
SUBORDINATE
LEGISLATION

2018 No.55 (W.)

**NATIONAL HEALTH
SERVICE, WALES**

**Mental Health Act 1983 (Approved
Clinicians) (Wales) Directions 2018**

Made 16 July 2018

Coming into force 20 July 2018

The Welsh Ministers, give the following Directions in exercise of the powers conferred by sections 12(1)(b), 13(2)(a) and 203(9) and (10) of the National Health Service (Wales) Act 2006⁽¹⁾.

Title, Commencement and Application

1.—(1) The title of these Directions is the Mental Health Act 1983 (Approved Clinicians) (Wales) Directions 2018.

(2) These Directions are given to Local Health Boards and apply in relation to approving persons to act as approved clinicians in relation to Wales.

(3) These Directions come into force on 16 July 2018

Interpretation

2. In these Directions—

“the 1983 Act” (“*Deddf 1983*”) means the Mental Health Act 1983⁽²⁾;

“the 2008 Directions” (“*Cyfarwyddydau Deddf Iechyd Meddwl 1983 ynghylch Clinigwyr*

Cymeradwy (Cymru) 2008”) means the Mental Health Act 1983 Approved Clinician (Wales) Directions 2008;

“the 2006 Act” (“*Deddf 2006*”) means the National Health Service (Wales) Act 2006;

(1) 2006 c.42.
(2) 1983 c.20.

except in the context of direction 4 “approve” (“*cymeradwyo*”) and “approval” (“*cymeradwyaeth*”) include “reapprove” (“*ailgymeradwyo*”) and “reapproval” (“*ailgymeradwyaeth*”);

“approved clinician” (“*clinigydd cymeradwy*”) has the meaning given by section 145(1) of the 1983 Act⁽¹⁾;

“approving Board” (“*Bwrdd sy'n cymeradwyo*”) means Betsi Cadwaladr University Local Health Board;

“Board” (“*Bwrdd*”) means a Local Health Board established under section 11 of the 2006 Act;

“initial training course” (“*cwrs hyfforddi cychwynnol*”) means a course which the approving Board considers suitable for the purposes of training a prospective approved clinician;

“medical treatment” (“*triniaeth feddygol*”) has the meaning given in section 145(1) and (4) of the 1983 Act;

“mental disorder” (“*anhwylder meddwl*”) has the meaning given in section 1(2) of the 1983 Act;

“period of approval” (“*cyfnod cymeradwyaeth*”) has the meaning given in direction 5;

“professional body” (“*corff proffesiynol*”) means the body responsible for the registration or listing of members of each of the professions listed in Schedule 1;

“professional requirements” (“*gofynion proffesiynol*”) means the requirements set out in Schedule 1 to these Directions;

“protected characteristic” (“*nodwedd warchoddedig*”) has the meaning given in section 4 of the Equality Act 2010⁽²⁾;

“refresher training course” (“*cwrs hyfforddi diweddarau*”) means a course which the approving Board considers suitable for the purposes of refreshing the skills and competencies of a person who is, or has previously been, an approved clinician;

“relevant competencies” (“*cymwyseddau perthnasol*”) means the competencies listed in Schedule 2 to these Directions;

“responsible clinician” (“*clinigydd cyfrifol*”) has the meaning given in section 34(1) of the 1983 Act; and

(1) The Welsh Ministers have directed the Boards to exercise the function under section 145(1) of the 1983 Act under their powers to make these Directions.

(2) 2010 c.15.

“treatment” (“*triniaeth*”) means medical treatment for a mental disorder.

Function of Approval

3. The Boards are to exercise the function of approving persons to be approved clinicians in their area with the approving Board exercising this function on behalf of each of the Boards.

Granting Approval

4.—(1) Subject to paragraph (2) and direction 9 the approving Board may only grant approval to a person who has applied to be an approved clinician if that person—

- (a) fulfils at least one of the professional requirements;
- (b) is able to demonstrate that they have the relevant competencies;
- (c) has completed an initial training course within the two year period prior to the date of the application for approval; and
- (d) has an enhanced criminal record certificate under section 113B of the Police Act 1997 including suitability information relating to children under section 113BA and vulnerable adults under section 113BB of that Act unless the applicant is:
 - (i) a person who is, or is a partner in a partnership that is, registered under Chapter 2 of the Health and Social Care Act 2008; or
 - (ii) currently employed by a person so registered.

