

MENTAL HEALTH ACT 1983

INSTRUCTIONS WITH RESPECT TO THE EXERCISE OF AN APPROVAL FUNCTION IN RELATION TO SECTION 12 DOCTORS 2015

The Secretary of State gives these Instructions in exercise of the powers conferred by section 12ZA(5) of the Mental Health Act 1983(a):

PART 1

Application, etc.

Application, commencement and interpretation

1.—(1) These Instructions are given to a person with whom the Secretary of State has entered into an agreement under section 12ZA of the Mental Health Act 1983.

(2) These Instructions apply in relation to the approving of persons to act as section 12 doctors in relation to England.

(3) These Instructions come into force on 5th January 2016 .

(4) The Mental Health Act 1983 Instructions with Respect to the Exercise of Approval Functions 2014, which were signed on 11 February 2014 and effective from 17 February 2014, are revoked from 5th January 2016.

(5) In these Instructions —

“the 1983 Act” means the Mental Health Act 1983;

“the approval function” means the function of approving a person to act as a section 12 doctor;

“approve” and “approval” include “re-approve” and “re-approval”;

“approved mental health professional” has the meaning given by section 114 of the 1983 Act(b);

“approving body” means a person with whom the Secretary of State has entered into an agreement under section 12ZA of the 1983 Act for the function of approving persons to act as section 12 doctors to be exercisable by the Secretary of State concurrently with that person;

“consultant psychiatrist” means a person who is a specialist in psychiatry and who holds a consultant post with a health service provider;

“forensic physician” means a person the approving body considers is a forensic physician or a forensic medical examiner;

“induction training course” means a course approved by an approving body for the purpose of the induction of a prospective section 12 doctor;

“medical treatment” has the meaning given by section 145(1) and (4) of the 1983 Act(c);

“mental disorder” has the meaning given by section 1(2) of the 1983 Act(d);

“the performers list” means the list of medical practitioners prepared, maintained and published under regulations made under section 91 of the National Health Service Act 2006(e)

(a) 1983 c.20. Section 12ZA was inserted by section 38(1) of the Health and Social Care Act 2012 (c.7) (“the 2012 Act”).

(b) Section 114 of the 1983 Act was substituted by section 18 of the Mental Health Act 2007 (“the 2007 Act”).

(c) The definition of “medical treatment” was amended by section 7 of the 2007 Act.

(d) The definition of “mental disorder” was substituted by section 1(1) and (2) of the 2007 Act.

(e) 2006 c.41. Section 91 has been amended by section 55(1) of, and paragraph 35 of Schedule 4 to, the Health and Social Care 2012 Act (c.7).

or section 49 of the National Health Service (Wales) Act 2006(a);

“professional requirements” means the requirements set out in the Schedule to these Instructions;

“refresher training course” means a course approved by an approving body for the purpose of refreshing the skills and competencies of a person who is, or has previously been, a section 12 doctor;

“the responsible clinician” has the meaning given by section 34(1) of the 1983 Act(b);

“second opinion appointed doctor” means a registered medical practitioner appointed by the Care Quality Commission for the purposes of Part 4 of the 1983 Act;

“section 12 doctor” means a practitioner who is approved for the purposes of section 12 of the 1983 Act in relation to England, except in paragraph 3 sub-paragraphs (4)(b), (5)(d), (6)(c) and (7)(c) and in the Schedule, where it means a practitioner who is approved for the purposes of section 12 of the 1983 Act in relation to England or Wales(c);

“the Specialist Register” means the Specialist Register kept by the General Medical Council under section 34D of the Medical Act 1983(d);

“specialist in psychiatry” means a person included in the Specialist Register as a specialist in psychiatry; and

“treatment” means medical treatment for mental disorder.

PART 2

Approvals: General

Function of approval

2. The Secretary of State instructs an approving body to exercise the approval function in accordance with these Instructions and any agreement made under section 12ZA of the 1983 Act which is in force between the Secretary of State and the approving body.

Approval under section 12(2) of the 1983 Act

3.—(1) Subject to paragraph 4, an approving body must approve a person under section 12(2) of the 1983 Act (approval of practitioners giving medical recommendations) to act as a section 12 doctor where the person (“the applicant”) has applied for approval and the approving body—

- (a) is satisfied that the applicant satisfies sub-paragraphs (2) to (7) of this paragraph; and
- (b) the approving body has obtained references from the referees described in sub-paragraph (7) concerning the applicant’s ability to understand and implement the 1983 Act and is satisfied with those references.

