

rethink

**National Institute for
Mental Health in England**

**the mental
health act**
essential information
for parents and carers

About Rethink

Rethink, the leading national mental health membership charity, works to help everyone affected by severe mental illness recover a better quality of life. We provide hope and empowerment through delivering effective services and support to all those who need us, and campaign for better mental health care provision through greater awareness and understanding.

Who is this booklet for?

This booklet is for parents and carers of children and young people who need to be admitted to hospital for treatment of a mental disorder. When this booklet refers to 'parent' or 'parents' this means anyone with **parental responsibility** for a child or young person. When this booklet refers to 'carer' or 'carers' it means informal carers as opposed to paid professional carers.

How will this booklet help me?

This booklet provides essential information about what you can expect to happen if your child needs to be admitted to hospital for treatment of a **mental disorder**. It provides overview of how some important parts of the **Mental Health Act** may affect you and your child and what rights you have under this Act. It does this through a series of questions and answers.

If you are unclear on what is happening or why, you should ask one of the doctors, nurses or other professionals who are looking after your child to explain this to you.

Decisions around the care and treatment of children and young people are complex. This booklet cannot cover all possible situations but is intended to answer some of the main questions you may have.

If you have concerns about any aspect of your child's admission and treatment in hospital you should seek specialist advice. At the back of this booklet is a list of organisations that will be able to provide you with further information and advice.

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You will notice some of the terms used in this booklet are highlighted in **bold**. These are terms which you may hear being used by the doctors, nurses and other professionals who are caring for your child. They are explained in more detail in the '**Jargon Buster**' on pages 20-22.

Can I be involved in decisions about my child's care?

Yes, if your child agrees to this then you should be involved in decisions about your child's care and treatment. However, if your child is able to make a decision on whether information about their care and treatment is shared with you and they decide that they do not want this to happen, this decision must be respected.

This is because your child has a right to have their personal information kept confidential. This information cannot be shared without your child's agreement unless there are very clear reasons for doing so (for example, the need to protect your child from serious harm). Those caring for your child should take steps to find out why your child does not want you to be given this information and whether these reasons can be addressed.

Your child's right to confidentiality does not prevent you from sharing information with the care team about your own concerns, nor prevent those caring for your child in seeking information from you.

What is the Mental Health Act?

The Mental Health Act is the law used to admit, detain and treat adults, children and young people who need treatment for a **mental disorder**. Its full name is the Mental Health Act 1983 and it was amended recently by the Mental Health Act 2007.

Doctors and nurses treating your child will also use the **Mental Health Act Code of Practice** which provides guidance to them on how they should fulfil their duties under the Mental Health Act. The Mental Health Code of Practice includes five 'Guiding Principles' which must be considered when any decisions are being made under the Mental Health Act.

For further information, please see Rethink's factsheets on 'Detention under the Mental Health Act 1983' and 'The Mental Health Act 2007 – Changes to the existing law'.

The 5 principles can be summarised as follows:

1. **Purpose principle:**
all decisions should be made with the aim of minimising the undesirable effects of mental disorder.

2. **Least restrictive principle:** restrictions of a patient's freedom should be kept to a minimum.
3. **Respect principle:** the needs and values of each patient should be recognised and respected. This includes their race, religion, culture, gender, age, sexuality and any disability they may have. The patient's views, wishes and feelings should be taken into account and followed where this is possible.
4. **Participation principle:** patients should be involved as much as possible in the planning of their care and treatment. The involvement of carers and family member should be encouraged unless there are particular reasons why this should not happen.
5. **Effectiveness, efficiency and equity principle:** resources should be used in an effective, efficient and equitable way

Can my child be treated for a mental disorder in the community instead of going into hospital?

Wherever possible your child should be provided with the necessary care and support in the

community. In most circumstances, if the right treatment for a mental disorder can be provided in the community then this is likely to be the best option for both you and your child. In such cases, mental health services for young people up to the age of 18 years are usually provided by **Child and Adolescent Mental Health Services**. However, in some areas of the country, 16 and 17 year olds are treated by adult mental health teams.

I've been told that my child needs to go into hospital because of a mental disorder – what happens next?

There may be times when admission to hospital will be the only way of providing the care and treatment that your child needs. For example, admission to hospital may be necessary because your child needs to be in the safe environment of a hospital in order to assess and treat their **mental disorder**.

Once it has been decided that your child needs to be admitted into hospital, the next step will be to decide whether your child can be admitted to hospital as an **informal patient** (sometimes called a voluntary patient) or as a **formal patient** detained under the **Mental Health Act** (this is sometimes referred to as 'being sectioned').

Detention under the Mental Health Act will only be considered if it is not possible for your child to be admitted as an **informal patient**. For detention under the Mental Health Act to take place, this will normally require two doctors and a specially approved social worker or other mental health professional to assess your child and agree that an admission to hospital is necessary and that the conditions for detaining your child are met. The most common sections for admission to hospital are **Section 2** and **Section 3**.

