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**An Bille Meabhair-Shláinte, 2024**

**Mental Health Bill 2024**

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**ADMINISTRATIVE REPRINT**

*Bille Dála arna leasú i gCoiste ag Seanad Éireann  
Dáil Bill as amended in Committee by Seanad Éireann*

This administrative reprint incorporates amendments made at Committee Stage by Seanad Éireann. It has been produced for ease of reference only, given that amendments made by Seanad Éireann to a Bill initiated in Dáil Éireann cannot have legislative effect unless agreed to by Dáil Éireann.



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**MENTAL HEALTH BILL 2024**

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*Dáil Bill as amended in Committee by Seanad Éireann*

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233. Amendment of Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023
234. Amendment of Family Courts Act 2024

ACTS REFERRED TO

Animal Health and Welfare Act 2013 (No. 15)  
Assisted Decision-Making (Capacity) Act 2015 (No. 64)  
Bail Act 1997 (No. 16)  
Broadcasting Act 2009 (No. 18)  
Child Care Act 1991 (No. 17)  
Children Act 2001 (No. 24)  
Children and Family Relationships Act 2015 (No. 9)  
Civil Partnership and Certain Rights and Obligations of Cohabitants Act 2010 (No. 24)  
Companies Act 2014 (No. 38)  
Comptroller and Auditor General (Amendment) Act 1993 (No. 8)  
Coroners Act 1962 (No. 9)  
Courts (Supplemental Provisions) Act 1961 (No. 39)  
Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023 (No. 3)  
Criminal Law (Insanity) Act 2006 (No. 11)  
Data Protection Act 2018 (No. 7)  
Defence Act 1954 (No. 18)  
Domestic Violence Act 2018 (No. 6)  
Education Act 1998 (No. 51)  
Electronic Commerce Act 2000 (No. 27)  
Ethics in Public Office Act 1995 (No. 22)  
European Parliament Elections Act 1997 (No. 2)  
Family Courts Act 2024 (No. 48)  
Guardianship of Infants Act 1964 (No. 7)  
Health Act 2004 (No. 42)  
Health Act 2007 (No. 23)  
Health and Social Care Professionals Act 2005 (No. 27)  
Legal Services Regulation Act 2015 (No. 65)  
Local Government Act 2001 (No. 37)  
Medical Practitioners Act 2007 (No. 25)  
Mental Health (Amendment) Act 2018 (No. 10)  
Mental Health Act 2001 (No. 25)  
Mental Health Acts 1945 to 2001  
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National Vetting Bureau (Children and Vulnerable Persons) Act 2012 (No. 47)  
Non-Fatal Offences against the Person Act 1997 (No. 26)  
Nurses and Midwives Act 2011 (No. 41)  
Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023 (No. 10)  
Petty Sessions (Ireland) Act 1851 (14 & 15 Vict., c. 93)

Protected Disclosures Act 2014 (No. 14)

Public Health (Tobacco) Act 2002 (No. 6)

Public Service Management (Recruitment and Appointments) Act 2004 (No. 33)

Public Service Pensions (Single Scheme and Other Provisions) Act 2012 (No. 37)

Social Welfare Consolidation Act 2005 (No. 26)

Taxes Consolidation Act 1997 (No. 39)

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# Bill

*entitled*

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 District Court; 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. 5

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

## PART 1

### PRELIMINARY AND GENERAL

#### **Short title and commencement** 10

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 6*. 15

#### **Interpretation**

2. In this Act—
  - “Act of 1991” means the Child Care Act 1991;
  - “Act of 1997” means the European Parliament Elections Act 1997; 20
  - “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; 25
  - “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 139*;
  - “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; 30
  - “Board” has the meaning assigned to it in *section 103*;
  - “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 46*, 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 62*; 5

“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 188* by a member of a person’s multidisciplinary team, and where possible, in consultation with the person the subject of the plan, and 10
- (b) in relation to a child, a plan prepared under *section 189* by a member of a child’s multidisciplinary team, and where possible, in consultation with the child where appropriate or the parent or guardian of the child the subject of the plan;

“Chief Executive Officer” means the chief executive officer of the Commission appointed in accordance with *section 112*; 15

“Chief Inspector” means the person who holds the office of Inspector of Mental Health Services in accordance with *section 136*;

“child” means a person under the age of 18;

“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 65*; 20

“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 174*; 25

“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; 30

“Commission” means the Mental Health Commission established by the Act of 2001 and continued in being under *section 101*;

“consultant psychiatrist” means a registered medical practitioner who is registered in the Specialist Division under the medical specialty of “Psychiatry”; 35

“criteria for involuntary admission” shall be construed in accordance with *section 12*;

“criteria for involuntary admission of a child” shall be construed in accordance with *section 66*;

“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;	5
“designated centre”, other than in <i>section 155</i> , has the same meaning as it has in the Criminal Law (Insanity) Act 2006;	
“examination”, in relation to a recommendation for involuntary admission, an involuntary admission order, a renewal order or a proposed transfer under <i>section 36</i> , 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;	10
“Executive” means the Health Service Executive;	
“guardian” means, in relation to a child—	15
(a) a guardian pursuant to the Guardianship of Infants Act 1964, or	
(b) the person acting in <i>loco parentis</i> to that child;	
“guardian <i>ad litem</i> ” means, in relation to a child, a guardian <i>ad litem</i> (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;	20
“guiding principles” shall be construed—	
(a) in relation to an adult, in accordance with <i>section 9</i> , and	
(b) in relation to a child, in accordance with <i>section 10</i> ;	
“involuntary admission order” has the meaning assigned to it—	
(a) in relation to an adult, in <i>sections 22</i> and <i>38</i> , and	25
(b) in relation to a child, in <i>section 67</i> ;	
“involuntarily admitted child” means a child who fulfils the criteria for detention in <i>section 66</i> and is subject to an involuntary admission order or a renewal order made under <i>section 67</i> or <i>68</i> ;	
“involuntarily admitted person” means an adult who fulfils the criteria for involuntary admission in <i>section 12</i> and has been admitted to a registered acute mental health centre pursuant to an involuntary admission order or a renewal order;	30
“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;	35
“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; 5

“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, 10
- (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: 15
  - (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; 20

“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— 25

- (a) in relation to an adult, in accordance with *section 194*, and
- (b) in relation to a child aged 16 years or older, in accordance with *section 195*;

“parent” means—

- (a) in relation to a child, subject to *paragraph (b)*, the father or mother (within the meaning of section 2 of the Guardianship of Infants Act 1964) of the child, 30
- (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, in relation to a child, his or her parents, or either of them, or guardian, or, where the child is the subject of a care order, the Agency; 35

“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; 5
- “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; 10
- “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; 15
- “recommendation for involuntary admission” has the meaning assigned to it in *section 16*;
- “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; 20
- “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 25
  - (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; 30
- “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 35
  - (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 health professional” means—

- (a) a registered medical practitioner,
- (b) a registered nurse or registered midwife within the meaning of the Nurses and Midwives Act 2011, or 5
- (c) a registrant within the meaning of section 3 of the Health and Social Care Professionals Act 2005 prescribed for the purposes of this Part,

who is appropriately trained to order the application, initiate the application of, or apply, a restrictive practice; 10

“renewal order” has the meaning assigned to it—

- (a) in relation to an adult, in *section 23*, and
- (b) in relation to a child, in *section 68*;

“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; 15

“responsible person” has the meaning assigned to it in *section 173*;

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

“review board” has the meaning assigned to it in *section 27*;

“review panel” has the meaning assigned to it in *section 27*; 20

“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 20*;

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

“specified person” means a person who— 25

- (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; 30

“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;

“treatment” in relation to a person, other than in *sections 37* and *85*, includes the administration of physical, psychological and other remedies relating to the care and 35

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— 5

- (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. 10

### **Regulations**

3. (1) The Minister may by regulations provide for any matter referred to in this Act as prescribed or to be prescribed. 15
- (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. 20

### **Service of documents** 25

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; 30
  - (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. 35

- (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. 5

### **Transitional provisions**

5. (1) 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 20* shall remain in force and have effect on or after the commencement of *section 20* as if that section had not been enacted. 10
- (2) A superannuation scheme made under section 40 of the Act of 2001 that was in force immediately before the commencement of *section 120* or *121*, as the case may be, shall—
- (a) remain in force and have effect on or after the commencement of *section 120* or *121*, as the case may be, as if the scheme concerned had been made under *section 120* or *121*, as the case may be, and 15
- (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.

### **Repeals**

6. The following Acts are repealed: 20

- (a) the Act of 2001;
- (b) the Mental Health (Amendment) Act 2018.

### **Expenses**

7. 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. 25

### **Review of operation of Act**

8. (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. 30
- (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**

9. (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. 5
- (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 10
- (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. 15
- (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*. 20
- (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, 25
- (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. 30
- (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— 35
- (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, 5
- (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. 10
- (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, 15
  - (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 20
  - (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**

- 10. (1) In making any decision under *Part 4* concerning the admission, detention, 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 67* 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: 25 30
- (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; 35
  - (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* 30

#### **Interpretation (*Part 3*)**

**11.** 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 35

to it in *section 14*;

“direct applicant” has the meaning assigned to it in *section 15*;

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

“Garda request for an application for a recommendation for involuntary admission” has the meaning assigned to it in *section 18*; 5

“independent consultant psychiatrist” has the meaning assigned to it in *section 28*;

“panel of independent consultant psychiatrists” has the meaning assigned to it in *section 28*;

“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— 10

- (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 15
- (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 15*;

“request for an application for a recommendation for involuntary admission” has the meaning assigned to it in *section 13*; 20

“requester” has the meaning assigned to it in *section 13*.

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

**12.** (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: 25

- (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 30
  - (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, 35

- (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; 5
- 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 10
    - (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— 15
    - (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, 20
    - (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. 25
  - (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**

- 13. (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— 30
  - (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. 35

- (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, 5
  - (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 10
      - (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. 15
- (4) A request for an application for a recommendation for involuntary admission shall be made in the form and manner specified by the Commission. 20

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

14. (1) Where an authorised officer receives a request in that behalf under *section 13(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— 25
- (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 30
  - (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. 35
- (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. 40

- (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. 5
- (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. 10
- (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— 15
- (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 13*. 20
- (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. 25
- (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 17(1)*. 30
- (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. 35
- (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, 40
- (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. 5
- (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— 10
  - (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** 15

- 15.** (1) Without prejudice to the generality of *section 14* 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 Part 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. 20
- (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, 25
  - (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 30
  - (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 35
  - (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 40

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. 5
- (6) In this section and *section 18*, “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 10
    - (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 15
  - (d) is a mental healthcare professional (other than a consultant psychiatrist).

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

16. (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, 20
- 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. 25
- (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 Part referred to as a “recommendation for involuntary admission”). 30 35
- (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. 40

- (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. 5
- (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— 10
- (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. 15
- (7) A registered medical practitioner shall be disqualified from examining a person under *subsection (1)* where the registered medical practitioner— 20
- (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 25
- (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, 30
- (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. 35
- (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**

17. (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, insofar as he or she is aware, disclose to the authorised officer or, in the case of a direct applicant, to the registered medical practitioner— 5
- (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 16(4)*, or 10
    - (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 14* and the date and circumstances relating to any such previous refusal. 15
- (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**

18. (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— 20
- (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 25
  - (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. 30
- (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) to (7)* may be carried out. 35
- (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, 40

- 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
- (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— 10
- (a) carry out each of the steps specified in *section 15(3)*, and 15
- (b) decide whether or not to make a direct application for a recommendation for involuntary admission in respect of the person concerned.
- (6) *Sections 14, 15 and 17* 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 application for involuntary admission. 20
- (7) *Section 16* 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— 25
- (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 16(3)* or refuse to make a recommendation for involuntary admission under *section 16(4)*; 30
- (b) any other necessary modifications.
- (8) A person taken into custody under this section shall be released from custody immediately if— 35
- (a) following an assessment of the person concerned, an authorised officer refuses to make an application under *section 14(5)*,
- (b) having carried out each of the steps specified in *section 15(3)*, a relevant person contacted under *subsection (5)* decides not to make a direct application for a recommendation for involuntary admission, or 40

(c) following an examination of the person concerned, a registered medical practitioner refuses to make a recommendation for involuntary admission under *section 16(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. 5

(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 16(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 15

(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 19, 40, 74, 85 or 140*. 20

(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. 25

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

19. (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. 30

(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— 35

(a) the clinical director of the registered acute mental health centre specified in the recommendation, or 40

(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. 5

(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 10

(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— 15

(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 20

(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. 25

**Bringing and bringing back of persons to registered acute mental health centre by a service provider** 30

**20.** (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: 35

(a) the bringing of persons, other than children, to the registered acute mental health centre pursuant to *section 19* or *21*;

(b) the bringing of children to the registered acute mental health centre pursuant to *sections 76* or *80*;

- (c) the bringing back of persons, other than children, to the registered acute mental health centre pursuant to *section 21* or *40*;
  - (d) the bringing back of children to the registered acute mental health centre pursuant to *section 85*.
- (2) Where an arrangement referred to in *subsection (1)* has been entered into— 5
- (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. 10
- (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 19, 21, 40* and *85*.

