the involuntarily admitted person or that it is necessary for the purpose of obtaining special treatment for the admitted person concerned, authorise the transfer of the admitted person concerned, or
  - (b) if it is not so satisfied, refuse to authorise the transfer.
- (10) The provisions of *sections 28, 29, 30 and 32*, where applicable, shall apply to the referral of a proposal to a review board under this section as they apply to the referral of an involuntary admission order to a review board with any necessary modifications.
- (11) Effect shall not be given to a decision to which *subsection (9)* applies before—
  - (a) the expiration of the time for the bringing of an appeal to the Circuit Court, or
  - (b) if such an appeal is brought, the determination or withdrawal thereof.
- (12) Where an involuntarily admitted person is transferred to the Central Mental Hospital under this section, the clinical director of the registered acute mental health centre from which he or she has been transferred shall give notice in writing of the transfer to the Commission within 24 hours of the transfer having taken place.
- (13) The detention of an involuntarily admitted person in the Central Mental Hospital under this section shall be deemed for the purposes of this Act to be detention in the registered acute mental health centre from which he or she has been transferred.
- (14) A person's detention in the Central Mental Hospital may continue until—
  - (a) the expiry of the order detaining the person, or
  - (b) the expiry of any subsequent renewal order where, in advance of the making of the renewal order concerned—
    - (i) the clinical director of the registered acute mental health centre from which the person was transferred approves a further period of detention, and

- (ii) the clinical director of the Central Mental Hospital has consented in writing to the further detention.
- (15) An approval under *subparagraph (i)* of *subsection (14)(b)* and a consent under *subparagraph (ii)* of that subsection shall be valid until the expiry of the order detaining the person and thereafter for each period of a renewal order, if, in respect of each period, the necessary approval and consent is obtained under *subsection (14)* in respect of the involuntarily admitted person concerned.
- (16) A report shall be provided by the clinical director of the Central Mental Hospital to the Commission every 3 months regarding the status of the persons detained in the Central Mental Hospital under this Act and the status of all of the pending applications for transfer under this section to the Central Mental Hospital.
- (17) The Commission shall prepare and publish a code of practice in relation to this section.
- (18) In this section, “forensic consultant psychiatrist” means a consultant psychiatrist who has not less than 3 years postgraduate training certified by the College of Psychiatrists of Ireland in forensic psychiatry.

#### **Transfer to hospital or other place in certain circumstances**

- 36.** (1) A clinical director of a registered acute mental health centre may arrange for the transfer of an involuntarily admitted person detained in that centre to a hospital or other place, other than a registered acute mental health centre or a designated centre, for the purposes of receiving treatment and for his or her detention there for that purpose.
- (2) A person who is transferred under this section to a hospital or other place under *subsection (1)* may be kept there so long as is necessary for the purpose of his or her treatment, but no longer than the expiry of the involuntary admission order or any subsequent renewal order pursuant to which he or she is detained, and shall then be taken back to the registered acute mental health centre from which he or she was transferred.
- (3) The detention of a person in a hospital or other place under this section shall be deemed for the purposes of this Act to be detention in the registered acute mental health centre from which he or she was transferred.

#### **Power to detain voluntarily admitted person who fulfils criteria for involuntary admission**

- 37.** (1) Where in respect of a voluntarily admitted person, a responsible consultant psychiatrist or another mental healthcare professional who is responsible for or involved in the care and treatment of the voluntarily admitted person is of the opinion that the voluntarily admitted person fulfils the criteria for involuntary admission, he or she, for the purpose of carrying out the matters in *subsections (2) to (7)*, may—
- (a) take charge of the person the subject of his or her opinion, and
- (b) detain him or her for a period not exceeding 24 hours.

- (2) The responsible consultant psychiatrist shall carry out an examination of the person concerned under *section 21(1)*.
- (3) If, following an examination of the voluntarily admitted person, the responsible consultant psychiatrist is of the opinion that the person does not fulfil the criteria for involuntary admission—
  - (a) the process for involuntary admission initiated under *subsection (1)* shall not proceed further, and
  - (b) the voluntarily admitted person shall be immediately notified of the decision and informed of his or her right to leave the centre or stay as a voluntarily admitted person and a record of the decision shall be recorded in that person’s medical records.
- (4) If, following an examination of the voluntarily admitted person, the responsible consultant psychiatrist is satisfied that the person the subject of the opinion has a mental disorder which fulfils the criteria for involuntary admission, the consultant psychiatrist shall arrange for another consultant psychiatrist who is not on the staff of the registered acute mental health centre and who will not be involved in the care and treatment of the person concerned (in this section referred to as the “second consultant psychiatrist”) to carry out a second examination of the person.
- (5) If, following an examination of the voluntarily admitted person and consultation with the responsible consultant psychiatrist, the second consultant psychiatrist—
  - (a) is satisfied that the voluntarily admitted person fulfils the criteria for involuntary admission, he or she shall as soon as may be and in any event not later than 24 hours after the examination concerned, issue a certificate in writing in a form specified by the Commission stating that opinion and the reason for his or her opinion, or
  - (b) is not satisfied that the person fulfils the criteria for involuntary admission, he or she shall, as soon as may be and in any event not later than 24 hours after the examination concerned, issue a certificate in writing in a form specified by the Commission stating that he or she is of the opinion that the voluntarily admitted person does not fulfil the criteria for involuntary admission.
- (6) Where a certificate is issued under *subsection (5)(a)*, the responsible consultant psychiatrist shall make an order (in this Act referred to as an “involuntary admission order”) in a form specified by the Commission for the reception, detention and care and treatment of the voluntarily admitted person in the registered acute mental health centre and the opinion of the second consultant psychiatrist shall be recorded in the involuntary admission order.
- (7) Where a certificate is issued under *subsection (5)(b)*—
  - (a) the process for involuntary admission initiated under *subsection (1)* shall not proceed further, and
  - (b) the responsible consultant psychiatrist shall inform the voluntarily admitted person that he or she is not being involuntarily admitted and that he or she is free

to leave the registered acute mental health centre immediately or stay as a voluntarily admitted person and a record of the decision shall be recorded in his or her medical records.

- (8) All steps taken under this section shall be completed within 24 hours of the time the person is detained under *subsection (1)*.
- (9) *Sections 21(4), 22 to 36, 38, 39 and 40* shall apply to a person involuntarily admitted under this section as they apply to a person involuntarily admitted under *section 21* with any necessary modifications.
- (10) The Commission shall be notified in a form specified by the Commission of the decision to detain or the decision not to detain in accordance with this section.

#### **Absence with leave**

- 38.** (1) A responsible consultant psychiatrist may, in respect of an involuntarily admitted person and subject to *subsection (2)*, grant permission in writing (in this Act referred to as a “permitted absence”) to the person to be absent from the registered acute mental health centre concerned subject to such conditions as the responsible consultant psychiatrist considers appropriate and so specifies in writing.
- (2) A permitted absence given to a person shall not exceed 14 continuous days and shall not exceed the unexpired period of an involuntary admission order or renewal order, as the case may be, in respect of the involuntarily admitted person.
  - (3) Where a person is absent from a registered acute mental health centre pursuant to *subsection (1)*, the responsible consultant psychiatrist may, if he or she is of the opinion that it is clinically appropriate to do so, withdraw the permission granted under *subsection (1)* and direct the person in writing to return to the registered acute mental health centre.
  - (4) The responsible consultant psychiatrist may extend in writing the period of permitted absence by such further periods not exceeding 14 continuous days, and for so long a period as does not exceed the unexpired period of the involuntary admission order or renewal order, as the case may be, in respect of the person.
  - (5) Any notice of an extension of absence given under *subsection (4)* shall be notified to the Commission within 24 hours of the making of the notice in a form specified by the Commission.
  - (6) The Commission shall prepare and publish a code of practice in relation to this section.

#### **Absence without leave**

- 39.** (1) Where an involuntarily admitted person in respect of whom an involuntary admission order or a renewal order is in force—
- (a) leaves a registered acute mental health centre otherwise than by way of a permitted absence,

- (b) fails to return to the registered acute mental health centre in accordance with any direction given to him or her under *section 38* or on the expiration of the permitted absence, or
- (c) fails, in the opinion of the responsible consultant psychiatrist, to comply with any condition specified in the permitted absence,

the clinical director of the registered acute mental health centre concerned shall arrange for a member or members of the staff of the centre or other person or persons, duly authorised in that behalf under *section 19*, to bring the person back to the registered acute mental health centre.

- (2) Where a member of staff or another person duly authorised in that behalf under *section 19*, as the case may be, is unable to bring the admitted person back to the registered acute mental health centre, the clinical director or a consultant psychiatrist acting on his or her behalf shall, if necessary, request An Garda Síochána to assist in bringing the person back to that registered acute mental health centre and where An Garda Síochána receives a request in that regard, An Garda Síochána shall comply with such a request as soon as practicable.
- (3) A member of An Garda Síochána may for the purposes of this section—
  - (a) enter if needs be by force any dwelling or other premises or any place if he or she has reasonable cause to believe that the person concerned is to be found there, and
  - (b) take all reasonable measures to bring the involuntarily admitted person back to the registered acute mental health centre including, where necessary, the detention or restraint of the person concerned.
- (4) The clinical director of a registered acute mental health centre shall notify the Commission of all absences referred to in *subsection (1)* in a form specified by the Commission within 24 hours of the absence occurring.

### **Discharge of admitted persons**

- 40.** (1) Where the responsible consultant psychiatrist becomes of the opinion that a person no longer fulfils the criteria for involuntary admission, he or she shall by order, in a form specified by the Commission, revoke the relevant involuntary admission order or renewal order, as the case may be, in respect of the person and inform the person in writing of that opinion and the effect of the revocation of the order.
- (2) Notwithstanding the revocation of an order in respect of a person under *subsection (1)*, the person may, if he or she wishes, with the agreement of his or her responsible consultant psychiatrist, remain in the registered acute mental health centre as a voluntarily admitted person.
  - (3) When an order is revoked under *subsection (1)*, the responsible consultant psychiatrist shall immediately meet with the person concerned to provide him or her with all relevant information from the person's individual care plan, which shall include information regarding—

- (a) the fact that the person may, with the agreement of his or her responsible consultant psychiatrist, remain in the registered acute mental health centre as a voluntarily admitted person,
  - (b) what will occur if the person decides to stay in the registered acute mental health centre as a voluntarily admitted person, and
  - (c) what will occur if the person decides to leave the registered acute mental health centre.
- (4) The person concerned may, at his or her request, be accompanied by a nominated person at any meeting held under *subsection (3)*.
- (5) The decision to remain as a voluntarily admitted person in the registered acute mental health centre, with the agreement of the person's responsible consultant psychiatrist, or to leave the registered acute mental health centre shall be a decision of the person.
- (6) The decision of the person, the subject of the revocation order, shall be recorded in that person's medical records.
- (7) Where a consultant psychiatrist revokes an order under *subsection (1)*, the consultant psychiatrist shall give to the person concerned and his or her legal representative (if any) a notice in a form specified by the Commission to the effect that he or she—
  - (a) is no longer involuntarily admitted,
  - (b) is free to leave the registered acute mental health centre, or with the agreement of his or her responsible consultant psychiatrist, stay as a voluntarily admitted person, and
  - (c) subject to *subsections (9) to (12) and (14)*, is entitled to have his or her involuntary admission reviewed by a review board in accordance with the provisions of *section 31* or, where such review has commenced, completed in accordance with that section if he or she so requests by notice in writing addressed to the Commission within 14 days of the date of his or her discharge.
- (8) Where a responsible consultant psychiatrist revokes an order under *subsection (1)*, he or she shall cause copies of the order made under that subsection and the notice referred to in *subsection (7)* to be given to the Commission and, subject to the consent of the previously admitted person, any other party.
- (9) Subject to *subsection (10)*, where an order is revoked under *subsection (1)* in respect of a person and the order has been referred to a review board under *section 30* but the time and date has not been scheduled for the hearing of the review of the detention by the review board or the hearing has not commenced, the hearing by the review board shall not commence unless the person the subject of the order or his or her legal representative requests by notice in writing addressed to the Commission, as soon as practicable, but no later than 14 days after the date of the revocation of the order, that the review be completed.
- (10) Where an order is revoked under *subsection (1)* and the revocation takes place within 48 hours before the time and date scheduled for the hearing of the review of the detention by the review board, the review shall continue at the time and date

scheduled if the person or his or her legal representative submits a request in writing to the Commission to confirm that he or she wishes the hearing to proceed on that date.

- (11) Where no request for the hearing to proceed is received under *subsection (10)*, the review shall be discontinued.
- (12) Where a person or his or her legal representative requests under *subsection (9)* that a review be completed, that review shall take place within 21 days of the date the request is made.
- (13) Where a person who is the subject of an order revoking his or her involuntary admission requests that a review be completed or held, as the case may be, under *subsection (9)*, the provisions of *sections 30, 31 and 32* shall apply in relation to the review with any necessary modifications.
- (14) Notwithstanding *section 31(2)*, in the case of an involuntary admission order or renewal order, where a person requests that a review be completed or held, as the case may be, under *subsection (9) or (10)*, the review board shall review the detention of the person concerned and shall determine whether—
  - (a) (i) the provisions of *sections 8, 11 to 25 and 37*, where applicable, were complied with, or
  - (ii) if there was a failure to comply with any such provision, if the failure affected the substance of the order and caused an injustice,and
- (b) the consultant psychiatrist who made the involuntary admission order or renewal order did so on the date the order was made on the basis that the person fulfilled the criteria for involuntary admission at the time of the making of the involuntary admission order or renewal order, as the case may be.
- (15) Where a person is going to be discharged or has been discharged under *subsection (1)*, a member of the person's multidisciplinary team shall engage with the person concerned and, in so far as is practicable and where appropriate, liaise with any nominated person for the purposes of planning the discharge of the person who is being discharged.

**Provision of information for persons admitted as voluntarily admitted person to registered acute mental health centre**

- 41.** (1) The responsible consultant psychiatrist of a voluntarily admitted person shall, as soon as is practicable after the person is admitted to the registered acute mental health centre, give or cause to be given to the person a notice in writing of the admission, which notice shall include a statement in writing to the effect that the person—
- (a) will be given a general description of the proposed care and treatment to be administered to him or her during the period of voluntary admission,
  - (b) is entitled to receive information on any aspect of his or her proposed care and treatment at any time during the period of admission,

- (c) will be provided with an explanatory note on the guiding principles in relation to all decisions regarding his or her care and treatment,
  - (d) is entitled to consent to or refuse treatment during the period of voluntary admission,
  - (e) is informed of the complaints procedure for the registered acute mental health centre and of his or her entitlement to bring a complaint under that procedure,
  - (f) is informed of any relevant advocacy services,
  - (g) is entitled to communicate with the Chief Inspector,
  - (h) is entitled to discuss discharge planning with a member of his or her multidisciplinary team,
  - (i) is entitled to have a nominated person under *section 192* accompany him or her to meetings and to consult with on decisions regarding the proposed care and treatment to be administered during the period of admission, and
  - (j) subject to *section 37*, is informed that he or she may leave the registered acute mental health centre at any time.
- (2) A nominated person shall be entitled to—
- (a) receive a copy of the notice provided under *subsection (1)*,
  - (b) receive any information subsequently provided under *paragraph (a), (b) or (c)* of that subsection, and
  - (c) accompany the voluntarily admitted person to meetings and consult with him or her on decisions regarding the proposed care and treatment to be administered during the period of admission.
- (3) A notice provided under *subsection (1)* and any information subsequently provided under *paragraph (a), (b) or (c)* of that subsection shall be in a form and language that the person in receipt of the information can understand.

### CHAPTER 3

#### *Consent to treatment*

##### **Definitions (consent to treatment)**

**42.** In this Chapter—

“initial treatment period” means the period specified in *section 47(1)*;

“further treatment period” means the period specified in *section 47(4)*.

##### **Consent to treatment to be obtained prior to treatment**

- 43.** A mental healthcare professional shall, before treating an involuntarily admitted person, obtain consent for the treatment concerned from the involuntarily admitted person, unless otherwise expressly provided for in this Act.

**Person's consent to treatment**

- 44.** (1) Consent, in relation to an involuntarily admitted person, means consent of the person obtained freely without threats or inducements where—
- (a) adequate information in a form and language that the person can understand on the nature, purpose and likely effects of the treatment concerned has been given to the person, and
  - (b) he or she has capacity to give the consent concerned.
- (2) Subject to *sections 47, 49 and 50*, a person may, at any time do either or both of the following:
- (a) refuse any treatment proposed to him or her;
  - (b) withdraw his or her consent to any treatment.
- (3) It shall be presumed that every person has capacity to give his or her consent to, or to refuse, treatment unless the contrary is shown in accordance with the Act of 2015 or the provisions of this Part.
- (4) Where an involuntarily admitted person is making a decision in relation to his or her treatment under this Act, he or she may consult with a nominated person or any other person of his or her choosing.
- (5) Each consent to or refusal of treatment under this Chapter shall be made in relation to the specific treatment proposed and a person shall not make a decision that has the effect (whether intentional or otherwise) of providing general consent to or, as the case may be, general refusal to consent to all forms of treatment without considering each specific treatment proposed.

**Capacity assessment**

- 45.** (1) Where a responsible consultant psychiatrist reasonably considers that an involuntarily admitted person may lack capacity to consent to or refuse treatment, then he or she shall, as soon as practicable, carry out a capacity assessment or arrange for another mental healthcare professional who is involved in the care and treatment of the person concerned to carry out the capacity assessment.
- (2) Where, following the completion of a capacity assessment of an involuntarily admitted person, the responsible consultant psychiatrist, or other mental healthcare professional, concludes that the person, the subject of the assessment, lacks capacity to consent to or refuse treatment, the responsible consultant psychiatrist shall arrange for a second capacity assessment of the person to be carried out by another consultant psychiatrist or other mental healthcare professional.
- (3) A second capacity assessment shall not be carried out by a person who is involved in the care and treatment of the person concerned.
- (4) Where, following the completion of a capacity assessment and second capacity assessment, both the responsible consultant psychiatrist or other mental healthcare professional who carried out the assessments concerned conclude that the person, the

subject of the assessment, lacks capacity to consent to or refuse a proposed treatment, then that person shall be assessed as lacking capacity to give consent to the proposed treatment and the provisions of *sections 46 to 51* shall apply accordingly.

- (5) Where, following the completion of a capacity assessment under *subsection (1)*, or a second capacity assessment, the mental healthcare professional concerned finds that the person, the subject of the assessment, does not lack capacity, then that person shall be assessed as having capacity to consent to or refuse the proposed treatment.
- (6) A capacity assessment and, where applicable, a second capacity assessment shall be—
  - (a) arranged for and carried out as soon as practicable, and
  - (b) carried out regularly, with the frequency of review based on the individual needs of the person concerned, and in any event not less than once every 14 days, to assess whether the person continues to lack the necessary capacity to consent to or refuse treatment.
- (7) A capacity assessment and a second capacity assessment of a person and the findings thereof shall be retained and recorded in the person's medical records.
- (8) An involuntarily admitted person, and his or her nominated person, if any, shall be entitled to be furnished with copies of the capacity assessments on request.
- (9) A spouse or relative of a person shall be disqualified from carrying out a capacity assessment in respect of that person.
- (10) The Commission shall prepare and publish a code of practice in relation to capacity assessments.

### **Treatment of persons lacking capacity to consent, or otherwise, under *Chapter 3***

- 46.** (1) Where, prior to his or her involuntary admission or following an application under *section 48*, an involuntarily admitted person is declared under Part 5 of the Act of 2015 to lack capacity to consent to or refuse a proposed treatment, the treatment may be administered to him or her if—
- (a) in a case where there is a decision-making representative duly authorised by the Circuit Court to make decisions relevant to the person's mental healthcare and treatment, the decision-making representative concerned consents to the treatment proposed in accordance with the Act of 2015, and
  - (b) in a case where the Circuit Court has made a decision-making order under *section 38* of the Act of 2015, the order of the Court provides for consent to the specific treatment proposed.
- (2) Where an involuntarily admitted person has been assessed to lack capacity to give consent to or refuse treatment under *section 45* and there is a valid advance healthcare directive in place in respect of the person, which is relevant to the specific treatment proposed, the treatment may be administered to him or her if a provision of the directive, or a designated healthcare representative duly authorised under the directive, provides for consent to the specific treatment proposed.

- (3) A decision-making representative or a designated healthcare representative duly authorised to represent an involuntarily admitted person in respect of that person's mental healthcare and treatment shall perform his or her functions in accordance with the Act of 2015.
- (4) Where an involuntarily admitted person has been assessed to lack capacity to give consent to or refuse treatment under *section 45* and *subsections (1)* and *(2)* do not apply, treatment may be administered to him or her in accordance with *section 47, 49* or *50*, as the case may be.
- (5) Where treatment is administered to an involuntarily admitted person without consent under this Chapter, the absence of consent and details of the treatment or treatments shall be noted in the medical records of the person.

#### **Administration of treatment following admission**

**47.** (1) Subject to *subsections (2)* to *(6)* and *(9)*, where, following the making of an involuntary admission order—

- (a) a person is assessed under *section 45* as lacking capacity to consent to or refuse treatment, or
- (b) a capacity assessment or a second capacity assessment is being carried out under *section 45*, but that assessment has not been completed,

treatment may be administered to the person concerned for a period not exceeding 21 days from the date of making of the involuntary admission order (in this Chapter referred to as the “initial treatment period”).

- (2) Treatment may be administered to a person under *subsection (1)* where—
  - (a) such treatment is immediately necessary for the protection of life of the person or that of another person,
  - (b) such treatment is necessary for protection from an immediate and serious threat to the health of the person, or that of another person, or
  - (c) the person has a mental disorder, the nature and degree of which is such that—
    - (i) he or she requires treatment immediately,
    - (ii) the treatment required to be given to the person cannot be given to that person other than in a registered acute mental health centre, and
    - (iii) the treatment of the person concerned would be likely to materially benefit the condition of that person,

and there is no alternative safe and effective treatment available.

- (3) Where treatment is being administered to a person under *subsection (1)(b)*—
  - (a) a capacity assessment and a second capacity assessment shall be completed no later than 72 hours after the initiation of treatment, and

- (b) the administration of treatment under that subsection shall be discontinued immediately where the person is assessed as not lacking capacity to consent to or refuse treatment after either the capacity assessment or the second capacity assessment.
- (4) A responsible consultant psychiatrist may extend an initial treatment period for a further period not exceeding 21 days (in this Chapter referred to as a “further treatment period”), commencing on the date of the expiration of the initial treatment period, if—
- (a) he or she is of the opinion that the criteria in *subsection (2)* continue to apply in respect of the involuntarily admitted person, and
- (b) in advance of the expiration of the initial treatment period, another consultant psychiatrist who is not involved in the care or treatment of the involuntarily admitted person confirms, in a form and manner specified by the Commission, that he or she is also of the opinion that the criteria in *subsection (2)* continue to apply in respect of that person.
- (5) Where there is—
- (a) a decision-making representative appointed under the Act of 2015 duly authorised to make decisions relevant to an involuntarily admitted person’s mental healthcare and treatment, or
- (b) a valid advance healthcare directive in respect of an involuntarily admitted person which is relevant to the specific treatment,
- treatment under this section may only be administered to that person in accordance with *section 46(1)* or *(2)*, as the case may be.
- (6) Treatment may be administered to an involuntarily admitted person under *subsection (1)* or *(4)* until such time, whichever is the sooner, as any of the following occurs, upon which any initial treatment period or, where extended under *subsection (4)*, the further treatment period shall cease:
- (a) the person is assessed to have capacity to consent to or refuse treatment under *section 45*;
- (b) an application is made to the Circuit Court under *section 48*;
- (c) the person is discharged as an involuntarily admitted person;
- (d) the responsible consultant psychiatrist discontinues the treatment;
- (e) the expiry of the initial treatment period or, where extended under *subsection (4)*, the further treatment period.
- (7) Where *section 48* applies in respect of an involuntarily admitted person and that person is receiving treatment under *subsection (1)* or *(4)*, the application referred to in *section 48* shall be made by the registered proprietor before the expiry of the initial treatment period or, where extended under *subsection (4)*, the further treatment period, as the case may be.

- (8) Where a responsible consultant psychiatrist proposes to administer treatment to a person beyond the initial treatment period or, where extended under *subsection (4)*, the further treatment period, such treatment may only be administered in accordance with *section 43, 44, 46, 49 or 50*, as the case may be.
- (9) A reference to treatment administered under *subsection (1)* shall not include treatment administered under *section 51*.

#### **Application to Circuit Court in certain circumstances**

- 48.** (1) Where an involuntarily admitted person has been assessed as lacking capacity to consent to or refuse a proposed treatment under *section 45* and there is not—
- (a) a decision-making representative appointed under the Act of 2015 duly authorised to make decisions relevant to the person’s mental healthcare and treatment,
  - (b) a valid advance healthcare directive in respect of the person which is relevant to the specific treatment proposed, or
  - (c) a decision-making order made by the Circuit Court under section 38 of the Act of 2015 which is relevant to the specific treatment proposed,

an application shall be made by or on behalf of the registered proprietor to the Circuit Court under Part 5 of the Act of 2015 as soon as practicable and prior to any treatment, other than treatment provided under *section 47, 49 or 50*, being provided to the involuntarily admitted person.

- (2) An application to the Circuit Court made under *subsection (1)* shall be withdrawn by the registered proprietor where—
  - (a) the person the subject of the application is discharged as an involuntarily admitted person, or
  - (b) the person the subject of the application is assessed under *section 45* to have capacity to consent to or refuse treatment.

#### **Treatment without consent pending Circuit Court determination**

- 49.** (1) Without prejudice to the generality of *section 44*, treatment specified in *subsection (2)* may be given to an involuntarily admitted person where—
- (a) an application has been made to the Circuit Court in relation to the involuntarily admitted person under *section 48* but no determination has yet been made in relation to the application, or
  - (b) outside of the initial treatment period or, where extended under *section 47(4)*, the further treatment period, a capacity assessment or a second capacity assessment is being carried out under *section 45* but an application to the Circuit Court under *section 48* has not yet been made.
- (2) Treatment may be administered to a person under *subsection (1)* where there is no alternative safe and effective treatment available and—

- (a) such treatment is immediately necessary for the protection of life of the person or that of another person,
  - (b) such treatment is necessary for protection from an immediate and serious threat to the health of the person, or that of another person, or
  - (c) the person has a mental disorder, the nature and degree of which is such that—
    - (i) he or she requires treatment immediately,
    - (ii) the treatment required to be given to the person cannot be given to that person other than in a registered acute mental health centre, and
    - (iii) the treatment of the person concerned would be likely to materially benefit the condition of that person.
- (3) Where treatment is being administered to a person under *subsection (1)(b)*—
- (a) a capacity assessment and a second capacity assessment shall be completed no later than 72 hours after the initiation of treatment, and
  - (b) the administration of treatment under that subsection shall be discontinued immediately where the person is assessed as not lacking capacity to consent to or refuse treatment after either the capacity assessment or the second capacity assessment.
- (4) A reference to treatment administered under *subsection (1)* shall not include treatment administered under *section 51*.
- (5) Subject to *subsection (6)*, the continued administration of treatment to an involuntarily admitted person under this section shall be—
- (a) reviewed every 3 months by a consultant psychiatrist who is not involved in the care and treatment of the involuntarily admitted person concerned, and
  - (b) where that consultant psychiatrist is of the opinion that the criteria in *subsection (2)* continue to apply, approved in a form and manner specified by the Commission.
- (6) Treatment may be administered to an involuntarily admitted person under this section until such time, whichever is sooner, as any of the following occurs:
- (a) the Circuit Court makes a determination under Part 5 of the Act of 2015 in relation to an application under *section 48*;
  - (b) the person is discharged as an involuntarily admitted person;
  - (c) the responsible consultant psychiatrist discontinues the treatment;
  - (d) the person is assessed to have capacity to consent to or refuse treatment under *section 45*.

#### **Application to High Court for treatment order in certain circumstances**

- 50.** (1) Where treatment cannot be administered to an involuntarily admitted person because the person—

- (a) has capacity to make decisions about his or her treatment but refuses to consent to the treatment concerned, or
  - (b) has a relevant decision-making representative, or has a valid and relevant advance healthcare directive or a relevant designated healthcare representative appointed under an advance healthcare directive relevant to the treatment concerned and that representative refuses to consent to the treatment concerned or the advance healthcare directive specifies that there is not consent to the treatment concerned,
- an application may be made by or on behalf of the registered proprietor of the registered acute mental health centre concerned to the High Court specifying the proposed treatment and seeking an order to administer the treatment concerned to the person (in this section referred to as a “treatment order”) where all of the following apply, namely:
- (i) the treatment concerned is immediately necessary for the protection of life of another person or persons, or necessary for protection from an immediate and serious threat to the health of another person or persons;
  - (ii) the involuntarily admitted person requires the treatment concerned immediately;
  - (iii) there is no alternative safe and effective treatment available;
  - (iv) it is likely that the condition of the involuntarily admitted person will benefit from such treatment.
- (2) A refusal to consent to the treatment referred to in *subsection (1)* may be withdrawn at any time, and any application made to the High Court under that subsection may be withdrawn, where—
- (a) the person has capacity and decides to withdraw his or her refusal and to now consent to the treatment,
  - (b) the decision-making representative withdraws his or her refusal to consent to the treatment and now consents to the treatment, or
  - (c) the relevant designated healthcare representative appointed under a valid and relevant advance healthcare directive has authority within the appointing directive to do so, and determines that it is now the will and preference of the person that the refusal be withdrawn and treatment be consented to.
- (3) Where an application for a treatment order is before the High Court, the Court may, pending its determination on the application, of its own motion or on the application of any person, give such interim directions as it sees fit as to the care and treatment of the person who is the subject of the application but any such direction shall cease to have effect immediately on the determination by the Court of the application before it.
- (4) An application may be made by or on behalf of the registered proprietor of the registered acute mental health centre concerned to the High Court to renew a treatment order made under this section, subject to any directions of the Court, where the involuntarily admitted person the subject of the treatment order continues to satisfy the criteria in *subsection (1)*.

- (5) A treatment order shall, subject to any directions of the High Court, have effect for a period not exceeding 3 months.
- (6) An application to the High Court made under *subsection (1) or (4)* shall be deemed to be withdrawn where the involuntarily admitted person concerned is no longer subject to an involuntary admission order or renewal order under this Act.

### **Electro-convulsive therapy**

- 51.** (1) Subject to *subsection (2)*, electro-convulsive therapy shall not be administered to a person unless he or she gives consent in writing to the administration of the therapy.
- (2) Where the person has been found under *section 45* to lack the necessary capacity to give consent to a proposed treatment of electro-convulsive therapy, then the provisions of *section 46* shall apply.
  - (3) The Commission shall, with the consent of the Minister, following consultation with the Minister and the Minister for Justice, Home Affairs and Migration, make regulations providing for the use of electro-convulsive therapy in a registered acute mental health centre or a designated centre.
  - (4) In particular, but without prejudice to the generality of *subsection (3)*, regulations under *subsection (3)* may provide for any or all of the following matters:
    - (a) the administration of electro-convulsive therapy, including using the therapy with dignity and respect for the person;
    - (b) assessment of persons prior to the administration of electro-convulsive therapy;
    - (c) the interaction of the administration of electro-convulsive therapy and the guiding principles;
    - (d) the records to be maintained in relation to the administering of electro-convulsive therapy to a person;
    - (e) facilities and staff to be provided in a registered acute mental health centre or designated centre for the use of electro-convulsive therapy;
    - (f) the training and experience of relevant health professionals or specified persons who are administering electro-convulsive therapy;
    - (g) clinical governance of the use of electro-convulsive therapy, including written policies by a registered acute mental health centre or designated centre on the use of electro-convulsive therapy;
    - (h) communication with a nominated person regarding the use of electro-convulsive therapy;
    - (i) any other matters which are necessary or expedient for the purposes of giving effect to *subsection (3)*.

## CHAPTER 4

*Restrictive practices***Interpretation (restrictive practices)**

- 52.** (1) Where a specified person applies a restrictive practice in respect of a voluntarily admitted person, the admission status of the voluntarily admitted person shall be reviewed pursuant to *section 37* as soon as possible after such application, but no later than 24 hours after the initiation of the application concerned.
- (2) A restrictive practice may only be applied in respect of a person who is in the care of—
- (a) a registered acute mental health centre,
  - (b) the Central Mental Hospital, or
  - (c) another designated centre (other than the Central Mental Hospital).
- (3) A person who contravenes a regulation made under *section 58* that is stated to be a penal regulation shall be guilty of an offence and shall be liable on summary conviction to a class A fine.

**Seclusion**

- 53.** A person shall not be placed in seclusion in a registered acute mental health centre or designated centre unless—
- (a) the seclusion is ordered and initiated by a relevant health professional,
  - (b) the seclusion is applied in respect of the person by a relevant health professional or a specified person under the direct supervision of a relevant health professional,
  - (c) the application of such seclusion is determined by the relevant health professional, in accordance with regulations made under *section 58*, to be necessary where there is an immediate threat of serious harm to the person or to another person, and such seclusion is to prevent such a threat, and
  - (d) the seclusion concerned complies with regulations under *section 58*.

**Mechanical restraint**

- 54.** A mechanical restraint shall not be applied in respect of a person receiving treatment in a registered acute mental health centre or designated centre unless—
- (a) the restraint is ordered and initiated by a consultant psychiatrist only,
  - (b) the restraint is applied in respect of the person by a relevant health professional or a specified person under the direct supervision of a relevant health professional,

- (c) the application of such restraint is determined by the consultant psychiatrist, in accordance with regulations made under *section 58*, to be necessary where there is an immediate threat of serious harm to the person or to another person, or where it is necessary for the administering of treatment to the person concerned, and
- (d) the mechanical restraint concerned complies with regulations under *section 58*.

### **Physical restraint**

- 55.** A physical restraint shall not be applied in respect of a person receiving treatment in a registered acute mental health centre or designated centre unless—
- (a) the restraint is ordered and initiated by a relevant health professional,
  - (b) the restraint is applied to the person by a relevant health professional or a specified person under the direct supervision of a relevant health professional,
  - (c) the application of such restraint is determined by the relevant health professional, in accordance with regulations made under *section 58*, to be necessary where there is an immediate threat of serious harm to the person or to another person, or where it is necessary for the administering of treatment to the person concerned, and
  - (d) the physical restraint concerned complies with regulations under *section 58*.

### **Pharmacological restraint**

- 56.** A pharmacological restraint shall not be applied in respect of a person receiving treatment in a registered acute mental health centre or designated centre unless—
- (a) the restraint is ordered by a consultant psychiatrist only,
  - (b) the restraint is initiated by a relevant health professional,
  - (c) the restraint is applied in respect of the person by a relevant health professional,
  - (d) the application of such restraint is determined by the consultant psychiatrist, in accordance with regulations made under *section 58*, to be necessary where there is an immediate threat of serious harm to the person or to another person, and
  - (e) the pharmacological restraint concerned complies with regulations under *section 58*.

### **Application and recording of restrictive practices**

- 57.** (1) A restrictive practice may only be applied in respect of a person—
- (a) in rare and exceptional circumstances,
  - (b) where there is no safe alternative for the person,
  - (c) where it is the least restrictive practice possible in the circumstances,

- (d) where the application is proportionate to the immediate threat of serious harm to the person or to another person that has been assessed by the person who orders and initiates the practice to exist, and
  - (e) for the shortest duration possible.
- (2) Where a restrictive practice is applied in respect of a person, the consultant psychiatrist or relevant health professional who ordered, initiated or applied the restrictive practice concerned shall communicate to the person in a manner in which that person is reasonably expected to understand—
- (a) the reasons why the restrictive practice is being applied,
  - (b) the expected duration of the application, and
  - (c) the circumstances which, in the opinion of the consultant psychiatrist or relevant health professional, will lead to the discontinuation of the application of the restrictive practice.
- (3) The consultant psychiatrist or the relevant health professional who orders, initiates or applies a restrictive practice in respect of a person shall have due regard to—
- (a) the will and preferences of the person regarding the application of the restrictive practice, and
  - (b) the view of any nominated person in relation to such will and preferences,
- and such will and preferences and views shall be recorded in writing in the person's medical record and care plan.
- (4) A registered proprietor of a registered acute mental health centre or designated centre shall—
- (a) cause to be maintained in writing a record, in such form and manner as may be specified by the Commission, which shall include such information as may be specified by the Commission in respect of the application of a restrictive practice in respect of a person in that registered acute mental health centre or designated centre,
  - (b) cause to be maintained in writing a record of a communication under *subsection (2)*, and
  - (c) retain a copy of each of the records referred to in *paragraphs (a) and (b)* with the person's medical records for such period as may be specified in regulations made by the Commission under *section 58*.
- (5) A copy of the record under *paragraph (a) or (b) of subsection (4)* shall be made available, when so requested, for inspection by—
- (a) the Chief Inspector or an Assistant Inspector, or
  - (b) another staff member of the Commission, authorised by the Chief Inspector, where the information contained in the record is required for the proper performance by the Chief Inspector or the Assistant Inspector of his or her duties.

- (6) A registered proprietor of a registered acute mental health centre or designated centre shall ensure that the Commission is notified, in the form and manner specified by the Commission and within the period specified by the Commission, of each application of a restrictive practice in respect of a person in that registered acute mental health centre or designated centre concerned.

