



Implementation of the Mental Health Act 2007

Transitional Arrangements

Implementation of the Mental Health Act 2007: Transitional Arrangements

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Contact Details	Clive Marritt Mental Health Legislation Wellington House, 133-155 Waterloo Road London SE1 8UG 020 7972 4492
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Implementation of the Mental Health Act 2007

Transitional Arrangements

Prepared by: Mental Health Act Implementation Team, Department of Health

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Executive summary

From 3 November 2008, major changes are being made to the Mental Health Act 1983 (“the Act”), as a result of amendments made to it by the Mental Health Act 2007.

This guidance explains the transitional provisions associated with those changes. These relate to:

- Applications for detention under Part 2 of the Act;
- Detention under Part 3 of the Act
- Arrangements for the renewal of detention;
- Consent to treatment under Part 4 of the Act;
- Guardianship;
- Tribunals;
- Applications to the County Court about the appointment of acting nearest relatives;
- Approved mental health professionals; and
- Approved clinicians.

Please note in particular that the Mental Health Act 1983 Approved Clinician (General) Directions made on 31 July 2008 revoke the Mental Health Act 1983 Approved Clinician Directions 2008 (made on 7 May 2008) and now incorporate Directions on the transitional arrangements for approved clinicians.

Further guidance for strategic health authorities and employers on their responsibilities around approving and employing approved clinicians and responsible clinicians is being produced separately and will be available soon.

This guidance covers the transitional arrangements only. It applies to England.

Hospital managers, local social services authorities and strategic health authorities will need to ensure that they and their staff are familiar with these transitional arrangements in order to apply the changes correctly.

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References to legislation

1. In this guidance

- 3 November means 3 November 2008
- references to “the Act” are to the Mental Health Act 1983 (as amended by the Mental Health Act 2007)
- references to “sections” are to sections of the Mental Health Act 1983
- the “commencement order” means the Mental Health Act 2007 (Commencement No. 7 and Transitional Provisions) Order 2008.
- the “new Regulations” mean the Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008 – which replace the Mental Health (Hospital, Guardianship and Consent to Treatment) Regulations 1983
- the “new statutory forms” means the forms set out in those new Regulations
- Schedule 10 means Schedule 10 to the Mental Health Act 2007
- the “Tribunals Order” means the Transfer of Tribunal Functions Order 2008 (currently laid in draft awaiting approval by both Houses of Parliament)
- “directions” means the Mental Health Act 1983 Approved Clinician (General) Directions 2008
- “doctor” means registered medical practitioner
- “section 12 doctor” means a doctor approved under section 12(2) of the Mental Health Act 1983
- “LSSA” means a local social services authority

Applications for detention under Part 2 of the Act

Existing detention

2. The criteria for detention under section 3 of the Act change from 3 November, because:

- is will no longer be necessary for patients to be suffering from one of the four specified categories of mental disorder. Instead, section 3 will refer to “mental disorder” generally;

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- the so-called “treatability test” will no longer apply; and
 - the new appropriate medical treatment test will apply (to all patients).
3. This change does not affect the validity of anyone’s detention if they were already liable to be detained on the basis of an application under section 3 at the time the change takes effect. This includes cases where an application has been made, but the patient has (for some reason) not yet actually be detained in hospital. (Paragraph 2(1)(a) of Schedule 10).
 4. However, when considering whether the patient should remain detained after 3 November, responsible clinicians, hospital managers and the Tribunal must apply the amended criteria, including the appropriate medical treatment test. (Paragraph 2(2) of Schedule 10).

Section 5 holding powers

5. From the very start of 3 November, the new statutory forms must be used for the holding powers in section 5(2) and 5(4) – forms H1 and H2 respectively.
6. But if a patient is already subject to the holding powers as a result of report or record on old forms 12 or 13 before 3 November, they remain liable to be detained. It is not necessary to complete a new form.

