

MENTAL HEALTH ACT 1983

INSTRUCTIONS WITH RESPECT TO THE EXERCISE OF AN APPROVAL FUNCTION IN RELATION TO APPROVED CLINICIANS 2015

The Secretary of State gives these Instructions in exercise of the powers conferred by section 12ZA(5) of the Mental Health Act 1983(a):

PART 1

Application, etc.

Application, commencement and interpretation

1.—(1) These Instructions are given to a person with whom the Secretary of State has entered into an agreement under section 12ZA of the Mental Health Act 1983.

(2) These Instructions apply in relation to the approving of persons to act as approved clinicians in relation to England.

(3) These Instructions come into force on 5th January 2016 (b).

(4) In these Instructions —

“the 1983 Act” means the Mental Health Act 1983;

“the approval function” means the function of approving a person to act as an approved clinician(c);

“approve” and “approval” includes “re-approve” and “re-approval”;

“approved clinician” means a person approved by the Secretary of State or another person by virtue of section 12ZA of the 1983 Act to act as an approved clinician in relation to England for the purposes of that Act, except in paragraph 3 sub-paragraphs (5)(b), (7) and (9) and in Schedule 2 paragraphs 2, 3 and 9, where it has the meaning given by section 145(1) of the 1983 Act;

“approved mental health professional” has the meaning given by section 114 of the 1983 Act(d);

“approving body” means a person with whom the Secretary of State has entered into an agreement under section 12ZA of the 1983 Act for the function of approving persons to act as approved clinicians to be exercisable by the Secretary of State concurrently with that person;

“consultant psychiatrist” means a person who is a specialist in psychiatry and who holds a consultant post with a health service provider;

“induction training course” means a course approved by an approving body for the purpose of the induction of a prospective approved clinician;

“medical treatment” has the meaning given by section 145(1) and (4) of the 1983 Act(e);

“mental disorder” has the meaning given by section 1(2) of the 1983 Act(f);

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- (a) 1983 c.20. Section 12ZA was inserted by section 38(1) of the Health and Social Care Act 2012 (c.7) (“the 2012 Act”).
- (b) The Mental Health Act 1983 Instructions with respect to the exercise of approval functions 2014, which were signed on 11 February 2014 and effective from 17 February 2014, are revoked from 5th January 2016 by the Mental Health Act 1983 Instructions with respect to the exercise of an approval function in respect of section 12 doctors 2015.
- (c) The definition of “approved clinician” was inserted by section 14(1) and (5) of the Mental Health Act 2007 (c.12) (“the 2007 Act”) and amended by section 38(4) of the 2012 Act.
- (d) Section 114 of the 1983 Act was substituted by section 18 of the 2007 Act.
- (e) The definition of “medical treatment” was amended by section 7 of the 2007 Act.
- (f) The definition of “mental disorder” was substituted by section 1(1) and (2) of the 2007 Act.

“the professional requirements” means the requirements set out in Schedule 1 to these Instructions;

“refresher training course” means a course approved by an approving body for the purpose of refreshing the skills and competencies of a person who is, or has previously been, an approved clinician;

“the relevant competencies” means the skills and competencies set out in Schedule 2 to these Instructions;

“the responsible clinician” has the meaning given by section 34(1) of the 1983 Act^(a);

“the Specialist Register” means the Specialist Register kept by the General Medical Council under section 34D of the Medical Act 1983^(b);

“specialist in psychiatry” means a person included in the Specialist Register as a specialist in psychiatry; and

“treatment” means medical treatment for mental disorder.

PART 2

Approvals: General

Function of approval

2. The Secretary of State instructs an approving body to exercise the approval function in accordance with these Instructions and any agreement made under section 12ZA of the 1983 Act which is in force between the Secretary of State and the approving body.