### **Emergency treatment before admission**

21. (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 22(2)(a)* in respect of the person— 15
- (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 20
  - (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. 25
- (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. 30
- (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 16(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 22* as soon as practicable, or 35
  - (b) the recommendation for involuntary admission has expired under *section 16(9)*— 40

- (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. 5
- (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. 10
- (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. 15

### **Involuntary admission order**

22. (1) Where a clinical director receives a recommendation for involuntary admission under *section 16* 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. 20
- (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 25
  - (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. 30 35
- (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; 40
  - (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**

- 23.** (1) An involuntary admission order shall—
- (a) authorise the reception, detention, care and treatment of the involuntarily admitted person concerned, and 5
  - (b) subject to *subsection (2)*, or *section 32*, 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. 10
- (3) The 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”). 15
- (4) Where a responsible consultant psychiatrist proposes to extend an involuntary admission order under this section, 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. 20
- (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 25
  - (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. 30

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

- 24.** 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. 35

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

25. (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. 5
- (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. 10
- (3) A notice under *subsection (2)* shall include a statement in writing and in a form and language that may reasonably be understood by him or her, to the effect that the involuntarily admitted person—
- (a) is entitled to legal representation, 15
  - (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, 20
  - (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, 25
  - (g) is entitled to communicate with the Chief Inspector,
  - (h) will have his or her involuntary admission reviewed by a review board in accordance with *section 32*,
  - (i) is entitled to appeal to the Circuit Court against a decision of a review board under *section 33*, 30
  - (j) is entitled to make an application under *section 34* to be transferred to another registered acute mental health centre,
  - (k) 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, 35
  - (l) is entitled to discuss discharge planning with a member of his or her multidisciplinary team, and
  - (m) 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. 40
- (4) A nominated person under *subsection (3)(m)* 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
- (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 Part 7 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. 10

**Psychosocial assessment of involuntarily admitted person** 15

26. (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. 20
- (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. 25

CHAPTER 2

*Review of involuntary admission*

**Mental Health Review Board**

27. (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 31*. 30
- (2) The 3 review panels shall be as follows: 35
- (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)*, 5
  - (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, 10
  - (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. 15
- (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— 20
- (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 25
  - (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. 30
- (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. 35

- (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 5
  - (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— 10
- (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, 15
  - (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 20
  - (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. 25
- (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 32* if he or she is the spouse or relative of the person the subject of the review. 30
- (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** 35

- 28.** (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 31*.

- (2) *Subsections (5) to (15) of section 27* 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**

29. (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 36* and may for those purposes receive submissions and such evidence as it thinks fit. 5
- (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. 10
- (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, 15
  - (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, 20
  - (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. 25
- (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. 30
- (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, 35
  - (b) being in attendance before a review board pursuant to a direction under *paragraph (b) 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 40

- 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 5
- (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. 10
- (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— 15
- (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 31(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 20
- (iii) the responsible consultant psychiatrist,  
of the time and date for the review hearing set under *section 31(1)(b)* by the Commission,
- (b) the attendance of the responsible consultant psychiatrist at the hearing of the review board, 25
- (c) where a legal representative is assigned under *section 31(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 31* 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, 30
- (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, 35 40

- (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, 5
  - (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, 10
  - (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, 15
  - (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. 20
- (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. 25
- (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; 30
  - (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. 35
- (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 32*.
- (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 40

*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**

30. A legal representative assigned to a person under *section 31(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 33* shall, with the prior consent of the person concerned, be entitled to access to the person's medical records. 5

### **Referral to review board**

31. (1) Following the receipt by the Commission of an involuntary admission order or a renewal order, the Commission shall, as soon as possible— 10
- (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, 15
  - (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 20
  - (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 25
    - (iii) review the medical records relating to the person,in order to determine whether the person continues to fulfil the criteria for involuntary admission. 30
- (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— 35
- (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— 5
- (a) examination under *subsection (1)(e)(i)*,  
(b) interviews under *subsection (1)(e)(ii)*, and  
(c) reviews under *subsection (1)(e)(iii)*. 10
- (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. 15
- (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. 20
- (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. 25

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

32. (1) Following a referral by the Commission of an involuntary admission order or a renewal order to a review board under *section 31*, the review board shall review the involuntary admission of the person concerned, having regard to the documents provided to it under *section 31(8)*. 30
- (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— 35
- (i) the provisions of *sections 9 to 24 and 38*, 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, 40

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 Commission or the review board, as the case may be, 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 which period shall not be less than 14 days, after the date of making of the order concerned. 5
- (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 10
- (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. 15 20
- (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: 25
- (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. 30
- (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 35
- (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 41* unless his or her detention is authorised otherwise than under this Act. 40

- (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. 5
- (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. 10

**Appeal to Circuit Court**

33. (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— 15
- (a) he or she does not meet the criteria for involuntary admission, or
  - (b) the provisions of *sections 9 to 24* and *38*, 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. 20
- (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 32* 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. 25
- (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 30
  - (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— 35
- (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 40

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— 5
- (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. 10
- (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. 15
- (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. 20
- (12) If any matter is published or broadcast in contravention of *subsection (10)*, each of the following persons, namely: 25
- (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, 30
- 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 31* 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. 35
- (15) The Court shall notify the Commission of the appeal and the outcome of the proceedings. 40

(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. 5

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

34. (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. 10
- (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. 15
- (3) The clinical director shall, within 7 days of receiving a request from an involuntarily admitted person for a transfer under *subsection (1)*— 20
- (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 25
- (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. 30
- (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. 35
- (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**

35. (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 other designated centre),  
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**

36. (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. 5
- (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. 10
- (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, 15
- (b) set the time and date for the hearing 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, 20
- (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. 25
- (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. 30 35
- (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 a direction, he or she shall so notify the 40

- 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— 5
- (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
- (10) The provisions of *sections 9, 13, 14, 15, 16, 18, 19, 20, 22, 23, 25, 31, 32, 33 and 38*, 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— 15
- (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. 20
- (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 the expiry of the involuntary admission order or any subsequent renewal order, as the case may be, and where— 25
- (a) the clinical director of the registered acute mental health centre from which the person was transferred approves a further period of detention, and
- (b) the clinical director of the Central Mental Hospital has consented in writing to the further detention. 30
- (15) An approval under *paragraph (a)* of *subsection (14)* and a consent under *paragraph (b)* 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. 35
- (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. 40

- (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.

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

37. (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. 10
- (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. 15
- (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. 20

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

38. (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— 25
- (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 22(1)*. 30
- (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 detention initiated under *subsection (1)* shall not proceed further, and 35
- (b) the voluntarily admitted person shall be immediately notified of the decision, informed of his or her right to leave the centre or stay as a voluntarily admitted person and a record of the decision 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 40

- 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
- (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, certify in writing in a form specified by the Commission stating that opinion and the reason for his or her opinion, or 10
- (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. 15
- (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. 20
- (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 25
- (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. 30
- (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 23 to 37* shall apply to a person involuntarily admitted under this section as they apply to a person involuntarily admitted under *section 22* with any necessary modifications. 35
- (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**

39. (1) A responsible consultant psychiatrist may, in respect of an involuntarily admitted person and subject to *subsection (2)*, grant permission in writing (in this Part referred to as a “permitted absence”) to the person to be absent from the registered acute 40

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.	5
(3) Where a person is absent from a registered acute mental health centre pursuant to <i>subsection (1)</i> , 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 <i>subsection (1)</i> and direct the person in writing to return to the registered acute mental health centre.	10
(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 <i>subsection (4)</i> shall be notified to the Commission within 24 hours of the making of the notice in a form specified by the Commission.	15
(6) The Commission shall prepare and publish a code of practice in relation to this section.	
<b>Absence without leave</b>	20
<b>40.</b> (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 <i>section 39</i> or on the expiration of the permitted absence, or	25
(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 <i>section 20</i> , to bring the person back to the registered acute mental health centre.	30
(2) Where a member of staff or another person duly authorised in that behalf under <i>section 20</i> , 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.	35
(3) A member of An Garda Síochána may for the purposes of this section—	40

- (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. 5
- (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** 10

41. (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. 15
- (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— 20
- (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, 25
  - (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. 30
- (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. 35
- (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— 40
- (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 consultant psychiatrist, stay as a voluntarily admitted person, and
- (c) is entitled to have his or her involuntary admission reviewed by a review board in accordance with the provisions of *section 32* 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. 5
- (8) Where a 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. 10
- (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 31* 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. 15
- (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. 20 25
- (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. 30
- (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 31, 32 and 33* shall apply in relation to the review with any necessary modifications.
- (14) Notwithstanding *section 32(1)*, 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)*, the review board shall review the detention of the person concerned and shall determine whether— 35
- (a) (i) the provisions of *sections 9 to 24 and 38*, where applicable, were complied with, or 40
- (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. 5

**Provision of information for persons admitted as voluntarily admitted person to registered acute mental health centre** 10

42. (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— 15
- (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, 20
  - (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, 25
  - (f) is entitled to communicate with the Chief Inspector,
  - (g) is entitled to discuss discharge planning with a member of his or her multidisciplinary team,
  - (h) is entitled to have a nominated person under *section 194* 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 30
  - (i) subject to *section 38*, 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)*, 35
  - (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. 40

- (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*

5

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

43. In this Chapter—

“initial treatment period” means the period specified in *section 48(1)*;

“further treatment period” means the period specified in *section 48(4)*.

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

10

44. 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**

45. (1) Consent, in relation to an involuntarily admitted person, means consent of the person obtained freely without threats or inducements where— 15

(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. 20

(2) Subject to *sections 48, 50 and 51*, 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. 25

(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. 30

(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. 35

## Capacity assessment

46. (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. 5
- (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. 10
- (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 to 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 47 to 52* shall apply accordingly. 15 20
- (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— 25
- (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. 30
- (7) A capacity assessment and a second capacity assessment 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. 35
- (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*

47. (1) Where, prior to his or her involuntary admission or following an application under *section 49*, an involuntarily admitted person is declared under Part 5 of the Act of 40

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 5
  - (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 46* 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. 10 15
- (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 46* and *subsections (1)* and *(2)* do not apply, treatment may be administered to him or her in accordance with *section 48, 49* or *50*, as the case may be. 20
- (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. 25

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

**48.** (1) Subject to *subsections (2), (4), (5), (6)* and *(9)*, where, following the making of an involuntary admission order—

- (a) a person is assessed under *section 46* as lacking capacity to consent to or refuse treatment, or 30
- (b) a capacity assessment or a second capacity assessment is being carried out under *section 46*, 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”). 35

- (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 40

- (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, 5
 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 10
  - (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 to 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— 15
  - (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 20
  - (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. 25
  
- (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, 30
 treatment under this section may only be administered to that person in accordance with *section 47(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 further treatment period shall cease: 35
  - (a) the person is assessed to have capacity to consent to or refuse treatment under *section 46*;
  - (b) an application is made to the Circuit Court under *section 49*; 40

- (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 further treatment period.
- (7) Where *section 49* applies and a person is receiving treatment under *subsection (1)* or *(4)*, the application referred to in *section 49* shall be made by the registered proprietor before the expiry of the initial treatment period or further treatment period, as the case may be. 5
- (8) Where a responsible consultant psychiatrist proposes to administer treatment to a person beyond the initial treatment period or any further treatment period, such treatment may only be administered in accordance with *section 45, 47, 50* or *51* as the case may be. 10
- (9) A reference to treatment administered under *subsection (1)* shall not include treatment administered under *section 52*.