(2) The applicant satisfies the professional requirements.

(3) The applicant—

- (a) has provided an enhanced criminal record certificate under section 113B of the Police Act 1997(e) (“an enhanced criminal record certificate”) including suitability information

(a) 2006 c.42. S.I. 2004/1020, which was made in exercise of the powers conferred by sections 28X and 126(4) of the National Health Service Act 1977 (c.49), have effect as if made under sections 49 and 63 of the National Health Service (Wales) Act 2006 (c.42) by virtue of section 4 of, and paragraph 1 of Part 1 of Schedule 2 to, the National Health Service (Consequential Provisions) Act 2006 (c.43).

(b) The definition of “the responsible medical officer” was substituted for the definition of “the responsible clinician” by section 9(1) and (10) of the 2007 Act.

(c) Section 12 doctors approved in relation to Wales are treated as approved in relation to England under regulations made under section 134A of the 1983 Act. See S.I. 2008/1204.

(d) 1983 c.54. Section 34D was inserted by article 4 of, and paragraph 10 of Schedule 1 to, S.I. 2010/234.

(e) 1997 c.50. Section 113B was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c.15) and has been amended subsequently.

- relating to children under section 113BA(a) and vulnerable adults under section 113BB(b) of that Act;
- (b) is a person who is, or is a partner in a partnership that is, registered under Chapter 2 of the Health and Social Care Act 2008(c);
 - (c) is currently employed by a person or a partner so registered; or
 - (d) has provided an enhanced criminal record certificate which is subject to up-date arrangements within the meaning given in section 116A(3)(d) of the Police Act 1997 (updating certificates) and has provided up-date information that there is no information recorded in central records which would be included in a new certificate but is not included in the current certificate.
- (4) The applicant—
- (a) has, within the twelve month period immediately preceding the date of the application for approval, completed an induction training course; or
 - (b) is or has been, within the twelve month period immediately preceding the date of the application, a section 12 doctor and has completed a refresher training course within the twelve month period immediately preceding the date of the application.
- (5) The applicant has provided evidence which the approving body considers shows satisfactory participation in continuing professional development and—
- (a) in the case of a psychiatrist, has included evidence by way of a certificate from the Royal College of Psychiatrists stating that the applicant is in good professional standing for continuing professional development or other evidence which the approving body considers demonstrates sufficient and suitable continuing professional development;
 - (b) in the case of a psychiatrist in a training programme recognised by the Royal College of Psychiatrists, has included evidence from the applicant’s programme director, or a person the approving body considers to be equivalent to a programme director, that the applicant has made satisfactory progress in their continuing professional development for the purposes of being approved to act as a section 12 doctor;
 - (c) in the case of a general practitioner on the performers list, has included evidence of participation in an annual appraisal process required as a condition of continued inclusion in the performers list;
 - (d) in the case of a general practitioner who has previously been but is not currently on the performers list and who has previously been a section 12 doctor, has included evidence of participation in an annual appraisal process that satisfies the requirements of the General Medical Council; or
 - (e) in the case of a forensic physician who is neither a psychiatrist nor a general practitioner on the performers list—
 - (i) has included evidence of participation in an annual professional appraisal which is satisfactory to the General Medical Council, and
 - (ii) has included evidence which the approving body considers demonstrates sufficient and suitable continuing professional development.
- (6) The applicant has provided evidence to the satisfaction of the approving body—
- (a) of a professional qualification which the approving body considers to be relevant;
 - (b) of inclusion in the performers list, if applicable; and

(a) Section 113BA was inserted in relation to England, Wales and Northern Ireland by section 63(1) of, and paragraph 14(1) and (4) of Part 2 of Schedule 9 to, the Safeguarding Vulnerable Groups Act 2006 (c.47) (“the 2006 Act”) and has been amended subsequently.

(b) Section 113BB was inserted in relation to England, Wales and Northern Ireland by section 63(1) of, paragraph 14(1) and (4) of Part 2 of Schedule 9 to, the 2006 Act and has been amended subsequently.

(c) 2008 c.14.

(d) Section 116A was inserted in relation to England and Wales by section 83 of the Protection of Freedoms Act 2012 (c.9), and has been amended subsequently.