Approval to act as an approved clinician

- 3.—(1) An approving body must approve a person to act as an approved clinician where—
- (a) the person (“the applicant”) has applied for approval;
 - (b) the approving body is satisfied that the applicant satisfies sub-paragraphs (2) to (8) of this paragraph; and
 - (c) the approving body has obtained references from the referees described in sub-paragraph (7) concerning the applicant’s ability to understand and implement the 1983 Act and is satisfied with those references.
- (2) The applicant satisfies at least one of the professional requirements.
- (3) The applicant—
- (a) has provided evidence to demonstrate to the approving body’s satisfaction that they have the relevant competencies;
 - (b) is a specialist in psychiatry or included in the Specialist Register in respect of a specialty that the approving body considers to be equivalent to psychiatry; or
 - (c) is in their final year of supervised psychiatric training.
- (4) The applicant—
- (a) has provided an enhanced criminal record certificate under section 113B of the Police Act 1997^(c) (“an enhanced criminal record certificate”) including suitability information

(a) The definition of “the responsible medical officer” was substituted for the definition of “the responsible clinician” by section 9(1) and (10) of the 2007 Act.

(b) 1983 c.54. Section 34D was inserted by article 4 of, and paragraph 10 of Schedule 1 to, S.I. 2010/234.

(c) 1997 c.50. Section 113B was inserted by section 163(2) of the Serious Organised Crime and Police Act 2005 (c.15) and has been amended subsequently.

- relating to children under section 113BA(a) and vulnerable adults under section 113BB(b) of that Act;
- (b) is 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(c);
 - (c) is currently employed by a person or a partner so registered; or
 - (d) has provided an enhanced criminal record certificate which is subject to up-date arrangements within the meaning given in section 116A(3)(d) of the Police Act 1997 (updating certificates) and has provided up-date information that there is no information recorded in central records which would be included in a new certificate but is not included in the current certificate.
- (5) The applicant—
- (a) has completed an induction training course within the two year period immediately preceding the date of the application; or
 - (b) is or has been an approved clinician within the twelve month period immediately preceding the date of the application and has completed a refresher training course within the twelve month period immediately preceding the date of the application.
- (6) The applicant has provided—
- (a) evidence which the approving body considers shows satisfactory participation in continuing professional development and which complies with the relevant professional regulator’s requirements; or
 - (b) in the case of an applicant who is a psychiatrist, evidence by way of a certificate from the Royal College of Psychiatrists stating that the applicant is in good professional standing for continuing professional development or any other evidence which the approving body considers demonstrates sufficient and suitable continuing professional development.
- (7) The applicant has provided an up to date curriculum vitae and the contact details of two referees who meet the following requirements—
- (a) each referee must have known the applicant for a period of time that the approving body considers to be reasonable;
 - (b) at least one of the referees must, within the twelve month period immediately preceding the date of the application, have worked with the applicant in England or Wales for a period of time which the approving body considers reasonable;
 - (c) at least one of the referees must be—
 - (i) a person whom the approving body considers to be the applicant’s current or most recent medical director or clinical director (or in the case of a non-medical applicant, a person the approving body considers to be equivalent to a medical director or a clinical director); or
 - (ii) in the case of an applicant who is on a training programme recognised by the Royal College of Psychiatrists, the programme director or a person the approving body considers to be equivalent to a programme director;
 - (d) one of the referees must be an approved clinician and the other referee must be one of the following—
 - (i) an approved clinician;

(a) Section 113BA was inserted in relation to England, Wales and Northern Ireland by section 63(1) of, and paragraph 14(1) and (4) of Part 2 of Schedule 9 to, the Safeguarding Vulnerable Groups Act 2006 (c.47) (“the 2006 Act”) and has been amended subsequently.

(b) Section 113BB was inserted in relation to England, Wales and Northern Ireland by section 63(1) of, paragraph 14(1) and (4) of Part 2 of Schedule 9 to, the 2006 Act and has been amended subsequently.

(c) 2008 c.14.

(d) Section 116A was inserted in relation to England and Wales by section 83 of the Protection of Freedoms Act 2012 (c.9), and has been amended subsequently.

