

MENTAL HEALTH (APPROVAL FUNCTIONS) ACT 2012

EXPLANATORY NOTES

SUMMARY AND BACKGROUND

3. A technical issue was identified in the way doctors had been approved for the purpose of enabling them to make medical recommendations about admitting mentally disordered patients to hospital and detaining them for their own health or safety or for the protection of the public under the Mental Health Act 1983. That issue applied in four regions (North East, Yorkshire and Humber, West Midlands and East Midlands).
4. The purpose of the Mental Health (Approval Functions) Act 2012 is to give retrospective validation to the power to approve practitioners or clinicians under the Mental Health Act 1983 and hence ensure the lawfulness of any detention or other action which was taken on the basis that a valid power to approve existed.
5. The Mental Health Act 1983 makes provision for applications to be made for the admission to and detention in a hospital of those who are suffering from mental disorder where it is for their own health or safety or for the protection of others. The purpose of such admission and detention is to enable the individual concerned to be assessed or treated in an appropriate environment. In order for a person to be detained in hospital for assessment or treatment, an application must be made to the managers of the hospital in question and supported by written recommendations from two doctors (one of whom must be an approved practitioner or an approved clinician) who have personally examined the patient, along with an approved mental health professional (usually a social worker). Similar requirements apply in other contexts, for example to support the powers of the courts or the Secretary of State to order hospital admission or to transfer to hospital persons serving sentences of imprisonment. Approved clinicians are also in charge of patients' treatment once they have been admitted to hospital and are responsible for making a number of other decisions in relation to patients under the Mental Health Act.
6. Under the Mental Health Act, the function of approving practitioners under section 12, and clinicians under section 145, is vested in the Secretary of State¹. Regulations² (in the case of practitioners) and Directions³ (in the case of approved clinicians) allow for the approval functions to be carried out by Strategic Health Authorities (SHAs).
7. SHAs have no legal power to delegate the exercise of the approval functions to NHS trusts or NHS foundation trusts. In spite of this, four SHAs (North East, Yorkshire and Humber, West Midlands and East Midlands) delegated the exercise of the approval functions to trusts providing mental health services. This meant that these trusts granted approvals but had no legal power to do so. The SHAs have recently rectified the position for all future approvals.

¹ In relation to Wales, Welsh Ministers approve "approved clinicians".

² The National Health Service (Functions of Strategic Health Authorities and Primary Care Trusts and Administration Arrangements) (England) Regulations 2002 (SI 2002/2375).

³ Mental Health Act 1983 Approved Clinicians (General) Directions 2008.