**Application to Circuit Court in certain circumstances**

49. (1) Where an involuntarily admitted person has been assessed as lacking capacity to consent to or refuse a proposed treatment under *section 46* and there is not— 15
- (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 20
  - (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 48, 50* or *51*, being provided to the involuntarily admitted person. 25
- (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 30
  - (b) the person the subject of the application is assessed under *section 46* to have capacity to consent to or refuse treatment.

**Treatment without consent pending Circuit Court determination**

50. (1) Without prejudice to the generality of *section 45*, treatment specified in *subsection (2)* may be given to the involuntarily admitted person concerned where— 35
- (a) an application has been made to the Circuit Court in relation to an involuntarily admitted person under *section 49* but no determination has yet been made in relation to the application, or

- (b) outside of the initial treatment period or any further treatment period, a capacity assessment or a second capacity assessment is being carried out under *section 46* but an application to the Circuit Court under *section 49* 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— 5
- (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— 10
- (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. 15
- (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 to refuse treatment after either the capacity assessment or the second capacity assessment. 20
- (4) A reference to treatment administered under *subsection (1)* shall not include treatment administered under *section 52*.
- (5) Subject to *subsection (6)*, the continued administration of treatment to an involuntarily admitted person under this section shall be— 25
- (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. 30
- (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 49*; 35
- (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 46*.

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

51. (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 5
  - (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, 10
- 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: 15
- (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; 20
  - (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— 25
- (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. 30
- (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. 35
- (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 40

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. 5

### **Electro-convulsive therapy**

- 52.** (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. 10
- (2) Where the person has been found to lack capacity to give consent to a proposed treatment under *section 46*, then the provisions of *section 47* 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. 15
- (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; 20
  - (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; 25
  - (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; 30
  - (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)*. 35

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

- 53.** (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 38* as soon as possible after such application, but no later than 24 hours after the initiation of the application concerned. 5
- (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, 10
  - (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 59* 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. 15

**Seclusion**

- 54.** 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, 20
  - (c) the application of such seclusion is determined by the relevant health professional, in accordance with regulations made under *section 59*, 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 25
  - (d) the seclusion concerned complies with regulations under *section 59*.

**Mechanical restraint**

- 55.** 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— 30
- (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 59*, to be necessary where there is an immediate threat of serious harm to the person or to another person, or 35

where it is necessary for the administering of treatment to the person concerned,  
and

- (d) the mechanical restraint concerned complies with regulations under *section 59*.

### **Physical restraint**

- 56.** 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— 5
- (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 59*, 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 10
  - (d) the physical restraint concerned complies with regulations under *section 59*. 15

### **Pharmacological restraint**

- 57.** 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, 20
  - (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 59*, 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 59*. 25

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

- 58.** (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, 30
  - (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. 35

- (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, 5
  - (b) the expected duration of the application, 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 of the restrictive practice.
- (3) A registered proprietor of a registered acute mental health centre or designated centre shall— 10
- (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, 15
  - (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 59*. 20
- (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. 25
- (5) 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. 30

### **Regulations concerning restrictive practices**

- 59.** (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. 35
- (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); 40

- (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); 5
- (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; 10
- (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); 15
- (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; 20
- (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; 25
- (n) any other matters which are necessary or expedient for the purposes of giving effect to *subsection (1)*.

## PART 4

### CHILDREN 30

#### CHAPTER 1

#### *Interpretation and general*

### **Interpretation**

#### **60. (1)** In this Part—

“emergency care order” has the meaning assigned to it in section 13 of the Act of 1991; 35

“interim care order” has the meaning assigned to it in section 17 of the Act of 1991;  
 “supervision order” has the meaning assigned to it in section 19 of the Act of 1991;  
 “voluntary care arrangement” means a care arrangement under section 4 of the Act of 1991.

- (2) 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. 5

**Application of Act of 1991**

61. (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. 10
- (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; 15
- (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 20
- (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 67* and to the Executive respectively; 25
- (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 67* and to the Executive respectively;
- (e) in section 35B of the Act of 1991— 30
- (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 67* and to the Family District Court or District Court respectively;
- (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 63(2)* and *65(2)* and to the Family District Court or District Court respectively; 35
- (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 67*;
  - (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 63(2)* or *65(2)*; 5
- (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) to a subsequent care order shall be construed as references to an involuntary admission order made under *section 67* and a renewal order made under *section 68* 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 of the District Court; 10
  - (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 63(2)* or *section 65(2)* respectively; 15
- (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; 20
- (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 67*;
- (j) any other necessary modifications.
- (3) References in sections 13(7), 18(3), 19(4) and 43A of the Act of 1991, to psychiatric examination, treatment or assessment do not include references to treatment under this Act. 25
- (4) 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 Part as if he or she was the subject of a care order, with the modification that references to an application to— 30
- (a) the District Court or the Family District Court under *section 63(2)*, *65(2)*, *67*, *68*, *71* or *72*,
  - (b) the Family Circuit Court under *section 70*, or 35
  - (c) the Family High Court under *section 89*,
- 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. 40

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

62. (1) Where, in respect of a child aged 16 years or older— 5
- (a) a consultant psychiatrist or another mental healthcare professional, and
- (b) the child’s parents or guardian or the Agency,
- reasonably considers 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”). 10
- (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. 15 20
- (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. 25
- (5) A capacity assessment and, where applicable, a second capacity assessment shall be— 30
- (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. 35
- (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. 40

- (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 parents or guardian or the Agency, 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. 5
- (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. 10

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

- 63. (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. 15
- (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. 20
- (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. 25
- (4) Subject to *subsection (5)* and *section 72*, 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 parents or guardian or the Agency, with the consent of his or her parents or guardian or the Agency. 30
- (5) Where a child being discharged under this section is the subject of a voluntary care arrangement, an emergency care order or an interim care order, he or she may leave the registered acute mental health centre at any time into the care of the Agency, with the consent of his or her parents or guardian.

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

- 64. (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. 35
- (2) Where a child aged 16 years or older has been assessed under *section 62* 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 65*.

- (3) Subject to *section 72*, a voluntarily admitted child aged 16 years or older, other than a child who is the subject of a care order, 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. 5
- (4) Where a child the subject of a care order is admitted under this section, the Executive shall notify the Agency as soon as may be.
- (5) Subject to *section 72*, 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. 10

**Admission with parental consent of child aged 16 years or older lacking necessary capacity** 15

65. (1) Subject to *subsections (2) and (3)*, where a child aged 16 years or older is assessed under *section 62* 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— 20
- (a) the subject of a care order,
  - (b) aged 16 years or older, and
  - (c) assessed under *section 62* 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. 25 30
- (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 *subsections (6) and (7) and section 72*, 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 parents or guardian or the Agency, with the consent of his or her parents or guardian or the Agency, as the case may be. 35
- (5) Where a child being discharged under this section is the subject of a voluntary care arrangement, an emergency care order or an interim care order, he or she may leave the registered acute mental health centre at any time into the care of the Agency, with the consent of his or her parents or guardian, as the case may be. 40

- (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 5
  - (b) arrange for capacity assessments of the child to be carried out in accordance with *section 62* 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 62*, the child shall be treated as a voluntarily admitted child admitted under *section 64*. 10
- (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. 15

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

66. (1) A child may be involuntarily admitted to a registered acute mental health centre pursuant to an involuntary admission order under *section 67* 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: 20
- (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— 25
      - (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, 30  
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— 35
    - (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— 5
- (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, 10
  - (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. 15
- (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**

67. (1) Subject to *subsection (4)*, 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. 20
- (2) 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, and where— 25
- (a) the child cannot be admitted as a voluntarily admitted child under *section 63* or *64*,
  - (b) the child cannot be admitted as a child aged 16 years or older lacking necessary capacity admitted with parental consent under *section 65*, 30
  - (c) 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 responsible consultant psychiatrist believes, with the agreement of the child's parents or guardian or the Agency, that it is in the best interests of the child to be admitted on an involuntary basis, or 35
  - (d) 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, following the making of reasonable enquiries by the Executive, the parents of the child, or either of them, or guardian cannot be found by the Executive,

- 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, for an order authorising the reception, detention and care and treatment of the child in a registered acute mental health centre. 5
- (3) Where the Executive makes an application for involuntary admission under *subsection (2)* 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 10
- (b) indicate to the Court whether he or she is satisfied that the child fulfils the criteria for involuntary admission of a child.
- (4) The Executive may make an application for involuntary admission under *subsection (2)* without any prior examination of the child by a consultant psychiatrist, where— 15
- (a) the child is aged 16 years or older and refuses or does not consent to the examination, or
- (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— 20
- (i) the parents or guardian or the Agency refuse or do not consent to the examination of the child, or
- (ii) following the making of reasonable enquiries by the Executive, the parents, or either of them, or guardian, cannot be found by the Executive.
- (5) Where the Executive makes an application for involuntary admission under *subsection (2)* 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— 25 30
- (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. 35
- (6) A consultant psychiatrist shall be disqualified from carrying out an examination under *subsection (1)* or *(6)* where he or she is a relative of the child concerned.
- (7) Where the Family District Court or the District Court, as the case may be, is satisfied, having considered— 40
- (a) the report of the consultant psychiatrist referred to in *subsection (3)* or *(5)*, and

<p>(b) any other evidence that may be adduced before it that a child fulfils the criteria for involuntary admission of a child,</p> <p>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.</p> <p>(8) Where a guardian <i>ad litem</i> stands appointed for a child the subject of a care order at the time that an application for involuntary admission under <i>subsection (2)</i> is proposed, the Executive shall notify the guardian <i>ad litem</i> of the proposed application in advance.</p> <p>(9) Subject to <i>subsection (11)</i>, notice of an application for involuntary admission under <i>subsection (2)</i> and a copy of the proceedings shall be served by the Executive on—</p> <p style="padding-left: 2em;">(a) where the application is in respect of a child the subject of a care order, a voluntary care arrangement, an emergency care order or an interim care order, the Agency, and</p> <p style="padding-left: 2em;">(b) any other person specified by the Family District Court or the District Court, as the case may be.</p> <p>(10) 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.</p> <p>(11) An application for involuntary admission under <i>subsection (2)</i> 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 <i>ex parte</i>.</p> <p>(12) 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 <i>subsection (2)</i>, 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.</p> <p><b>Duration and renewal of involuntary admission order of child</b></p> <p><b>68.</b> (1) An involuntary admission order shall—</p> <p style="padding-left: 2em;">(a) authorise the reception, detention and care and treatment of the child concerned, and</p> <p style="padding-left: 2em;">(b) subject to <i>subsection (2)</i>, <i>section 70 and 71(7)</i>, remain in force for 21 days after the date of its making, and then expire.</p> <p>(2) Where, on or before the expiration of the period of involuntary admission referred to in <i>subsection (1)(b)</i>, 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</p>	<p>5</p> <p>10</p> <p>15</p> <p>20</p> <p>25</p> <p>30</p> <p>35</p> <p>40</p>
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- “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”). 5
  - (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 10
    - (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. 15
  - (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 61*, of the proposed application in advance. 20
  - (7) Notice of an application under *subsection (2)* and a copy of the proceedings shall be served by the Executive on—
    - (a) where the child is the subject of a care order, a voluntary care arrangement, an emergency care order or an interim care order, the Agency, and
    - (b) any other person specified by the Family District Court or the District Court, as the case may be. 25
  - (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. 30
  - (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. 35