New applications for detention

7. From 3 November, applications for detention under sections 2, 3 or 4 and the supporting medical recommendation(s) must be made using the new statutory forms (A1 to A8), subject to the following points.
8. Under the new Regulations, if the application is to a hospital in Wales, the appropriate Welsh application form will have to be used.
9. Whether the application is being made to a hospital in England or Wales, if a doctor making the recommendation examined the patient in Wales, then the recommendation must be made on the relevant Welsh statutory form. If it is a joint recommendation and one doctor examined the patient in England and the other in Wales, then either the English or Welsh form may be used. (Regulation 4(2)).
10. A application for detention under section 2 or 3 on a new statutory form can be made on the basis of two medical recommendations completed and signed before 3 November on old forms 19 or 20. But it cannot be made on the basis of one recommendation completed and signed before 3 November on an old form and one completed on or after 3 November on a new form. (Paragraph 2(1)(c) of Schedule 10).
11. Note, however, that the new conflict of interest rules – set out in the Mental Health (Conflicts of Interest) (England) Regulations 2008 – apply to applications made on or after 3 November, even if they are made on the basis of medical recommendations signed before that date.

Detention under Part 3 of the Act

Medical evidence

12. The criteria for detaining defendants, offenders and prisoners under Part 3 of the Act change from 3 November, because:
- the references to the four specified categories of mental disorder are all replaced by references to mental disorder generally
 - the so-called “treatability test” in sections 37, 45A and 47 no longer applies
 - the new appropriate medical treatment test applies in section 36 (remand for treatment), section 37 (hospital orders), section 45A (hospital and limitation directions) and sections 47 and 48 (transfer directions)
13. As a result, the courts or the Secretary of State for Justice (as the case may be) will only be able to make orders or directions under Part 3 where they have received the necessary medical evidence that the amended criteria are met. In cases where it is unclear whether the decision will be made before or after 3 November, it will be helpful for doctors providing reports to address both the old and new criteria.

Patients who have yet to be admitted to hospital

14. Where a court, or the Secretary of State, has already, before 3 November, made an order or direction under Part 3 for a patient’s detention in hospital, that order or direction remains valid even if the patient has not yet in fact been admitted to the hospital. It is not necessary to obtain a new order or direction. (Paragraph 2(1)(a) of Schedule 10)

Renewal of detention

15. From 3 November, responsible clinicians must use the new statutory form (H5 or H6) to make a report renewing a patient’s detention under section 20 (or confirming it under section 21B)
16. However, a report that has already been furnished to the hospital managers on an old form 30 or 31A before 3 November remains valid even if the renewal date is not until after 3 November. There is no need to submit a further report. (Paragraph 2(1)(b) of Schedule 10).

Consent to treatment – Part 4 of the Act

Existing SOAD certificates

17. From 3 November, electro-convulsive therapy (ECT) and related medication will no longer be governed by section 58, but by new section 58A instead.
18. In addition, the criteria by which second opinion appointed doctors (SOADs) may approve treatment under section 57 or 58 will change slightly.

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19. Certificates given by SOADs under sections 57, 58 and new section 58A (SOAD certificates) will be given on new statutory forms (T1 to T6).
20. Certificates given before 3 November on old form 37 authorising treatment under section 57 (neurosurgery for mental disorder etc) remain valid. So do SOAD certificates on old form 39 relating to medication under section 58.
21. Similarly, SOAD certificates on old form 39 authorising electro-convulsive therapy (ECT) remain valid if the patient lacks capacity to consent to the treatment. But they will no longer authorise treatment without the patient's consent if the patient has capacity to give (and refuse) that consent. That is because new section 58A cannot be used to authorise ECT without the consent of such a patient. (Paragraph 3 of Schedule 10)

Existing certificates of consent under section 58(3)(a) - Form 38

22. From 3 November, certificates recording patients' consent to treatment must be made using new forms T2 (section 58 – medication) or T4 (section 58A – ECT and related medication).
23. Certificates given on old form 38 by SOADs before 3 November remain valid.
24. So do certificates given by responsible medical officers (RMOs), so long as they remain the approved clinician in charge of the treatment in question. See paragraphs nn et seq below.

