



Health and Social Care Act 2012

2012 CHAPTER 7

PART 1

THE HEALTH SERVICE IN ENGLAND

Functions relating to mental health matters

38 Approval functions

(1) After section 12 of the Mental Health Act 1983 insert—

“12ZA Agreement for exercise of approval function: England

- (1) The Secretary of State may enter into an agreement with another person for an approval function of the Secretary of State to be exercisable by the Secretary of State concurrently—
 - (a) with that other person, and
 - (b) if a requirement under section 12ZB has effect, with the other person by whom the function is exercisable under that requirement.
- (2) In this section and sections 12ZB and 12ZC, “approval function” means—
 - (a) the function under section 12(2), or
 - (b) the function of approving persons as approved clinicians.
- (3) An agreement under this section may, in particular, provide for an approval function to be exercisable by the other party—
 - (a) in all circumstances or only in specified circumstances;
 - (b) in all areas or only in specified areas.
- (4) An agreement under this section may provide for an approval function to be exercisable by the other party—
 - (a) for a period specified in the agreement, or
 - (b) for a period determined in accordance with the agreement.

Status: This is the original version (as it was originally enacted).

- (5) The other party to an agreement under this section must comply with such instructions as the Secretary of State may give with respect to the exercise of the approval function.
- (6) An instruction under subsection (5) may require the other party to cease to exercise the function to such extent as the instruction specifies.
- (7) The agreement may provide for the Secretary of State to pay compensation to the other party in the event of an instruction such as is mentioned in subsection (6) being given.
- (8) An instruction under subsection (5) may be given in such form as the Secretary of State may determine.
- (9) The Secretary of State must publish instructions under subsection (5) in such form as the Secretary of State may determine; but that does not apply to an instruction such as is mentioned in subsection (6).
- (10) An agreement under this section may provide for the Secretary of State to make payments to the other party; and the Secretary of State may make payments to other persons in connection with the exercise of an approval function by virtue of this section.

12ZB Requirement to exercise approval functions: England

- (1) The Secretary of State may impose a requirement on the National Health Service Commissioning Board (“the Board”) or a Special Health Authority for an approval function of the Secretary of State to be exercisable by the Secretary of State concurrently—
 - (a) with the Board or (as the case may be) Special Health Authority, and
 - (b) if an agreement under section 12ZA has effect, with the other person by whom the function is exercisable under that agreement.
- (2) The Secretary of State may, in particular, require the body concerned to exercise an approval function—
 - (a) in all circumstances or only in specified circumstances;
 - (b) in all areas or only in specified areas.
- (3) The Secretary of State may require the body concerned to exercise an approval function—
 - (a) for a period specified in the requirement, or
 - (b) for a period determined in accordance with the requirement.
- (4) Where a requirement under subsection (1) is imposed, the Board or (as the case may be) Special Health Authority must comply with such instructions as the Secretary of State may give with respect to the exercise of the approval function.
- (5) An instruction under subsection (4) may be given in such form as the Secretary of State may determine.
- (6) The Secretary of State must publish instructions under subsection (4) in such form as the Secretary of State may determine.

Status: This is the original version (as it was originally enacted).

- (7) Where the Board or a Special Health Authority has an approval function by virtue of this section, the function is to be treated for the purposes of the National Health Service Act 2006 as a function that it has under that Act.
- (8) The Secretary of State may make payments in connection with the exercise of an approval function by virtue of this section.

12ZC Provision of information for the purposes of section 12ZA or 12ZB

- (1) A relevant person may provide another person with such information as the relevant person considers necessary or appropriate for or in connection with—
 - (a) the exercise of an approval function; or
 - (b) the exercise by the Secretary of State of the power—
 - (i) to enter into an agreement under section 12ZA;
 - (ii) to impose a requirement under section 12ZB; or
 - (iii) to give an instruction under section 12ZA(5) or 12ZB(4).
- (2) The relevant persons are—
 - (a) the Secretary of State;
 - (b) a person who is a party to an agreement under section 12ZA; or
 - (c) if the Secretary of State imposes a requirement under section 12ZB on the National Health Service Commissioning Board or a Special Health Authority, the Board or (as the case may be) Special Health Authority.
- (3) This section, in so far as it authorises the provision of information by one relevant person to another relevant person, has effect notwithstanding any rule of common law which would otherwise prohibit or restrict the provision.
- (4) In this section, “information” includes documents and records.”
- (2) In section 54(1) of that Act (requirement for certain medical evidence etc. to be from practitioner approved under section 12 of the Act), after “the Secretary of State” insert “, or by another person by virtue of section 12ZA or 12ZB above,”.
- (3) In section 139(4) of that Act (protection for acts done in pursuance of the Act: exceptions), at the end insert “or against a person who has functions under this Act by virtue of section 12ZA in so far as the proceedings relate to the exercise of those functions”.
- (4) In section 145(1) of that Act (interpretation), in the definition of “approved clinician”, after “the Secretary of State” insert “or another person by virtue of section 12ZA or 12ZB above”.
- (5) In each of the following provisions, after “the Secretary of State” insert “, or by another person by virtue of section 12ZA or 12ZB of that Act,”—
 - (a) in section 8(2) of the Criminal Procedure (Insanity) Act 1964 (interpretation), in the definition of “duly approved”,
 - (b) in section 51(1) of the Criminal Appeal Act 1968 (interpretation), in the definition of “duly approved”,
 - (c) in section 6(1) of the Criminal Procedure (Insanity and Unfitness to Plead) Act 1991 (interpretation), in the definition of “duly approved”,

Status: This is the original version (as it was originally enacted).