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

69. 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. 40

## Appeal to Family Circuit Court

70. (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— 5
- (a) he or she does not meet the criteria for involuntary admission of a child, or
  - (b) the provisions of this section and *sections 10, 20, 67, 68, 72, 75 and 78*, 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. 10
- (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 77(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. 15
- (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 20
  - (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. 25
- (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 30
  - (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. 35
- (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, 40

- (c) where the child is the subject of a care order, a voluntary care arrangement, an emergency care order or an interim care order, the Agency,
  - (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 5
  - (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 61*, of the bringing of the appeal.
- (9) Before making an order under this section, the Family Circuit Court may have regard 10 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**

71. (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, 15 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— 20
    - (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, 25
    - or
    - (ii) in the case of a child aged 16 years or older assessed as lacking capacity under *section 62*, 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, 30
  - and
  - (b) provide the child with all relevant information from the child’s care plan prepared in accordance with *section 189* and information regarding—
    - (i) what will occur if the child leaves the registered acute mental health centre, and 35
    - (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 62*, 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 63(2)* or *65(2)*. 5
- (3) The meeting referred to in *subsection (1)* may also be attended by—
- (a) in the case of a child aged 16 years or older, at his or her request or where, in the opinion of the responsible consultant psychiatrist, it is in the child's best interests— 10
- (i) the child's parents or guardian or the Agency, and
- (ii) any nominated person,
- (b) in the case of a child aged 16 years or older assessed as lacking capacity to consent under *section 62* or a child under 16 years of age—
- (i) his or her parents or guardian or the Agency, and 15
- (ii) where relevant, any nominated person.
- (4) Where a responsible consultant psychiatrist proposes to discharge a child under *subsection (1)*, the responsible consultant psychiatrist or another mental healthcare professional who is involved in the child's care and treatment shall—
- (a) notify— 20
- (i) the Executive,
- (ii) the child's guardian *ad litem*, and
- (iii) where the child is the subject of a care order, a voluntary care arrangement, an emergency care order, an interim care order or a supervision order, the Agency, 25
- 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, 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. 30
- (5) Where the Family District Court or the District Court, as the case may be, refuses an application for a renewal order under *section 68* 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. 35
- (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 40

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 for 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. 5
- (8) Notice of an application under *subsection (6)* and a copy of the proceedings shall be served by the Executive on— 10
- (a) where the child is the subject of a care order, a voluntary care arrangement, an emergency care order, an interim care order or a supervision order, the Agency, and
  - (b) any other person specified by the Family District Court or the District Court, as the case may be. 15
- (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 20
  - (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. 25
- (11) Where a child the subject of a care order, a voluntary care arrangement, an emergency care order or an interim care order is discharged under this section, he or she shall be released into the care of the Agency. 30

### **Power to detain child**

72. (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)*. 35
- (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 40

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 involuntary admission shall cease and the child or the child and his or her parents or guardian or the Agency, as the case may be, shall be immediately notified of the decision, and— 5
- (a) in the case of a voluntarily admitted child aged 16 years or older admitted under *section 64*, informed of his or her right to leave the registered acute mental health centre or stay as a voluntarily admitted child in accordance, and 10
- (b) in the case of a voluntarily admitted child under 16 years of age admitted under *section 63*, or a child aged 16 years or older lacking necessary capacity admitted with parental consent under *section 65*, 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. 15
- (4) Where a child the subject of a care order is discharged following a notification under *subsection (3)*, he or she shall be released into the care of the Agency.
- (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 67(2)*, subject to the following modifications: 20
- (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, 25
- (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 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 days; 30
- (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; 35
- (c) the application may, if the judge is satisfied that the urgency of the matter so requires, be made *ex parte*; 40
- (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 67(1)*, the clinical director of the registered acute mental health centre shall retain 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 67*. 5
- (7) The examinations carried out under *subsection (2)* shall be recorded and a copy shall be retained in the child's medical records. 10
- (8) The Executive may make an application for involuntary admission under *section 67(2)* in respect of a child to whom this section applies without any examinations under *subsection (2)* being carried out where *paragraph (a)* or *(b)* of *section 67(4)* applies. 15
- (9) The Executive shall notify the Commission, in the form and manner specified by the Commission, of the decision to involuntarily admit or the decision not to involuntarily admit a child under this section.

**Notification to Agency**

- 73. (1) The Executive shall, as soon as may be, notify the Agency where a child who is the subject of a voluntary care arrangement, an emergency care order or an interim care order— 20
  - (a) is admitted to a registered acute mental health centre under *section 63, 64* or *65*, or
  - (b) leaves a registered acute mental health centre under *section 63, 64, 65* or *72*. 25
- (2) The Executive shall, as soon as may be, notify the Agency where a child who is the subject of a supervision order—
  - (a) is admitted to a registered acute mental health centre under *section 63, 64, 65* or *67*,
  - (b) leaves a registered acute mental health centre under *section 63, 64, 65* or *72*, or 30
  - (c) is discharged from a registered acute mental health centre under *section 71*.
- (3) 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 63, 64, 65* or *67* 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— 35
  - (a) leaves a registered acute mental health centre under *section 63, 64, 65* or *72*, or
  - (b) is discharged from a registered acute mental health centre under *section 71*.

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

74. (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— 5
- (a) take all reasonable measures necessary to take the child into custody and arrange for the matters specified in *subsections (3) to (5)*, 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. 10
- (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) to (5)*, may be carried out. 15
- (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 the child’s parents, or either of them, or guardian, or, in the case of a child the subject of a care order, the Child and Family Agency as soon as practicable, but no later than 3 hours from the time that the child is taken into custody. 20
- (4) Where a member of An Garda Síochána takes a child into custody under *subsection (1)* and the parents of the child, or either of them, or guardian, or, in the case of a child the subject of a care order, the Child and Family Agency are contacted, the child shall be released into the care of that person or persons, unless 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 into the care of that person or persons. 25
- (5) Where the member or members of An Garda Síochána continue to believe that the child has a mental disorder that fulfils *paragraph (a)* of the criteria for involuntary admission of a child and— 30
- (a) it has not been possible to contact, within 3 hours of the child being taken into custody, the parents of the child, or either of them, or guardian, or, where the child is the subject of a care order, the Child and Family Agency, or
  - (b) where the parents of the child, or either of them, or guardian have been contacted and, 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 into the care of that person or persons, 35
- the member or members may request that the child be released into the care of the Executive as soon as possible, but not later than 6 hours from the time that the child is taken into custody under *subsection (1)*, or, where the period of custody has been extended under *subsection (2)*, not later than within 12 hours from the time that the child has been taken into custody. 40

- (6) Where the member or members of An Garda Síochána make a request to the Executive under *subsection (5)*, the Executive shall comply with the request as soon as practicable.

#### Care by Executive pending examination

75. (1) Where the Executive takes a child into care on a ground set out in *section 74(5)(a)* and the parents of the child, or either of them, a guardian or, in the case of a child the subject of a care order, the Child and Family Agency are subsequently contacted, the child shall be released into the care of that person or persons unless, in the opinion of the member or members of staff of the Executive responsible for the child, there is an immediate and serious risk to the health or welfare of the child by releasing the child into the care of that person or persons. 5 10
- (2) Where a child is released under *subsection (1)* and the parents of the child, or either of them, or a guardian or, in the case of a child the subject of a care order, the Child and Family Agency request the assistance of the Executive for the purpose of transferring a child from the care of the Executive, a member or members of the Executive shall comply with that request as soon as practicable. 15
- (3) Where a child has been released into the care of the Executive under *section 74(5)* and the child is not released under *subsection (1)*, the Executive shall, as soon as possible, arrange for a consultant psychiatrist to examine the child to determine 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 67*. 20
- (4) Where the consultant psychiatrist, following an examination of the child, is of the opinion that the child does not have a mental disorder that fulfils the criteria for involuntary admission of a child—
- (a) in the case of a child aged 16 years or older, other than a child the subject of a care order, he or she will be released immediately from the care of the Executive, unless— 25
- (i) 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, or 30
- (ii) his or her detention is authorised by law other than under this Act,
- (b) in the case of a child aged 16 years or older who is the subject of a care order, he or she will be released immediately into the care of the Child and Family Agency, unless his or her detention is authorised by law other than under this Act, and
- (c) in the case of a child under 16 years of age, he or she shall remain in the care of the Executive until such time as his or her parents, or either of them, or guardian, or, where the child is the subject of a care order, the Child and Family Agency can be found, or until such a time as a care order under the Act of 1991 may be sought by the Child and Family Agency. 35

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

76. (1) Where an involuntary admission order is made under *section 67* in respect of a child, the child's parents or guardian or the Agency 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. 5
- (2) Where the parents or guardian of a child the subject of an involuntary admission order or the Agency are unable to arrange for the child to be brought to the registered acute mental health centre in accordance with *subsection (1)*, the parents or guardian or the Agency shall request— 10
- (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. 15
- (3) 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.
- (4) A person referred to in *paragraph (a) or (b) of subsection (2)* 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 person referred to in *paragraph (a) or (b) of subsection (2)* 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. 20 25
- (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 child concerned is to be found there, and 30
- (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. 35
- (6) A member of An Garda Síochána who under *subsection (5)(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. 40

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

77. (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. 5
- (2) The notice under *subsection (1)* and any information provided in accordance with *subsection (3)* shall be given—
- (a) in the case of a voluntarily admitted child under 16 years of age or a child aged 16 years or older lacking necessary capacity admitted with parental consent, to the child and his or her parents or guardian or the Agency, and 10
  - (b) in the case of a voluntarily admitted child aged 16 years or older, to the child and, with the consent of the child concerned or where it is in his or her best interests in the opinion of the responsible consultant psychiatrist, to the child’s parents or guardian or the Agency. 15
- (3) A notice under *subsection (1)* shall include a statement in writing to the effect that the recipient—
- (a) 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) is entitled to receive information on any aspect of the child’s proposed care and treatment at any time during the period of admission, 20
  - (c) 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) will be provided with information on the right of the child or his or her parents or guardian or the Agency, to consent or refuse to consent to treatment, subject to *Chapter 3*, 25
  - (e) will be provided with information on 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) is informed of the entitlement of the child and his or her parents, or either of them, or guardian, or, where the child is the subject of a care order, the Child and Family Agency, to communicate with the Chief Inspector, 30
  - (g) is informed of the entitlement of the child and his or her parents or guardian or the Agency, to discuss discharge planning,
  - (h) is informed of the entitlement of the child to engage with— 35
    - (i) his or her parents or guardian or the Agency, and
    - (ii) where applicable, a nominated person,
  - (i) will be provided with all other relevant information as outlined in the code of practice relating to admission of children published by the Commission, and

- (j) is informed of the entitlement of the child to leave the registered acute mental health centre at any time, subject to *section 63(4)*, *64(3)*, *64(5)* or *65(4)*, and to *section 72*.
- (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. 5

**Provision of information for involuntarily admitted child**

78. (1) The responsible consultant psychiatrist in relation to an involuntarily admitted child shall, as soon as is practicable but not later than 24 hours after the making of the involuntary admission order or renewal order give, or cause to be given, a copy of the order to— 10
- (a) the child concerned, and
  - (b) (i) the parents, or either of them, or guardian of the child, where appropriate, or  
(ii) where the child is the subject of a care order, the Agency.
- (2) The responsible consultant psychiatrist in respect of an involuntarily admitted child shall, as soon as practicable 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. 15
- (3) A notice under *subsection (2)* and any information provided in accordance with *subsection (4)* shall be given— 20
- (a) in the case of 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 62*—
    - (i) to the child concerned, and
    - (ii) (I) to the parents, or either of them, or guardian of the child, where appropriate, or 25  
(II) where the child is the subject of a care order, to the Agency,
  - and
  - (b) in the case of an involuntarily admitted child aged 16 years or older—
    - (i) to the child concerned, and 30
    - (ii) with the consent of the child concerned or where, in the opinion of the responsible consultant psychiatrist, it is in the child’s best interests—
      - (I) to the parents, or either of them, or guardian of the child, where appropriate, or
      - (II) where the child is the subject of a care order, to the Agency. 35
- (4) A notice under *subsection (2)* shall include a statement in writing to the effect that the recipient—

