

EXPLANATORY MEMORANDUM TO
THE MENTAL HEALTH (CONFLICTS OF INTEREST) (ENGLAND)
REGULATIONS 2008

2008 No. 1205

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

2. Description

2.1 This instrument sets out the circumstances in which there would be a potential conflict of interest which will prevent an approved mental health professional (AMHP) making an application under Part 2 of the Mental Health Act 1983 (the 1983 Act), or a doctor giving a medical recommendation for the purposes of such an application. It also sets out the particular circumstances when, even where there is a potential conflict of interest, an AMHP or a doctor may take part in an assessment in an emergency.

3. Matters of Special Interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Background

4.1 This instrument is part of the implementation of the Mental Health Act 2007 (the 2007 Act), which amends the 1983 Act, and is made under the powers conferred by section 12A of the 2007 Act. Section 22(5) of the 2007 Act amends the 1983 Act to allow for regulations to provide details of the circumstances in which there would be a potential conflict of interest.

4.2 A view was expressed at Committee stage that the current provisions in Section 12 of the 1983 Act on conflicts of interest are complex and over-rigid, and that they have failed to keep up with the development of new patterns of service delivery and contain a number of anomalies. The Government acknowledged this complexity and agreed to consider placing the detail in secondary legislation, which would allow more flexibility to ensure provision keeps pace with changes in practice over time. This instrument sets out this detail.

5. Territorial Extent and Application

5.1 This instrument applies to England. There will be separate, though similar, regulations for Wales.

6. European Convention on Human Rights

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

7. Policy Background

7.1 The Government wishes to set out in regulations its views on the circumstances in which there will be a conflict of interest for approved mental health professionals making an application and doctors giving a medical recommendation for the purposes of detaining a patient under the Mental Health Act. This is a complex area, which is better set out in regulations where more detail can be given, with the flexibility to ensure provision keeps pace with changes in practice over time.

7.2 This instrument sets out that there is a potential conflict of interest if specified personal relationships exist between the AMHP or doctors to each other, to the patient, or to the nearest relative (as defined by the 1983 Act),. There will also be circumstances where there is a potential conflict of interest for financial, business or professional reasons.

Consultation

7.3 Consultation on draft Conflicts of Interest Regulations took place as part of the Department of Health's consultation on draft secondary legislation arising from the 2007 Act. Consultation ran from 25th October 2007 to 24th January 2008, and was supplemented by events and workshops. Nine individuals and organisations also commented in writing on these Regulations.

7.4 Consultees generally welcomed the draft Regulations. Some issues were raised on conflict that go beyond the remit of the regulation (that is they were not about making applications under Part 2 of the Act). A number of requests were made for clarification on certain terms, which are being covered further in Code of Practice guidance (see below). See also:

<http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/index.htm>

Guidance

7.5 The Mental Health Act 1983 Code of Practice will provide guidance on these Regulations.

8. Impact

8.1 An Impact Assessment has not been prepared for this instrument as it has no impact on the private or voluntary sectors.

9. Contact

9.1 Janet Davies at the Department of Health (tel. 020 7972 4779 or e-mail: Janet.Davies@dh.gsi.gov.uk) can answer any queries about the instrument.