

APPROVAL UNDER SECTION 12(2) MENTAL HEALTH ACT 1983

THE NATIONAL CRITERIA FOR ENGLAND

Revised October 2009 by the National Reference Group

1. INTRODUCTION

- 1.1 Section 12(2) of the Mental Health Act 1983 requires that, in those cases where two medical recommendations for the compulsory admission of a mentally disordered person to hospital, or for reception into guardianship, are required, one of the two must be made by a practitioner approved for the purposes of that section by the Secretary of State as having special experience in the diagnosis or treatment of mental disorder. Approval is also required for practitioners providing reports or giving evidence under Part III of the Act.
- 1.2 Statutory responsibility for approving doctors under Section 12(2) of the Mental Health Act 1983 in England is delegated to the ten Strategic Health Authorities. These authorities maintain a register of Section 12(2) approved practitioners and have in place their own mechanisms for administering the register, maintaining it and authorising approval, re-approval and removal from the register.
- 1.3 Each Section 12(2) Approval Panel consists of doctors practising in the relevant fields and considers every new application against the criteria listed below. The suitability of every applicant is considered individually with account taken of experience, training, qualifications and references. Approval is not automatic. These criteria are offered as guidance to practitioners seeking approval under the Act. The guidance includes those seeking both initial approval and re-approval. Potential applicants who do not find their particular training backgrounds or experience identified in the criteria below but who still wish to be considered for Section 12(2) approval are invited to contact their relevant Section 12(2) Administrator or Section 12(2) Panel Chair for further advice as to whether exceptional relevant experience can be considered.
- 1.4 This guidance applies only to Section 12(2) approval/re-approval under the Mental Health Act 1983.

2. ENTITLEMENTS

- 2.1 During their period of approval Section 12(2) practitioners can:
 - Make recommendations under Part II of the Act (compulsory admission to hospital and guardianship).
 - Make recommendations & give evidence to the Court under Part III (patients concerned in criminal proceedings or under sentence)
 - Give reports to be considered by the Secretary of State for Justice for directing the transfers to hospital or guardianship of prisoners and certain other persons.
 - If trained, act as a mental health assessor within the meaning of the Mental Capacity Act 2005 (Deprivation of Liberty Safeguards).
- 2.2 Approval allows practitioners to undertake duties as above in any part of England and Wales.

3. **RESPONSIBILITIES**

3.1 Aspiring or established Section 12(2) practitioners **must**:

- Ensure they are approved **before** carrying out any of the functions for which approval is a legal prerequisite.
- Hold a licence to practice (from 16 November 2009) and inform the Section 12(2) administrator if this is withdrawn or suspended at any time.
- Ensure they have insurance and /or indemnity for Section 12(2) work with a recognised medical defence organisation or similar body to cover work undertaken which is not part of a contract of employment.
- Keep up to date with the latest Mental Health Act guidance & have ready access to the current Mental Health Act Code of Practice.
- If acting as a mental health assessor within the meaning of the Mental Capacity Act 2005 (Deprivation of Liberty Safeguards) keep up to date with the latest Mental Capacity Act Guidance & have ready access to the current Mental Capacity Act Code of Practice.
- Ensure they have insurance and or indemnity if acting as a mental health assessor within the meaning of the Mental Capacity Act 2005 (Deprivation of Liberty Safeguards) with a recognised medical defence organisation or similar body to cover work undertaken which is not part of a contract of employment.
- Recognise and work within the limits of their competence (General Medical Council Good Medical Practice 2006).
- Work in accordance with the General Medical Council “Duties of a Doctor”. (annex A)
- Inform the Section 12(2) Administrator for their area if they become subject to General Medical Council Fitness to Practice proceedings (suspension of registration automatically cancels Section 12(2) approval.)
- Inform their Section 12(2) Administrator for their area of any change to home or work address or telephone numbers, or other contact information.
- Inform the Section 12(2) Administrator for their relevant area of any employment move to a different Strategic Health Authority anticipated to be longer than six months.

4. **GENERAL ADVICE AND WARNINGS**

4.1 Approval cannot be given retrospectively. Practitioners whose approval has lapsed must refrain from carrying out those functions until their approval is renewed.

4.2 Section 12(2) Administrators endeavour to notify practitioners when their approval is due for renewal. That is why it is **essential** that practitioners inform Section 12 Administrators of any of the changes outlined in section 3 above.

