

EXPLANATORY MEMORANDUM TO
THE NATIONAL HEALTH SERVICE DELEGATION OF FUNCTIONS TO
THE NHS BUSINESS SERVICES AUTHORITY (AWDURDOD
GWASANAETHAU BUSNES Y GIG) (COUNTER FRAUD AND SECURITY
MANAGEMENT) REGULATIONS 2008

2008 No. 1148

1. This explanatory memorandum has been prepared by the Department of Health and is laid before Parliament by Command of Her Majesty.
2. **Description**

These Regulations delegate the functions of the Secretary of State in Part 10 of the National Health Service Act 2006 (c.41) in relation to the compulsory disclosure of documents for the purposes of the Secretary of State's counter fraud and security management functions, to the NHS Business Services Authority (Awdurdod Gwasanaethau Busnes y GIG), ("the Authority"). The Authority is a Special Health Authority established under section 28 of the National Health Service Act 2006.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None
4. **Legislative Background**
 - 4.1 Chapter 3 of Part 4 of the Health Act 2006 (c.28) gives the Secretary of State powers relating to the disclosure of documents when exercising his counter fraud and security management functions. Section 48 of that Act allows the Secretary of State to delegate those functions under the Health Act 2006 to a Special Health Authority.
 - 4.2 Chapter 3 of Part 4 of the Health Act 2006 was consolidated into Part 10 of the National Health Service Act 2006. Section 277 of the National Health Service Act 2006 had the effect that Part 10 of the National Health Service Act 2006 came into force immediately after Chapter 3 of Part 4 of the Health Act 2006 came into force.
 - 4.3 These Regulations are the first to be made under the powers contained in section 199(2) to (5) of the National Health Service Act 2006. No regulations were made under section 48 of the Health Act 2006.
5. **Territorial Extent and Application**

This instrument applies to England only.
6. **European Convention on Human Rights**

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

7.1 Most people who work in, use or are contracted to the NHS are honest, but there are a minority who try to defraud it and its valuable resources. People receiving treatment and those working within the NHS are also entitled to expect a safe and secure environment.

7.2 The Counter Fraud and Security Management Service Division of the Authority has responsibility for all policy and operational matters relating to the prevention, detection and investigation of fraud and corruption in the Department of Health and the NHS and to the management of security in the NHS.

7.3 In the evolving NHS, it is essential to enable the body countering fraud and security incidents and breaches to have the powers at its disposal to effectively deal with the majority of cases itself.

7.4 Chapter 3 of Part 4 of the Health Act 2006 sets out a framework which together with these Regulations will provide counter fraud and security management specialists with the powers to perform their duties professionally and effectively. In specific circumstances they will have the power to require the production of original documents from any NHS bodies, health service provider or person providing services to the NHS under contract.

7.5 The Regulations will have the effect that where allegations of fraud or security incidents or breaches are made all possible avenues can be investigated to prove or disprove the allegation within the NHS and without necessarily relying on valuable police time in every case.

7.6 A consultation undertaken prior to the initial Bill in October 2004, and on the Code of Practice in July 2007 (this will be made under section 200 of the National Health Service Act 2006 and will relate to the exercise of the functions delegated in these Regulations) show overwhelming support in the Government's efforts to combat fraud and reduce security incidents and breaches. The details of the responses have helped develop the powers, to ensure appropriate safeguards are put in place to protect the confidentiality of any records produced under these powers.

8. Impact

An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies.

9. Contact

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