- (a) 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) is 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) 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, 5
  - (d) will be provided with information on the rights of the child or the right of his or her parents, or either of them, or guardian, or, where the child is the subject of a care order, of the Child and Family Agency, to consent or refuse to consent to treatment subject to *Chapter 3* of this Part, 10
  - (e) will be provided with information on the complaints procedure for the registered acute mental health centre and of the entitlement of the child and his or her parents, or either of them, or guardian, or, where the child is the subject of a care order, the Child and Family Agency to bring a complaint under that procedure,
  - (f) is informed of the entitlement of the child and his or her parents, or either of them, or guardian, or, where the child is the subject of a care order, the Child and Family Agency, to communicate with the Chief Inspector, 15
  - (g) 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, 20
  - (h) 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 61*,
  - (i) is provided with all other relevant information as outlined in the code of practice relating to admission of children published by the Commission, 25
  - (j) is informed of the entitlement to appeal to the Family Circuit Court against an involuntary admission order or a renewal order, and of the effect of appeals from orders in *section 70*,
  - (k) is informed of the entitlement of the child and his or her parents, or either of them, or guardian, or, where the child is the subject of a care order, the Child and Family Agency, to discuss discharge planning, and 30
  - (l) is informed of the entitlement of the child to engage with—
    - (i) his or her parents, or either of them, or guardian, or, where the child is the subject of a care order, the Child and Family Agency, and 35
    - (ii) where applicable, a nominated person.
- (5) 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**

79. (1) Subject to *subsection (2)*, the child's parents or guardian or the Agency 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. 5
- (2) Where a child is aged 16 years or older and does not lack capacity, his or her parents or guardian or the Agency, as the case may be, and where applicable, his or her nominated person, shall not be entitled to the matters in *paragraphs (a) and (b) of subsection (1)* unless the child concerned consents. 10

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

80. (1) Where a child is to be admitted to a registered acute mental health centre under *section 63 or 65* and his or her parents or guardian or the Agency are or is unable to arrange to bring the child to the registered acute mental health centre, the parents or guardian or the Agency, as the case may be, shall request— 15
- (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, 20
- 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. 25

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

81. (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. 30
- (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. 35
- (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. 40

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

82. (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, 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) where the application is in respect of 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) 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. 5 10
- (9) In this section, references to an involuntary admission order include references to a renewal order.

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

83. (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— 15
- (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 62* or a child under 16 years of age, his or her parents or guardian or the Agency or, where relevant, any nominated person. 20
- (2) Subject to *subsection (3)*, a clinical director who receives a request under *subsection (1)* may make an application under *section 82* 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. 25
- (3) Before deciding whether to make an application under *section 82*, 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. 30
- (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 make an application under *section 82*,
  - (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 35
  - (c) send a copy of the request and his or her decision to the Commission.

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

84. (1) Subject to the terms of any involuntary admission order or renewal order made under *section 67* or *68*, the responsible consultant psychiatrist in respect of an involuntarily admitted child may, subject to *subsection (3)*, give permission in writing (in this Part referred to as a “permitted absence”)— 5
- (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 62*, 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. 10
- (2) Where a permitted absence is given under *subsection (1)* to a child the subject of a care order, the child shall be released into the care of the Agency for the duration of the permitted absence. 15
- (3) 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.
- (4) When a child aged 16 years or older has been given a permitted absence, the responsible consultant psychiatrist shall inform the child’s parents or guardian or the Agency of the permitted absence. 20
- (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 to return to the registered acute mental health centre. 25
- (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. 30

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

85. (1) Where a child in respect of whom an involuntary admission order or renewal order is in force— 35
- (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 parents or guardian or the Agency under *section 84(5)* or on the expiration of the permitted absence, or 40

- (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 20*, to bring the child back to the registered acute mental health centre. 5
- (2) Where a member of staff or service provider authorised in that behalf under *section 20*, 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. 10
- (3) A member of An Garda Síochána may for the purposes of this section— 15
- (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. 20

### CHAPTER 3

#### *Consent to treatment for children*

#### **Consent to treatment for children to be obtained prior to treatment** 25

- 86.** (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 62*, obtain consent for the treatment concerned from the child's parents or guardian or the Agency unless otherwise expressly provided for in this Act. 30

#### **Child's consent to treatment**

- 87.** (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 62*, means consent of the child obtained freely without threats or inducements, where— 35
- (a) adequate information in a form and language that the child can understand on the nature, purpose and likely effects of the treatment concerned (in this section referred to as “information relevant to the decision”) has been given to the child, and 40

- (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 62*, means the consent of the child's parents or guardian or the Agency obtained freely without threats or inducement where— 5
  - (a) adequate information relevant to the decision 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— 10
  - (a) a child aged 16 years or older who has capacity to make decisions about his or her treatment under *section 62*, 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 62*, his or her parents or guardian or the Agency. 15

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

- 88.** (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 62*, 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. 20
  - (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. 25
  - (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. 30

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

- 89.** (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— 35
    - (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 62*—

- (I) his or her parents, or either of them, or guardian, or, where the child is the subject of a care order, the Child and Family Agency refuses to consent to the treatment concerned, or
  - (II) his or her parents, or either of them, or guardian, after the making of reasonable enquiries, cannot be found, 5
- or
- (b) in the case of an involuntarily admitted child under 16 years of age—
    - (i) his or her parents, or either of them, or guardian, or, where the child is the subject of a care order, the Child and Family Agency refuses to consent to the treatment concerned, or 10
    - (ii) 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. 15
- (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 20
      - (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. 25
  - (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 30
    - (b) in the case of an involuntarily admitted child aged 16 years or older assessed as lacking capacity under *section 62* or an involuntarily admitted child under 16 years of age, the parents of the child, or either of them, or guardian, or, where the child is the subject of a care order, the Child and Family Agency withdraws his or her or its refusal to consent to the treatment concerned and now consents to the treatment. 35
  - (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, 40

- (b) subject to *paragraph (c)*, where the child is under 16 years of age or has been assessed as lacking necessary capacity under *section 62*, his or her parents or guardian or the Agency,
  - (c) where the child is under 16 years of age or has been assessed as lacking necessary capacity under *section 62* and is the subject of a voluntary care arrangement, an emergency care order or an interim care order, his or her parents or guardian and the Agency, 5
  - (d) where the child is aged 16 years or older, has capacity to make decisions about his or her treatment and is the subject of a care order, a voluntary care arrangement, an emergency care order or an interim care order, the Agency, and 10
  - (e) any other person specified by the Family High Court,
- 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. 15
  - (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 involuntarily admitted child the subject of the treatment order continues to satisfy the relevant criteria in *subsection (2)*. 20
  - (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 62*, 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, all of the relevant criteria in *subsection (2)* apply. 25 30
  - (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. 35
  - (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— 40
    - (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) and (b) of subsection (2)* apply, an application for a treatment order may be made under this section with all necessary modifications. 5

(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. 10

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

90. (1) Subject to *subsection (11)*, 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 62* or an involuntarily admitted child aged under 16 years because— 15

(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 20

(ii) where, in respect of a child who is not 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,

and

(b) the relevant criteria in *subsection (2)* apply. 25

(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 30

(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 35

(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 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 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, and
  - (c) 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 circumstances in *subsection (1)* 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. 5
- (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 *subsection (1)* continue to apply. 10
- (9) Where treatment is administered under *subsection (8)*, the Executive shall immediately notify the persons specified in *paragraphs (a), (b) and (c) of subsection (5)*. 15
- (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, 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. 20
- (11) Where, in the case of an involuntarily admitted child aged 16 years or older assessed as lacking capacity under *section 62* or an involuntarily admitted child aged under 16 years—
- (a) the responsible consultant psychiatrist, and 25
- (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. 30
- (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— 35
- (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 *subsection (1)* continue to apply,
- and *subsections (3), (4), (5), (7), (8), (9) and (10)* shall apply to such a renewal application with any necessary modifications. 40

- (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: 5
- (a) in the case of a child aged 16 years or older, he or she is assessed under *section 62* as having capacity to consent to or refuse treatment;
  - (b) the child's parents or guardian or the Agency make a decision to consent to or refuse treatment on behalf of the child; 10
  - (c) the child is discharged as an involuntarily admitted child under *section 71*;
  - (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)*.

CHAPTER 4 15

*Prohibited and restrictive practices for children*

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

91. (1) Where a restrictive practice is applied in respect of a child admitted under *section 63, 64 or 65*, the admission status of the child shall be reviewed pursuant to *section 72* as soon as possible, but no later than 24 hours after the initiation of the application. 20
- (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**

92. 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. 25

**Seclusion for children**

93. 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, 30
  - (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 98*, 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 35

- (d) the seclusion concerned complies with regulations under *section 98*.

### **Mechanical restraint for children**

- 94.** 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, 5
  - (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, the application of such restraint is determined by the consultant psychiatrist, in accordance with regulations made under *section 98*, to be necessary where there is an immediate threat of serious harm to the child or to another person, and 10
  - (c) the mechanical restraint concerned complies with regulations under *section 98*.

### **Physical restraint for children**

- 95.** 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, 15
  - (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 98*, to be necessary where there is an immediate threat of serious harm to the child or to another person, and 20
  - (d) the restraint complies with regulations under *section 98*.

### **Pharmacological restraint for children**

- 96.** 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, 25
  - (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 98*, to be necessary where there is an immediate threat of serious harm to the child or to another person, and 30
  - (e) the pharmacological restraint concerned complies with regulations under *section 98*.

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

- 97.** (1) A restrictive practice should be applied in respect of a child only—
- (a) where it is in the best interests of the child, 35

- (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, 5
  - (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 10
  - (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— 15
- (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 expects will lead to the discontinuation of the application.
- (3) A registered proprietor shall— 20
- (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 25
  - (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 98*.
- (4) A copy of the record under *paragraph (a) or (b) of subsection (3)* shall be made available, when so requested, for inspection by— 30
- (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. 35
- (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

98. (1) The Commission may, with the consent of the Minister, 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 10* (including that the best interests and the welfare of the child shall be the primary consideration) to apply in respect of children; 10
  - (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); 15
  - (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; 20
  - (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); 25
  - (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; 30
  - (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)*. 35
- (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 use of a restrictive practice

99. (1) Where a restrictive practice is used on—
- (a) a voluntarily admitted child admitted under *section 63*,
  - (b) a child aged 16 years or older lacking necessary capacity admitted with parental consent under *section 65*, or 5
  - (c) an involuntarily admitted child,
- his or her parents or guardian or the Agency and his or her nominated person, if any, shall be informed of the application of the restrictive practice as soon as possible after the initiation of any application of a restrictive practice.
- (2) Where a restrictive practice is used on a voluntarily admitted child admitted under *section 64*— 10
- (a) his or her nominated person, if any, and
  - (b) where the child is the subject of a care order, the Agency,
- shall be informed of the application of the restrictive practice as soon as possible after the initiation of any application of a restrictive practice. 15
- (3) 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) or (2)*—
- (a) the reasons why the restrictive practice was applied,
  - (b) the expected duration of the application of the restrictive practice, and 20
  - (c) the circumstances which in the opinion of the consultant psychiatrist or relevant health professional expects will lead to the discontinuation of the application.
- (4) 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. 25

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

100. (1) As soon as practicable after the admission of a child admitted voluntarily under *section 63*, a child aged 16 years or older lacking necessary capacity admitted with parental consent under *section 65* or an involuntarily admitted child, the responsible consultant psychiatrist or another member of the child's multidisciplinary team shall— 30
- (a) 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 35
  - (iii) the child's parents or guardian or the Agency,
- (b) take into account the views of the persons referred to in *paragraph (a)* regarding the application of restrictive practices, and

- (c) record the views of those persons in the child’s medical records and care plan.
- (2) As soon as practicable after the admission of a child voluntarily admitted under *section 64*, the responsible consultant psychiatrist or another member of the child’s multidisciplinary team shall—
  - (a) 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) where the child is the subject of a care order, the Agency,
  - (b) take into account the views of the persons referred to in *paragraph (a)* regarding the application of restrictive practices, and
  - (c) record the views of those persons in the child’s medical records and care plan.

