SCOTTISH STATUTORY INSTRUMENTS

2005 No. 262

MENTAL HEALTH

The Mental Health (Conflict of Interest) (Scotland) Regulations 2005

Made - - - -	*16th May 2005*
Laid before the Scottish Parliament - - - -	*18th May 2005*
Coming into force - -	*5th October 2005*

The Scottish Ministers, 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(**1**), and of all other powers enabling them in that behalf, hereby make the following Regulations:

Citation, commencement and interpretation

1.—(1) These Regulations may be cited as the Mental Health (Conflict of Interest) (Scotland) Regulations 2005 and shall come into force on 5th October 2005.

(2) For the purposes of these Regulations–

"cohabitee" in relation to a medical practitioner, includes a person, whether of the same sex or not, who is living with that medical practitioner in a relationship which has the characteristics of the relationship between husband and wife; and

"independent health care service" has the same meaning as in section 2(5) of the Regulation of Care (Scotland) Act 2001(**2**).

(3) In these Regulations, any other reference to a numbered section is a reference to the section bearing that number in the Mental Health (Care and Treatment) (Scotland) Act 2003.

Conflict of interest in relation to medical examination – short term detention in hospital

2.—(1) Subject to regulation 3, the circumstances in which there is to be taken to be a conflict of interest in relation to the medical examination for the purposes of sections 44 (short term detention in hospital) and 47 (extension of short-term detention in hospital) are where the approved medical practitioner is–

(a) related to the patient in any degree specified in the Schedule;

(**1**) 2003 asp 13.
(**2**) 2001 asp 8.

(b) employed by or contracted to provide services in or to an independent health care service in which the patient will be detained if detention is authorised under either section 44 or, as the case may be section 47; or

(c) employed by or contracted to provide services in or to a hospital, other than an independent health care service, in which the patient will be detained if detention is authorised under either section 44 or, as the case may be, section 47.

(2) For the purposes of paragraph (1)(c), unless a medical practitioner works wholly or mainly in a hospital, that practitioner shall not be regarded as being employed by or contracted to provide services in or to that hospital.

Circumstances in which there is not a conflict of interest – short term detention in hospital

3. Notwithstanding regulation 2, the circumstances in which there is not to be taken to be a conflict of interest in relation to the medical examination for the purposes of sections 44 and 47, are where failure by the approved medical practitioner to carry out the medical examination would result in a delay which would involve serious risk to the health, safety or welfare of the patient or to the safety of other persons.

Conflict of interest in relation to medical examination – compulsory treatment order

4.—(1) The circumstances in which there is to be taken to be a conflict of interest in relation to the medical examination for the purposes of section 58(5) (requirements for medical examinations relating to compulsory treatment orders) are where–

(a) either medical practitioner is related to the patient in any degree specified in the Schedule;

(b) the two medical practitioners are related to each other in any degree specified in the Schedule;

(c) it is proposed that the compulsory treatment order should authorise the detention of the patient in an independent health care service and either medical practitioner is employed by or contracted to provide services in or to that independent health care service; or

(d) it is proposed that the compulsory treatment order should authorise the detention of the patient in a hospital other than an independent health care service and both medical practitioners are employed by or contracted to provide services in or to that hospital.

(2) For the purposes of paragraph (1)(d), unless a medical practitioner works wholly or mainly in a hospital, that practitioner shall not be regarded as being employed by or contracted to provide services in or to that hospital.

Permitted conflicts of interest – compulsory treatment order

5.—(1) For the purposes of section 58(5), the circumstances in which a medical examination of a patient may be carried out even although there is a conflict of interest in relation to that medical examination are–

(a) where the conflict of interest is in terms of regulation 4(1)(c) or (d);

(b) failure to carry out the medical examination would result in delay which would involve serious risk to the health, safety or welfare of the patient or the safety of other persons; and

(c) if one of the medical practitioners is a consultant, the other does not work directly with or under the supervision of that consultant.