

HSE National Consent Policy 2022: Mental Health Specific Aspects



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National Consent Policy 2022 v1.2

Part 1: Adults:

- In effect from 22 Jan 2024
- Revised to take account of Assisted Decision-Making (Capacity) Act 2015 as amended
- Engagement with key stakeholders including Office of Legal Affairs, Counsel, and State Claims Agency
- Incorporation of relevant aspects of Decision-Support Service Codes of Practice

Part 2: Children and Young People

- No changes in v1.2



Mental Health Act 2001: Significance of Basis for Admission

3(1)(a)

Because of illness, disability or dementia, there is a serious likelihood of the person concerned causing immediate and serious harm to himself or herself or to other persons

(The 'Risk' Ground)

3(1)(b)

Because of illness, disability or dementia, the judgment of the person concerned is so impaired that failure to admit the person to an approved centre would be likely to lead to a serious deterioration in his or her condition or would prevent the administration of appropriate treatment that could only be given by such admission **and**

The reception, detention and treatment of the person concerned in an approved centre would be likely to benefit or alleviate the condition of that person to a material extent

(The 'Illness/Therapeutic' Ground)



National Consent Policy:
Pt 1 Section 6.5

Admissions under s. 3(1)(b)

- Decision-Making Representative (if there is one) can consent to treatment for person and the person is not considered incapable of giving consent
- Advance Healthcare Directive in respect of treatment for mental disorder must be complied with in the normal way
- No equivalent measures for admissions under s. 3(1)(a)



National Consent Policy:

Pt 1 Section 6.5

Advance Healthcare Directives

- Refusal of treatment is legally binding provided AHD is valid and applicable
- Requirement to comply with AHD continues for person admitted under s. 3(1)(b) MHA
- For s. 3(1)(a) admissions, AHD relating to treatment for a physical condition not related to the mental disorder remains enforceable



National Consent Policy:

Pt. 1 Section 7.1.6

Children and Young People

- Distinction 1:

Child: U16

Young Person: 16 & 17

- Distinction 2:

‘Voluntary’ patient

Admitted under Mental Health Act 2001



General Requirements

- **All** children and YP in approved centres must have individual care plan which must address educational needs
- Where possible care plan must be developed with the child/YP



Consent Requirements where MHA does not apply

Mental Health Treatment in Community

Admission to Approved Centre

Treatment in Approved Centre

Consent Requirements where MHA