- (c) if the applicant has completed all of their training, or a part of their training which the approving body considers substantial, outside England or Wales, and has not previously been a section 12 doctor, of the steps the applicant has taken to familiarise themselves with psychiatric practice and the organisation of psychiatric services in England or Wales, including the practical application of the 1983 Act.

(7) The applicant has provided an up to date curriculum vitae and the contact details of two referees who meet the following requirements—

- (a) each referee must have known the applicant for a period of time that the approving body considers reasonable;
- (b) at least one referee must have worked with the applicant in England or Wales for a period of time which the approving body considers reasonable in the twelve month period immediately preceding the date of the application; and
- (c) one referee must be a consultant psychiatrist who is a section 12 doctor and the other referee must be one of the following—
 - (i) an approved clinician;
 - (ii) a consultant psychiatrist who is a section 12 doctor;
 - (iii) a person who is currently responsible for undertaking the applicant’s professional appraisal;
 - (iv) an approved mental health professional with whom the applicant has worked for a period of time which the approving body considers reasonable within the twelve month period immediately preceding the date of the application; or
 - (v) the applicant’s current medical director or clinical director (or a person the approving body considers to be equivalent to the applicant’s current medical or clinical director).

Subsequent approvals

4.—(1) An approving body must approve a person under section 12(2) of the 1983 Act to act as a section 12 doctor where the person (“the applicant”) has, within the twelve month period following the expiry of the applicant’s latest period of approval, applied for approval and the approving body considers that the applicant has provided satisfactory evidence of ongoing involvement in the diagnosis of mental disorder or treatment.

(2) That evidence may be shown by the undertaking of one or more of the following activities in the twelve month period immediately preceding the date of the application—

- (a) acting as a medical member of the Health, Education and Social Care Chamber of the First-tier Tribunal(**a**) or the Mental Health Review Tribunal for Wales(**b**);
- (b) carrying out assessments as a second opinion appointed doctor for the Care Quality Commission(**c**) or the Healthcare Inspectorate Wales(**d**);
- (c) giving evidence to, or preparing reports or assessments for, a court for the purposes of—
 - (i) Part 3 of the 1983 Act (patients concerned in criminal proceedings or under sentence);
 - (ii) the Mental Capacity Act 2005(**e**); or
 - (iii) the Children Act 1989(**f**);

(a) The Health, Education and Social Care Chamber of the First-tier Tribunal is allocated its functions under article 4(i) of S.I. 2010/2655.

(b) The Mental Health Review for Wales was established under section 63 of the Act, as amended by section 2(1) of, and paragraph 107(6) of Schedule 1 to, the Health Authorities Act 1995 (c. 17) and article 9(1) of, and paragraphs 39 and 45 of Schedule 3 to, S.I. 2008/2833.

(c) The Care Quality Commission was established by section 1 of the Health and Social Care Act 2008.

(d) The Health Inspectorate Wales is a part of the Welsh Government and carries out functions of the Welsh Ministers.

(e) 2005 c.9.

(f) 1989 c.41.

- (d) carrying out at least two assessments of mental disorder for the purposes of making medical recommendations under the 1983 Act;
 - (e) acting as the responsible clinician in relation to a patient or as an approved clinician in charge of the treatment of a patient; or
 - (f) being employed in a clinical post and having a level of responsibility for the diagnosis of mental disorder or treatment which the approving body considers to be substantial.
- (3) An approving body must approve a person (“P”) under section 12(2) of the 1983 Act to act as a section 12 doctor where—
- (a) P has previously been approved as a section 12 doctor and P’s approval ended because the professional body responsible for P’s professional registration ended that registration;
 - (b) P is registered with the body responsible for P’s professional registration;
 - (c) P, or the professional body responsible for P’s professional registration, has informed the approving body that P is registered with the body; and
 - (d) P has provided any further information and/or evidence the approving body considers reasonably necessary in relation to the period of time that P ceased to act as a section 12 doctor and the approving body is satisfied with that information and/or evidence.

Period of approval

5.—(1) Subject to sub-paragraph (2), an approving body may approve a person to act as a section 12 doctor for a period of up to five years commencing from the date of the approval.

(2) Where paragraph 4(3) applies, the approving body must approve a person to act as a section 12 doctor from the date of approval to the date that the person’s previous approval would, but for paragraph 4(3)(a), have otherwise expired.