ECT for children and young people under the age of 18 – informal patients

25. From 3 November, unless treatment is immediately necessary in the terms of section 62(1)(a) or (b), informal patients under the age of 18 may not be given ECT as a treatment for mental disorder without the treatment first being approved by a SOAD on new form T5 or T6.
26. However, if on 3 November an under 18 informal patient has been receiving, or is about to receive, ECT, it may be given (or continued) without a SOAD certificate until the end of 16 November at the latest while steps are taken to obtain a SOAD certificate. If the SOAD visits but decides not to approve the treatment it would have to stop. (Paragraph 13 of the Schedule to the commencement order)
27. For these purposes “informal patient” means any patient to whom section 56(5) (as amended) applies – mainly patients who are not detained under the Act (but also patients detained under the holding powers in section 5 or one of the other short term detention provisions).

Guardianship

Existing guardianship

28. The criteria for guardianship change slightly on 3 November, because it will no longer be necessary for guardianship patients to be suffering from one of the four specified categories of mental disorder. Instead, the Act will just refer to “mental disorder” generally.

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29. This change does not affect the validity of anyone's guardianship if they were already subject to guardianship at the time the change takes effect (Paragraph 2(1)(a) of Schedule 10).

New applications for guardianship

30. From 3 November, applications for guardianship and the supporting medical recommendations must be made using the new statutory forms (G1 to G4), subject to the following points.
31. Under the new Regulations, if the application is to a local authority in Wales, the appropriate Welsh application form will have to be used.
32. Whether the application is being made to an English or Welsh local authority, if a doctor making the recommendation examined the patient in Wales, then the recommendation must be made on the relevant Welsh statutory form. If it is a joint recommendation and one doctor examined the patient in England and the other in Wales, then either the English or Welsh form may be used. (Regulation 4(2)).
33. A guardianship application on a new statutory form can be made on the basis of medical recommendations completed before 3 November on old forms 19 or 20. But it cannot be made on the basis of one recommendation completed before 3 November on an old form and one completed on or after 3 November on a new form. (Paragraph 2(1)(c) of Schedule 10).
34. Note, however, that the new conflict of interest rules – set out in the Mental Health (Conflicts of Interest) (England) Regulations 2008 – apply to applications made on or after 3 November, even if they are made on the basis of medical recommendations signed before that date.

Applications for guardianship made before 3 November but not yet accepted by the local authority

35. An application made on old forms 17 or 18 before 3 November can still be accepted by an LSSA after 3 November. But the acceptance must be recorded on the new statutory form (G5). (Paragraph 2(1)(b) of Schedule 10).

Responsible medical officers for guardianship patients

36. A doctor authorised by an LSSA to act as the responsible medical officer (RMO) for a guardianship patient does not automatically become the patient's responsible clinician, but would need to be authorised as such before they next take a decision in the patient's case (eg in relation to renewal or discharge).

Renewal of guardianship

37. From 3 November, responsible clinicians and (for patients with private guardians) nominated medical attendants must use the new statutory form (G9 or G10) to make a report renewing a patient's guardianship under section 20 (or confirming it under section 21B)

38. However, a report that has already been furnished to the LSSA on an old form 31 or 31B before 3 November remains valid even if the renewal date is not until after 3 November. There is no need to submit a further report. (Paragraph 2(1)(b) of Schedule 10).

Tribunals

New First-tier Tribunal

39. Subject to Parliament, from 3 November the Mental Health Review Tribunal (MHRT) in England will become part of a single integrated two-tier tribunal system and sit within the Health and Social Care Chamber of the new First-tier Tribunal (the Tribunal). The new system will harmonise procedures and will help people to find their way around the system to get solutions to their issues more quickly and efficiently. There will also be a new right of appeal, on a point of law, to the new Upper Tribunal (which will largely take the place of judicial review of tribunal decisions).