- (ii) an approved mental health professional with whom the applicant has, within the twelve month period immediately preceding the date of application, worked for a period of time which the approving body considers reasonable; or
 - (iii) the applicant's current or most recent medical director or clinical director (or in the case of a non-medical applicant, a person the approving body considers to be equivalent to a medical director or a clinical director).
- (8) The applicant has provided evidence to the satisfaction of the approving body—
- (a) of a professional qualification which the approving body considers relevant; and
 - (b) if the applicant has completed all of their training, or a part of their training which the approving body considers substantial, outside England or Wales, and has not previously been an approved clinician, of the steps the applicant has taken to familiarise themselves with psychiatric practice and the organisation of psychiatric services in England or Wales, including the practical application of the 1983 Act.
- (9) An approving body must approve a person (“P”) to act as an approved clinician where—
- (a) P has previously been an approved clinician and P's approval ended because the professional body responsible for P's professional registration ended that registration;
 - (b) P, or the professional body responsible for P's professional registration, has informed the approving body that P is registered with the body and the approving body is satisfied that this is the case at the time of considering approval; and
 - (c) P has provided any further information and/or evidence the approving body considers reasonably necessary in relation to the period of time that P ceased to act as an approved clinician and the approving body is satisfied with that information/evidence.

Period of approval

4.—(1) Subject to sub-paragraphs (2) and (3), an approving body is to approve a person to act as an approved clinician for five years commencing from the date of the approval.

(2) If, at the date of the approval, a person (“P”) is in their final year of supervised psychiatric training and will not be employed as an acting up or locum consultant psychiatrist during that period, the approval is to be effective from the date on which P notifies, and provides evidence to, the approving body that P has been included on the Specialist Register as a specialist in psychiatry.

(3) Where paragraph 3(9) applies, the approving body must approve a person to act as an approved clinician from the date of approval to the date that the person's previous approval would, but for paragraph 3(9)(a), have otherwise expired.

(4) Subject to paragraphs 5, 6 and 7, the approval, including the period for which it is granted by the approving body, is not affected if the approved person takes up employment in an area in relation to which another body is an approving body.

Conditions of approval

5.—(1) The approval of a person to act as an approved clinician is subject to the following conditions—

- (a) the person who is approved (“P”) must immediately cease to act as an approved clinician and immediately notify the approving body if—
 - (i) P no longer satisfies paragraph 3, sub-paragraphs (2) or (3)(a) or (b); or
 - (ii) P is suspended from any of the registers referred to in the professional requirements;
- (b) P must notify the approving body immediately if P becomes subject to fitness to practice proceedings;
- (c) P must notify the approving body as soon as practicable of any change in P's home or work address, telephone numbers, email address or other contact information;

- (d) P must notify the approving body at least one month before P takes up employment for a period longer than six months in an area in relation to which another body is an approving body;
- (e) P must cease to act as an approved clinician if P's approval is suspended under paragraph 6, is ended under paragraph 7, or has expired;
- (f) P must at all times comply with the law including the Data Protection Act 1998(a);
- (g) if, at the date of the approval, P is in their final year of supervised psychiatric training and will be employed as an acting up or locum consultant psychiatrist during that period, P must provide evidence to the approving body within 12 months of the date of the approval that they have become a specialist in psychiatry;
- (h) such other conditions as the approving body considers are reasonable and appropriate.

(2) An approving body may vary or remove a condition imposed under sub-paragraph (1)(h) or impose a new condition under that sub-paragraph in circumstances including but not limited to those where the approving body is considering suspending or ending the suspension of P's approval under paragraph 6.

(3) Where an approving body (A) has granted an approval to a person for whom another approving body (B) subsequently becomes responsible, B may vary or remove any condition imposed by A under sub-paragraph (1)(h) or impose a new condition under sub-paragraph (1)(h).

(4) Where a condition has been imposed under sub-paragraph (1)(h) that P is required to meet after the date of approval, an approving body must take reasonable steps to satisfy itself that the person has met that condition.

