COLLEGE OF PSYCHIATRISTS OF IRELAND

FAO all Senators

Seanad 2nd Stage

Mental Health Bill 2024 – Children Only

We appreciate the work on Mental Health Bill 2024 in recent weeks that led to the passing of a lot of crucial amendments. Unfortunately, important issues, previously raised, remain in relation to the admission, treatment and care of children under this future Mental Health Act and were not addressed by the fifth stage of the legislative process in the Dáil.

The current iteration of the Bill, post Dáil amendments, has some unnecessary provisions that will complicate the admission of and delay necessary treatment for children.

Key issues are summarised below. A more detailed explanation and recommendations by relevant sections of the Bill follows.

Introduction of a third consultant

When a child is admitted involuntarily as per the current Mental Health Act it involves two consultants. External judicial oversight occurs prior to admission and an application for an order requires that an inpatient consultant has assessed that admission is indicated. The latter will later report back to the court and apply for extension of detention order as required. Parents are party to the legal process, and a Guardian ad Litem is appointed. All parties have leave to apply to court at any time to vary any orders made.

The amended Bill proposes to introduce a third consultant into the process and completely excludes the treating consultant from the legal process other than in the application for treatment orders in the High Court. This will not enhance the efficient delivery of crucial treatment and care to enable their recovery in a safe and timely way. Furthermore, it will add unnecessary distress to the child and their parents/guardians.

Introduction of a second legal process and second opinion assessments

Most cases, as per the Bill, would now involve two separate legal processes, with the case before two judges. This will cause unnecessary distress to the young person and family, impact negatively on care planning and require additional time for clinicians and parents to prepare for and attend court(s).

The system under the current Act, where this is managed before one judge, has operated very well over the last number of years. Second opinion assessment reports are provided as necessary and can be requested by any of the parties including the judge presiding over the case.

Eating disorders

Just one example of where unnecessary delays will result, as per the wording of the Bill, and could be extremely hazardous for young people, is in the treatment of eating disorders. The current system has supported the provision of necessary lifesaving treatment for children with severe eating disorders. No child has been transferred abroad since 2018 for treatment of this condition.

Conclusion

The operation of the Mental Health Act 2001 has been very successful in ensuring care and treatment is delivered appropriately to children who have severe debilitating symptoms of mental illness. The proposed changes and additional provisions are unnecessary, cumbersome, have the potential to delay the provision of care and could

lead to risk of deterioration, increased severity in symptoms and distress for the very small group of children in urgent need of care and treatment. It is vital that the points are addressed to ensure children continue to receive appropriate and timely care.

No other necessary medical treatment would risk delay in life saving treatments for children.

Please see detailed explanation, and by section of the Bill, below.

Overview and detail regarding the care and treatment of children as per latest iteration of the 2024 Bill

Currently, the admission of children to an approved centre involves two consultants, the referring community consultant and the inpatient consultant who accepts the admission. Care is transferred to the inpatient treating consultant unlike the adult system where the treating consultant in the community is also the treating consultant in the inpatient setting.

External judicial oversight occurs prior to admission, application for an order requires that an inpatient consultant has assessed that admission is indicated. This inpatient consultant will later report back to the court and apply for extension of detention order as required.

Introducing a third consultant (and possibly more) into the process will not enhance the delivery of care in a safe and timely way and will result in the child being assessed by yet another consultant resulting in unnecessary distress for the child and parents and probable delay.

Parents are party to the legal process, and a Guardian ad Litem is appointed. All parties have leave to apply to court at any time to vary any orders made.

In most cases children are admitted involuntarily for treatment. Treatment orders are made appropriately by the District Court. This has been supported by Judges of the High Court in a number of cases.

The President of The High Court has affirmed this process in cases that were previously subject to High Court Orders. Such situations arise when a child on a High Court Order is admitted from a general/paediatric hospital and an order is the made under the Mental Health Act 2001.

The proposed legislation completely excludes the treating consultant from the legal process other than in the application for treatment orders in the High Court.