40. Cases already in progress at 3 November will continue, despite the formal change of tribunal. Likewise, decisions taken by MHRTs but not yet implemented – for example, deferred discharges – will be treated as if they had been made by the new Tribunal. (Schedule 4 to the Tribunals Order)

Reports to the Tribunal

41. There will be new Rules and Practice Directions governing the procedure of the Tribunal. From 3 November, reports to the Tribunal will have to be in accordance with those new rules and directions.

42. Although the role of the new Tribunal under the Act is essentially the same as the current MHRTs, it will be applying the amended criteria in section 72 for determining whether a patient should be discharged. Those changes – in particular the new appropriate medical treatment test – mirror the changes to the criteria for initial detention under Parts 2 and 3 of the Act.

43. To avoid delays, it will be helpful for reports submitted to the Tribunal before 3 November, but which may be considered after that date, to address the amended, as well as the current, criteria.

Automatic referrals to the Tribunal by hospital managers – new rules

44. From 3 November, there will be major changes to the rules in section 68 about when hospital managers must refer patients' cases to the Tribunal.

45. In particular, from that date:

- the duty to refer patients after six months will also apply to section 2 patients whose detention has been extended as a result of an application to the county court for the displacement of their nearest relative;

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- for patients whose detention started under section 2 or 4, but who were then detained under section 3 (without a break in between), the six month period will now be calculated from the day of their admission under section 2 or 4;
- any applications (or references) made while a patient was detained under section 2 or 4 are to be ignored when determining whether the duty to refer after six months applies;
- the duty to refer patients aged 18 or over if three years has passed without their case being considered by the Tribunal, will now apply as soon as the three years are up, not (as now) at the next renewal date; and
- the duty to refer child patients after one year has passed without their case being considered by the Tribunal will also now apply as soon as the one year is up, not at the next renewal date – and will now apply to 16 and 17 year olds as well.

46. These new rules will apply to patients who were detained before 3 November.

47. Hospital managers will need to check whether they have any existing patients who will become eligible for an earlier referral because of the change to the rules. If the date for making the referral under the new rules has already passed on 3 November, the referral should be made as soon as possible. (Paragraph 9(2) of Schedule 10)

Applications to the Tribunal after reclassification – sections 66(1)(d) and (fb)

48. From 3 November, the Act will no longer distinguish between different categories of mental disorder. It will no longer be necessary (or possible) for RMOs to reclassify the mental disorder of detained patients under section 16 or 21B. Consequently, there will no longer be a right for patients (or nearest relatives) to apply to the Tribunal following a reclassification.

49. However, if a reclassification report is made by an RMO before 3 November, the patient (and, where relevant, the nearest relative) will still be able to apply to the Tribunal at any time during the 28 days following the day on which they are told that the report has been furnished, even if the 28 day period continues past 3 November. (Paragraph 4 of Schedule 10)

Applications to the Tribunal by patients subject to hospital and limitation directions

50. From 3 November, patients given hospital and limitation directions by the courts under section 45A will no longer be able to apply to the Tribunal during the first six months following the directions.

51. But this will not affect the rights of any patient given a hospital and limitation direction before 3 November, even if the six month period continues past that date. (Paragraph 9(2) of Schedule 10)

Applications to the Tribunal by displaced nearest relatives – section 66(1)(h)

52. From 3 November, nearest relatives who have been displaced by an order of the county court on the grounds in section 29(3)(a) or (b) – no identifiable nearest relative, or

incapacity of the nearest relative - will no longer have the right to apply to the Tribunal for the patient's discharge under section 66(1)(h).

53. This change does not apply to nearest relatives who were displaced on those grounds as a result of an application made to the county court before 3 November (even if the court's order is not made until after that date). They will retain their right to apply to the Tribunal. (Paragraph 6(4) of Schedule 10)

Applications to the county court about the appointment of acting nearest relatives

54. From 3 November, there will be a number of important changes to the rules in sections 29 and 30 about applications to the county court for the appointment of an acting nearest relative (and therefore, in most cases, the displacement of the current nearest relative).