When can my child consent to their admission or treatment?

The mental health professionals who are considering the admission to hospital and/or treatment will need to assess your child's ability to make these decisions. This will depend on various factors including the age and maturity of your child. In order to be able to consent to admission to hospital or treatment, your child will need to be able to understand fully what is being put to them and to make a decision about this.

Consent

Consent is the voluntary permission of a person for something to happen to them, such as admission to hospital or medical treatment to be given. For consent to be valid, a person should have adequate information about what is being suggested to them. For medical treatment, this should include information on the possible risks and benefits of the treatment. Consent is not valid if it was given as a result of unfair pressure being put upon the person providing the consent.

Gillick competent

This term refers to a young person under the age of 16 years old who has sufficient intelligence and understanding to be able to understand fully what is being suggested to them. A young person who is 'Gillick competent' is able to give a valid consent to admission or treatment.

Different rules apply depending on whether your child is **under** or **over 16 years old**.

Under 16 years old

If your child is under 16 they will be able to consent to their own admission or treatment if they are assessed by as being '**Gillick competent**' in relation to the specific decision being considered.

16 years old and over

If your child is 16 or 17 years old, they will be able to consent to the admission to hospital or treatment if they are able to understand the relevant information, weigh this information up and come to a decision. This is known as having the **capacity** to make a decision. If a 16 or 17 year old lacks capacity to make a decision, the **Mental Capacity Act 2005** will apply.

The Mental Capacity Act 2005

The provides a framework for making decision on behalf of people aged 16 or over who lack the capacity to make their own decisions. It makes it clear who can take decisions, in which situations, and how they should go about this.

When can I consent to my child's admission or treatment on their behalf?

Where your child is unable to make a decision about their admission to hospital or their treatment, you may be able to make this decision on behalf of your child if this falls within the **'zone of parental control'**:

Zone of Parental Control

This term is used in the **Mental Health Act Code of Practice** to describe the types of decisions that people with parental responsibility will be able to make in relation to their child's treatment and care.

Whether a decision falls within the 'zone of parental control' depend on the individual circumstances of each case. In summary, the Mental Health Code of Practice advises that when deciding whether the particular decision falls within this zone, two important questions must be considered:

Question 1.

Is it a decision that a parent would normally be expected to make?

Question 2.

Are there any indications that the parent might not act in the best interests of the child or young person?

If the mental health professional can answer confidently 'Yes' to Q1 and 'No ' to Q2 then the decision is more likely to fall within the zone of parental control.

How will it be decided whether my child can consent to admission or treatment or if I can consent on my child's behalf?

The following 4 diagrams on pages 9-12 show the questions that will be relevant when considering whether you or your child can consent to the admission to hospital or treatment for mental disorder, or whether the Mental Health Act or a court order must be used to authorise the admission or treatment.

There are separate diagrams for each of the following situations:

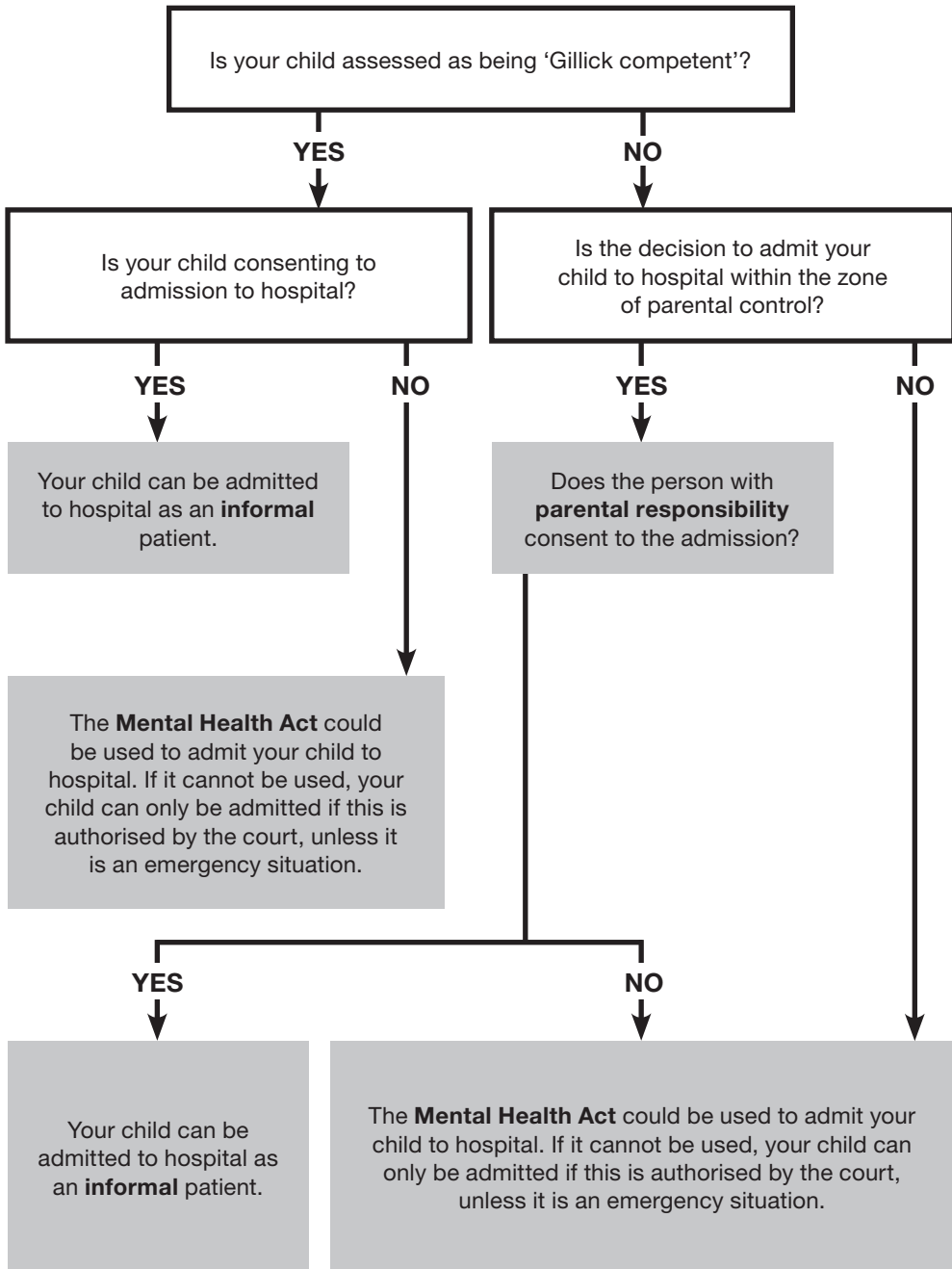
- (1) Admission to hospital of children under 16 year olds
- (2) Admission to hospital of 16 and 17 year olds
- (3) Treatment of children under 16 year olds
- (4) Treatment of 16 and 17 year olds

