WELSH STATUTORY INSTRUMENTS

2008 No. 2440 (W.213)

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;

"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

(**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).

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.