Most cases will now involve two separate legal processes, with the case before two judges. This will cause unnecessary distress to the young person and family, impact negatively on care planning and the additional time clinicians and parents will attend court.

The current system where this is managed before one judge has operated very well over the last number of years. Second opinion assessment reports are provided as necessary and can be requested by any of the parties including the judge presiding over the case.

The current system has supported the provision of necessary lifesaving treatment for children with severe eating disorders. No child has been transferred abroad since 2018 for treatment of this condition.

These proposed changes are unnecessary, cumbersome, have the potential to delay the provision of care, cause distress to children and parents, take up significantly more inpatient consultant clinical time to produce no actual benefit.

The Mental Health Bill 2024 presented to the Oireachtas for first stage of the legislative process included significant changes to the Heads of Bill previously published in advance of the Bill 2024 being drafted; it remains uncertain or unknown as to why these substantial changes and additional provisions with regard to children were included.

Active and timely engagement is required to address the important issues raised to ensure that the legislation that is enacted is fit for purpose in ensuring the rights of young people are protected and vindicated and the necessary delivery of care and treatment.

The following pages provide detail as per relevant section of the 2024 Bill, as they apply to children and identified areas of concern.

Chapter 2

Admission of Children

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

61. (1) Where, in respect of a child aged 16 years or older—

(a) a consultant psychiatrist or another mental healthcare professional,

(b) the child's parents, or either of them, or guardian, or

(c) in the case of a child the subject of a care order, the Child and Family Agency,

reasonably considers that the child may lack the capacity necessary to consent to, or refuse to consent to, his or her admission or care and treatment under this Part, the responsible consultant psychiatrist shall carry out a capacity assessment of the child or arrange for another mental healthcare professional to carry out a capacity assessment to assess if the child has the necessary capacity to make the decision concerned (in this Act referred to as a "capacity assessment").

(2) Where, following the completion of a capacity assessment of a child aged 16 years or older under subsection(1), the responsible consultant psychiatrist or other mental healthcare professional concludes that the child lacks the capacity necessary to consent to, or refuse to consent to, his or her admission or care and treatment, the consultant psychiatrist shall arrange for a second capacity assessment of the child to be carried out by a second consultant psychiatrist or another mental healthcare professional

(3) The second capacity assessment shall not be carried out by a person who is or will be involved in the care and treatment of the child concerned.

(4) Where, following the completion of a capacity assessment under subsection (1) and a second capacity assessment under subsection (2), both mental healthcare professionals who carried out the capacity assessments conclude that the child, the subject of the assessment, lacks the capacity necessary to consent to, or refuse to consent to, his or her admission or care and treatment under this Part, then the child shall be assessed as lacking capacity in that respect.

(5) Where, following the completion of 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 to consent to, his or her admission or care and treatment under this Part, then that child shall be assessed as having capacity in that respect.

(6) A capacity assessment carried out under subsection (1) or (2) and the findings thereof shall be retained and recorded in the child's medical record.

(7) 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 either of them, or guardian,

(b) where the child is the subject of a care order, the Child and Family Agency, or

(c) his or her nominated person.

(8) The child and the persons referred to in paragraphs (a), (b) and (c) of subsection (7) shall be entitled to be furnished with copies of a capacity assessment in respect of the child on request.

(9) A relative of a child shall be disqualified from carrying out a capacity assessment in respect of the child.

(10) The Commission shall prepare and publish a code of practice in relation to capacity assessments under this section.

Note

- The majority of young people aged 16 years and over, particularly those with an eating disorder, who are not consenting to admission, will not demonstrate capacity.
- To confirm the absence of capacity requires not only an assessment by the treating consultant or other health care professional but also the assessment of another consultant or health care professional who is not or will not be involved in the young person's care or treatment.
- In practical terms, this will prove to be onerous as other consultants will be providing on call service to the inpatient facility where the young person will be admitted and so will be potentially involved in their care and treatment.
- This provision will potentially delay the provision of care, given the need to identify a clinician from outside the service completely to carry out the assessment.
- Once a lack of capacity has been determined, one can proceed to admission as a voluntary patient with parental consent.
- However, it is rarely in the best interest of the child to so do therefore the next step will be to proceed with an application for detention for care and treatment.