You will notice that some of the boxes in the diagrams have solid black outlines. These reflect the various stages at which some of the legal concepts outlined above such as **consent**, **Gillick competence**, **capacity** and the **zone of parental control** will be considered by the care team.

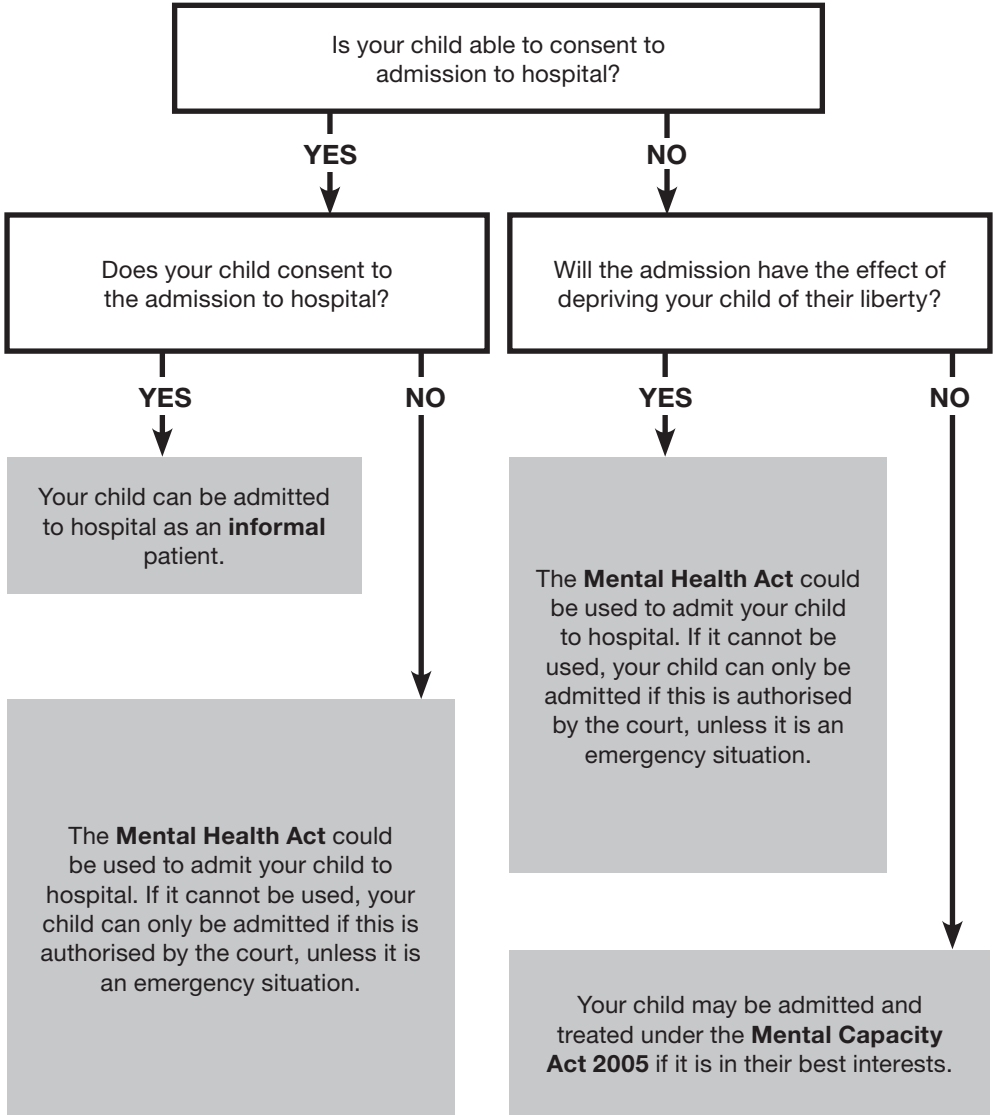
The following diagrams are intended to help explain the decision making process in relation to your child's admission to hospital and/or treatment. They cannot cover all possible situations and should not be used as a guide to how the law affects you or your child.