### **Regulations concerning restrictive practices**

- 58.** (1) The Commission may, with the consent of the Minister, and following consultation with the Minister and the Minister for Justice, Home Affairs and Migration, make regulations providing for the application of restrictive practices in respect of persons who are in the care of a registered acute mental health centre or designated centre.
- (2) In particular, but without prejudice to the generality of *subsection (1)*, regulations under *subsection (1)* may provide for any or all of the following matters:
- (a) the application of a restrictive practice in respect of a person (including the application of the practice with dignity and respect for the person);
  - (b) the principles underpinning the application of a restrictive practice;
  - (c) the interaction of the application of a restrictive practice and the guiding principles;
  - (d) the procedures governing the application of a restrictive practice (including procedures in respect of the ordering and initiation of a restrictive practice in respect of a person and the persons who should be notified of such ordering and initiation);
  - (e) the records to be maintained in relation to the application of a restrictive practice in respect of a person;
  - (f) the monitoring of the application of a restrictive practice;
  - (g) the procedures for the renewal of the application of a restrictive practice in relation to a person;
  - (h) the procedures concerning the discontinuation of the application of a restrictive practice (including who may order the discontinuation of such application and under what circumstances);
  - (i) the facilities and staff to be provided in a registered acute mental health centre or designated centre for the application of a restrictive practice;
  - (j) the training and experience of relevant health professionals or specified persons who apply restrictive practices in relation to a person;
  - (k) the clinical governance of a restrictive practice, including written policies by a registered acute mental health centre or designated centre on the application of a restrictive practice;
  - (l) the use of CCTV or other electronic monitoring in relation to seclusion;

- (m) communication with any nominated person regarding the application of a restrictive practice, including how the views of such persons or the person upon whom the practice is administered are considered;
- (n) any other matters which are necessary or expedient for the purposes of giving effect to *subsection (1)*.

## PART 4

### CHILDREN

#### CHAPTER 1

##### *General*

#### **Treatment of child who is not the subject of care order**

- 59.** For the avoidance of doubt, in this Part, a child that is the subject of an emergency care order, an interim care order, a supervision order or a voluntary care arrangement shall be treated the same as a child who is not the subject of a care order, unless otherwise provided.

#### **Application of Act of 1991**

- 60.** (1) Sections 21, 22, 24, 24A, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 35A to 35Q, 37 and 47 of the Act of 1991 shall, subject to the modifications specified in *subsection (2)*, apply to proceedings under this Part as they apply to proceedings to which those sections apply.
- (2) The modifications referred to in *subsection (1)* are as follows:
- (a) references in a section specified in that subsection to proceedings or an order under Part III, IV, IVA, IVB, V, VA or VI of the Act of 1991 shall be construed as references to proceedings or an order under this Part;
  - (b) references in sections 29, 35F and 35G of the Act of 1991 to the Agency shall be construed as references to—
    - (i) where the child is the subject of a care order, the Executive and the Agency, and
    - (ii) in all other instances, the Executive;
  - (c) references in section 34 of the Act of 1991 to an order made under Part III or Part IV of that Act and to the Agency shall be construed as references to an involuntary admission order made under *section 66* and to the Executive respectively;
  - (d) references in section 35 of the Act of 1991 to an order made under Part IV of that Act and to the Agency shall be construed as references to an involuntary admission order made under *section 66* and to the Executive respectively;

- (e) in section 35B of the Act of 1991—
    - (i) references in subsection (2) of that section to proceedings under Part IVA and to the Family High Court shall be construed as references to proceedings under *section 66* and to the Family District Court or District Court respectively, and
    - (ii) references in subsection (3) of that section to proceedings under Part IV, IVB or VI and to the Family District Court or the Family Circuit Court shall be construed as references to proceedings under *section 62(2)* and *64(2)* and to the Family District Court or District Court respectively;
  - (f) in section 35D of the Act of 1991—
    - (i) the reference in subsection (1) of that section to proceedings under Part IVA of that Act shall be construed as a reference to proceedings under *section 66*, and
    - (ii) the reference in subsection (2) of that section to proceedings under Part IV, IVB or VI of that Act shall be construed as a reference to an application under *section 62(2)* or *64(2)*;
  - (g) in section 35H of the Act of 1991—
    - (i) references in subsection (1) of that section to a special care order and in subsection (6) of that section to a subsequent care order shall be construed as references to an involuntary admission order made under *section 66* and a renewal order made under *section 67* respectively, and references in subsection (1) or (6) of that section to the Family High Court shall be construed as references to the Family District Court or the District Court, and
    - (ii) references in subsection (2) of that section to the Family District Court or the Family Circuit Court and an application under section 18(1) of that Act for a care order shall be construed as references to the Family District Court or District Court and an application under *section 62(2)* or *section 64(2)* respectively;
  - (h) references in section 35K of the Act of 1991 to “the Minister” shall be construed as references to the Minister and the Minister for Children, Disability and Equality;
  - (i) references in section 37 of the Act of 1991 to an order under Part III or IV of that Act shall be construed as references to an involuntary admission order made under *section 66*;
  - (j) any other necessary modifications.
- (3) References in sections 18(3) and 43A of the Act of 1991 to a person having authority to consent to psychiatric examination, treatment or assessment shall, in respect of admission, detention, care and treatment under this Part, be subject to the provisions of this Act.

- (4) References in sections 13(7) and 19(4) of the Act of 1991 to psychiatric examination, treatment or assessment do not include references to treatment under this Act.
- (5) Where a child is the subject of a special care order (within the meaning of the Act of 1991) or an interim special care order (within the meaning of the Act of 1991), he or she may be admitted to a registered acute mental health centre and treated under this Act as if he or she was the subject of a care order, with the modification that references to an application to—
- (a) the District Court or the Family District Court under *section 62(2), 64(2), 66, 67, 70, 71 or 80,*
  - (b) the Family Circuit Court under *section 69,* or
  - (c) the Family High Court under *section 87,*

shall be construed as references to an application to the High Court or Family High Court under section 23NF(1) of the Act of 1991 to authorise the release of the child from the special care unit for the provision of psychiatric examination, treatment or assessment and with any other necessary modifications.

## CHAPTER 2

### *Admission of children*

#### **Assessment of capacity of child aged 16 years or older to consent to admission, care and treatment**

- 61.** (1) Where, in respect of a child aged 16 years or older—
- (a) a consultant psychiatrist or another mental healthcare professional, and
  - (b) the child’s parents or guardian or the Agency,
- reasonably consider that the child may lack the capacity necessary to consent to or refuse his or her admission or care and treatment under this Part, the responsible consultant psychiatrist shall carry out a capacity assessment of the child or arrange for another mental healthcare professional to carry out a capacity assessment to assess if the child has the necessary capacity to make the decision concerned (in this Act referred to as a “capacity assessment”).
- (2) Where, following the completion of a capacity assessment of a child aged 16 years or older under *subsection (1)*, the responsible consultant psychiatrist or other mental healthcare professional concludes that the child lacks the capacity necessary to consent to or refuse his or her admission or care and treatment, the responsible consultant psychiatrist shall arrange for a second capacity assessment of the child to be carried out by another consultant psychiatrist or another mental healthcare professional.
- (3) The second capacity assessment shall not be carried out by a person who is or will be involved in the care and treatment of the child concerned.

- (4) Where, following the completion of a capacity assessment under *subsection (1)* and a second capacity assessment under *subsection (2)*, both mental healthcare professionals who carried out the capacity assessments conclude that the child, the subject of the assessment, lacks the capacity necessary to consent to or refuse his or her admission or care and treatment under this Part, then the child shall be assessed as lacking capacity in that respect.
- (5) A capacity assessment and, where applicable, a second capacity assessment shall be—
  - (a) arranged for and carried out as soon as practicable, and
  - (b) carried out regularly, with the frequency of review based on the individual needs of the child concerned, and in any event not less than once every 14 days, to assess whether the child continues to lack the necessary capacity to consent to or refuse treatment.
- (6) Where, following the completion of a capacity assessment under *subsection (1)* or a second capacity assessment under *subsection (2)*, the mental healthcare professional concerned concludes that the child, the subject of the assessment, does not lack the capacity necessary to consent to or refuse his or her admission or care and treatment under this Part, then that child shall be assessed as having capacity in that respect.
- (7) A capacity assessment carried out under *subsection (1)* or *(2)* and the findings thereof shall be retained and recorded in the child's medical records.
- (8) Where a child aged 16 years or older is making a decision regarding his or her admission or care and treatment under this Part, he or she may consult with—
  - (a) his or her relevant consulted carers, or
  - (b) his or her nominated person.
- (9) The child and the persons referred to in *paragraphs (a)* and *(b)* of *subsection (8)* shall be entitled to be furnished with copies of a capacity assessment in respect of the child on request.
- (10) A relative of a child shall be disqualified from carrying out a capacity assessment in respect of the child.
- (11) The Commission shall prepare and publish a code of practice in relation to capacity assessments under this section.

#### **Voluntary admission of child under 16 years of age**

- 62.** (1) Subject to *subsection (2)*, a child under 16 years of age shall not be admitted as a voluntarily admitted child to a registered acute mental health centre without the consent of his or her parents, or either of them, or guardian.
- (2) Where a child referred to in *subsection (1)* is the subject of a care order, the Executive may, with the agreement of the responsible consultant psychiatrist and with the consent of and on notice to the Agency, apply to the Family District Court or the District Court for the time being assigned to the Family District Court district or District Court district, as the case may be, where the child resides or is for the time

being and, where the Court is satisfied that it is in the best interests of the child to be so admitted, the Court shall make an order authorising the admission of that child to the registered acute mental health centre.

- (3) Where a guardian *ad litem* stands appointed for a child the subject of a care order at the time that an application under *subsection (2)* is proposed, the Executive shall notify the guardian *ad litem* of the proposed application in advance.
- (4) Subject to *subsection (5)* and *section 71*, a voluntarily admitted child under 16 years of age may leave the registered acute mental health centre at any time into the care of his or her relevant carer, with the consent of his or her parents or guardian or the Agency.
- (5) The Executive shall, as soon as may be, notify the Agency where a child the subject of a supervision order leaves a registered acute mental health centre under *subsection (4)*.
- (6) Where a child under 16 years of age admitted to a registered acute mental health centre under this section may continue to require care and treatment in the registered acute mental health centre after attaining the age of 16, his or her responsible consultant psychiatrist shall, in consultation with the child, his or her parents or guardian or the Agency and the Executive, as appropriate, arrange for the child to be admitted under *section 63, 64* or *66* or discharged under this section, as the case may be, immediately upon the child attaining the age of 16.

#### **Voluntary admission of child aged 16 years or older**

- 63.** (1) A child aged 16 years or older shall not be admitted as a voluntarily admitted child to a registered acute mental health centre without his or her consent.
- (2) Where a child aged 16 years or older has been assessed under *section 61* to lack the necessary capacity to consent to or refuse his or her admission on a voluntary basis, he or she may be admitted to a registered acute mental health centre pursuant to *section 64*.
  - (3) Subject to *section 71*, a voluntarily admitted child aged 16 years or older, other than a child referred to in *subsection (4)*, may leave the registered acute mental health centre at any time unless, in the opinion of the responsible consultant psychiatrist, it is not in the best interests of the child to do so, in which case the child shall be released into the care of his or her parents, or either of them, or guardian.
  - (4) Subject to *section 71*, a voluntarily admitted child aged 16 years or older who is the subject of a care order, a voluntary care arrangement, an emergency care order or an interim care order may leave the registered acute mental health centre at any time into the care of the Agency.
  - (5) The Executive shall, as soon as may be, notify the Agency where a child the subject of a supervision order leaves a registered acute mental health centre under this section.

**Admission with parental consent of child aged 16 years or older lacking necessary capacity**

64. (1) Subject to *subsections (2) and (3)*, where a child aged 16 years or older is assessed under *section 61* to lack the necessary capacity to consent to or refuse his or her admission on a voluntary basis, he or she may be admitted to a registered acute mental health centre with the consent of his or her parents, or either of them, or guardian.

(2) Where a child is—

(a) the subject of a care order,

(b) aged 16 years or older, and

(c) assessed under *section 61* to lack the necessary capacity to consent to or refuse his or her admission on a voluntary basis,

the Executive may, with the agreement of the responsible consultant psychiatrist and with the consent of and on notice to the Agency, apply to the Family District Court or the District Court for the time being assigned to the Family District Court district or District Court district, as the case may be, where the child resides or is for the time being located and, where the Court is satisfied that it is in the best interests of the child to be so admitted, the Court shall make an order authorising the admission of that child to that registered acute mental health centre.

(3) Where a guardian *ad litem* stands appointed for a child the subject of a care order at the time that an application under *subsection (2)* is proposed, the Executive shall notify the guardian *ad litem* of the intended application in advance.

(4) Subject to *subsection (7)* and *section 71*, a child admitted to a registered acute mental health centre under this section may leave the registered acute mental health centre at any time into the care of his or her relevant carer, with the consent of his or her parents or guardian or the Agency, as the case may be.

(5) The Executive shall, as soon as may be, notify the Agency where a child the subject of a supervision order is discharged from a registered acute mental health centre under this section.

(6) Where a child has been admitted to a registered acute mental health centre under this section, the registered acute mental health centre shall—

(a) provide all relevant supports to the child to enable the child to form his or her own views and will and preferences and, where possible, make decisions affecting himself or herself in relation to his or her admission, care and treatment under this Part, and

(b) arrange for capacity assessments of the child to be carried out in accordance with *section 61* to assess whether the child continues to lack the necessary capacity to consent to or refuse voluntary admission.

(7) Where a child admitted under this section is found to have the necessary capacity to consent to or refuse voluntary admission following a periodic capacity assessment under *section 61*, the child shall be treated as a voluntarily admitted child admitted under *section 63*.

- (8) The Commission shall prepare and publish a code of practice for staff working in a registered acute mental health centre in relation to the provisions of this section.

**Criteria for involuntary admission of child to registered acute mental health centre**

**65.** (1) A child may be involuntarily admitted to a registered acute mental health centre pursuant to an involuntary admission order under *section 66* and detained there if he or she fulfils each of the criteria (in this Act referred to as the “criteria for involuntary admission of a child”) specified in either *paragraph (a)* or *(b)*, namely:

(a) the child has a mental disorder, the nature and degree of which is such that—

(i) the life of the child, or that of another person, is at risk, or the health of the child, or that of another person, is at risk of immediate and serious harm, and

(ii) if the child were to be admitted and detained in a registered acute mental health centre—

(I) his or her admission and detention would be likely to reduce the risk he or she poses to himself or herself or others due to his or her mental disorder,

(II) he or she would likely benefit from care and treatment that cannot be given to that child other than in a registered acute mental health centre, or

(III) his or her admission and detention would be likely to benefit his or her mental disorder;

or

(b) the child has a mental disorder, the nature and degree of which is such that—

(i) he or she requires care and treatment immediately,

(ii) the care and treatment required to be given to the child cannot be given to that child other than in a registered acute mental health centre, and

(iii) the reception, detention and care and treatment of the child concerned in a registered acute mental health centre would be likely to materially benefit the condition of that child.

(2) Nothing in *subsection (1)* shall be construed as authorising the involuntary admission of a child to a registered acute mental health centre by reason only of the fact that the child—

(a) has a mental disorder that does not fulfil the criteria for involuntary admission of a child,

(b) has an intellectual disability,

(c) has a personality disorder,

(d) is addicted to drugs or intoxicants,

- (e) may behave in such a manner or hold views that are contrary to, deviate from or transgress cultural, religious, social or traditional norms or customs of appropriate behaviour, or
  - (f) requires to reside in a safe environment provided by a registered acute mental health centre.
- (3) The Commission shall prepare and issue a code of practice for staff working in a registered acute mental health centre in relation to the provisions of this section.

### **Involuntary admission of child**

66. (1) Subject to *subsection (5)*, where it appears to the Executive that a child has a mental disorder that fulfils the criteria for involuntary admission of a child, the Executive shall, as soon as may be, arrange for a consultant psychiatrist to carry out an examination of the child.
- (2) In carrying out an examination under *subsection (1)*, a responsible consultant psychiatrist shall consider, in consultation with the child's relevant consulted carers, if any—
- (a) whether the child may, in the first instance, be admitted—
    - (i) as a voluntarily admitted child under *section 62* or *63*, or
    - (ii) as a child aged 16 years or older lacking necessary capacity admitted with parental consent under *section 64*,and
  - (b) if so, whether it would be in the best interests of the child to be admitted pursuant to *section 62*, *63* or *64*, as the case may be, rather than being admitted on an involuntary basis under this section.
- (3) Where, following an examination under *subsection (1)*, the consultant psychiatrist is satisfied that the child has a mental disorder that fulfils the criteria for involuntary admission of a child, the Executive may make an application to the Family District Court or the District Court for the time being assigned to the Family District Court district or District Court district, as the case may be, where the child resides or is for the time being, for an order authorising the reception, detention and care and treatment of the child in a registered acute mental health centre.
- (4) Where the Executive makes an application for involuntary admission under *subsection (3)* following an examination under *subsection (1)*, the consultant psychiatrist who carried out an examination of the child shall—
- (a) report to the Court as soon as practicable within such period as is specified by the Court, which period shall be no longer than 72 hours after the giving of such direction by the Court, on the results of the examination, and
  - (b) indicate to the Court whether he or she is satisfied that the child fulfils the criteria for involuntary admission of a child.

- (5) The Executive may make an application for involuntary admission under *subsection (3)* without any prior examination of the child by a consultant psychiatrist, where—
- (a) the child is aged 16 years or older and refuses or does not consent to the examination,
  - (b) in the case of a child under 16 years of age or a child aged 16 years or older who lacks the necessary capacity to consent to or refuse voluntary admission, the parents or guardian or the Agency refuse or do not consent to the examination of the child, or
  - (c) in the case of a child referred to in *paragraph (b)* who is not the subject of a care order, following the making of reasonable enquiries by the Executive, the parents, or either of them, or guardian, cannot be found by the Executive.
- (6) Where the Executive makes an application for involuntary admission under *subsection (3)* without a prior examination by a consultant psychiatrist of the child, the subject of the application, the Family District Court or the District Court, as the case may be, may, if it is satisfied that there is reasonable cause to believe that the child fulfils the criteria for involuntary admission of a child, direct the Executive to arrange for an examination of the child by a consultant psychiatrist and for that consultant psychiatrist to—
- (a) report to the Court as soon as practicable within such period as is specified by the Court, which period shall be no longer than 72 hours after the giving of such direction by the Court, on the results of the examination, and
  - (b) indicate to the Court whether he or she is satisfied that the child fulfils the criteria for involuntary admission of a child.
- (7) A consultant psychiatrist shall be disqualified from carrying out an examination under *subsection (1)* or *(5)* where he or she is a relative of the child concerned.
- (8) Where the Family District Court or the District Court, as the case may be, is satisfied, having considered—
- (a) the report of the consultant psychiatrist referred to in *subsection (4)* or *(6)*, and
  - (b) any other evidence that may be adduced before it that a child fulfils the criteria for involuntary admission of a child,
- the Court shall make an order (in this Act referred to as an “involuntary admission order”) for the involuntary admission of the child concerned in a specified registered acute mental health centre.
- (9) Where a guardian *ad litem* stands appointed for a child the subject of a care order at the time that an application for involuntary admission under *subsection (3)* is proposed, the Executive shall notify the guardian *ad litem* of the proposed application in advance.
- (10) Subject to *subsection (12)*, notice of an application for involuntary admission under *subsection (3)* and a copy of the proceedings shall be served by the Executive on—

- (a) the child’s relevant notified carers, and
  - (b) any other person specified by the Family District Court or the District Court, as the case may be.
- (11) Before making an involuntary admission order under this section, the Family District Court or the District Court, as the case may be, may have regard to any submission made to it in relation to any matter by or on behalf of a party to the proceedings concerned or any other person having an interest in the proceedings.
- (12) An application for involuntary admission under *subsection (3)* may, if the Family District Court or the District Court, as the case may be, is satisfied that the urgency of the matter so requires, be made *ex parte*.
- (13) Where an application for involuntary admission of a child is made to the Family District Court or the District Court, as the case may be, under *subsection (3)*, the Court, of its own motion or on the application by any person, may give such directions as it sees fit as to the reception, detention and care and treatment of the child who is the subject of the application pending its determination of the matter, and any such direction shall cease to have effect on the determination of the application.

#### **Duration and renewal of involuntary admission order of child**

67. (1) An involuntary admission order shall—
- (a) authorise the reception, detention and care and treatment of the child concerned, and
  - (b) subject to *subsections (2) and (3)*, *section 69* and *70(7)*, remain in force for 21 days after the date of its making, and then expire.
- (2) Where, on or before the expiration of the period of involuntary admission referred to in *subsection (1)(b)*, an application is made to the Family District Court or the District Court for the time being assigned to the Family District Court district or District Court district, as the case may be, where the child resides or is for the time being by the Executive for an extension of the period of involuntary admission, the Court may by order extend the period of involuntary admission (in this Act referred to as a “renewal order”), for a further period not exceeding 3 months, commencing on the expiration of the involuntary admission order made in respect of the child.
- (3) The period referred to in *subsection (2)* may be extended by order made by the Family District Court or the District Court, as the case may be, on further application in that behalf by the Executive for periods each of which does not exceed 3 months (each of which orders is also referred to in this Act as a “renewal order”).
- (4) The Family District Court or the District Court, as the case may be, shall not make a renewal order under this section unless—
- (a) the child has been examined by a consultant psychiatrist not more than 48 hours prior to the making of the application under *subsection (2) or (3)* and a report of the results of the examination is furnished to the Court by the Executive upon the making of the application, and

- (b) following consideration by the Court of the report, it is satisfied that the child continues to have a mental disorder which fulfils the criteria for involuntary admission of a child.
- (5) A consultant psychiatrist shall be disqualified from carrying out an examination under *subsection (4)* where he or she is a relative of the child concerned.
- (6) Where the Executive proposes to make an application under *subsection (2)*, it shall notify the guardian *ad litem* for the child appointed in accordance with Part VA of the Act of 1991, as applied by *section 60*, of the proposed application in advance.
- (7) Notice of an application under *subsection (2)* or *(3)* and a copy of the proceedings shall be served by the Executive on—
- (a) the child’s relevant notified carers, and
- (b) any other person specified by the Family District Court or the District Court, as the case may be.
- (8) Before making a renewal order under this section, the Family District Court or the District Court, as the case may be, may have regard to any submission made to it in relation to any matter by or on behalf of a party to the proceedings concerned or any other person having an interest in the proceedings.
- (9) Where an application for a renewal order is made to the Family District Court or the District Court, as the case may be, under *subsection (2)* or *(3)*, the Court, of its own motion or on the application of any person, may, pending its determination of the matter, give such directions as it sees fit as to the care and treatment of the child who is the subject of the application, and any such direction shall cease to have effect on the determination of the application.

#### **Copy of order in respect of child to be sent to Commission**

- 68.** The responsible consultant psychiatrist shall, as soon as is practicable but not later than 24 hours after the making of an involuntary admission order and any renewal order in respect of an involuntarily admitted child, send, or cause to be sent, a copy of the order concerned to the Commission.

#### **Appeal to Family Circuit Court**

- 69.** (1) An involuntarily admitted child may appeal to the Family Circuit Court against a decision of the Family District Court or the District Court to make an involuntary admission order or a renewal order, as the case may be, made in respect of him or her on the grounds that—
- (a) he or she does not meet the criteria for involuntary admission of a child, or
- (b) the provisions of this section and sections 9, 66, 67, 71, 73, 74, 76 and 80, where applicable, were not complied with, and the failure affected the substance of the order and caused an injustice and the failure to comply with the provisions concerned was such as to render the detention invalid.

- (2) An appeal under this section shall be brought by the involuntarily admitted child or his or her parents or guardian or the Agency by notice in writing within 28 days of the date of receipt of the written notice under *section 76(2)*.
- (3) The jurisdiction conferred on the Family Circuit Court by this section may be exercised by a judge of the Family Circuit Court for the time being assigned to the Family Circuit Court circuit in which the registered acute mental health centre concerned is situated or, at the option of the child, in which the child is ordinarily resident.
- (4) On appeal to it under *subsection (1)(a)*, the Family Circuit Court shall—
  - (a) if it is shown by the registered acute mental health centre to the satisfaction of the Court that the child fulfils the criteria for involuntary admission of a child, affirm the order, or
  - (b) if the registered acute mental health centre has not shown to the satisfaction of the Court that the child fulfils the criteria for involuntary admission of a child, revoke the order.
- (5) On appeal to it under *subsection (1)(b)*, the Family Circuit Court shall—
  - (a) if it is shown by the registered acute mental health centre to the satisfaction of the Court that the provisions the subject of the appeal were complied with or that any failure to comply did not affect the substance of the order and did not cause an injustice, affirm the order, or
  - (b) if the registered acute mental health centre has not shown to the satisfaction of the Court that the provisions the subject of the appeal were complied with or that any failure to comply did not affect the substance of the order and did not cause an injustice, revoke the order.
- (6) An order under *subsection (4)* or *(5)* may contain such consequential or supplementary provisions as the Family Circuit Court considers appropriate.
- (7) Notice of an appeal under *subsection (1)* and a copy of the proceedings shall be served by the person bringing the appeal on—
  - (a) the Executive,
  - (b) the Commission,
  - (c) the child’s relevant notified carers,
  - (d) the registered proprietor of the registered acute mental health centre concerned,
  - (e) the responsible consultant psychiatrist in respect of the child the subject of the appeal, and
  - (f) any other person specified by the Family Circuit Court.
- (8) A person bringing an appeal under this section shall also notify the guardian *ad litem* for the child appointed in accordance with Part VA of the Act of 1991, as applied by *section 60*, of the bringing of the appeal.

- (9) Before making an order under this section, the Family Circuit Court may have regard to any submission made to it in relation to any matter by or on behalf of a party to the proceedings concerned or any other person having an interest in the proceedings.

### Discharge of involuntarily admitted children

70. (1) Subject to *subsection (2)*, where a responsible consultant psychiatrist becomes of the opinion that a child no longer fulfils the criteria for involuntary admission of a child, the responsible consultant psychiatrist shall as soon as possible meet with the child concerned and—

- (a) inform the child of his or her intention to notify the Executive under *subsection (4)* of his or her proposal to discharge the child and of the right of the child, if discharged, to leave the registered acute mental health centre or, with the responsible consultant psychiatrist's agreement—

(i) remain as a voluntarily admitted child if—

(I) in the case of a child aged 16 years or older, the child wishes, or

(II) in the case of a child under 16 years of age, the child's parents, or either of them, or guardian, wishes,

or

(ii) in the case of a child aged 16 years or older assessed as lacking capacity under *section 61*, remain as a child aged 16 years or older lacking necessary capacity admitted with parental consent if his or her parents, or either of them, or guardian wishes,

and

(b) provide the child with all relevant information from the child's care plan prepared in accordance with *section 187* and information regarding—

(i) what will occur if the child leaves the registered acute mental health centre, and

(ii) what will occur if the child remains in the registered acute mental health centre in accordance with *paragraph (a)(i)* or *(ii)*.

(2) Where a child referred to in *subsection (1)*—

(a) is under 16 years of age or is assessed as lacking capacity under *section 61*, and

(b) is the subject of a care order,

that subsection shall apply in relation to the child with the modification that the child may remain as a voluntarily admitted child in the registered acute mental health centre with the responsible consultant psychiatrist's agreement where an order is made by the Family District Court or the District Court, as the case may be, authorising the admission under *section 62(2)* or *64(2)*.

(3) The meeting referred to in *subsection (1)* may also be attended by—

- (a) the child's relevant consulted carers, if any, and
  - (b) any nominated person.
- (4) Where, following a meeting under *subsection (1)*, a responsible consultant psychiatrist proposes to discharge a child under that subsection, the responsible consultant psychiatrist or another mental healthcare professional who is involved in the child's care and treatment shall—
- (a) notify—
    - (i) the Executive,
    - (ii) the child's guardian *ad litem*,
    - (iii) the child's relevant consulted carers, if any, and
    - (iv) in relation to a child who is the subject of a voluntary care arrangement, an emergency care order, an interim care order or a supervision order, if not already notified under *subparagraph (iii)*, the Agency,of the proposal to discharge the child, together with a report of his or her opinion that the child no longer fulfils the criteria for involuntary admission of a child, for the purpose of *subsection (6)*, and
  - (b) engage with the child concerned and, in so far as is practicable, where appropriate, liaise with the persons referred to in *paragraph (a)* or *(b)* of *subsection (3)* as they apply in respect of the child concerned for the purposes of planning the child's discharge.
- (5) Where the Family District Court or the District Court, as the case may be, refuses an application for a renewal order under *section 67* in relation to a child, *subsections (1)* to *(4)* shall apply to the child concerned and his or her responsible consultant psychiatrist with the modification that the discharge of the child has been authorised by the Family District Court or the District Court under *subsection (7)*, and a further application under *subsection (6)* shall not be required.
- (6) Where the Executive has been notified of a proposal to discharge a child under *subsection (4)*, the Executive shall make an application to the Family District Court or the District Court for the time being assigned to the Family District Court district or District Court district, as the case may be, where the child resides or is for the time being and furnish the report referred to in *subsection (4)(a)* to the Court upon the making of the application.
- (7) Subject to *subsection (9)*, where the Court is satisfied, having considered an application under *subsection (6)*, that the child no longer meets the criteria for involuntary admission of a child, the Court shall make an order authorising the discharge of the child as an involuntarily admitted child from the registered acute mental health centre.
- (8) Notice of an application under *subsection (6)* and a copy of the proceedings shall be served by the Executive on—
- (a) the child's relevant notified carers, and

- (b) any other person specified by the Family District Court or the District Court, as the case may be.
- (9) Before making an order authorising the discharge of the child as an involuntarily admitted child under *subsection (7)*, the Family District Court or the District Court, as the case may be—
- (a) shall have regard to the report referred to in *subsection (4)(a)*, and
  - (b) may have regard to any submission made to it in relation to any matter by or on behalf of a party to the proceedings concerned or any other person having an interest in the proceedings.
- (10) The decision under this section for a child to remain in a registered acute mental health centre as a voluntarily admitted child or a child aged 16 years or older lacking necessary capacity admitted with parental consent, or to not remain, shall be recorded and a copy shall be retained in the child’s medical records.
- (11) Where a child discharged under this section is—
- (a) the subject of a care order, a voluntary care arrangement, an emergency care order or an interim care order, or
  - (b) where *paragraph (a)* does not apply, under 16 years of age or aged 16 years or older and assessed as lacking capacity to consent under *section 61*,
- he or she shall be released into the care of his or her relevant carer.

### Power to detain child

71. (1) Where the responsible consultant psychiatrist or another mental healthcare professional who is responsible for or involved in the care and treatment of a voluntarily admitted child or a child aged 16 years or older lacking necessary capacity admitted with parental consent is of the opinion that the child fulfils the criteria for involuntary admission of a child, the responsible consultant psychiatrist or other mental healthcare professional concerned may, if necessary, detain the child for a period not exceeding 24 hours for the purpose of carrying out the matters in *subsections (2), (3) and (5)*.
- (2) Where a child is detained under *subsection (1)*, the responsible consultant psychiatrist shall as soon as possible carry out an examination of the child and, where following that examination he or she remains of the opinion that the child fulfils the criteria for involuntary admission of a child, arrange for another consultant psychiatrist who is not involved in the care and treatment of the child to carry out a second examination of the child.
- (3) If, following his or her examination and consultation with the responsible consultant psychiatrist, the second consultant psychiatrist is of the opinion that the child does not fulfil the criteria for involuntary admission of a child, the detention shall cease and the child or the child and his or her relevant notified carers shall be immediately notified of the decision, and—

- (a) in the case of a voluntarily admitted child aged 16 years or older admitted under *section 63*, informed of his or her right to leave the registered acute mental health centre or stay as a voluntarily admitted child in accordance with that section, and
  - (b) in the case of a voluntarily admitted child under 16 years of age admitted under *section 62*, or a child aged 16 years or older lacking necessary capacity admitted with parental consent under *section 64*, informed of his or her right to leave, or to stay as a voluntarily admitted child, or a child aged 16 years or older lacking necessary capacity admitted with parental consent, in accordance with those sections.
- (4) Where a child discharged under this section is—
- (a) the subject of a care order, a voluntary care arrangement, an emergency care order or an interim care order, or
  - (b) where *paragraph (a)* does not apply, under 16 years of age or aged 16 years or older and assessed as lacking capacity to consent under *section 61*,
- he or she shall be released into the care of his or her relevant carer.
- (5) If, following his or her examination, the second consultant psychiatrist is of the opinion that the child does fulfil the criteria for involuntary admission of a child, the Executive shall make an application for involuntary admission of a child under *section 66(3)*, subject to the following modifications:
- (a) the application shall be made—
    - (i) at the next sitting of the Family District Court held in the Family District Court district in which the child resides or is for the time being,
    - (ii) in circumstances of urgency where no judge of the Family District Court is available to hear the application, at the next sitting of the District Court held in the same District Court district, or
    - (iii) in the event that the next sitting of the Family District Court or District Court is not due to be held within 3 working days of the date on which the child is detained under this section, at a sitting of the Family District Court or District Court which has been specially arranged under *paragraph (d)*, held within the said 3 working days;
  - (b) where a judge for the Family District Court district or a judge for the District Court district in which the child resides or is for the time being is not immediately available, an order may be made by any judge of the Family District Court or the District Court;
  - (c) the application may, if the judge is satisfied that the urgency of the matter so requires, be made *ex parte*;
  - (d) the application may, if the judge is satisfied that the urgency of the matter so requires, be heard and an order made thereon elsewhere than at a sitting of the Family District Court or a public sitting of the District Court;

- (e) the Executive shall furnish reports, prepared by the psychiatrist or psychiatrists concerned, of the examinations under *subsection (2)* when making the application.
- (6) Where a child has been detained in accordance with *subsection (1)* and, following examinations under *subsection (2)*, the Executive makes an application under *section 66(3)*, the clinical director of the registered acute mental health centre shall continue the reception, detention and care of the child during the 72 hour period pending the hearing of that application, subject to any directions from the Family District Court or District Court, as the case may be, under *section 66*.
- (7) The examinations carried out under *subsection (2)* shall be recorded and a copy shall be retained in the child's medical records.
- (8) The Executive may make an application for involuntary admission under *section 66(3)* in respect of a child to whom this section applies without any examinations under *subsection (2)* being carried out where *paragraph (a), (b) or (c) of section 66(5)* applies.
- (9) The Executive shall notify the Commission, in the form and manner specified by the Commission, of a decision under this section to make an application for involuntary admission under *section 66* or to not make such an application.

#### **Notification to Agency**

72. Where a child was the subject of a care order, a voluntary care arrangement, an emergency care order, an interim care order or a supervision order at the time of his or her admission under *section 62, 63, 64 or 66* and that arrangement or order ceases during his or her period of admission, the Executive shall, as soon as may be, notify the Agency where the child concerned—
- (a) is the subject of a renewal order under *section 67*,
  - (b) leaves a registered acute mental health centre under *section 62, 63, 64 or 71*, or
  - (c) is discharged from a registered acute mental health centre under *section 70*.

#### **Powers of Garda Síochána to take child into custody in certain circumstances**

73. (1) Where a member of An Garda Síochána has reasonable grounds for believing that a child has a mental disorder that fulfils *paragraph (a)* of the criteria for involuntary admission of a child, the member may either alone or with any other member or members of An Garda Síochána—
- (a) take all reasonable measures necessary to take the child into custody and arrange for the matters specified in *subsections (3), (4), (6), (8), (10), (13), (15) and (16)*, as applicable, to be carried out as soon as practicable, but no later than 6 hours after the time that the child is taken into custody, and
  - (b) enter, if needs be by force, any dwelling or other premises or any place if he or she has reasonable grounds for believing that the child is to be found there.

- (2) The period referred to in *subsection (1)(a)* may be extended by one additional period of 6 hours under the authorisation of a member of An Garda Síochána not below the rank of inspector if he or she has reasonable grounds for believing that the additional period is necessary in order that the matters specified in *subsections (3), (4), (6), (8), (10), (13), (15) and (16)*, as applicable, may be carried out.
- (3) Where a member of An Garda Síochána takes a child into custody under *subsection (1)*, he or she or any other member or members of An Garda Síochána shall contact—
- (a) in relation to a child the subject of a care order, the Agency,
  - (b) in relation to a child the subject of a voluntary care arrangement, an emergency care order, an interim care order or a supervision order, the Agency and the child's parents, or either of them, or guardian, and
  - (c) in all other circumstances, the child's parents, or either of them, or guardian,
- as soon as practicable, but no later than 3 hours from the time that the child is taken into custody.
- (4) Where a member of An Garda Síochána takes a child into custody under *subsection (1)*, he or she or any other member or members of An Garda Síochána may request—
- (a) a registered medical practitioner to carry out an examination of the child, or
  - (b) the Executive to arrange for a consultant psychiatrist to carry out an examination of the child,
- to assess whether the child has a mental disorder that fulfils the criteria for involuntary admission of a child requiring an application for involuntary admission of a child under *section 66*.
- (5) In so far as possible, an examination under *subsection (4)* shall also be attended by the persons specified in *paragraphs (a), (b) or (c)* of *subsection (3)*, as the case may be.
- (6) Where, following an examination of a child under *subsection (4)*—
- (a) a registered medical practitioner is of the opinion that the child concerned has a mental disorder that fulfils the criteria for involuntary admission of a child, a member or members of An Garda Síochána—
    - (i) shall, subject to *subsection (7)*—
      - (I) release the child into the care of his or her relevant carer for the purpose of that person or persons engaging with the Executive to assess whether an application for involuntary admission under *section 66* is required in respect of the child, and
      - (II) notify the Executive that the child has been released into the care of his or her relevant carer,
- and

- (ii) may request the Executive to assess whether an application for involuntary admission under *section 66* is required in respect of the child,
  - or
  - (b) a consultant psychiatrist is of the opinion that the child has a mental disorder that fulfils the criteria for involuntary admission of a child—
    - (i) subject to *subsection (7)*, a member or members of An Garda Síochána shall release the child into the care of his or her relevant carer, and
    - (ii) the Executive may make an application for involuntary admission under *section 66* in respect of the child.
- (7) A member or members of An Garda Síochána shall not release a child under *paragraph (a)(i)* or *(b)(i)* of *subsection (6)* where—
- (a) in the opinion of the member or members of An Garda Síochána responsible for the child, there is an immediate and serious risk to the health or welfare of the child or that of another person by releasing the child,
  - (b) in the opinion of the registered medical practitioner or consultant psychiatrist concerned, there is an immediate and serious risk to the health or welfare of the child or that of another person by releasing the child,
  - (c) in the case of a child who is not the subject of a care order, a voluntary care arrangement, an emergency care order or an interim care order, his or her relevant carer, after the making of reasonable enquiries, cannot be found, or
  - (d) his or her detention is authorised by law other than under this Act.
- (8) Where *paragraph (a)*, *(b)* or *(c)* of *subsection (7)* applies, the member or members of An Garda Síochána may request that the Executive take charge of the child as soon as possible until such time as—
- (a) an involuntary admission order is made under *section 66* in respect of the child,
- or
- (b) the Executive assesses that an application for involuntary admission under *section 66* is not required in respect of the child.
- (9) The Executive shall comply with the request under *subsection (8)* as soon as practicable.
- (10) Where *subsection (7)(c)* applies and the child’s relevant carer is subsequently found, the child shall be released from the custody of An Garda Síochána or from the charge of the Executive, as the case may be, unless, in the opinion of the member or members of An Garda Síochána responsible for the child or the Executive, there is an immediate and serious risk to the health or welfare of the child or that of another person by releasing the child into the care of that person or persons.
- (11) Where a request is made under *subsection (8)* due to *paragraph (a)* or *(c)* of *subsection (7)* applying, the member or members of An Garda Síochána responsible for the child shall notify the Agency as soon as may be.

