



# Mental Health Act 1983

## 1983 CHAPTER 20

### PART VIII

#### MISCELLANEOUS FUNCTIONS OF LOCAL AUTHORITIES AND THE SECRETARY OF STATE

##### *Functions of the Secretary of State*

#### **118 Code of practice.**

- (1) The Secretary of State shall prepare, and from time to time revise, a code of practice—
  - (a) for the guidance of registered medical practitioners, managers and staff of hospitals [<sup>F1</sup>, independent hospitals and care homes] and approved social workers in relation to the admission of patients to hospitals [<sup>F2</sup> and registered establishments] under this Act [<sup>F3</sup> and to guardianship and after-care under supervision under this Act]; and
  - (b) for the guidance of registered medical practitioners and members of other professions in relation to the medical treatment of patients suffering from mental disorder.
- (2) The code shall, in particular, specify forms of medical treatment in addition to any specified by regulations made for the purposes of section 57 above which in the opinion of the Secretary of State give rise to special concern and which should accordingly not be given by a registered medical practitioner unless the patient has consented to the treatment (or to a plan of treatment including that treatment) and a certificate in writing as to the matters mentioned in subsection (2)(a) and (b) of that section has been given by another registered medical practitioner, being a practitioner appointed for the purposes of this section by the Secretary of State.
- (3) Before preparing the code or making any alteration in it the Secretary of State shall consult such bodies as appear to him to be concerned.
- (4) The Secretary of State shall lay copies of the code and of any alteration in the code before Parliament; and if either House of Parliament passes a resolution requiring the code or any alteration in it to be withdrawn the Secretary of State shall withdraw

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the code or alteration and, where he withdraws the code, shall prepare a code in substitution for the one which is withdrawn.

- (5) No resolution shall be passed by either House of Parliament under subsection (4) above in respect of a code or alteration after the expiration of the period of 40 days beginning with the day on which a copy of the code or alteration was laid before that House; but for the purposes of this subsection no account shall be taken of any time during which Parliament is dissolved or prorogued or during which both Houses are adjourned for more than four days.
- (6) The Secretary of State shall publish the code as for the time being in force.

#### Textual Amendments

- F1** Words in s. 118(1) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(6)(a)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (subject to transitional provisions in Schs. 1-3 and art. 3(4)-(10))
- F2** Words in s. 118(1) substituted (1.4.2002) by 2000 c. 14, ss. 116, 122, **Sch. 4 para. 9(6)(b)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (subject to transitional provisions in Schs. 1-3 and art. 3(4)-(10))
- F3** Words in s. 118(1)(a) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 16

### 119 Practitioners approved for Part IV and s. 118.

- (1) The Secretary of State may make such provision as he may with the approval of the Treasury determine for the payment of remuneration, allowances, pensions or gratuities to or in respect of registered medical practitioners appointed by him for the purposes of Part IV of this Act and section 118 above and to or in respect of other persons appointed for the purposes of section 57(2)(a) above.
- (2) A registered medical practitioner or other person appointed by the Secretary of State for the purposes of the provisions mentioned in subsection (1) above may, for the purpose of exercising his functions under those provisions, at any reasonable time—
- (a) visit and interview and, in the case of a registered medical practitioner, examine in private any patient detained in a [<sup>F4</sup>registered establishment]; and
  - (b) require the production of and inspect any records relating to the treatment of the patient in that home.

#### Textual Amendments

- F4** Words in s. 119(2) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(2)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (with transitional provisions in Schs. 1-3 and art. 3(4)-(10))

### 120 General protection of detained patients.

- (1) The Secretary of State shall keep under review the exercise of the powers and the discharge of the duties conferred or imposed by this Act so far as relating to the detention of patients or to patients liable to be detained under this Act and shall make arrangements for persons authorised by him in that behalf—

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- (a) to visit and interview in private patients detained under this Act in hospitals and [F5registered establishments]; and
- (b) to investigate—
  - (i) any complaint made by a person in respect of a matter that occurred while he was detained under this Act in a hospital or [F5registered establishment] and which he considers has not been satisfactorily dealt with by the managers of that hospital or [F5registered establishment]; and
  - (ii) any other complaint as to the exercise of the powers or the discharge of the duties conferred or imposed by this Act in respect of a person who is or has been so detained.
- (2) The arrangements made under this section in respect of the investigation of complaints may exclude matters from investigation in specified circumstances and shall not require any person exercising functions under the arrangements to undertake or continue with any investigation where he does not consider it appropriate to do so.
- (3) Where any such complaint as is mentioned in subsection (1)(b)(ii) above is made by a Member of Parliament and investigated under the arrangements made under this section the results of the investigation shall be reported to him.
- (4) For the purpose of any such review as is mentioned in subsection (1) above or of carrying out his functions under arrangements made under this section any person authorised in that behalf by the Secretary of State may at any reasonable time—
  - (a) visit and interview and, if he is a registered medical practitioner, examine in private any patient in a [F5registered establishment]; and
  - (b) require the production of and inspect any records relating to the detention or treatment of any person who is or has been detained in a [F5registered establishment].
- (5) ..... F6
- (6) The Secretary of State may make such provision as he may with the approval of the Treasury determine for the payment of remuneration, allowances, pensions or gratuities to or in respect of persons exercising functions in relation to any such review as is mentioned in subsection (1) above or functions under arrangements made under this section.
- (7) The powers and duties referred to in subsection (1) above do not include any power or duty conferred or imposed by Part VII of this Act.

