

2022 No. (W.)

MENTAL CAPACITY, WALES

**The Mental Capacity (Deprivation
of Liberty: Training and Criteria for
Approval as an Approved Mental
Capacity Professional) (Wales)
Regulations 2022**

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Mental Capacity (Amendment) Act 2019 (c. 18) (“the 2019 Act”) amended the Mental Capacity Act 2005 (c. 9) (“the 2005 Act”) to provide for a new process for authorising arrangements enabling the care or treatment of persons who lack capacity to consent to the arrangements, which give rise to a deprivation of their liberty (“the arrangements”). In particular, the 2019 Act inserts a new Schedule AA1 into the 2005 Act, which contains the new administrative scheme for the authorisation of those arrangements by a responsible body in Wales (“Liberty Protection Safeguards”). The Liberty Protection Safeguards will replace the scheme set out in Schedule A1 to the 2005 Act (“Deprivation of Liberty Safeguards Scheme”).

Before the arrangements can be authorised, a pre-authorisation review must be carried out to determine whether the authorisation conditions are met in respect of the arrangements or whether it is reasonable for a responsible body to conclude that the authorisation conditions are met. In certain circumstances, this pre-authorisation review must be carried out by an Approved Mental Capacity Professional (“AMCP”). An AMCP will also, in certain circumstances, determine whether the authorisation conditions are met upon a review of the arrangements.

Paragraph 39 of Schedule AA1 to the 2005 Act requires each local authority to make arrangements for persons to be approved as AMCPs, and to ensure that enough AMCPs are available for its area.

These Regulations set out the criteria which must be met in order for a person to be eligible for approval by

a local authority in Wales as an AMCP. These criteria include a requirement to undertake either a conversion course or initial training and, once approved to undergo further training annually in order that approval by a local authority may continue. These Regulations also set out the bodies which may approve a conversion course, initial training and further training for the purpose of meeting the training element of the eligibility criteria for approval as an AMCP in Wales.

Regulation 3 provides that in order to be eligible for approval a person must be registered in the register of one of the professions mentioned in that regulation.

Regulation 4 specifies the matters that a local authority in Wales must take into account before approving a person as an AMCP.

Regulation 5 prescribes that, in each year of approval, an AMCP must satisfy the local authority which approved that person as an AMCP that they have undertaken at least 18 hours of further training in the year of approval and have carried out their functions as an AMCP to an appropriate standard in order for that approval to continue.

Regulation 6 provides that an AMCP must notify the approving local authority, and cease to act as an AMCP, if they are no longer registered in the register of a profession specified in regulation 3 or if they are suspended from the register.

Regulation 7 requires a person's approval as an AMCP to be suspended if that person is suspended from the relevant register of the professions mentioned in regulation 3.

Regulation 8 provides an exemption from the requirement in regulation 5(1)(a) to undertake 18 hours of further training in each year of approval. This exemption will only apply if, following a request by an AMCP, the local authority considers there is a good reason to agree to the exemption and continue an approval. An AMCP must not carry out any functions as an AMCP until they have completed at least 18 hours of further training in such a period as specified by the local authority.

Regulation 9 specifies when an approval as an AMCP will end.

Regulation 10(1) provides for Social Care Wales to approve initial training courses for the purpose of regulation 4 for AMCPs in Wales. Regulation 10(2) provides for either Social Care Wales or the Welsh Ministers to approve conversion courses for the purpose of regulation 4 which will enable a person who is a best interest assessor under the Deprivation of Liberty Safeguards Scheme to become AMCP.

Regulation 10(3) provides for either Social Care Wales or a local authority in Wales to approve further training for AMCPs for the purpose of regulation 5. Training or courses approved by a body prescribed by the Secretary of State in relation to England may also be considered for the purposes of regulations 4 and 5.

The Welsh Ministers' Code of Practice on the carrying out of Regulatory Impact Assessments was considered in relation to these Regulations. As a result a regulatory impact assessment has been prepared as to the likely costs and benefits of complying with these Regulations. A copy can be obtained from the Mental Health, Substance Misuse and Vulnerable Groups Division, Welsh Government, Cathays Park, Cardiff CF10 3NQ.