Consent is a complicated area of medical law and therefore it is important to get specialist advice if any issues occur during your child's admission or treatment to hospital. You can contact any of the organisations listed at the end of the booklet for further advice.

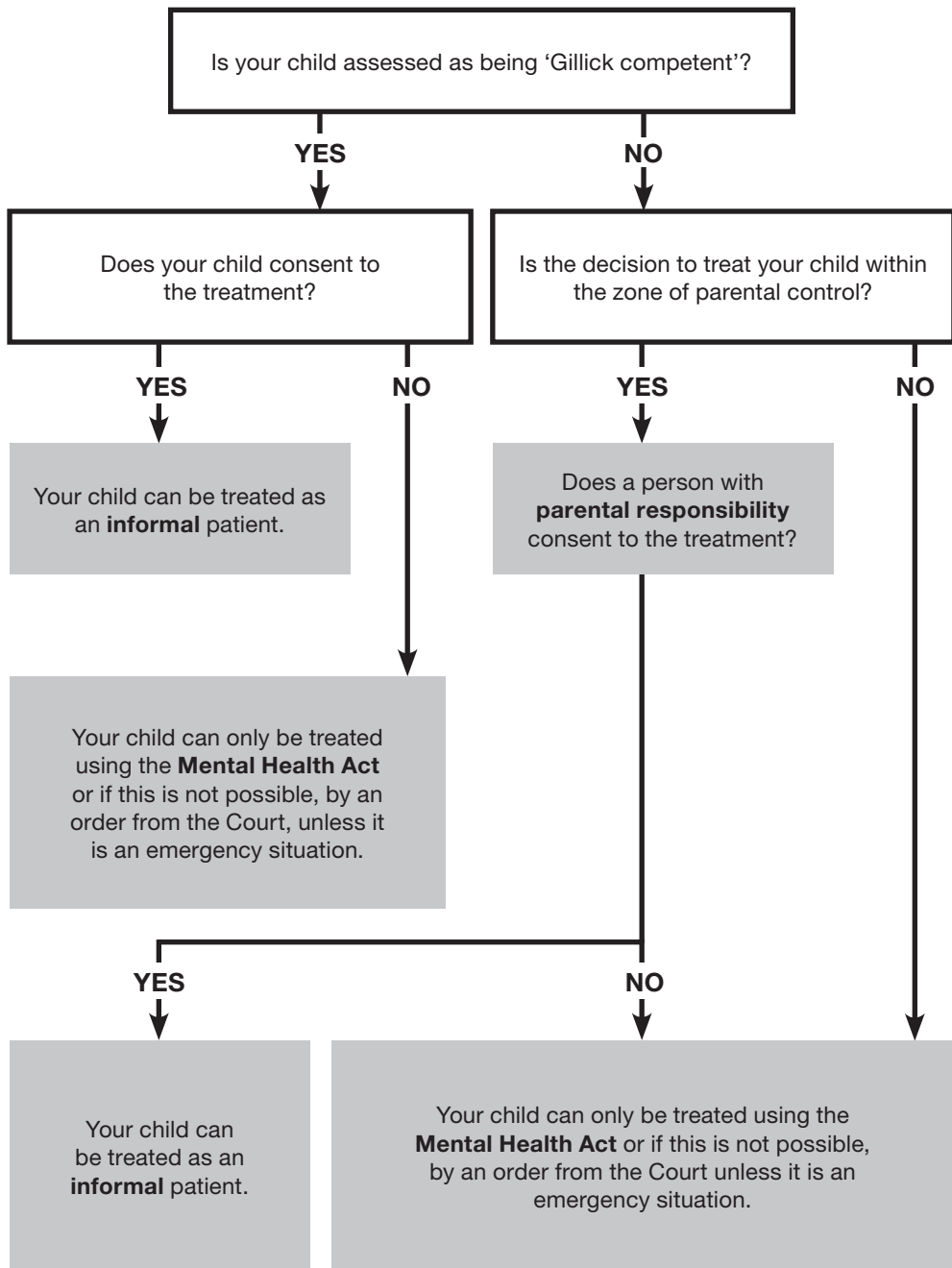
Admission to hospital – under 16 year olds



