



# Mental Health Act 2007

## 2007 CHAPTER 12

### PART 1

#### AMENDMENTS TO MENTAL HEALTH ACT 1983

### CHAPTER 2

#### PROFESSIONAL ROLES

##### *Approved clinicians and responsible clinicians*

#### **9 Amendments to Part 2 of 1983 Act**

- (1) Part 2 of the 1983 Act (compulsory admission to hospital and guardianship) is amended as follows.
- (2) In section 5 (application in respect of patient already in hospital)—
  - (a) in subsection (2), after “registered medical practitioner” insert “or approved clinician”,
  - (b) for subsection (3) substitute—

“(3) The registered medical practitioner or approved clinician in charge of the treatment of a patient in a hospital may nominate one (but not more than one) person to act for him under subsection (2) above in his absence.
- (3A) For the purposes of subsection (3) above—
  - (a) the registered medical practitioner may nominate another registered medical practitioner, or an approved clinician, on the staff of the hospital; and
  - (b) the approved clinician may nominate another approved clinician, or a registered medical practitioner, on the staff of the hospital.”, and



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- (c) in subsection (4), after “a practitioner”, in each place, insert “or clinician”.
- (3) In section 17 (leave of absence)—
  - (a) in subsection (1)—
    - (i) for “responsible medical officer” substitute “responsible clinician”, and
    - (ii) for “that officer” substitute “that clinician”,
  - (b) in subsection (3), for “responsible medical officer” substitute “responsible clinician”, and
  - (c) in subsection (4)—
    - (i) for “responsible medical officer” substitute “responsible clinician”, and
    - (ii) for “that officer” substitute “that clinician”.
- (4) In section 20 (duration of authority)—
  - (a) in subsections (3) and (5), for “responsible medical officer” substitute “responsible clinician”,
  - (b) after subsection (5) insert—
 

“(5A) But the responsible clinician may not furnish a report under subsection (3) above unless a person—

    - (a) who has been professionally concerned with the patient’s medical treatment; but
    - (b) who belongs to a profession other than that to which the responsible clinician belongs,

states in writing that he agrees that the conditions set out in subsection (4) above are satisfied.”,
  - (c) in subsection (6), for “appropriate medical officer” substitute “appropriate practitioner”, and
  - (d) omit subsection (10).
- (5) In section 21B (patients who are taken into custody or return after more than 28 days)—
  - (a) in subsections (2) and (3), for “appropriate medical officer” substitute “appropriate practitioner”, and
  - (b) in subsection (10), omit the definition of “appropriate medical officer”.
- (6) In section 23(2) (persons who may apply for discharge of patient), in paragraphs (a) and (b), for “responsible medical officer” substitute “responsible clinician”.
- (7) In section 24 (visiting and examination of patients), in each place, after “registered medical practitioner” insert “or approved clinician”.
- (8) In section 25(1) (restrictions on discharge by nearest relative)—
  - (a) for “responsible medical officer” substitute “responsible clinician”, and
  - (b) for “that officer” substitute “that clinician”.
- (9) In section 34 (interpretation of Part 2 of the 1983 Act), in subsection (1), insert the following definition at the appropriate place—
 

““the appropriate practitioner” means—



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- (a) in the case of a patient who is subject to the guardianship of a person other than a local social services authority, the nominated medical attendant of the patient; and
- (b) in any other case, the responsible clinician;”.

(10) In that subsection, for the definition of “the responsible medical officer” substitute—

““the responsible clinician” means—

- (a) in relation to a patient liable to be detained by virtue of an application for admission for assessment or an application for admission for treatment, or a community patient, the approved clinician with overall responsibility for the patient’s case;
- (b) in relation to a patient subject to guardianship, the approved clinician authorised by the responsible local social services authority to act (either generally or in any particular case or for any particular purpose) as the responsible clinician;”.

## **10 Amendments to Part 3 of 1983 Act**

(1) Part 3 of the 1983 Act (patients concerned in criminal proceedings) is amended as follows.

(2) In section 35 (remand to hospital for report)—

- (a) in subsections (4) and (5), for “registered medical practitioner” substitute “approved clinician”, and
- (b) in subsection (8), after “registered medical practitioner” insert “or approved clinician”.