2022 No. (W.)

MENTAL CAPACITY, WALES

**The Mental Capacity (Deprivation
of Liberty: Training and Criteria for
Approval as an Approved Mental Capacity
Professional) (Wales)
Regulations 2022**

Made ***

Laid before Senedd Cymru ***

*Coming into force in accordance with
regulation 1(2) and (3)*

The Welsh Ministers, in exercise of the powers conferred by section 65(1)(b) and (c) of, and paragraph 40(1) of Schedule AA1 to, the Mental Capacity Act 2005⁽¹⁾, make the following Regulations.

Title, commencement and application

1.—(1) The title of these Regulations is the Mental Capacity (Deprivation of Liberty: Training and Criteria for Approval as an Approved Mental Capacity Professional) (Wales) Regulations 2022.

(2) Except as specified in paragraph (3), these Regulations come into force on [insert date].

(3) The following provisions come into force on [insert date]—

- (a) regulation 2 in so far as it applies to regulations 4(1) and (3) and 10(2);
- (b) regulation 4(1);
- (c) regulation 4(3);
- (d) regulation 10(2).

(1) 2005 c. 9. Schedule AA1 was inserted by section 1(4) of the Mental Capacity (Amendment) Act 2019 (c. 18). *See* the definitions of “prescribed” and “appropriate authority” in paragraph 40(5) and (6)(b) respectively of that Schedule.

(4) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

“the 2001 Order” (“*Gorchymyn 2001*”) means the Health Professions Order 2001⁽¹⁾;

“the 2005 Act” (“*Deddf 2005*”) means the Mental Capacity Act 2005;

“AMCP” (“*PGMC*”) means an Approved Mental Capacity Professional;

“Approved Mental Capacity Professional” (“*Proffesiynolyn Galluedd Meddyliol Cymeradwy*”) has the meaning given in paragraph 3 of Schedule AA1;

“approving local authority” (“*awdurdod lleol cymeradwyo*”) means the local authority that approved a person as an AMCP under regulation 4;

“best interests assessor” (“*asesydd lles pennaf*”) means a person who is eligible and selected⁽²⁾ to carry out best interests assessments under paragraph 38 of Schedule A1⁽³⁾ to the 2005 Act as in force immediately before [insert date];

“conversion course” (“*cwrs trosi*”) means training which is—

- (a) undertaken by a best interests assessor as an alternative to initial training;
- (b) approved for best interests assessors who wish to become approved as an AMCP by—
 - (i) Social Care Wales, or
 - (ii) the Welsh Ministers, or
 - (iii) a body prescribed by the Secretary of State in regulations made under paragraph 40(1)(c) of Schedule AA1, for best interests assessors who wish to be approved as AMCPs;

“course of higher education” (“*cwrs addysg uwch*”) means a course mentioned in Schedule 6 to the Education Reform Act 1988⁽⁴⁾;

“further training” (“*hyfforddiant pellach*”) means—

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- (1) S.I. 2002/254.
 - (2) See S.I. 2009/783 (W. 69) for eligibility criteria for best interest assessors.
 - (3) Schedule A1 repealed by paragraph 2 of Schedule 2 to the Mental Capacity (Amendment) Act 2019 (c. 18) (date to be appointed. Paragraph 2(c) of Schedule 2 came into force on 16 May 2019 for the limited purpose of enabling the exercise of any power to make regulations; not yet in force otherwise).
 - (4) 1988 c. 40.

- (a) training approved by Social Care Wales pursuant to regulation 10(3),
- (b) training approved by a local authority in Wales, or
- (c) a course of higher education approved by a body prescribed by the Secretary of State in regulations made under paragraph 40(1)(c) of Schedule AA1, for persons who are approved as AMCPs;

“initial training” (*“hyfforddiant cychwynnol”*) means—

- (a) training approved by Social Care Wales pursuant to regulation 10(1), or
- (b) a course of higher education approved by a body prescribed by the Secretary of State in regulations made under paragraph 40(1)(c) of Schedule AA1, for persons who wish to become approved as AMCPs;

“local authority” (*“awdurdod lleol”*) has the meaning given by paragraph 4(1) of Schedule AA1;

“local authority in England” (*“awdurdod lleol yn Lloegr”*) has the meaning given by paragraph 4(1)(a) of Schedule AA1;

“local authority in Wales” (*“awdurdod lleol yng Nghymru”*) has the meaning given by paragraph 4(1)(b) of Schedule AA1;

“Schedule AA1” (*“Atodlen AA1”*) means Schedule AA1 to the 2005 Act;

“Social Care Wales” (*“Gofal Cymdeithasol Cymru”*) has the meaning given by section 67 of the Regulation and Inspection of Social Care (Wales) Act 2016⁽¹⁾.