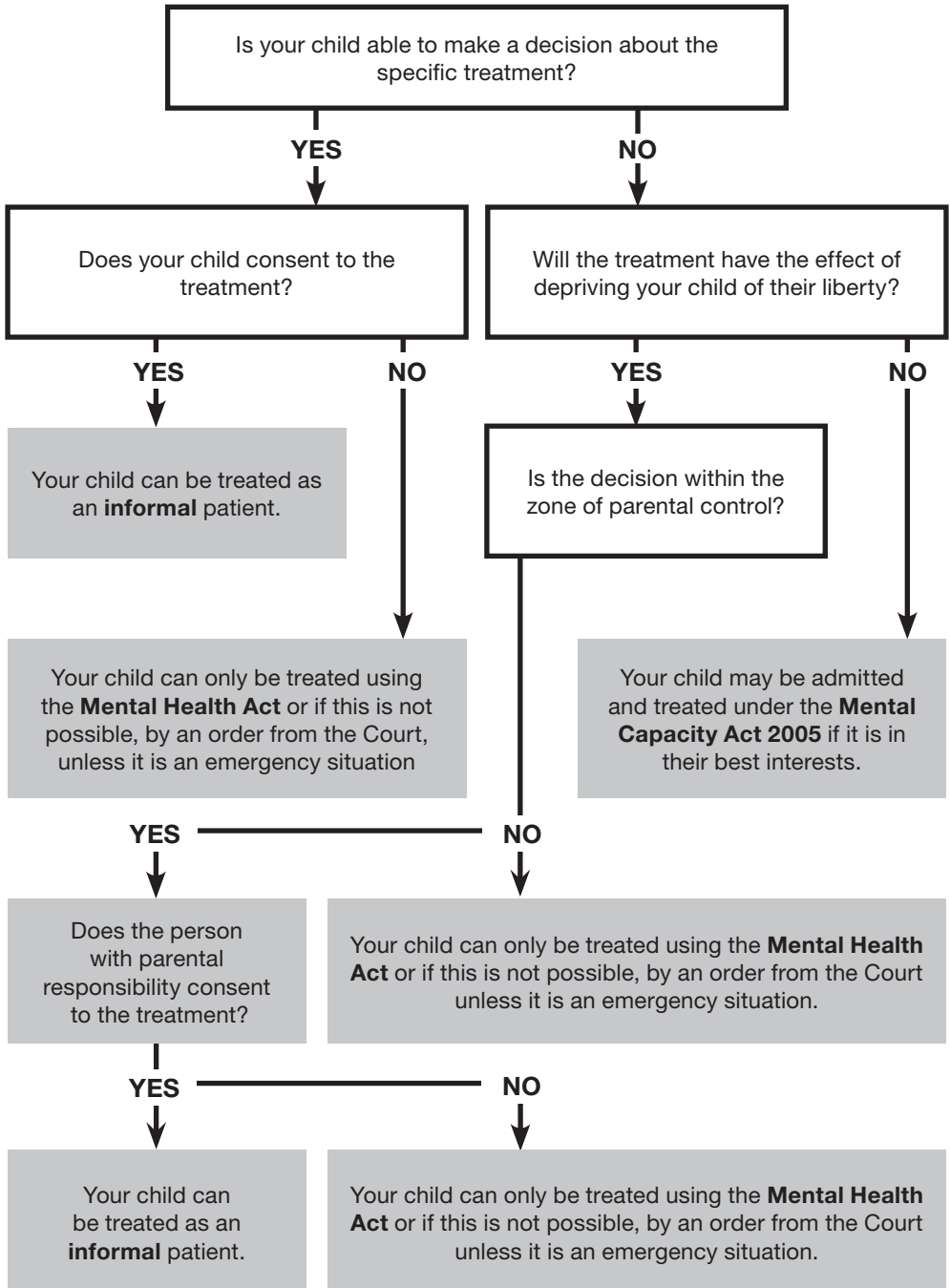
Admission to hospital – 16 and 17 year olds



Treatment – under 16 year olds



Treatment – 16 and 17 year olds



My child is in local authority care – will I still be consulted about admission to hospital or treatment?

If your child has been placed under the care of a local authority (this is known as a **'care order'**) the local authority will share **parental responsibility** with you. This means that the local authority can agree to your child's admission to hospital or treatment. Although your consent may not be needed for such decisions, they should usually be discussed with you (unless there are particular reasons why the local authority considers that you should not be involved).

If your child is being looked after by the local authority on a voluntary basis (not under a care order) the local authority does not have parental responsibility. This means that you should be consulted about your child's care and treatment in the same way as if your child was still living with you.

What sort of ward can I expect for my child?