55. These changes include:

- a new right for patients themselves to apply for the appointment of an acting nearest relative and/or apply for a previous order to be varied or ended;
- a new ground for applying – namely that the current nearest relative is not a suitable person to act as such;
- the court will no longer be restricted to appointing someone named in the application – if no-one is named in the application (or no-one who is suitable and willing) the court will be able to appoint someone else who is suitable and willing; and
- new rules on the ending of appointing acting nearest relatives on the grounds in section 29(3)(a) and (b) - no identifiable nearest relative or the current nearest relative's incapacity. Unless the court specifies the length of the order, the order will now continue in force indefinitely unless it is subsequently varied or ended by the court.

56. These changes do not apply to court orders on the basis of applications made to the county court before 3 November (even if the court's order is not made until after that date). So, for example, if the application was made before 3 November, the court will only be able to appoint the applicant, or someone else named in the application, as the acting nearest relative. (Paragraphs 6(1) & (2) of Schedule 10)

57. However, these changes do apply to subsequent applications to vary or discharge those orders. So, for example, patients themselves will now be able to apply for an order appointing an acting nearest relative to be varied or ended, even if the order in question was originally made on the basis of an application before 3 November. (Paragraphs 6(4) of Schedule 10)

58. For changes to the rights of certain displaced nearest relatives to apply to the Tribunal for a patient's discharge, see paragraphs 52 and 53 above.

After-care under supervision (supervised discharge)

59. Detailed guidance on the transitional arrangements for patients subject to after-care under supervision under section 25A was issued, together with the “Mental Health Act 2007 (Commencement No.6 and After-care under Supervision: Savings, Modifications and Transitional Provisions) Order 2008”, on 7 May. It can be found on the mental health area of the Department of Health website under the heading “Mental Health Act 2007 - commencement orders, regulations, and other secondary legislation”.

Approved mental health professionals

60. The Government, in amending the Act, has opened up the role of the approved social worker (ASW) to a wider group of professionals and has renamed the role to that of the approved mental health professionals (AMHP). Further guidance is being developed for LSSAs as approving authorities and for employers about AMHPs and this will be available soon.

61. Any decision or action taken by an ASW before 3 November is to be treated as made or taken by an AMHP. This will ensure that such decisions made before 3 November are still legally valid after that date. (Paragraphs 4 and 5 of the Schedule to the commencement order)

Approved mental health professionals transitional arrangements (Paragraphs 6 to 11 of the Schedule to the commencement order)

62. Individuals who are already approved as ASWs will be treated as if they are approved as AMHPs from 3 November for as long as their ASW approval lasts. For example someone who is currently approved as an ASW until the end of January 2010 will automatically be treated as approved an AMHP until the end of January 2010.

Suspension

63. An ASW whose registration as a social worker is suspended on 3 November will be treated as an AMHP whose approval is suspended for as long as the social work suspension lasts. If the suspension as a social worker is lifted the AMHP suspension should also be lifted.

Conditions

64. The approval of ASWs who are treated as AMHPs through transitional arrangements will be subject to the same conditions as the approval of new AMHPs. These conditions are set out in The Mental Health (Approved Mental Health Professionals) (Approval) (England) Regulations 2008. LSSAs should make AMHPs aware of these conditions and ensure that processes are in place to record actions and activities. The conditions are that the AMHP must:

- undertake at least 18 hours of relevant annual training agreed with the LSSA which approves them;
- notify the LSSA if they agree to act on behalf of another LSSA (or if such an agreement ends);

- notify the LSSA if they are suspended from the register of social workers; and
- stop working as an AMHP and notify the LSSA if they cease to meet their professional requirements (that is cease to be registered as a social worker or as another professional eligible to be an AMHP).

Recording information

65. LSSAs will already hold records of ASWs and it should be a straightforward process to record their approval to act as AMHPs. There is a requirement to record the date of approval as an ASW and the date the approval expires. Additional information that should be recorded includes any suspensions or conditions that need to be met. LSSAs will also want to check if an AMHP is also treated as approved by another LSSA (for transitional arrangements only (see paragraph 67.)).