AMCP: criteria for approval

3. A person is eligible for approval as an AMCP if that person is—

- (a) a first level nurse⁽²⁾ registered in Sub-Part 1 of the Nurses’ Part of the register maintained under article 5 of the Nursing and Midwifery Order 2001⁽³⁾,
- (b) a person registered as a social worker—
 - (i) in the social worker part of the register kept by Social Care Wales under section

⁽¹⁾ 2016 anaw 2.

⁽²⁾ See article 1 of the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004 (S.I. 2004/1765) for the definition of “first level nurse”.

⁽³⁾ S.I. 2002/253.

- 80 of the Regulation and Inspection of Social Care (Wales) Act 2016⁽¹⁾;
- (ii) in the register kept by Social Work England under section 39(1) of the Children and Social Work Act 2017⁽²⁾;
 - (iii) in the register maintained by the Scottish Social Services Council under section 44 of the Regulation of Care (Scotland) Act 2001⁽³⁾;
 - (iv) in the register maintained by the Northern Ireland Social Care Council under section 3 of the Health and Personal Social Services Act (Northern Ireland) 2001⁽⁴⁾,
- (c) a practitioner psychologist registered in Part 14⁽⁵⁾ of the register maintained under article 5 of the 2001 Order,
 - (d) a speech and language therapist registered in Part 12 of the register maintained under article 5 of the 2001 Order, or
 - (e) an occupational therapist registered in Part 6 of the register maintained under article 5 of the 2001 Order.

Approval of AMCPs: matters to be taken into account by a local authority in Wales

4.—(1) A local authority in Wales must only approve a person falling within regulation 3 as an AMCP if—

- (a) either paragraph (2) or (3) applies, and
- (b) the local authority in Wales is satisfied that that person—
 - (i) has an applied knowledge of the 2005 Act and the code of practice prepared or revised under section 42 of that Act, and
 - (ii) the ability to keep appropriate records and to provide clear and reasoned reports in accordance with legal requirements and good practice, and
 - (iii) has knowledge of good practice in relation to arrangements in Wales.

(2) This paragraph applies if the person—

- (a) has—
 - (i) successfully completed initial training,

(1) 2016 anaw 2.
 (2) 2017 c. 16.
 (3) 2001 asp 8.
 (4) 2001 c. 3 (N.I.).
 (5) See article 2 of the Health Professions (Parts of and Entries in the Register) Order of Council 2003 (S.I. 2003/1571) for parts of the register.

- (ii) previously been approved as an AMCP under paragraph (3), or
 - (iii) previously been approved as an AMCP by a local authority in England,
 - (b) is not suspended from the register relevant to that person's profession mentioned in regulation 3,
 - (c) has at least 2 years post registration experience in one of the professions mentioned in regulation 3,
 - (d) has in force an adequate and appropriate indemnity arrangement which provides cover in respect of any liabilities that might arise in connection with the carrying out of that person's functions under the 2005 Act as an AMCP, and
 - (e) has either—
 - (i) an enhanced criminal record certificate issued under section 113B of the Police Act 1997⁽¹⁾, or
 - (ii) if the purpose for which the certificate is required is not one prescribed under subsection (2) of that section, a criminal record certificate issued under section 113A of that Act.
- (3) This paragraph applies if a person—
- (a) is a best interests assessor,
 - (b) has—
 - (i) successfully completed a conversion course before [insert date], and
 - (ii) applied to the local authority before [insert date],
 - (c) is not suspended from the register relevant to that person's profession mentioned in regulation 3,
 - (d) has in force an adequate and appropriate indemnity arrangement which provides cover in respect of any liabilities that might arise in connection with the carrying out of that person's functions under the 2005 Act as an AMCP, and
 - (e) has either—
 - (i) an enhanced criminal record certificate issued under section 113B of the Police Act 1997, or
 - (ii) if the purpose for which the certificate is required is not one prescribed under subsection (2) of that section, a criminal

(1) 1997 c. 50.

record certificate issued under section 113A of that Act.