By April 2010, an important change is due to be put in place in all hospitals. It concerns children and young people under the age of 18 who are admitted to hospital for treatment for mental disorder, whether they are admitted under the **Mental Health Act** or whether they are informal patients.

When a child or young person is admitted to hospital, the managers of that hospital must make sure that the ward environment is suitable for someone of their age, subject to any particular needs they may have. In order to help them in this work the hospital managers must consult someone who knows about the treatment of children or young people with mental disorder.

This change was introduced to avoid children and young people being admitted inappropriately to adult psychiatric wards.

The 'Checklist for Parents' on page 23 sets out some questions you can ask if your child is admitted to hospital for treatment for mental disorder. These questions are designed to help you find out about the care and treatment that your child is to receive when in hospital. They will be particularly important

from April 2010 when this duty on the hospital managers of a hospital to make sure that the ward environment is suitable for your child comes into force.

What would be an appropriate environment for my child?

This would very much depend on your child's individual circumstances and particular needs. A suitable environment should include staff trained to understand children and young people's needs and all staff working with children should be checked with the **Criminal Records Bureau**. The ward should have the facilities to allow your child to continue with their social and educational development as normally as is possible.

An appropriate ward environment for your child in an emergency may be different from an appropriate ward environment during a longer admission. For a longer admission, access to education and the opportunity to mix with people of a similar age would be much more important than for a short emergency admission.

Would admission to an adult ward ever be appropriate for a child or young person?

This would very much depend on the circumstances of each case. In most cases the appropriate environment for your child will be a specialist child and adolescent mental health unit. However, a mature young person who is nearly 18 years old may prefer to be in an adult ward rather than in a specialist child and adolescent ward.

The situation may also be different if your child needs to be admitted to hospital urgently. If a place is not available in a specialist child and adolescent mental health unit, it may be necessary to admit your child to an adult psychiatric ward in order to provide your child with mental health care in a safe environment. This would be an appropriate environment but only for a limited period. Once the initial emergency is over, your child should be transferred to an environment which provides specialist care for children and adolescents. Under 16 year olds should not be admitted to adult psychiatric wards at all.

What should I do if I think that my child's ward is not appropriate for them?

If you don't think that your child is in an appropriate environment then ask to speak to staff on the ward to raise your concerns. You may wish to use the Checklist on page 23 of this booklet as a guide to the information you may want to know from the hospital.

You can also bring your concerns to the attention of the managers of the hospital, by using the hospital's complaints system. You can get help via the Patient Advocacy Liaison Services at the hospital.

If you would like specialist independent advice on how to make a complaint then you can contact the independent organisations listed at the back of this booklet for further information and advice.

What happens if my child is admitted to a ward which is far away from our home?

Occasionally your child may need to be transferred to a hospital which is some distance away from your local area because it is the only environment which is able to meet your child's needs at that time. This

can create additional problems such as the distance and costs involved in visiting the hospital. In these circumstances, the hospital should talk to you about arranging any financial assistance or practical help you may need to visit your child.

For further information about this, please see Rethink's leaflet on 'Out of Area Treatments and Placements – a good practice guide'.

Are there any special rules about giving treatment for mental disorder under the Mental Health Act?

Yes. The Mental Health Act has special rules for different types of treatment. For example, if your child is detained in hospital for treatment, they can be given medication for up to three months if authorised by the professional in charge of the treatment. However, if they wanted to continue with this treatment beyond three months this would only be possible if your child consents to the treatment or a **Second Opinion Appointed Doctor** agrees that such treatment is appropriate.

Another example is

Electroconvulsive therapy (ECT).

This is very rarely given to children and young people and the Mental Health Act introduces additional safeguards where ECT is being considered as a type of treatment. Unless it is an emergency, no-one under 18 can be given ECT unless it is approved by a **Second Opinion Appointed Doctor**. In addition, if ECT is proposed, your child has the right to help from an **Independent Mental Health Advocate**.

For further information, please see Rethink's factsheet on 'Electroconvulsive Therapy'.

Is there anyone independent of the hospital who can assist my child?

From April 2009, **Independent Mental Health Advocates** will be available in England to help patients understand their rights and raise any issues they may have. Independent Mental Health Advocates will be available to all patients, including children and young people, who are detained in hospital under the Mental

Health Act or receiving treatment under **Supervised Community Treatment** (see below).

Other under 18 years olds have the right to access an Independent Mental Health Advocate if they are being considered for a treatment which requires **Second Opinion Appointed Doctor** approval such as **Electroconvulsive Therapy**.

Independent Mental Health Advocates are already available in Wales.

Can my child appeal against their detention under the Mental Health Act?

Yes. Children and young people who are detained under the **Mental Health Act** have the same rights as adult patients to apply to a **Tribunal** which has the power to discharge your child from detention. The hospital should provide information about the right to appeal to every patient, including details of local mental health solicitors who can provide specialist advice and represent the patient at the Tribunal.

For further information, please see Rethink's factsheet on 'Detention under the Mental Health Act 1983'.