62. Voluntary admission of child under 16 years of age

62. (1) Subject to subsection (2), a child under 16 years of age shall not be admitted as a voluntarily admitted child to a registered acute mental health centre without the consent of his or her parents, or either of them, or guardian.

(2) Where a child referred to in subsection (1) is the subject of a care order, and the Child and Family Agency and the Executive believe that it is in the best interests of the child to be admitted to the registered acute mental health centre on a voluntary basis, the Executive shall make an application to the District Court in the District Court district where the child concerned resides or is 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 reception, care and treatment of that child in that registered acute mental health centre on a voluntary basis.

(3) Subject to section 70, 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 either of them, or guardian, or, where subsection (2) applies, the Child and Family Agency, with the consent of his or her parents, or either of them, or guardian, or the Child and Family Agency.

Note

- Appropriate provision

63. Voluntary admission of child aged 16 years or older

63. (1) A child aged 16 years or older shall not be admitted as a voluntarily admitted child to a registered acute mental health centre without his or her consent.

(2) Where a child aged 16 years or older has been assessed under section 61 to lack the necessary capacity to consent to, or refuse to consent to, his or her admission on a voluntary basis, he or she may be admitted to a registered acute mental health centre pursuant to section 64.

(3) Subject to section 71, a voluntarily admitted child aged 16 years or older, other than a child 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.

(4) Subject to section 71, a voluntarily admitted child aged 16 years or older who is the subject of a care order may leave the registered acute mental health centre at any time into the care of the Child and Family Agency.

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

64.(1) Subject to subsection (2), where a child aged 16 years or older is assessed under section 60 to lack the necessary capacity to consent to, or refuse to consent to, 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 referred to in subsection (1) is the subject of a care order and the Child and Family Agency and the Executive believe that it is in the best interests of the child to be admitted to a registered acute mental health centre, the Executive shall make an application to the District Court in the District Court district where the child concerned resides or is 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 reception, care and treatment of the child in the registered acute mental health centre.

(3) Subject to subsection (5) and section 70, 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 either of them, or guardian, or, where subsection (2) applies, the Child and Family Agency, with the consent of his or her parents, or either of them, or guardian, or the Child and Family Agency respectively.

(4) 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 decision. affecting himself or herself in relation to his or her admission, care and treatment under this Part, and

(b) arrange for capacity assessments of the child under section 60 to be 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 to consent to, voluntary admission.

(5) Where a child admitted under this section is found to have the necessary capacity to consent to, or refuse to consent to, voluntary admission following a periodic capacity assessment under section 60, the child shall be treated as a voluntarily admitted child admitted under section 62.

(6) 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

Note

- Under Section 64 (2) The District Court can make an order for the reception care and treatment of a child subject to a Care Order.
- This applies to the situation where a young person aged 16 years or more has been admitted under parental consent following an assessment that determined that the young person lacked capacity.
- There is not a stipulation for the repeat capacity assessment to be carried out by a second clinician who is not or will not be involved in their care.

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

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

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

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

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

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

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

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

or

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

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

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

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

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

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

(b) has an intellectual disability,

(c) has a personality disorder,

(d) is addicted to drugs or intoxicants,

(e) may behave in such a manner or hold views that are contrary to, deviate from or transgress cultural, religious, social or traditional norms or customs of appropriate behaviour, or

(f) requires to reside in a safe environment provided by a registered acute mental health centre.

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

Note

- Criteria are necessary and appropriate.

66. Involuntary admission of child

66. (1) Where it appears to the Executive that a child has a mental disorder that fulfils the criteria for involuntary admission of a child, and where—

(a) the child cannot be admitted as a voluntarily admitted child under section 61 or 62,

(b) the child cannot be admitted as a child aged 16 years or older lacking necessary capacity admitted with parental consent under section 63,

(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 to consent to voluntary admission, the responsible consultant psychiatrist, 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, believe that it is in the best interests of the child to be admitted on an involuntary basis, or

(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 to consent to 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 District Court in the District Court district where the child concerned resides or is located, for an order authorising the reception, detention, and care and treatment of the child in a registered acute mental health centre.