Suspension of approval

6.—(1) If the body responsible for the professional registration of a person who has been approved to act as an approved clinician ("P") notifies an approving body that the registration has been suspended, the body which is the approving body in respect of the area in which P is employed at that time (whether or not it is the body that approved P to act as an approved clinician) must, on receiving notification of the suspension of registration, suspend P's approval for as long as the registration is suspended.

(2) Where the approving body is notified that the suspension of the registration has ended, the approving body must end the suspension of approval unless the approving body suspends the approval under sub-paragraph (3).

(3) An approving body may suspend P's approval for a period which the approving body considers is reasonably necessary for the approving body to determine whether to end the approval under paragraph 7.

(4) Before an approving body suspends P's approval under sub-paragraph (3), it must—

- (a) give P its reasons for considering suspending the approval;
- (b) allow P to submit representations in respect of the proposed suspension within such period of time which the approving body considers reasonable; and
- (c) consider representations submitted by P to it.

(5) Where an approving body suspends P's approval or ends the suspension, the approving body must notify P, and where it considers it appropriate to do so the body responsible for P's professional registration, of its decision and the reasons for the decision.

(6) The period of P's approval is to continue to run during any period during which the approval is suspended.

(7) Where a suspension of approval has ended, P's approval is to continue to run for the remainder of its unexpired period, unless the approving body ends it earlier in accordance with paragraph 7.

(a) 1998 c.29.

End of approval

7.—(1) If the body responsible for the professional registration of a person who has been approved to act as an approved clinician (“P”) notifies an approving body that P has been removed from the register, the body which is the approving body in respect of the area in which P is employed at that time (whether or not it is the body that approved P to act as an approved clinician) must, on receiving notification of removal from the register, end P’s approval.

(2) Except where paragraph 6(1) applies, an approving body must end the approval of P to act as an approved clinician before the expiry of the approval—

- (a) in accordance with a request in writing by P; or
- (b) if it is not satisfied that P—
 - (i) satisfies at least one of the professional requirements;
 - (ii) has complied with the conditions attached to P’s approval; or
 - (iii) has the relevant competencies.

(3) Before an approving body ends an approval under sub-paragraph (2)(b), the approving body must—

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

(4) When an approving body ends an approval under sub-paragraph (2)(b), the approving body must notify P and the body responsible for P’s professional registration of its decision and the reasons for the decision.

Records

8.—(1) An approving body must keep a record in respect of each person it approves as an approved clinician and the record must include—

- (a) the person’s application for approval;
- (b) the date of approval;
- (c) the conditions attached to the person’s approval, any variation to or removal of those conditions, and any evidence provided to the approving body that the person has met or continues to meet such conditions;
- (d) details of any period of suspension of approval under paragraph 6 and the reasons for the suspension and the ending of the suspension;
- (e) details of the completion of any training referred to in paragraph 3(5);
- (f) details of any previous approvals referred to in paragraph 3(5)(b); and
- (g) the date of the expiry of approval and, if applicable, the reason for ending the approval before it expires.

(2) The record referred to in sub-paragraph (1) must be retained by the approving body for a period of six years commencing from the day on which the person’s latest approval ended.

Signed by authority of the Secretary of State for Health



Anne McDonald

A Member of the Senior Civil Service
Department of Health

Date 23 Dec 2015

SCHEDULE 1

Paragraph 1(4)

Professional Requirements

The professional requirements are that the person who has applied for approval as an approved clinician must be one of the following—

- (a) a registered medical practitioner;
- (b) a practitioner psychologist listed in the register maintained by the Health and Care Professions Council^(a);
- (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^(b), 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; or
- (e) a social worker listed in the register maintained by the Health and Care Professions Council.