(12) Where—

- (a) in advance of an examination of a child under *subsection (4)*, the member or members of An Garda Síochána responsible for the child has or have reasonable grounds for believing that the child concerned no longer has a mental disorder that fulfils *paragraph (a)* of the criteria for involuntary admission of a child, or
- (b) following an examination of a child under *subsection (4)*, a registered medical practitioner or consultant psychiatrist referred to in that subsection is of the opinion that the child concerned does not have a mental disorder that fulfils the criteria for involuntary admission of a child,

the child shall, subject to *subsections (13), (14) and (15)*, be released from the custody of An Garda Síochána.

(13) Where *paragraph (a) or (b) of subsection (12)* applies—

- (a) where the child is the subject of a care order, a voluntary care arrangement, an emergency care order or an interim care order, a member or members of An Garda Síochána shall release the child into the care of the Agency unless his or her detention is authorised other than under this Act, and
- (b) subject to *subsection (14)*, in all other circumstances—
  - (i) where the child is under 16 years of age, a member or members of An Garda Síochána shall release the child into the care of his or her relevant carer, and
  - (ii) where the child is aged 16 years or older, a member or members of An Garda Síochána shall release the child immediately,

unless the detention of the child is authorised other than under this Act.

(14) A member or members of An Garda Síochána shall not release a child under *subsection (13)(b)* where—

- (a) in the opinion of the member or members of An Garda Síochána responsible for the child, there is an immediate and serious risk to the health or welfare of the child by releasing the child, or
- (b) in respect of a child referred to in *subsection (13)(b)(i)*, his or her relevant carer, after the making of reasonable enquiries, cannot be found,

until such time as a request is made under *subsection (15)* or a notification is made under *subsection (16)*, as the case may be.

(15) Where *subsection (14)(a)* applies, a member or members of An Garda Síochána may request the Agency that the child be delivered up to the custody of the Agency under section 12 of the Act of 1991 as soon as may be.

(16) Where *subsection (14)(b)* applies, a member or members of An Garda Síochána may notify the Agency.

**Bringing of child subject of involuntary admission order to registered acute mental health centre**

74. (1) Where an involuntary admission order is made under *section 66* in respect of a child, the child's relevant carer shall arrange for the child to be brought to the registered acute mental health centre specified in the order as soon as practicable after the making of the order.
- (2) Where a child's relevant carer is unable to arrange for the child to be brought to the registered acute mental health centre in accordance with *subsection (1)*, the relevant carer shall request—
- (a) the clinical director of the registered acute mental health centre specified in the order, or
  - (b) a consultant psychiatrist acting on that clinical director's behalf,
- to arrange for the child concerned to be brought to the registered acute mental health centre.
- (3) Where the relevant carer of a child the subject of an involuntary admission order, other than the Agency, fails or refuses to arrange for the child to be brought to the registered acute mental health centre specified in the order, the clinical director of the registered acute mental health centre concerned or a consultant psychiatrist acting on the clinical director's behalf shall arrange for the child concerned to be brought to the registered acute mental health centre.
- (4) A person referred to in *paragraph (a) or (b) of subsection (2)*, on foot of a request made under that subsection, shall arrange for the child the subject of the involuntary admission order to be brought to the specified registered acute mental health centre by members of the staff of the centre or a service provider as soon as practicable.
- (5) A clinical director or consultant psychiatrist referred to in *paragraph (a) or (b) of subsection (2) or in subsection (3)* may request a member of An Garda Síochána to assist in bringing the child the subject of the involuntary admission order to the specified registered acute mental health centre where the clinical director or consultant psychiatrist concerned is of the opinion that such assistance is necessary to protect the health of the child or other persons from the threat of immediate and serious harm.
- (6) Where a request is made to An Garda Síochána under *subsection (5)*, a member or members of An Garda Síochána—
- (a) shall comply with that request as soon as practicable, and
  - (b) may—
    - (i) enter if needs be by force any dwelling or other premises or any place if the member has reasonable cause to believe that the child concerned is to be found there, and
    - (ii) take all reasonable measures necessary to bring the child the subject of the order to the registered acute mental health centre including the detention or restraint of the child concerned.

- (7) A member of An Garda Síochána who under *subsection (6)(b)(ii)* detains or restrains a child the subject of an order shall cease the detention or restraint immediately upon the detention or restraint no longer being necessary, in the opinion of the member of An Garda Síochána applying the restraint, in order to protect the health of the child or other persons from the threat of immediate and serious harm.

**Provision of information for voluntarily admitted child or a child aged 16 years or older lacking necessary capacity admitted with parental consent**

75. (1) The responsible consultant psychiatrist in relation to a voluntarily admitted child or a child aged 16 years or older lacking necessary capacity admitted with parental consent shall, as soon as practicable after the admission, give, or cause to be given, a notice of the admission.
- (2) A notice under *subsection (1)* and any information provided in accordance with *subsection (3)* shall be given to—
- (a) the child concerned,
  - (b) the child’s relevant consulted carers, if any,
  - (c) in relation to a child who is the subject of a voluntary care arrangement, an emergency care order, an interim care order or a supervision order, if not already notified under *paragraph (b)*, the Agency, and
  - (d) where relevant, any nominated person.
- (3) A notice under *subsection (1)* shall include a statement in writing to the effect that—
- (a) the child’s relevant consulted carers, if any, will be given a general description of the proposed care and treatment to be administered to the child during the period of his or her admission,
  - (b) the child’s relevant consulted carers, if any, are entitled to receive information on any aspect of the child’s proposed care and treatment at any time during the period of admission,
  - (c) the recipient will be provided with an explanatory note on the guiding principles that apply in relation to all decisions regarding the child’s care and treatment,
  - (d) the recipient is informed of the rights of the child or his or her parents or guardian or the Agency, where appropriate, subject to *Chapter 3*, to consent or refuse to consent to treatment,
  - (e) the recipient is informed of the complaints procedure for the registered acute mental health centre and of the entitlement of the child and his or her parents or guardian or the Agency to bring a complaint under that procedure,
  - (f) the recipient is informed of any relevant advocacy services,
  - (g) the recipient is informed of the entitlement of the child and his or her parents or guardian or the Agency to communicate with the Chief Inspector,

- (h) the recipient is informed of the entitlement of the child and his or her relevant consulted carers, if any, to discuss discharge planning,
  - (i) the recipient is informed of the entitlement of the child to engage with—
    - (i) his or her relevant consulted carers, and
    - (ii) where applicable, a nominated person,
  - (j) the recipient will be provided with all other relevant information as outlined in the code of practice relating to admission of children, and
  - (k) the recipient is informed of the entitlement of the child to leave the registered acute mental health centre at any time, subject to *sections 62(4), 63(3), 63(4), 64(4) and 71*.
- (4) A notice provided under *subsection (1)* and any information provided in accordance with *subsection (3)* shall be in a form and language that the person in receipt of the information can understand.

#### **Provision of information for involuntarily admitted child**

- 76.** (1) The responsible consultant psychiatrist in respect of an involuntarily admitted child shall, as soon as practicable but not later than 24 hours after the making of an involuntary admission order or a renewal order, give or cause to be given a notice of the making of the order concerned.
- (2) A notice under *subsection (1)* and any information provided in accordance with *subsection (3)* shall be given to—
- (a) the child concerned,
  - (b) the child’s relevant consulted carers, if any,
  - (c) in relation to a child who is the subject of a voluntary care arrangement, an emergency care order, an interim care order or a supervision order, if not already notified under *paragraph (b)*, the Agency, and
  - (d) where relevant, any nominated person.
- (3) A notice under *subsection (2)* shall include a statement in writing to the effect that—
- (a) the child’s relevant consulted carers, if any, will be given a general description of the proposed care and treatment to be administered to the child during the period of his or her involuntary admission,
  - (b) the child’s relevant consulted carers, if any, are entitled to receive information on any aspect of the child’s proposed care and treatment at any time during the period of involuntary admission,
  - (c) the recipient will be provided with an explanatory note on the guiding principles that apply in relation to all decisions regarding the child’s care and treatment,

- (d) the recipient is informed of the rights of the child or his or her parents or guardian or the Agency, where appropriate, subject to *Chapter 3*, to consent or refuse to consent to treatment,
  - (e) the recipient is informed of the complaints procedure for the registered acute mental health centre and of the entitlement of the child and his or her parents or guardian or the Agency to bring a complaint under that procedure,
  - (f) the recipient is informed of any relevant advocacy services,
  - (g) the recipient is informed of the entitlement of the child and his or her parents or guardian or the Agency to communicate with the Chief Inspector,
  - (h) the recipient is informed that a court may, in any proceedings under this Part that the child to whom the notice relates is a party, if it thinks fit, appoint a solicitor to represent the interests of the child in the proceedings pursuant to section 25 of the Act of 1991,
  - (i) the recipient is informed of the guardian *ad litem* appointed for him or her following the making of the involuntary admission order in accordance with Part VA of the Act of 1991, as applied by *section 60*,
  - (j) the recipient is provided with all other relevant information as outlined in the code of practice relating to admission of children,
  - (k) the recipient is informed of the entitlement to appeal to the Family Circuit Court under *section 69* against an involuntary admission order or a renewal order, and of the effect of such appeals,
  - (l) the recipient is informed of the entitlement of the child and his or her relevant consulted carers, if any, to discuss discharge planning, and
  - (m) the recipient is informed of the entitlement of the child to engage with—
    - (i) his or her relevant consulted carers, and
    - (ii) where applicable, a nominated person.
- (4) A notice provided under *subsection (2)* and any information provided in accordance with *subsection (4)* shall be in a form and language that the person in receipt of the information can understand.

### **Right to information and attendance at meetings**

77. The child's relevant consulted carers, if any, and, where applicable, his or her nominated person shall be entitled to—
- (a) information of a general nature on the care and treatment of the child, and
  - (b) accompany the child to meetings and consult with him or her on decisions regarding the proposed care and treatment to be administered during the period of admission.

**Bringing of child other than child subject of involuntary admission order to registered acute mental health centre**

78. (1) Where a child is to be admitted to a registered acute mental health centre under *section 62* or *64* and his or her relevant carer is unable to arrange to bring the child to the registered acute mental health centre, the relevant carer shall request—
- (a) the clinical director of the registered acute mental health centre which the child is to be admitted to, or
  - (b) a consultant psychiatrist acting on that clinical director's behalf,
- to arrange for the child concerned to be brought to the registered acute mental health centre.
- (2) A person referred to in *paragraph (a)* or *(b)* of *subsection (1)* shall arrange for the child referred to in that subsection to be brought to the registered acute mental health centre by members of the staff of the centre or a service provider as soon as practicable.

**Transfer of involuntarily admitted child to hospital or other place in certain circumstances**

79. (1) A clinical director of a registered acute mental health centre may arrange for the transfer of an involuntarily admitted child detained in that centre to a hospital or other place, other than a registered acute mental health centre, for the purposes of receiving treatment and for his or her detention there for that purpose.
- (2) A child who is transferred under *subsection (1)* may be kept at the hospital or other place so long as is necessary for the purpose of his or her treatment, but no longer than the expiry of the involuntary admission order or any subsequent renewal order pursuant to which he or she is detained, and shall then be taken immediately back to the registered acute mental health centre from which he or she was transferred.
- (3) The detention of a child in a hospital or other place, other than a registered acute mental health centre, under this section shall be deemed for the purposes of this Act to be detention in the registered acute mental health centre from which he or she was transferred.

**Transfer of child by clinical director in certain circumstances**

80. (1) Where, in relation to an involuntarily admitted child, the clinical director of a registered acute mental health centre (in this section referred to as the “first-mentioned registered acute mental health centre”) is of the opinion that—
- (a) it would be for the benefit of the involuntarily admitted child in the first-mentioned registered acute mental health centre to be transferred to another registered acute mental health centre (in this section referred to as a “second-mentioned registered acute mental health centre”), or

- (b) for the purpose of obtaining special treatment, the details of which shall be specified in writing, it is necessary for the child to be transferred to a second-mentioned registered acute mental health centre,

the Executive may, with the consent of the clinical director of the first-mentioned registered acute mental health centre and the clinical director of the second-mentioned registered acute mental health centre, apply to the Family District Court or the District Court for the time being assigned to the Family District Court district or District Court district, as the case may be, where the child resides or is for the time being, for the transfer of the involuntarily admitted child to the second-mentioned registered acute mental health centre.

- (2) Where, following an application under *subsection (1)*, the Court is satisfied that it is in the best interests of the child to be transferred, the Court shall make an order authorising the transfer, reception and care and treatment of that child in that second-mentioned registered acute mental health centre.
- (3) Where a guardian *ad litem* stands appointed for a child the subject of a care order at the time that an application under *subsection (1)* is proposed, the Executive shall notify the guardian *ad litem* of the proposed application in advance.
- (4) Notice of the application under *subsection (1)* and a copy of the proceedings shall be served by the Executive on—
- (a) the child's relevant notified carers, and
  - (b) any other person specified by the Family District Court or the District Court, as the case may be.
- (5) Before making an order under *subsection (2)*, the Family District Court or the District Court, as the case may be, may have regard to any submission made to it in relation to any matter by or on behalf of a party to the proceedings concerned or any other person having an interest in the proceedings.
- (6) Where an involuntarily admitted child is transferred to a second-mentioned registered acute mental health centre following the making of an order under *subsection (2)*, the clinical director of the first-mentioned registered acute mental health centre shall give notice in writing of the transfer to the Commission within 24 hours of the transfer having taken place.
- (7) A child who is transferred to a second-mentioned registered acute mental health centre following an application under *subsection (1)(a)* may be detained in the second-mentioned registered acute mental health centre until the date of the expiration of the involuntary admission order pursuant to which he or she was detained in the first-mentioned registered acute mental health centre.
- (8) A child who is transferred to a second-mentioned registered acute mental health centre following an application under *subsection (1)(b)* may be detained there so long as is necessary for the purpose of the specified special treatment and shall then be taken back to the first-mentioned registered acute mental health centre, which taking back may not occur later than the date of the expiration of the involuntary admission

order pursuant to which he or she was detained in the first-mentioned registered acute mental health centre.

- (9) In this section, references to an involuntary admission order include references to a renewal order.

### **Request for application for transfer of child**

- 81.** (1) A request may be made to the clinical director of a registered acute mental health centre for the transfer of an involuntarily admitted child detained in that centre to another registered acute mental health centre by—
- (a) subject to *paragraph (b)*, in the case of a child aged 16 years or older, the child concerned or any nominated person, and
  - (b) in the case of a child aged 16 years or older assessed as lacking capacity to consent under *section 61* or a child under 16 years of age, his or her parents or guardian or the Agency or, where relevant, any nominated person.
- (2) Subject to *subsection (3)*, a clinical director who receives a request under *subsection (1)* may request the Executive to make an application under *section 80* for the transfer of the involuntarily admitted child with the consent of the clinical director of the registered acute mental health centre to which the child is to be transferred.
- (3) Before deciding whether to request the Executive to make an application under *section 80*, the clinical director who received the request under *subsection (1)* shall consult with the child the subject of the application, the responsible consultant psychiatrist and other members of the child’s multidisciplinary team and, as appropriate, the child’s parents or guardian or the Agency and any nominated person.
- (4) The clinical director who received the request under *subsection (1)* shall, within 7 days of receiving the request—
- (a) make his or her decision on whether or not to request the Executive to make an application under *section 80*,
  - (b) provide a copy in writing of that decision to the person who made the request which shall include, where the clinical director refuses a request, the reasons for refusing the request, and
  - (c) send a copy of the request and his or her decision to the Commission.

### **Absence with leave of child**

- 82.** (1) Subject to the terms of any involuntary admission order or renewal order made under *section 66* or *67*, the responsible consultant psychiatrist in respect of an involuntarily admitted child may, subject to *subsection (4)*, give permission in writing (in this Act referred to as a “permitted absence”)—
- (a) to an involuntarily admitted child aged 16 years or older, or

- (b) in the case of an involuntarily admitted child under 16 years of age or an involuntarily admitted child aged 16 years or older assessed as lacking capacity to consent under *section 61*, to the child's parents or guardian or the Agency,
- to permit the child to be absent from the registered acute mental health centre concerned subject to such conditions as the responsible consultant psychiatrist considers appropriate and so specifies in writing.
- (2) Where a permitted absence is given under *subsection (1)* to—
- (a) a child the subject of a care order, a voluntary care arrangement, an emergency care order or an interim care order, or
- (b) a child under 16 years of age or aged 16 years or older assessed as lacking capacity to consent under *section 61*,
- he or she shall be released into the care of his or her relevant carer for the duration of the permitted absence.
- (3) The responsible consultant psychiatrist shall, where practicable, give adequate notice of not less than 3 days to the child's relevant notified carers in advance of giving a permitted absence under *subsection (1)*.
- (4) A permitted absence given under *subsection (1)* shall not exceed 14 continuous days and shall not exceed the unexpired period of an involuntary admission order or a renewal order, as the case may be, in respect of the child.
- (5) Where a child is absent from a registered acute mental health centre pursuant to a permitted absence, the responsible consultant psychiatrist may, if he or she is of the opinion that it is clinically appropriate to do so, withdraw the permitted absence and give a direction to the child and his or her relevant carer for the child to return to the registered acute mental health centre.
- (6) The responsible consultant psychiatrist may extend in writing the period of permitted absence by additional periods not exceeding 14 continuous days, and for so long as an additional period does not exceed the unexpired period of the involuntary admission order or renewal order.
- (7) Where an extension of absence is given under *subsection (6)*, notice of it shall be given to the persons referred to in *paragraphs (a) and (b) of subsection (1)* and to the Commission within 24 hours of the making of the notice in a form and manner specified by the Commission.

### **Absence without leave of child**

- 83.** (1) Where a child in respect of whom an involuntary admission order or renewal order is in force—
- (a) leaves a registered acute mental health centre otherwise than by way of a permitted absence,

- (b) fails to return to the registered acute mental health centre in accordance with any direction given to the child or his or her relevant carer under *section 82(5)* or on the expiration of the permitted absence, or
  - (c) fails, in the opinion of the responsible consultant psychiatrist in respect of the child, to comply with any condition specified in the permitted absence,
- the clinical director of the registered acute mental health centre concerned shall arrange for a member or members of the staff of the registered acute mental health centre or a service provider duly authorised in that behalf under *section 19*, to bring the child back to the registered acute mental health centre.
- (2) Where a member of staff or service provider authorised in that behalf under *section 19*, as the case may be, is unable to bring the child back to the registered acute mental health centre, the clinical director or a consultant psychiatrist acting on his or her behalf shall, if necessary, request An Garda Síochána to assist in bringing the child back to that registered acute mental health centre and where An Garda Síochána receives a request in that regard, An Garda Síochána shall comply with such a request as soon as practicable.
  - (3) A member of An Garda Síochána may for the purposes of this section—
    - (a) enter if needs be by force any dwelling or other premises or any place if he or she has reasonable cause to believe that the child concerned is to be found there, and
    - (b) take all reasonable measures to bring the child to the registered acute mental health centre including, where necessary, the detention or restraint of the child concerned.
  - (4) The clinical director of a registered acute mental health centre shall notify the Commission of all absences referred to in *subsection (1)* in a form specified by the Commission within 24 hours of the absence occurring.

### CHAPTER 3

#### *Consent to treatment for children*

##### **Consent to treatment for children to be obtained prior to treatment**

- 84.** (1) A mental healthcare professional shall, before providing treatment to a child aged 16 years or older, obtain consent for the treatment concerned from the child, unless otherwise expressly provided for in this Act.
- (2) A mental healthcare professional shall, before providing treatment to a child under 16 years of age, or a child aged 16 years or older who has been assessed as lacking capacity under *section 61*, obtain consent for the treatment concerned from the child's parents or guardian or the Agency unless otherwise expressly provided for in this Act.

**Child's consent to treatment**

- 85.** (1) In this Part, consent, in relation to a child aged 16 years or older, who has not been assessed as lacking capacity under *section 61*, means consent of the child obtained freely without threats or inducements, where—
- (a) adequate information in a form and language that the child can understand on the nature, purpose and likely effects of the treatment concerned has been given to the child, and
  - (b) he or she has capacity to give the consent concerned.
- (2) In this Part, consent, in respect of a child under 16 years of age, or a child aged 16 years or older who has been assessed as lacking capacity under *section 61*, means the consent of the child's parents or guardian or the Agency obtained freely without threats or inducement where—
- (a) adequate information in a form and language that the child can understand on the nature, purpose and likely effects of the treatment concerned has been given to the child's parents or guardian or the Agency, and
  - (b) due regard has been given to the views and the will and preferences of the child in accordance with the guiding principles.
- (3) Consent to treatment may be withdrawn at any time by—
- (a) a child aged 16 years or older who has capacity to make decisions about his or her treatment under *section 61*, or
  - (b) in respect of a child under 16 years of age, or a child aged 16 years or older who has been assessed as lacking capacity under *section 61*, his or her parents or guardian or the Agency.

**Treatment refusal by or on behalf of involuntarily admitted child**

- 86.** (1) Subject to *subsection (2)*, an involuntarily admitted child aged 16 years or older may refuse to consent to any specific treatment proposed to him or her at any time, and he or she may withdraw his or her consent to any specific treatment at any time.
- (2) Where an involuntarily admitted child aged 16 years or older has been assessed as lacking necessary capacity under *section 61*, his or her parents or guardian or the Agency may refuse to consent to any specific treatment proposed to be given to the involuntarily admitted child at any time, and he, she or it may withdraw his, her or its consent to any specific treatment at any time.
- (3) In respect of an involuntarily admitted child under 16 years of age, his or her parents or guardian or the Agency may refuse to consent to any specific treatment proposed to be given to the involuntarily admitted child at any time, and he, she or it may withdraw his, her or its consent to any specific treatment at any time.
- (4) Each refusal to consent to treatment under this section shall be made in relation to the specific treatment proposed and it shall not be permissible to make a decision that

provides general consent to or, as the case may be, total refusal to consent to all forms of treatment without considering each specific treatment proposed.

**Application to Family High Court for treatment order for child in certain circumstances**

**87.** (1) Where treatment cannot be administered to an involuntarily admitted child because—

(a) in the case of an involuntarily admitted child aged 16 years or older—

(i) he or she has capacity to make decisions about his or her treatment but refuses to consent to the treatment concerned, or

(ii) where he or she has been assessed as lacking necessary capacity under *section 61*—

(I) his or her parents or guardian or the Agency refuse or refuses to consent to the treatment concerned, or

(II) other than where the child is the subject of a care order, his or her parents, or either of them, or guardian, after the making of reasonable enquiries, cannot be found,

or

(b) in the case of an involuntarily admitted child under 16 years of age—

(i) his or her parents or guardian or the Agency refuse or refuses to consent to the treatment concerned, or

(ii) other than where the child is the subject of a care order, his or her parents, or either of them, or guardian, after the making of reasonable enquiries, cannot be found,

an application may be made by the Executive to the Family High Court specifying the proposed treatment and seeking an order to administer the treatment concerned to the involuntarily admitted child (in this section referred to as a “treatment order”) where all of the relevant criteria in *subsection (2)* apply.

(2) The relevant criteria for the purpose of a treatment order are as follows:

(a) the treatment concerned is—

(i) immediately necessary for the protection of life of the child or another person or persons, or

(ii) necessary for protection from an immediate and serious threat to the health of the child or another person or persons;

(b) the involuntarily admitted child requires the treatment concerned;

(c) there is no alternative safe and effective treatment available;

(d) it is likely that the condition of the involuntarily admitted child will materially benefit from the treatment concerned.

- (3) A refusal to consent to treatment referred to in *subsection (1)* may be withdrawn at any time, and any application made to the Family High Court under that subsection may be withdrawn, where—
- (a) an involuntarily admitted child aged 16 years or older has capacity and decides to withdraw his or her refusal and to now consent to treatment concerned, or
  - (b) in the case of an involuntarily admitted child aged 16 years or older assessed as lacking capacity under *section 61* or an involuntarily admitted child under 16 years of age, his or her parents or guardian or the Agency withdraws the refusal to consent to the treatment concerned and now consents to the treatment.
- (4) Where an application is made to the Family High Court under *subsection (1)*, the Executive shall immediately notify—
- (a) the guardian *ad litem* appointed for the child, and
  - (b) the child's relevant notified carers,
- of the making of the application and any treatment provided under *subsection (7)*.
- (5) Where an application for a treatment order under *subsection (1)* is before the Family High Court, the Court may, pending its determination of the application, of its own motion or on the application of any person, give such interim directions as it sees fit as to the care and treatment of the involuntarily admitted child who is the subject of the application but any such direction shall cease to have effect immediately on the determination by the Court of the application before it.
- (6) An application may be made by the Executive to the Family High Court to renew a treatment order made under this section, subject to any directions of the Court, where the grounds in *paragraph (a)* or *(b)* of *subsection (1)* and the relevant criteria in *subsection (2)* continue to apply.
- (7) Where an application to the Family High Court has been made under *subsection (1)* or *(6)* in relation to an involuntarily admitted child under 16 years of age or an involuntarily admitted child aged 16 years or older who has been assessed as lacking capacity under *section 61*, treatment may be administered to the involuntarily admitted child prior to the hearing of the application, for a period of 72 hours after its initiation or until the hearing of the application by the Family High Court, whichever is sooner, where, in the opinion of the responsible consultant psychiatrist, the grounds in *paragraph (a)* or *(b)* of *subsection (1)* and the relevant criteria in *subsection (2)* continue to apply.
- (8) Where treatment is administered to a child without consent pursuant to a treatment order under *subsection (1)* or prior to the hearing of the application under *subsection (7)*, the absence of consent and details of the treatment or treatments shall be noted in his or her medical records.
- (9) A treatment order shall, subject to any directions of the Family High Court, have effect for a period not exceeding 3 months.

- (10) An application to the Family High Court shall be deemed to be withdrawn where the involuntarily admitted child concerned is no longer subject to an involuntary admission order or a renewal order.
- (11) Where, in the case of—
- (a) a voluntarily admitted child under 16 years of age, or
  - (b) a child aged 16 years or older lacking necessary capacity admitted with parental consent,
- the responsible consultant psychiatrist and the child's parents or guardian or the Agency agree that it would be detrimental to the relationship between the child and his or her parents or guardian or the Agency for that person or persons to consent to or refuse treatment, and, in the opinion of the responsible consultant psychiatrist, the criteria specified in *paragraphs (a), (b) and (d) of subsection (2)* apply (with the modification that a reference to an involuntarily admitted child shall be construed as a reference to the child concerned), an application for a treatment order may be made under this section with all necessary modifications.
- (12) Where treatment is administered to a child without consent pursuant to a treatment order, the absence of consent and details of the treatment or treatments shall be noted in his or her medical records.

#### **Application to Family District Court for relevant treatment order**

- 88.** (1) Subject to subsections *(11)* and *(16)*, an application for a treatment order under this section may be made by the Executive where—
- (a) treatment cannot be administered to an involuntarily admitted child aged 16 years or older assessed as lacking capacity under *section 61* or an involuntarily admitted child aged under 16 years because—
    - (i) his or her parents, or either of them, or guardian, having been given an opportunity to consent to or refuse the treatment concerned, fail to do so or are incapable of doing so, or
    - (ii) his or her parents, or either of them, or guardian, after the making of reasonable enquiries, cannot be found,
 and
  - (b) the relevant criteria in *subsection (2)* apply.
- (2) The relevant criteria for the purpose of *subsection (1)* are that there is no alternative safe and effective treatment available and—
- (a) the treatment is immediately necessary for the protection of life of the child or that of another person,
  - (b) the treatment is necessary for protection from an immediate and serious threat to the health of the child, or that of another person, or
  - (c) the child has a mental disorder, the nature and degree of which is such that—

- (i) he or she requires treatment immediately,
  - (ii) the treatment required to be given to the child cannot be given to that child other than in a registered acute mental health centre, and
  - (iii) the treatment of the child concerned would be likely to materially benefit the condition of that child.
- (3) The following provisions shall have effect in relation to an application under *subsection (1)*:
- (a) the application shall be made—
    - (i) at the next sitting of the Family District Court held in the Family District Court district in which the child resides or is for the time being,
    - (ii) in circumstances of urgency where no judge of the Family District Court is available to hear the application, at the next sitting of the District Court held in the same District Court district, or
    - (iii) in the event that the next sitting of the Family District Court or District Court is not due to be held within 3 working days, at a sitting of the Family District Court or District Court which has been specially arranged under *paragraph (d)*, held within the said 3 working days;
  - (b) where a judge for the Family District Court district or a judge for the District Court district in which the child resides or is for the time being is not immediately available, an order may be made by any judge of the Family District Court or the District Court;
  - (c) the application may, if the judge is satisfied that the urgency of the matter so requires, be made *ex parte*;
  - (d) the application may, if the judge is satisfied that the urgency of the matter so requires, be heard and an order made thereon elsewhere than at a sitting of the Family District Court or a public sitting of the District Court;
  - (e) the Executive shall specify the proposed treatment to be administered to the child concerned.
- (4) Before making an application under *subsection (1)* due to a failure by a child's parents, or either of them, or guardian to consent to or refuse the treatment concerned, the Executive shall—
- (a) provide adequate time, information and, as appropriate, support to assist a child's parents, or either of them, or guardian to make a decision regarding the treatment concerned, and
  - (b) inform the parents, or either of them, or guardian of its intention to make an application and consult with them in advance as appropriate.
- (5) Where an application is made under *subsection (1)*, the Executive shall immediately notify the making of the application to—
- (a) the guardian *ad litem* appointed for the child,

- (b) where possible and appropriate, the child’s parents, or either of them, or guardian,
  - (c) where the child is the subject of a voluntary care arrangement, an interim care order, an emergency care order or a supervision order, the Agency, and
  - (d) any other person specified by the Family District Court or the District Court, as the case may be.
- (6) Subject to *subsection (14)*, where the Family District Court or the District Court, as the case may be, is satisfied, having considered any reports or evidence that may be adduced before it, that the grounds in *paragraph (a)* of *subsection (1)* and the relevant criteria in *subsection (2)* continue to apply, the Court may make an order (in this section referred to as a “relevant treatment order”) for the administration of the proposed treatment to the child concerned in a registered acute mental health centre for a period not exceeding 21 days.
- (7) Before making a relevant treatment order, the Family District Court or the District Court, as the case may be, may request and consider such reports or evidence as it considers necessary to be furnished to the Court, within such period as may be specified by the Court.
- (8) Where an application has been made under *subsection (1)*, treatment may be administered to the child the subject of the application for a period of 72 hours from the initiation of the application or until the hearing of the application by the Family District Court or the District Court, as the case may be, whichever is sooner, where, in the opinion of the responsible consultant psychiatrist, the grounds in *paragraph (a)* of *subsection (1)* and the relevant criteria in *subsection (2)* continue to apply.
- (9) Where treatment is administered under *subsection (8)*, the Executive shall immediately notify the persons specified in paragraphs *(a)*, *(b)*, *(c)* and *(d)* of *subsection (5)*.
- (10) On the hearing of an application under *subsection (1)*, the Family District Court or the District Court, as the case may be, pending its determination of the application, of its own motion or on the application of any person, may give such interim directions as it sees fit as to the care and treatment of the child the subject of the application, but any such direction shall cease to have effect immediately on the determination by the Court of the application before it.
- (11) Where, in the case of an involuntarily admitted child aged 16 years or older assessed as lacking capacity under *section 61* or an involuntarily admitted child aged under 16 years—
- (a) the responsible consultant psychiatrist, and
  - (b) the child’s parents or guardian or the Agency,
- agree that it would be detrimental to the relationship between the child and his or her parents or guardian or the Agency for that person or persons to consent to or refuse treatment, and, in the opinion of the responsible consultant psychiatrist, the relevant

criteria in *subsection (2)* apply, an application for a relevant order may be made under this section with any necessary modifications.

- (12) An application may be made by the Executive to the Family District Court or the District Court, as the case may be, to renew a relevant treatment order for one further period not exceeding 21 days, commencing on the date of the expiry of the initial relevant treatment order, subject to any directions of the Court, where—
- (a) in the case of a child aged 16 years or older, the child continues to lack capacity to consent to or refuse treatment, and
- (b) the grounds in *paragraph (a)* of *subsection (1)* and the relevant criteria in *subsection (2)* continue to apply,
- and *subsections (3), (4), (5), (7), (8), (9) and (10)* shall apply to such a renewal application with any necessary modifications.
- (13) The Executive shall withdraw any application under this section not yet determined by the Family District Court or the District Court, as the case may be, where any of the matters in *subsection (14)* occur.
- (14) Treatment may be administered pursuant to a relevant treatment order or any renewed relevant treatment order under this section until such time as the order expires or any of the following occurs, whichever is the sooner:
- (a) in the case of a child aged 16 years or older, he or she is assessed under *section 61* as having capacity to consent to or refuse treatment;
- (b) the child's parents, or either of them, or guardian makes a decision to consent to or refuse treatment on behalf of the child;
- (c) the child is discharged as an involuntarily admitted child under *section 70*;
- (d) the responsible consultant psychiatrist discontinues the treatment.
- (15) The Executive shall notify the Agency where a relevant treatment order is made under *subsection (6)* or renewed under *subsection (12)*.
- (16) This section shall not apply to a child the subject of a care order other than where *subsection (11)* applies.

#### CHAPTER 4

##### *Prohibited and restrictive practices for children*

##### **Application (Chapter 4: Prohibited and restrictive practices for children)**

89. (1) Where a restrictive practice is applied in respect of a child admitted under *section 62, 63 or 64*, the admission status of the child shall be reviewed pursuant to *section 71* as soon as possible, but no later than 24 hours after the initiation of the application.
- (2) A restrictive practice may only be applied in respect of a child who is in the care of a registered acute mental health centre.

**Prohibition on administration of electro-convulsive therapy for children**

90. Electro-convulsive therapy shall not be administered to a child and, accordingly, a reference in this Part to treatment that may be administered to a child, or authorised or directed in respect of a child, shall not include electro-convulsive therapy.

**Seclusion for children**

91. A child shall not be placed in seclusion in a registered acute mental health centre unless—

- (a) the seclusion is ordered and initiated by a relevant health professional,
- (b) the seclusion is applied in respect of the child by a relevant health professional or a specified person under the direct supervision of a relevant health professional,
- (c) the application of such seclusion is determined by the relevant health professional, in accordance with regulations made under *section 96*, to be necessary where there is an immediate threat of serious harm to the child or to another person, and such seclusion is to prevent such a threat, and
- (d) the seclusion concerned complies with regulations under *section 96*.

**Mechanical restraint for children**

92. A mechanical restraint shall not be applied in respect of a child receiving treatment in a registered acute mental health centre unless—

- (a) such restraint is ordered and initiated by a consultant psychiatrist,
- (b) the restraint is applied in respect of the child by a relevant health professional or a specified person under the direct supervision of a relevant health professional,
- (c) the application of such restraint is determined by the consultant psychiatrist, in accordance with regulations made under *section 96*, to be necessary where there is an immediate threat of serious harm to the child or to another person, and
- (d) the mechanical restraint concerned complies with regulations under *section 96*.

**Physical restraint for children**

93. A physical restraint shall not be applied in respect of a child receiving treatment in a registered acute mental health centre unless—

- (a) the restraint is ordered and initiated by a relevant health professional,
- (b) the restraint is applied to the child by a relevant health professional or a specified person under the direct supervision of a relevant health professional,
- (c) the application of such restraint is determined by the relevant health professional, in accordance with regulations made under *section 96*, to be necessary where there is an immediate threat of serious harm to the child or to another person, and
- (d) the restraint complies with regulations under *section 96*.

**Pharmacological restraint for children**

94. A pharmacological restraint shall not be applied in respect of a child receiving treatment in a registered acute mental health centre unless—
- (a) the restraint is ordered by a consultant psychiatrist only,
  - (b) the restraint is initiated by a relevant health professional,
  - (c) the restraint is applied in respect of the child by a relevant health professional,
  - (d) the application of such restraint is determined by the consultant psychiatrist, in accordance with regulations made under *section 96*, to be necessary where there is an immediate threat of serious harm to the child or to another person, and
  - (e) the pharmacological restraint concerned complies with regulations under *section 96*.