- 4.3 Approval may be withdrawn on the recommendation of the relevant Section 12(2) Panel. Panels have their own criteria and arrangements for making these decisions and for considering any appeals against such decisions.
- 4.4 Your name, professional address, professional telephone number and period of approval will be entered in the Register of Approved Practitioners, which is made available on-line & routinely distributed to Section 12(2) Panel Members, Strategic Health Authorities, Primary Care Trust, Mental Health Trusts, Local Authorities, Private Hospitals, Police and Prison Services to which the public may have very limited access to only confirm Section 12(2) status. The Data Protection Act 1998 applies. If the information held is needed for any other purpose your permission will be sought prior to release. Apart from the published information, your information will be stored on a secure database.
- 4.5 Practitioners affirm they have insurance and /or indemnity for Section 12(2) work with a recognised medical defence organisation or similar body. Section 12(2) Panels DO NOT indemnify practitioners.

5. **CRITERIA FOR INITIAL APPROVAL**

5.1 **Eligibility**

- Medical practitioners with special experience in the diagnosis or treatment of mental disorder (including GP Principals or GPs in a salaried position) are eligible to apply for approval as Section 12(2) doctors.
- Approved Clinicians who are doctors do not need to be separately approved under the Section 12(2) process in order to exercise functions which the Act reserves to Section 12(2) doctors. However, as a condition of approval, Strategic Health Authorities (and where relevant Primary Care Trusts) require medical Approved Clinicians to attend initial and update courses, which will include training on Section 12(2) functions.

5.2 **Applicants must satisfy the following criteria:**

- a) Have full registration with the General Medical Council and, from 16 November 2009, hold a License to Practice.
- b) Within one year prior to or during the application process attend S12 (2) induction training course approved by a relevant Section 12(2) Panel.
- c) Provide evidence of satisfactory participation in continuing professional development. Psychiatrists should normally be registered and in good standing for CPD with the Royal College of Psychiatrists (those in training grades must provide evidence of satisfactory progress in an accredited training scheme). General Practitioners must have participated in the annual appraisal process required as a condition of continued inclusion in a Primary Care Trust's Performer's List and produce evidence that they remain on the Performer's List.
- d) Applicants who have trained in other jurisdictions will be expected to take steps to familiarise themselves with psychiatric practice and the organisation of psychiatric services, as well as the practical application of the Mental Health Act in England and Wales.

e) Supply the names of two referees who have known the applicant for a reasonable period of time, at least one with whom they have worked in the past year. One must be a Section 12(2) approved Consultant Psychiatrist.

The other referee may be drawn from any of the following groups:

- An Approved Clinician
- A consultant psychiatrist approved under S12(2) of the MHA
- Their current professional appraiser.
- An Approved Mental Health Professional with whom the applicant has worked within the preceding twelve months.
- Their Medical or Clinical Director
- Their Clinical Educator (for GPs)

f) Provide up-to-date curriculum vitae.

5.3 **Satisfy at least one of the following sets of additional criteria:**

Criterion A – Medical Practitioners with relevant higher specialist qualifications in Psychiatry or General Practice

- Be a Member or Fellow of the Royal College of Psychiatrists or equivalent and have a minimum of three years equivalent whole time experience in an accredited psychiatric training post or a substantive post where there was substantial experience in the diagnosis or treatment of mental disorder. **OR**
- Be a Member of the Royal College of General Practitioners or equivalent and have a minimum of three years equivalent whole time experience in a substantive salaried or principal post where there was substantial experience in the diagnosis or treatment of mental disorder. Such experience may have been recognised by the award of a higher degree or diploma relevant to mental health work. At least four months of their experience must have been in a supervised psychiatric training post within an accredited training scheme or one that satisfies the criteria for accreditation as a General Practitioner with a Special Interest in Mental Health.

Criterion B – Medical Practitioners with special experience in the diagnosis or treatment of mental disorder who do not meet Criterion A

- Have four years whole time equivalent experience in a psychiatric training post, a non-consultant career grade post or a substantive salaried or principal post where there was substantial experience in the diagnosis or treatment of mental disorder. Such experience may have been recognised by the award of a higher degree or diploma relevant to mental health work. For General Practitioners, at least four months of their experience must have been in a supervised psychiatric training post within an accredited training scheme or one that satisfies the criteria for accreditation as a General Practitioner with a Special Interest in Mental Health
- Provide evidence of having competently undertaken two Mental Health Act assessments supervised by a Section 12(2) approved doctor.

Criterion C – Specialist Psychiatrists who have qualified outside England and Wales and do not meet Criterion A

- Be included on the Specialist Register of the General Medical Council as a specialist in Psychiatry (or equivalent specialty) or hold a substantive post in the National Health Service as a Consultant Psychiatrist under the NHS National Fellowship programme
- Provide evidence of having competently undertaken two Mental Health Act assessments supervised by a Section 12(2) approved doctor.
- Have a minimum of three months experience of psychiatric practice in England or Wales.