SCHEDULE 2

Paragraph 1(4)

Relevant competencies

Relevant competencies for approved clinicians

1. The relevant competencies are those set out in paragraphs 2 to 9.

The role of the approved clinician and responsible clinician

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

Legal and policy framework

- 3.—(1) Applied knowledge of—
 - (a) mental health legislation, related codes of practice and national and local policy and guidance;
 - (b) other relevant legislation, codes of practice and national and local policy guidance, in particular, relevant parts of the Human Rights Act 1998^(c), the Mental Capacity Act 2005^(d), the Children Act 1989^(e) and the Children Act 2004^(f); and
 - (c) relevant guidance issued by the National Institute for Health and Clinical Excellence.

(2) In the above paragraph “relevant” means relevant to the decisions likely to be taken by an approved clinician or the responsible clinician.

(a) Formerly known as the Health Professions Council and continued in existence by section 214(1) of the 2012 Act.
(b) S.I. 2002/253. The Register is divided into parts in accordance with the Nurses and Midwives (Parts of and Entries in the Register) Order of Council 2004 (S.I. 2004/1765).
(c) 1998 c.42.
(d) 2005 c.9.
(e) 1989 c.41.
(f) 2004 c.31.

Assessment

4.—(1) Ability to—

- (a) identify the presence of mental disorder;
- (b) identify the severity of the mental disorder; and
- (c) determine whether the mental disorder is of a kind or degree warranting compulsory detention.

(2) Ability to assess all levels of clinical risk, including risks to the safety of the patient and others within an evidence based framework for risk assessment and management.

(3) Ability to undertake mental health assessments incorporating biological, psychological, cultural and social perspectives.

Treatment

5.—(1) Understanding of—

- (a) mental health related treatments, which include physical, psychological and social interventions;
- (b) different evidence based treatment approaches and their applicability to different patients; and
- (c) the range of appropriate treatments and treatment settings which can be provided in the least restrictive environment and will deliver the necessary health and social outcomes.

(2) High level of skill in determining whether a patient has capacity to consent to treatment.

(3) Ability to formulate, review appropriately and lead on treatment in relation to which the clinician is appropriately qualified in the context of a multi-disciplinary team.

(4) Ability to communicate clearly the aims of the treatment to patients, carers and the team.

Care planning

6. Ability to manage and develop care plans which combine health (including measures relating to physical and psychological health and medication), social services (including housing and employment) and other resources, preferably within the context of the Care Programme Approach(a).

Leadership and multi-disciplinary team working

7.—(1) Ability to effectively lead a multi-disciplinary team.

(2) Ability to assimilate the (potentially diverse) views and opinions of other professionals, patients and carers, whilst maintaining an independent view.

(3) Ability to manage and take responsibility for making decisions in complex cases without the need to refer to supervision in each individual case.

(4) Understanding and recognition of the limits of the person's own skills and an ability to seek professional views from others to inform a decision, for example, through peer review and appraisal.

Equality and cultural diversity

8.—(1) Up-to-date knowledge and understanding of relevant equality issues.

(a) "Care Programme Approach" describes the approach used in secondary mental health care to assess, plan, review and co-ordinate the range of treatment, care and support needs for people in contact with secondary mental health services who have complex characteristics. Guidance on the Care Programme Approach is given in "Refocusing the Care Programme Approach", which was published by the Department of Health on 19 March 2008.

(2) Ability to identify, challenge, and where possible and appropriate redress discrimination and inequality in relation to approved clinician practice.

(3) Understanding of the need to sensitively and actively promote equality and diversity.

(4) Understanding of how cultural factors and personal values can affect practitioners' judgements and decisions concerning the application of mental health legislation and policy.

Communication

9.—(1) Ability to communicate effectively with professionals, patients, carers and others, particularly in relation to decisions taken and the underlying reasons for these.

(2) Ability to keep appropriate records and an awareness of the legal requirements in relation to record keeping, including the processing of all personal data or sensitive personal data in accordance with the Data Protection Act 1998(a).

(3) Understanding of, and ability to manage, the competing requirements of confidentiality and effective information sharing, to the benefit of the patient and other stakeholders.

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

(5) Ability to present evidence to courts and tribunals.

(a) 1998 c.29.