



## **Adult Social Care**

# **Assessment of a Child or Young Person by a Mental Health Professional**

**Version 2**

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## The Mental Health Act 1983 has no Lower Age Limit

When assessing a child or young person under the act, the following relevant legislation should be considered: [The Children Acts 1989](#) and [2004](#); the [Mental Capacity Act 2005](#); [Family Law and Reform Act 1969](#); [Human Rights Act 1998](#); [United Nations Convention on the Rights of the Child](#). The latest edition of Jones, R. (2018) 'Mental Health Act Manual' and [The Mental Health Act Code of Practice](#) chapter 19 should also be read.

It is also important to note that a child refers to anyone under the age of 16 and a young person to anyone aged between 16 to 17 years of age.

## Children Legislation

The term "child" is defined in the Children Act 1989 as anybody under the age of 18 years. It can extend to young people with a disability up until the age of 19. Social Care Services cannot apply for a Care, Supervision or Secure order for a child aged 17 or older. If a child has been accommodated by Social Care Services beyond the age of 16, then obligations to assist and support continue until the age of 21.

The following are some of the main areas of the Children Act 1989 that Approved Mental Health Practitioners (AMHP) need to be aware of:

### **"Child Protection": Duty to Investigate": S.47 Children Act 1989.**

This is the obligation to investigate referrals suggesting that a child is at risk of significant harm.

### **"Children in Need": S.17 Children Act 1989.**

This is the term used to refer to children for whom a need is identified for the provision of general support or specific services. It places specific responsibilities on local authorities for the provision of services. Need is defined to include those not likely to achieve or maintain a reasonable standard of health or development without provision of services by the local authority or those at risk of impairment of health development without such services.

Following a Mental Health Act Assessment, the AMHP may need to refer a child or young person to Social Care Services as they meet the above criteria. This would need to be done by contacting Call Derbyshire or by contacting the child or young person's worker, if already known to services

### **"Voluntary Accommodation": S.20 Children Act 1989.**

A child or young person can be voluntarily accommodated by Social Care Services if their parents agree to it or the child or young person themselves agree and are competent (if under 16) or have capacity (if 16 and over) to make this decision.

When a child is voluntarily accommodated parental responsibility remains with the parents.

## “Secure Accommodation”: S.25 Children Act 1989.

There may be times when ‘detention’ in a secure environment is considered to be in a child’s best interests. In such circumstances, if a choice is offered, AMHPs may need to consider whether detention in hospital under the MHA is a more appropriate form of intervention than under S.25 Children Act which would not normally be appropriate if a child’s mental health is the major reason for needing detention.

Legal advice must be sought if this is being considered.

## Assessment Process

When a request is received for the assessment of a child or young person under the [Mental Health Act 1983](#), it is good practice when there is time to convene a strategy meeting to enable the sharing of the information, ascertain actions already taken and alternatives which could be considered. It is also important to remember that the AMHP has 14 days in which to complete their assessment. This time may be necessary in order to ascertain the least restrictive and most appropriate alternative to hospital admission.

Important areas to consider when undertaking a MHA assessment of a child or young person:

- Determining who has parental responsibility for the child - the person with parental responsibility is normally the nearest relative unless other criteria set out in section 26 of the MHA are met, it is important for the AMHP to obtain any copies of court orders or agreements relating to the above to put on the child or young person’s file
- Ensuring relevant court orders are in place - if the local authority has a full care order for a child they will be the nearest relative unless the child is married or has a civil partner - if a parent or another person has a child arrangements order (previously known as a residence order) for a child they will be the nearest relative (and if there is a joint child arrangements order - previously known as a joint residence order - then both parties would be the nearest relative) unless the child is married or has a civil partner
- Establishing if the child or young person is capable of making his/her own decisions - (i.e. are they Gillick competent for under 16s and do they have capacity for 16 year olds and over) - it is also important to note that we should assume a young person has capacity (similar to an adult) unless proven otherwise and to clearly document any competency/capacity assessments if undertaken
- Establishing If the person with parental responsibility is refusing to consent to the child receiving treatment - on what grounds and are they reasonable
- Determining if the decision in question falls within the Zone of Parental Control (ZOPC) - the ZOPC refers to decisions that parents can make in relation to a child or young person which could involve admitting them into hospital for treatment, see COP 36.9 for further details

In all the above situations, it is important to seek legal advice for further guidance.

### **Principles to Take into Account**

The following principles should be followed with regard to the assessment/treatment of children and young people under the Mental Health Act 1983 (as amended in 2007):

- The best interests of the child or young person must always remain paramount
- Children and young people should be kept as fully informed as possible about their care and treatment; and their views and wishes must always be taken into account
- Unless statute specifically overrides, children and young people should generally be regarded as having the right to make their own decisions, and in particular treatment decisions, when they have sufficient understanding and intelligence
- Any intervention into the life of a child or young person considered necessary by reason of their mental disorder should be the least restrictive possible and result in the least segregation possible from family, friends, community, and school
- All children and young people in hospital should receive appropriate education
- Children and young people have as much right to expect their dignity to be respected as anyone else and also the same right to privacy and confidentiality as anyone else

### **Identifying Age-Appropriate Service for Children and Young People**

Hospital managers have a duty to ensure that the hospital environment of a detained or informal mentally disordered child or young person is “suitable having regard to his (sic) age (subject to needs)” (MHA 1983: s131A, as amended in 2007).

This means that the child or young person should have access to the following: appropriate physical facilities; staff with the right training and knowledge to understand and address the needs of children and young people; a hospital routine that will allow their personal; social and educational development to continue as normally as possible; and as equal access to educational opportunities as their peers.

Hospital managers must also consult a person who is experienced in Child and Adolescent Mental Health Services (CAMHS) cases to ensure the hospital environment is suitable for a child or young person.

### **Independent Mental Health Advocate Service**

If the child or young person is detained under the MHA, it is important for the AMHP to provide that

individual with information on their local Independent Mental Health Advocate (IMHA) service and to refer on their behalf if requested.

### Alternative to Hospital Admission

If a child or young person is not admitted to hospital, they can be referred to their local CAMHS for support if appropriate. If the young person is aged 16 and over, for crisis input they can be referred to their local Adult Crisis Team. They can also be referred to social care if they meet their criteria or other statutory or voluntary organisations relevant to children and young people.

### References

Jones, R. (2018) 'Mental Health Act Manual' 21st Edition. London: Sweet & Maxwell.

Department of Health (1983) 'Mental Health Act 1983 amended 2007) available at <http://www.legislation.gov.uk/ukpga/2007/12/contents>

### Approval and Authorisation History

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Name	Job Title	Date
Authored by Paul Emerson	Senior Practitioner	January 2015
Approved by Carole Robinson	Group Manager	January 2015
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#### Change History

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