Criterion D - Forensic Physicians (Forensic Medical Examiners)

Section 12(2) Panels recognise Forensic Physicians as a unique group. Many Forensic Physicians/Forensic Medical Examiners will be general practitioners and could qualify for approval under Criteria A or B above. However they can also seek Section 12(2) approval as a Forensic Physician/Forensic Medical Examiner if they satisfy the following criteria:-

- Have membership of the Faculty of Forensic and Legal Medicine
- Have had at least four years post-registration clinical experience in relevant areas at least four months of which will have been in a supervised psychiatric training post.
- Have had a minimum of six months full time or twelve months part time (or the equivalent) employment as a Forensic Physician/Forensic Medical Examiner.
- Competently undertake two Mental Health Act assessments supervised by a Section 12(2) approved doctor.
- Give the name and address of the local Lead Forensic Physician whom the Section 12(2) Panel will approach for a reference (which will include evidence with respect to training).

6. RE-APPROVAL

6.1 Renewal is not automatic and applications are processed in the same way as new applications. Applicants must:

- Complete an application form applying for re-approval.
- Have full registration with the General Medical Council and, from 16 November 2009, hold a License to Practice
- Provide evidence of attendance at a recognised training course within the current period of approval.
- Provide evidence of satisfactory Continuing Professional Development as set out in 5.2 (c).
- Supply the names of two professional referees as set out in 5.2 (e). References will routinely be taken and must be satisfactory.
- Provide up-to-date curriculum vitae

- 6.2 In addition to satisfying the requirements listed above, applicants for re-approval are required to demonstrate ongoing involvement in the diagnosis or treatment of mental disorder, for example by providing written confirmation of involvement in one or more of the following:
- a) Acting as a Medical member of the First-tier Tribunal (Mental Health).
 - b) Undertaking assessments as a Second Opinion Appointed Doctor for the Care Quality Commission, or the Healthcare Inspectorate Wales.
 - c) Preparation of independent expert reports for Courts under Part 3 of the MHA, Mental Capacity Act, Deprivation of Liberty Safeguards or relevant legislation relating to children.
 - d) Undertaking at least two Mental Health Act assessments within the previous calendar year.
 - e) Confirmation of having acted as a Responsible Clinician, or an Approved Clinician in charge of the treatment of a patient.
 - f) Confirmation of employment in a clinical post with substantial responsibility for the diagnosis or treatment of mental disorder. This is likely to be within a specialist mental health setting.

7. **PERIOD OF APPROVAL**

The period of approval can be between 1 and 5 years. Doctors in substantive posts will usually be approved for 5 years but doctors may be approved for a shorter period. Applicants will be given reasons if this is the case.

8. **PROCEDURES**

- 8.1 The NHS East of England is advised in exercising this function by the East of England Regional Approval Panel (EERAP). Your application will be determined by two EERAP members.

Applications

Submissions for approval and re-approval should be sent to

Geraldine Bushell / Jennie Papa
Section 12(2) / AC Administrators
NHS East of England
Victoria House
Capital Park
Fulbourn
Cambridge CB21 5XB

Phone: 01223 596953 / 597744

E-mail: geraldine.bushell@eoe.nhs.uk / jennie.papa@eoe.nhs.uk

8.2 **Completed applications are subject to administrative processes which include:-**

- A check that forms have been completed correctly
- Initial appraisal against published criteria
- GMC check
- Checking against NHS East of England 'Doctor Alerts' system
- Taking references
- Distribution to two Panel members for scrutiny
- Decision making
- Decision communicated to applicant

Although processes are followed strictly, where there is minor doubt or disagreement the Panel Chair may be asked to make a decision. For major doubt or disagreement the matter is put to Panel for resolution at the next available hearing.

APPENDIX A

The duties of a doctor registered with the General Medical Council

Patients must be able to trust doctors with their lives and well-being. To justify that trust, we as a profession have a duty to maintain a good standard of practice and care and to show respect for human life. In particular as a doctor you must:

- make the care of your patient your first concern;
- treat every patient politely and considerately;
- respect patients' dignity and privacy;
- listen to patients and respect their views;
- give patients information in a way they can understand;
- respect the rights of patients to be fully involved in decisions about their care;
- keep your professional knowledge and skills up to date;
- recognize the limits of your professional competence;
- be honest and trustworthy;
- respect and protect confidential information;
- make sure that your personal beliefs do not prejudice your patients' care;
- act quickly to protect patients from risk if you have good reason to believe that you or a colleague may not be fit to practice;
- avoid abusing your position as a doctor; and
- work with colleagues in the ways that best serve patients' interests.

In all these matters you must never discriminate unfairly against your patients or colleagues. And you must always be prepared to justify your actions to them.