

EXPLANATORY MEMORANDUM TO
THE MENTAL HEALTH (APPROVED MENTAL HEALTH
PROFESSIONALS) (APPROVAL) (ENGLAND) REGULATIONS 2008

2008 No. 1206

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 This Instrument is made under the power in section 114 to make regulations in connection with a number of matters to do with the approval of persons to be approved mental health professionals, including the period of approval, and the factors that are to be taken into account which include which professions they should be drawn from, and what competencies they should demonstrate.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 This Instrument is part of the implementation of the Mental Health Act 2007 (“2007 Act”), which amends the Mental Health Act 1983. Section 114 was substituted by section 18 of the 2007 Act. It provides detail as to who may be approved as an approved mental health professional (“AMHP”) and conditions to which they must be subject. The new role of the AMHP, which replaces that of the approved social worker (“ASW”), was generally supported in the course of debate, with some concerns raised about losing the specialist expertise of the approved social worker and the need for sufficient training of approved mental health professionals. The competencies set out in this Instrument have been drafted to address these concerns.

5. Territorial Extent and Application

5.1 This Instrument applies to England. There will be separate, though similar, regulations for Wales.

6. European Convention on Human Rights

6.1 As the instrument is subject to the negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy Background

7.1 The Government, in amending the Mental Health Act 1983, has decided to open up the role of the approved social worker (ASW) to a wider group of professionals, and to call these practitioners approved mental health professionals (AMHPs). AMHPs will be drawn from: social workers; first level nurses, whose field of practice is mental health or learning disability nursing; occupational therapists; and chartered psychologists.

7.2 The functions of the AMHP will be similar to the ASW role (with the addition of functions related to supervised community treatment (“SCT”). SCT is a new provision introduced by the 2007 Act which allows patients to be safely treated in the community, providing that they can be recalled to hospital if necessary. The AMHP role will build on the strengths of the existing system and the training will be based on the current ASW training regulated through the General Social Care Council.

7.3 Local social services authorities will be responsible for approving AMHPs in the same way that they did ASWs.

Consultation

7.4 Consultation on draft AMHP Regulations took place as part of the Department of Health’s consultation on draft secondary legislation arising from the Mental Health Act 2007. Consultation ran from 25th October 2007 to 24th January 2008, and was supplemented by events and workshops. 12 individuals and organisations commented in writing on these regulations. Generally, the proposals were welcomed. A number of comments were received on operational matters that do not affect the regulations, but which will be clarified in guidance. This Instrument takes account of respondents’ views on the need for the provision of suspension of the approval of a person as an AMHP if a professional’s registration or listing authority suspend them.

Guidance

7.5 Guidance is being developed for employers and approving authorities and will be available in time for implementation. The Mental Health Act 1983 Code of Practice will also provide guidance on the role and responsibilities of the AMHP.

8. Impact

8.1 An impact assessment on the changes in these regulations was carried out in the Mental Health Bill: Regulatory Impact Assessment revised June 2007: http://www.dh.gov.uk/en/Publicationsandstatistics/Legislation/Regulatoryimpactassessment/DH_076477. An extract is appended.

9. Contact

9.1 Janet Davies at the Department of Health (tel. 020 7972 4779 or e-mail: Janet.Davies@dh.gsi.gov.uk) can answer any queries about the instrument.

Impact assessment extract

Opening up the Approved Social Worker role

1. The Government in amending the [Mental Health] Act decided to open up the two roles which will have the greatest impact both for the patient and for the services.
2. The Act will permit by regulation the broadening of the group of practitioners who can take on the role of Approved Social Worker (ASW). This will allow people with the right skills and experience to carry out key tasks rather than restricting them to a particular profession (currently social workers). All mental health professionals who take on these roles will have to be trained and approved to do so.
3. The ASW role will stay the same as in the 1983 Act (save for new functions relating to SCT [supervised community treatment]), but the role will be opened up to a wider group of mental health professionals. Local authorities, who can currently only approve social workers whom they employ, will be able to approve mental health professionals whom they will not necessarily employ, such as nurses and occupational therapists. Social worker is a protected title so the Act changes the name of the role from “approved social worker” to “approved mental health professional” (AMHP).

Benefits

4. Where the ASW role is restricted to social workers, the AMHP role will be open to people from other professions. It is a change made in the spirit of the development of multi-agency and multi-disciplinary teamwork in the delivery of modern mental health services.

Risks

5. In relation to the opening up of the ASW role there are two main risks identified by stakeholders. The first is the perceived loss of independence from the two doctors at the point of making an application for assessment or treatment. The second is that there will be a diminution in the social care perspective. The risk in relation to the independence question is that those AMHPs who are employed by the NHS rather than a local authority cannot be as independent because they may be employed by the same organisation as the doctors who are examining the patient. We do not accept that this is a significant problem because the ability of a mental health professional to be independent stems from their professional status, training and ability. It does not stem from who their employer is.
6. We recognise that the training and experience of ASWs is key to making sure that the AMHP role is independent and maintains a strong social care perspective. That is why we are working with the General Social Care Council in England, and the Care Council in Wales (the organisations that currently

approve ASW training), ASWs and other interested parties to make sure that the AMHP role develops in a way that builds on what is best about the ASW role. This includes training, which will be a condition of approval as an AMHP, and which we intend to model on the highly valued ASW training. The social care perspective will also be maintained by building on the existing expertise of ASWs and we expect that the vast majority of AMHPs, at least initially, will be social workers. In future, it is intended that the pool of professionals eligible for approval in this role will be enhanced by the inclusion of other suitably qualified and experienced mental health professionals. We therefore do not think that the independence of the AMHP or the loss of the social care perspective is a significant risk.

Costs

7. There will be some additional costs for training as a result of opening up the role of ASW to health professionals such as nurses and occupational therapists. Local social services authorities will be responsible for ensuring that there are sufficient numbers of trained AMHPs to meet their duty to arrange for an AMHP to be available if they believe a patient in their area needs assessing for admission under the Act. They may wish to pass the funding to the Trust to pay for the training of AMHPs who are employees of Trusts.
8. The introduction of SCT will increase the statutory functions of AMHPs as compared with those of ASWs. On a straight calculation based on a pro-rata increase in the numbers of trained staff to cover these increased functions, this would lead to an increase in costs of £2m per year. On the other hand, it is the case that most of the new statutory functions will replace work that mental health social workers would do anyway, and that therefore it might be possible to absorb the new work within the existing staff numbers, in which case the overall effect would be minimal. In discussion of the workforce implications of the Bill, there has been no suggestion that the worst case scenario is likely.
9. We have assumed that the actual cost of this option will be towards the lower end of the two extremes, but assumed there will be some extra training required. We have estimated a cost of £500,000 per year. We will do further work to refine this cost in partnership with representatives of Local Authority employers.