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SCOTTISH STATUTORY INSTRUMENTS

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**2017 No. 174**

**MENTAL HEALTH**

**The Mental Health (Conflict of Interest) (Scotland) Regulations 2017**

<i>Made</i>	- - - -	<i>30th May 2017</i>
<i>Laid before the Scottish Parliament</i>	- - - -	<i>1st June 2017</i>
<i>Coming into force</i>	- -	<i>30th June 2017</i>

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 291A(2) of the Mental Health (Care and Treatment) (Scotland) Act 2003<sup>(1)</sup> and all other powers enabling them to do so.

**Citation, commencement and interpretation**

1.—(1) These Regulations may be cited as the Mental Health (Conflict of Interest) (Scotland) Regulations 2017 and come into force on 30th June 2017.

(2) For the purposes of these Regulations, “cohabitee” in relation to a medical practitioner, includes a person who is living with that medical practitioner in a relationship which has the characteristics of the relationship between spouses.

(3) In these Regulations, except in regulation 5(1)(b)(ii), any 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 a medical examination – short-term detention in hospital**

2. 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(1) (short-term detention in hospital) and 47(1) (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; or
- (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(1) or 47(1).

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(1) [2003 asp 13](#) (“the 2003 Act”). Section 291A was inserted into the 2003 Act by section 29(2) of the Mental Health (Scotland) Act 2015 ([asp 9](#)).

### **Circumstances in which section 291A does not apply – short term detention**

3. Section 291A(1) (conflicts of interest to be avoided) does not apply(2) in circumstances where a delay by the medical practitioner in carrying out a medical examination for the purposes of sections 44(1) or 47(1) would, in the opinion of that medical practitioner, give rise to a serious risk to the health, safety or welfare of the patient or to the safety of other persons.

### **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 57(2) (mental health officer’s duty to apply for compulsory treatment order) are where—

- (a) either medical practitioner is related to the patient in any degree specified in the schedule;
- (b) the 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 both medical practitioners are employed by or contracted to provide services in or to that independent health care service;
- (d) other than in the circumstances described in paragraph (3), 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), a medical practitioner shall be regarded as being employed by or contracted to provide services in or to a hospital only if they work wholly or mainly in that hospital.

(3) The circumstances are where one of the medical practitioners concerned is a consultant and the other does not work directly with or under the supervision of that consultant.

### **Conflict of interest - review of certain orders**

5.—(1) The circumstances in which there is to be taken to be a conflict of interest in relation to a medical examination for the purpose of sections 77(2) (first mandatory review), 78(2) (further mandatory reviews), 139(2) (first review of compulsion order), 140(2) (further review of compulsion order) and 182(2) (review of compulsion order and restriction order) are where the responsible medical officer or as the case may be the approved medical practitioner is—

- (a) related to the patient in any degree specified in the schedule; or
- (b) other than in the circumstances described in paragraph (2), 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—
  - (i) section 64 (compulsory treatment order); or
  - (ii) sections 57A (compulsion order) or 59 (hospital orders: restrictions on discharge) of the 1995 Act(3).

(2) The circumstances are—

- (a) where the responsible medical officer or as the case may be the approved medical practitioner is employed by or contracted to provide services in or to an independent health care service in which the patient is or will be detained as set out in paragraph (1)(b)(i) and (ii); and

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(2) Section 291A(2)(b) gives Scottish Ministers power to specify circumstances in which section 291A(1) does not apply.

(3) “the 1995 Act” means the Criminal Procedure (Scotland) Act 1995 (c.46). See section 329(1) of the 2003 Act.

- (b) the patient has in addition to the examination carried out for the purposes described in paragraph (1) been examined in the period during which a review must be carried out in terms of sections 77(2), 78(2), 139(2), 140(2) and 182(2) by an approved medical practitioner who is not so employed or contracted.

**Revocation**

6. The Mental Health (Conflict of Interest) (Scotland) (No. 2) Regulations 2005(4) are revoked.

St Andrew's House, Edinburgh  
30th May 2017

*MAUREEN WATT*  
Authorised to sign by the Scottish Ministers

SCHEDULE

Regulations 2, 4 and 5

Prohibited degrees of relationship

Child  
Grandchild  
Parent  
Grandparent  
Spouse  
Civil partner  
Child, grandchild, parent, grandparent, sister, brother of a civil partner  
Sister  
Brother  
Daughter-in-law  
Son-in-law  
Brother-in-law  
Cohabitee  
Child, grandchild, parent, grandparent, sister, brother of a cohabitee

For the purposes of this schedule—

- (a) a relationship of the half-blood is to be treated as a relationship of the whole-blood; and
- (b) the stepchild of a person is to be treated as the child of that person.

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**EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

These Regulations revoke and replace the Mental Health (Conflict of Interest) (Scotland) (No. 2) Regulations 2005.

They provide for the circumstances where there is, or is not, to be taken to be a conflict of interest in relation to certain categories of medical examination carried out under the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”) and, where such a conflict of interest is permitted in relation to certain medical examinations which are required to be carried out under the 2003 Act.

Regulation 3 provides that section 291A(1) does not apply in circumstances of serious risk to the health, safety and welfare of the patient or risk to the safety of other persons in cases involving medical examinations made for the purposes of sections 44(1) or 47(1) of the 2003 Act (in the context of short-term detention certificates).