(3) In section 36 (remand to hospital for treatment)—

- (a) in subsection (3), for “registered medical practitioner who would be in charge of his treatment” substitute “approved clinician who would have overall responsibility for his case”,
- (b) in subsection (4), for “responsible medical officer” substitute “responsible clinician”, and
- (c) in subsection (7), after “registered medical practitioner” insert “or approved clinician”.

(4) In section 37 (hospital and guardianship orders), in subsection (4), for “registered medical practitioner who would be in charge of his treatment” substitute “approved clinician who would have overall responsibility for his case”.

(5) In section 38 (interim hospital orders)—

- (a) in subsection (4), for “registered medical practitioner who would be in charge of his treatment” substitute “approved clinician who would have overall responsibility for his case”, and
- (b) in subsection (5), for “responsible medical officer”, in each place, substitute “responsible clinician”.

(6) In section 41 (power of courts to restrict discharge from hospital), in subsections (3) (c) and (6), for “responsible medical officer” substitute “responsible clinician”.

(7) In section 44(2) (person who is to give evidence in connection with committal to hospital), for “registered medical practitioner who would be in charge of the offender’s



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treatment” substitute “approved clinician who would have overall responsibility for the offender’s case”.

- (8) In section 45A(5) (person who is to give evidence in connection with hospital or limitation direction), for “registered medical practitioner who would be in charge of his treatment” substitute “approved clinician who would have overall responsibility for his case”.
- (9) In the following provisions, for “responsible medical officer” substitute “responsible clinician”—
  - (a) section 45B(3) (requirement to produce report on person subject to hospital and limitation directions), and
  - (b) section 49(3) (requirement to produce report on person subject to restriction direction).

## **11 Further amendments to Part 3 of 1983 Act**

- (1) Part 3 of the 1983 Act (patients concerned in criminal proceedings) is further amended as follows.
- (2) In section 50(1) (powers of Secretary of State in respect of prisoners under sentence)—
  - (a) for “responsible medical officer” substitute “responsible clinician”, and
  - (b) for “registered medical practitioner” substitute “approved clinician”.
- (3) In section 51 (further provisions as to detained persons)—
  - (a) in subsection (3)—
    - (i) for “responsible medical officer” substitute “responsible clinician”, and
    - (ii) for “registered medical practitioner” substitute “approved clinician”, and
  - (b) in subsection (4), for “responsible medical officer” substitute “responsible clinician”.
- (4) In section 52 (further provisions as to persons remanded by magistrates' courts), in subsections (5) and (7), for “responsible medical officer” substitute “responsible clinician”.
- (5) In section 53(2) (powers of Secretary of State in respect of civil prisoners and persons detained under the Immigration Acts)—
  - (a) for “responsible medical officer” substitute “responsible clinician”, and
  - (b) for “registered medical practitioner” substitute “approved clinician”.
- (6) In section 54 (requirements as to medical evidence), for subsection (2) substitute—
  - “(2) For the purposes of any provision of this Part of this Act under which a court may act on the written evidence of any person, a report in writing purporting to be signed by that person may, subject to the provisions of this section, be received in evidence without proof of the following—
    - (a) the signature of the person; or
    - (b) his having the requisite qualifications or approval or authority or being of the requisite description to give the report.
  - (2A) But the court may require the signatory of any such report to be called to give oral evidence.”



- (7) In section 55 (interpretation of Part 3), for the definition of “responsible medical officer” in subsection (1) substitute—

““responsible clinician”, in relation to a person liable to be detained in a hospital within the meaning of Part 2 of this Act, means the approved clinician with overall responsibility for the patient’s case.”

- (8) In Part 2 of Schedule 1 (modifications in relation to patients subject to special restrictions), in paragraph 3—

- (a) in paragraph (b), for ““the responsible medical officer” and after the words “that officer”” substitute ““the responsible clinician” and after the words “that clinician””, and
- (b) in paragraph (c), for ““by the responsible medical officer”” substitute ““by the responsible clinician””.

## **12 Amendments to Part 4 of 1983 Act**

- (1) Part 4 of the 1983 Act (consent to treatment) is amended as follows.