Can I discharge my child from hospital if s/he is detained under the Mental Health Act?

If your child is detained under **Section 2** or **Section 3** of the Mental Health Act and you are your child's **nearest relative**, you can ask for that your child is discharged. You have to give the managers of the hospital 72 hours written notice of your intention to discharge your child.

If you do this, the person responsible for your child's care and treatment in hospital can overrule your request if they think that your child is likely to be a danger to themselves or other people. If your request is overruled and your child is detained under Section 3, you could then apply to the **Tribunal** which can discharge your child from hospital.

For further information, please see Rethink's factsheet on 'Nearest Relative'.

My child is now ready to be discharged from hospital – will they receive support in the community?

Before your child leaves hospital the mental health professionals who have been looking after your child will need to make sure that your child's health and social care needs are assessed and a decision is made on what care and treatment your child should receive in the community. This may be referred to as 'aftercare planning' or the 'care programme approach'.

The professionals should talk to your child to find out what they would like. Unless your child has said that this should not happen, you should also be involved in these discussions and asked what you think would be best for your child. If your child is going to live with you, you may also need support to help you to provide the necessary care for your child.

If your child has been detained under **Section 3** of the Mental Health Act they will have the right to 'after-care services' (such as somewhere to live and social care support) under Section 117 of the Mental Health Act.

I have heard of ‘Supervised Community Treatment’ – what is this?

This is a new form of community treatment for people who have been detained in hospital under one of the longer term treatment sections, most usually **Section 3**. These patients can be placed on Supervised Community Treatment before they are discharged from hospital. This will mean that they can be treated for **mental disorder** in the community instead of in hospital but that they can be called back to hospital if necessary. Supervised Community Treatment is also referred to as being on a Community Treatment Order.

Patients placed on Supervised Community Treatment will also be expected to keep to certain conditions, such as living in a particular place and attending a particular place at a particular time to receive treatment. The conditions will vary from patient to patient but will include conditions which are felt to be necessary to ensure that patient receives treatment, to prevent harm to the patient’s health or safety, or the protection of other people.

Parents and carers cannot consent to or refuse any treatment given under Supervised Community

Treatment because the treatment will be authorised by the Mental Health Act. However, if your child is going to be living with you when placed on a SCT then you should be consulted (subject to your child’s right to confidentiality) about the treatment. This is because if you were not happy with the treatment it would make it very difficult for your child to live with you while on Supervised Community Treatment.

What can I do if I am unhappy about any of the above things?

If you are unhappy about anything to do with your child’s care or treatment then it is very important to raise this with the care team as soon as possible. If this does not resolve your problem then you would be entitled to make a formal complaint using the hospital complaints procedure.

Further information on how to do this will be available from the **Patient Advocacy Liaison Services** at each hospital.

If you would like specialist independent advice on how to make a complaint then you can contact the independent organisations overleaf for further information and advice.

Further information

Rethink National Advice Service

89 Albert Embankment
London
SW1 7TP

Telephone: 0845 456 0455

Email: advice@rethink.org

www.rethink.org

Mondays, Wednesdays and Fridays
10am to 3pm

Tuesdays and Thursdays
10am to 1pm

Copies of all of the leaflets and factsheets referred to above are available to download from our website **www.rethink.org** or **www.mentalhealthshop.org**

MIND

PO Box 277
Manchester
M60 3XN

Infoline: 0845 766 0163

Email: info@mind.org.uk

www.mind.org.uk

Young Minds

48-50 St John Street
London
EC1M 4DG

Telephone: 020 7336 8445

www.youngminds.org.uk

Citizens' Advice Bureau

You can find your nearest Citizen's Advice Bureau at
www.citizenadvice.org.uk

Children's Legal Centre

38 Great Portland Street
London
W1W 8QY

Telephone: 0207 580 1664

www.childrenslegalcentre.com

Jargon Buster

Capacity

The ability to understand and hold information in your mind, weigh this information up and communicate what you want. A person's capacity to make a specific decision will be assessed by a doctor.

Care Order

An order made by a Court which places a child under the care of the local authority.

Child and Adolescent Mental Health Services (or CAMHS)

Mental health services specifically for children and young people. They are usually made up of different professionals including psychiatrists, psychologists, nurses and social workers.

Criminal Records Bureau

An agency of the Home Office which provides access to criminal records information. Employers can ask the Criminal Records Bureau to check whether job applicants have any criminal records which would make them unsuitable for the job, especially work with children or vulnerable adults.

Electroconvulsive Therapy (ECT)

Electroconvulsive Therapy is a treatment for some types of mental illness. The person is placed under an anaesthetic and an electric current is passed through their brain to cause a fit (or seizure).

It is most often used for severe depression when other forms of treatment have not worked. It is rarely used for children or young people.

Formal patient

A formal patient is a person who is detained in hospital under the Mental Health Act.

Independent Mental Health Advocates (or IMHAs)

Specially trained patient advocates who can help patients understand their rights and raise any issues that they may have about their care or treatment under the Mental Health Act.