ASWs approved by more than one LSSA

66. In general, AMHPs may only be approved by one LSSA in England (though they may work of behalf of more than one).

67. There may be a number of ASWs who are currently approved by more than one LSSA. If so, they will be treated as approved as an AMHP by each separate authority through the transitional arrangements, unless or until

- they ask one or more of those authorities to end their approval;
- they are formally re-approved by an LSSA as an AMHP at the end of their transitional approval, in which case that LSSA must inform the other LSSAs concerned who must end their transitional approval.

68. Although not a requirement, ASWs who are currently approved by more than one LSSA may wish to agree with those LSSAs that they will be approved by one only from 3 November (or when practicable). This would simplify, for example, discussions around meeting requirements for annual update training and avoid duplication.

Decisions made prior to 3 November 2008 to be treated as decisions of approved clinicians

69. Decisions made by RMOs (and, in certain cases, other doctors) before 3 November are to be treated as though they had been made by an approved clinician (AC) and/or a responsible clinician (RC) – whichever is applicable. This will ensure that such decisions made before 3 November are still legally valid after that date. Details of where such decisions may have been made, and by whom, are set out in the commencement order. This is reproduced here for ease of reference.

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<i>Provision in 1983 Act</i>	<i>Named person</i>	<i>Treated as taken by</i>
Part 2	RMO	responsible clinician
Part 2	appropriate medical officer ¹	appropriate practitioner
Sections 36(4), 38(5), 41(3)(c) and (6), 45B(3), 49(3), 51(4), 52(5) and (7)	RMO	responsible clinician
Sections 57(2)(a) and 58(3)(b)	RMO	responsible clinician or the approved clinician in charge of the treatment in question
Sections 58(3)(a), 61(1) (the first time it appears) and 63	RMO	approved clinician in charge of the treatment
Section 35(4) and (5)	RMP	approved clinician
Sections 36(3), 37(4), 38(4), 45A(5)	RMP who would be in charge of his treatment	approved clinician who would have overall responsibility for his case
Section 44(2)	RMP who would be in charge of the offender's treatment	approved clinician who would have overall responsibility for the offender's case
Sections 50(1), 51(3) and 53(2)	RMO or any other RMP	responsible clinician or any other approved clinician
Section 134	RMP in charge of the treatment of the patient	approved clinician with overall responsibility for the patient's case

¹ Appropriate medical officer is defined in section 16 (which is to be repealed) as being a guardianship's responsible medical officer or (if there is a private guardian) nominated medical attendant. By analogy, appropriate practitioner is defined in section 34(1) as a patient's responsible clinician or nominated medical attendant. *[DN: my mistake, now corrected]*

Approval as Approved Clinicians

70. Paragraphs 71 to 85 below give details of arrangements for some doctors to be treated as approved clinicians from 3 November.

Approved clinicians and responsible clinicians

71. The roles currently undertaken by responsible medical officers (RMOs) and doctors (in respect of certain parts of the Act) are being opened up to a wider group of professionals. These practitioners will be called approved clinicians (ACs) and responsible clinicians (RCs).
72. The Code of Practice, Mental Health Act 1983 (Chapter 14) deals with the identification of RCs for patients being assessed and treated under the Act. The RC is the AC who will have overall responsibility for a patient's case. Further guidance for strategic health authorities (SHAs) and employers on their responsibilities around approving and employing ACs and RCs is being produced separately and will be available soon.

Arrangements for treating some doctors as approved clinicians from 3 November

73. To ensure continuity of service provision for patients subject to the Act, Directions provide for the transitional approval of certain groups of doctors as ACs from 3 November. The following three groups of section 12 doctors will be approved as ACs from 3 November under the provisions of Part 3 of the Directions.

Group 1

74. Section 12 doctors who have carried out the functions of an RMO in the 12 month immediately prior to 3 November. For this group the following points should be noted:
- Approval as AC under the transitional arrangements will run until the end of the current section 12 approval. If this is less than 12 months after 3 November, then approval will last 12 months from 3 November.