(2) Subject to subsection (3), the Executive shall not make an application for involuntary admission of a child under subsection (1) unless the child has been examined by a consultant psychiatrist and a report of the results of the examination recommending the making of the application in that regard has been prepared.

(3) The Executive may make an application for involuntary admission under subsection (1) without any prior examination of the child by a consultant psychiatrist, where—

(a) the child is aged 16 years or older and refuses or does not consent to the examination,

(b) in the case of a child under 16 years of age, or a child aged 16 years or older who lacks the necessary capacity to consent to or refuse to consent to voluntary admission—

(i) the parents, or either of them, or guardian, or, where the child is the subject of a care order, the Child and Family 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.

(4) Where the Executive makes an application for involuntary admission under subsection (1) without a prior examination by a consultant psychiatrist of the child, the subject of the application, the District Court 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 a report of the results of that examination to be furnished to the Court within such period as is specified by the Court, which period shall be no longer than 72 hours after the giving of the direction.

(5) A consultant psychiatrist shall be disqualified from carrying out an examination under subsection (2) or (4) where he or she—

(a) is or will be involved in the care and treatment of the child concerned, or (b) is a relative of the child concerned.

(6) Where the Court gives a direction under subsection (4), the consultant psychiatrist who carries out an examination of the child shall report to the Court as soon as practicable, but no later than 72 hours after

the giving of directions by the Court, on the results of the examination and shall indicate to the Court whether he or she is satisfied that the child fulfils the criteria for involuntary admission of a child.

(7) Where the Court is satisfied, having considered—

(a) the report of the consultant psychiatrist referred to in subsection (2) or (4), and

(b) any other evidence that may be adduced before it that a child fulfils the criteria for involuntary admission of a child, the Court shall make an order (in this Act referred to as an "involuntary admission order").

(8) An application for involuntary admission under subsection (1) may, if the Court is satisfied that the urgency of the matter so requires, be made ex parte.

(9) Where an application for involuntary admission of a child is made to the District Court under subsection (1), 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.

Note

- It is the decision of the treating psychiatrist to make an application for involuntary detention not "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".
- To meet the criteria for an involuntary admission requires an assessment by a consultant psychiatrist.
- The consultant psychiatrist who has assessed the young person as requiring an involuntary admission must now ask another psychiatrist "who is not or will not be involved in their care" to care out an assessment, to prepare a report and give evidence in court.
- In the case of a 16 year old or over another consultant who is not or will not be involved in their care will already have had to carry out a capacity assessment.
- Under Section 66 (1) (d) "the Executive shall make an application to the District Court in the District Court district where the child concerned resides or is located, for an order authorising the reception, detention, and care and treatment of the child in a registered acute mental health centre".
- If the order authorises reception, detention, and care and treatment why is there a further requirement to seek a treatment order in the High Court if the child subject to an Admission Order is refusing treatment.
- However, the court is not required to have the treating consultant in the court when the application is being made to give evidence to the court as the court may wish to enquire as to the duration and other aspects of the order. This will require both consultants to be in the court.

67. Duration and renewal of involuntary admission order of child

67. (1) An involuntary admission order shall—

(a) authorise the reception, detention, and care and treatment of the child concerned, and

(b) subject to subsection (2), section 68 or 68(7) remain in force for 21 days after the date of its making, and then expire.

(2) Where, on or before the expiration of the period of involuntary admission referred to in subsection (1)(b), an application is made to the District Court by the Executive for an extension of the period of involuntary admission, the Court may by order extend the period of involuntary admission (in this Act referred to as a "renewal order"), for a further period not exceeding 3 months, commencing on the expiration of the involuntary admission order made in respect of the child.

(3) The period referred to in subsection (2) may be extended by order made by the District Court on further application in that behalf by the Executive for periods each of which does not exceed 3 months (each of which orders is also referred to in this Act as a "renewal order").