PART 5

THE COMMISSION

CHAPTER 1

15

*Continuance in being and functions of Commission*

**Continuance in being of Commission**

- 101.** (1) Notwithstanding the repeal of the Act of 2001 by *section 6*, the body known as the Mental Health Commission established under that Act shall continue in being in accordance with the provisions of this Act. 20
- (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. 25
- (4) The seal of the Commission shall be authenticated by— 30
- (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 35

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. 5

### **Functions of Commission**

**102.** (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, 10
  - (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. 15
- (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. 20

## CHAPTER 2

### *Board of Commission*

### **Functions of Board**

25

**103.** (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— 30
    - (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 116*, 35
  - (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 126* and the annual business plan in accordance with *section 127*.
- (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
- (5) The Board shall inform the Minister in writing of any matter that it considers requires the Minister's attention.

### **Membership of Board**

- 104.** (1) The Board shall consist of the following members— 10
- (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— 15
- (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. 20
- (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. 25
- (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 30
  - (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. 35
- (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 101*, 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. 5
- (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. 10

**Casual vacancies**

- 105. (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. 15
- (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. 20

**Removal of member of Board**

- 106. (1) The Minister may at any time remove from office a member of the Board if, in the opinion of the Minister— 25
  - (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, 30
  - (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— 35
  - (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 5
- (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. 10

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

- 107.** (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 15
  - (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— 20
- (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. 25

### **Meetings and procedures of Board**

- 108.** (1) The Board shall hold such and so many meetings as may be necessary for the due fulfilment of its functions. 30
- (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 35
  - (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
- (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. 10
- (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. 15

### **Committees of Board**

- 109.** (1) The Board may establish one or more committees—
- (a) to assist the Commission, including the Board, in the performance of its functions, or 20
  - (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. 25
  - (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. 30
  - (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. 35
  - (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. 5

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

- 110.** (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. 10
  - (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. 15

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

- 111.** (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— 20
- (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 25
  - (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: 30
- (a) membership of the Board;
  - (b) membership of a committee of the Board;
  - (c) appointment as Chief Executive Officer.

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

- 112.** (1) The Commission shall have a Chief Executive Officer (in this Act referred to as “the Chief Executive Officer”). 5
- (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 101* 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. 10
- (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. 15
- (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. 20
- (7) The Chief Executive Officer shall not hold any other office or employment or carry on any business without the consent of the Board. 25
- (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. 30
- (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**

35

- 113.** (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. 5
- (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— 10
- (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, 15
  - (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. 20

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

- 114.** (1) In addition to the functions performed in accordance with *section 102(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. 25
- (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. 30
- (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**

- 115.** (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 35

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. 5
- (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 10
  - (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. 15

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

- 116.** (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. 20

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

- 117.** (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— 25
- (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 30
  - (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. 35

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

- 118.** (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. 5
- (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. 10
- (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**

15

- 119.** Notwithstanding the repeal of the Act of 2001 by *section 6*, 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 101*, 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 118(1)* the person to be a member of the staff of the Commission immediately before that commencement, and 20
- (b) on the same conditions (including those relating to termination of appointment) as the person employed, immediately before that commencement,
- and the other provisions of this Act shall be construed accordingly. 25

**Superannuation of staff of Commission**

- 120.** (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 118* to be a member of the staff of the Commission, 30
- 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 119* who, immediately before the commencement of *section 101*, 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. 35

- (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 121*.
- (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 121* and the amended scheme shall be made in accordance with *section 121*. 5
- (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 5*. 10

### **Amending superannuation scheme**

- 121.** (1) The Commission may, after the commencement of *section 101*, and subject to *section 120*, 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— 15
- (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. 20
- (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. 25
  - (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. 30
  - (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 35 40

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. 5

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

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

- (a) nominated as a member of Seanad Éireann, 10
- (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. 15 20

- (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. 25

### **Specialist advisers**

**123.** (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. 30

- (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. 35

- (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.

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

- 124.** 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). 5

**Directions from Minister**

- 125.** (1) The Minister may give a direction in writing to the Commission for any purpose relating to this Act and concerning— 10
- (a) any matter or thing referred to in this Act or any other enactment, and
  - (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. 15
- (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. 20
- (4) The Minister may, by direction, in writing, amend or revoke a direction under this section (including a direction under this subsection).

**Strategic plan**

- 126.** (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. 25
- (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. 30
- (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. 35
- (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 5
  - (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. 10

### **Annual business plan**

- 127.** (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— 15
- (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)*. 20
- (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. 25

### **Annual report**

- 128.** (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. 30
- (3) An annual report shall not be submitted to the Minister unless it has been adopted by the Board. 35
- (4) An annual report shall include—
- (a) the report of the Chief Inspector under *section 143*,

- (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. 5
- (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. 10

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

- 129.** (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. 15
- (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. 20

### **Grants to Commission**

- 130.** 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. 25

### **Gifts**

- 131.** (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. 30
- (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**

- 132.** (1) The Commission shall— 35
- (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. 5
- (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. 10
- (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. 15
- (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. 20

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

- 133.** (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— 25
- (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, 30
  - (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. 35
- (2) In giving evidence under this section, the Chief Executive Officer shall not question or express an opinion on the merits of— 40
- (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

134. (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. 5
- (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. 10
- (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. 15
- (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. 5
- (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— 20
- (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 25
- (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. 30
- (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. 35
- (9) In giving evidence under this section, the Chief Executive Officer shall not question or express an opinion on the merits of— 40
- (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 133*, the Committee on Members’ Interests of Dáil Éireann or the Committee on Members’ Interests of Seanad Éireann), or 5
  - (b) a subcommittee of a committee falling under *paragraph (a)*.

**Prohibition on unauthorised disclosure of confidential information**

- 135.** (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, 10
  - (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 15
  - (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, 20
  - (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, 25
  - (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. 30
- (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. 35
- (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.

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## CHAPTER 6

### *Inspector, inspections and inquiries*

#### **Inspector of Mental Health Services**

- 136.** (1) Notwithstanding the repeal of the Act of 2001 by *section 6*, 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”. 10
- (2) Subject to *subsection (3)*, the Board shall appoint a consultant psychiatrist to be the Chief Inspector. 15
- (3) The person who immediately before the commencement of *section 101* 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. 20
- (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. 25
- (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. 30
- (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. 35

## Functions of Chief Inspector

137. (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 5
    - (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 142*,
  - (c) to carry out an inquiry in accordance with *section 144*, 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 143*. 10
- (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, 15
  - (b) the level of compliance with this Act or 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)*, 20
  - (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

138. (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— 25
- (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 30
  - (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. 35
- (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**

- 139.** (1) The Commission may appoint such and so many persons, including members of the staff of the Commission, (who shall be known as Assistant Inspectors of Mental Health Services and are referred to in this Act as “Assistant Inspectors”) 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. 5 10
- (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. 15
- (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 101* 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. 20
- (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 25
  - (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. 30
- (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. 35

### **Powers of inspectors**

- 140.** (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 40

- 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, 5
- (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, 10 15
- (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, 20
- (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. 25
- (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. 30
- (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)*. 35
- (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 40
- (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

- (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 145*). 10
- (7) In this section, “inspector” means the Chief Inspector or an Assistant Inspector.

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

**141.** (1) When making an inspection of any registered acute mental health centre under *section 137(1)*, the inspector shall— 15

- (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 25, 77 or 78*, and
- (b) inspect the registered acute mental health centre for compliance with the provisions of this Act or any regulations or codes of practice made thereunder. 20

(2) When making an inspection of any registered acute mental health centre under *section 137(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. 25

(3) When making an inspection of any registered community mental health centre under *section 137(1)* or any registered community mental health service under *section 137(2)*, the inspector shall inspect the service or centre, as the case may be, for compliance with the provisions of this Act or any regulations or codes of practice made thereunder. 30

(4) In this section, “inspector” means the Chief Inspector or an Assistant Inspector.

### **Inspection reports**

**142.** (1) As soon as is practicable after the completion of an inspection carried out pursuant to *subsection (1) or (2) of section 137* of a registered mental health service, an inspector shall prepare a draft report of the inspection. 35

(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. 40

- (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. 5
- (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. 10
- (6) In this section, “inspector” means the Chief Inspector or an Assistant Inspector.

**Annual review and report of Chief Inspector**

- 143.** (1) The Chief Inspector shall— 15
- (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 its findings consequent upon that annual review. 20
- (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 142*, 25
  - (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** 30

- 144.** (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: 35
- (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; 5
  - (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 109*, which shall be chaired by the Chief Inspector, an Assistant Inspector or other such person as specified by the Board in *subsection (1)*. 10
- (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”). 15
- (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. 20
- (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. 25
- (8) As soon as practicable after the expiration of the later of the periods 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. 30
- (9) A report under *subsection (8)* shall be absolutely privileged wherever and however published.

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

- 145.** (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 140(4)* or impedes the exercise by the inspector or member, as the case may be, of such power, or 35
  - (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 140(1)(c), (d), (e) or (f)*, or in purported compliance with such requirement gives information or 40

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.

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### Legal privilege

**146.** (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.

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- (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,

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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.

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- (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:

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(a) the preservation of the information, in whole or in part, in a safe and secure place in any manner specified by the Court;

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(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

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- (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. 5
- (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; 10
  - “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 15

##### *Definition*

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

**147.** In this Part, “registered person” has the meaning assigned to it by *section 172*.

#### CHAPTER 2

##### *Registration and application for registration of mental health services* 20

#### **Register of acute mental health centres**

- 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 acute mental health centres (referred to in this section as the “Register of acute mental health centres”). 25
- (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, 30
  - (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**

- 149.** (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 section as the “Register of community mental health centres”). 5
- (2) The Register of community mental health centres shall include the following details in relation to a registered community mental health centre— 10
- (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, 15
  - (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** 20

- 150.** (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 section 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— 25
- (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, 30
  - (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**

- 151.** (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. 5
- (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, 10
  - (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. 15

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

- 152.** (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. 20
- (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, 25
  - (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. 30

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

- 153.** (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. 35

- (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, 5
  - (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** 10

- 154.** (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. 15

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

- 155.** (1) Where the Commission receives an application under *section 151*, the Commission may— 20
- (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. 25
- (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— 30
- (a) the registered person meets the requirements of *section 172*,
  - (b) the registered proprietor has complied with all requirements imposed on the registered proprietor under this Act or any regulations made thereunder following an assessment of the proposed registered proprietor under *section 170*, and 35
  - (c) the responsible person fulfils the criteria for a responsible person as set out in *section 173*.

- (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 151* 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; 5
  - (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. 10
- (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; 15
  - (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; 20
  - (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**

- 156.** (1) Where the Commission receives an application under *section 152*, the Commission may— 25
- (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 30
  - (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. 35
- (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 172*,

- (b) the registered proprietor has complied with all requirements imposed on the registered proprietor under this Act or any regulations made thereunder following an assessment of the proposed registered proprietor under *section 170*, and
  - (c) the responsible person fulfils the criteria for a responsible person as set out in *section 173*. 5
- (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 152* 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 10 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 15 take effect and the date on which the registration ends.