Examples.

A doctor from this group whose approval as a section 12 doctor runs until 31 July 2010 will be treated as approved as an AC until 31 July 2010.

A doctor from this group whose approval as a section 12 doctor runs until December 2008 will be treated as approved as an AC until 2 November 2009.

- A doctor does not have to have been working at consultant level as an RMO to be treated as an AC under these arrangements. ACs will normally be consultant level (as were RMOs) but there is no legal restriction on non-consultant doctors being ACs.

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- Whether a doctor has acted as an RMO in the last 12 months will be a matter of fact. If at any time a doctor has carried out any duties that fell to an RMO under 1983 Act then they will have “carried out the function of an RMO”. They do not need to have carried out the function for the whole 12 months – just at some time during the 12 months.
- Having acted as an RMO is a matter of fact for the individual. Even if an employer’s policies set out that they should be prepared to undertake RMO duties as part of on-call duties, doctors who may have been on-call will only be treated as an AC for the purposes of these transitional arrangements if they have actually taken decisions which fall to an RMO at some point in the 12 months prior to 3 November 2008.
- After this period of transitional approval doctors in this group will need to apply for approval under the general approval arrangements (see paragraph 81). They will not have to undertake a course for the initial training of ACs to receive general approval as they will satisfy Direction 4(c)(ii) in being treated as approved as an AC (if this is within the 5 year period). They will, of course, have to meet the other requirements of the general approval arrangements (see paragraph 81).

Group 2

75. Section 12 doctors who do not fall within group 1, but who have been in overall charge of the medical treatment for mental disorder of a person in the 12 months prior to 3 November.
76. It is envisaged that doctors from this group will mainly be psychiatrists working in community teams who have not had RMO responsibilities within the 12 months prior to 3 November (or ever). They may, however, need to be available to make decisions that fall to an AC (or RC), particularly for patients discharged onto Supervised Community Treatment. For this group the following points should be noted:
 - Doctors in this group will be expected to complete a course for the initial training of approved clinicians (see paragraph 81) in the first year after 3 November 2008. **If the course is completed** the doctor will be approved to be an AC under transitional arrangements for a further 2 years from 3 November 2009.
 - After this further 2 years doctors in this group will need to apply for approval under the general approval arrangements (see paragraph 81). They will not have to complete a course for the initial training of ACs again. They will, of course, have to meet the other requirements of the general approval arrangements(see paragraph 81).
 - **If the course is not completed** by 2 November 2009, approval will not be extended under the transitional provisions and will end on 2 November 2009. Doctors in this group who have not completed the training by 2 November 2009 will have to apply to the SHA to be approved as ACs through general approval arrangements (see paragraph 81). They will have to complete a course for the initial training of approved clinicians to be approved under general arrangements as they will not be treated as being an AC in this period. (Direction 14(b) applies)

Examples

A doctor in group 2 is approved as an AC up to 2 November 2009. He completes a course for the initial training of approved clinicians on 3 December 2008. He will then be approved as an AC until 2nd November 2011.

A doctor in group 2 is approved as an AC up to 2 November 2009. He fails to complete a course for the initial training of approved clinicians by 2 November 2009. His approval to act as an AC will not be automatically extended. He will have to apply to the relevant SHA for approval through general approval arrangements.

Group 3

77. Section 12 doctors who do not fall within groups 1 or 2, but who have been appointed to the post of consultant psychiatrist within the period of 18 months ending on 2 November 2009 (that is 6 months before 3 November 2008 and 1 year after). For this group the following points should be noted:

- Transitional approval will be until 2 November 2009.
- To gain further approval after this period of transitional approval doctors from this group will have to apply to the SHA to be approved as an AC through general approval arrangements (see paragraph 81). They will have to complete a course for the initial training of ACs to be approved under general arrangements as they will not be treated as being an AC in this period. (Direction 16(b) applies)

Examples

A section 12 approved doctor takes up his first post as a consultant psychiatrist responsible for the care of a patient subject to the provisions of the MH Act in January 2009. He will be treated as approved as an AC until 2 November 2009 without having to have completed a course for the initial training of ACs.