**Application and recording of restrictive practice on child**

95. (1) A restrictive practice may only be applied in respect of a child—
- (a) where it is in the best interests of the child,
  - (b) in rare and exceptional circumstances,
  - (c) where it is the least restrictive practice possible in the circumstances,
  - (d) as a practice of last resort,
  - (e) after the age, size and physical vulnerability of the child has been assessed and considered by the person ordering the restrictive practice,
  - (f) where the application of the restrictive practice is proportionate to—
    - (i) the age, size and physical vulnerability of the child, and
    - (ii) the immediate threat of serious harm to the child or to others that has been assessed to exist,
  - (g) where there is no safe alternative for the child, and
  - (h) for the shortest duration possible.
- (2) Where a restrictive practice is applied in respect of a child, the consultant psychiatrist or relevant health professional who ordered, initiated or applied the restrictive practice concerned shall communicate to the child in a manner that the child is reasonably expected to understand—
- (a) the reasons why the restrictive practice is being applied,
  - (b) the expected duration of the application, and
  - (c) the circumstances which, in the opinion of the consultant psychiatrist or relevant health professional, will lead to the discontinuation of the application.
- (3) A registered proprietor of a registered acute mental health centre shall—

- (a) cause to be maintained in writing a record in such form and manner as may be specified by the Commission, which shall include such information as may be specified by the Commission in respect of the application of a restrictive practice in respect of a child in that centre,
  - (b) cause to be maintained in writing a record of a communication under *subsection (2)*, and
  - (c) retain a copy of each of the records referred to in *paragraphs (a) and (b)* in the child's medical records for such period as may be specified in regulations made by the Commission under *section 96*.
- (4) A copy of the record under *paragraph (a) or (b) of subsection (3)* shall be made available, when so requested, for inspection by—
- (a) the Chief Inspector or an Assistant Inspector, or
  - (b) another staff member of the Commission, authorised by the Chief Inspector, where the information contained in the record is required for the proper performance by the Chief Inspector or the Assistant Inspector of his or her duties.
- (5) A registered proprietor of a registered acute mental health centre shall notify the Commission, in the form and manner specified by the Commission and within the period specified by the Commission, of each application of a restrictive practice in respect of a child in that registered acute mental health centre.

### **Regulations concerning restrictive practices on children**

- 96.** (1) The Commission may, with the consent of the Minister, and following consultation with the Minister and Minister for Children, Disability and Equality, make regulations providing for the application of a restrictive practice in respect of a child who is in the care of a registered acute mental health centre.
- (2) In particular, but without prejudice to the generality of *subsection (1)*, regulations under *subsection (1)* may provide for any or all of the following matters:
- (a) the application of a restrictive practice in respect of a child (including the application of the practice on a child with dignity and respect);
  - (b) the principles underpinning the application of a restrictive practice;
  - (c) the interaction of the application of a restrictive practice and the guiding principles referred to in *section 9* (including that the best interests and the welfare of the child shall be the primary consideration) to apply in respect of children;
  - (d) the procedures governing the application of a restrictive practice (including procedures in respect of the ordering and initiation of a restrictive practice in respect of a child and the persons who should be notified of such ordering and initiation);
  - (e) the records to be maintained in relation to the application of a restrictive practice in respect of a child;
  - (f) the monitoring of the application of a restrictive practice on a child;

- (g) the procedures for the renewal of the application of a restrictive practice in relation to a child;
  - (h) the procedures concerning the discontinuation of the application of a restrictive practice on a child (including who may order the discontinuation of such application and under what circumstances);
  - (i) the facilities to be provided in a registered acute mental health centre for the application of a restrictive practice on a child;
  - (j) the training and experience of relevant health professionals or specified persons who apply a restrictive practice in relation to a child;
  - (k) the clinical governance of a restrictive practice, including written policies by a registered acute mental health centre on the application of a restrictive practice on a child;
  - (l) the use of CCTV or other electronic monitoring in relation to seclusion of a child;
  - (m) any other matters which are necessary or expedient for the purposes of giving effect to *subsection (1)*.
- (3) A person who contravenes a regulation made under this section that is stated to be a penal regulation shall be guilty of an offence and shall be liable on summary conviction to a class A fine.

#### **Notification of the application of a restrictive practice**

97. (1) Where a restrictive practice is applied in respect of a child admitted under *section 62, 63, 64 or 66*, his or her relevant notified carers and nominated person, if any, shall be informed of the application of the restrictive practice as soon as possible after the initiation of the application of the restrictive practice.
- (2) The consultant psychiatrist or relevant health professional who ordered, initiated or applied the restrictive practice concerned shall also communicate, or cause to be communicated, under *subsection (1)*—
- (a) the reasons why the restrictive practice was applied,
  - (b) the expected duration of the application of the restrictive practice, and
  - (c) the circumstances which in the opinion of the consultant psychiatrist or relevant health professional expects will lead to the discontinuation of the application.
- (3) Where a parent, guardian, the Agency or a nominated person is informed of the application of a restrictive practice under this section, a record of the notification shall be recorded in writing and retained in the medical records of the child.

#### **Role of parent or guardian regarding application of restrictive practice**

98. (1) As soon as practicable after the admission of a child admitted voluntarily under *section 62*, a child aged 16 years or older lacking necessary capacity admitted with parental consent under *section 64* or an involuntarily admitted child, the responsible

consultant psychiatrist or another member of the child's multidisciplinary team shall—

- (a) subject to *subsection (3)*, provide information on the application of restrictive practices in that registered acute mental health centre to—
    - (i) the child,
    - (ii) his or her nominated person, if any, and
    - (iii) the child's relevant consulted carers, if any,
  - (b) take into account the views of any person to whom information is provided under *paragraph (a)* regarding the application of restrictive practices, and
  - (c) record the views of any person to whom information is provided under *paragraph (a)* in the child's medical records and care plan.
- (2) As soon as practicable after the admission of a child voluntarily admitted under *section 63*, the responsible consultant psychiatrist or another member of the child's multidisciplinary team shall—
- (a) subject to *subsection (3)*, provide information on the application of restrictive practices in that registered acute mental health centre to—
    - (i) the child,
    - (ii) his or her nominated person, if any, and
    - (iii) his or her relevant consulted carers, if any,
  - (b) take into account the views of any person to whom information is provided under *paragraph (a)* regarding the application of restrictive practices, and
  - (c) record the views of any person to whom information is provided under *paragraph (a)* in the child's medical records and care plan.
- (3) Where the responsible consultant psychiatrist forms an opinion that it would be in the best interests of the child for any persons specified in *subsection (1)(a)* or *(2)(a)* not to be provided with information on the application of restrictive practices, such information is not required to be provided.
- (4) Where information is provided to a child under *subsection (1)(a)* or *(2)(a)*, such information shall be—
- (a) given in a manner that is accessible to the child, and
  - (b) provided in a manner that can reasonably be understood by the child.

## PART 5

## THE COMMISSION

## CHAPTER 1

*Continuance in being and functions of Commission***Continuance in being of Commission**

99. (1) Notwithstanding the repeal of the Act of 2001 by *section 5*, the body known as the Mental Health Commission established under that Act shall continue in being in accordance with the provisions of this Act.
- (2) Anything commenced but not completed by the Commission before the repeal of the Act of 2001 may be carried on and completed by the Commission after the repeal as if that Act had not been repealed.
- (3) The Commission is a body corporate with perpetual succession and an official seal and shall have the power to sue, and may be sued, in its corporate name, and shall, with the consent of the Minister given with the approval of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation have power to acquire, hold and dispose of land or an interest in land, and shall have power to acquire, hold and dispose of any other property.
- (4) The seal of the Commission shall be authenticated by—
- (a) the signatures of 2 members of the Board, or
- (b) the signatures of both a member of the Board and a member of the staff of the Commission, authorised by the Board to act in that behalf.
- (5) Judicial notice shall be taken of the seal of the Commission and any document purporting to be an instrument made by, and to be sealed with the seal of, the Commission shall, unless the contrary is shown, be received in evidence and be deemed to be such an instrument without further proof.
- (6) Any contract or instrument which, if entered into or executed by an individual, would not require to be under seal may be entered into or executed on behalf of the Commission by any person generally or specially authorised by the Commission for that purpose.

**Functions of Commission**

100. (1) The Commission shall, in addition to the other functions conferred on it by this Act, the Act of 2015 or any other enactment—
- (a) regulate mental health services,
- (b) promote the improvement of mental health services by setting standards for best practice in those services and encouraging adherence to those standards,

- (c) promote public awareness of the regulation of mental health services and other matters provided for under this Act, and
  - (d) take all reasonable steps to protect the rights and interests of persons detained in registered acute mental health centres.
- (2) The Commission shall perform its functions through or by the Chief Executive Officer or any member of the staff of the Commission duly authorised in that behalf by the Chief Executive Officer.
- (3) The Commission shall have all such powers as are necessary or expedient for the performance of its functions and shall ensure that its functions are performed effectively and efficiently.

## CHAPTER 2

### *Board of Commission*

#### **Functions of Board**

- 101.** (1) The Commission shall have a Board (in this Act referred to as the “Board”) established under this Act.
- (2) The Board shall, in addition to the functions conferred on it by this Act—
- (a) satisfy itself that appropriate systems, procedures and practices are in place for the internal performance management and accountability of the Commission in respect of—
    - (i) the Commission’s functions under this Act or any other enactment, and
    - (ii) the achievement of any objectives set out in the Commission’s strategic plan,
  - (b) provide guidance and advice to the Chief Executive Officer where requested under *section 114*,
  - (c) establish and implement arrangements for the management of the performance of the Chief Executive Officer, and
  - (d) approve the strategic plan in accordance with *section 124* and the annual business plan in accordance with *section 125*.
- (3) The Board shall have all such powers as are necessary or expedient for the performance of its functions.
- (4) The Board is accountable to the Minister for the performance of its functions under this Act.
- (5) The Board shall inform the Minister in writing of any matter that it considers requires the Minister’s attention.

#### **Membership of Board**

- 102.** (1) The Board shall consist of the following members—

- (a) a chairperson,
  - (b) a deputy chairperson, and
  - (c) 9 ordinary members.
- (2) The members of the Board shall be appointed by the Minister from among persons who, in the opinion of the Minister, have sufficient experience and expertise relating to—
- (a) matters connected with the functions of the Commission to enable them to make a substantial contribution to the effective and efficient performance of those functions, or
  - (b) matters connected to the provision of mental health services, psychiatry, law, advocacy, capacity and assisted decision-making, organisational and financial governance, management, public administration or risk management.
- (3) The Minister shall, in so far as practicable, endeavour to ensure that among the members of the Board there is an equitable balance between men and women.
- (4) The chairperson shall hold office for such period, not exceeding 5 years, from the date of his or her appointment as the Minister shall determine.
- (5) The deputy chairperson shall hold office for such period, not exceeding 5 years, from the date of his or her appointment as the Minister shall determine.
- (6) Of the ordinary members of the Board appointed under this section—
- (a) 5 members shall hold office for a period not exceeding 3 years from the date of his or her appointment, and
  - (b) 4 members shall hold office for a period not exceeding 5 years from the date of his or her appointment.
- (7) Subject to *subsection (8)*, a member of the Board whose term of office expires by the efflux of time shall be eligible for reappointment to the Board.
- (8) A person who is reappointed to the Board in accordance with *subsection (7)* shall not hold office for periods the aggregate of which exceeds 8 years.
- (9) A member of the Board may resign from the Board by giving notice in writing to the Minister of his or her resignation and the resignation shall take effect on the date specified in the notice, or the date on which the Minister receives the notice, whichever is the later.
- (10) Subject to *subsection (11)*, the persons who held office as members of the Commission immediately before the commencement of *section 99*, shall cease to hold office upon such commencement but may be eligible to be appointed as members of the Board for a term not exceeding 3 years.
- (11) A person referred to in *subsection (10)* who is appointed as a member of the Board shall not hold office as such a member for more than one term and, in any event, may not serve as such a member and as a member of the Commission for a cumulative period of more than 8 years.

**Casual vacancies**

- 103.** (1) If a member of the Board resigns, dies, is removed from office or otherwise ceases to hold office (other than by the efflux of time), the Minister shall, as soon as practicable, appoint a person to fill the casual vacancy so arising.
- (2) A person appointed under *subsection (1)* shall hold office for the unexpired period of his or her predecessor's term of office, or such other period as the Minister may determine not exceeding 5 years (including such unexpired period).
- (3) A member of the Board appointed under *subsection (1)* is eligible for reappointment to the Board on the expiry of the unexpired period or other period, as appropriate, referred to in *subsection (2)*, but may not serve for more than 2 further consecutive terms and in any event may not serve for a period of more than 8 years.

**Removal of member of Board**

- 104.** (1) The Minister may at any time remove from office a member of the Board if, in the opinion of the Minister—
- (a) the member has, without reasonable excuse, failed to discharge the functions of the office,
  - (b) the member has become incapable through ill-health of effectively performing his or her functions,
  - (c) the member has committed stated misbehaviour, or
  - (d) the member's removal is necessary for the effective and efficient performance by the Board of its functions.
- (2) A member of the Board shall cease to be qualified for office and shall cease to hold office if he or she—
- (a) is adjudicated bankrupt and such bankruptcy has not been annulled or discharged,
  - (b) makes a composition or arrangement with creditors,
  - (c) is sentenced by a court of competent jurisdiction to a term of imprisonment,
  - (d) is convicted on indictment of an offence,
  - (e) is convicted of an offence involving fraud or dishonesty,
  - (f) has a declaration under section 819 of the Act of 2014 made against him or her or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act,
  - (g) is subject, or is deemed to be subject, to a disqualification order, within the meaning of Chapter 4 of Part 14 of the Act of 2014, whether by virtue of that Chapter or any other provision of that Act, or
  - (h) is removed by a competent authority for any reason (other than failure to pay a fee) from any register established for the purpose of registering members of a profession in the State or another jurisdiction.

**Removal of all members of Board from office**

- 105.** (1) The Minister may remove all the members of the Board from office if—
- (a) the Board fails to achieve a quorum for 3 consecutive meetings,
  - (b) the Board does not comply with a judgment, order or decree of a court,
  - (c) the Board does not comply with a direction of the Minister or any other requirement imposed on it by or under any enactment including this Act, or
  - (d) he or she is of the reasonable opinion that the Board's functions are not being performed in an effective and efficient manner.
- (2) Before removing all the members of the Board from office under *subsection (1)(d)*, the Minister may appoint a person to—
- (a) conduct an independent review of any matter giving rise to his or her opinion that the Commission's functions are not being performed in an effective or efficient manner, and
  - (b) submit a report to the Minister on the results of the review.
- (3) The Board shall co-operate with a review under *subsection (2)* and give the person conducting it all reasonable assistance, including access to such premises, equipment and records as the person may require for the purposes of the review.

**Meetings and procedures of Board**

- 106.** (1) The Board shall hold such and so many meetings as may be necessary for the due fulfilment of its functions.
- (2) At a meeting of the Board—
- (a) the chairperson of the Board shall, if present, be the chairperson of the meeting,
  - (b) if and so long as the chairperson of the Board is not present or if that office is vacant, the deputy chairperson shall, if present, be the chairperson of the meeting, or
  - (c) if and so long as neither the chairperson nor the deputy chairperson of the Board is present, or if the offices of the chairperson and deputy chairperson are vacant, the other members of the Board who are present shall choose one of their number to be the chairperson of the meeting.
- (3) Every question at a meeting on which a vote is required shall be determined by a majority of the votes of the members of the Board present and voting on the question.
- (4) Subject to *subsection (5)*, the Board may act notwithstanding one or more vacancies among its members.
- (5) The quorum for a meeting of the Board shall, unless the Minister otherwise directs, be 6.

- (6) The Board shall, subject to the provisions of this Act, be independent in the performance of its functions and may, subject to those provisions, regulate its own procedure.
- (7) The Board may hold or continue a meeting by the use of any means of communication by which all the members are facilitated to hear and be heard at the same time (in this section referred to as an “electronic meeting”).
- (8) A member of the Board who participates in an electronic meeting is taken for all purposes to be present at the meeting.

### **Committees of Board**

- 107.** (1) The Board may establish one or more committees—
- (a) to assist the Commission, including the Board, in the performance of its functions, or
  - (b) to advise the Commission, including the Board, on matters relating to its functions.
- (2) Subject to *subsection (3)*, a committee may consist of such number of members as the Board considers appropriate and the membership of a committee may be comprised of members of the Board or members of the staff of the Commission, or both.
  - (3) Where a committee is established to advise the Commission on matters relating to its functions, membership of the committee may include persons who—
    - (a) are not members of the Board or members of the staff of the Commission, and
    - (b) have relevant expertise or experience in those matters.
  - (4) The Board may appoint a member of the Board to be the chairperson of a committee.
  - (5) A member of a committee may be removed at any time from membership of the committee by the Board for stated reasons.
  - (6) A committee shall be appointed by the Board for such period and subject to such terms of reference as the Board considers appropriate.
  - (7) The acts of a committee shall be subject to confirmation by the Board, unless the Board otherwise determines.
  - (8) The Board may regulate the procedure of a committee but, subject to the foregoing, a committee may regulate its own procedure.
  - (9) A committee shall provide the Board with such information as it may require, in respect of the committee’s activities and operations, for the purposes of the performance by the Commission of its functions.
  - (10) The Board may at any time dissolve a committee.
  - (11) A committee may act notwithstanding one or more vacancies in its membership.

**Remuneration and expenses of members of Board and committees**

- 108.** (1) A member of the Board may be paid such remuneration, and such allowances for expenses, if any, as the Minister may, with the consent of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, determine.
- (2) A member of a committee of the Commission, other than a member of the Board, the Chief Executive Officer or any other member of the staff of the Commission, may be paid such remuneration, and such allowances for expenses, if any, as the Minister may, with the consent of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, determine.
- (3) The remuneration and allowances for expenses, if any, determined in accordance with this section are payable by the Commission out of funds at its disposal.

**Membership of either House of Oireachtas, European Parliament or local authority**

- 109.** (1) A member of the Board, a member of a committee of the Board or the Chief Executive Officer, shall cease to be a member or the Chief Executive Officer, as the case may be, on being—
- (a) nominated as a member of Seanad Éireann,
  - (b) elected as a member of either House of the Oireachtas or of the European Parliament,
  - (c) regarded, pursuant to Part XIII of the Second Schedule to the Act of 1997, as having been elected to be a member of the European Parliament, or
  - (d) elected or co-opted as a member of a local authority.
- (2) A person who, for the time being, is entitled under the Standing Orders of either House of the Oireachtas to sit therein, is a member of the European Parliament or is entitled under the standing orders of a local authority to act as a member thereof, while he or she is so entitled or is such a member, shall be disqualified for:
- (a) membership of the Board;
  - (b) membership of a committee of the Board;
  - (c) appointment as Chief Executive Officer.

## CHAPTER 3

*Chief Executive Officer***Chief Executive Officer**

- 110.** (1) The Commission shall have a Chief Executive Officer (in this Act referred to as “the Chief Executive Officer”).
- (2) Subject to *subsection (3)*, the Chief Executive Officer shall be appointed by the Board in accordance with the Public Service Management (Recruitment and Appointments) Act 2004.

- (3) The person who immediately before the commencement of *section 99* was the chief executive of the Commission shall, on that commencement, continue in office as the Chief Executive Officer of the Commission in accordance with the terms and conditions of his or her appointment.
- (4) Subject to *subsection (5)*, the Board, with the consent of the Minister, may reappoint a person whose term of office expires by the efflux of time to be the Chief Executive Officer.
- (5) A person who is reappointed to be the Chief Executive Officer under *subsection (4)* shall not hold office for periods the aggregate of which, including the period for which he or she was first appointed to be Chief Executive Officer, exceeds 10 years.
- (6) The Chief Executive Officer shall hold office for such period and subject to such terms and conditions (including terms and conditions relating to remuneration, allowances for expenses and superannuation) as the Minister may determine after consultation with the Board and with the consent of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation.
- (7) The Chief Executive Officer shall not hold any other office or employment or carry on any business without the consent of the Board.
- (8) The Chief Executive Officer shall not be a member of the Board but he or she may, in accordance with the procedures of the Board, attend meetings of the Board and shall be entitled to speak at and give advice at such meetings.
- (9) The Chief Executive Officer may resign from office by giving notice in writing to the Board of his or her resignation and the resignation shall take effect on the date specified in the notice or the date on which the Board receives the notice, whichever is later.
- (10) The chairperson of the Board shall notify the Minister within 24 hours of receipt of a resignation under *subsection (9)*, of such resignation.

### **Removal of Chief Executive Officer**

- 111.** (1) The Board may, with the consent of the Minister, at any time, remove the Chief Executive Officer from office if, in the Board's opinion—
- (a) the Chief Executive Officer has, without reasonable excuse, failed to discharge the functions of the office,
  - (b) the Chief Executive Officer has become incapable through ill-health of performing his or her functions,
  - (c) the Chief Executive Officer has committed stated misbehaviour, or
  - (d) the removal of the Chief Executive Officer appears to the Board to be necessary for the effective performance by the Commission of its functions.
- (2) If the Chief Executive Officer is removed from office in accordance with *subsection (1)*, the Board shall provide the Chief Executive Officer with a statement of reasons for the removal.

- (3) The Chief Executive Officer shall cease to be qualified for office and shall cease to hold office if he or she—
  - (a) is adjudicated bankrupt and such bankruptcy has not been annulled or discharged,
  - (b) makes a composition or arrangement with creditors,
  - (c) is sentenced by a court of competent jurisdiction to a term of imprisonment,
  - (d) is convicted on indictment of an offence,
  - (e) is convicted of an offence involving fraud or dishonesty,
  - (f) has a declaration under section 819 of the Act of 2014 made against him or her or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act, or
  - (g) is subject, or is deemed to be subject, to a disqualification order, within the meaning of Chapter 4 of Part 14 of the Act of 2014, whether by virtue of that Chapter or any other provision of that Act.

#### **Functions of Chief Executive Officer**

112. (1) In addition to the functions performed in accordance with *section 100(2)*, the Chief Executive Officer shall, under the general direction and control of the Board carry on, manage and control generally the administration and business of the Commission.
- (2) The Chief Executive Officer shall perform his or her functions subject to such directions as may be given to him or her from time to time by the Board, and shall be accountable to the Board for the efficient and effective management of the Commission and for the due performance of his or her functions.
- (3) The Chief Executive Officer shall provide the Board with such information in relation to any matter concerning the functions and operation of the Commission as the Board may request.
- (4) The Chief Executive Officer may make proposals to the Board on any matter relating to the Commission's functions.

#### **Delegation of functions of Chief Executive Officer**

113. (1) Subject to any directions that may be given by the Board, the Chief Executive Officer may delegate any of his or her functions to a specified member of the staff of the Commission, and that member of the staff shall be accountable to the Chief Executive Officer for the performance of the functions so delegated.
- (2) Any function delegated under this section to a member of the staff of the Commission is to be performed by such member of the staff under the general direction and control of the Chief Executive Officer and in compliance with any directions, limitations and guidelines as may be specified by the Chief Executive Officer.
- (3) The delegation of a function under this section does not preclude the Chief Executive Officer performing the function.

- (4) The Chief Executive Officer may—
  - (a) vary any delegation of a function under this section, or
  - (b) revoke such delegation.
- (5) On varying or revoking the delegation of a function, the Chief Executive Officer shall inform each member of the staff to whom the function was delegated of its variation or revocation.
- (6) The Chief Executive Officer shall be accountable to the Board for the performance of any functions delegated under this section.

#### **Consultation by Chief Executive Officer with Board**

- 114.** (1) The Chief Executive Officer may consult with, or request the guidance and advice of, the Board on any matter relating to the performance of a function of the Commission.
- (2) The Chief Executive Officer shall have regard to any guidance and advice of the Board pursuant to a request under this section before performing any function to which the guidance and advice relates.

#### **Acting Chief Executive Officer**

- 115.** (1) Subject to *subsection (3)*, the Board, with the consent of the Minister, may appoint a member of the staff of the Commission to perform the functions of the Chief Executive Officer during—
- (a) any period or periods when the Chief Executive Officer is absent from duty or from the State or is, for any other reason, unable to perform the functions of Chief Executive Officer,
  - (b) any suspension from office of the Chief Executive Officer, or
  - (c) any vacancy in the office of Chief Executive Officer.
- (2) The Board may at any time terminate an appointment under this section.
- (3) A person shall not be appointed under this section to perform the functions of the Chief Executive Officer for a continuous period of more than 12 months during a vacancy in the office of Chief Executive Officer.

### CHAPTER 4

#### *Staff of Commission and specialist advisers*

#### **Staff of Commission**

- 116.** (1) The Commission may appoint such and so many persons to be members of the staff of the Commission as it may determine with the consent of the Minister and the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation.

- (2) The terms and conditions of a member of the staff of the Commission, and the grade at which he or she serves, shall be such as may be determined from time to time by the Commission with the consent of the Minister and the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation.
- (3) A member of the staff of the Commission shall be paid by the Commission out of funds at its disposal, such remuneration and allowances for expenses as the Commission, with the consent of the Minister and the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, determines.

### **Existing staff of Commission**

**117.** Notwithstanding the repeal of the Act of 2001 by *section 5*, a person who was a member of the staff of the Commission appointed under *section 39* of that Act, immediately before the commencement of *section 99*, shall continue to be employed as a member of the staff of the Commission—

- (a) as if, on that commencement, the Commission had appointed under *section 116(1)* the person to be a member of the staff of the Commission immediately before that commencement, and
- (b) on the same conditions (including those relating to termination of appointment) as the person was employed immediately before that commencement,

and the other provisions of this Act shall be construed accordingly.

### **Superannuation of staff of Commission**

**118.** (1) Subject to *section 10* of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012, a pensionable public servant who—

- (a) is not a member of the Single Public Service Pension Scheme, and
- (b) is appointed under *section 116* to be a member of the staff of the Commission,

shall, on his or her appointment as a member of the staff of the Commission, become and be a member of a relevant superannuation scheme in accordance with its terms and conditions.

- (2) A person referred to in *section 117* who, immediately before the commencement of *section 99*, was a member of a relevant superannuation scheme or the Single Public Service Pension Scheme shall, on that commencement, continue to be a member of the scheme concerned in accordance with its terms and conditions.
- (3) The Commission may prepare and submit to the Minister a scheme amending or revoking a scheme previously submitted and approved under *section 40* of the Act of 2001 and the amended scheme shall be made in accordance with *section 119*.
- (4) The Commission may prepare and submit to the Minister a scheme amending or revoking a scheme previously submitted and approved under this section and *section 119* and the amended scheme shall be made in accordance with *section 119*.

- (5) In this section, “relevant superannuation scheme” means a scheme, as amended from time to time, made under section 40 of the Act of 2001 by the Minister, with the consent of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, and continued in force under *section 268*.

### **Amending superannuation scheme**

- 119.** (1) The Commission may, after the commencement of *section 99*, and subject to *section 118*, prepare and submit to the Minister a scheme or schemes amending the schemes made under section 40 of the Act of 2001 for the granting of superannuation benefits to or in respect of—
- (a) such members of the staff of the Commission and the Chief Executive Officer, but not including persons to whom the Single Public Service Pension Scheme applies by virtue of Chapter 2 of Part 2 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012 as it considers appropriate, and
  - (b) former members of the staff of the Commission and former Chief Executive Officers, including those who are deceased.
- (2) Every scheme shall fix the time and conditions of retirement for all persons to, or in respect of whom, superannuation benefits are payable under the scheme, and different times and conditions may be fixed in respect of different classes of persons.
- (3) The Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation may amend the time and conditions of retirement and any such amendments shall be included in the scheme.
- (4) The Commission may prepare and submit to the Minister a scheme amending or revoking a scheme previously submitted and approved under this section.
- (5) A scheme or amending scheme submitted to the Minister under this section shall, if approved by the Minister, with the consent of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, be carried out by the Commission in accordance with its terms.
- (6) Every scheme made under this section shall make provision for appeals.
- (7) A superannuation benefit shall not be granted by the Commission to or in respect of any members of the staff of the Commission who are members of a scheme made under section 40 of the Act of 2001 or a scheme under this section and no other arrangement shall be entered into for the provision of any superannuation benefit to such persons on their ceasing to hold office, other than in accordance with a scheme made under that section 40 or such scheme or schemes submitted and approved under this section or an arrangement approved by the Minister, with the consent of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation.
- (8) The Minister shall cause every scheme submitted and approved under this section to be laid before each House of the Oireachtas, as soon as may be, after it is approved, and if either House within the next 21 days on which that House sits after the scheme

is laid before it, passes a resolution annulling the scheme, the scheme shall be annulled accordingly, but without prejudice to anything previously done thereunder.

### **Membership of either House of Oireachtas or European Parliament**

**120.** (1) Where a member of the staff of the Commission is—

- (a) nominated as a member of Seanad Éireann,
- (b) elected as a member of either House of the Oireachtas or to be a member of the European Parliament, or
- (c) regarded, pursuant to Part XIII of the Second Schedule to the Act of 1997, as having been elected to that Parliament,

he or she shall, thereupon, stand seconded from employment by the Commission and shall not be paid by, or be entitled to receive from, the Commission any remuneration or allowances for expenses in respect of the period commencing on such nomination or election or when he or she is so regarded as having been elected, as the case may be, and ending when such person ceases to be a member of either such House or a member of such Parliament.

- (2) Without prejudice to the generality of *subsection (1)*, that subsection shall be construed as prohibiting, among other things, the reckoning of a period therein mentioned as service with the Commission for the purpose of any pensions, gratuities or other allowances payable on resignation, retirement or death.
- (3) A person who, for the time being, is entitled under the Standing Orders of either House of the Oireachtas to sit therein or is a member of the European Parliament, while he or she is so entitled or is such a member, shall be disqualified for employment in any capacity by the Commission.

### **Specialist advisers**

**121.** (1) The Commission may engage such specialist advisers as it may consider necessary to assist it in the discharge of its functions under this Act.

- (2) The engagement of a person as a specialist adviser shall be for such period and subject to such terms and conditions as may be determined by the Commission with the consent of the Minister and the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation.
- (3) The Commission may, out of funds at its disposal, pay such fees and allowances for expenses, if any, incurred by a specialist adviser as the Commission may, with the consent of the Minister and the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, determine.

## CHAPTER 5

*Funding and accountability***Borrowing by Commission**

**122.** The Commission may, with the consent of the Minister and the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation (following consent from the Minister for Finance) and subject to such conditions (if any) as they may specify, borrow money in any currency (whether on the security of the assets of the Commission or not).

**Directions from Minister**

- 123.** (1) The Minister may give a direction in writing to the Commission for any purpose relating to this Act and concerning—
- (a) any matter or thing referred to in this Act or any other enactment, or
  - (b) the implementation of any policy or objective of the Minister or the Government which relates to a function of the Commission, where the Minister is of the opinion that the Commission or the Board, as applicable, is not having sufficient regard to such policy or objective in the performance of the Commission's functions.
- (2) The Commission shall comply with a direction given by the Minister under this section.
- (3) The Commission shall, within the time specified by the Minister in a direction, inform the Minister of the measures taken by the Commission to comply with the direction.
- (4) The Minister may, by direction, in writing, amend or revoke a direction under this section (including a direction under this subsection).

**Strategic plan**

- 124.** (1) The Commission shall, with the approval of the Board, prepare and adopt a strategic plan to be submitted to the Minister for each ensuing 4 year period.
- (2) When preparing the strategic plan, the Commission shall consult with the Minister.
- (3) The Minister shall, as soon as practicable after a strategic plan has been submitted to him or her under *subsection (1)*, cause a copy of it to be laid before each House of the Oireachtas.
- (4) The Commission shall ensure that, as soon as practicable after copies of a strategic plan are laid before both Houses of the Oireachtas in accordance with *subsection (3)*, the strategic plan is published on a website maintained by or on behalf of the Commission.
- (5) When preparing a strategic plan, the Commission may consult such persons as it considers appropriate.

- (6) In this section, “strategic plan” means a document that—
- (a) specifies the key objectives, outputs and related strategies, including use of resources, of the Commission,
  - (b) includes a review of the outcomes and effectiveness of the preceding strategic plan,
  - (c) includes any other matters that the Minister may direct, and
  - (d) is prepared in a form and manner that is in accordance with any directions issued from time to time by the Minister.
- (7) The strategic plan of the Commission in operation on the commencement of *subsection (1)* shall continue to apply until a strategic plan under this section comes into effect.

### **Annual business plan**

- 125.** (1) The Commission shall, on or after the commencement of this section, with the approval of the Board, prepare and submit to the Minister, before the commencement of each financial year, a business plan relating to the discharge of its functions, including—
- (a) having regard to the strategic plan, the objectives of the Commission for that year and its strategy for achieving those objectives,
  - (b) the priorities of the Commission for that year, having regard to those objectives and its available resources, and
  - (c) any other matters that the Minister may from time to time specify when issuing directions or guidelines under *subsection (2)*.
- (2) The Minister may, from time to time, issue directions or guidelines to the Commission concerning the preparation of the annual business plan and the Commission shall comply with those directions and prepare the annual business plan in accordance with those guidelines.

### **Annual report**

- 126.** (1) Subject to *subsection (2)*, as soon as may be after the end of each year, the Commission shall prepare and submit to the Minister a report (in this section referred to as the “annual report”) on the activities of the Commission during that year.
- (2) In respect of the period commencing on the commencement of this section and ending on 31 December next following such commencement, the Commission shall prepare and submit to the Minister a report (in this section also referred to as the “annual report”) on the activities of the Commission during that period not later than 6 months after the said 31 December.
- (3) An annual report shall not be submitted to the Minister unless it has been adopted by the Board.

- (4) An annual report shall include—
  - (a) the report of the Chief Inspector under *section 141*,
  - (b) the report submitted to the Commission by the Director of the Decision Support Service under section 102 of the Act of 2015, and
  - (c) other information in such form and regarding such matters as the Minister may direct.
- (5) The Minister shall, as soon as practicable, cause copies of the annual report to be laid before each House of the Oireachtas.
- (6) The Commission shall publish on a website maintained by or on behalf of the Commission, its annual report in such form as it thinks fit as soon as practicable after *subsection (5)* has been complied with in respect of the report.
- (7) The Commission may publish, on a website maintained by or on behalf of the Commission, such other reports on matters related to its activities and functions, as it may consider relevant and appropriate.

#### **Reports, recommendations and information to Minister**

- 127.** (1) The Minister may, from time to time as he or she considers appropriate, request the Commission to provide information or make a report to him or her on any matter relating to the functions of the Commission, including the Board, and the Commission shall comply with the request within the period specified in the request or within such other period as may be agreed by the Minister and the Commission.
- (2) The Commission may, of its own initiative, advise and, as appropriate, make recommendations to the Minister in relation to mental health services and any matter concerning the functions of the Commission.

#### **Grants to Commission**

- 128.** In each financial year, after consultation with the Commission in relation to its expenditure, the Minister may advance to the Commission out of moneys provided by the Oireachtas such sums as the Minister may, with the consent of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, determine for the purposes of expenditure by the Commission in the performance of its functions.

#### **Gifts**

- 129.** (1) The Commission may, with the consent of the Minister, accept gifts of money, land or other property upon such trusts and conditions (if any) as may be specified by the donor.
- (2) The Commission shall not accept a gift if the trusts or conditions attaching to it would be inconsistent with its functions.

**Accounts and audits of Commission**

- 130.** (1) The Commission shall—
- (a) submit estimates of income and expenditure to the Minister in such form, in respect of such periods and at such times as may be required by the Minister, and
  - (b) provide the Minister with any information which the Minister may require in relation to such estimates, including proposals and future plans relating to the performance by the Commission of its functions.
- (2) The Commission shall keep in such form and in respect of such accounting periods as may be approved by the Minister with the consent of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, all proper and usual accounts of moneys received and spent by the Commission, including an income and expenditure account and a balance sheet.
- (3) The Commission shall, whenever so requested by the Minister, permit any person appointed by him or her to examine the books or other records of account of the Commission in respect of any financial year or other period and shall facilitate any such examination, and the Commission shall pay such fee for the examination as may be fixed by the Minister.
- (4) The Commission shall submit accounts kept in accordance with this section, as soon as may be, but not later than 1 April in the year immediately following the financial year to which they relate or on such earlier date as the Minister may specify, to the Comptroller and Auditor General for audit.
- (5) A copy of the accounts and the Comptroller and Auditor General's report on them shall be presented to the members of the Board and the Minister, as soon as may be, after the audit and the Minister shall cause a copy of the accounts and report to be laid before each House of the Oireachtas.

**Accountability of Chief Executive Officer to Public Accounts Committee**

- 131.** (1) The Chief Executive Officer shall, whenever required in writing to do so by the Committee of Dáil Éireann established under the Standing Orders of Dáil Éireann to examine and report to Dáil Éireann on the appropriation accounts and reports of the Comptroller and Auditor General, give evidence to that Committee on—
- (a) the regularity and propriety of the transactions recorded or required to be recorded in any book or other record of account subject to audit by the Comptroller and Auditor General which the Chief Executive Officer or the Commission is required by or under statute to prepare,
  - (b) the economy and efficiency of the Commission in the use of its resources,
  - (c) the systems, procedures and practices employed by the Commission for the purpose of evaluating the effectiveness of its operations, and
  - (d) any matter affecting the Commission referred to in a special report of the Comptroller and Auditor General under section 11(2) of the Comptroller and Auditor General (Amendment) Act 1993, or in any other report of the

Comptroller and Auditor General (in so far as it relates to a matter specified in *paragraph (a), (b) or (c)*) that is laid before Dáil Éireann.

- (2) In giving evidence under this section, the Chief Executive Officer shall not question or express an opinion on the merits of—
  - (a) any policy of the Government or of a Minister of the Government, or
  - (b) the objectives of such a policy.

