

NATIONAL HEALTH SERVICE, WALES

NATIONAL HEALTH SERVICE (WALES) ACT 2006

Mental Health Act 1983 Approved Clinician (Wales) Directions 2008

Made

20 October 2008

Coming into force

3 November 2008

The Welsh Ministers give the following directions in exercise of the powers conferred on them by sections 12, 13 and 203 of the National Health Service (Wales) Act 2006(1).

PART 1

Application etc.

Application, commencement and interpretation

1.—(1) These Directions apply to Local Health Boards.

(2) These Directions apply in relation to Wales.

(3) These Directions come into force on 3 November 2008.

(4) In these Directions—

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

except in the context of direction 3, “approve” (“*cymeradwyo*”) and “approval” (“*cymeradwyaeth*”) include “reapproval” (“*ail gymeradwyo*”) and “reapproval” (“*ail gymeradwyaeth*”);

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

“approving Board” (“*Bwrdd sy’n cymeradwyo*”) means the Board that has approved the person to be an approved clinician;

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

“commencement day” (“*diwrnod cychwyn*”) means 3 November 2008;

“community responsible medical officer” (“*swyddog meddygol cyfrifol cymunedol*”) has the meaning given by section 34(1) of the Act;

“medical treatment” (“*triniaeth feddygol*”) has the meaning given by section 145 of the Act;

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

“period of approval” (“*cyfnod cymeradwyaeth*”) means the period of time for which the approval is granted in accordance with direction 5 or direction 8;

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

“responsible medical officer” (“*swyddog meddygol cyfrifol*”) has the meaning given by section 34(1) of the Act;

“relevant competencies” (“*cymwyseddau perthnasol*”) means the skills set out at Schedule 2 to these Directions;

(1) 2006 c.42.

(2) 1983 c.20.

“responsible clinician” (“*clinigydd cyfrifol*”) has the meaning given by section 34(1) of the Act; and
“treatment” (“*triniaeth*”) in the context of these Directions means medical treatment for a mental disorder.

PART 2

Approvals: General

Function of approval

2. The Welsh Ministers direct the Boards to exercise the function of approving persons to be approved clinicians.

Granting approval

3.—(1) Subject to paragraph (2), a Board may only grant approval to a person to be an approved clinician (where that person is not already approved as an approved clinician under these Directions, or has not been so approved within the previous five years) if that person—

- (a) fulfils the professional requirements;
- (b) is able to demonstrate that he or she possesses the relevant competencies; and
- (c) has completed within the last two years a course for the initial training of approved clinicians.

(2) A Board may only grant approval to a person to be an approved clinician, where that person is not already approved as an approved clinician under these Directions, but is approved to act in relation to England, or has been so approved within the previous five years, if that person—

- (a) fulfils the professional requirements; and
- (b) is able to demonstrate that he or she possesses the relevant competencies such as will enable that person to act within Wales, or, if not, completes such course as the approving Board deems necessary to enable him or her to do so.

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

Period of approval

4. A person may be approved as an approved clinician for a period of up to five years.

Suspension of or conditions attaching to Registration

5.—(1) If at any time after being approved, an approved clinician’s registration or listing in accordance with the fulfilment of the professional requirements as required under direction 3(1)(a) or 3(2)(a) as the case may be is suspended, the approving Board must suspend that person’s approval for the duration of the suspension of his or her registration or listing.

(2) In the event of conditions being attached to an approved clinician’s registration or listing, as the case may be, the Board may attach such conditions to the approval, or may suspend approval, as it may deem necessary.

(3) Where the suspension of approval has ended, the approval will continue to run for any unexpired period of approval, unless the approving Board ends it earlier in accordance with direction 6.

End of approval

6.—(1) Subject to paragraph (2), below, 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 period of approval has expired in the following circumstances—

- (a) if, in the opinion of the approving Board, the approved clinician does not meet any of the conditions attached to his or her approval; or
- (b) if, in the reasonable opinion of the approving Board, the approved clinician no longer possesses the relevant competencies; or
- (c) if, in the opinion of the approving Board, the approved clinician no longer meets the professional requirements; or
- (d) if the approved clinician makes a written request for cessation of approval.

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

Conditions of Approval

7. Any approval granted under these Directions is subject to the following conditions—

- (a) the approved clinician must notify the approving Board immediately if he or she no longer continues to meet any of the requirements set out in direction 3 in the case of initial approval, or direction 8 in the case of re-approval or if he or she is suspended from registration or listing under such requirements, or has conditions attached to the same;
- (b) the approved clinician must provide evidence to the approving Board's satisfaction, at no less than annual intervals of the date of his or her approval, that he or she continues to possess the relevant competencies to carry out functions as an approved clinician; and
- (c) any such other conditions as the approving Board thinks appropriate.

Reapproval

8.—(1) A Board may grant approval of a person who has previously been approved within Wales, such approval having been in force within the previous five years prior to the proposed date of reapproval, in accordance with these Directions where that person—

- (a) fulfils the professional requirements; and
- (b) is able to demonstrate that he or she possesses the relevant competencies.

(2) In determining whether the person seeking approval as an approved clinician possesses the relevant competencies as required under paragraph (1)(b) above, the Board must have regard to the references of that person.

Monitoring and Records

9.—(1) The approving Board must keep a record of all approved clinicians that it approves, including—

- (a) their names;
- (b) their professions;
- (c) the dates of approval;
- (d) the periods for which approval is given;
- (e) details of the completion of any training referred to in direction 3;
- (f) evidence provided to it by approved clinicians under direction 7; and
- (g) any details of the ending or suspension of approval, or conditions attached to the same.