- (d) in section 157(6) of the Criminal Justice Act 2003 (mentally disordered offenders: definition of “medical report”),
- (e) in section 172(1) of the Armed Forces Act 2006 (fitness to stand trial etc: definition of “duly approved”), and
- (f) in section 258(5) of that Act (mentally disordered offenders), in the definition of “medical report”.

39 Discharge of patients

- (1) In section 23 of the Mental Health Act 1983 (discharge of patients), omit subsections (3) and (3A).
- (2) In section 24 of that Act (visiting and examination of patients), omit subsections (3) and (4).
- (3) In Schedule 1 to that Act (application of certain provisions of that Act to patients subject to hospital and guardianship orders)—
 - (a) in Part 1, in paragraph 1, omit “24(3) and (4),” and
 - (b) in Part 2, in paragraph 1, omit “24(3) and (4),”.
- (4) In consequence of the repeals made by this section—
 - (a) in the National Health Service and Community Care Act 1990, in Schedule 9—
 - (i) omit paragraph 24(3)(a) and the “and” following it, and
 - (ii) omit paragraph 24(4),
 - (b) in the Health Authorities Act 1995, in Schedule 1, omit paragraph 107(2)(a) and (3),
 - (c) in the Care Standards Act 2000, in Schedule 4, omit paragraph 9(3),
 - (d) in the Health and Social Care (Community Health and Standards) Act 2003, in Schedule 4, omit paragraphs 53(a) and 54,
 - (e) in the Domestic Violence, Crime and Victims Act 2004—
 - (i) omit sections 37A(5), 38A(3), 43A(5) and 44A(3),
 - (ii) in section 37A(7)(a), omit “, (5),” and
 - (iii) in section 43A(7), omit “, (5),” and
 - (f) in the Mental Health Act 2007, in Schedule 3, omit paragraphs 10(5) and (6) and 11(3) and (4).

40 After-care

- (1) Section 117 of the Mental Health Act 1983 (after-care) is amended as follows.
- (2) In subsection (2)—
 - (a) after “duty of the” insert “clinical commissioning group or”,
 - (b) omit “Primary Care Trust or” in each place it appears, and
 - (c) after “such time as the” insert “clinical commissioning group or”.
- (3) After subsection (2C) insert—

“(2D) Subsection (2), in its application to the clinical commissioning group, has effect as if for “to provide” there were substituted “to arrange for the provision of”.

- (2E) The Secretary of State may by regulations provide that the duty imposed on the clinical commissioning group by subsection (2) is, in the circumstances or to the extent prescribed by the regulations, to be imposed instead on another clinical commissioning group or the National Health Service Commissioning Board.
- (2F) Where regulations under subsection (2E) provide that the duty imposed by subsection (2) is to be imposed on the National Health Service Commissioning Board, subsection (2D) has effect as if the reference to the clinical commissioning group were a reference to the National Health Service Commissioning Board.
- (2G) Section 272(7) and (8) of the National Health Service Act 2006 applies to the power to make regulations under subsection (2E) as it applies to a power to make regulations under that Act.”
- (4) In subsection (3)—
- (a) after “section “the” insert “clinical commissioning group or”,
 - (b) omit “Primary Care trust or” in each place it appears, and
 - (c) after “means the”, in the first place it appears, insert “clinical commissioning group or”.
- (5) In section 275 of the National Health Service Act 2006 (interpretation) after subsection (4) insert—
- “(5) In each of the following, the reference to section 3 includes a reference to section 117 of the Mental Health Act 1983 (after-care)—
- (a) in section 223K(8), paragraph (a) of the definition of “relevant services”,
 - (b) in section 244(3), paragraph (a)(i) of the definition of “relevant health service provider”,
 - (c) in section 252A(10), the definition of “service arrangements”,
 - (d) section 253(1A)(d)(ii).”
- (6) In section 48 of the Health and Social Care Act 2008 (special reviews and investigations), in subsection (2)(ba), after “the National Health Service Act 2006” insert “or section 117 of the Mental Health Act 1983 (after-care)”.
- (7) In section 97 of that Act (general interpretation of Part 1), in subsection (2A), after “section 7A of that Act” insert “or section 117 of the Mental Health Act 1983 (after-care)”.
- (8) In consequence of the repeals made by subsections (2)(b) and (4)(b), omit paragraph 47 of Schedule 2 to the National Health Service Reform and Health Care Professions Act 2002.