- (2) In section 57 (requirements as to certification for treatment requiring consent and a second opinion)—

- (a) in subsection (2)(a), for “responsible medical officer” substitute “responsible clinician (if there is one) or the person in charge of the treatment in question”, and
- (b) in subsection (3), for the words from “, and of those persons” to the end substitute “but, of those persons—
  - (a) one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner; and
  - (b) neither shall be the responsible clinician (if there is one) or the person in charge of the treatment in question.”

- (3) In section 58 (requirements as to certification for treatment requiring consent or a second opinion)—

- (a) in subsection (3)—
  - (i) in paragraph (a), for “responsible medical officer” substitute “approved clinician in charge of it”, and
  - (ii) in paragraph (b), for “responsible medical officer” substitute “responsible clinician or the approved clinician in charge of the treatment in question”, and
- (b) in subsection (4), for the words from “, and of those persons” to the end substitute “but, of those persons—
  - (a) one shall be a nurse and the other shall be neither a nurse nor a registered medical practitioner; and
  - (b) neither shall be the responsible clinician or the approved clinician in charge of the treatment in question.”

- (4) In section 61 (review of treatment)—

- (a) in subsection (1)—
  - (i) for “by the responsible medical officer” substitute “by the approved clinician in charge of the treatment”, and



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- (ii) in paragraph (a), for “responsible medical officer” substitute “responsible clinician”,
  - (b) in subsection (2)(b), for “responsible medical officer” substitute “responsible clinician”,
  - (c) in subsection (3), omit the words “to the responsible medical officer”, and
  - (d) after that subsection insert—
    - “(3A) The notice under subsection (3) above shall be given to the approved clinician in charge of the treatment.”
- (5) In section 62(2) (exception to discontinuance of treatment), for “responsible medical officer” substitute “approved clinician in charge of the treatment”.
- (6) In section 63 (treatment not requiring consent), for “responsible medical officer” substitute “approved clinician in charge of the treatment”.
- (7) In section 64 (supplementary provisions for Part 4)—
  - (a) in subsection (1), for the words from ““the responsible” to “treatment” substitute ““the responsible clinician” means the approved clinician with overall responsibility for the case”, and
  - (b) after that subsection insert—
    - “(1A) References in this Part of this Act to the approved clinician in charge of a patient’s treatment shall, where the treatment in question is a form of treatment to which section 57 above applies, be construed as references to the person in charge of the treatment.”

### **13 Amendments to Part 5 of 1983 Act**

- (1) Part 5 of the 1983 Act (Mental Health Review Tribunals) is amended as follows.
- (2) In the following provisions, after “registered medical practitioner” insert “or approved clinician”—
  - (a) section 67(2) (power to visit and examine patient for the purposes of a tribunal reference), and
  - (b) section 76(1) (power to visit and examine patient for the purposes of a tribunal application).
- (3) In section 79 (interpretation of Part 5), in subsection (6), for “, and “the responsible medical officer” means the responsible medical officer,” substitute “, and “the responsible clinician” means the responsible clinician,”.

### **14 Amendments to other provisions of 1983 Act**

- (1) The 1983 Act is amended as follows.
- (2) In section 118 (code of practice), in subsection (1)(a), after “registered medical practitioners” insert “, approved clinicians”.
- (3) In the following provisions, after “registered medical practitioner” insert “or approved clinician”—
  - (a) section 120(4)(a) (right of person authorised by Secretary of State etc to visit patients), and



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- (b) section 121(5)(a) (right of person authorised by Mental Health Act Commission to visit patients).
- (4) In section 134 (correspondence of patients), in subsection (1), for “registered medical practitioner in charge of the treatment of the patient” substitute “approved clinician with overall responsibility for the patient’s case”.
- (5) In section 145 (general interpretation), in subsection (1), insert the following definition at the appropriate place—
  - ““approved clinician” means a person approved by the Secretary of State (in relation to England) or by the Welsh Ministers (in relation to Wales) to act as an approved clinician for the purposes of this Act;”.