Informal patient

An informal patient is a person who is in hospital voluntarily.

Mental Capacity Act 2005

The law which provides a framework making decisions on behalf of people who lack capacity to make their own decisions. The main provisions of this Act apply to individuals aged 16 years or over.

Mental Disorder

The Mental Health Act defines a mental disorder as ‘any disorder or disability of the mind’

Mental Health Act

The law which governs the care and treatment of patients with mental disorder. It provides for the circumstances in which individuals can be detained in hospital and treated without their consent. Its full name is the Mental Health Act 1983 and it was amended by the Mental Health Act 2007.

Mental Health Act Code of Practice

The Mental Health Act Code of Practice is a document which provides guidance to doctors and other healthcare professionals about how they should exercise their powers and duties under the Mental Health Act when providing care and treatment to people with mental disorder.

Nearest Relative

A term used in the Mental Health Act to describe the relative of a patient who has various rights and powers under the Mental Health Act. The Mental Health Act sets out a list of people who are eligible to be a patient’s Nearest Relative in order of priority. In most circumstances, a child or young person’s Nearest Relative will be the elder of their parents. However if the parents were not married when the child was born, the father can only be the Nearest Relative if he has acquired parental responsibility.

Parental responsibility

This means all the rights, duties, responsibility and authority a parent has in relation to a child. The mother of a child always has parental responsibility (unless the child has been adopted by someone else). A father will have parental responsibility if he is married to the mother.

If the parents are not married the father will have parental responsibility if, for a child born after 1st December 2003, he is registered on the birth certificate. An unmarried father can also enter into a parental responsibility agreement with the mother or apply to the Court for a parental responsibility order.

If an order is made by a court for the child to live with a specific person (a residence order) this automatically gives that person parental responsibility for the child.

Patient Advocacy and Liaison Service (or PALS)

A service provided by each NHS Trust to provide support, advice and information to patient and their families or carers. They can provide information about the NHS Complaints procedure.

Second Opinion Appointed Doctor (or SOAD)

Second Opinion Appointed Doctors are independent psychiatrists appointed by the Mental Health Act Commission (the Care Quality Commission from April 2009) to consider whether certain types of treatment should be given.

Section 2

This is a section of the Mental Health Act which authorises the detention of a patient in hospital for assessment of the patient's mental disorder (or assessment followed by treatment). Detention under Section 2 can normally only last for up to 28 days.

Section 3

This is a section of the Mental Health Act which authorises the detention of a patient in hospital so that the patient can receive treatment for mental disorder. Detention under Section 3 can last for an initial period of up to 6 months, after which it can be renewed if necessary

Supervised Community Treatment

This is where a patient remains subject to the Mental Health Act after they leave hospital. They will be expected to keep to certain conditions such as continuing with their treatment in the community. If necessary, they can be made to come back to hospital. In order to be placed on Supervised Community Treatment, the person responsible for the patient's care must make a Community Treatment Order setting out the conditions which they are expected to keep.

Tribunal

An independent judicial panel with the power to direct the discharge of patients detained under the Mental Health Act. The panels usually consist of three people – a psychiatrist, a lawyer and a lay person. A detained patient, and in some circumstances their Nearest Relative, can appeal against their detention to the Tribunal.

My child is detained under the Mental Health Act what should I expect?

A checklist of questions

These questions below are designed to help you find out about the care and treatment that your child is to receive when in hospital for treatment for mental disorder.

- Has a specialist in children and young people's mental health been involved in my child's admission?
 - Is the ward a suitable environment for my child and does it meet his or her needs?
 - Does the ward have staff trained to understand children and young people's needs?
 - How will the ward support my child to continue with their educational and social development?
 - Are those working with my child checked with the Criminal Records Bureau?
 - Has the hospital spoken to me about any financial or practical help I need to visit my child?
 - Is the ward safe for my child?
 - Have the staff members discussed with both my child and me any legal issues relating to consent to treatment or admission?
 - Has my child been offered an Independent Mental Health Advocate? (if they are detained under the Mental Health Act, receiving Supervised Community Treatment or if Electroconvulsive Therapy is being considered as a treatment option)
- Independent Mental Health Advocacy will be available in England from April 2009 and is already available in Wales.
- How can I raise any concerns that I might have about my child's care or treatment?

Join us

Rethink works tirelessly to improve the lives of those affected by severe mental illness. If we are going to continue to succeed we'll need your help. You can support us in any number of ways for example becoming a member, making a donation or becoming a campaigner.

Please support us today to help transform the lives of generations to come. To find out how you can help visit www.rethink.org, phone 0845 456 0455 or email info@rethink.org

Information on mental health

For more information about Rethink publications and other products on mental health, please visit www.mentalhealthshop.org or call 0845 456 0455.

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INVESTOR IN PEOPLE

**Working together to help everyone
affected by severe mental illness
recover a better quality of life**

**For further information on Rethink
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