(2) Where a person is approved to act as an approved clinician in relation to England, or has been so approved in the previous 5 years and is not already approved under these Directions, the approving Board may only grant approval to that person to be an approved clinician in relation to Wales if that person—

- (a) fulfils the professional requirements;
- (b) is able to demonstrate that they have the relevant competencies; and
- (c) has an enhanced criminal record certificate under section 113B of the Police Act 1997 including suitability information relating to children under section 113BA and vulnerable adults under section 113BB of that Act unless the applicant is:
 - (i) a person who is, or is a partner in a partnership that is, registered under

Chapter 2 of the Health and Social Care Act 2008; or

- (ii) currently employed by a person so registered.

(3) In determining whether the person seeking approval as an approved clinician has the relevant competencies as required under paragraphs (1)(b) and (2)(b), the approving Board must have regard to the references of that person.

Period of approval

5.—(1) Subject to paragraph (2) the approving Board may approve a person to act as an approved clinician for a period of 5 years.

(2) Where a person is approved to act as an approved clinician under regulation 4(2), the approving Board may only approve that person to act as an approved clinician for the period which is remaining in relation to their approval in relation to England.

Conditions to maintain approval during the period of approval

6.—(1) Any approval granted under these Directions is subject to the following conditions—

- (a) the approved clinician must immediately cease to act as such and immediately notify the approving Board if they are suspended from any of the registers or lists referred to in the professional requirements;
- (b) the approved clinician must immediately notify the approving Board if—
 - (i) any conditions are attached, by their professional body, to their registration or listing,
 - (ii) they become subject to fitness to practise proceedings by their professional body,
 - (iii) they no longer meet the requirements set out in direction 4 or 9, as the case may be, and
 - (iv) they are convicted of, or receive a caution for, a criminal offence in the United Kingdom, or convicted of or receive a caution for an offence outside the United Kingdom which, if committed in England and Wales, would constitute a criminal offence;
- (c) the approved clinician must on request provide evidence to the approving Board that they continue to possess the relevant competencies;
- (d) the approved clinician must immediately cease to act as an approved clinician if the

person's approval is suspended or, upon the expiry of the period of approval where no application for reapproval has been made; and

- (e) such other conditions as the approving Board considers are reasonable and appropriate.

(2) If, during the period of approval, conditions are attached to the approved clinician's registration or listing by their professional body, the approving Board must attach the same conditions to the approval, unless it has suspended the approval under direction 7(3).

Suspension of approval

7.—(1) If at any time during the period of approval the approved clinician's professional body suspends that registration or listing, the approving Board must suspend that clinician's approval for as long as the registration or listing is suspended.

(2) If at anytime during the period of approval an approved clinician has conditions attached to their registration or listing by their professional body, the approving Board may suspend that person's approval.

(3) If at anytime during the period of approval an approved clinician is convicted of, or receives a caution for, a criminal offence in the United Kingdom or is convicted of or receives a caution for an offence outside the United Kingdom which, if committed in England and Wales, would constitute a criminal offence, the approving Board may suspend that person's approval.

(4) Before the approving Board suspends an approved clinician's approval under paragraphs (1), (2) or (3), it must—

- (a) give the approved clinician its reasons for considering suspending the approval;
- (b) give the approved clinician a period of time which the approving Board considers reasonable to make representations in respect of the proposed action; and
- (c) consider representations submitted by the approved clinician to the approving Board.

(5) When the approving Board suspends an approved clinician's approval, the approving Board must inform the approved clinician and the professional body responsible for regulating the approved clinician's professional registration or listing of its reasons for the decision.

(6) If a person's approval is suspended, that person may not act in that capacity unless and until the suspension of approval is ended by the approving Board.

(7) Where the suspension of approval has ended, the approval will continue to run for the remainder of the

period of approval unless the approving Board ends it earlier in accordance with direction 8.

End of approval

8.—(1) Subject to paragraph (2), the approval of an approved clinician ends upon the expiry of the period of approval.

(2) The approving Board must end the approval of an approved clinician before the expiry of the period of approval in the following circumstances—

- (a) if, in the opinion of the approving Board, the approved clinician does not comply with any of the conditions listed in direction 6;
- (b) if, in the opinion of the approving Board, the approved clinician no longer has the relevant competencies;
- (c) if the approved clinician no longer meets the professional requirements; or
- (d) if the approved clinician makes a request, in writing, to end their approval.

(3) Before the approving Board ends an approved clinician's approval under paragraphs (2)(a)-(c), the approving Board must—

- (a) give the approved clinician its reasons for considering ending the approval;
- (b) give the approved clinician a period of time which the approving Board considers reasonable to make representations in respect of the proposed action; and
- (c) consider representations submitted by the person to the approving Board.

(4) Where the approving Board ends the approval of an approved clinician under paragraph (2), the approving Board must immediately notify that clinician in writing of the date of the ending of approval and the reason for the ending of approval.

