

2008 No. 2440 (W. 213)

MENTAL HEALTH, WALES

**The Mental Health (Conflicts of
Interest) (Wales) Regulations 2008**

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), as amended by the Mental Health Act 2007 (c.12), or a registered medical practitioner cannot make a medical recommendation for the purposes of an application mentioned in section 12(1) for a person to be admitted under the Act.

An approved mental health professional considering making an application to admit a person under 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 for a number of reasons. Those reasons are the existence of a professional (regulation 3), financial (regulation 4), business (regulation 5) or personal (regulation 6) relationships between that person and another assessor, or between that person and either the patient or, where the application is to be made by the patient's nearest relative, the nearest relative.

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 if there would otherwise be a delay with a serious risk to the health or safety of the patient or to others.

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

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MENTAL HEALTH, WALES

**The Mental Health (Conflicts of
Interest) (Wales) Regulations 2008**

Made *15 September 2008*

Laid before the National Assembly for Wales
17 September 2008

Coming into force *3 November 2008*

The Welsh Ministers, in exercise of the powers conferred upon them by section 12A of the Mental Health Act 1983(1), hereby make the following Regulations:

Title, commencement and extent

1.—(1) The title of these Regulations is the Mental Health (Conflict of Interest) (Wales) Regulations 2008 and they come into force on 3 November 2008.

(2) These Regulations apply in relation to Wales.

Interpretation

2. In these Regulations—

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

“AMHP” (“*GPIMC*”) means an approved mental health professional;

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

“assessor” (“*asesydd*”) means—

- (a) an AMHP considering making an application, or
- (b) a registered medical practitioner considering giving a medical recommendation;

(1) 1983 c.20. Section 12A was inserted by section 25(5) of the Mental Health Act 2007 (c.12). The Secretary of State has made separate regulations in relation to England.

(2) 1983 c.20 (as amended by the Mental Health Act 2007 c.12).

“medical recommendation” (*“argymhelliad meddygol”*) means a medical recommendation as mentioned in section 12(1) of the Act for the purposes of an application;

references to “nearest relative” (*“perthynas agosaf”*) include any person for the time being appointed to carry out the functions of the nearest relative by virtue of an order made under section 29 of the Act, regulation 33 of the Mental Health (Hospital, Guardianship, Community Treatment and Consent to Treatment) (Wales) Regulations 2008 or regulation 24 of the Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008.

Potential conflict of interest for professional reasons

3.—(1) When considering a patient, an assessor will have a potential conflict of interest if he or she—

- (a) works under the direction of, or is employed by, one of the other assessors considering the patient;
- (b) is a member of a team organised to work together for clinical purposes on a routine basis of which the other two assessors are also members.

(2) Where the patient’s nearest relative is making an application, an assessor will have a potential conflict of interest if he or she—

- (a) works under the direction of, or is employed by, that patient’s nearest relative;
- (b) employs the patient’s nearest relative or the nearest relative works under his or her direction;
- (c) is a member of a team organised to work together for clinical purposes on a routine basis of which the nearest relative is also a member.

(3) When considering a patient, an assessor will have a potential conflict of interest if he or she –

- (a) works under the direction of, or is employed by, the patient;
- (b) employs the patient or the patient works under his or her direction;
- (c) is a member of a team organised to work together for clinical purposes on a routine basis of which the patient is also a member.

Potential conflict for financial reasons

4.—(1) Subject to paragraph (4), an assessor will have a potential conflict of interest if he or she stands to make financial gain dependent upon whether or not

he or she decides to make an application or give a medical recommendation.

(2) Where the application is for the admission of the patient to a hospital which is not a registered establishment, one (but not more than one) of the medical recommendations may be given by a registered medical practitioner who is on the staff of that hospital or who receives or has an interest in the receipt of any payments made on account of the maintenance of the patient.

(3) Where the application is for the admission of the patient to a hospital which is a registered establishment, neither of the medical recommendations may be given by a registered medical practitioner who is on the staff of that hospital or who receives or has an interest in the receipt of any payments made on account of the maintenance of the patient.

(4) For the purposes of this regulation the term “financial gain” does not include any fee paid to a practitioner in respect of the examination of a patient pursuant to section 12 of the Act or the provision of any recommendation as a result of such examination.

Potential conflict of interest for business reasons

5.—(1) When considering a patient, an assessor will have a potential conflict of interest if he or she is closely involved in the same business venture as another assessor, the patient or the patient’s nearest relative 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, an assessor will have a potential conflict of interest if he or she is closely involved in the same business venture as the nearest relative including being a partner, director, other office-holder or major shareholder of that venture.

Potential conflict of interest on the basis of a personal relationship

6.—(1) An assessor will have a potential conflict of interest in considering a patient, if he or she 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;
- (e) living with a relevant person as if he or she 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 patient’s nearest relative is making the application, the nearest relative;

(b) “related in the first degree” means as a parent, sister, brother, daughter or son; and includes step relationships;

(c) “related in the second degree” means as an uncle, aunt, grandparent, grandchild, first cousin, niece, nephew, parent-in-law, grandparent-in-law, grandchild-in-law, sister-in-law, brother-in-law, daughter-in-law or son-in-law and includes step relationships;

(d) references to step relationships and in-laws in paragraphs (b) and (c) above are to be read in accordance with section 246 of the Civil Partnership Act 2004⁽¹⁾.

Emergency Provision

7. These Regulations do not prevent an AMHP making an application or a registered medical practitioner giving a medical recommendation if there would otherwise be delay involving serious risk to the health or safety of the patient or others.

Edwina Hart

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

15 September 2008

⁽¹⁾ 2004 c.33.