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

157. (1) Where the Commission receives an application under *section 153*, the Commission may—
- (a) register the community mental health service where it is satisfied of the matters 20 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 25 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 30 Commission is satisfied that—
- (a) the registered person meets the requirements of *section 172*,
  - (b) the registered proprietor has complied with all requirements imposed on the registered proprietor under this Act or any regulations made thereunder following an assessment of the proposed registered proprietor under *section 170*, and
  - (c) the responsible person fulfils the criteria for a responsible person as set out in 35 *section 173*.
- (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 153* and shall notify the person of the registration of the community mental health service and such notification shall specify: 40

- (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; 5
- (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**

- 158.** (1) A person may apply to the Commission for the renewal of registration of a registered mental health service. 10
- (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, 15
  - (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 20
  - (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, 25
  - (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 30
  - (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— 35
- (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. 5
- (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)*, 10
- 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— 15
- (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 20
  - (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 155(4), 156(4) or 157(4)* and shall notify the person who made the application for renewal under this section accordingly. 25
- (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— 30
- (a) the refusal of the application and the reasons for it, and
  - (b) the right to appeal in accordance with *section 165*.
- (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. 35

## Representations

159. (1) Where the Commission proposes to—

(a) refuse to register—

(i) an acute mental health centre under *section 155*,

(ii) a community mental health centre under *section 156*, or

(iii) a community mental health service under *section 157*,

(b) attach a condition to the registration of a registered mental health service when registering such a service in accordance with *section 155*, *156* or *157* or vary or impose a condition, including an additional condition, where it considers it necessary under *section 161*, or

(c) refuse to renew the registration of a registered mental health service under *section 158*,

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 165*.

## Duration of registration

160. (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. 5

**Variation or addition of conditions**

- 161.** (1) The Commission may, where it considers it necessary to do so, vary a registration under *section 155, 156 or 157* including by way of varying a condition, imposing a condition or including an additional condition. 10
- (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 15
    - (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. 20
- (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 remove, 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— 25
- (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. 30
- (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 35
  - (b) that the registered mental health service may appeal the decision under *section 165*.

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

- 162.** (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. 5
- (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. 10
- (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. 15
- (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 20
- (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— 25
- (a) of the decision and the reasons for it, and
- (b) that the registered mental health service may appeal the decision under *section 165*. 30

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

- 163.** (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 35
- (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

164. (1) Subject to *section 165*, 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 155, 156, 157* or *161* on the registration; 5
  - (b) the information provided by the registered mental health service when applying for registration under *section 155, 156* or *157* or making representations under *section 159* 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; 10
  - (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— 15
- (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. 20
- (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. 25
- (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. 30
- (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— 35
- (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 40

- (d) that the service may within 21 days of the decision appeal the decision under *section 165*.
- (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. 5
- (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 10
  - (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**

- 165.** (1) A person who is aggrieved by a decision under *section 155, 156, 157, 158, 161, 162 or 164* may, not later than 21 days after the person received notice of the decision, appeal to the District Court against the decision. 15
- (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. 20
- (4) On the hearing of an appeal under *subsection (1)*, the District Court may—
  - (a) affirm the decision of the Commission under *section 155, 156, 157, 158, 161, 162 or 164*, 25
  - (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. 30
- (5) The decision of the District Court under this section on a question of fact shall be final.

**Duty to display certification**

- 166.** (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. 35
- (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**

**167.** 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 155, 156 and 157* and the other provisions of this Part applicable to an application for registration shall, with all necessary modifications, apply accordingly. 5

### **Duty to notify change in information**

- 168.** (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 10
  - (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. 15

### **Requests by Commission for information**

- 169.** (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. 20
- (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. 25
- (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. 30

## CHAPTER 3

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

#### **Registered proprietor**

- 170.** (1) A person shall not operate the business of a mental health service unless he or she is the registered proprietor thereof. 35
- (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; 5
  - (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 cause to be maintained records in accordance with this Act; 10
  - (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 155, 156 or 157* 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 or any regulations made thereunder. 15

**Delegation of functions of registered proprietor**

- 171. (1) A registered proprietor may delegate any of the responsibilities specified in *section 170(3)* to other persons each of whom are suitably qualified by training and experience to perform such functions. 20
- (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. 25
- (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** 30

- 172. (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 155, 156 or 157*. 35
- (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. 5

**Responsible person**

- 173.** (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 Part referred to as a “responsible person”). 10
- (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; 15
    - (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; 20
    - (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 151, 152* or *153* 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 25
    - (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 or any regulations made thereunder. 30
  - (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)*. 35
  - (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. 40

- (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**

- 174.** (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. 5
- (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. 10
- (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* 15

### **Compliance notice**

- 175.** (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— 20
- (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 25
- (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— 30
- (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. 35
- (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; 5
  - (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— 10
- (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; 15
- “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)*. 20
- (12) This section applies to *sections 161, 166, 167, 168, 169, 170(3)(b), 173(6), 184, 185, 190, 193, 196 and 197*.

## CHAPTER 5

25

### *Closure, cancellation and taking charge*

#### **Commission may temporarily cancel registration without notice in certain circumstances**

- 176.** (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— 30
- (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 matter 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. 35

- (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 5
  - (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. 10
- (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— 15
- (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, 20
  - 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. 25

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

177. (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— 30
- (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. 35
- (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**

- 178. (1) Where the Commission has temporarily cancelled the registration of a registered mental health service in accordance with *section 176* or a court has cancelled the registration of a registered mental health service in accordance with *section 177*, 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 181*, or
  - (c) temporarily take charge of the registered mental health service in accordance with *section 180*.

**Closure of registered mental health service**

- 179. (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 5
  - (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. 10
- (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**

- 180.** (1) The Executive may, as soon as possible after the notification under *section 178(1)*— 15
- (a) consult with the registered proprietor of the mental health service, the subject of the cancellation, and
  - (b) make an application under *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. 20 25
- (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 30
  - (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— 35
- (a) such time as the Executive seeks the closure of the service in accordance with *section 179*, or
  - (b) the mental health service is registered by the Commission in accordance with *section 155, 156 or 157*.

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

- 181.** (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— 5
- (a) the registration of the 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. 10
- (2) Where the person referred to in *subsection (1)* is a child, the Executive shall make an application to the District Court in the District Court district where the child concerned resides, or is located, prior to the transfer taking place, for an order authorising— 15
- (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. 20
- (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. 25
- (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. 30
- (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. 35
- (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; 40
  - (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; 5
- (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; 10
- (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**

**182. (1) Where—**

- (a) a person, including a voluntarily admitted child or a child aged 16 years or older lacking capacity admitted with parental consent, is receiving treatment in a registered acute mental health centre and is not subject to an involuntary admission order or a renewal order under this Act, 15
- (b) the registration of the centre has been cancelled and the service will cease to provide mental health services, and 20
- (c) the Executive is not taking charge of the centre or the centre will otherwise cease to provide mental health services, the Executive or the registered proprietor—
  - (i) shall, where there is an imminent risk of harm to the person 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 25
  - (ii) may, where there is no risk of harm to the person, arrange for his or her transfer to another registered acute mental health centre.

**(2) 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 30
- (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 his or her transfer to another registered community mental health centre or registered community mental health service. 35

- (3) 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 (1)*, his or her care plan and any regulations made by the Minister under this section. 40

- (4) Without prejudice to the generality of *subsection (3)*, 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; 5
  - (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; 10
  - (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; 15
  - (g) any other matters which the Minister considers appropriate.

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

- 183.** If a registered mental health service ceases to provide mental health services or closes the mental health service in accordance with *section 179*, the Commission shall— 20
- (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* 25

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

- 184.** (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. 30
- (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— 35
- (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; 5
  - (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; 10
  - (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; 15
  - (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; 20
  - (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, 25
    - (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, 30
    - (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; 35
  - (k) 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
- (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** 10

- 185.** (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. 15
- (2) Without prejudice to the generality of *subsection (1)*, regulations under that subsection may provide, in addition to the matters provided for in *section 184(3)*, for all or any of the following matters:
- (a) access to education for children in a registered mental health service; 20
- (b) access to age appropriate services for children in a registered mental health service.

PART 7

MISCELLANEOUS

CHAPTER 1 25

*Codes of practice, electronic signatures and care plans*

**Codes of practice**

- 186.** (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*, 30
- (b) the assessment and determination of capacity for children aged 16 years or older under *section 62*,
- (c) the transfer of persons to the Central Mental Hospital under *section 36*,
- (d) the criteria for involuntary admission under *section 12* and the criteria for involuntary admission of a child under *section 66*, 35

- (e) the bringing, and bringing back, of persons to registered acute mental health centres under *section 20*,
  - (f) absence with leave under *section 39* or *84*,
  - (g) the admission with parental consent of a child aged 16 years or older lacking necessary capacity under *section 65*, and 5
  - (h) the use of advanced electronic signatures under *section 187*.
- (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, 10
  - (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. 15
- (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. 20
- (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. 25
- (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. 30
- (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 35
  - (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. 5

**Use of advanced electronic signatures**

- 187.** (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— 10
    - (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. 15

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

- 188.** (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. 20
- (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, 25
    - (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— 30
    - (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, insofar as possible, in consultation with the person concerned. 35
  - (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, 5
  - (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**

- 189.** (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. 10
- (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, 15
  - (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, 20
  - (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— 25
- (a) consult the child’s parents or guardian or the Agency, as appropriate, 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— 30
    - (i) in the case of a child admitted under *section 64* the child concerned and, with his or her consent, the child’s parents or guardian or the Agency, or a nominated person, or
    - (ii) in the case of a child admitted under *section 63, 65* or *67*—
      - (I) the child’s parents or guardian or the Agency, and 35
      - (II) the guardian *ad litem* for the child, 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 parents or guardian or the Agency.
- (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. 5
- (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. 10

**Regulations concerning care plans**

**190.** 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; 15
- (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, child, the child’s parents or guardian or the Agency, where appropriate, the subject of a care plan in the development and review of the plan; 20
- (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; 25
- (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 30

*Data protection*

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

**191.** 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; 35

“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; 5

“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**

**192.** (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 193* to the extent necessary and proportionate for the performance of its functions under this Act. 10

(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. 15

(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** 20

**193.** 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; 25

(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; 30

(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;

(g) where possible, the proposed time limit within which each category of personal data shall be erased; 35

(h) such other conditions (if any) as the Minister considers appropriate to impose on such processing.

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

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

- 194.** (1) Subject to *subsection (7)*, 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. 5
- (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 10
- (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. 15
- (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. 20
- (6) The responsible consultant psychiatrist or the relevant health professional who orders, initiates or applies a restrictive practice shall have due regard to—
- (a) the will and preferences of the person regarding the application of a restrictive practice, and 25
- (b) the view of any nominated person in relation to such will and preferences, and those views shall be recorded in writing in the person’s medical record and care plan.
- (7) 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. 30
- (8) The provisions of this section shall apply to a nominated person nominated by a decision-making representative under *subsection (7)* as if he or she was nominated by the person himself or herself.

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

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- 195.** (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 62, 71, 77, 78, 79, 99 and 100*.

- (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. 5
- (4) A nominated person may be nominated again by the child concerned where his or her nomination has expired. 10
- (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. 15
- (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. 20
- (9) In this section, references to “a child” mean a child aged 16 years or older.