Reapproval

9.—(1) A Board may grant reapproval to a person who has previously been approved as an approved clinician in Wales where—

- (a) the previous approval has been in force within the 5 year period immediately preceding the date of the application for reapproval;
- (b) the person seeking reapproval fulfils the professional requirements;
- (c) the person seeking reapproval is able to demonstrate that they have the relevant competencies;
- (d) the person seeking reapproval has an enhanced criminal record certificate under

section 113B of the Police Act 1997 including suitability information relating to children under section 113BA and vulnerable adults under section 113BB of that Act unless the applicant is:

- (i) a person who is, or is a partner in a partnership that is, registered under Chapter 2 of the Health and Social Care Act 2008, or
 - (ii) currently employed by a person so registered, and
- (e) the person has completed a refresher training course within the 2 year period immediately preceding the date on which the person's previous period of approval expired.

(2) In determining whether the person seeking reapproval as an approved clinician has the relevant competencies as required under paragraph (1)(c), the approving Board must have regard to the references of that person.

Monitoring and Records

10.—(1) The approving Board must keep a record of all approved clinicians that it approves and those records must include—

- (a) the application;
- (b) the person's name;
- (c) the person's profession;
- (d) the dates of approval;
- (e) the period for which approval is granted;
- (f) details of the completion of any training referred to in directions 4 and 9;
- (g) the person's references;
- (h) details of any—
 - (i) conditions attached to the approval,
 - (ii) suspension of approval and the date that such suspension comes to an end,
 - (iii) ending of approval.

(2) The approving Board must keep the records referred to in paragraph (1), in relation to each approved clinician approved by it, for a period of 5 years following the ending of an approved clinician's approval.

Revocation

11. Subject to the saving provisions in direction 12 the following directions are revoked—

- (a) The 2008 Directions;

- (b) The Mental Health Act 1983 Approved Clinician (Wales) (Amendment) Directions 2009.

Transitional and saving provisions

12.—(1) Where immediately before the date on which these Directions come into force a person is approved as an approved clinician, on and after that day these Directions will apply to that person's approval as if the approval were granted in accordance with these Directions save that the period of approval will begin on the date upon which approval was actually granted under the 2008 Directions.

(2) Where a person has made an application for approval prior to the day on which these Directions come into force, but that application has not yet been determined, that application is to be determined in accordance with the 2008 Directions notwithstanding the revocation of those Directions.

(3) Where an application to which paragraph (2) applies results in the approving Board granting approval, these Directions will apply to that approved clinician's approval as if such approval had been granted under these Directions.

Signed under the authority of the Cabinet Secretary for Health and Social Services, one of the Welsh Ministers



Dr Elizabeth Davies
Deputy Director, Mental Health and Vulnerable
Groups Division

Dated

16 July 2018

SCHEDULE 1

Direction 4(a)

Professional Requirements

1. In order to fulfil the professional requirements a person must submit evidence to demonstrate that they are one or more of the following—

- (a) a registered medical practitioner;
- (b) a psychologist who is listed in the British Psychological Society's Register of Chartered Psychologists and who holds a relevant practising certificate issued by that Society⁽¹⁾ or a practitioner psychologist registered in a list maintained by the Health and Care Professions Council⁽²⁾;
- (c) a first level nurse, registered in Sub-Part 1 of the Nurses' Part of the register maintained under article 5 of the Nursing and Midwifery Order 2001⁽³⁾, with the inclusion of an entry indicating their field of practice is mental health or learning disabilities nursing;
- (d) an occupational therapist listed in the register maintained by the Health and Care Professions Council;
- (e) a social worker listed in the register maintained by Social Care Wales⁽⁴⁾ or the Health and Care Professions Council.

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- (1) The British Psychological Society is a Royal Charter body, registered as a charity in England and Wales No.229642 and is at St. Andrew's House, 48 Princess Road East, Leicester, LE1 7DR.
 - (2) The Health Professions Council is set up under article 3 of the Health Professions Order 2001, S.I. 2002/254.
 - (3) S.I. 2002/235.
 - (4) The Care Council for Wales is established under section 54(1) of the Care Standards Act 2000 (c.14). Section 54(1) was repealed but the body known as the Care Council for Wales is to continue in existence but is renamed as Social Care Wales by virtue of section 67 of the Regulation and Inspection of Social Care (Wales) Act 2016 (2016 anaw 2).

SCHEDULE 2

Direction 4(b)

Relevant competencies

1 The role of the approved clinician

1.1 A comprehensive understanding of the role, legal responsibilities and key functions of an approved clinician and responsible clinician.