## **15 Amendments to other Acts**

- (1) In section 116B(5) of the Army Act 1955 (3 & 4 Eliz. 2 c. 18) (provision for person subject to hospital order and restriction order to be remitted for trial, etc)—
  - (a) for “the responsible medical officer” substitute “the responsible clinician”, and
  - (b) for the words from “In this subsection” to the end substitute—
    - “In this subsection “responsible clinician” means the responsible clinician within the meaning of Part 3 of the 1983 Act.”
- (2) In section 116B(5) of the Air Force Act 1955 (3 & 4 Eliz. 2 c. 19) (provision for person subject to hospital order and restriction order to be remitted for trial, etc)—
  - (a) for “the responsible medical officer” substitute “the responsible clinician”, and
  - (b) for the words from “In this subsection” to the end substitute—
    - “In this subsection “responsible clinician” means the responsible clinician within the meaning of Part 3 of the 1983 Act.”
- (3) In section 63B(5) of the Naval Discipline Act 1957 (c. 53) (provision for person subject to hospital order and restriction order to be remitted for trial, etc)—
  - (a) for “the responsible medical officer” substitute “the responsible clinician”, and
  - (b) for the words from “In this subsection” to the end substitute—
    - “In this subsection “responsible clinician” means the responsible clinician within the meaning of Part 3 of the 1983 Act.”
- (4) In section 5A(4) of the Criminal Procedure (Insanity) Act 1964 (c. 84) (provision for person subject to hospital order and restriction order to be remitted for trial, etc), for “the responsible medical officer” substitute “the responsible clinician”.
- (5) In section 171 of the Armed Forces Act 2006 (c. 52) (remission for trial)—
  - (a) in subsection (1), for “the responsible medical officer” substitute “the responsible clinician”, and
  - (b) in subsection (4) for the definition of “the responsible medical officer” substitute—
    - ““the responsible clinician” means the responsible clinician within the meaning of Part 3 of the Mental Health Act 1983.”



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- (6) On the commencement of the repeal of an enactment mentioned in subsection (1), (2) or (3) by the Armed Forces Act 2006, that subsection shall also cease to have effect.

**16      Certain registered medical practitioners to be treated as approved under section 12 of 1983 Act**

In section 12 of the 1983 Act (general provisions as to medical recommendations), after subsection (2) insert—

“(2A) A registered medical practitioner who is an approved clinician shall be treated as also approved for the purposes of this section under subsection (2) above as having special experience as mentioned there.”

**17      Regulations as to approvals in relation to England and Wales**

After section 142 of the 1983 Act, insert—

**“142A Regulations as to approvals in relation to England and Wales**

The Secretary of State jointly with the Welsh Ministers may by regulations make provision as to the circumstances in which—

- (a) a practitioner approved for the purposes of section 12 above, or  
 (b) a person approved to act as an approved clinician for the purposes of this Act,

approved in relation to England is to be treated, by virtue of his approval, as approved in relation to Wales too, and vice versa.”

*Approved mental health professionals*

**18      Approved mental health professionals**

For section 114 of the 1983 Act (appointment of approved social workers) and the cross-heading immediately above it substitute—

*“Approved mental health professionals*

**114 Approval by local social services authority**

- (1) A local social services authority may approve a person to act as an approved mental health professional for the purposes of this Act.
- (2) But a local social services authority may not approve a registered medical practitioner to act as an approved mental health professional.
- (3) Before approving a person under subsection (1) above, a local social services authority shall be satisfied that he has appropriate competence in dealing with persons who are suffering from mental disorder.
- (4) The appropriate national authority may by regulations make provision in connection with the giving of approvals under subsection (1) above.



- (5) The provision which may be made by regulations under subsection (4) above includes, in particular, provision as to—
  - (a) the period for which approvals under subsection (1) above have effect;
  - (b) the courses to be undertaken by persons before such approvals are to be given and during the period for which such approvals have effect;
  - (c) the conditions subject to which such approvals are to be given; and
  - (d) the factors to be taken into account in determining whether persons have appropriate competence as mentioned in subsection (3) above.
- (6) Provision made by virtue of subsection (5)(b) above may relate to courses approved or provided by such person as may be specified in the regulations (as well as to courses approved under section 114A below).
- (7) An approval by virtue of subsection (6) above may be in respect of a course in general or in respect of a course in relation to a particular person.
- (8) The power to make regulations under subsection (4) above includes power to make different provision for different cases or areas.
- (9) In this section “the appropriate national authority” means—
  - (a) in relation to persons who are or wish to become approved to act as approved mental health professionals by a local social services authority whose area is in England, the Secretary of State;
  - (b) in relation to persons who are or wish to become approved to act as approved mental health professionals by a local social services authority whose area is in Wales, the Welsh Ministers.
- (10) In this Act “approved mental health professional” means—
  - (a) in relation to acting on behalf of a local social services authority whose area is in England, a person approved under subsection (1) above by any local social services authority whose area is in England, and
  - (b) in relation to acting on behalf of a local social services authority whose area is in Wales, a person approved under that subsection by any local social services authority whose area is in Wales.”

