

EXPLANATORY MEMORANDUM TO
THE MENTAL HEALTH (MUTUAL RECOGNITION) REGULATIONS 2008
2008 No.1204

1. This explanatory memorandum has been prepared by the Department of Health and the Welsh Assembly Government and is laid before Parliament and the National Assembly for Wales by Command of Her Majesty.

2. Description

2.1 This instrument sets out the circumstances in which a doctor approved in England under section 12 of the Mental Health Act 1983 (the 1983 Act) as having special experience in the diagnosis or treatment of mental disorder (a Section 12 doctor) may be also treated as approved in Wales, and vice versa.

2.2 It also sets out the circumstances in which a person approved as an approved clinician in England may be treated as approved in Wales, and vice versa. An approved clinician is a practitioner (a doctor, psychologist, nurse, occupational therapist or social worker) approved under the 1983 Act to act as such.

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

3.1 None.

4. Legislative Background

4.1 This instrument is made under the power in section 142A of the 1983 Act for the Secretary of State and the Welsh Ministers jointly to set out the circumstances in which specified persons approved in England shall also be treated as approved in relation to Wales, and vice versa. This is to allow practitioners approved as section 12 doctors and persons approved to act as approved clinicians the flexibility to carry out their functions under the 1983 Act in both England and Wales in specified circumstances. This is likely to be particularly important in areas near the border between England and Wales, where services are accessed for patients across that border. It also provides flexibility regarding the provision of medical recommendations in line with provisions to be made in the Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008 and equivalent Welsh Regulations.

5. Territorial Extent and Application

5.1 This instrument applies to England and 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 An approved clinician is a person approved by the Secretary of State in relation to England, or the Welsh Ministers in relation to Wales. The criteria for approval will

not necessarily be the same in England and in Wales, so a person approved in one is not automatically approved in the other. There are however circumstances where it would be disruptive to patient care were their approved clinician not to be able to act as their approved clinician. The regulations set out these circumstances, such as where a patient is liable to be detained but he is in Wales (perhaps on leave of absence) and the hospital in which he is liable to be detained is in England. The Mental Health Act 2007 (the 2007 Act) also amends the 1983 Act to provide for approved clinicians who are registered medical practitioners to be treated as Section 12 doctors. Regulations therefore also set out the circumstances in which a Section 12 doctor approved in England may be treated as approved in relation to Wales, and vice versa.

Consultation

7.2 Consultation on draft Mutual Recognition Regulations took place as part of the programme of consultation on draft secondary legislation arising from the 2007 Act which ran from October 2007 to January 2008, and was supplemented by events and workshops.

7.3 No specific written responses were received during the consultation period on these Regulations, but during the workshops and events the flexibility provided for by these Regulations was welcomed.

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) or Claire Fife at the Welsh Assembly Government (tel. 029 2082 6988 or email: Claire.Fife@wales.gsi.gov.uk) can answer any queries about the instrument.