(4) The District Court shall not make a renewal order under this section unless—

(a) the child has been examined by a consultant psychiatrist not more than 48 hours prior to the making of the application under subsection (2) or (3) and a report of the results of the examination is furnished to the Court by the Executive upon the making of the application, and

(b) following consideration by the District Court of the report, it is satisfied that the child continues to have a mental disorder which fulfils the criteria for involuntary admission of a child.

(5) A consultant psychiatrist shall be disqualified from carrying out an examination under subsection (4) where he or she—

(a) is or will be involved in the care and treatment of the child concerned, or

(b) is a relative of the child concerned.

(6) Where an application for a renewal order is made to the Court 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.

Note

- Under Section 67 (5)(a) The consultant psychiatrist who is responsible for the young person's is excluded from the process and another psychiatrist who is not or will not be involved in their care to carry out an assessment, is to prepare a report and give evidence in court.
- The court when arriving at a determination on the extension of an involuntary detention surely requires evidence on the responsible treating consultant.
- The practicalities of identifying a consultant who is not or will be not involved in their care.

68. Copy of order in respect of child to be sent to Commission

69. Appeal to Circuit Court

70. Discharge of involuntarily admitted children

70. (1) Subject to subsection (6), where in respect of an involuntarily admitted child the responsible consultant psychiatrist becomes of the opinion that the child no longer fulfils the criteria for involuntary admission of a child, or where the District Court refuses an application for a renewal order under section 67, the responsible consultant psychiatrist shall as soon as possible inform the child or, in the case of a child under 16 years of age or a child aged 16 years or older assessed as lacking capacity under section 61, the child and his or her parents, or either of them, or guardian that the child is no longer involuntarily admitted and can now leave the registered acute mental health centre or, with the responsible consultant psychiatrist's agreement—

(a) remain as a voluntarily admitted child if—

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

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

or

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

(2) Where the child referred to in subsection (1)—

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

(b) is the subject of a care order,

that subsection shall apply with the modification that the child may remain as a voluntarily admitted child in the registered acute mental health centre with the consultant psychiatrist's agreement where—

(i) the Child and Family Agency wishes, and

(ii) an order is made by the District Court authorising the admission under section 62(2) or 64(2).

(3) When the responsible consultant psychiatrist becomes of the opinion that a child no longer fulfils the criteria for involuntary admission of a child, or where the District Court refuses an application for a renewal order under section 67, the responsible consultant psychiatrist shall immediately meet with the child concerned to provide him or her with all relevant information from the child's individual care plan prepared in accordance with section 180 and information regarding—

(a) what will occur if the child stays in the registered acute mental health centre as a voluntarily admitted child or as a child aged 16 years or older lacking necessary capacity admitted with parental consent, and (b) what will occur if the child leaves the registered acute mental health centre.

(4) The meeting referred to in subsection (3) shall 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—

(i) the child's parents, or either of them, or guardian, or, where the child is the subject of a care order, the Child and Family Agency, and

(ii) any nominated person,

and

(b) in the case of a child aged 16 years or older assessed as lacking capacity to consent under section 61 or a child under 16 years of age—

(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

(ii) where relevant, any nominated person.

(5) The decision to remain in a registered acute mental health centre or not shall be recorded and a copy shall be retained in the child's medical record.

(6) Where a child is going to be discharged or has been discharged under subsection (1), the responsible consultant psychiatrist or another mental healthcare professional who is involved in his or her care and treatment shall 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 (4) as they apply in respect of the child going to be or who has been discharged for the purposes of planning his or her discharge.

(7) Where a child is discharged from involuntary admission under this section, including in circumstances where a child decides to stay in the registered acute mental health centre as a voluntarily admitted child or a child aged 16 years or older lacking capacity admitted with parental consent—

(a) the involuntary admission order or renewal order pursuant to which the child was detained immediately prior to the discharging shall cease to have effect, and

(b) the Executive shall notify the District Court that the child has been discharged from involuntary admission as soon as practicable.