#### **Accountability of Chief Executive Officer to other Oireachtas committees**

- 132.** (1) Subject to *subsection (2)*, the Chief Executive Officer shall, at the request in writing of an Oireachtas committee, attend before it to give account for the general administration of the Commission.
- (2) The Chief Executive Officer shall not be required to give account before an Oireachtas committee for any matter which is, or has been or may be the subject of proceedings before a court or tribunal of inquiry in the State.
  - (3) Where the Chief Executive Officer is of the opinion that a matter in respect of which he or she is requested to give account before an Oireachtas committee is a matter to which *subsection (2)* applies, he or she shall, as soon as practicable, seek the opinion of the Board thereon.
  - (4) If the Board is of the opinion that the matter concerned is one to which *subsection (2)* applies, the Chief Executive Officer shall inform the Oireachtas committee of that opinion and the reasons for the opinion and, unless the information is conveyed to the Oireachtas committee at the time the Chief Executive Officer is before it, the information shall be conveyed to the Oireachtas committee in writing.
  - (5) If the Board is of the opinion that the matter concerned is not one to which *subsection (2)* applies, the Chief Executive Officer shall attend before the Oireachtas committee to give account for the matter.
  - (6) Where the Chief Executive Officer has informed an Oireachtas committee of the opinion of the Board in accordance with *subsection (4)* and the committee does not withdraw the request referred to in *subsection (1)* in so far as it relates to the matter the subject of that opinion—
    - (a) the Chief Executive Officer may, not later than 21 days after being informed by the Oireachtas committee of its decision not to do so, apply to the High Court in a summary manner for determination of the question of whether the matter is one to which *subsection (2)* applies, or
    - (b) the chairperson of the Oireachtas committee may, on behalf of the Oireachtas committee, make an application,and the High Court shall determine the matter.
  - (7) Pending the determination of an application under *subsection (6)*, the Chief Executive Officer shall not attend before the Oireachtas committee to give account for the matter that is the subject of the application.

- (8) If the High Court determines that the matter concerned is one to which *subsection (2)* applies, the Oireachtas committee shall withdraw the request referred to in *subsection (1)* but if the High Court determines that *subsection (2)* does not apply, the Chief Executive Officer shall attend before the Oireachtas committee to give account for the matter.
- (9) In giving evidence under this section, the Chief Executive Officer shall not question or express an opinion on the merits of—
- (a) any policy of the Government or of a Minister of the Government, or
  - (b) the objectives of such a policy.
- (10) In this section, “Oireachtas committee” means—
- (a) a committee appointed by either House of the Oireachtas or jointly by both Houses of the Oireachtas (other than the Committee referred to in *section 131*, the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann), or
  - (b) a subcommittee of a committee falling under *paragraph (a)*.

#### **Prohibition on unauthorised disclosure of confidential information**

- 133.** (1) Subject to *subsection (2)*, a person shall not disclose confidential information obtained by him or her in his or her capacity, or while performing duties as—
- (a) a member of the Board,
  - (b) a member of a committee of the Board,
  - (c) the Chief Executive Officer,
  - (d) a member of the staff of the Commission,
  - (e) the Chief Inspector,
  - (f) an Assistant Inspector, or
  - (g) a person engaged by the Commission in any other capacity.
- (2) *Subsection (1)* shall not operate to prevent the disclosure of confidential information by a person referred to in that subsection where—
- (a) the Board authorises the disclosure,
  - (b) the disclosure is made to the Board, the Chief Executive Officer or a member of the staff of the Commission in the performance of functions of the Commission,
  - (c) the disclosure is made in the performance of the functions of the Commission,
  - (d) the disclosure is made by or on behalf of the Commission to the Minister,
  - (e) the disclosure is made in compliance with a requirement of this Act or is otherwise required by law,

- (f) the disclosure is made by a person in the circumstances referred to in section 35(2) of the Ethics in Public Office Act 1995,
  - (g) the disclosure is a protected disclosure (within the meaning of the Protected Disclosures Act 2014), or
  - (h) the disclosure is made to a member of An Garda Síochána and, in the opinion of the person making the disclosure, the information may relate to the commission of an offence.
- (3) A person who contravenes *subsection (1)* shall be guilty of an offence and shall be liable, on summary conviction, to a class A fine or imprisonment for a term not exceeding 12 months, or to both.
- (4) In this section, “confidential information” includes—
- (a) information that is expressed by the Commission to be confidential either as regards particular information or as regards information of a particular class or description, and
  - (b) proposals of a commercial nature or tenders submitted to the Commission by contractors, consultants or any other person.

## CHAPTER 6

*Inspector, inspections and inquiries***Inspector of Mental Health Services**

- 134.** (1) Notwithstanding the repeal of the Act of 2001 by *section 5*, the office of Inspector of Mental Health Services established under section 50 of that Act shall continue in being in accordance with the provisions of this Act and the holder of the office shall continue to be known as the Inspector of Mental Health Services and is referred to in this Act as “the Chief Inspector”.
- (2) Subject to *subsection (3)*, the Board shall appoint a consultant psychiatrist to be the Chief Inspector.
- (3) The person who immediately before the commencement of *section 99* was the Inspector shall, on that commencement, continue in office as the Chief Inspector in accordance with the terms and conditions of his or her appointment.
- (4) Subject to *subsection (3)*, the Chief Inspector shall hold office for such period and on such terms and conditions as may be determined by the Board subject to the consent of the Minister and the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation.
- (5) The Chief Inspector shall be paid by the Commission out of funds at its disposal, such remuneration and allowances for expenses as the Board, with the consent of the Minister and the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, determines.

- (6) An appointment under *subsection (2)* shall cease—
  - (a) if the Board revokes the appointment, or
  - (b) if it is for a fixed period, on the expiry of that period.
- (7) The Chief Inspector shall be furnished with a warrant of his or her appointment by the Commission, and shall, when exercising any power conferred on him or her by this Act if requested by any person affected thereby, produce the warrant of appointment or a copy of it to that person.
- (8) The Chief Inspector may delegate any of his or her functions to an Assistant Inspector, and that person shall be accountable to the Chief Inspector for the performance of the functions so delegated.

### Functions of Chief Inspector

**135.** (1) The functions of the Chief Inspector shall be—

- (a) to visit and inspect—
    - (i) every registered acute mental health centre at least once in each registration period of 3 years, and
    - (ii) every registered community mental health centre at least once in each registration period of 5 years,
  - (b) to prepare and publish inspection reports in accordance with *section 140*,
  - (c) to carry out an inquiry in accordance with *section 142*, and
  - (d) to carry out an annual review of mental health services and prepare and submit a report to the Commission in accordance with *section 141*.
- (2) In relation to a registered community mental health service, the Chief Inspector shall visit and inspect a representative number of those services within the registration period, taking into account—
- (a) a geographic area of registration ensuring a balanced representation of inspection across that area,
  - (b) the level of compliance with this Act and any regulations made thereunder of—
    - (i) a registered community mental health service, or
    - (ii) another registered community mental health service with the same registered proprietor or responsible person as *subparagraph (i)*,
  - (c) whether a number of registered community mental health services have the same registered proprietor or responsible person, and
  - (d) such other criteria as the Commission considers appropriate.

**Acting Chief Inspector**

- 136.** (1) Subject to *subsection (4)*, the Board may appoint a consultant psychiatrist to act as the Acting Chief Inspector to perform the functions of the Chief Inspector during—
- (a) any period or periods when the Chief Inspector is absent from duty or from the State or is, for any other reason, unable to perform the functions of Chief Inspector,
  - (b) any suspension from office of the Chief Inspector, or
  - (c) any vacancy in the office of Chief Inspector.
- (2) An Acting Chief Inspector shall be furnished with a warrant of his or her appointment by the Commission, for the duration of his or her appointment as Acting Chief Inspector, and shall, when exercising any power conferred on him or her by this Act if requested by any person affected thereby, produce the warrant of appointment or a copy of it to that person.
- (3) The Board may at any time terminate an appointment under this section.
- (4) A person shall not be appointed under this section to perform the functions of the Chief Inspector for a continuous period of more than 12 months during a vacancy in the office of Chief Inspector.

**Assistant Inspectors of Mental Health Services**

- 137.** (1) The Commission may appoint such and so many persons (who shall be known as Assistant Inspectors of Mental Health Services and are referred to in this Act as “Assistant Inspectors”), including members of staff of the Commission, as it may determine to assist the Chief Inspector in the performance of his or her functions, with the consent of the Minister and the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation.
- (2) An Assistant Inspector, other than a member of the staff of the Commission, shall be paid by the Commission out of funds at its disposal, such remuneration and allowances for expenses as the Commission, with the consent of the Minister and the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, determines.
- (3) An Assistant Inspector, other than a member of the staff of the Commission, shall hold office for such period and on such terms and conditions as may be determined by the Commission subject to the consent of the Minister and the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation.
- (4) Any person who immediately before the commencement of *section 99* was an Assistant Inspector under section 54 of the Act of 2001 shall, on that commencement, be deemed to be an Assistant Inspector appointed under this Act.
- (5) An appointment under *subsection (1)* shall cease—
- (a) if the Commission revokes the appointment,
  - (b) if the appointment is for a fixed period, on the expiry of that period, or

- (c) if the person was when appointed, or has since become, a member of the staff of the Commission, and the person ceases to be a member of its staff.
- (6) An Assistant Inspector shall be furnished with a warrant of his or her appointment by the Commission, and shall, when exercising any power conferred on him or her by this Act if requested by a person affected thereby, produce the warrant of appointment or a copy of it to that person.
- (7) An Assistant Inspector shall perform his or her functions subject to the general direction of the Chief Inspector and a function of the Chief Inspector performed pursuant to this Act by an Assistant Inspector shall be deemed, for the purposes of this Act, to have been performed by the Chief Inspector.

### **Powers of inspectors**

**138.** (1) For the purposes of this Act, an inspector may—

- (a) subject to *subsections (3) and (4)*, at all reasonable times enter (if necessary by the use of reasonable force), search and inspect any registered mental health service, any premises in respect of which an application for registration has been made under *Part 6* or any premises at, or from, which the inspector has reasonable grounds to believe that mental health services are being, or have been, provided, or that books, documents or records (including records stored in non-legible form) in relation to mental health services are kept,
- (b) inspect, examine and make copies of or take extracts from any such books, documents or records referred to in *paragraph (a)* including in the case of information in a non-legible form, copies of or extracts from such information in a permanent legible form or require that such a copy of or extracts therefrom be provided,
- (c) without prejudice to any other power conferred by this section, require the registered proprietor, any employee or any person carrying out services for or on behalf of the registered mental health service or premises to give to the inspector such assistance and information and to produce to the inspector any books, documents or records referred to in *paragraph (a)* that are in that person's power, possession or procurement, as the inspector may reasonably require for the purposes of his or her functions under this Act,
- (d) remove and retain any books, documents or records for such period as the inspector reasonably considers necessary for the purposes of the performance of the inspector's functions under this Act, or require any person referred to in *paragraph (c)* to retain and maintain such records for such period as the inspector reasonably considers necessary for those purposes,
- (e) require a person referred to in *paragraph (c)* to answer such questions as the inspector may ask relative to any matter under this Act and to make a declaration of the truth of the answers to those questions, and
- (f) require any person by or on whose behalf data equipment is or has been used or any person having charge of, or otherwise concerned with the operation of, the

data equipment or any associated apparatus or material, to afford the inspector all reasonable assistance in relation to it and assist in the retrieval of information from such data equipment, apparatus or material.

- (2) When performing a function under this Act, an inspector may, subject to any warrant under *subsection (4)*, be accompanied by such number of other inspectors or members of An Garda Síochána as he or she considers appropriate.
- (3) An inspector shall not enter a dwelling other than—
  - (a) with the consent of the occupier, or
  - (b) pursuant to a warrant under *subsection (4)*.
- (4) Upon the sworn information of an inspector, a judge of the District Court may, if satisfied that there are reasonable grounds for believing—
  - (a) that information, books, documents or other records (including information, books, documents or records stored in non-legible form) required by an inspector under this section is or are held at any dwelling, or
  - (b) that evidence of, or evidence relating to, the commission of an offence under this Act, or regulations made thereunder, is to be found in any dwelling,issue a warrant authorising a named inspector, accompanied by such other inspectors or members of An Garda Síochána as may be necessary, at any time or times, before the expiration of one month from the date of issue of the warrant, to enter (if necessary by the use of reasonable force) the dwelling and perform the functions of an inspector under *paragraphs (b), (c), (d), (e) and (f) of subsection (1)*.
- (5) Where an inspector believes, upon reasonable grounds, that a person has committed an offence under this Act, he or she may require that person to provide him or her with his or her name and the address at which he or she ordinarily resides.
- (6) A statement or admission made by a person pursuant to a requirement under *subsection (1)(c) or (e)* shall not be admissible as evidence in proceedings brought against the person for an offence (other than an offence under *section 143*).
- (7) In this section, “inspector” means the Chief Inspector or an Assistant Inspector.

### **Duties of inspector when making an inspection**

- 139.** (1) When making an inspection of any registered acute mental health centre under *section 135(1)*, the inspector shall—
- (a) visit, or seek to meet with, every person receiving care and treatment in the registered mental health service whom he or she has been requested to visit by the person himself or herself or by any other person pursuant to the notice provided under *section 24, 41, 75 or 76*, and
  - (b) inspect the registered acute mental health centre for compliance with the provisions of this Act and any regulations or codes of practice made thereunder.

- (2) When making an inspection of any registered acute mental health centre under *section 135(1)*, the inspector shall visit, or seek to meet with, every person subject to an involuntary admission order or a renewal order, the propriety of whose detention the inspector has reason to doubt.
- (3) When making an inspection of any registered community mental health centre under *section 135(1)* or any registered community mental health service under *section 135(2)*, the inspector shall inspect the service or centre, as the case may be, for compliance with the provisions of this Act and any regulations or codes of practice made thereunder.
- (4) In this section, “inspector” means the Chief Inspector or an Assistant Inspector.

### **Inspection reports**

- 140.** (1) As soon as is practicable after the completion of an inspection carried out pursuant to *subsection (1) or (2) of section 135* of a registered mental health service, an inspector shall prepare a draft report of the inspection.
- (2) An inspector shall, as soon as is practicable after preparing the draft report, provide the registered mental health service with a copy of the draft report and a notice in writing stating that the registered mental health service may, not later than 21 days from the date on which it receives the notice, or such further period as an inspector considers necessary, make submissions in writing to the inspector on the draft report.
  - (3) An inspector shall, as soon as is practicable after the expiration of the period referred to in *subsection (2)*, and having considered any submissions made under that subsection, and following any further consultation with the registered mental health service concerned, make any revisions to the draft report which, in the opinion of the inspector are warranted, and finalise the report.
  - (4) An inspector shall, as soon as is practicable after the draft report has been finalised under *subsection (3)* and prior to publication of the report under *subsection (5)*, provide a copy of the final report to the registered mental health service concerned, the Board and the Minister.
  - (5) An inspector shall ensure that, as soon as practicable after a report under this section is provided to the registered mental health service under *subsection (4)*, the report is published on a website maintained by or on behalf of the Commission.
  - (6) In this section, “inspector” means the Chief Inspector or an Assistant Inspector.

### **Annual review and report of Chief Inspector**

- 141.** (1) The Chief Inspector shall—
- (a) carry out a review (in this Chapter referred to as the “annual review”) in each year of mental health services in the State during the immediately preceding year, and
  - (b) prepare and submit to the Commission a report (in this Chapter referred to as the “annual report”) on his or her findings consequent upon that annual review.

- (2) Without prejudice to the generality of *subsection (1)*, the annual report shall contain—
  - (a) an overview of the quality of care and treatment given to persons in receipt of mental health services,
  - (b) a summary of the findings ascertained pursuant to inspection reports published under *section 140*,
  - (c) statistics and information on the extent of compliance by registered mental health services with the requirements of this Act, and
  - (d) such other matters as he or she considers appropriate to report on arising from his or her review.

### **Inquiries**

- 142.** (1) The Board may cause the Chief Inspector, or such other person as may be specified by the Board, to carry out an inquiry in accordance with this section into a registered mental health service or any premises in the State where mental health services are, or are suspected of being, provided, where the Board has reasonable grounds to believe that there is a serious risk:
- (a) to the health or welfare of a person receiving care and treatment at or from such a service or premises;
  - (b) of a failure to comply by the service or premises concerned with the provisions of this Act or any regulations or codes of practice made thereunder.
- (2) The Minister may require the Board to cause an inquiry to be carried out in accordance with this section into a registered mental health service or any premises in the State where mental health services are, or are suspected of being, provided, where he or she has reasonable grounds to believe that there is a serious risk:
- (a) to the health or welfare of a person receiving care and treatment at or from such a service or premises;
  - (b) of a failure to comply by the service or premises concerned with the provisions of this Act or any regulations or codes of practice made thereunder.
- (3) For the purposes of carrying out an inquiry referred to in *subsection (1)* or *(2)*, the Board shall establish a committee (in this section referred to as a “Committee of Inquiry”) in accordance with *section 107*, which shall be chaired by the Chief Inspector, an Assistant Inspector or other such person as specified by the Board in *subsection (1)*.
- (4) As soon as practicable after carrying out an inquiry, the Committee of Inquiry, or a member of the Committee of Inquiry nominated by that Committee, shall prepare a draft report on the results of the inquiry (in this section referred to as the “draft report”).
- (5) A Committee of Inquiry shall furnish the draft report to the registered mental health service or premises concerned.

- (6) The Committee of Inquiry may furnish the draft report, or part of the draft report, to any other person it considers appropriate.
- (7) The Committee of Inquiry shall give notice in writing when furnishing the draft report under *subsection (5) or (6)* that the registered mental health service, premises or person concerned may make representations to the Committee concerning the draft report or, as the case may be, a part of the draft report, not later than 28 days after the report is furnished to them.
- (8) As soon as practicable after the expiration of the period of 28 days referred to in *subsection (7)* and having considered any representations made pursuant to that subsection, the Committee of Inquiry may amend the draft report and shall furnish the final report on the inquiry to the Board and the Minister.
- (9) A report under *subsection (8)* shall be absolutely privileged wherever and however published.

### **Penalty for obstruction of Inspector**

- 143.** (1) A person shall be guilty of an offence if he or she—
- (a) obstructs or interferes with the Chief Inspector, an Assistant Inspector or a member of An Garda Síochána in the course of exercising a power conferred on him or her by this Act or a warrant under *section 138(4)* or impedes the exercise by the inspector or member, as the case may be, of such power, or
  - (b) fails or refuses to comply with a requirement of the Chief Inspector, an Assistant Inspector or a member of An Garda Síochána pursuant to *section 138(1)(c), (d), (e) or (f)*, or in purported compliance with such requirement gives information or makes a declaration to the inspector or member that he or she knows to be false or misleading in any material respect.
- (2) A person guilty of an offence under *subsection (1)* shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months, or to both.

### **Legal privilege**

- 144.** (1) Subject to *subsection (2)*, nothing in this Act shall compel the disclosure by any person of privileged legal material or authorise the taking of privileged legal material.
- (2) The disclosure of information may be compelled, or possession of it taken, pursuant to this Act, notwithstanding that it is apprehended that the information is privileged legal material provided that the compelling of its disclosure or the taking of its possession is done by means whereby the confidentiality of the information can be maintained (as against the person compelling such disclosure or taking such possession) pending the determination by the High Court of the issue as to whether the information is privileged legal material.

- (3) Without prejudice to *subsection (4)*, where, in the circumstances referred to in *subsection (2)*, information has been disclosed or taken possession of pursuant to this Act, the person—
- (a) to whom such information has been so disclosed, or
  - (b) who has taken possession of it,
- shall (unless the person has, within the period subsequently mentioned in this subsection, been served with notice of an application under *subsection (4)* in relation to the matter concerned) apply to the High Court for a determination as to whether the information is privileged legal material and an application under this section shall be made within 30 days after the disclosure or the taking of possession.
- (4) A person who, in the circumstances referred to in *subsection (2)*, is compelled to disclose information, or from whose possession information is taken, pursuant to this Act, may apply to the High Court for a determination as to whether the information is privileged legal material.
- (5) Pending the making of a final determination of an application under *subsection (3)* or *(4)*, the High Court may give such interim or interlocutory directions as the Court considers appropriate including, without prejudice to the generality of the foregoing, directions in respect of any or all of the following:
- (a) the preservation of the information, in whole or in part, in a safe and secure place in any manner specified by the Court;
  - (b) the appointment of a person with suitable legal qualifications possessing the level of experience, and the independence from any interest falling to be determined between the parties concerned, that the Court considers to be appropriate for the purpose of—
    - (i) examining the information, and
    - (ii) preparing a report for the Court with a view to assisting or facilitating the Court in the making by the Court of its determination as to whether the information is privileged legal material.
- (6) An application under *subsection (3)* or *(4)* shall be by motion and may, if the High Court directs, be heard otherwise than in public.
- (7) In this section—
- “computer” includes a personal organiser or any other electronic means of information storage or retrieval;
- “information” means information contained in a book, document or record, a computer or otherwise;
- “privileged legal material” means information which, in the opinion of the Court, a person is entitled to refuse to produce on the grounds of legal professional privilege.

## PART 6

## REGULATION OF MENTAL HEALTH SERVICES

## CHAPTER 1

*Definition***Definition (Part 6)**

**145.** In this Part, “registered person” has the meaning assigned to it by *section 170*.

## CHAPTER 2

*Registration and application for registration of mental health services***Register of acute mental health centres**

- 146.** (1) The Commission shall, as soon as practicable after the coming into operation of this section, cause to be established and maintained, in such form as it considers appropriate, a register of acute mental health centres (referred to in this Act as the “Register of acute mental health centres”).
- (2) The Register of acute mental health centres shall include the following details in relation to a registered acute mental health centre—
- (a) the name of the registered acute mental health centre,
  - (b) the name of the registered proprietor and the responsible person,
  - (c) the address of the premises in which the mental health service is carried on,
  - (d) the number of persons who can be accommodated in the acute mental health centre,
  - (e) the date on which the registration of the centre is to take effect,
  - (f) the duration for which the registration of the centre has effect,
  - (g) any conditions relating to the registration of the centre, and
  - (h) such other matters as the Commission considers appropriate.

**Register of community mental health centres**

- 147.** (1) The Commission shall, as soon as practicable after the coming into operation of this section, cause to be established and maintained, in such form as it considers appropriate, a register of community mental health centres (referred to in this Act as the “Register of community mental health centres”).
- (2) The Register of community mental health centres shall include the following details in relation to a registered community mental health centre—
- (a) the name of the registered community mental health centre,

- (b) the name of the registered proprietor and responsible person,
- (c) the address of the premises in which the mental health service is carried on,
- (d) the number of persons who can be accommodated in the community mental health centre,
- (e) the date on which the registration of the centre is to take effect,
- (f) the duration for which the registration of the centre has effect,
- (g) any conditions relating to the registration of the centre, and
- (h) such other matters as the Commission considers appropriate.

### **Register of community mental health services**

- 148.** (1) The Commission shall, as soon as practicable after the coming into operation of this section, cause to be established and maintained, in such form as it considers appropriate, a register of community mental health services (referred to in this Act as the “Register of community mental health services”).
- (2) The Register of community mental health services shall include the following details in relation to a registered community mental health service—
- (a) the name of the registered community mental health service,
  - (b) the name of the registered proprietor and the responsible person,
  - (c) the address of the premises in which the mental health service is carried on,
  - (d) the date on which the registration of the service is to take effect,
  - (e) the duration for which the registration of the service has effect,
  - (f) any conditions relating to the registration of the service, and
  - (g) such other matters as the Commission considers appropriate.

### **Application for registration of acute mental health centres**

- 149.** (1) A person shall not operate an acute mental health centre unless the centre is registered in accordance with the provisions of this Part.
- (2) Where a person proposes to operate an acute mental health centre, he or she shall make an application to the Commission for the registration of the centre.
- (3) An application under *subsection (2)* shall be made in writing in a form specified by the Commission, accompanied by the prescribed fee, if any, and shall specify—
- (a) the name of the acute mental health centre,
  - (b) the name of the registered proprietor and, where applicable, the name of the registered person,
  - (c) the name and particulars of the responsible person,

- (d) the address of the premises in which the mental health service is carried on,
- (e) the number of persons who can be accommodated in the acute mental health centre, and
- (f) such other information as may be prescribed.

#### **Application for registration of community mental health centres**

- 150.** (1) A person shall not operate a community mental health centre unless the centre is registered in accordance with the provisions of this Part.
- (2) Where a person proposes to operate a community mental health centre, he or she shall make an application to the Commission for the registration of the centre.
- (3) An application under *subsection (2)* shall be made in writing in a form specified by the Commission, accompanied by the prescribed fee, if any, and shall specify—
- (a) the name of the community mental health centre,
  - (b) the name of the registered proprietor and, where applicable, the name of the registered person,
  - (c) the name and particulars of the responsible person,
  - (d) the address of the premises in which the mental health service is carried on,
  - (e) the number of persons who can be accommodated in the community mental health centre, and
  - (f) such other information as may be prescribed.

#### **Application for registration of community mental health services**

- 151.** (1) A person shall not operate a community mental health service unless the service is registered in accordance with the provisions of this Part.
- (2) Where a person proposes to operate a community mental health service, he or she shall make an application to the Commission for the registration of the service.
- (3) An application under *subsection (2)* shall be made in writing in a form specified by the Commission, accompanied by the prescribed fee, if any, and shall specify—
- (a) the name of the community mental health service,
  - (b) the name of the registered proprietor and, where applicable, the name of the registered person,
  - (c) the name and particulars of the responsible person,
  - (d) the address of the premises in which the community mental health service is carried on, or from where community mental health services are carried out, and
  - (e) such other information as may be prescribed.

**Carrying on of more than one registered mental health service**

- 152.** (1) A person who proposes to operate more than one registered acute mental health centre or registered community mental health centre shall make a separate application to be registered for each of those centres.
- (2) A person who proposes to operate more than one registered community mental health service shall make a separate application to be registered for each of those services, but may, with the agreement of the Commission, make one application for some or all of those services.

**Grant or refusal of registration of acute mental health centres**

- 153.** (1) Where the Commission receives an application under *section 149*, the Commission may—
- (a) register the acute mental health centre where it is satisfied of the matters under *paragraphs (a), (b) and (c) of subsection (3)*,
  - (b) register the acute mental health centre subject to such conditions as it may attach to the registration, or
  - (c) refuse to register the acute mental health centre.
- (2) The Commission shall visit a mental health service in respect of which a person has applied for registration as a registered acute mental health centre within a prescribed period and take any findings into consideration when assessing the application for registration.
- (3) Subject to *subsection (5)*, the Commission shall not register an acute mental health centre unless the Commission is satisfied that—
- (a) the registered person meets the requirements of *section 170*,
  - (b) the registered proprietor has complied with all requirements imposed on the registered proprietor under this Act and any regulations made thereunder following an assessment of the proposed registered proprietor under *section 168*, and
  - (c) the responsible person fulfils the criteria for a responsible person as set out in *section 171*.
- (4) Where the Commission registers the acute mental health centre under this section, the Commission shall issue a certificate of registration to the person who made the application under *section 149* and shall notify the person of the registration of the acute mental health centre and such notification shall specify:
- (a) the name of the acute mental health centre the subject of the registration concerned;
  - (b) the premises to which the registration relates;
  - (c) in the case of registration which is subject to conditions, the conditions which apply to the registration concerned;

- (d) the date from which the registration of the acute mental health centre shall take effect and the date on which the registration ends.
- (5) The Commission shall not register the following as a registered acute mental health centre:
  - (a) a designated centre (within the meaning of the Health Act 2007);
  - (b) an institution managed by or on behalf of a Minister of the Government;
  - (c) that part of an institution in which the majority of persons being cared for and maintained are receiving medical or surgical treatment for illness, injury, disability, palliative, obstetric or gynaecological care;
  - (d) an institution primarily used for the provision of educational, cultural, recreational, leisure, social or physical activities;
  - (e) a special care unit (within the meaning of the Health Act 2007);
  - (f) a children detention school (within the meaning of section 3 of the Children Act 2001).

#### **Grant or refusal of registration of community mental health centres**

- 154.** (1) Where the Commission receives an application under *section 150*, the Commission may—
- (a) register the community mental health centre where it is satisfied of the matters under *paragraphs (a), (b) and (c) of subsection (3)*,
  - (b) register the community mental health centre subject to such conditions as it may attach to the registration, or
  - (c) refuse to register the community mental health centre.
- (2) The Commission shall visit a mental health service in respect of which a person has applied for registration as a registered community mental health centre within a prescribed period and take any findings into consideration when assessing the application for registration.
- (3) The Commission shall not register a community mental health centre unless the Commission is satisfied that—
- (a) the registered person meets the requirements of *section 170*,
  - (b) the registered proprietor has complied with all requirements imposed on the registered proprietor under this Act and any regulations made thereunder following an assessment of the proposed registered proprietor under *section 168*, and
  - (c) the responsible person fulfils the criteria for a responsible person as set out in *section 171*.
- (4) Where the Commission registers the community mental health centre under this section, the Commission shall issue a certificate of registration to the person who

made the application under *section 150* and shall notify the person of the registration of the community mental health centre and such notification shall specify:

- (a) the name of the community mental health centre the subject of the registration concerned;
- (b) the premises to which the registration relates;
- (c) in the case of registration which is subject to conditions, the conditions which apply to the registration concerned;
- (d) the date from which the registration of the community mental health centre shall take effect and the date on which the registration ends.

### **Grant or refusal of registration of community mental health services**

**155.** (1) Where the Commission receives an application under *section 151*, the Commission may—

- (a) register the community mental health service where it is satisfied of the matters under *paragraphs (a), (b) and (c) of subsection (3)*,
  - (b) register the community mental health service subject to such conditions as it may attach to the registration, or
  - (c) refuse to register the community mental health service.
- (2) The Commission may visit a mental health service in respect of which a person has applied for registration as a registered community mental health service within a prescribed period and take any findings into consideration when assessing the application for registration.
- (3) The Commission shall not register a community mental health service unless the Commission is satisfied that—
- (a) the registered person meets the requirements of *section 170*,
  - (b) the registered proprietor has complied with all requirements imposed on the registered proprietor under this Act and any regulations made thereunder following an assessment of the proposed registered proprietor under *section 168*, and
  - (c) the responsible person fulfils the criteria for a responsible person as set out in *section 171*.
- (4) Where the Commission registers the community mental health service under this section, the Commission shall issue a certificate of registration to the person who made the application under *section 151* and shall notify the person of the registration of the community mental health service and such notification shall specify:
- (a) the name of the community mental health service the subject of the registration concerned;
  - (b) the premises to which the registration relates;

- (c) in the case of registration which is subject to conditions, the conditions which apply to the registration concerned;
- (d) the date from which the registration of the community mental health service shall take effect and the date on which the registration ends.

**Renewal of registration**

**156.** (1) A person may apply to the Commission for the renewal of registration of a registered mental health service.

- (2) Where a person is applying for the renewal of registration of a registered acute mental health centre, an application shall be made in a form specified by the Commission, accompanied by a prescribed fee, if any, and shall specify—
  - (a) the name of the registered acute mental health centre,
  - (b) the name of the registered proprietor and, where applicable, the name of the registered person or the responsible person,
  - (c) the address of the premises in which the registered acute mental health centre is carried on,
  - (d) the number of persons who can be accommodated in the registered acute mental health centre, and
  - (e) such other information as may be prescribed.
- (3) Where a person is applying for the renewal of registration of a registered community mental health centre, an application shall be made in the form and manner specified by the Commission, accompanied by a prescribed fee, if any, and shall specify—
  - (a) the name of the registered community mental health centre,
  - (b) the name of the registered proprietor and, where applicable, the name of the registered person,
  - (c) the address of the premises in which the registered community mental health centre is carried on,
  - (d) the number of persons who can be accommodated in the registered community mental health centre, and
  - (e) such other information as may be prescribed.
- (4) Where a person is applying for the renewal of registration of a registered community mental health service, an application shall be made in the form and manner specified by the Commission, accompanied by a prescribed fee, if any, and shall specify—
  - (a) the name of the registered community mental health service,
  - (b) the name of the registered proprietor and, where applicable, the name of the registered person,
  - (c) the address of the premises in which the registered community mental health service is carried on or from where services are carried out, and

- (d) such other information as may be prescribed.
- (5) The Commission may visit a registered mental health service in respect of which a person has applied to renew its registration under this section and take any findings into consideration when assessing the application for renewal.
- (6) Subject to *subsection (7)*—
  - (a) where the application for a renewal of registration of a registered mental health service is made in accordance with *subsection (2), (3) or (4)*, and
  - (b) following any findings taken into consideration by the Commission following an inspection under *subsection (5)*,the Commission shall renew the registration in accordance with the application where it is satisfied that the application complies with the requirements of this section.
- (7) The Commission shall refuse the application for a renewal of registration of a registered mental health service where—
  - (a) it has reasonable grounds to believe that the application, or any document or information accompanying the application, contains information that is false or misleading,
  - (b) it has serious concerns that the person who made the application for renewal under this section is not in compliance with provisions of this Act during the period of registration and that non-compliance, in the view of the Commission, amounts to a significant failure of compliance, or
  - (c) there is a serious risk to the health or welfare of the staff or of a person in a registered mental health service.
- (8) Where the Commission grants the application for the renewal of a registration of a registered mental health service, the Commission shall, as soon as practicable after doing so, issue a certificate of registration under *section 153(4), 154(4) or 155(4)* and shall notify the person who made the application for renewal under this section accordingly.
- (9) Where the Commission refuses the application for a renewal, the Commission shall, as soon as is possible, notify the person who made the application for renewal under this section in writing of—
  - (a) the refusal of the application and the reasons for it, and
  - (b) the right to appeal in accordance with *section 163*.
- (10) An application for the renewal of registration of a registered mental health service under this section shall be made not less than 6 months before the date on which the registration is due to expire.

### Representations

157. (1) Where the Commission proposes to—
- (a) refuse to register—

- (i) an acute mental health centre under *section 153*,
  - (ii) a community mental health centre under *section 154*, or
  - (iii) a community mental health service under *section 155*,
- (b) attach a condition to the registration of a registered mental health service when registering such a service in accordance with *section 153, 154 or 155*,
  - (c) vary or impose a condition, including an additional condition, where it considers it necessary under *section 159*, or
  - (d) refuse to renew the registration of a registered mental health service under *section 156*,

it shall notify the registered proprietor in writing of the proposal and the reasons for the proposal not later than 14 days after the date of the proposal, and that he or she may make representations in accordance with this section.

- (2) A person who receives a notification under *subsection (1)* may within 21 days of the date of such notice make representations in writing in respect of the proposal by the Commission to refuse the application for a registration, attach a condition or refuse to renew the registration of a registered mental health service.
- (3) Where a notification has been given under *subsection (1)*, the Commission shall not issue a final decision until—
  - (a) it has considered any representations made to it by the person concerned in accordance with *subsection (2)*, within 21 days of receipt of such representations, or
  - (b) the period referred to in *subsection (2)* has elapsed and no representations are made by the person concerned.
- (4) Where the Commission, having considered the representations (if any) made to it under *subsection (2)*, decides to refuse to register the acute mental health centre, community mental health centre or community mental health service, attach a condition to the registration of a registered mental health service or refuse to renew the registration of a registered mental health service, it shall notify the person concerned in writing—
  - (a) of the decision and the reasons for it, and
  - (b) that the person concerned may appeal the refusal under *section 163*.

### **Duration of registration**

- 158.** (1) A registration of a registered acute mental health centre has effect for a period of no more than 3 years from the date of registration specified by the Commission on registration.
- (2) A registration of a registered community mental health centre has effect for a period of no more than 5 years from the date of registration specified by the Commission on registration.

- (3) A registration of a registered community mental health service has effect for a period of no more than 5 years from the date of registration specified by the Commission on registration.

#### **Variation or addition of conditions**

**159.** (1) The Commission may, where it considers it necessary to do so, vary a registration under *section 153, 154 or 155* including by way of varying a condition, imposing a condition or including an additional condition.

- (2) Where the Commission proposes to vary a registration under *subsection (1)*, it shall notify the registered mental health service in writing of the proposal and any such notification shall—

(a) specify the condition to the registration which the Commission proposes—

- (i) to vary and provide details of the proposed variation and the reasons for it, or  
(ii) to impose on the registration and the reasons for it,

(b) specify the date from which the condition shall apply, which date shall not be less than 21 days from the date of the notice, and

(c) inform the registered mental health service that it may make representations in writing to the Commission within 21 days of the date of receipt of such notice.

- (3) A registered mental health service which receives a notification under *subsection (2)* may make representations in writing in respect of the proposal by the Commission to vary or impose a condition on the registration in accordance with *subsection (4)*.

- (4) Where a notification has been given under *subsection (2)*, the Commission shall not issue a final decision regarding its proposal until—

(a) it has considered any representations made to it by the registered mental health service in accordance with *subsection (3)*, within 21 days of receipt of such representations, or

(b) the period referred to in *subsection (2)* has elapsed and no representations are made by the service.

- (5) Where the Commission, having considered the representations (if any) made to it under *subsection (3)*, decides to vary or impose a condition to a registration, it shall notify the registered mental health service in writing—

(a) of the decision and the reasons for it, and

(b) that the registered mental health service may appeal the decision under *section 163*.

#### **Application by registered mental health service to vary or remove condition**

**160.** (1) A registered mental health service may apply to the Commission for the variation or removal of any condition attached to the registration of the service.

- (2) An application under *subsection (1)* shall be made in the prescribed manner accompanied by the prescribed fee, if any.
- (3) The Commission may grant an application under *subsection (1)* if it is satisfied that the variation or removal of the condition is—
  - (a) appropriate in the circumstances, and
  - (b) will not adversely affect persons receiving treatment from the registered mental health service.
- (4) Where the Commission proposes not to grant an application under *subsection (1)*, it shall notify the registered mental health service in writing that it may make representations in writing to the Commission within 21 days of the date of receipt of such notice.
- (5) A registered mental health service which receives a notification under *subsection (4)* may make representations in writing in respect of the proposal by the Commission not to grant the application concerned.
- (6) Where a notification has been given under *subsection (4)*, the Commission shall not issue a final decision regarding its proposal until—
  - (a) it has considered any representations made to it by the registered mental health service in accordance with *subsection (5)*, within 21 days of receipt of such representations, or
  - (b) the period referred to in *subsection (4)* has elapsed and no representations are made by the service.
- (7) Where the Commission, having considered the representations (if any) made to it under *subsection (5)*, refuses to vary or remove a condition to a registration, it shall notify the registered mental health service in writing—
  - (a) of the decision and the reasons for it, and
  - (b) that the registered mental health service may appeal the decision under *section 163*.

