

Executive Note

The Mental Health (Conflict of Interest) (Scotland) (No. 2) Regulations 2005 SSI/2005/380

The above instrument replaces the Mental Health (Conflict of Interest) (Scotland) Regulations 2005 (S.S.I. 2005/262) which are revoked by this instrument. In this instrument, what was previously included as regulation 2(1)(c) and (2) which related to medical practitioners employed in NHS hospitals has been removed, but otherwise the content of the instrument is the same. In view of the fact that this instrument supersedes the previous one, copies will be provided free of charge to known recipients of the previous instrument

The Regulations are made in exercise of the powers conferred by sections 44(8), 47(5) and 58(5) of the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the Act”). The instrument is subject to negative resolution procedure.

Policy Objectives

The purpose of the instrument is to specify the circumstances set out in sections 44(8), 47(5) and 58(5) of the Act where there is, or there is not, to be taken a conflict of interest in relation to certain medical examinations carried out under the Mental Health (Care and Treatment)

(Scotland) Act 2003. These sections within the Act are in relation to the medical examination of patients subject to:

- short - term detention in hospital,
- extension of detention pending application for compulsory treatment order
- compulsory treatment orders.

The objective is to ensure that, subject to limited exceptions, the medical examination of a patient is carried out by a medical practitioner who is independent.

The Regulations detail the circumstances where there is to be considered a conflict of interest. The schedule to the Regulations lists the prohibited degrees of relationship where they exist between an approved medical practitioner and the patient (regulation 2), or exist either between the medical practitioners or between one of them and the patient (regulation 4). The relationships listed include immediate family members: husband, wife, parent, child, sister, brother, grand-parent and grand child. Also included are family members through marriage and relationships which are similar for non-married couples.

Where a medical examination of a patient is required, it should not be carried out by a medical practitioner who is related in any way by blood, marriage or cohabitation to the patient or to another examining practitioner. In addition no doctor carrying out a medical examination should be employed in an independent health care service in which the patient is or will be detained, and where two medical examinations are required, at least one of those will be carried out by a practitioner who does not work in an NHS hospital where the patient is or may be detained..

The Regulations make provision for a doctor to carry out a medical examination in cases of urgent necessity notwithstanding such a conflict.

Consultation

Policy on these regulations was consulted on formally in a “regulations policy proposals consultation document” published in summer 2004. Further informal consultation has also taken place by way of discussion with the Scottish Executive’s Mental Health Legislation Reference Group.

Financial Effects

The Order has no financial effects on the Scottish Executive or any other organisation.

Scottish Executive Health Department
15 July 2005