(3) Subject to paragraphs 6 to 8, the approval, including the period for which it is granted by the approving body, is not affected if the approved person takes up employment in an area in relation to which another body is an approving body.

Conditions of approval

6.—(1) The approval of a person to act as a section 12 doctor must be subject to the following conditions—

- (a) the person who is approved (“P”) must immediately cease to act as a section 12 doctor and immediately notify the approving body if the body responsible for P’s professional registration suspends or ends that registration during the period of the approval;
- (b) P must notify the approving body immediately if P becomes subject to fitness to practice proceedings;
- (c) P must notify the approving body as soon as practicable of any change in P’s home or work address, telephone numbers, email address or other contact information;
- (d) P must notify the approving body at least one month before P takes up employment for a period longer than six months in an area in relation to which another body is an approving body;
- (e) P must cease to act as a section 12 doctor if P’s approval is suspended under paragraph 7, is ended under paragraph 8(1) or 8(2), or has expired;
- (f) P must at all times comply with the law including the Data Protection Act 1998(a); and
- (g) such other conditions as the approving body considers are reasonable and appropriate.

(2) An approving body may vary or remove a condition imposed under sub-paragraph (1)(g) or impose a new condition under that sub-paragraph in circumstances including but not limited to

(a) 1998 c.29.

those where the approving body is considering suspending or ending the suspension of P's approval under paragraph 7.

(3) Where an approving body (A) has granted an approval to a person for whom another approving body (B) subsequently becomes responsible, B may vary or remove any condition imposed by A under sub-paragraph (1)(g) or impose a new condition under that sub-paragraph.

(4) Where a condition has been imposed under sub-paragraph (1)(g) that P is required to meet after the date of approval, an approving body must take reasonable steps to satisfy itself that the person has met that condition.

Suspension of approval

7.—(1) If the body responsible for the professional registration of a person who has been approved to act as a section 12 doctor ("P") notifies an approving body that the registration has been suspended, the body which is the approving body in respect of the area in which P is employed at that time (whether or not it is the body that approved the person to act as a section 12 doctor) must, on receiving notification of the suspension of registration, suspend P's approval for as long as the registration is suspended.

(2) Where the approving body is notified that the suspension of the registration has ended, the approving body must end the suspension of approval unless the approving body suspends the approval under sub-paragraph (3).

(3) An approving body may suspend P's approval for a period of time which the approving body considers is reasonably necessary for the approving body to determine whether to end the approval under paragraph 8.

(4) Before an approving body suspends P's approval under sub-paragraph (3), it must—

- (a) give P its reasons for considering suspending the approval;
- (b) allow P to submit representations in respect of the proposed suspension within such period of time which the approving body considers reasonable; and
- (c) consider any such representations submitted by P to it.

(5) Where an approving body suspends P's approval or ends a suspension, the approving body must inform P and, where it considers it appropriate to do so, the body responsible for P's professional registration, of its decision and the reasons for the decision.

(6) The period of P's approval is to continue to run during any period during which the approval is suspended.

(7) Where a suspension of approval has ended, P's approval is to continue to run for the remainder of its unexpired period, unless the approving body ends it earlier in accordance with paragraph 8.

End of approval

8.—(1) If the body responsible for the professional registration of a person who has been approved to act as a section 12 doctor ("P") notifies an approving body that P has been removed from the register, the body which is the approving body in respect of the area where P is employed at that time (whether or not it is the body that approved P to act as a section 12 doctor) must, on receiving notification of removal from the register, end P's approval.

(2) Except where paragraph 7(1) applies, an approving body must end P's approval before the expiry of approval—

- (a) in accordance with a request in writing by P; or
- (b) if it is not satisfied that P—
 - (i) satisfies the professional requirements; or
 - (ii) has complied with the conditions attached to P's approval.

(3) Before an approving body ends an approval under sub-paragraph (2)(b), the approving body must—

- (a) give P its reasons for considering ending the approval;
- (b) give P a period of time which the approving body considers reasonable to make representations in respect of the proposed ending of the approval; and
- (c) consider representations submitted by P to it.

(4) When an approving body ends an approval under sub-paragraph (2)(b), the approving body must inform P and the body responsible for P's professional registration of its decision and the reasons for the decision.