#### **Removal of conditions by Commission**

- 161.** (1) The Commission may, at any time, remove any condition attached to the registration of a registered mental health service where it considers that the removal of the condition is—
  - (a) appropriate in the circumstances, and
  - (b) will not adversely affect persons receiving treatment from the registered mental health service.
- (2) Where the Commission has removed a condition in accordance with *subsection (1)*, it shall notify the registered mental health service.

**Suspension and revocation of registration**

- 162.** (1) Subject to *section 163*, the Commission may suspend or revoke a registration of any registered mental health service for any of the following reasons:
- (a) the Commission is of the opinion that the registered mental health service contravened a condition attached, varied or imposed under *section 153, 154, 155* or *159* on the registration;
  - (b) the information provided by the registered mental health service when applying for registration under *section 153, 154* or *155* or making representations under *section 157* was false or incomplete in any material aspect;
  - (c) the Commission is of the opinion that there is a risk to the health or welfare of persons accessing services from that service;
  - (d) the registered mental health service has not complied with this Act or any regulations made thereunder.
- (2) Where the Commission proposes to suspend or revoke a registration under *subsection (1)*, it shall—
- (a) notify the registered mental health service, the subject of the proposal, in writing, of the proposal and the reasons for the proposal, and
  - (b) inform the registered mental health service, the subject of the proposal, that the service may make representations to the Commission not later than 21 days or such further period as the Commission specifies from the date of the service of the notification and that any such representations shall be considered by the Commission.
- (3) A registered mental health service which receives a notification under *subsection (2)* may within 21 days of the notification make representations in writing in respect of the proposal.
- (4) Where a notification has been given under *subsection (2)*, the Commission shall not issue a final decision until—
- (a) it has considered any representations made to it by the registered mental health service in accordance with *subsection (3)*, or
  - (b) the period referred to in *subsection (2)(b)* has elapsed and no representations are made by the registered mental health service concerned.
- (5) Where the Commission, having considered any representations made by or on behalf of a registered mental health service under *subsection (3)* and having considered the needs of the persons accessing the service, decides to suspend or revoke a registration, it shall notify the registered mental health service in writing of the decision, stating—
- (a) the reasons on which the decision is based,
  - (b) the date on which the suspension or revocation, as the case may be, shall take effect,

- (c) in the case of a registration which is to be suspended, the period for which it is to be suspended, and
  - (d) that the service may within 21 days of the decision appeal the decision under *section 163*.
- (6) Where the Commission suspends a registration under *subsection (5)*, the Commission may, if it considers it necessary in all the circumstance to do so, extend the period of suspension and where it proposes to do so, *subsection (2)* shall with all necessary modifications apply to the proposal to extend the suspension as it applies to the proposal to suspend a registration.
- (7) Where the Commission decides to suspend or revoke a registration under *subsection (5)*—
- (a) the decision takes effect, where no appeal is made within the period referred to in *subsection (5)(d)*, upon the expiration of that period, or
  - (b) in the event of an appeal against the decision being made within that period, the decision stands suspended until the appeal is determined or withdrawn.

### Appeals

- 163.** (1) A person who is aggrieved by a decision under *section 153, 154, 155, 156, 159, 160 or 162* may, not later than 21 days after the person received notice of the decision, appeal to the District Court against the decision.
- (2) Where a person makes an appeal under *subsection (1)*, he or she shall at the same time notify the Commission of the appeal.
- (3) An appeal under *subsection (1)* shall be made to a judge of the District Court for the time being assigned to the District Court district within which the person concerned or the mental health service, as the case may be, is situated.
- (4) On the hearing of an appeal under *subsection (1)*, the District Court may—
- (a) affirm the decision of the Commission under *section 153, 154, 155, 156, 159, 160 or 162*,
  - (b) direct the Commission to register, renew or restore the registration of the mental health service,
  - (c) remove or vary the condition attached to the registration of the registered mental health service, or
  - (d) allow the appeal.
- (5) The decision of the District Court under this section on a question of fact shall be final.

**Duty to display certification**

- 164.** (1) A registered proprietor of a registered mental health service shall ensure that a certificate of registration is prominently displayed at the registered mental health service.
- (2) A registered proprietor shall be guilty of an offence if he or she fails, without reasonable excuse, to comply with *subsection (1)*.

**Material amendment of registration**

- 165.** A registered mental health service that wishes for its registration to be amended in a material way shall apply to the Commission for such amendment to its registration and, in the case of such application, *sections 153, 154 and 155* and the other provisions of this Part applicable to an application for registration shall, with all necessary modifications, apply accordingly.

**Duty to notify change in information**

- 166.** (1) A registered mental health service shall, as soon as practicable, notify the Commission—
- (a) of any change in the name or address of the registered proprietor of the registered mental health service, and
  - (b) of an error in an entry in the register relating to the registered mental health service, or a change in circumstances that is likely to have a bearing on the accuracy of an entry in the register.
- (2) A person shall be guilty of an offence if he or she fails, without reasonable excuse, to provide the information in accordance with *subsection (1)* within a period of 28 days from the date of any such change or error.

**Requests by Commission for information**

- 167.** (1) Where the Commission requests a notified person to provide the Commission with such information as the Commission may reasonably require for the purposes of this Part and is so specified in its request, the notified person shall comply with that request within the period specified in the request.
- (2) A notified person shall be guilty of an offence if he or she fails, without reasonable excuse, to provide the information in accordance with *subsection (1)* within the period specified in the request.
- (3) In this section, “notified person” means—
- (a) a person who has made an application under this Chapter,
  - (b) a registered proprietor,
  - (c) a registered person, or
  - (d) a responsible person.

## CHAPTER 3

*Registered proprietor, registered person, responsible person and clinical director***Registered proprietor**

- 168.** (1) A person shall not operate the business of a mental health service unless he or she is the registered proprietor thereof.
- (2) The registered proprietor shall be the owner of the registered mental health service.
- (3) The registered proprietor shall have the following responsibilities namely:
- (a) carrying on of the business of the registered mental health service, including overall responsibility for governance, staffing, financial matters and resourcing;
  - (b) overall responsibility for ensuring compliance of the registered mental health service with the provisions of this Act;
  - (c) ensuring compliance with any conditions attached to the registration of the registered mental health service;
  - (d) making an application under Part 5 of the Act of 2015 for the purposes of *Chapter 3 of Part 3*;
  - (e) maintaining or causing to be maintained records in accordance with this Act;
  - (f) liaising with the Commission from time to time and when requested to do so by the Commission.
- (4) The Commission shall assess the person proposed to be the registered proprietor when an application for registration is made under *section 149, 150 or 151* and may approve the inclusion of the registered proprietor on the register where the Commission is of the opinion that the registered proprietor has complied with all requirements imposed on the registered proprietor under this Act and any regulations made thereunder.

**Delegation of functions of registered proprietor**

- 169.** (1) A registered proprietor may delegate any of the responsibilities specified in *section 168(3)* to other persons each of whom are suitably qualified by training and experience to perform such functions.
- (2) Where a registered proprietor delegates or proposes to delegate functions under *subsection (1)*, he or she shall ensure that there is in place appropriate training of such persons to enable the delegation of functions and to ensure accountability for the performance of those functions.
- (3) A registered proprietor shall, notwithstanding any delegations made by him or her in accordance with this section, at all times remain accountable to the Commission for the performance of the function so delegated.
- (4) A registered proprietor may revoke a delegation made under *subsection (1)*.

**Registered person**

- 170.** (1) Where the registered proprietor is a corporate body or unincorporated body, the registered proprietor shall nominate a person to be named on the registration of the mental health service in accordance with this section (in this Part known as the “registered person”) when registering the service in accordance with *section 153, 154 or 155*.
- (2) Where a person named under *subsection (1)* is no longer the registered person, the registered proprietor may nominate another person to be the registered person and the Commission shall amend the register accordingly.
- (3) A registered person named under *subsection (1)* or *(2)* shall be a suitably qualified person by reason of his or her qualifications, training, skills and experience to discharge the responsibilities of a registered proprietor.
- (4) Nothing in this section shall be construed as preventing a registered person from being appointed as the registered person of more than one registered mental health service.

**Responsible person**

- 171.** (1) A registered proprietor shall, as soon as practicable after the commencement of this section and, in any event, not later than 3 months after such commencement, nominate in writing at least one suitably qualified person for the purposes of this Part (in this Act referred to as a “responsible person”).
- (2) A responsible person shall be a suitably qualified person by reason of his or her training and experience to discharge the responsibilities of a responsible person.
- (3) A responsible person shall have the following responsibilities namely:
- (a) carrying on the day-to-day operation of the registered mental health service;
  - (b) reporting to the registered proprietor on the day-to-day operations of the registered mental health service as necessary and when requested to do so;
  - (c) ensuring compliance by members of the staff of the registered mental health service with this Act and any regulations made thereunder and any conditions imposed upon the registration of the service;
  - (d) liaising with the Commission from time to time, including in relation to compliance with this Act and when requested to do so by the Commission.
- (4) The Commission shall assess the person proposed to be the responsible person when an application for registration is made under *section 149, 150 or 151* and may—
- (a) approve the inclusion of the person nominated on the register where the Commission is of the opinion that the responsible person is a suitably qualified person in accordance with *subsection (2)* and has complied with all requirements imposed on the responsible person under this Act or any regulations made thereunder, or

- (b) refuse to approve the inclusion of the person nominated on the register where the Commission is of the opinion that the responsible person is not a suitably qualified person in accordance with *subsection (2)* and has not complied with all requirements imposed on the responsible person under this Act and any regulations made thereunder.
- (5) A person nominated under *subsection (1)* may carry out the responsibilities of a responsible person under this section while awaiting the assessment of the Commission under *subsection (4)*.
- (6) A registered proprietor shall, notwithstanding the nomination by the service of the responsible person, at all times remain responsible for, and accountable to the Commission in respect of compliance with this Act and any regulations made thereunder.
- (7) Nothing in this section shall be construed as preventing a responsible person from being appointed as the responsible person of more than one registered mental health service.

### **Clinical director**

- 172.** (1) The governing body of a registered acute mental health centre shall appoint in writing a consultant psychiatrist to be the clinical director of the registered acute mental health centre.
- (2) A clinical director shall be a suitably qualified person by reason of his or her qualifications, training, skills and experience to discharge the responsibilities of a clinical director.
  - (3) Nothing in this section shall be construed as preventing a consultant psychiatrist being appointed as the clinical director of more than one registered acute mental health centre.

## CHAPTER 4

### *Compliance notice*

### **Compliance notice**

- 173.** (1) Where an inspector is satisfied that a person has contravened a provision to which this section applies, the inspector may, with the approval of the Commission, serve a notice (in this Act referred to as a “compliance notice”) on the person.
- (2) A compliance notice shall—
    - (a) state the grounds for the inspector being satisfied that there has been a contravention referred to in *subsection (1)*,
    - (b) for the purpose of ensuring compliance by the person concerned with a provision to which this section applies, require the person to do or refrain from doing such act or acts as is or are specified in the notice by such date as is so specified, and

- (c) contain information regarding the bringing of an appeal under *subsection (5)* against the notice, including the manner in which an appeal shall be brought.
- (3) A compliance notice shall not specify a date in accordance with *subsection (2)(b)* that falls on or before the date by which an appeal under *subsection (5)* may be brought.
- (4) The inspector may, with the approval of the Commission—
- (a) withdraw a compliance notice at any time, as he or she considers appropriate, or
  - (b) where no appeal is brought under *subsection (5)*, specify a date extending the period specified in the notice for the purposes of *subsection (2)(b)*, and notify the person in writing accordingly.
- (5) A person may appeal a compliance notice served on him or her to the District Court not later than 21 days after the service of the compliance notice concerned.
- (6) Where a person makes an appeal under *subsection (5)* that person shall at the same time notify the Commission of the appeal and the grounds for the appeal and the inspector and the appellant concerned shall be entitled to be heard and to adduce evidence at the hearing of an appeal under *subsection (5)*.
- (7) The District Court shall, upon an appeal under *subsection (5)*, do one of the following:
- (a) affirm the compliance notice concerned;
  - (b) direct the inspector to withdraw the compliance notice concerned.
- (8) The inspector shall comply with a direction under *subsection (7)(b)*.
- (9) A person who fails to comply with a compliance notice by the specified date shall be guilty of an offence.
- (10) This section shall not operate to prevent or restrict—
- (a) the entitlement of any person to bring proceedings for the purpose of securing compliance with this Act by a person, or
  - (b) the bringing or prosecuting of any proceedings for an offence under this Act.
- (11) In this section—
- “inspector” means the Chief Inspector or an Assistant Inspector;
- “specified date” means, in relation to a compliance notice—
- (a) the date specified in the notice in accordance with *subsection (2)(b)*, where no appeal against the notice is brought under *subsection (5)*, or
  - (b) the day falling immediately after the expiration of the period of 7 days from the date on which the District Court so affirms the notice, where an appeal against the notice is brought under *subsection (5)* and the District Court affirms the notice in accordance with *subsection (7)(a)*.
- (12) This section applies to *sections 159, 164, 165, 166, 167, 168(3), 171(6), 182, 183, 188, 191, 194 and 195*.

## CHAPTER 5

*Closure, cancellation and taking charge***Commission may temporarily cancel registration without notice in certain circumstances**

- 174.** (1) Where the Commission considers that there is a serious risk to the life, health or welfare of members of the staff or the persons in a registered mental health service, the Commission may, without giving notice, temporarily cancel the registration of the registered mental health service and any such temporary cancellation shall have effect for a period not exceeding 21 days as shall be specified in a notice under *subsection (2)* and shall cease to have effect—
- (a) subject to *paragraph (b)*, on the expiry of the date specified in the notice, or
  - (b) in a case where the registered mental health service, the subject of the temporary cancellation, makes within the period specified in the notice, an application to the District Court under *subsection (3)*, on the determination of the Court.
- (2) Where the Commission decides to temporarily cancel a registration under *subsection (1)*, the Commission shall, as soon as may be, notify in writing the registered mental health service—
- (a) of the decision and the reasons for it,
  - (b) of the period for which the temporary cancellation shall have effect and the date on which it shall come into operation, and
  - (c) that the service may make an application under *subsection (3)* for consideration and determination by the Court of the temporary cancellation of the registration concerned.
- (3) A registered mental health service which is aggrieved by a decision of the Commission under *subsection (1)* may make an application on notice in a summary manner to the District Court for consideration and determination by the Court of the decision of the Commission.
- (4) The District Court may, on the hearing of an application under *subsection (3)* by a registered mental health service, consider any evidence adduced or argument made, whether adduced or made to the Commission and may—
- (a) either—
    - (i) confirm the decision that is the subject of the application, or
    - (ii) cancel that decision and replace it with such other decision as the District Court considers appropriate,and
  - (b) give the Commission such direction as the District Court considers appropriate.
- (5) An application made under this section to the District Court shall be to a judge of the District Court for the time being assigned to the District Court district within which the registered mental health service is located.

**Application where risk to life or serious risk to health or welfare of persons in registered mental health service**

- 175.** (1) Where the Commission has reasonable grounds to believe that there is a risk to the life, or a serious risk to the health or welfare, of members of the staff or of a person in a registered mental health service, the Commission may apply to the District Court for an order—
- (a) cancelling the registration of the registered mental health service,
  - (b) varying any condition of the registration of the registered mental health service, or
  - (c) attaching an additional condition to the registration of the registered mental health service.
- (2) An application under this section may be made *ex parte* where, having regard to the circumstances of the particular case, the Court considers it necessary or expedient to do so in the interests of justice.
- (3) Where an application under *subsection (1)* for an order is made *ex parte*, it shall be grounded on an affidavit sworn by the Chief Inspector.
- (4) Where, on hearing an application under *subsection (1)*, the District Court is satisfied that there is a risk to the life, or a serious risk to the health or welfare, of members of the staff or a person accessing the registered mental health service because of any act, omission, failure to act or negligence on the part of the registered mental health service or the registered proprietor, it may make an order in accordance with that subsection—
- (a) cancelling the registration of the registered mental health service,
  - (b) varying any condition of the registration of the registered mental health service, or
  - (c) attaching an additional condition to the registration of the registered mental health service.
- (5) An application under *subsection (1)* shall be made to the District Court judge assigned to the District Court district in which the registered mental health service is located.
- (6) Where an order is made under *subsection (4)*, the Chief Inspector shall, as soon as is practicable, serve a copy of the order and the affidavit referred to in *subsection (3)* on the registered mental health service concerned.

**Notification of temporary or permanent cancellation of registration to the Executive**

- 176.** (1) Where the Commission has temporarily cancelled the registration of a registered mental health service in accordance with *section 174* or a court has cancelled the registration of a registered mental health service in accordance with *section 175*, the Commission shall notify the Executive in writing of the cancellation and of the date on which the cancellation takes effect.

- (2) In a notification made under *subsection (1)*, the Commission may request the Executive to—
- (a) make alternative arrangements for the persons within the care of the registered mental health service, the subject of such cancellation,
  - (b) where appropriate, transfer or arrange for the transfer of the persons within the care of the registered mental health service to another registered mental health service in accordance with *section 179*, or
  - (c) temporarily take charge of the registered mental health service in accordance with *section 178*.

### **Closure of registered mental health service**

- 177.** (1) Where a registered proprietor intends to cease the provision of services in a registered mental health service, the registered proprietor shall inform the Commission, by notice in writing of the intended date, not later than—
- (a) in relation to a registered acute mental health centre or a registered community mental health centre, 6 months prior to the intended date, or
  - (b) in relation to a registered community mental health service, 3 months prior to the intended date.
- (2) The registered mental health service shall continue to provide mental health services in the registered mental health service, for a period of not less than—
- (a) in relation to a registered acute mental health centre or a registered community mental health centre, 6 months, or
  - (b) in relation to a registered community mental health service, 3 months,
- from the date of serving of notice under *subsection (1)* unless it has agreed in writing with the Commission that it may cease the provision of these services at a date earlier than the intended date.
- (3) In this section, “intended date” means the date specified in the notice under *subsection (1)* on which the registered proprietor intends to cease providing services in a registered mental health service.

### **Taking charge of mental health service by Executive on cancellation of registration**

- 178.** (1) The Executive may, as soon as possible after the notification under *section 176(1)*—
- (a) consult with the registered proprietor of the mental health service, the subject of the cancellation, and
  - (b) make an application in accordance with *subsection (3)* to the District Court to take charge of the mental health service, the subject of the cancellation.
- (2) Where the Executive was, immediately before the cancellation, the registered proprietor of the mental health service, the Executive may, following consultation with the Commission, notwithstanding the cancellation of registration, continue to

provide mental health services at the mental health service as if it were a registered mental health service as its registered proprietor and subject to the particulars of any such arrangement agreed with the Commission.

- (3) Subject to *subsection (4)*, where the Executive was not, immediately before the cancellation, the registered proprietor of the mental health service, the Executive may—
  - (a) with the consent of the person who, immediately before the cancellation was the registered proprietor, or
  - (b) by order of the District Court following an application made under *subsection (1)*, take charge of the mental health service and may provide mental health services at the mental health service as if it were registered under this Act with the Executive as its registered proprietor.
- (4) The Executive may take charge in accordance with *subsection (3)*, until—
  - (a) such time as the Executive seeks the closure of the service in accordance with *section 177*, or
  - (b) the mental health service is registered by the Commission in accordance with *section 153, 154 or 155*.

**Transfer of persons subject of order from registered acute mental health centre following closure**

- 179.** (1) Subject to *subsection (3)*, where a person is the subject of an involuntary admission order or a renewal order and continues to meet the criteria for involuntary admission or criteria for involuntary admission of a child, as the case may be, and where—
  - (a) the registration of the registered acute mental health centre has been cancelled,
  - (b) mental health services will no longer be provided in that centre, or
  - (c) the centre will otherwise cease to provide mental health services,and the Executive is not taking charge of the centre, the Executive or the registered proprietor shall arrange for his or her transfer to another registered acute mental health centre.
- (2) Where the person referred to in *subsection (1)* is a child, the Executive shall make an application to the Family District Court in the Family District Court district where the child concerned resides, or is located, prior to the transfer taking place, for an order authorising—
    - (a) the transfer to the other registered acute mental health centre, and
    - (b) the reception, detention and care and treatment of the child in that other registered acute mental health centre.
  - (3) A person the subject of an involuntary admission order or a renewal order may be detained in a registered acute mental health centre to which he or she has been transferred under *subsection (1)* until the date of expiration of the order pursuant to

which he or she was detained in the registered acute mental health centre from which he or she was transferred.

- (4) Where a person the subject of an involuntary admission order or a renewal order is transferred to another registered acute mental health centre under this section, the clinical director of the registered acute mental health centre from which he or she has been transferred shall give notice in writing of the transfer to the Commission within 24 hours of the transfer having taken place.
- (5) The detention of a person the subject of an involuntary admission order or a renewal order in another registered acute mental health centre under this section shall be deemed for the purposes of this Act to be detention in the registered acute mental health centre to which he or she has been transferred.
- (6) Any transfer of a person under this section shall take account of the assessed needs of the person and his or her care plan and any regulations made by the Minister under this section.
- (7) Without prejudice to the generality of *subsection (6)*, regulations under this section may provide for all or any of the following matters:
  - (a) procedural steps in relation to the temporary or permanent closure of a registered acute mental health centre, including timeframes for transfer, if any, and the notification of closure to residents or people accessing those services;
  - (b) where relevant, the safe and secure transfer of persons from one registered acute mental health centre to another;
  - (c) the guiding principles underpinning any transfer;
  - (d) assessment of the needs of each person receiving treatment in the registered acute mental health centre whose care and treatment is to be transferred to another registered acute mental health centre and the recording of this assessment on his or her individual care plan as appropriate;
  - (e) information to be given to people receiving care and treatment in the registered acute mental health centre when transferred;
  - (f) transfer of medical records and other information, as appropriate, from the registered acute mental health centre, the subject of the cancellation, to another registered acute mental health centre;
  - (g) any other matters which the Minister considers appropriate.

**Transfer of persons other than those subject to order from registered acute mental health centre following closure**

**180.** (1) Where—

- (a) the registration of a registered acute mental health centre has been cancelled and the service will cease to provide mental health services, and
- (b) the Executive is not taking charge of the centre concerned or the centre concerned will otherwise cease to provide mental health services,

the Executive or the registered proprietor shall or may, as the case may be, carry out the steps specified in *subsection (2)* in respect of any person (including a voluntarily admitted child or a child aged 16 years or older lacking capacity admitted with parental consent) receiving treatment in the centre concerned who is not subject to an involuntary admission order or a renewal order.

- (2) Where *subsection (1)* applies, the Executive or the registered proprietor—
- (a) shall, where there is an imminent risk of harm to the person concerned if he or she does not continue to receive mental health treatment, arrange for his or her transfer to another registered acute mental health centre, or
  - (b) may, where there is no risk of harm to the person concerned, arrange for his or her transfer to another registered acute mental health centre.
- (3) Where—
- (a) a person is accessing services in a registered community mental health centre or registered community mental health service where the registration of the centre or service has been cancelled and the centre or service will cease to provide mental health services, and
  - (b) the Executive is not taking charge of the centre or service, or the centre or service will otherwise cease to provide mental health services,
- the Executive or the registered proprietor may arrange for the transfer of the person concerned to another registered community mental health centre or registered community mental health service.
- (4) Any transfer of a person under this section shall take account of the assessed needs of the person and, where the person is transferred in accordance with *subsection (2)*, his or her care plan and any regulations made by the Minister under this section.
- (5) Without prejudice to the generality of *subsection (4)*, regulations under this section may provide for all or any of the following matters:
- (a) procedural steps in relation to the temporary or permanent closure of a registered mental health service, including timeframes, or transfer, if any, and the notification of closure to residents or people accessing those services;
  - (b) where relevant, the transfer of persons from one registered mental health service to another;
  - (c) the guiding principles underpinning any transfer;
  - (d) assessment of the needs of each person receiving treatment in the registered mental health service whose care and treatment is to be transferred to another service and the recording of this assessment on his or her individual care plan as appropriate;
  - (e) information to be given to people receiving care and treatment in the registered mental health service when transferred;

- (f) transfer of medical records and other information, as appropriate, from the service, the subject of the cancellation, to a registered mental health service;
- (g) any other matters which the Minister considers appropriate.

### **Cessation of mental health service**

**181.** If a registered mental health service ceases to provide mental health services or closes the mental health service in accordance with *section 177*, the Commission shall—

- (a) make a note to that effect in the appropriate register including the date of cessation of the service, and
- (b) cancel the registration of the service.

## CHAPTER 6

### *Regulations for registered mental health services*

### **Regulations for registration, operation and management of mental health services**

**182.** (1) Notwithstanding the generality of *section 3* and subject to *subsection (2)*, the Minister may, after consultation with the Commission and where appropriate, the Minister for Justice, Home Affairs and Migration, or the Minister for Children, Disability and Equality, as the case may be, make regulations in relation to the registration, operation and management of a registered mental health service including matters relating to the care and treatment of persons in that service.

(2) The Minister may, after consultation with the Commission and the Minister for Justice, Home Affairs and Migration, make regulations in relation to the registration, operation and management of—

- (a) designated centres which have been registered as a registered mental health service and which may include the Central Mental Hospital, or
- (b) the Central Mental Hospital only,

including matters related to the care and treatment of persons in those centres or that Hospital.

(3) Without prejudice to the generality of *subsections (1)* and *(2)*, regulations under *subsections (1)* and *(2)* may provide for all or any of the following matters:

- (a) the registration of a registered mental health service;
- (b) the experience or qualifications required by a registered proprietor, a registered person or a responsible person to carry out the functions of the respective roles;
- (c) the maintenance, care and welfare of all persons receiving treatment in a registered mental health service;
- (d) the staffing of a registered mental health service including requirements as to the qualifications of members of the staff and the training of such staff;

- (e) the design and quality of the premises of a registered mental health service, including accommodation facilities provided in registered acute mental health centres and registered community mental health centres;
  - (f) the establishment and maintenance of a register of all persons receiving treatment in, or under the care of, a registered mental health service;
  - (g) the records and reports to be kept and maintained by a registered mental health service;
  - (h) the development and implementation of community care plans by a registered community mental health centre or by a registered community mental health service;
  - (i) that, subject to any regulations made under section 53 of the Health Act 2004, a registered mental health service be required—
    - (i) to make adequate arrangements for an accessible and effective procedure for dealing with complaints made by or on behalf of a person who is or was receiving any of the services or who is seeking or has sought any such service,
    - (ii) to nominate a member of the staff of a registered mental health service to be the complaints officer and another member of such staff to be the review officer to investigate and review complaints for the registered mental health service,
    - (iii) to ensure that persons employed in the registered mental health service are appropriately trained on the arrangements for dealing with complaints, and
    - (iv) to publicise the arrangements for dealing with complaints;
  - (j) the development and implementation by a registered mental health service of adequate arrangements for effective risk management policies and procedures for the service;
  - (k) the information to be provided by a registered mental health service on any relevant advocacy services and access to such services, as appropriate;
  - (l) any other matters which are necessary or expedient for the purposes of giving effect to *subsection (1) or (2)*.
- (4) The Minister may, following consultation with the Minister for Justice, Home Affairs and Migration, provide that regulations made under this section shall apply in the same manner to designated centres as those regulations apply to registered acute mental health centres, and shall specify in the order making the regulations where it shall so apply.
- (5) A person who contravenes a provision of a regulation made under *subsection (1) or (2)* that is stated in the regulations to be a penal provision shall be guilty of an offence and shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 3 months, or to both.

**Regulations for registration, operation and management of mental health services for children**

- 183.** (1) Notwithstanding the generality of *section 3*, the Minister may, after consultation with the Commission and the Minister for Children, Disability and Equality, make regulations in relation to the registration, operation and management of registered mental health services for children including matters relating to the care and treatment of children by those services.
- (2) Without prejudice to the generality of *subsection (1)*, regulations under that subsection may provide, in addition to the matters provided for in *section 182(3)*, for all or any of the following matters:
- (a) access to education for children in a registered mental health service;
  - (b) access to age-appropriate services for children in a registered mental health service.
- (3) A person who contravenes a provision of a regulation made under *subsection (1)* that is stated in the regulations to be a penal provision shall be guilty of an offence and shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding 3 months, or to both.

## PART 7

## MISCELLANEOUS

## CHAPTER 1

*Codes of practice, electronic signatures and care plans***Codes of practice**

- 184.** (1) Subject to *subsection (2)*, the Commission may, and at the request of the Minister shall, prepare and publish a code of practice for any matter related to—
- (a) the application of the Act of 2015 to people whose treatment is regulated by *Part 3*,
  - (b) the assessment and determination of capacity for children aged 16 years or older under *section 61*,
  - (c) the transfer of persons to the Central Mental Hospital under *section 35*,
  - (d) the criteria for involuntary admission under *section 11* and the criteria for involuntary admission of a child under *section 65*,
  - (e) the bringing, and bringing back, of persons to registered acute mental health centres under *section 19* or *74*,
  - (f) absence with leave under *section 38* or *82*,

- (g) the admission with parental consent of a child aged 16 years or older lacking necessary capacity under *section 64*, and
  - (h) the use of advanced electronic signatures under *section 185*.
- (2) Before publishing a code of practice under *subsection (1)*, the Commission—
- (a) shall publish in such manner as the Commission considers appropriate a draft of the code and shall allow persons 30 days from the date of publication of the draft code within which to make representations in writing to the Commission in relation to the draft code or such further period, not exceeding 30 days, as the Commission in its absolute discretion thinks fit,
  - (b) shall consult with the Minister, and any other Minister as appropriate, and
  - (c) following consultation and, where relevant, having considered the representations (if any) made, shall submit the draft code to the Minister for his or her approval and for his or her consent to its publication.
- (3) The Minister may—
- (a) consent to the publication of a code of practice under this section with or without modification, or
  - (b) refuse to consent to publication of such a code of practice.
- (4) Where the Commission publishes a code of practice under this section, the Commission shall cause a notice to that effect to be published in *Iris Oifigiúil*—
- (a) identifying or specifying the code, and
  - (b) specifying the date from which the code shall have effect.
- (5) The Commission may, with the consent of the Minister but subject to *subsection (6)* amend or revoke a code of practice published under this section.
- (6) *Subsection (2)* shall, with all necessary modifications, apply to a code of practice that the Commission proposes to amend or revoke under *subsection (5)* as *subsection (2)* applies to a code of practice that the Commission proposes to publish under this section.
- (7) Where the Commission amends or revokes a code of practice published under this section, the Minister shall cause a notice to that effect to be published in *Iris Oifigiúil*—
- (a) identifying or specifying the code to which the amendment or revocation relates and, if applicable, particulars of the amendment, and
  - (b) specifying the date from which the amendment or revocation shall have effect.
- (8) The Commission shall cause to be published in such form as it considers appropriate a copy of each code of practice published under this section, as the code is in force from time to time, on and from the date on which the code has effect.
- (9) A document bearing the seal of the Commission and purporting to be a code of practice published under this section or, where such a code has been amended under

*subsection (5)*, the code as so amended, shall be admissible in evidence in any proceedings under this Act or before a court or tribunal.

- (10) In this section, “code of practice” includes part of a code of practice.

#### **Use of advanced electronic signatures**

- 185.** (1) An advanced electronic signature may be used for the purpose of any signature under this Act.
- (2) The Commission shall prepare and publish a code of practice regarding the use of advanced electronic signatures under this Act and shall specify—
- (a) the appropriate form for such signatures,
  - (b) the circumstances in which such signatures may be used, and
  - (c) any other matters the Commission considers appropriate.
- (3) In this section, “advanced electronic signature” has the same meaning as it has in section 2 of the Electronic Commerce Act 2000.

#### **Care plans for registered acute mental health centres**

- 186.** (1) A member of the multidisciplinary team of a person, other than a child, admitted to a registered acute mental health centre shall, following a comprehensive assessment of the person, prepare a care plan based on that assessment, no later than 14 days, or such shorter period as may be prescribed, after the date of that person’s admission to the centre.
- (2) Subject to *subsection (3)*, a care plan prepared under *subsection (1)* shall—
- (a) identify the person’s care and treatment needs required to meet any recovery goals identified,
  - (b) outline appropriate goals towards the effective recovery of the person,
  - (c) specify the resources required to achieve the care and treatment identified in the plan, and
  - (d) have due regard to the will and preferences of the person, the subject of that care plan.
- (3) A member of a person’s multidisciplinary team, after consultation with other members of that team, shall—
- (a) review the care plan on a regular basis with the frequency of review based on the individual needs of the person concerned, and
  - (b) where necessary or relevant, revise the care plan after such consultation and, in so far as possible, in consultation with the person concerned.
- (4) A member of a person’s multidisciplinary team may, where the consent of the person concerned has been given, consult with—

- (a) the nominated person (if any) of the person concerned, or
  - (b) any other person, where appropriate.
- (5) A care plan prepared under *subsection (1)* or revised under *subsection (3)(b)* shall be—
- (a) signed where possible or appropriate by the person the subject of the plan,
  - (b) retained with the person's medical records for such period as may be specified by the Commission, and
  - (c) accessible to the person the subject of the plan.

### Care plans for children in registered acute mental health centres

- 187.** (1) A member of a child's multidisciplinary team shall, following a comprehensive assessment of the child in a registered acute mental health centre, prepare a care plan based on that assessment no later than 14 days, or such shorter period as may be prescribed, after that child's admission to the centre.
- (2) Subject to *subsection (3)*, a care plan prepared under *subsection (1)* shall—
- (a) identify the child's care and treatment needs required to meet any recovery identified,
  - (b) outline appropriate goals towards the effective recovery of the child,
  - (c) include that the child is provided with appropriate educational services in accordance with his or her needs and age and include details of such services being offered to the child,
  - (d) specify the resources required to achieve the care and treatment identified in the plan, and
  - (e) have due regard, in accordance with the guiding principles, to the will and preferences of the child, the subject of that care plan.
- (3) A member of the multidisciplinary team shall—
- (a) consult the child's relevant consulted carers, if any, before preparing the care plan under *subsection (1)*,
  - (b) ensure that any consultation is accessible to the child and that information shall be provided in a manner that can reasonably be understood by the child, and
  - (c) provide a copy of that plan to—
    - (i) the child concerned,
    - (ii) the child's relevant consulted carers, if any,
    - (iii) in relation to a child who is the subject of a voluntary care arrangement, an emergency care order, an interim care order or a supervision order, if not already notified under *subparagraph (ii)*, the Agency, and
    - (iv) the child's nominated person, if any.

- (4) A member of a child’s multidisciplinary team shall review the care plan on a regular basis, with the frequency of review based on the individual needs of the child concerned and where necessary or relevant, revise the plan after consultation with the child concerned and where appropriate, his or her relevant consulted carers, if any.
- (5) A member of a child’s multidisciplinary team shall consult with other members of that multidisciplinary team when preparing or revising a care plan.
- (6) A care plan prepared under *subsection (1)* or revised under *subsection (4)* shall be—
  - (a) signed, where possible or appropriate by the child and, where appropriate by his or her parents or guardian or the Agency, and
  - (b) retained in the child’s medical records for such period as may be specified by the Commission.

### **Regulations concerning care plans**

**188.** Without prejudice to the generality of *section 3*, the Minister may make regulations concerning care plans which may provide for any or all of the following matters:

- (a) the form of a care plan;
- (b) the resources required to achieve any goals set out in a care plan;
- (c) the review of a care plan by a multidisciplinary team;
- (d) the involvement of the adult or child the subject of a care plan, and, where appropriate, the parents, or either of them, or guardian of a child the subject of a care plan or the Agency in the development and review of the plan;
- (e) the involvement, as appropriate, of nominated persons or other persons where the person the subject of the care plan consents;
- (f) the retention and maintenance of a record of a care plan;
- (g) access to the care plan by the adult or child, the subject of the care plan, or the child’s parents or guardian or the Agency, where appropriate;
- (h) any particulars related to matters that members of a person’s multidisciplinary team can develop, review, amend or update in his or her care plan;
- (i) any other matters which are necessary or expedient for the purposes of giving effect to this Chapter.

## CHAPTER 2

### *Data protection*

#### **Definitions (*Chapter 2: data protection*)**

**189.** In this Chapter—

“Act of 2018” means the Data Protection Act 2018;

“controller” means a controller within the meaning of the General Data Protection Regulation;

“General Data Protection Regulation” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016<sup>1</sup> on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

“personal data” has the meaning it has in the General Data Protection Regulation;

“processing”, in relation to personal data, has the meaning it has in the General Data Protection Regulation;

“special categories of personal data” has the same meaning as it has in the Act of 2018.

### **Processing of personal data and special categories of personal data**

- 190.** (1) The Commission may process personal data, including special categories of personal data, in accordance with the General Data Protection Regulation and the Act of 2018 and any regulations under *section 191* to the extent necessary and proportionate for the performance of its functions under this Act.
- (2) For the purposes of this Act, the Commission is designated as controller in relation to personal data processed by it for the purposes of the performance of its functions under this Act.
- (3) Personal data processed for the purposes referred to in *subsection (1)* shall not be retained for any period beyond which it is required and shall be permanently deleted after it is no longer required.