**Records to be maintained for registered mental health services**

- 196.** (1) Subject to *section 197*, a registered proprietor 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 a registered mental health service. 25
- (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 a registered mental health service; 30
    - (c) any records relating to any decision or treatment of a person while within the care of the registered mental health service.
  - (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. 35

- (4) The Minister may prescribe the form of the records to be kept and maintained by a registered 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**

- 197.** (1) A registered proprietor 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. 5
- (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; 10
  - (b) any orders made—
    - (i) under *section 22* or *23* in relation to an involuntarily admitted person, or
    - (ii) under *section 63(2)*, *65(2)*, *67* or *71* in relation to a child, while at the registered acute mental health centre;
  - (c) any capacity assessments; 15
  - (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; 20
  - (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. 25
- (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. 30
- (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* 35

**Offences and penalties**

- 198.** A person guilty of an offence under *Part 6* or *section 201* 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** 5

**199.** 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**

**200.** (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. 10 15

(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. 20

**Offence of false or misleading information**

**201.** A person who makes an application under *section 151, 152, 153 or 158* 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. 25

**Minister may prescribe fee**

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

- (a) registration of a registered acute mental health centre under *section 151*,
- (b) registration of a registered community mental health centre under *section 152*,
- (c) registration of a registered community mental health service under *section 153*, and 30
- (d) renewal of a registration under *section 158*,

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

**Definitions (*Chapter 5: legal aid*)****203.** In this Chapter—

- “affected person” has the meaning assigned to it in *section 204*; 5
- “assigned legal representative” means a legal representative assigned by the Commission under *section 205(2), 205(3), 205(4)* or *206(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— 10
- (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; 15
- “panel” means a panel of legal representatives established by the Commission under *section 205(1)*;
- “relevant matter” means—
- (a) a review specified in *paragraph (a)* of *section 204*,
  - (b) a review specified in *paragraph (b)* of *section 204*, or 20
  - (c) an appeal specified in *paragraph (c)* of *section 204*.

**Application of Chapter**

- 204.** 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: 25
- (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 32*;
  - (b) a review of a proposal for transfer of the affected person to the Central Mental Hospital by a review board under *section 36*; 30
  - (c) subject to *section 206*, an appeal by the affected person to the Circuit Court under *section 33* 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**

- 205.** (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, 35

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 5
  - (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 204(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. 10
- (3) Where an affected person is the subject of a proposal for transfer to the Central Mental Hospital under *section 36*, the Commission shall, for the purposes of providing legal representation in relation to a relevant matter specified in *section 204(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. 15
- (4) Where the Commission assigns a legal representative to an affected person, under this section or *section 206*, 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. 20 25
- (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. 30
- (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 130*. 35
- (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. 40

## Criteria for granting legal aid for appeal

206. (1) Where an affected person seeks to appeal a decision of a review board to the Circuit Court under *section 33* 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. 5
- (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 33(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. 10
- (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 204(c)*, other than in the following circumstances where the Commission may refuse to grant legal aid: 15
- (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 20  
(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 204* or retained by the affected person at his or her own expense), of the written notice under *section 32* of the relevant decision of the review board. 25
- (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 204* unless— 30
- (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— 35
- (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. 40

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

- 207.** (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. 5
- (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 208*, 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. 10

### **Commission may request certain information in respect of legal representation** 15

- 208.** (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 205(7)*.
- (2) An assigned legal representative shall comply with a request of the Commission under *subsection (1)*. 20
- (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. 25
- (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**

- 209.** (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. 30
- (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: 35
- (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; 40

- (c) the procedures concerning the appeal of decisions by the Commission in cases where an affected person is refused legal aid under *section 206* by the Commission;
- (d) the terms and conditions to apply to—
  - (i) a legal representative on a panel, and 5
  - (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 205(5)*;
- (g) the form and manner in which an application for legal aid is to be made under *section 206*; 10
- (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; 15
- (j) the criteria for the authorisation by the Commission under *section 208(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— 20
  - (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. 25

## PART 8

### AMENDMENT OF ACT OF 2015

#### **Amendment of section 2 of Act of 2015**

**210.** Section 2 of the Act of 2015 is amended, in subsection (1)—

- (a) by the deletion of the definition of “Act of 2001”, and 30
- (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**

**211.** 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**

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**212.** 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.

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(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,

15

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*.

20

(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.”.

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**Amendment of section 98 of Act of 2015**

**213.** 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**

**214.** Section 104 of the Act of 2015 is amended—

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(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”,

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(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: 5

“ ‘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**

**215.** 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 *section 16* 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.”. 10  
15

#### **Involuntarily admitted persons whose treatment is regulated by Chapter 3 of Part 3 of Act of 2026**

**216.** 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 20

(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*. 25

(2) In this section, ‘mental disorder’, ‘involuntarily admitted person’ and ‘treatment’ have the same meaning as they have in the *Act of 2026*.”.

### PART 9 30

#### CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

#### **Amendment of Defence Act 1954**

**217.** 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 35

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**

**218.** Section 8C of the Courts (Supplemental Provisions) Act 1961 is amended, in subsection (2)— 15

- (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**

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**219.** (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 2025* to a registered acute mental health centre (within the meaning of that Act);”, 25

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);”, 30

- (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. 35

### **Amendment of Act of 1991**

**220.** The Act of 1991 is amended—

- (a) in section 23F(2)(b)(ii), by the substitution of “*Mental Health Act 2026*” for “Mental Health Act 2001”,
- (b) in section 23H(1)(c)(ii), by the substitution of “*Mental Health Act 2026*” for “Mental Health Act 2001”, 5
- (c) in section 23J(1)(d)(ii), by the substitution of “*Mental Health Act 2026*” for “Mental Health Act 2001”,
- (d) in section 23K(d)(ii), by the substitution of “*Mental Health Act 2026*” for “Mental Health Act 2001”, and 10
- (e) in section 23L(1)(e)(ii), by the substitution of “*Mental Health Act 2026*” for “Mental Health Act 2001”.

### **Amendment of Bail Act 1997**

**221.** 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”: 15

“ ‘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);” 20

### **Amendment of Non-Fatal Offences against the Person Act 1997**

**222.** 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 25
- (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**

**223.** The Taxes Consolidation Act 1997 is amended—

- (a) in section 268— 30
    - (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), 35
- 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 2025*” 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): 5

“(j) the *Mental Health Act 2026*.”.

#### **Amendment of Education Act 1998**

**224.** The Education Act 1998 is amended, in section 60, by the substitution of the following definition for the definition of “school”: 10

“ ‘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;”.

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#### **Amendment of Public Health (Tobacco) Act 2002**

**225.** 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”, 20

and

(b) in subsection (8), by the deletion of the definition of “psychiatric hospital”.

#### **Amendment of Health Act 2004**

**226.** 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*”, 25

(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*;”, 30

(c) in section 55D—

(i) by the substitution of “Chief Inspector (within the meaning of the *Mental Health Act 2025*)” 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 2025*) who is in the course of a visit, inspection or inquiry carried out in accordance with *section 137* 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”.

**Amendment of Social Welfare Consolidation Act 2005**

**227.** The Social Welfare Consolidation Act 2005 is amended—

- (a) in section 86—
  - (i) in subsection (1), by the insertion of the following paragraph after paragraph (b):
    - “(ba) the *Mental Health Act 2026*, or”,
  - and
  - (ii) in subsection (2), by the insertion of “or the *Mental Health Act 2026*” after “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*,”.

**Amendment of Health Act 2007**

**228.** 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 101* 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**

229. 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**

230. 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**

231. 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**

232. 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 2025*” for “Mental Health Act 2001”.

**Amendment of Patient Safety (Notifiable Incidents and Open Disclosure) Act 2023**

233. 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 2025*;”,

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**

234. 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”,

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(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)—

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(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.*”

# BILLE

dá ngairtear

Acht do dhéanamh socrú maidir le haoisigh a ghlacadh isteach in ionaid ghéar-mheabhairshláinte chláráithe, agus a urscaoileadh astu, in imthosca áirithe, agus maidir le haoisigh, is aoisigh a chomhlíonann na critéir chun bheith glactha isteach in ionaid den sórt sin ar bhonn ainneonach, a ghlacadh isteach ar bhonn ainneonach; do dhéanamh socrú maidir leis na critéir chun aoisigh a ghlacadh isteach in ionaid ghéar-mheabhairshláinte chláráithe ar bhonn ainneonach, agus maidir le hathbheithiú a dhéanamh ar an nglacadh isteach sin; agus, chun na gceolach sin, do dhéanamh socrú maidir le boird athbheithnithe meabhairshláinte a bhunú; do dhéanamh socrú maidir le cúram agus cóireáil a thabhairt d'aoisigh in ionaid ghéar-mheabhairshláinte chláráithe agus do dhéanamh socrú nach dtabharfar cóireáil d'aoisigh gan toiliú a thabhairt le haghaidh na cóireála sin, seachas in imthosca teoranta áirithe; do dhéanamh rialáil, in imthosca teoranta áirithe, ar chleachtais srianta a chur i bhfeidhm maidir le haoisigh a ghlactar isteach in ionaid ghéar-mheabhairshláinte chláráithe; do dhéanamh socrú maidir le leanai a ghlacadh isteach in ionaid ghéar-mheabhairshláinte chláráithe, agus a urscaoileadh astu, ar bhonn saorálach agus le toiliú tuismitheora; do dhéanamh socrú maidir le leanai, is leanai a chomhlíonann na critéir chun leanai a ghlacadh isteach in ionaid ghéar-mheabhairshláinte chláráithe ar bhonn ainneonach, a ghlacadh isteach in ionaid ghéar-mheabhairshláinte chláráithe ar bhonn ainneonach, agus a urscaoileadh astu, ar mhodh iarratas chun na Cúirte Dúiche; do dhéanamh socrú maidir leis na critéir chun leanai a ghlacadh isteach in ionaid ghéar-mheabhairshláinte chláráithe ar bhonn ainneonach, agus maidir le hathbheithiú a dhéanamh ar an nglacadh isteach sin; do dhéanamh socrú maidir le cóireáil a thabhairt do leanai in ionaid ghéar-mheabhairshláinte chláráithe agus do dhéanamh socrú nach dtabharfar cóireáil do leanai gan toiliú a thabhairt le haghaidh na cóireála sin, seachas in imthosca teoranta áirithe; do dhéanamh rialáil, in imthosca teoranta áirithe, ar chleachtais srianta a chur i bhfeidhm maidir le leanai a ghlactar isteach in ionaid ghéar-mheabhairshláinte chláráithe agus ar an toimeasc ar theirpe leictir-thritheamhach a thabhairt maidir leis na leanai sin; do dhéanamh socrú maidir le hiarratais a dhéanamh chun na cúirte d'fhonn socrú a dhéanamh maidir le teidíochtaí daoine a ghlactar isteach in ionaid ghéar-mheabhairshláinte chláráithe; do dhéanamh socrú maidir leis an gCoimisiún Meabhair-Shláinte agus maidir leis an gCigire Seirbhísi Meabhair-Shláinte a choimeád ar marthain; do dhéanamh socrú maidir le clár d'ionaid ghéar-mheabhairshláinte, clár d'ionaid meabhairshláinte phobail, agus clár de sheirbhísi meabhairshláinte pobail le haghaidh na n-ionad agus na seirbhísi sin a chlárú faoin Acht seo agus dá réir, a bhunú agus a chothabháil; do dhéanamh socrú maidir le rialáil seirbhísi meabhairshláinte, lena n-áirítear ionaid ghéar-mheabhairshláinte chláráithe, ionaid meabhairshláinte phobail chláráithe agus seirbhísi meabhairshláinte pobail cláráithe; do dhéanamh socrú maidir leis an gCoimisiún Meabhair-Shláinte do dhéanamh faireachán ar chomhlíonadh fhorálacha an Achte seo agus d'fhorheidhmíú chomhlíonadh fhorálacha an Achte seo; d'aisghaim an Acht Meabhair-Shláinte, 2001 agus achtacháin áirithe eile; do dhéanamh socrú maidir leis an Acht um Chinnteoireacht Chuidithe (Cumas), 2015 agus achtacháin áirithe eile a leasú; agus do dhéanamh socrú i dtaobh nithe gaolmhara.

## ATHCHLÓ RIARACHÁIN

*Bille Dála arna leasú i gCoiste ag Seanad Éireann,*

29 Eanáir, 2026

# BILL

entitled

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 District Court; 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.

## ADMINISTRATIVE REPRINT

*Dáil Bill as amended in Committee by Seanad*

*Éireann,*

29 January, 2026

This administrative reprint incorporates amendments made at Committee Stage by Seanad Éireann. It has been produced for ease of reference only, given that amendments made by Seanad Éireann to a Bill initiated in Dáil Éireann cannot have legislative effect unless agreed to by Dáil Éireann.