
STATUTORY INSTRUMENTS

2008 No. 1205

MENTAL HEALTH, ENGLAND

The Mental Health (Conflicts of Interest) (England) Regulations 2008

Made - - - - - *28th April 2008*
Laid before Parliament *7th May 2008*
Coming into force - - - *3rd November 2008*

The Secretary of State, in exercise of the powers conferred by section 12A of the Mental Health Act 1983(1), makes the following Regulations:

Citation, commencement and application

1.—(1) These Regulations may be cited as the Mental Health (Conflicts of Interest) (England) Regulations 2008 and shall come into force on 3rd November 2008.

(2) These Regulations apply in relation to England only.

Interpretation

2. In these Regulations—

“the Act” means the Mental Health Act 1983;

“AMHP” means an approved mental health professional;

“application” means an application mentioned in section 11(1) of the Act;

“assessor” means—

(a) an AMHP, or

(b) a registered medical practitioner.

General

3. Regulations 4 to 7 set out the circumstances in which there would be a potential conflict of interest within the meaning of section 12A(1) of the Act such that an AMHP shall not make an application or a registered medical practitioner shall not give a medical recommendation.

(1) 1983 c.20. Section 12A was inserted by section 22(5) of the Mental Health Act 2007 (c.12). Welsh Ministers are making separate Regulations in relation to Wales.

Potential conflict for financial reasons

4.—(1) An assessor shall have a potential conflict of interest for financial reasons if the assessor has a financial interest in the outcome of a decision whether or not to make an application or give a medical recommendation.

(2) Where an application for the admission of the patient to a hospital which is a registered establishment is being considered, a registered medical practitioner who is on the staff of that hospital shall have a potential conflict of interest for financial reasons where the other medical recommendation is given by a registered medical practitioner who is also on the staff of that hospital.

Potential conflict of interest for business reasons

5.—(1) When considering making an application or considering giving a medical recommendation in respect of a patient, an assessor shall have a potential conflict of interest for business reasons if both the assessor and the patient or another assessor are closely involved in the same business venture, including being a partner, director, other office-holder or major shareholder of that venture.

(2) Where the patient's nearest relative is making an application, a registered medical practitioner who is considering giving a medical recommendation in respect of that patient shall have a potential conflict of interest for business reasons if that registered medical practitioner and the nearest relative are both closely involved in the same business venture, including being a partner, director, other office-holder or major shareholder of that venture.

Potential conflict of interest for professional reasons

6.—(1) When considering making an application or considering giving a medical recommendation in respect of a patient, an assessor shall have a potential conflict of interest for professional reasons if the assessor—

- (a) directs the work of, or employs, the patient or one of the other assessors making that consideration;
- (b) except where paragraph (3) applies, is a member of a team organised to work together for clinical purposes on a routine basis and—
 - (i) the patient is a member of the same team, or
 - (ii) the other two assessors are members of the same team.

(2) Where the patient's nearest relative is making an application, a registered medical practitioner who is considering giving a medical recommendation in respect of that patient shall have a potential conflict of interest for professional reasons if that registered medical practitioner—

- (a) directs the work of, or employs, the nearest relative, or
- (b) works under the direction of, or is employed by, the patient's nearest relative.

(3) Paragraph (1)(b) shall not prevent a registered medical practitioner giving a medical recommendation or an AMHP making an application if, in their opinion, it is of urgent necessity for an application to be made and a delay would involve serious risk to the health or safety of the patient or others.

Potential conflict of interest on the basis of a personal relationship

7.—(1) An assessor who is considering making an application or considering giving a medical recommendation in respect of a patient, shall have a potential conflict of interest on the basis of a personal relationship if that assessor is—

- (a) related to a relevant person in the first degree;

- (b) related to a relevant person in the second degree;
 - (c) related to a relevant person as a half-sister or half-brother;
 - (d) the spouse, ex-spouse, civil partner or ex-civil partner of a relevant person, or
 - (e) living with a relevant person as if they were a spouse or a civil partner.
- (2) For the purposes of this regulation—
- (a) “relevant person” means another assessor, the patient, or, if the nearest relative is making the application, the nearest relative;
 - (b) “related in the first degree” means as a parent, sister, brother, son or daughter and includes step relationships;
 - (c) “related in the second degree” means as an uncle, aunt, grandparent, grandchild, first cousin, nephew, niece, parent-in-law, grandparent-in-law, grandchild-in-law, sister-in-law, brother-in-law, son-in-law or daughter-in-law and includes step relationships;
 - (d) references to step relationships and in-laws in sub-paragraphs (b) and (c) are to be read in accordance with section 246 of the Civil Partnership Act 2004(2).

Signed by authority of the Secretary of State for Health.

28th April 2008

Ivan Lewis
Parliamentary Under-Secretary of State
Department of Health

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations set out the circumstances in which there is a potential conflict of interest such that an approved mental health professional cannot make an application mentioned in section 11(1) of the Mental Health Act 1983 (c.20) (“the Act”), or a registered medical practitioner cannot make a medical recommendation for the purposes of such an application.

An approved mental health professional considering making an application mentioned in section 11 of the Act, or a registered medical practitioner considering giving a medical recommendation for the purposes of such an application, will have a potential conflict of interest if the reasons set out in the Regulations apply. These may be financial reasons (regulation 4), business reasons (regulation 5), professional reasons (regulation 6) or because of a personal relationship existing between the assessor and another assessor, or between the assessor and the patient or, where the application is to be made by the patient’s nearest relative, the nearest relative (regulation 7).

There is provision for an approved mental health professional or a registered medical practitioner to make an application or a medical recommendation despite a potential conflict of interest for professional reasons in specified circumstances in cases of urgent necessity where there would otherwise be a delay with a serious risk to the health or safety of the patient or to others (regulation 6).

The Welsh Ministers are making separate Regulations in relation to Wales.

A full impact assessment has not been produced for this instrument as no impact on the private or voluntary sectors is foreseen.