### **Regulations concerning data protection**

- 191.** Without prejudice to the generality of *section 3*, the Minister may, after consultation with the Commission, make regulations for any or all of the following:
- (a) the types and forms of processing which may be carried out;
  - (b) the personal data that may be processed;
  - (c) the circumstances in which the personal data may be processed, including specifying the persons to whom the data may be disclosed;
  - (d) suitable and specific measures, including measures referred to in *section 36(1)* of the Act of 2018, to safeguard the fundamental rights and freedoms of data subjects in the processing of personal data, including special categories of personal data under this Act;
  - (e) where the processing involves data relating to the health of a data subject, additional measures to be taken to safeguard the processing of that data;
  - (f) the period of time during which personal data or special categories of personal data may be processed;

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<sup>1</sup> OJ No. L119, 4.5.2016, p. 1

- (g) where possible, the proposed time limit within which each category of personal data shall be erased;
- (h) such other conditions (if any) as the Minister considers appropriate to impose on such processing.

## CHAPTER 3

*Nominated persons and records to be maintained***Nominated persons**

- 192.** (1) Subject to *subsection (6)*, where a person has been admitted to a registered acute mental health centre, the person may nominate an adult (in this Act referred to as a “nominated person”) on his or her behalf to be provided with information in relation to his or her treatment under this Act or on the application of a restrictive practice.
- (2) Where a person has nominated a nominated person in accordance with *subsection (1)*, he or she may—
- (a) specify the duration of time for such nomination, and
  - (b) revoke such nomination at any time.
- (3) Where no duration is specified under *subsection (2)(a)*, any nominated person nominated under *subsection (1)* shall be nominated for a period of not more than 3 months or until the person is discharged from the registered acute mental health centre, whichever is sooner.
- (4) A nominated person may be nominated again by the person concerned where his or her nomination has expired.
- (5) Where a person has nominated a nominated person in accordance with *subsection (1)* or revoked a nomination in accordance with *subsection (2)(b)*, such nomination or revocation shall be recorded in writing and retained with the medical records of the person.
- (6) Where a decision-making representative has been appointed to the person concerned, he or she may act as the nominated person or he or she may nominate another person on behalf of the person to be a nominated person.
- (7) The provisions of this section shall apply to a nominated person nominated by a decision-making representative under *subsection (6)* as if he or she was nominated by the person himself or herself.

**Nominated person for children aged 16 years or older**

- 193.** (1) Where a child has been admitted to a registered acute mental health centre, he or she may nominate his or her guardian or another adult (in this Act referred to as a “nominated person”) on his or her behalf to be provided with information in accordance with *sections 61, 70, 75, 76, 77, 97, 98 and 187* and to make requests in accordance with *section 81*.

- (2) Where a child has nominated a nominated person in accordance with *subsection (1)*, he or she may—
  - (a) specify the duration of time for such nomination, and
  - (b) revoke such nomination at any time.
- (3) Where no duration is specified under *subsection (2)(a)*, any nominated person nominated under *subsection (1)* shall be nominated for a period of not more than 3 months or until the child is discharged from the registered acute mental health centre, whichever is sooner.
- (4) A nominated person may be nominated again by the child concerned where his or her nomination has expired.
- (5) A child may change his or her nominated person at any time.
- (6) Where a child has nominated a nominated person in accordance with *subsection (1)* or revoked a nomination in accordance with *subsection (2)(b)*, such nomination or revocation shall be recorded in writing and retained with the medical records of the child.
- (7) A child may consult with his or her nominated person at any time during his or her admission to a registered acute mental health centre and a child may request that his or her nominated person attend any meetings during his or her admission.
- (8) The nomination, or not, of a nominated person under this section shall not interfere with any rights of the parents or guardian of a child to receive information regarding the child.
- (9) In this section, references to “a child” mean a child aged 16 years or older.

**Records to be maintained for registered community mental health centres and registered community mental health services**

- 194.** (1) A registered proprietor of a registered community mental health centre or a registered community mental health service shall cause to be maintained a record (in this section referred to as “the record”) in respect of a person who is in or being treated by the registered community mental health centre or the registered community mental health service concerned.
- (2) Without prejudice to the generality of *subsection (1)*, the following shall be retained as part of the record:
    - (a) the person’s medical information;
    - (b) reports from any examination or assessment of the person within the care of the registered community mental health centre or the registered community mental health service concerned;
    - (c) any records relating to any decision or treatment of a person while within the care of the registered community mental health centre or the registered community mental health service concerned.

- (3) The record shall be maintained in a secure and permanent form, and made available for inspection by the Chief Inspector and Assistant Inspectors or another staff member of the Commission, authorised by the Chief Executive Officer, where the information contained in the record is required for the proper performance by the Commission of its duties.
- (4) The Minister may prescribe the form of the records to be kept and maintained by a registered community mental health centre or a registered community mental health service under this section and any matter relating to the keeping and maintenance of such records.

### **Records to be maintained for registered acute mental health centres**

- 195.** (1) A registered proprietor of a registered acute mental health centre shall cause to be maintained a record (in this section referred to as “the record”) in respect of a person who is receiving treatment and care in a registered acute mental health centre.
- (2) Without prejudice to the generality of *subsection (1)*, the following shall be retained as part of the record:
- (a) the person’s medical information;
  - (b) any orders made—
    - (i) under *section 21* or *22* in relation to an involuntarily admitted person, or
    - (ii) under *section 62(2)*, *64(2)*, *66*, *67* or *70* in relation to a child, while at the registered acute mental health centre;
  - (c) any capacity assessments;
  - (d) any treatment that is administered to a person without consent under *Chapter 3 of Part 3* or *Chapter 3 of Part 4*;
  - (e) where the person is an adult, any use of electro-convulsive therapy on the person in the registered acute mental health centre;
  - (f) any application of a restrictive practice on the person in the registered acute mental health centre;
  - (g) reports from any examination or assessment of the person within the care of a registered acute mental health centre;
  - (h) any records relating to any decision, or treatment on a person while within the care of the registered acute mental health centre.
- (3) The record shall be maintained in a secure and permanent form, and made available for inspection by the Chief Inspector and Assistant Inspectors or another staff member of the Commission, authorised by the Chief Inspector, where the information contained in the record is required for the proper performance by the Chief Inspector or the Assistant Inspectors of his or her duties.

- (4) The Minister may prescribe the form of the records to be kept and maintained by a registered acute mental health centre under this section and any matter relating to the keeping and maintenance of such records.

## CHAPTER 4

*Offences and penalties***Offences and penalties**

**196.** A person guilty of an offence under *Part 6* (other than an offence under *section 182* or *183*) or *section 199* shall be liable—

- (a) on summary conviction, to a class A fine or to imprisonment for a term not exceeding 12 months, or to both, or
- (b) on conviction on indictment, to a fine not exceeding €50,000 or to imprisonment for a term not exceeding 2 years, or to both.

**Time limit where offence may be prosecuted in summary proceedings only**

**197.** Notwithstanding section 10(4) of the Petty Sessions (Ireland) Act 1851, summary proceedings for an offence under this Act may be instituted at any time within 2 years from the date on which the offence was alleged to have been committed.

**Liability for offences by body corporate**

**198.** (1) Where an offence under this Act is committed by a body corporate and is proved to have been so committed with the consent or connivance of, or to be attributable to any wilful neglect on the part of any person, being a director, manager, secretary or other officer of the body corporate, or a person who was purporting to act in any such capacity, that person, as well as the body corporate, shall be guilty of an offence and shall be liable to be proceeded against and punished as if he or she were guilty of the first-mentioned offence.

- (2) Where the affairs of a body corporate are managed by its members, *subsection (1)* applies in relation to the acts and defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.

**Offence of false or misleading information**

**199.** A person who makes an application under *section 149, 150, 151* or *156* and who provides information to the Commission under any of those sections that he or she knows to be false or misleading in any material particular or is reckless as to whether it is false or misleading in any material particular shall be guilty of an offence.

**Minister may prescribe fee**

**200.** The Minister may prescribe a fee where an application is made for—

- (a) registration of a registered acute mental health centre under *section 149*,
- (b) registration of a registered community mental health centre under *section 150*,
- (c) registration of a registered community mental health service under *section 151*,  
and
- (d) renewal of a registration under *section 156*,

and such fee shall be recoverable by the Commission as a simple contract debt in any court of competent jurisdiction.

## CHAPTER 5

### *Legal aid*

#### **Definitions (*Chapter 5: legal aid*)**

**201.** In this Chapter—

“affected person” has the meaning assigned to it in *section 202*;

“assigned legal representative” means a legal representative assigned by the Commission under *section 203(2)*, *203(3)*, *203(4)* or *204(3)*;

“legal aid” means, in relation an affected person, legal representation given to the person by an assigned legal representative in any relevant matter;

“legal representation” means, in relation to an affected person, representation given to the person by a legal representative in connection with a relevant matter and includes—

- (a) the giving of any oral or written advice by the legal representative to the person concerned, and
- (b) all such assistance as is usually given by a legal representative in contemplation of, ancillary to or in connection with, such relevant matters;

“panel” means a panel of legal representatives established by the Commission under *section 203(1)*;

“relevant matter” means—

- (a) a review specified in *paragraph (a)* of *section 202*,
- (b) a review specified in *paragraph (b)* of *section 202*, or
- (c) an appeal specified in *paragraph (c)* of *section 202*.

#### **Application of Chapter**

**202.** This Chapter applies to a person who is the subject of an involuntary admission order or renewal order (in this Chapter referred to as an “affected person”) made under *Part 3* in respect of the following:

- (a) a review of an involuntary admission order or renewal order by a review board in respect of the affected person, the subject of the order concerned, under *section 31*;
- (b) a review of a proposal for transfer of the affected person to the Central Mental Hospital by a review board under *section 35*;
- (c) subject to *section 204*, an appeal by the affected person to the Circuit Court under *section 32* or an appeal against an order of the Circuit Court to the High Court on a point of law under *subsection (16)* of that section, as the case may be.

### **Panel of legal representatives and provision of legal aid**

**203.** (1) The Commission shall, on such terms and conditions as the Commission may, with the consent of the Minister and the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, from time to time determine, establish and maintain a panel or panels of legal representatives who are willing to provide legal aid to affected persons in respect of a relevant matter.

(2) Where an affected person—

- (a) is the subject of an involuntary admission order, or
- (b) is the subject of a renewal order,

the Commission shall, for the purposes of providing legal representation in relation to a relevant matter specified in *section 202(a)*, assign a legal representative to the person concerned from a panel as soon as practicable following the receipt by the Commission of the involuntary admission order or renewal order concerned, other than where the person concerned has engaged, or proposes to engage, a legal representative at his or her own expense.

(3) Where an affected person is the subject of a proposal for transfer to the Central Mental Hospital under *section 35*, the Commission shall, for the purposes of providing legal representation in relation to a relevant matter specified in *section 202(b)*, assign a legal representative to the person concerned from a panel as soon as practicable following the receipt by the Commission of such a proposal, other than where the person concerned has engaged, or proposes to engage, a legal representative at his or her own expense.

(4) Where the Commission assigns a legal representative to an affected person, under this section or *section 204*, but the person wishes to be provided with the services of a legal representative on the panel other than the legal representative so assigned, that person may make an application to the Commission in that regard and, save where the Commission considers it inappropriate, it shall assign an alternative legal representative from a panel to provide legal aid to the person concerned.

(5) The Commission shall provide written confirmation, in the prescribed form and manner, of the assignment of a legal representative to an affected person—

- (a) to the assigned legal representative, and
- (b) to the affected person.

- (6) A person who is for the time being on a panel shall be disqualified from appointment to a review panel or a review board.
- (7) The Commission shall ensure that legal representation provided by an assigned legal representative is of a sufficiently high standard.
- (8) The cost of legal aid shall be discharged by the Commission out of moneys advanced to the Commission in accordance with *section 128*.
- (9) Legal aid shall be provided free of charge to an affected person and without reference to his or her financial resources.
- (10) The Minister shall, with the consent of the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, from time to time, determine the fees to be paid to assigned legal representatives in respect of legal representation.

### **Criteria for granting legal aid for appeal**

- 204.** (1) Where an affected person seeks to appeal a decision of a review board to the Circuit Court under *section 32* and he or she has not engaged, or does not propose to engage, a legal representative at his or her own expense in respect of the appeal, he or she may make an application to the Commission for legal aid in respect of that appeal.
- (2) Where an affected person seeks to appeal a decision of the Circuit Court on a point of law to the High Court under *section 32(16)* and he or she has not engaged, or does not propose to engage, a legal representative at his or her own expense in respect of the appeal, he or she may make an application to the Commission for legal aid in respect of that appeal.
- (3) Where the Commission receives an application from an affected person under *subsection (1)* or *(2)*, the Commission shall assign a legal representative from a panel to the person concerned, for the purposes of providing legal representation in relation to a relevant matter specified in *section 202(c)*, other than in the following circumstances where the Commission may refuse to grant legal aid:
- (a) the affected person has previously appealed the relevant decision of the review board or the Circuit Court, as the case may be, the subject of the proposed appeal, to the Circuit Court or High Court, as the case may be;
  - (b) the affected person has not made his or her application to the Commission within a period of 21 days of the receipt by him or her, or his or her legal representative (whether or not that legal representative was previously assigned by the Commission on behalf of the person in respect of a relevant matter specified in *paragraph (a)* or *(b)* of *section 202* or retained by the affected person at his or her own expense), of the written notice under *section 31* of the relevant decision of the review board.
- (4) Where the Commission assigns a legal representative from a panel to an affected person under *subsection (3)*, the Commission shall assign the legal representative who was previously assigned by the Commission on behalf of the person in respect of a relevant matter specified in *paragraph (a)* of *section 202* unless—

- (a) the legal representative previously assigned is unavailable, or
  - (b) the person wishes to be provided with the services of a legal representative on the panel other than the legal representative previously assigned.
- (5) Where the Commission refuses legal aid to an affected person under *subsection (3)*, the Commission shall inform the affected person in writing—
- (a) of the refusal and the reasons for it, and
  - (b) that the affected person may appeal against the decision of the Commission in accordance with *subsection (6)*.
- (6) An affected person who is refused legal aid under *subsection (3)* may appeal such refusal within 28 days, or such longer period of time as may be prescribed, to the Chief Executive Officer in the prescribed form and manner.

#### **Relationship between legal representative and person in receipt of legal aid**

- 205.** (1) Save as is otherwise specifically provided for by or under this Act, the relationship between an assigned legal representative and an affected person in receipt of legal aid and the rights and privileges arising out of such relationship, shall be the same as the relationship between, and the rights and privileges arising out of the relationship between, a legal representative and his or her client not being a person in receipt of such legal aid.
- (2) Notwithstanding the relationship between, or rights and privileges of, an assigned legal representative and an affected person in receipt of legal aid, an assigned legal representative providing legal representation to an affected person shall, if so requested by a person duly authorised in that behalf by the Commission in accordance with *section 206*, provide the person so authorised with any information as that person may reasonably require, in such form as that person may specify, relating to the legal representation provided to an affected person.

#### **Commission may request certain information in respect of legal representation**

- 206.** (1) The Commission may, for the purposes of enabling it to discharge its functions under this Act, request an assigned legal representative to provide such information as may reasonably be required for the purposes referred to in *section 203(7)*.
- (2) An assigned legal representative shall comply with a request of the Commission under *subsection (1)*.
- (3) The Commission shall, for the purposes of *subsection (1)*, on such terms and conditions as the Commission may determine, authorise such and so many suitable persons to request information from assigned legal representatives who provide legal representation to affected persons.
- (4) A person authorised under *subsection (3)* shall make a report of his or her findings and furnish that report to the Commission.

- (5) A person authorised by the Commission under *subsection (3)* shall be independent in the performance of his or her functions.

### **Regulations concerning legal aid**

- 207.** (1) The Commission, with the consent of the Minister and the Minister for Public Expenditure, Infrastructure, Public Service Reform and Digitalisation, may make regulations providing for the grant by the Commission of legal aid to affected persons in accordance with this Chapter.
- (2) Without prejudice to the generality of *subsection (1)*, regulations under this section may provide for all or any of the following matters in respect of the provision of legal aid under this Chapter:
- (a) the criteria which a legal representative must satisfy in order to demonstrate that he or she is suitably qualified to be placed by the Commission on a panel;
  - (b) the reasons and circumstances in which a legal representative on a panel may be removed from the panel;
  - (c) the procedures concerning the appeal of decisions by the Commission in cases where an affected person is refused legal aid under *section 204* by the Commission;
  - (d) the terms and conditions to apply to—
    - (i) a legal representative on a panel, and
    - (ii) an assigned legal representative;
  - (e) the procedures concerning the assignment of a legal representative;
  - (f) the form and manner in which written confirmations are to be provided under *section 203(5)*;
  - (g) the form and manner in which an application for legal aid is to be made under *section 204*;
  - (h) the procedures to be followed by a legal representative following his or her assignment by the Commission to provide legal representation to an affected person;
  - (i) the information to be provided to an affected person in respect of whom a legal representative is assigned;
  - (j) the criteria for the authorisation by the Commission under *section 206(3)* of persons by the Commission for the purposes of that section;
  - (k) the procedures to ensure that legal representation of a sufficiently high standard is provided by assigned legal representatives, including—
    - (i) measures to ensure the protection of the privacy and interests of persons in receipt of legal aid, and
    - (ii) duties of assigned legal representatives;

- (l) the procedures regarding the engagement of witnesses;
- (m) any other matter which the Commission considers appropriate.

## PART 8

### AMENDMENT OF CRIMINAL LAW (INSANITY) ACT 2006

#### Definition

**208.** In this Part, “Act of 2006” means the Criminal Law (Insanity) Act 2006.

#### Amendment of section 1 of Act of 2006

**209.** Section 1 of the Act of 2006 is amended—

- (a) by the deletion of the definitions of “the Act of 2001”, “approved medical officer” and “patient”,
- (b) by the substitution of the following definition for the definition of “clinical director”:

‘clinical director’ has the meaning assigned to it by the *Act of 2026*, and, where a consultant psychiatrist is duly authorised by a clinical director to perform his or her functions under this Act, the consultant psychiatrist shall, in relation to those functions, be deemed for the purposes of this Act, to be a clinical director;”,

and

- (c) by the insertion of the following definitions:

“ ‘*Act of 2026*’ means the *Mental Health Act 2026*;

‘consultant psychiatrist’ has the same meaning as it has in the *Act of 2026*;

‘criteria for involuntary admission’ shall be construed in accordance with the *Act of 2026*;

‘detained person’ means a person detained in a designated centre pursuant to this Act;”.

#### Amendment of section 3 of Act of 2006

**210.** Section 3 of the Act of 2006 is amended—

- (a) in subsection (2), by the deletion of “established under section 32 of the Act of 2001”,
- (b) in subsection (3), by the substitution of “*Chapter 3 of Part 3 of the Act of 2026*” for “Part 4 of the Act of 2001”, and
- (c) by the substitution of the following subsection for subsection (4):

“(4) In this section, ‘psychiatric centre’ means a registered acute mental health centre (within the meaning of the *Act of 2026*) in which treatment is provided to persons for a mental disorder (within the meaning of that Act) that fulfils the criteria for involuntary admission.”.

#### **Amendment of section 4 of Act of 2006**

**211.** Section 4 of the Act of 2006 is amended—

(a) in subsection (3)—

(i) in paragraph (aa), by the substitution of “a consultant psychiatrist” for “an approved medical officer”, and

(ii) by the substitution of the following paragraph for paragraph (b):

“(b) Subject to subsections (7) and (8), where in a case to which paragraph (a) relates, the Court determines that an accused person is unfit to be tried, the Court shall adjourn the proceedings until further order, and may—

(i) if it is satisfied, having considered the evidence of a consultant psychiatrist adduced pursuant to subsection (6)(b) and any other evidence that may be adduced before it that the accused person has a mental disorder (within the meaning of the *Act of 2026*) that fulfils the criteria for involuntary admission and is in need of in-patient care or treatment in a designated centre, commit him or her to a specified designated centre until an order is made under section 13 or 13A, or

(ii) if it is satisfied, having considered the evidence of a consultant psychiatrist adduced pursuant to subsection (6)(b) and any other evidence that may be adduced before it that the accused person has a mental disorder or has a mental disorder (within the meaning of the *Act of 2026*) that fulfils the criteria for involuntary admission and is in need of out-patient care or treatment in a designated centre, make such order as it thinks proper in relation to the accused person for out-patient treatment in a designated centre.”,

(b) in subsection (5)—

(i) in paragraph (bb), by the substitution of “a consultant psychiatrist” for “an approved medical officer”, and

(ii) by the substitution of the following paragraph for paragraph (c):

“(c) Subject to subsections (7) and (8), if the judge determines that the accused person is unfit to be tried, he or she shall adjourn the proceedings until further order, and may—

- (i) if it is satisfied, having considered the evidence of a consultant psychiatrist adduced pursuant to subsection (6)(b) and any other evidence that may be adduced before it, that the accused person has a mental disorder (within the meaning of the *Act of 2026*) that fulfils the criteria for involuntary admission and is in need of in-patient care or treatment in a designated centre, commit him or her to a specified designated centre until an order is made under section 13 or 13A, or
- (ii) if it is satisfied, having considered the evidence of a consultant psychiatrist adduced pursuant to subsection (6)(b) and any other evidence that may be adduced before it, that the accused person has a mental disorder or has a mental disorder (within the meaning of the *Act of 2026*) that fulfils the criteria for involuntary admission and is in need of out-patient care or treatment in a designated centre, make such order as it thinks proper in relation to the accused person for out-patient treatment in a designated centre.”,

and

(c) in subsection (6)—

- (i) in paragraph (a), by the substitution of “a consultant psychiatrist” for “an approved medical officer” in both places that it occurs, and
- (ii) by the substitution of the following paragraph for paragraph (b):
  - “(b) Within the period authorised by the court under this subsection, the consultant psychiatrist who examined the accused person pursuant to subparagraph (ii) of paragraph (a) shall report to the court on whether or not in his or her opinion the accused person—
    - (i) has a mental disorder (within the meaning of the *Act of 2026*) that fulfils the criteria for involuntary admission and is in need of in-patient care or treatment in a designated centre, or
    - (ii) has a mental disorder or has a mental disorder (within the meaning of the *Act of 2026*) that fulfils the criteria for involuntary admission and is in need of out-patient care or treatment in a designated centre.”.

### **Amendment of section 5 of Act of 2006**

**212.** Section 5 of the Act of 2006 is amended—

- (a) in subsection (1)(a), by the substitution of “had, at the time, a mental disorder” for “was suffering at the time from a mental disorder”,
- (b) in subsection (2), by the substitution of “has a mental disorder (within the meaning of the *Act of 2026*) that fulfils the criteria for involuntary admission” for “is suffering from a mental disorder (within the meaning of the Act of 2001)”,

(c) in subsection (3)—

(i) by the substitution of the following paragraph for paragraph (a):

“(a) For the purposes of subsection (2), if the court considers that an accused person found not guilty by reason of insanity pursuant to subsection (1) has a mental disorder (within the meaning of the *Act of 2026*) that fulfils the criteria for involuntary admission and may be in need of in-patient care or treatment in a designated centre, the court may commit that person to a specified designated centre for a period of not more than 14 days and direct that during such period he or she be examined by a consultant psychiatrist at that centre.”,

(ii) in paragraph (b), by the substitution of “a consultant psychiatrist” for “an approved medical officer”, and

(iii) by the substitution of the following paragraph for paragraph (c):

“(c) Within the period of committal authorised by the court under this subsection the consultant psychiatrist concerned shall report to the court on whether in his or her opinion the accused person committed under paragraph (a) has a mental disorder (within the meaning of the *Act of 2026*) that fulfils the criteria for involuntary admission and is in need of in-patient care or treatment in a designated centre.”,

and

(d) in subsection (4), by the substitution of “had a mental disorder” for “was suffering from a mental disorder” in both places that it occurs.

#### **Amendment of section 6 of Act of 2006**

**213.** Section 6 of the Act of 2006 is amended, in subsection (1), by the substitution of the following paragraph for paragraph (b):

“(b) had, at the time, a mental disorder, and”.

#### **Amendment of section 8 of Act of 2006**

**214.** Section 8 of the Act of 2006 is amended—

(a) in subsection (1), by the substitution of the following paragraph for paragraph (b):

“(b) that he or she did not, at the time when the act was committed, have a mental disorder of the nature referred to in section 5(1)(b);”,

(b) in subsection (3), by the substitution of “that he or she did not have a mental disorder” for “that he or she was not suffering from a mental disorder”,

- (c) in subsection (5), by the substitution of “he or she had at the time that the offence alleged was committed, a mental disorder” for “he or she was at the time that the offence alleged was committed suffering from any mental disorder”,
- (d) in subsection (6)(b), by the substitution of “did not, at the time when the act was committed, have a mental disorder” for “was not, at the time when the act was committed, suffering from any mental disorder”,
- (e) in subsection (8), by the substitution of “he or she did not have a mental disorder” for “he or she was not suffering from any mental disorder”, and
- (f) in subsection (10), by the substitution of “is satisfied that the appellant at the time that the offence alleged was committed had a mental disorder” for “is satisfied that the appellant was at the time that the offence alleged was committed suffering from a mental disorder”.

**Amendment of section 12 of Act of 2006**

**215.** Section 12 of the Act of 2006 is amended—

- (a) by the substitution of “detained person” for “patient” in each place that it occurs, and
- (b) in subsection (6)(a), by the substitution of “detained persons” for “patients”.

**Amendment of section 13 of Act of 2006**

**216.** Section 13 of the Act of 2006 is amended by the substitution of “detained person” for “patient” in each place that it occurs.

**Amendment of section 13A of Act of 2006**

**217.** Section 13A of the Act of 2006 is amended by the substitution of “detained person” for “patient” in each place that it occurs.

**Amendment of section 13B of Act of 2006**

**218.** Section 13B of the Act of 2006 is amended, in subsection (10)—

- (a) by the substitution of the following paragraph for paragraph (b):
  - “(b) the Board shall order that the detained person be brought before it as soon as may be for the purposes of reviewing his or her detention, and”,
- and
- (b) in paragraph (c), by the substitution of “detained person” for “patient”.

**Amendment of section 13C of Act of 2006**

**219.** Section 13C of the Act of 2006 is amended by the substitution of the following

subsection for subsection (3):

“(3) In this section, ‘registered proprietor’ has the same meaning as it has in the *Act of 2026*.”.

#### **Amendment of section 14 of Act of 2006**

**220.** Section 14 of the Act of 2006 is amended—

- (a) in subsection (1), by the substitution of “detained person” for “patient”,
- (b) in subsection (2), by the substitution of “detained person” for “patient”,
- (c) in subsection (3), by the substitution of “person” for “patient” in each place that it occurs,
- (d) in subsection (4), by the substitution of “person” for “patient”,
- (e) in subsection (5), by the substitution of “person” for “patient”,
- (f) in subsection (6), by the substitution of “person” for “patient”,
- (g) in subsection (8), by the substitution of “detained person” for “patient” in each place that it occurs.

#### **Amendment of section 15 of Act of 2006**

**221.** Section 15 of the Act of 2006 is amended—

- (a) by the substitution of “has a mental disorder” for “is suffering from a mental disorder” in each place that it occurs, and
- (b) in subsection (9)(a), by the substitution of “a consultant psychiatrist” for “an approved medical officer”.

#### **Amendment of section 16 of Act of 2006**

**222.** Section 16 of the Act of 2006 is amended, in subsection (2), by the substitution of “*Act of 2026*” for “Act of 2001”.

#### **Amendment of section 17 of Act of 2006**

**223.** Section 17 of the Act of 2006 is amended, in subsection (3)(a), by the substitution of “has a mental disorder” for “is suffering from or continues to suffer from a mental disorder”.

#### **Amendment of Schedule 1 to Act of 2006**

**224.** Schedule 1 to the Act of 2006 is amended, in paragraph 1, by the substitution of “consultant psychiatrist” for “approved medical officer”.

## PART 9

## AMENDMENT OF ACT OF 2015

**Amendment of section 2 of Act of 2015**

**225.** Section 2 of the Act of 2015 is amended, in subsection (1)—

- (a) by the deletion of the definition of “Act of 2001”, and
- (b) by the insertion of the following definition:

“ ‘*Act of 2026*’ means the *Mental Health Act 2026*;”.

**Amendment of section 36 of Act of 2015**

**226.** Section 36 of the Act of 2015 is amended, in subsection (4)—

- (a) in paragraph (j)(ii), by the substitution of “person,” for “person, and”, and
- (b) by the insertion of the following paragraph after paragraph (j):

“(ja) a registered proprietor (within the meaning of the *Act of 2026*) for the purposes of *Chapter 3 of Part 3* of that Act, and”.

**Amendment of section 85 of Act of 2015**

**227.** Section 85 of the Act of 2015 is amended by the substitution of the following subsection for subsection (7):

“(7) (a) Subject to paragraphs (b) and (c) and subsections (1) to (5), an advance healthcare directive shall, insofar as it is provided for by this Part, be complied with.

(b) Where, in relation to an advance healthcare directive, at the time when it is proposed to treat the directive-maker concerned—

(i) his or her treatment is regulated by *Chapter 3 of Part 3* of the *Act of 2026*, or

(ii) he or she is the subject of a conditional discharge under section 13A of the Criminal Law (Insanity) Act 2006,

the advance healthcare directive concerned shall be complied with in respect of the directive-maker concerned subject to paragraph (c) and subsections (1) to (5), and the provisions of *Chapter 3 of Part 3* of the *Act of 2026*.

(c) Notwithstanding paragraph (b), where a refusal of treatment set out in an advance healthcare directive by a directive-maker relates to the treatment of a physical illness not related to the amelioration of a mental disorder of the directive-maker, the refusal shall be complied with.”.

**Amendment of section 98 of Act of 2015**

**228.** Section 98 of the Act of 2015 is amended, in subsection (1), by the substitution of “Part 5 of the *Act of 2026*” for “Part 3 of the Act of 2001”.

**Amendment of section 104 of Act of 2015**

**229.** Section 104 of the Act of 2015 is amended—

- (a) by the deletion of the definition of “approved centre”,
- (b) in the definition of “clinical director”, by the substitution of “*Act of 2026*” for “Act of 2001”,
- (c) in the definition of “consultant psychiatrist”, by the substitution of “*Act of 2026*” for “Act of 2001”,
- (d) by the substitution of the following definition for the definition of “mental disorder”:

“ ‘mental disorder’, in relation to a person, means a mental disorder (within the meaning of the *Act of 2026*) that fulfils the criteria for the involuntary admission of that person in accordance with that Act;”,

and

- (e) by the insertion of the following definition:

“ ‘criteria for involuntary admission’ has the meaning assigned to it by *section 2* of the *Act of 2026*.”.

**Amendment of section 106 of Act of 2015**

**230.** Section 106 of the Act of 2015 is amended by the substitution of “a person who lacks capacity has a mental disorder that fulfils the criteria for involuntary admission, the procedures provided for under the *Act of 2026* shall be followed as respects any recommendation for involuntary admission of the person (within the meaning of the *Act of 2026*)” for “a person who lacks capacity is suffering from a mental disorder, the procedures provided for under the Act of 2001 shall be followed as respects any proposal to detain that person”.

**Involuntarily admitted persons whose treatment is regulated by Chapter 3 of Part 3 of Act of 2026**

**231.** The Act of 2015 is amended by the substitution of the following section for section 136:

“**136.** (1) Nothing in this Act authorises a person—

- (a) to give an involuntarily admitted person treatment for a mental disorder, or
- (b) to consent to an involuntarily admitted person being given treatment for a mental disorder,

if, at the time when it is proposed to treat the involuntarily admitted person, his or her treatment is regulated by *Chapter 3 of Part 3 of the Act of 2026*, unless the treatment concerned is authorised in accordance with *Chapter 3 of Part 3 of the Act of 2026*.

- (2) In this section, ‘mental disorder’, ‘involuntarily admitted person’ and ‘treatment’ have the same meaning as they have in the *Act of 2026*.”.

## PART 10

### CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

#### **Amendment of Defence Act 1954**

**232.** The Defence Act 1954 is amended—

(a) in section 202—

(i) in subsection (1)(b), by the substitution of “such person has a mental disorder (within the meaning of the *Mental Health Act 2026*) that fulfils the criteria for involuntary admission (within the meaning of that Act)” for “such person is suffering from a mental disorder (within the meaning of the Mental Health Act 2001)”, and

(ii) by the substitution of “(6) In this section and section 203 ‘consultant psychiatrist’ has the same meaning as in the *Mental Health Act 2026*” for “(5) In this section and in section 203 ‘consultant psychiatrist’ has the same meaning as in the Mental Health Act 2001”,

and

(b) in section 203(2), by the substitution of “has a mental disorder (within the meaning of the *Mental Health Act 2026*) that fulfils the criteria for involuntary admission (within the meaning of that Act)” for “is suffering from a mental disorder (within the meaning of the Mental Health Act 2001)”.

#### **Amendment of Courts (Supplemental Provisions) Act 1961**

**233.** Section 8C of the Courts (Supplemental Provisions) Act 1961 is amended, in subsection (2)—

(a) in paragraph (k), by the deletion of “or”,

(b) in paragraph (l), by the substitution of “2018, or” for “2018.”, and

(c) by the insertion of the following paragraph after paragraph (l):

“(m) *Part 4 of the Mental Health Act 2026*.”.

#### **Amendment of Coroners Act 1962**

**234.** (1) The Coroners Act 1962 is amended—

- (a) in section 2, in the definition of “State custody or detention”—
    - (i) by the deletion of paragraph (d),
    - (ii) by the insertion of the following paragraph after paragraph (d):
      - “(da) involuntarily admitted under *Part 3* or *4* of the *Mental Health Act 2026* to a registered acute mental health centre (within the meaning of that Act);”,
  - and
  - (b) in section 60(5), by the insertion of the following paragraph after paragraph (d):
    - “(da) the deceased was, at the time of his or her death or immediately before his or her death, involuntarily admitted under *Part 3* or *4* of the *Mental Health Act 2026* to a registered acute mental health centre (within the meaning of that Act).”.
- (2) The amendments of the Coroners Act 1962 effected by *subsection (1)* shall not apply in relation to the death of a person that occurred before the commencement of this section.

#### **Amendment of Act of 1991**

**235.** The Act of 1991 is amended—

- (a) in section 12(3), after “in accordance with subsection (1),” by the insertion of “or where a request is made under *section 73(15)* of the *Mental Health Act 2026*,”,
- (b) in section 23F(2)(b)(ii), by the substitution of “*Mental Health Act 2026*” for “Mental Health Act 2001”,
- (c) in section 23H(1)(c)(ii), by the substitution of “*Mental Health Act 2026*” for “Mental Health Act 2001”,
- (d) in section 23J(1)(d)(ii), by the substitution of “*Mental Health Act 2026*” for “Mental Health Act 2001”,
- (e) in section 23K(d)(ii), by the substitution of “*Mental Health Act 2026*” for “Mental Health Act 2001”, and
- (f) in section 23L(1)(e)(ii), by the substitution of “*Mental Health Act 2026*” for “Mental Health Act 2001”.

#### **Amendment of Bail Act 1997**

**236.** Section 9A of the Bail Act 1997 is amended, in subsection (7), by the substitution of the following definition for the definition of “mental disorder”:

“ ‘mental disorder’ means a mental disorder (within the meaning of *section 2* of the *Mental Health Act 2026*) that—

- (a) in relation to an adult, fulfils the criteria for involuntary admission (within the meaning of that Act), or

- (b) in relation to a child, fulfils the criteria for involuntary admission of a child (within the meaning of that Act);”.

#### **Amendment of Non-Fatal Offences against the Person Act 1997**

**237.** Section 23 of the Non-Fatal Offences against the Person Act 1997 is amended—

- (a) in subsection (1), by the substitution of “surgical, medical, dental or mental health treatment” for “surgical, medical or dental treatment”, and
- (b) in subsection (2), by the substitution of “surgical, medical, dental or mental health treatment” for “surgical, medical or dental treatment”.

#### **Amendment of Taxes Consolidation Act 1997**

**238.** The Taxes Consolidation Act 1997 is amended—

- (a) in section 268—
  - (i) in subsection (1C)—
    - (I) by the substitution of “a registered acute mental health centre (within the meaning of *section 2* of the *Mental Health Act 2026*)” for “a centre (within the meaning of section 62 of the Mental Health Act 2001)”, and
    - (II) by the deletion of paragraph (a),
  - and
  - (ii) in subsection (2A), in paragraph (f)(xv) of the definition of “qualifying hospital” by the substitution of “within the meaning of the *Mental Health Act 2026*” for “within the meaning of the Mental Health Act 2001”,
- and
- (b) in section 1008A(1), in the definition of “relevant medical services”, by the substitution of the following paragraph for paragraph (j):
  - “(j) the *Mental Health Act 2026*,”.

#### **Amendment of Education Act 1998**

**239.** The Education Act 1998 is amended, in section 60, by the substitution of the following definition for the definition of “school”:

“ ‘school’ means a recognised school other than a recognised school that is situated in a hospital or registered acute mental health centre (within the meaning of *section 2* of the *Mental Health Act 2026*) which is specified in a list of such schools published by the Minister from time to time;”.

**Amendment of Public Health (Tobacco) Act 2002**

**240.** Section 47 of the Public Health (Tobacco) Act 2002 is amended—

(a) in subsection (7), by the substitution of the following paragraph for paragraph (j):

“(j) a registered acute mental health centre (within the meaning of section 2 of the *Mental Health Act 2026*), or”,

and

(b) in subsection (8), by the deletion of the definition of “psychiatric hospital”.

**Amendment of Health Act 2004**

**241.** (1) The Health Act 2004 is amended—

(a) in section 2(1), in the definition of “specialist community-based disability services”, by the substitution of “*Mental Health Act 2026*” for “Mental Health Acts 1945 to 2001”,

(b) in section 55A, by the substitution of the following definition for the definition of “mental health services”:

“ ‘mental health services’ means mental health services within the meaning of the *Mental Health Act 2026*;”,

(c) in section 55D—

(i) by the substitution of “Chief Inspector (within the meaning of the *Mental Health Act 2026*)” for “Inspector of Mental Health Services”, and

(ii) in paragraph (b)—

(I) in subparagraph (i), by the substitution of “*Mental Health Act 2026*” for “Mental Health Acts 1945 to 2001”, and

(II) in subparagraph (ii), by the substitution of “made under that Act” for “made under those Acts”,

(d) in section 55G, by the substitution of the following paragraph for paragraph (c):

“(c) the Chief Inspector (within the meaning of the *Mental Health Act 2026*) who is in the course of a visit, inspection or inquiry carried out in accordance with section 135 of that Act”,

and

(e) in Schedule 2A, by the substitution of “Chief Inspector (within the meaning of the *Mental Health Act 2026*)” for “Inspector of Mental Health Services”.

