

Gateway number: 18298

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To: Local Authority Directors of Adult Social Services

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Application of the Mental Health Act 1983

This letter is for your information and does not require any action. This afternoon the Secretary of State for Health announced that the Department of Health is taking action to correct an irregularity in the application of the Mental Health Act 1983.

A technical issue has been identified in the way some strategic health authorities have been administering the process for approving doctors to work under the Act. This involves how doctors who have been recommended by an expert panel for work assessing and detaining patients have had that recommendation approved.

There is no suggestion that the hospitalisation or detention of patients has been clinically inappropriate; nor that the doctors involved are anything other than properly qualified to make the recommendations; nor that these doctors might have made incorrect diagnoses or decisions about the treatment that patients need.

The issue is a technical irregularity involving the approval of the doctors who make the assessments – not the validity of the assessments themselves.

The Department of Health was informed of the issue last week. Work was started immediately to address the issue. For the future, all affected SHAs have dealt with the problem and have now approved all the doctors involved through revised governance arrangements.

The Department has received legal advice that there are good arguments that the detentions involving these particular approval processes were, and are, lawful, but there is a need for absolute legal clarity. The advice is that this irregularity should be resolved through emergency retrospective legislation, which we will be in force this week. The effect of the legislation will be to validate retrospectively the approval decisions that were made and it will be a simple and rapid process. It will apply in principle to the approval of all doctors under the Mental Health Act from its introduction in 1983 up until

Friday 26th October. It will not apply to any patients assessed from now on. They will continue to be assessed under the current provisions.

Local authorities can be reassured that there is no implication for the practice of, or decisions made by, Approved Mental Health Practitioners, under provisions of the Mental Health Act; but you may want to pass on the information in this letter to your AMHPs. If you need further details, you can contact your Strategic Health Authority, who will be coordinating local communications on this matter.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Shaun Gallagher', written in a cursive style.

Shaun Gallagher
Director General for Social Care, Local Government and Care Partnerships