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

PART 3

Transitional Arrangements

10. The Welsh Ministers direct Boards to follow these transitional provisions when exercising the function of approving persons to act as approved clinicians.

11. A Board must treat a person as approved to act as an approved clinician where that person—

- (a) has carried out the functions of a responsible medical officer or community responsible medical officer under the 1983 Act within the eighteen months immediately prior to the commencement day, and
- (b) is immediately prior to the commencement day a registered medical practitioner approved under section 12(2) of the 1983 Act.

12. A person to whom direction 11 applies is treated as approved to act as an approved clinician for twelve months, or until the end of his or her period of approval under section 12(2) of the 1983 Act, whichever is later.

13. Where a Board is considering whether to approve a person under direction 3(1), that person may not be treated as a person approved to act as an approved clinician for the purposes of direction 3(1)(c) if that person had been treated as approved under direction 11 but has not completed a course for the initial training of approved clinicians.

14. Direction 5 applies to a person treated as approved to act as an approved clinician as if paragraph (1) of that direction read –

“(1) If at the time of being treated as approved, or at any time after being treated as approved, the registration of an approved clinician as a registered medical practitioner is suspended, the approving Board must suspend that person’s approval to act as an approved clinician for the duration of the suspension of his or her registration or listing.”.

15. Direction 6 applies except that—

- (1) in paragraph (2)(b) for the words “no longer possesses” substitute the words “does not possess”, and
- (2) in paragraph (2)(c)(ii) for for the words “no longer meets” substitute the words “does not meet”.

16. Direction 9 applies except that for paragraph (1)(c) substitute—

“(c) the date on which the person is treated as approved”.

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

20 October 2008

SCHEDULE 1

Direction 1

Professional Requirements

1. In order to fulfil the professional requirements a person must be one of the following—

- (a) a registered medical practitioner;
- (b) a chartered psychologist who is listed in the British Psychological Society's Register of Chartered Psychologists and who holds a relevant practicing certificate issued by that Society⁽¹⁾;
- (c) a first level nurse, registered in Sub-Part 1 of the Nurses' Part of the Register established and kept by the Nursing and Midwifery Council⁽²⁾, which registration includes an entry indicating that the nurse's field of practice is mental health or learning disabilities nursing;
- (d) an occupational therapist, registered as such with the Health Professions Council⁽³⁾;
- (e) a social worker, registered as such with the Care Council for Wales or the General Social Care Council⁽⁴⁾.

(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 Council is set up under the Nursing and Midwifery Order 2001, S.I. 2002/235, and keeps the Register established under article 5 of the Order. The register is divided into parts in accordance with the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004/1765.

(3) The Health Professions Council is set up under article 3 of the Health Professions Order 2001, S.I. 2002/254.

(4) The Care Council for Wales and the General Social Care Council are set up under section 54(1) of the Care Standards Act 2000 (c.14).

SCHEDULE 2

Direction 1

Relevant competencies

1. The role of the approved clinician:

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

2. Values based practice

- 2.1 The ability to identify what constitutes least restrictive health and social care for those dealt with or who may be dealt with under the Act.
- 2.2 Understanding and respect of individuals' qualities, abilities and diverse backgrounds.
- 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 Able 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 Act.
- 3.2 Able to undertake a mental health assessment incorporating biological, psychological, cultural and social perspectives.
- 3.3 Able to assess all levels of clinical risk, and the safety of the patient and others within an evidence based framework for risk assessment and management.
- 3.4 Demonstrate a high level of skill in determining whether a patient has capacity to consent to treatment.

4. Care Planning

- 4.1 Possesses the skills and knowledge necessary to undertake safe, effective and efficient care planning, 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 needs;
 - (d) ensure that care plans are implemented as agreed;
 - (e) review and evaluate care plans (and revise as necessary).

5. Treatment

- 5.1 Has the skills and knowledge necessary to harness the specialist treatment expertise of the multidisciplinary team, for the benefit of the patient. Specifically, must be able to understand the roles and specialist competences 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 Possesses 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 multi-disciplinary and based on sound evidence.

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

7. Equality and Cultural Diversity:

7.1 Demonstrates an up to date knowledge of race equality legislation and other equality issues, including disability, sexual orientation and gender.

7.2 Has a broad grasp of issues of social exclusion.

7.3 Understands the need to promote equality and diversity.

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

7.5 Ability to identify, challenge, and where possible redress discrimination and inequality in all its forms in relation to approved clinician practice.

8. Mental Health Legislation and Policy:

8.1 Up to date working knowledge of:

- (a) the Act;
- (b) relevant NICE Guidelines;
- (c) relevant parts of other related legislation (including the Mental Capacity Act 2005, the Human Rights Act 1998 and the Children Acts);
- (d) all other relevant codes, national policies and protocols related to mental health;
- (e) Case law relevant to the practice of approved clinicians and responsible clinicians.

9. Communication:

9.1 Able to communicate effectively with professions, service users, carers and others, particularly in relation to decisions taken and the underlying reasons for these.

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

9.3 Able to demonstrate appropriate record keeping and an awareness of the legal requirements with respect to record keeping.

9.4 Ability to compile and complete statutory documentation and to provide written reports as required of an approved clinician.

9.5 Ability with regard to effective report writing.

9.6 Ability to competently present evidence both verbal and written, to courts and tribunals.