41 Provision of pocket money for in-patients

- (1) Section 122 of the Mental Health Act 1983 (provision of pocket money for in-patients) is amended as follows.
- (2) In subsection (1)—
- (a) for “Secretary of State may” substitute “Welsh Ministers may (in relation to Wales)”,

Status: This is the original version (as it was originally enacted).

- (b) for “he thinks fit” substitute “the Welsh Ministers think fit”,
 - (c) for “their” substitute “those persons”,
 - (d) for “him” substitute “the Welsh Ministers”, and
 - (e) for “they” substitute “those persons”.
- (3) In subsection (2)—
- (a) omit “the National Health Service Act 2006 and”, and
 - (b) for “either of those Acts” substitute “that Act”.
- (4) In section 146 of that Act (application to Scotland), omit “122,”.

42 Transfers to and from special hospitals

- (1) Omit section 123 of the Mental Health Act 1983 (transfers to and from special hospitals).
- (2) In section 68A of that Act (power to reduce periods after which cases must be referred to tribunal), in subsection (4)—
- (a) after paragraph (c), insert “or”,
 - (b) omit the “or” following paragraph (d), and
 - (c) omit paragraph (e).
- (3) In section 138 of that Act (retaking of patients escaping from custody), in subsection (4)(a), omit “or under section 123 above”.
- (4) In consequence of the repeal made by subsection (1), omit paragraph 67 of Schedule 4 to the Health Act 1999.
- (5) This section does not affect—
- (a) the authority for the detention of a person who is liable to be detained under the Mental Health Act 1983 before the commencement of this section,
 - (b) that Act in relation to any application, order or direction for admission or removal to a hospital made under that Act before that commencement, or
 - (c) the authority for the retaking of a person who, before that commencement, escapes while being taken to or from a hospital as mentioned in section 138(4)(a) of that Act.

43 Independent mental health advocates

- (1) In section 130A of the Mental Health Act 1983 (independent mental health advocates: England), in subsection (1)—
- (a) for “The Secretary of State” substitute “A local social services authority whose area is in England”, and
 - (b) at the end insert “for whom the authority is responsible for the purposes of this section”.
- (2) In subsection (4) of that section, for “the Secretary of State” substitute “a local social services authority”.
- (3) In section 130C of that Act (provision supplementary to section 130A), after subsection (4) insert—
- “(4A) A local social services authority is responsible for a qualifying patient if—

Status: This is the original version (as it was originally enacted).

- (a) in the case of a qualifying patient falling within subsection (2)(a) above, the hospital or registered establishment in which he is liable to be detained is situated in that authority's area;
- (b) in the case of a qualifying patient falling within subsection (2)(b) above, that authority is the responsible local social services authority within the meaning of section 34(3) above;
- (c) in the case of a qualifying patient falling within subsection (2)(c), the responsible hospital is situated in that authority's area;
- (d) in the case of a qualifying patient falling within subsection (3)—
 - (i) in a case where the patient has capacity or is competent to do so, he nominates that authority as responsible for him for the purposes of section 130A above, or
 - (ii) in any other case, a donee or deputy or the Court of Protection, or a person engaged in caring for the patient or interested in his welfare, nominates that authority on his behalf as responsible for him for the purposes of that section.

(4B) In subsection (4A)(d) above—

- (a) the reference to a patient who has capacity is to be read in accordance with the Mental Capacity Act 2005;
- (b) the reference to a donee is to a donee of a lasting power of attorney (within the meaning of section 9 of that Act) created by the patient, where the donee is acting within the scope of his authority and in accordance with that Act;
- (c) the reference to a deputy is to a deputy appointed for the patient by the Court of Protection under section 16 of that Act, where the deputy is acting within the scope of his authority and in accordance with that Act."

(4) In Schedule 1 to the Local Authority Social Services Act 1970 (social services functions), in the entry for the Mental Health Act 1983, at the appropriate place insert—

"Section 130A

Making arrangements to enable independent mental health advocates to be available to help qualifying patients".

44 Patients' correspondence

- (1) In section 134 of the Mental Health Act 1983 (patients' correspondence), in subsection (1)—
 - (a) before "the approved clinician" insert "or", and
 - (b) omit "or the Secretary of State".
- (2) Subsection (1) of this section does not affect the validity of any requests made to the Secretary of State under section 134(1) of that Act and having effect immediately before the commencement of this section.

45 Notification of hospitals having arrangements for special cases

- (1) In section 140 of the Mental Health Act 1983 (notification of hospitals having arrangements for special cases)—
 - (a) after “the duty of” insert “every clinical commissioning group and of”,
 - (b) omit “every Primary Care Trust and of”,
 - (c) after “the area of the” insert “clinical commissioning group or”,
 - (d) omit “Primary Care Trust or” in the first place it appears,
 - (e) after “available to the” insert “clinical commissioning group or”, and
 - (f) omit “Primary Care Trust or” in the second place it appears.
- (2) In consequence of the repeals made by this section, in the National Health Service Reform and Health Care Professions Act 2002, in Schedule 2, omit paragraph 48(a) and (c).