Records

9.—(1) An approving body must keep a record in respect of each person it approves as a section 12 doctor and the record must include—

- (a) the person's application for approval;
- (b) the date of approval;
- (c) the conditions attached to the person's approval, any variation to or removal of those conditions, and any evidence provided to the approving body that the person has met or continues to meet such conditions;
- (d) details of any period of suspension of approval under paragraph 7 and the reasons for the suspension and the ending of the suspension;
- (e) details of the completion of any training referred to in paragraph 3(4);
- (f) details of any previous approvals referred to in paragraph 3(4)(b); and
- (g) the date of the expiry of approval and, if applicable, the reason for ending the approval before it expires.

(2) The record referred to in sub-paragraph (1) must be retained by the approving body for a period of six years commencing from the day on which the person's latest approval ended.

Signed by authority of the Secretary of State for Health



Anne McDonald
A Member of the Senior Civil Service
Department of Health

Date 23 Dec 2015

SCHEDULE

Paragraph 1(5)

Professional Requirements

1. The professional requirements in relation to a person who has applied for approval as a section 12 doctor are in paragraphs 2 and 3 of this Schedule.

2. The person must be—

- (a) a registered medical practitioner with special experience in the diagnosis of mental disorder or treatment; and
- (b) hold a full registration with a licence to practice from the General Medical Council.

3. The person must—

- (1) be a member or fellow of the Royal College of Psychiatrists;
- (2) be a specialist in psychiatry or a person included in the Specialist Register as a specialist in respect of a specialty that the approving body considers to be equivalent to psychiatry;
- (3) be a member of the Royal College of General Practitioners, be on the performers list, and have a minimum of three years of full-time experience (or experience which the approving body

considers to be equivalent, whether gained in consecutive years or not), which meets the following criteria—

- (a) the experience is in a salaried or principal post, which is not a temporary post, the approving body considers the experience to be substantial experience in the diagnosis of mental disorder or treatment, and the experience may be evidenced by the award of a higher degree or diploma relevant to mental health work; and
- (b) the experience—
 - (i) is such that at least four months of it has been in a supervised psychiatric training post within a training programme recognised by the Royal College of Psychiatrists; or
 - (ii) is such that the person has been accredited by the Royal College of General Practitioners as a general practitioner with a special interest in mental health;

(4) have a minimum of four years of full-time experience (or experience which the approving body considers to be equivalent, whether gained in consecutive years or not) in a psychiatric training post, a non-consultant career grade post or a salaried or principal general practitioner post, which meets the following criteria—

- (a) the experience is considered by the approving body to be substantial experience in the diagnosis of mental disorder or treatment, and may be evidenced by the award of a higher degree or diploma relevant to mental health work;
- (b) in the case of a general practitioner on the performers list—
 - (i) the experience includes at least four months of experience in a supervised psychiatric training post within a training programme recognised by the Royal College of Psychiatrists; or
 - (ii) the experience is such that the person has been accredited by the Royal College of General Practitioners as a general practitioner with a special interest in mental health; and
- (c) the experience includes at least two assessments of mental disorder for the purposes of the making of medical recommendations under the 1983 Act, undertaken within the 12 month period immediately preceding the date of the application, which—
 - (i) have been supervised by a person who at the time was a section 12 doctor and member of the Royal College of Psychiatrists, a specialist in psychiatry, or a person included in the Specialist Register in respect of a specialty that the approving body considers to be equivalent to psychiatry, and
 - (ii) are supported by evidence that they were carried out competently;

(5) be a member of the Faculty of Forensic and Legal Medicine of the Royal College of Physicians (“the Faculty”), have a reference from the local lead forensic physician which includes evidence with respect to training, and have experience which includes—

- (a) at least four years of clinical experience after registration as a member of the Faculty in areas considered by the approving body to be relevant to the assessment of mental disorder, whether gained in consecutive years or not, at least four months of which are in a supervised psychiatric training post;
- (b) a minimum of six months’ full time or twelve months’ part time employment as a forensic physician, whether gained in consecutive years or not; and
- (c) at least two assessments of mental disorder for the purposes of the making of medical recommendations under the 1983 Act, supervised by a section 12 doctor, which are supported by evidence that these were competently undertaken; or

(6) be a general practitioner who—

- (a) has previously been but is not currently on the performers list; and
- (b) has previously been a section 12 doctor and the date of the end of the practitioner’s latest period of approval as a section 12 doctor is within the twelve month period immediately preceding the date of the practitioner’s application for a new approval.