## **19 Approval of courses etc for approved mental health professionals**

After section 114 of the 1983 Act insert—

### **“114A Approval of courses etc for approved mental health professionals**

- (1) The relevant Council may, in accordance with rules made by it, approve courses for persons who are or wish to become approved mental health professionals.
- (2) For that purpose—
  - (a) subsections (2) to (4)(a) and (7) of section 63 of the Care Standards Act 2000 apply as they apply to approvals given, rules made and courses approved under that section; and
  - (b) sections 66 and 71 of that Act apply accordingly.
- (3) In subsection (1), “the relevant Council” means—



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- (a) in relation to persons who are or wish to become approved to act as approved mental health professionals by a local social services authority whose area is in England, the General Social Care Council;
  - (b) in relation to persons who are or wish to become approved to act as approved mental health professionals by a local social services authority whose area is in Wales, the Care Council for Wales.
- (4) The functions of an approved mental health professional shall not be considered to be relevant social work for the purposes of Part 4 of the Care Standards Act 2000.
- (5) The General Social Care Council and the Care Council for Wales may also carry out, or assist other persons in carrying out, research into matters relevant to training for approved mental health professionals.”

## **20 Amendment to section 62 of Care Standards Act 2000**

In section 62 of the Care Standards Act 2000 (c. 14) (codes of practice), after subsection (1) insert—

“(1A) The codes may also lay down standards of conduct and practice expected of social workers when carrying out the functions of an approved mental health professional (as defined in section 114 of the Mental Health Act 1983).”

## **21 Approved mental health professionals: further amendments**

Schedule 2 (which contains amendments in connection with section 18) has effect.

### *Conflicts of interest in professional roles*

## **22 Conflicts of interest**

- (1) The 1983 Act is amended as follows.
- (2) In section 11 (general provisions as to applications), after subsection (1) insert—
 

“(1A) No application mentioned in subsection (1) above shall be made by an approved mental health professional if the circumstances are such that there would be a potential conflict of interest for the purposes of regulations under section 12A below.”
- (3) In section 12 (general provisions as to medical recommendations), in subsection (1), after “this Part of this Act” insert “or a guardianship application”.
- (4) In that section, for subsections (3) to (7) substitute—
 

“(3) No medical recommendation shall be given for the purposes of an application mentioned in subsection (1) above if the circumstances are such that there would be a potential conflict of interest for the purposes of regulations under section 12A below.”
- (5) After that section insert—



### **“12A Conflicts of interest**

- (1) The appropriate national authority may make regulations as to the circumstances in which there would be a potential conflict of interest such that—
  - (a) an approved mental health professional shall not make an application mentioned in section 11(1) above;
  - (b) a registered medical practitioner shall not give a recommendation for the purposes of an application mentioned in section 12(1) above.
- (2) Regulations under subsection (1) above may make—
  - (a) provision for the prohibitions in paragraphs (a) and (b) of that subsection to be subject to specified exceptions;
  - (b) different provision for different cases; and
  - (c) transitional, consequential, incidental or supplemental provision.
- (3) In subsection (1) above, “the appropriate national authority” means—
  - (a) in relation to applications in which admission is sought to a hospital in England or to guardianship applications in respect of which the area of the relevant local social services authority is in England, the Secretary of State;
  - (b) in relation to applications in which admission is sought to a hospital in Wales or to guardianship applications in respect of which the area of the relevant local social services authority is in Wales, the Welsh Ministers.
- (4) References in this section to the relevant local social services authority, in relation to a guardianship application, are references to the local social services authority named in the application as guardian or (as the case may be) the local social services authority for the area in which the person so named resides.”
- (6) In section 13 (duty to make applications for admission or guardianship), in subsection (5), after “section 11(4) above” insert “or of regulations under section 12A above”.