A section 12 approved doctor takes up his first post as a consultant psychiatrist in October 2008, but does not meet the requirements to be treated as an AC under Group 1 or Group 2 because he has not:

- had overall charge of a patient's care; or
- undertake any responsibilities that would fall to an RMO to make;

will be treated as approved as an AC until 2 November 2009 without having to have completed a course for the initial training of ACs.

Suspension

78. Any doctor approved under Part 3 of the Directions who at, or after, approval is suspended by the General Medical Council (GMC) will be suspended from being approved as an AC for as long as the GMC suspension lasts. If the GMC suspension is lifted the AC suspension should also be lifted.

Other doctors

79. Any doctor who does not meet the transitional arrangements in Part 3 of the Directions but wishes to be approved as an AC, will need to be approved by the relevant SHA under the general approval arrangements (Part 2 of the Directions) (see paragraph 81).

Section 12 approval

80. No changes have been made to provisions for section 12 doctors in the 2007 MH Act. However, all doctors who are approved as ACs under the transitional provisions in Part 3 of the Directions must also be section 12 approved. We understand that there may be a few doctors who may be otherwise eligible to be approved as an AC under these directions but who are not currently section 12 approved. These individuals will not be able to be approved as ACs through these transitional arrangements unless they apply for and receive section 12 approval before 3 November. Individual doctors and organisations should be aware of this and take any necessary action to avoid disruption of patient care and service delivery.

General approval

81. The Directions (Part 2) directs SHAs to exercise the function of approving persons to act as ACs. This is described here as general approval to distinguish it from the transitional approval described above. An SHA shall only approve a person to act as an AC under general approval arrangements if they are satisfied that the person:
- fulfils the professional requirements;
 - possesses relevant competencies; and
 - has completed a course for the initial training of ACs in the 12 months before approval, or, has been approved (or treated as approved under transitional arrangements as they have acted as an RMO) in the past 5 years.
82. SHAs may delegate the approval function to PCTs. New systems and processes are being established so that SHAs and PCTs can carry out these functions and guidance is being developed to support them with this. Further guidance for SHAs and employers on their responsibilities around approving and employing ACs and RCs is being produced separately and will be available soon.

Recording approved clinicians

83. SHAs will need to ensure that they have an up to date record of all ACs. All doctors approved as ACs under transitional arrangements in Part 3 of the Directions should from 3rd November be on SHA section 12 registers or lists (as all these doctors will be section 12 approved). However, it is important to emphasise that not all section 12

doctors will meet the criteria to be approved as ACs. SHAs will wish to ensure that their records are updated to add relevant details of individuals approved as ACs through the transitional arrangements, in particular the length of approval and the requirement for certain individuals (group 2. above) to undertake AC training in the first year. SHAs may wish to liaise with Mental Health Trusts, or any other providers who employ doctors with duties under the Act, to co-ordinate the collection of this information.

84. Trust Boards will need to ensure that the criteria within Directions have been applied to each of the medical practitioners who are being treated as ACs when the Act comes into force. To ensure this is the case, Boards will need to review each doctor's status and experience and decide whether the criteria are met. If the criteria are met then each name can be placed on the SHA's AC list. If the criteria are not met then arrangements need to be made for the individual practitioner to access appropriate training. Medical directors are likely to have a key role in this important process.

Initial training of approved clinicians

85. From 3 November all qualifying professionals (other than those described above under Group 1 in transitional arrangements) who wish to become approved, or treated as approved, as an AC will be required to have completed, or made a commitment to complete in the first year, an initial training course for ACs. The course materials and methods of delivery are the subject of guidance being developed under the auspices of the joint Department of Health/Care Services Improvement Partnership "Approved Clinician Advisory Group". That guidance, which will be available shortly, will set out the standards for training and the recommended curriculum.