(2) The amendments to the Health Act 2004 effected by subsection (1) shall not apply in relation to a protected disclosure under section 55D of that Act or a disclosure to the Inspector of Mental Health Services under section 55G of that Act regarding actions or omissions that occurred before the commencement of this section.

**Amendment of Social Welfare Consolidation Act 2005**

**242.** (1) The Social Welfare Consolidation Act 2005 is amended—

(a) in section 86—

(i) in subsection (1), by the substitution of “the *Mental Health Act 2026*” for “the Mental Health Acts 1945 to 2001”, and

(ii) in subsection (2), by the substitution of “the *Mental Health Act 2026*” for “the Mental Health Acts 1945 to 2001”,

and

(b) in section 249(1A), by the substitution of the following paragraph for paragraph (a):

“(a) an involuntary admission order or renewal order made under the *Mental Health Act 2026*,”.

(2) (a) The amendments to section 86 of the Social Welfare Consolidation Act 2005 effected by *subsection (1)(a)* shall not apply to medical care provided under the Mental Health Acts 1945 to 2001 before the date on which *subsection (1)(a)* comes into operation.

(b) The amendment to section 249(1A) of the Social Welfare Consolidation Act 2005 effected by *subsection (1)(b)* shall not apply to an admission order or renewal order made under the Act of 2001 that continues in force after the date on which *subsection (1)(b)* comes into operation.

**Amendment of Health Act 2007**

**243.** The Health Act 2007 is amended—

(a) in section 2(1), by the substitution of the following definition for the definition of “Mental Health Commission”:

“ ‘Mental Health Commission’ means the Mental Health Commission established by the Mental Health Act 2001 and continued in being under *section 99* of the *Mental Health Act 2026*;”,

and

(b) in section 8(1)(b)(i)(I), by the substitution of “*Mental Health Act 2026*” for “Mental Health Acts 1945 to 2009”.

**Amendment of Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010**

**244.** The Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 is amended—

(a) in section 29(4)(a), by the substitution of “*Mental Health Act 2026*” for “Mental Health Act 2001”, and

- (b) in section 107(c)(iv), by the substitution of “the *Mental Health Act 2026*” for “section 2(1) of the *Mental Health Act 2001*”.

#### **Amendment of National Vetting Bureau (Children and Vulnerable Persons) Act 2012**

- 245.** The National Vetting Bureau (Children and Vulnerable Persons) Act 2012 is amended, in Schedule 1, Part 2, paragraph 1, by the substitution of the following subparagraph for subparagraph (d):

“(d) a registered acute mental health centre within the meaning of the *Mental Health Act 2026*,”.

#### **Amendment of Animal Health and Welfare Act 2013**

- 246.** The Animal Health and Welfare Act 2013 is amended, in section 61(1)(e), by the substitution of “*Mental Health Act 2026*” for “*Mental Health Act 2001*”.

#### **Amendment of Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023**

- 247.** Section 2(1) of the Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023 is amended, in the definition of “clinical director”, by the substitution of “*Mental Health Act 2026*” for “*Mental Health Act 2001*”.

#### **Amendment of Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023**

- 248.** The Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023 is amended—

- (a) in section 2(1), by the substitution of the following definition for the definition of “Commission”:

“ ‘Commission’ has the meaning assigned to it by the *Mental Health Act 2026*,”

and

- (b) in section 29—

- (i) in subsection (1), by the substitution of “a registered mental health service (within the meaning of the *Mental Health Act 2026*)” for “an approved centre”, and

- (ii) by the deletion of subsection (6).

#### **Amendment of Family Courts Act 2024**

- 249.** The Family Courts Act 2024 is amended—

- (a) in section 2, in the definition of “family law proceedings”, by the insertion of the following paragraph after paragraph (z):

“(za) *Part 4* of the *Mental Health Act 2026*,”

- (b) in section 24(2)—

- (i) in paragraph (j), by the deletion of “or”,
- (ii) in paragraph (k), by the substitution of “2018, or” for “2018.”, and
- (iii) by the insertion of the following paragraph after paragraph (k):

“(l) *Part 4 of the Mental Health Act 2026.*”,

and

- (c) in section 39(2)—

- (i) in paragraph (d), by the deletion of “or”,
- (ii) in paragraph (e), by the substitution of “2018, or” for “2018.”, and
- (iii) by the insertion of the following paragraph after paragraph (e):

“(f) *Part 4 of the Mental Health Act 2026.*”.

## PART 11

### TRANSITIONAL PROVISIONS

#### CHAPTER 1

#### *Transitional provisions: Act of 2001*

### **Interpretation**

- 250.** (1) In this Chapter—

“clinical director” includes, where the context so requires, a clinical director so deemed under *section 263*;

“registered acute mental health centre” includes, where the context so requires, a registered acute mental health centre so deemed under *section 263*;

“relevant order”, other than in *sections 257, 258 and 259*, means—

- (a) an admission order made under section 14 or 24 of the Act of 2001, or
- (b) a renewal order made under section 15 of the Act of 2001;

“tribunal” has the same meaning as it has in the Act of 2001.

- (2) For the purposes of this Chapter and to the extent only that this Chapter applies, references to a person include references to a patient within the meaning of the Act of 2001.

### **Transitional provisions: admission and renewal orders for adults**

- 251.** (1) Subject to *sections 252(4) and 254(6)*, a relevant order in respect of a person that is in force immediately before the relevant date shall, subject to the modifications specified in *subsection (2)*, continue in force on and after the relevant date, and accordingly the

Act of 2001, as it stood immediately before the date on which this section comes into operation (in this section referred to as the “relevant date”), shall continue to have effect in respect of the person concerned until the earlier of—

- (a) the date an involuntary admission order is made under *Part 3* in respect of the person the subject of the relevant order,
  - (b) the date the person the subject of the relevant order is discharged following its revocation under section 18, 19 or 28 of the Act of 2001, or
  - (c) the date of the expiration of the relevant order.
- (2) The modifications referred to in *subsection (1)* are—
- (a) *subsections (3), (4), (6), (7) and (8) of section 8* shall apply in respect of the making of any decision relating to a person the subject of a relevant order that continues in force under *subsection (1)* as if that person were an applicable person (within the meaning of that section), and
  - (b) *Chapter 4 of Part 3 and section 192* shall, notwithstanding *subsection (1)*, apply in respect of a person the subject of a relevant order as if that person were an involuntarily admitted person.

#### **Transitional provisions: involuntarily admitted adults**

- 252.** (1) Subject to *subsections (4) and (6)*, where, immediately before the date on which this section comes into operation (in this section referred to as the “relevant date”) or following a transfer referred to in *section 261*, a person is being detained in a registered acute mental health centre pursuant to a relevant order, the clinical director of the registered acute mental health centre concerned shall, on or after the relevant date, arrange for the person concerned to be examined by a consultant psychiatrist under *section 21(1)* as if the person concerned were the subject of a recommendation for involuntary admission.
- (2) Following an examination of a person referred to in *subsection (1)*, the consultant psychiatrist—
- (a) shall, if satisfied that the person concerned has a mental disorder which fulfils the criteria for involuntary admission, make an involuntary admission order for the reception, detention and care and treatment of the person under *section 21(2)(a)*, or
  - (b) if not satisfied that the person concerned has a mental disorder which fulfils the criteria for involuntary admission, shall—
    - (i) refuse to make an involuntary admission order, and
    - (ii) arrange, subject to the modifications specified in *subsection (3)*, for the person to be discharged in accordance with section 28 of the Act of 2001.
- (3) In relation to each subsection of section 28 of the Act of 2001, the modifications referred to in *subsection (2)(b)(ii)* are—

- (a) in subsection (1), the consultant psychiatrist concerned shall, where not satisfied that the person concerned has a mental disorder which fulfils the criteria for involuntary admission, revoke the relevant order and discharge the person,
  - (b) for the purpose of subsection (3)(b), the consultant psychiatrist shall notify the person concerned that he or she is entitled to have his or her detention reviewed by a tribunal in accordance with *section 255*, and
  - (c) subsection (5) shall not apply to a person concerned, and any subsequent review or otherwise of his or her detention shall be in accordance with *section 255*.
- (4) A decision under *subsection (2)* to make or refuse to make an involuntary admission order shall be made as soon as may be after the relevant date, but not later than—
- (a) the date of the expiration of the relevant order for the person concerned, or
  - (b) the date that falls 28 days after the relevant date,
- whichever occurs sooner.
- (5) Where an involuntary admission order referred to in *subsection (2)(a)* is made in respect of a person referred to in *subsection (1)*, the relevant order pursuant to which that person was previously detained shall immediately cease to have effect and be deemed to be revoked.
- (6) A reference, in *subsection (1)*, to a person detained in a registered acute mental health centre pursuant to a relevant order immediately before the relevant date—
- (a) includes a person on a permitted leave of absence under section 26 of the Act of 2001,
  - (b) subject to *section 262*, includes a person absent from that centre without permission under section 27 of the Act of 2001, and
  - (c) does not include a person transferred to and detained in the Central Mental Hospital under section 21 of the Act of 2001.

### **Transitional provisions: involuntary admission processes in being**

- 253.** (1) Where, before the date on which this section comes into operation (in this section referred to as the “relevant date”), a person is the subject of an application under section 9(1) or 12(2) of the Act of 2001 but the medical practitioner to whom the application is addressed has not decided whether to make a recommendation in respect of the person concerned under section 10 of that Act by immediately before the relevant date, the registered medical practitioner concerned shall, on or after the relevant date, treat the application as if it were a direct application for a recommendation for involuntary admission under *section 14* and any subsequent involuntary admission (or otherwise) of the person concerned shall be determined in accordance with *Part 3*.
- (2) Where, before the relevant date, a person is the subject of a recommendation under section 10 of the Act of 2001 but an involuntary admission order has not yet been made or refused in respect of the person concerned under section 14(1)(a) or (b) of

that Act by immediately before the relevant date, the clinical director to whom the recommendation is addressed shall, on or after the relevant date, treat the recommendation as if it were a recommendation for involuntary admission under *section 15* and any subsequent involuntary admission (or otherwise) of the person concerned shall be determined in accordance with *Part 3*.

- (3) Where, before the relevant date, a person has been detained under section 23 of the Act of 2001 but a determination has not been made by immediately before the relevant date on whether the person concerned is to be—

- (a) the subject of an admission order under section 24(3) of that Act, or
- (b) discharged under subsection (1) or (2)(b) of section 24 of that Act,

the detention of that person shall, on or after the relevant date, be determined in accordance with *section 37* subject to the modification that the steps in *section 37* are required to be completed within 24 hours of the time the person is detained under section 23 of the Act of 2001, and any necessary additional modifications.

#### **Transitional provisions: admission to Central Mental Hospital**

**254.** (1) Where, immediately before the date on which this section comes into operation (in this section referred to as the “relevant date”) or following a transfer referred to in *subsection (8)* or *(9)*, a person is detained in the Central Mental Hospital under section 21 of the Act of 2001 pursuant to a relevant order, the clinical director of the Central Mental Hospital shall arrange for the person concerned to be examined by his or her responsible consultant under *section 21(1)* on or after the relevant date, as the case may be, as if the person concerned were the subject of a recommendation for involuntary admission.

- (2) Following an examination of a person referred to in *subsection (1)*, the responsible consultant psychiatrist—

- (a) shall, if satisfied that the person concerned has a mental disorder which fulfils the criteria for involuntary admission, make an involuntary admission order for the reception, detention and care and treatment of the person under *section 21(2)(a)*, or
- (b) shall, if not satisfied that the person concerned has a mental disorder which fulfils the criteria for involuntary admission—
  - (i) refuse to make such an involuntary admission order, and
  - (ii) arrange, subject to the modifications specified in *subsection (3)*, for the person to be discharged in accordance with section 28 of the Act of 2001.

- (3) In relation to each subsection of section 28 of the Act of 2001, the modifications referred to in *subsection (2)(b)(ii)* are—

- (a) in subsection (1), the consultant psychiatrist concerned shall, where not satisfied that the person concerned has a mental disorder which fulfils the criteria for involuntary admission, revoke the relevant order and discharge the person,

- (b) for the purpose of subsection (3)(b), the consultant psychiatrist shall notify the person concerned that he or she is entitled to have his or her detention reviewed by a tribunal in accordance with *section 255*, and
  - (c) subsection (5) of that section shall not apply to the person concerned, and any subsequent review or otherwise of his or her detention shall be in accordance with *section 255*.
- (4) Where an involuntary admission order referred to in *subsection (2)(a)* is made in respect of a person referred to in *subsection (1)*, the clinical director of the Central Mental Hospital shall, at the same time, consider whether—
- (a) it would be for the benefit of the person to remain in the Central Mental Hospital, or
  - (b) it is necessary, for the purpose of obtaining special treatment, the details of which shall be specified in writing, for the person to remain in the Central Mental Hospital.
- (5) Where the clinical director of the Central Mental Hospital is of the opinion that *paragraph (a)* or *(b)* of *subsection (4)* applies, the involuntary admission order made under *section 21(2)(a)* in respect of a person referred to in *subsection (1)*—
- (a) shall be for the reception, detention and care and treatment of the person in the registered acute mental health centre from which the person was transferred under section 21 of the Act of 2001, and
  - (b) shall be deemed to authorise the reception, detention and care and treatment of the person in the Central Mental Hospital.
- (6) A decision under *subsection (2)* shall be made and, as applicable, any considerations under *subsection (4)* shall be concluded as soon as may be after the relevant date, but not later than the date the relevant order for the person concerned expires or the date that falls 28 days after the relevant date, whichever occurs sooner.
- (7) Where an involuntary admission order is made in respect of a person referred to in *subsection (1)*, the relevant order pursuant to which that person was previously detained shall immediately cease to have effect and be deemed to be revoked.
- (8) The clinical director of the Central Mental Hospital shall notify the clinical director of the registered acute mental health centre from which a person was transferred under section 21 of the Act of 2001 of—
- (a) the results of an examination referred to in *subsection (1)*,
  - (b) the decision referred to in *subsection (2)* to make an involuntary admission order or to discharge the person concerned, and
  - (c) the outcome of considerations referred to in *subsection (4)*.
- (9) Where, before the relevant date, a clinical director of a registered acute mental health centre has proposed to transfer a person to the Central Mental Hospital under paragraph (a) of section 21(2) of the Act of 2001 but the Commission has not referred the proposal to a tribunal under subsection (2)(b) of that section by immediately

before the relevant date, the Commission shall, on and after the relevant date, treat the proposal as if it were made under *section 35(1)* for the purpose of *subsection (4)* of that section, and any subsequent transfer (or otherwise) of the person concerned shall be determined in accordance with *Part 3*.

- (10) Where, before the relevant date, the Commission has referred a proposal to transfer a person to the Central Mental Hospital to a tribunal under paragraph (a) of section 21(2) of the Act of 2001 but a tribunal has not by immediately before the relevant date reviewed the proposed transfer and determined whether to—
- (a) authorise the proposed transfer under section 21(2)(b)(i) of the Act of 2001, or
  - (b) refuse to authorise the proposed transfer under section 21(2)(b)(ii) of that Act,
- the referral to the tribunal shall lapse and the Commission shall, on and after the relevant date, treat the proposal to transfer the person concerned under paragraph (a) of section 21(2) of the Act of 2001 as if it were made under *section 35(1)* for the purpose of *subsection (4)* of that section, and any subsequent transfer (or otherwise) of the person concerned shall be determined in accordance with *Part 3*.
- (11) *Subsections (13), (14) and (15) of section 35* shall apply to an admission to the Central Mental Hospital under this section with the modification that a reference to a registered acute mental health centre from which a person has been or was transferred shall be construed as a reference to the registered acute mental health centre from which the person admitted under this section was previously transferred under section 21 of the Act of 2001 and any other necessary modifications.

#### **Transitional provisions: referral to and review by tribunal**

- 255.** (1) Where, before the date on which this section comes into operation (in this section referred to as the “relevant date”), a relevant order has been made but the Commission has not received the relevant order under section 17 of the Act of 2001 by immediately before the relevant date, the Commission shall, on or after the relevant date, carry out the matters specified in subsection (1) of that section upon receipt of the relevant order.
- (2) Where, before the relevant date, the Commission has received—
- (a) a copy of a relevant order under section 17 of the Act of 2001,
  - (b) an application referred to in section 15(3)(b) of the Act of 2001, or
  - (c) a notice referred to in section 28(5) of the Act of 2001,
- but has not carried out the matters specified in section 17(1) of the Act of 2001 by immediately before the relevant date, the Commission shall, on or after the relevant date, carry out the matters specified in that subsection.
- (3) Where, immediately before the relevant date—
- (a) a person has been discharged under section 28 of the Act of 2001,
  - (b) he or she has not made a request to the Commission for a review of his or her detention in accordance with section 28(5) of the Act of 2001, and

(c) the period allowed under section 28(5) of the Act of 2001 for making a request referred to in *paragraph (b)* has not yet expired,

the person may, on or after the relevant date but before the expiration of the period referred to in *paragraph (c)*, make a request to the Commission in accordance with section 28(5) of the Act of 2001 for a review of his or her detention and, where he or she does so, the Commission shall, on or after the relevant date, carry out the matters specified in section 17(1) of that Act.

(4) Where the Commission carries out the matters specified in section 17(1) of the Act of 2001 pursuant to *subsection (1), (2) or (3)*, a tribunal shall proceed in accordance with sections 17 and 18 of the Act of 2001 and, where the relevant order is affirmed, that decision may be appealed to the Circuit Court in accordance with section 19 of that Act.

(5) Where, before the relevant date, the Commission has referred—

(a) the making of a relevant order,

(b) an application referred to in section 15(3)(b) of the Act of 2001, or

(c) a notice referred to in section 28(5) of the Act of 2001,

to a tribunal under section 17(1) of the Act of 2001 but such tribunal has not by immediately before the relevant date reviewed the detention of the person concerned under section 18 of that Act, the tribunal shall, on or after the relevant date, carry out the review of the relevant order concerned in accordance with section 18 of that Act and, where the relevant order is affirmed, that decision may be appealed to the Circuit Court in accordance with section 19 of that Act.

(6) Where, before the relevant date, an appeal has been made under section 19 of the Act of 2001 against a decision to affirm a relevant order under section 18 of that Act but the Circuit Court has not, by immediately before the relevant date, determined the appeal, the appeal shall, on or after the relevant date, be determined in accordance with that Act.

(7) Where, immediately before the relevant date—

(a) a decision to affirm a relevant order under section 18 of the Act of 2001 has been made,

(b) the person the subject of the relevant order has not appealed the decision under section 19 of that Act, and

(c) the period of time allowed under section 19(2) of the Act of 2001 for bringing an appeal referred to in *paragraph (b)* has not expired,

the person the subject of the relevant order concerned may, on or after the relevant date but before the expiration of the period of time referred to in *paragraph (c)*, appeal the decision to the Circuit Court under section 19 of that Act and, where he or she does so, the appeal shall be determined by the Circuit Court in accordance with that Act.

- (8) Where a relevant order is deemed to be revoked under *section 252(5)* or *254(7)* or revoked by a consultant psychiatrist due to a discharge under *section 252(3)(a)* or *254(3)(a)* before a tribunal referred to in *subsection (4)* or *(5)* completes its review in respect of the relevant order under section 18 of the Act of 2001, the review by the tribunal shall not be completed unless the person or his or her legal representative notifies the Commission, as soon as practicable but not later than the time and date scheduled for the review, that the person concerned wishes the review to be completed in accordance with the Act of 2001.
- (9) Where a person requests that a review referred to in *subsection (8)* be completed, the tribunal shall, notwithstanding that the person concerned is no longer being detained pursuant to the relevant order the subject of the review, on or after the relevant date, determine the review in accordance with the Act of 2001 with any necessary modifications.
- (10) A person who is a member of a panel of consultant psychiatrists referred to in section 33(3)(b) of the Act of 2001 immediately before the relevant date shall, on and after the relevant date, continue as a member of that panel and be subject to the Act of 2001 as it stood immediately before the relevant date until the date of the determination of the final matter referred to a tribunal, including an appeal involving a decision of the tribunal concerned under section 19 of the Act of 2001, under *subsection (4)*, *(5)*, *(6)*, *(7)* or *(9)*.
- (11) The functions standing vested in a member of a panel of consultant psychiatrists referred to in section 33(3)(b) of the Act of 2001 immediately before the relevant date shall, in relation to a matter referred to in *subsection (10)*, continue to be performable on and after the relevant date by such a person.

### **Transitional provision: membership of tribunals**

#### **256. (1) Subject to *subsection (4)*—**

- (a) a person who is, immediately before the date on which this section comes into operation (in this section referred to as the “relevant date”), a member of a tribunal referred to in section 48(3)(a) of the Act of 2001 shall, on the panel establishment date, stand appointed as a member of the consultant psychiatrist review panel,
  - (b) a person who is, immediately before the relevant date, a member of a tribunal referred to in section 48(3)(b) of the Act of 2001 shall, on the panel establishment date, stand appointed as a member of the legal practitioners review panel, and
  - (c) a person who is, immediately before the relevant date, a member of a tribunal referred to in section 48(3)(c) of the Act of 2001 shall, on the panel establishment date, stand appointed as a member of the community review panel.
- (2) A person appointed under *subsection (1)* shall be so appointed for a period equal to the unexpired period for which he or she was appointed as a member of the tribunal, on the same conditions (including those relating to termination of appointment) as the Commission determined when appointing him or her under section 48(6) of the Act of 2001.

- (3) The period served by a person referred to in *subsection (1)* as a member of a tribunal immediately before the relevant date and the period for which he or she is appointed under *subsection (2)* shall be regarded as one period of office for the purposes of *section 26(7)*.
- (4) A person who is a member of a tribunal immediately before the relevant date shall, on and after the relevant date, continue as a member of that tribunal and be subject to the Act of 2001 as it stood immediately before the relevant date until the date on which any of the following occurs:
- (a) the determination of the final matter referred to that tribunal under—
    - (i) section 17 or 21 of the Act of 2001, including an appeal involving a decision of the tribunal concerned under section 19 of the Act of 2001, or
    - (ii) *section 255*, including an appeal involving a decision of the tribunal concerned under section 19 of the Act of 2001;
  - (b) he or she ceases to hold office under section 48(7), (9) or (10) of the Act of 2001;
  - (c) his or her period of membership expires,
- whichever is soonest.
- (5) The functions standing vested in a member of a tribunal immediately before the relevant date shall, in relation to a matter referred to in *subsection (4)(a)*, continue to be performable on and after the relevant date by such a person.
- (6) In this section—
- “community review panel” has the meaning given to it in *section 26(2)(c)*;
  - “consultant psychiatrist review panel” has the meaning given to it in *section 26(2)(a)*;
  - “legal practitioners review panel” has the meaning given to it in *section 26(2)(b)*;
  - “panel establishment date” means the date that the Commission establishes the community review panel, the consultant psychiatrist review panel and the legal practitioners review panel under *section 26(1)*.

#### **Transitional provisions: admission and renewal orders for children**

- 257.** (1) Subject to *section 258*, a relevant order in respect of a child that is in force immediately before the date on which this section comes into operation (in this section referred to as the “relevant date”) shall, subject to the modifications in *subsection (2)*, continue in force on and after the relevant date and accordingly the Act of 2001 as it stood immediately before the relevant date shall continue to have effect in respect of the child until the earlier of—
- (a) the date the child the subject of the relevant order is admitted under *section 62*, *63*, *64* or *66* following the commencement of the process specified in *section 258(1)*, or
  - (b) the date the relevant order is revoked and the child is discharged by the Family District Court or the District Court, as the case may be, under section 22 of the

Act of 1991 (as applied by section 25 of the Act of 2001) following an application under *section 258(2)(b)*.

- (2) The modifications referred to in *subsection (1)* are that the following provisions shall apply in respect of a relevant order that continues in force under *subsection (1)* as if the child the subject of the relevant order concerned were an involuntarily admitted child (and any other necessary modifications):
- (a) *paragraphs (a), (b), (d), (e), (f) and (g) of subsection (1) and subsections (2) and (3) of section 9;*
  - (b) *Chapter 4 of Part 4;*
  - (c) *section 193.*
- (3) In this section and *sections 258 and 259*, “relevant order” means—
- (a) an order authorising the detention of the child in an approved centre made under *section 25(6)* of the Act of 2001, or
  - (b) an extension of an order referred to in *paragraph (a)* made under subsections (9) or (10) of *section 25* of the Act of 2001.

#### **Transitional provisions: involuntarily admitted children**

- 258.** (1) Subject to *subsection (3) and (6)*, where, immediately before the date on which this section comes into operation (in this section referred to as the “relevant date”) or following a transfer referred to in *section 261*, a child is being detained in a registered acute mental health centre pursuant to a relevant order, the clinical director of the registered acute mental health centre concerned shall, on or after the relevant date—
- (a) arrange for the child concerned to be examined by a consultant psychiatrist under *section 66(1)*, and
  - (b) furnish the results of that examination to the Executive.
- (2) The Executive, having considered the results of an examination under *section 66(1)* referred to in *subsection (1)*—
- (a) shall arrange for the child to be admitted, with the agreement of the responsible consultant psychiatrist and the consent of the child or, as the case may be, his or her parents or guardian or the Agency—
    - (i) as a voluntarily admitted child under *section 62 or 63*, or
    - (ii) as a child aged 16 years or older lacking necessary capacity admitted with parental consent under *section 64*,
  - or
  - (b) shall make an application to the Family District Court or the District Court, as the case may be—
    - (i) for an order authorising the reception, detention and care and treatment of the child in a registered acute mental health centre under *section 66*, or

- (ii) for the child to be discharged in accordance with section 22 of the Act of 1991 (as applied by section 25 of the Act of 2001).
- (3) An admission referred to in *subsection (2)(a)* or an application referred to in *subsection (2)(b)* in respect of a child the subject of a relevant order shall be made as soon as may be after the relevant date, but not later than the date the relevant order for the child concerned expires or the date that falls 28 days after the relevant date, whichever occurs sooner.
- (4) Where a child referred to in *subsection (1)* is admitted to a registered acute mental health centre under *section 62, 63, 64 or 66* or discharged in accordance with section 22 of the Act of 1991 (as applied by section 25 of the Act of 2001), the relevant order pursuant to which the child was previously detained shall immediately cease to have effect.
- (5) Where a child referred to in *subsection (1)* is admitted to a registered acute mental health centre under *section 62, 63 or 64*, the Executive shall notify the Family District Court or District Court, as the case may be, as soon as may be that the child is no longer being detained pursuant to a relevant order.
- (6) In this section, references to a child being detained in a registered acute mental health centre pursuant to a relevant order includes—
- (a) a child on a permitted leave of absence under section 26 of the Act of 2001,
  - (b) subject to *section 262*, a child absent from that centre without permission under section 27 of the Act of 2001, and
  - (c) a child being detained in that centre following a transfer referred to in *section 261*.

**Transitional provisions: involuntary admission of children processes in being**

- 259.** (1) Where, before the date on which this section comes into operation (in this section referred to as the “relevant date”), an application in respect of a child has been made under section 25(1) of the Act of 2001 but the District Court has not determined whether to make or refuse to make an admission order under that section by immediately before the relevant date, the Family District Court or District Court, as the case may be, shall, on or after the relevant date, determine whether or not the child should be admitted to a registered acute mental health centre in accordance with *Part 4* subject to any necessary modifications.
- (2) Where, before the relevant date, an appeal has been brought to the Circuit Court under section 28 of the Act of 1991 (as applied by section 25 of the Act of 2001) in respect of a relevant order but the Circuit Court has not determined the appeal by immediately before the relevant date, the appeal shall be determined, on or after the relevant date, in accordance with those Acts and where a relevant order is affirmed, those Acts, subject to *sections 257 and 258*, shall apply accordingly.

**Transitional provisions: voluntarily admitted children**

- 260.** (1) Where, immediately before the date on which this section comes into operation (in this section referred to as the “relevant date”), a child is being treated in a registered acute mental health centre as a voluntary patient (within the meaning of the Act of 2001), his or her responsible consultant psychiatrist shall, as soon as may be but not later than 28 days after the relevant date, carry out an examination of the child.
- (2) After carrying out an examination under *subsection (1)*, the responsible consultant psychiatrist shall—
- (a) arrange for the child—
    - (i) to be admitted, with the agreement of the responsible consultant psychiatrist, and with the consent of the child or, as the case may be, his or her parents or guardian or the Agency—
      - (I) as a voluntarily admitted child under *section 62* or *63*, or
      - (II) as a child aged 16 years or older lacking necessary capacity admitted with parental consent under *section 64*,
    - or
    - (ii) to be discharged from the registered acute mental health centre,
    - or
  - (b) where the results of the examination recommend the making of an application for involuntary admission, furnish the results of the examination to the Executive as soon as may be for the purpose of making an application for an involuntary admission order under *section 66*.
- (3) Where the results of the examination under *subsection (1)* recommend the making of an application for involuntary admission, that examination shall be deemed to be an examination for the purpose of *section 66(1)* if—
- (a) the examination was carried out within a period of not more than 72 hours before the making of the application under *section 66(3)*, and
  - (b) a report of the results of the examination is furnished to the District Court or the Family District Court, as the case may be, by the Executive upon the making of the application.
- (4) Where, before the relevant date, a child has been detained under *section 23(2)* of the Act of 2001 but an application under *section 25(1)* of that Act has not been made by immediately before the relevant date, any admission of the child shall be determined on or after the relevant date in accordance with *section 71* as if the child were detained under that section subject to the modification that the period of 24 hours referred to in *section 71(1)* shall be deemed to have begun at the time the person was detained under *section 23* of the Act of 2001.

**Transitional provisions: transfers of persons**

- 261.** (1) Where, before the date on which this section comes into operation (in this section referred to as the “relevant date”), a clinical director of a registered acute mental health centre has received an application under section 20 of the Act of 2001 for a transfer of a person to another registered acute mental health centre (in this section referred to as the “second-mentioned registered acute mental health centre”) but has not considered the application by immediately before the relevant date, the clinical director may, on or after the relevant date, consider and determine the application and, if he or she so thinks fit—
- (a) refuse the application, or
  - (b) arrange for the transfer of the person to the second-mentioned registered acute mental health centre in accordance with that section and for the person to be detained accordingly in the second-mentioned registered acute mental health centre with the consent of the clinical director of that centre.
- (2) Where, before the relevant date, a clinical director of a registered acute mental health centre has arranged for the transfer of a person to another registered acute mental health centre (other than the Central Mental Hospital) under section 21(1) of the Act of 2001 but the transfer has not taken place by immediately before the relevant date, the clinical director may—
- (a) refuse the transfer, or
  - (b) arrange for the transfer to take place on or after the relevant date in accordance with that section and for the person to be detained accordingly in the other registered acute mental health centre concerned.

**Transitional provisions: absence with and without leave**

- 262.** (1) Where, immediately before the date on which this section comes into operation (in this section referred to as the “relevant date”), permission for a period of absence granted to a person under section 26(1) of the Act of 2001 is in force, the grant of such permission shall, on and after the relevant date, continue in force and accordingly that Act as it stood immediately before the relevant date shall continue to have effect in respect of the person until the date of the period specified in the permission expires, unless that permission is sooner withdrawn under *subsection (2)*.
- (2) Where, immediately before the relevant date, a person is absent from a registered acute mental health centre pursuant to a permission granted under section 26(1) of the Act of 2001, the responsible consultant psychiatrist for the person concerned shall, on or after the relevant date, withdraw the permission and direct the person to return to the registered acute mental health centre for the purpose of an examination referred to in *section 252(1)* or *258(1)*, as the case may be.
- (3) Where, immediately before the relevant date, following a withdrawal of permission under *subsection (2)*, or on or after the relevant date, a person in respect of whom a relevant order or a relevant order within the meaning of *section 257* is in force—

- (a) is absent from a registered acute mental health centre without permission granted under section 26(1) of the Act of 2001, or
- (b) fails to return to the registered acute mental health centre in accordance with any direction given under section 26 of the Act of 2001 or *subsection (2)*,

the clinical director of the registered acute mental health centre concerned may arrange for the person to be brought back to the centre in accordance with section 27 of the Act of 2001.

## CHAPTER 2

### *Registration of services*

#### **Transitional provision: registration of services, general**

- 263.** (1) Where, immediately before the date on which this section comes into operation (in this section referred to as the “relevant date”) or following a determination under *section 264(1)(a)*, an approved centre within the meaning of the Act of 2001 (in this section referred to as an “approved centre”) is registered by the Commission under section 64 of the Act of 2001, the approved centre shall be deemed, on the relevant date or on the date of such a determination under *section 264(1)(a)*, to be registered as a registered acute mental health centre and shall be entered by the Commission, on or after the relevant date, in the Register of acute mental health centres under *section 146*.
- (2) The duration of a registration of an approved centre deemed to be a registered acute mental health centre in accordance with *subsection (1)* shall begin on either of the dates referred to in *subsection (1)* as applies in relation to the centre and end on the date the period of the registration of that approved centre under section 64 of the Act of 2001 expires.
  - (3) Where, immediately before the relevant date, a certificate of registration in respect of an approved centre under section 64 of the Act of 2001 is in force, that certificate of registration shall, on the relevant date, be deemed to be a certificate of registration under *section 153* for the duration of the unexpired period of the registration referred to in *subsection (2)*.
  - (4) The Commission shall, on or after the relevant date, include a registered proprietor of an approved centre that is deemed to be a registered acute mental health centre in accordance with *subsection (1)* as the registered proprietor of the registered acute mental health centre concerned in the Register of acute mental health centres.
  - (5) The clinical director of an approved centre that is deemed to be a registered acute mental health centre in accordance with *subsection (1)* shall be deemed, on the relevant date, to be the clinical director of the registered acute mental health centre.
  - (6) The registered proprietor of an approved centre that is deemed to be a registered acute mental health centre in accordance with *subsection (1)* shall, as soon as may be and not later than 3 months after the relevant date, nominate a person to be the registered

person in accordance with *section 170(2)*, subject to the modification that the nominated person shall not be replacing a person named under *section 170(1)*.

- (7) A registered proprietor of a registered acute mental health centre that is deemed to be a registered acute mental health centre in accordance with *subsection (1)* shall comply with this Act and any regulations made thereunder from the relevant date.

**Transitional provision: registration of services**

**264.** (1) Where, before the date on which this section comes into operation (in this section referred to as the “relevant date”), an application has been made for registration of an approved centre within the meaning of the Act of 2001 (in this section referred to as an “approved centre”) under section 64 of the Act of 2001 but has not been determined by immediately before the relevant date, the application shall, on or after the relevant date, be determined in accordance with that Act and—

- (a) where a certificate of registration is issued pursuant to that application under section 64 of that Act, *section 263* shall apply accordingly, and
- (b) where a decision is made under section 64 of that Act to refuse to register the approved centre concerned, to remove the centre from the register or to attach a condition, or to amend or revoke a condition attached to the registration of the centre, that decision may be appealed to the District Court in accordance with section 65 of that Act subject to any necessary modifications.

(2) Where, before the relevant date, an appeal has been made under section 65 of the Act of 2001 against a decision under section 64 of that Act—

- (a) to refuse to register an approved centre,
- (b) to remove the centre from the register or to attach a condition, or
- (c) to amend or revoke a condition attached to the registration of the centre,

but the District Court has not determined the appeal by immediately before the relevant date, the appeal shall, on and after the relevant date, be determined in accordance with that Act with any necessary modifications.

(3) Where, immediately before the relevant date, an appeal under section 65 of the Act of 2001 has not been made but, on that date, the period allowed for bringing an appeal under that section has not yet expired, a registered proprietor or, as the case may be, a person intending to be a registered proprietor of an approved centre may, on or after that date, and within the period allowed for bringing the appeal, bring an appeal to the Family District Court under section 65 of the Act of 2001 and where he or she does so, the appeal shall be determined in accordance with that Act subject to any necessary modifications.

**Transitional provision: register of approved centres**

**265.** (1) Subject to *subsection (2)*, the Commission may retain the information contained in the register of approved centres maintained under section 64 of the Act of 2001 for the purposes of performing its functions under *Part 6* in respect of an acute mental health

centre deemed to be a registered acute mental health centre in accordance with *section 263*.

- (2) The Commission may retain the information referred to in *subsection (1)* for a period of 4 years commencing on the date on which this section comes into operation.

**Transitional provision: Inspector of Mental Health Services**

- 266.** Where, before the date on which this section comes into operation (in this section referred to as the “relevant date”), the Inspector (within the meaning of section 50 of the Act of 2001) or an Assistant Inspector (within the meaning of section 54 of the Act of 2001) has commenced a matter under the Act of 2001 but has not completed it by immediately before the relevant date, that matter may be carried on and completed on or after the relevant date by the Inspector or the Assistant Inspector in accordance with that Act.

CHAPTER 3

*Miscellaneous*

**Transitional provision: Service arrangements**

- 267.** An arrangement entered into under section 71A of the Act of 2001 that was for the time being in force immediately before the commencement of *section 19* shall remain in force and have effect on or after the date of the commencement of *section 19* as if that section had not been enacted.

**Transitional provision: Superannuation schemes**

- 268.** A superannuation scheme made under section 40 of the Act of 2001 that was in force immediately before the commencement of *section 118* or *119*, as the case may be, shall—
- (a) remain in force and have effect on or after the commencement of *section 118* or *119*, as the case may be, as if the scheme concerned had been made under *section 118* or *119*, as the case may be, and
  - (b) be construed as if references to a member of the staff of the Commission included references to a member of the staff of the Commission as established under the Act of 2001.