Note

- Under Section 67 (5)(a) The consultant psychiatrist who is responsible for the young person's is excluded from the process and another psychiatrist who is not or will not be involved in their care to carry out an assessment, is to prepare a report and give evidence in court.
- However, the responsible treating consultant can override a court order without recourse to the court.
- The court when arriving at a determination on the extension of an involuntary detention surely requires evidence on the responsible treating consultant.

71. Power to detain child

71. (1) Where the responsible consultant psychiatrist or another mental healthcare professional who is responsible for or involved in the care and treatment of a voluntarily admitted child or a child aged 16 years or older lacking necessary capacity admitted with parental consent is of the opinion that the child fulfils the criteria for involuntary admission of a child, the responsible consultant psychiatrist or other mental healthcare professional concerned may, if necessary, detain the child for a period not exceeding 24 hours for the purpose of carrying out the matters in subsections (2), (3) and (4).

(2) Where a child is detained under subsection (1), the responsible consultant psychiatrist shall as soon as possible carry out an examination of the child and, where following that examination he or she remains of the opinion that the child fulfils the criteria for involuntary admission of a child, arrange for another consultant psychiatrist who is not involved in the care and treatment of the child to carry out a second examination of the child.

(3) If, following his or her examination, 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 either of them, or guardian, or, where the child is the subject of a care order, the Child and Family Agency, as the case may be, shall be immediately notified of the decision, and—

(a) in the case of a voluntarily admitted child aged 16 years or older admitted under section 63, informed of his or her right to leave the registered acute mental health centre or stay as a voluntarily admitted child in accordance, and

(b) in the case of a voluntarily admitted child under 16 years of age admitted under section 62, or a child aged 16 years or older lacking necessary capacity admitted with parental consent under section 64, informed of his or her right to leave, or to stay as a voluntarily admitted child, or a child aged 16 years or older lacking necessary capacity admitted with parental consent, in accordance with those sections.

(4) If, following his or her examination, the second consultant psychiatrist is of the opinion that the child does fulfil the criteria for involuntary admission of a child, the Executive shall make an application for involuntary admission of a child under section 66(1) at the next sitting of the District Court held in the same District Court district where the child concerned normally resides or is located or, in the event that the next such sitting is not due to be held within 72 hours of the second examination under subsection (2), at a sitting of the District Court in the same District Court district which has been specially arranged, held within the said 72 hours, and shall furnish reports of the results of the examinations under subsection (2) when making its application for involuntary admission.

(5) Where a child has been detained in accordance with subsection (1) and, following examinations under subsection (2), the Executive makes an application under section 66(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 Court under section 66.

(6) The examinations carried out under subsection (2) shall be recorded and a copy shall be retained in the child's medical record.

(7) The Executive may make an application for involuntary admission under section 66(1) 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 66(3) applies.

(8) 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

Note

- "at a sitting of the District Court in the same District Court district which has been specially arranged, held within the said 72 hours, and shall furnish reports of the results of the examinations under subsection (2) when making its application for involuntary admission".
- This in not consistent with Section 66(5)(a). Where the treating consultant is excluded from the application process.

72. Powers of Garda Síochána to take child into custody in certain circumstances

73. Care by Executive pending examination

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

75. Provision of information for involuntarily admitted child

76. Right to information and attendance at meetings

76. (1) Subject to subsection (2), the parents of a child, or either of them, or guardian, or, where the child is the subject of a care order, the Child and Family 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,

(b) receive a copy of the notice provided under section 74(1) or 75(2), as the case may be,

(c) receive any information subsequently provided under the notice, and

(d) 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.

(2) Where a child is aged 16 years or older and does not lack capacity, his or her parents or guardian, or the Child and Family Agency, as the case may be, and where applicable, his or her nominated person, shall not be entitled to the matters in paragraphs (a), (b), (c) and (d) of subsection (1) unless the child concerned consents.

Note

- This must be balanced with "the best interests' principle".

78. Absence without leave of child

Chapter 3

Consent to treatment for children

79. Consent to treatment for children to be obtained prior to treatment

80. Child's consent to treatment

80. (1) In this Part, consent, in relation to a child aged 16 years or older, who has not been assessed as lacking capacity under section 61, means consent of the child obtained freely without threats or inducements, where—

(a) adequate information in a form and language that the child can understand on the nature, purpose and likely effects of the treatment concerned (in this section referred to as "information relevant to the decision") has been given to the child, and

(b) he or she has capacity to give the consent concerned.