(4) In this regulation—

“arrangements” (“*trefniadau*”) has the meaning given by paragraph 3 of Schedule AA1;

“indemnity arrangement” (“*trefniant indemnïad*”) means—

- (a) a policy of insurance,
- (b) an arrangement made for the purposes of indemnifying the person to whom the arrangement relates, or
- (c) a combination of a policy of insurance and an arrangement made for the purposes of indemnifying the person to whom the arrangement relates.

Conditions for continuing approval

5.—(1) Subject to paragraph (2), a person approved as an AMCP must, in each year of approval as such, satisfy the approving local authority that they have—

- (a) completed at least 18 hours of further training in the year of approval, and
- (b) carried out their functions as an AMCP to an appropriate standard.

(2) Paragraph (1)(a) does not apply to a person’s first year of approval where that person has in the 12 months preceding approval as an AMCP successfully completed—

- (a) initial training, or
- (b) a conversion course.

(3) In this regulation, “year of approval” means—

- (a) the 12 month period starting with the date on which that person was first approved as an AMCP, and
- (b) in subsequent years, the 12 month period starting on the anniversary of that date.

Notification requirements

6.—(1) Where an AMCP—

- (a) ceases to satisfy the criteria for approval specified in regulation 3, or
- (b) is suspended from the register relevant to their profession specified in regulation 3,

they must notify the approving local authority of that fact without delay.

(2) Where paragraph (1) applies, a person must not carry out functions of an AMCP.

Suspension from a register relevant to a person's profession in regulation 3

7.—(1) If, after their approval as an AMCP, a person is suspended from the register relevant to their profession specified in regulation 3, the approving local authority must suspend that approval for as long as the person's registration is suspended.

(2) When the approving local authority is notified that the person's suspension from their professional register has ended, the approving local authority must end the suspension of that person's approval as an AMCP.

(3) Where a person's suspension of approval as an AMCP is ended under paragraph (2), that person must not resume carrying out functions as an AMCP unless the approving local authority is satisfied that the person has appropriate competence to carry out those functions.

Exemption from the requirements of regulation 5(1)(a)

8.—(1) A person approved as an AMCP may request that they are exempted from the requirements of regulation 5(1)(a).

(2) The approving local authority may agree to the request mentioned in paragraph (1) if it considers there is good reason to exempt that person from the requirements of regulation 5(1)(a).

(3) Where the approving local authority agrees to a request under paragraph (2), the person in respect of whom the agreement relates must not carry out functions as an AMCP unless they have satisfied the approving local authority that they have completed at least 18 hours of further training in such a period as specified by the approving local authority.

(4) Where person resumes carrying out functions as an AMCP, their "year of approval" for the purposes of regulation 5(1) means—

- (a) the 12 month period beginning with the date on which that person resumes carrying out functions as an AMCP, and
- (b) in subsequent years, the 12 month period beginning with the anniversary of that date.

End of approval

9.—(1) The approving local authority must end a person's approval as an AMCP if—

- (a) the person no longer meets the criteria for approval specified in regulation 3,
- (b) except in circumstances where regulation 7 applies, regulation 4(2) or (3) ceases to apply in respect of that person,

- (c) it is no longer satisfied as to the matters in regulation 4(1)(b),
- (d) the person does not comply with the requirements of regulation 5(1), or
- (e) that person requests the approving local authority to do so.

(2) Where the approving local authority ends a person's approval as an AMCP under paragraph (1), it must notify the person that their approval as an AMCP has ended and give reasons for the ending of that approval.

Prescribed body to approve training and courses for AMCPs

10.—(1) Social Care Wales must approve initial training for persons who wish to become approved as AMCPs by a local authority in Wales.

(2) Social Care Wales or the Welsh Ministers must approve a conversion course for best interests assessors who wish to be approved as AMCPs by a local authority in Wales.

(3) Social Care Wales or a local authority in Wales may approve further training for persons who have completed initial training or a conversion course.

(4) Training approved under paragraph (1) must be a course of higher education.

Name

Minister for Health and Social Services, one of the Welsh Ministers

Date