2. Values based practice

2.1 The ability to identify and apply the range of appropriate and effective health and social care treatments and treatment settings which can be provided in the least restrictive methods for those dealt with or who may be dealt with under the 1983 Act.

2.2 An understanding and respect of individuals' unique personal characteristics.

2.3 Sensitivity to individuals' needs in terms of respect to the patient and the patient's choice, dignity and privacy whilst exercising the role of approved clinician or responsible clinician.

2.4 The ability to promote the rights, dignity and self determination of patients consistent with their own needs and wishes, to enable them to contribute to the decisions made affecting their quality of life and liberty.

3. Assessment

3.1 The ability to identify the presence or absence of mental disorder and the severity of the disorder, including whether it is of a kind or degree warranting the use of detention under the 1983 Act.

3.2 The ability to undertake mental health assessments incorporating biological, psychological, cultural and social perspectives.

3.3 The ability to assess all levels of clinical risk, including (but not limited to) the safety of the patient

and others within an evidence based framework for risk assessment and management.

3.4 The ability to demonstrate a high level of skill in determining whether a patient has capacity to consent to treatment.

4. Care and Treatment Planning

4.1 Possession of the skills and knowledge necessary to undertake safe, effective and efficient care planning, including (but not limited to) being able to:

- (a) involve patients and (where appropriate) their families and carers in care planning;
- (b) assess patients' needs;
- (c) formulate individual care plans to meet identified patient needs;
- (d) ensure that care plans are implemented as agreed;
- (e) review and evaluate care plans (and revise as necessary).

5. Treatment

5.1 The skills and knowledge necessary to harness the specialist treatment expertise of multi-disciplinary teams for the benefit of the patient. To include (but not be limited to) an understanding of the roles and specialist competencies of the various members of a multidisciplinary team, in relation to specific treatments and therapies.

5.2 Broad understanding of all mental health related treatments, i.e. physical, psychological and social interventions.

6. Leadership and Multi Disciplinary Team Working

6.1 Possession of the skills and knowledge necessary to:

- (a) lead effectively a multi-disciplinary team in the delivery of co-ordinated programmes of care, in order to meet the needs of patients for whom he or she is responsible;
- (b) take into account the views and opinions of patients and (where appropriate) their families and carers when developing programmes of care involving the team;
- (c) consider objectively the professional opinions of other colleagues within the team when formulating programmes of care, so as to ensure that care and treatment decisions are multidisciplinary and based on sound evidence.

6.2 An advanced level of skills in making and taking autonomous responsibility for complex judgements and decisions, without referring to supervision in each individual case.

7. Equality, diversity and rights

7.1 The ability to demonstrate up to date applied knowledge and understanding of relevant equality legislation and equality issues.

7.2 An awareness of how cultural factors and personal values can affect practitioners' judgements and decisions in the application of mental health legislation.

7.3 The ability to identify, challenge, and where possible redress discrimination and inequality in all its forms in relation to approved clinician practice.

7.4 The ability to demonstrate up to date applied knowledge and understanding of the rights of children and young persons.

7.5 The ability to demonstrate up to date applied knowledge and understanding of the rights of older people, in particular the right of older people to make their own decisions about their lives.

8. Mental Health Legislation and Policy

8.1 Up to date working knowledge of:

(a) relevant mental health legislation, including but not limited to, the 1983 Act and the Mental Capacity Act 2005(1), and the Mental Health (Wales) Measure 2010(2),

(b) other relevant legislation, including but not limited to, the Human Rights Act 1998(3), the Children Act 1989(4), the Children Act 2004(5) and the Social Services and Well-being (Wales) Act 2014(6),

(c) relevant guidelines from the National Institute for Health and Care Excellence, codes of practice and national policies and protocols; and

(d) relevant case law.

8.2 In the above paragraph, the term "relevant" means relevant to the practice of approved clinicians and responsible clinicians.

9 Communication

9.1 The ability to communicate effectively with professionals, patients, carers and others, particularly in relation to decisions taken and the underlying

(1) 2005 c.9.

(2) 2010 nawn. 7.

(3) 1998 c.42.

(4) 1989 c.41.

(5) 2004 c.31.

(6) 2014 anaw. 4.

reasons for these, and including an ability to determine whether a patient has capability or competency to consent to a treatment.

9.2 Consideration of the particular needs of individuals for whom Welsh is their language of choice.

9.3 Consideration of the particular needs of patients with protected characteristics.

9.4 The ability to demonstrate appropriate record keeping in accordance with legal requirements.

9.5 The ability to compile and complete statutory documentation and to provide written reports as required of an approved clinician.

9.6 The ability to write effective reports.

9.7 The ability to competently present evidence, both verbal and written, to courts and tribunals.