(2) In this Part, consent, in respect of a child under 16 years of age, or a child aged 16 years or older who has been assessed as lacking capacity under section 60, means the consent of—

(a) the parents of the child, or either of them, or guardian, or

(b) where the child is the subject of a care order, the Child and Family Agency, obtained freely without threats or inducement where—

(i) adequate information relevant to the decision has been given to the persons specified in paragraph (a) or (b), and

(ii) due regard has been given to the views and the will and preferences of the child in accordance with the guiding principles.

(3) Consent to treatment may be withdrawn at any time by

(a) a child aged 16 years or older who has capacity to make decisions about his or her treatment under section 61, or

(b) in respect of a child under 16 years of age, or a child aged 16 years or older who has been assessed as lacking capacity under section 61—

(i) the parents of the child, or either of them, or guardian, or

(ii) where the child is the subject of a care order, the Child and Family Agency

Note

- Under Section 66 (d) an application to the District Court in the District Court district where the child concerned resides or is located, for an order authorising the reception, detention, and care and treatment of the child in a registered acute mental health centre.
- This contradicts this section by implying the order excludes treatment.

81. Application to High Court for treatment order for child in certain circumstances

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

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

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

(ii) where he or she has been assessed as lacking necessary capacity under section 60—

(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,

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

(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 or on behalf of the responsible consultant psychiatrist to the High Court specifying the proposed treatment and seeking an order to administer the treatment concerned to the involuntarily admitted child (in this section referred to as a "treatment order") where all of the relevant criteria in subsection (2) apply.

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

(a) the treatment concerned is—

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

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

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

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

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

(3) A refusal to consent to treatment referred to in subsection (1) may be withdrawn at any time, and any application made to the Court under that subsection may be withdrawn, where—

(a) an involuntarily admitted child aged 16 years or older has capacity and decides to withdraw his or her refusal and to now consent to treatment concerned, or

(b) in the case of an involuntarily admitted child aged 16 years or older assessed as lacking capacity under section 60 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.

(4) Where an application for a treatment order under subsection (1) is before the 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.

(5) An application to the 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.

(6) Where, in the case of—

(a) a voluntarily admitted child under 16 years of age,

(b) a child aged 16 years or older lacking necessary capacity admitted with parental consent,

(c) an involuntarily admitted child under 16 years of age, or

(d) an involuntarily admitted child aged 16 years or older who has been deemed to lack necessary capacity under section 60, the responsible consultant psychiatrist and 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, agree that it would be detrimental to the relationship between the child and his or her parents, or either of them, or guardian, or, the Child and Family Agency for that person or persons to consent to or refuse to consent to treatment, and, in the opinion of the responsible consultant psychiatrist, the criteria specified in paragraphs (a), (b), (c) and (d) of subsection (2) apply, an application for a treatment order may be made under this section with all necessary modifications.

(7) 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 record.

Note

- Almost all young people admitted involuntarily will refuse treatment, particularly children with eating disorders. If they were not refusing treatment admission would not have been indicated.
- Therefore, most cases will require applications to the High Court.
- In this situation, the treating consultant gives evidence in High Court while excluded from the application for an admission order.
- The cases will now be before two courts and judges at the same time, this is not in the best interests of the young person.

Administration of treatment pending order in certain circumstances

82. (1) Without prejudice to the generality of section 78, where an application has been or will be made to the High Court for a treatment order under section 81 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 60, treatment may be given to the involuntarily admitted child concerned if, in the opinion of the responsible consultant psychiatrist, such treatment is—

(a) Immediately necessary for the protection of the life of the child or that of another person, or

(b) necessary for protection from an immediate and serious threat to the health of the child, or that of another person, and there is no alternative safe and effective treatment available.

(2) Where treatment is administered to a child without consent under subsection (1), the absence of consent and details of the treatment or treatments shall be noted in his or her medical record