



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.

Changes to legislation: Health and Social Care Act 2012, Section 38 is up to date with all changes known to be in force on or before 21 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

- (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.

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- (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”,
 - ^{F1}(d)

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- (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”.

Textual Amendments

- F1** S. 38(5)(d) repealed (1.12.2020) by Sentencing Act 2020 (c. 17), s. 416(1), **Sch. 28** (with ss. 413(4)(5), 416(7), Sch. 27); S.I. 2020/1236, reg. 2

Commencement Information

- I1** S. 38 in force at 1.4.2013 by S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing SI 2012/1831 art. 10 by [S.I. 2012/2657 art. 15](#)

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 9 Ch. 1B inserted by [2022 c. 31 s. 96](#)
- s. 102(4)(ba) inserted by S.I. 2019/93, Sch. 1 para. 13(3) (as substituted) by [S.I. 2019/1245 reg. 28](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 105(3A)(3B) inserted by [2013 c. 24 Sch. 14 para. 21](#)
- s. 106(3A)(3B) inserted by [2013 c. 24 Sch. 14 para. 22](#)
- s. 250(2)-(2B) substituted for s. 250(2) by [2022 c. 31 s. 95\(2\)\(a\)](#)
- s. 250(6)-(6D) substituted for s. 250(6) by [2022 c. 31 s. 95\(2\)\(d\)](#)
- s. 251251ZA substituted for s. 251 by [2022 c. 31 s. 95\(3\)](#)
- s. 251C(6A) inserted by [2022 c. 31 s. 95\(4\)\(a\)](#)
- s. 259(1)(aa)(b) substituted for s. 259(1)(b) by [2022 c. 31 s. 98\(b\)](#)
- s. 259(1)(aa) words substituted by [S.I. 2023/98 Sch. para. 17\(11\)\(a\)\(iii\)](#) (This amendment comes in force at the same time as 2022 c. 31, s. 98 comes into force)
- s. 259(10A)(10B) inserted by [2022 c. 31 s. 98\(h\)](#)
- s. 304(5)(ja) inserted by [2022 c. 31 s. 95\(5\)](#)