#### Textual Amendments

**F5** Words in s. 120(1)(4) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(2)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **reg. 3(3)(d)** (subject to transitional provisions in Schs. 1-3 and art. 3(4)-(10))

**F6** S. 120(5) repealed by Registered Homes Act 1984 (c. 23, SIF 113:3), s. 57, **Sch. 3**

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VALID FROM 01/04/2009

### **[<sup>F7</sup>120A Investigation reports**

- (1) The regulatory authority may publish a report of a review or investigation carried out by it under section 120(1).
- (2) The Secretary of State may by regulations make provision as to the procedure to be followed in respect of the making of representations to the Care Quality Commission before the publication of a report by the Commission under subsection (1).
- (3) The Secretary of State must consult the Care Quality Commission before making any such regulations.
- (4) The Welsh Ministers may by regulations make provision as to the procedure to be followed in respect of the making of representations to them before the publication of a report by them under subsection (1).

#### **Textual Amendments**

**F7** Ss. 120A-120D inserted (1.4.2009) by [Health and Social Care Act 2008 \(c. 14\)](#), ss. 52, 170, [Sch. 3 para. 9](#); S.I. 2009/462, [art. 1\(1\)\(b\)](#), 2, Sch. 1 para. 33

VALID FROM 01/04/2009

### **120B Action statements**

- (1) The regulatory authority may direct a person mentioned in subsection (2) to publish a statement as to the action the person proposes to take as a result of a review or investigation under section 120(1).
- (2) The persons are—
  - (a) the managers of a hospital within the meaning of Part 2 of this Act;
  - (b) a local social services authority;
  - (c) persons of any other description prescribed in regulations.
- (3) Regulations may make further provision about the content and publication of statements under this section.
- (4) “Regulations” means regulations made—
  - (a) by the Secretary of State, in relation to England;
  - (b) by the Welsh Ministers, in relation to Wales.

#### **Textual Amendments**

**F7** Ss. 120A-120D inserted (1.4.2009) by [Health and Social Care Act 2008 \(c. 14\)](#), ss. 52, 170, [Sch. 3 para. 9](#); S.I. 2009/462, [art. 1\(1\)\(b\)](#), 2, Sch. 1 para. 33

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VALID FROM 01/04/2009

## 120C Provision of information

- (1) This section applies to the following persons—
  - (a) the managers of a hospital within the meaning of Part 2 of this Act;
  - (b) a local social services authority;
  - (c) persons of any other description prescribed in regulations.
- (2) A person to whom this section applies must provide the regulatory authority with such information as the authority may reasonably request for or in connection with the exercise of its functions under section 120.
- (3) A person to whom this section applies must provide a person authorised under section 120 with such information as the person so authorised may reasonably request for or in connection with the exercise of functions under arrangements made under that section.
- (4) This section is in addition to the requirements of section 120(7)(c).
- (5) “Information” includes documents and records.
- (6) “Regulations” means regulations made—
  - (a) by the Secretary of State, in relation to England;
  - (b) by the Welsh Ministers, in relation to Wales.

### Textual Amendments

- F7** Ss. 120A-120D inserted (1.4.2009) by [Health and Social Care Act 2008 \(c. 14\)](#), ss. 52, 170, [Sch. 3 para. 9](#); [S.I. 2009/462](#), [art. 1\(1\)\(b\)](#), 2, [Sch. 1 para. 33](#)

VALID FROM 01/04/2009

## 120D Annual reports

- (1) The regulatory authority must publish an annual report on its activities in the exercise of its functions under this Act.
- (2) The report must be published as soon as possible after the end of each financial year.
- (3) The Care Quality Commission must send a copy of its annual report to the Secretary of State who must lay the copy before Parliament.
- (4) The Welsh Ministers must lay a copy of their annual report before the National Assembly for Wales.
- (5) In this section “financial year” means—
  - (a) the period beginning with the date on which section 52 of the Health and Social Care Act 2008 comes into force and ending with the next 31 March following that date, and

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(b) each successive period of 12 months ending with 31 March.]

#### Textual Amendments

**F7** Ss. 120A-120D inserted (1.4.2009) by Health and Social Care Act 2008 (c. 14), ss. 52, 170, **Sch. 3 para. 9**; S.I. 2009/462, **art. 1(1)(b)**, 2, Sch. 1 para. 33

### 121 Mental Health Act Commission.

- (1) Without prejudice to section 126(3) of the <sup>M1</sup>National Health Service Act 1977 (power to vary or revoke orders or directions) there shall continue to be a [<sup>F8</sup>Special Health Authority] known as the Mental Health Act Commission established under section 11 of that Act.
- (2) Without prejudice to the generality of his powers under section 13 of that Act, the Secretary of State shall direct the Commission to perform on his behalf—
  - (a) the function of appointing registered medical practitioners for the purposes of Part IV of this Act and section 118 above and of appointing other persons for the purposes of section 57(2)(a) above; and
  - (b) the functions of the Secretary of State under sections 61 and 120(1) and (4) above.
- (3) The registered medical practitioners and other persons appointed for the purposes mentioned in subsection (2)(a) above may include members of the Commission.
- (4) The Secretary of State may, at the request of or after consultation with the Commission and after consulting such other bodies as appear to him to be concerned, direct the Commission to keep under review the care and treatment, or any aspect of the care and treatment, in hospitals [<sup>F9</sup>, independent hospitals and care homes] of patients who are not liable to be detained under this Act.
- (5) For the purpose of any such review as is mentioned in subsection (4) above any person authorised in that behalf by the Commission may at any reasonable time—
  - (a) visit and interview and, if he is a registered medical practitioner, examine in private any patient in [<sup>F10</sup>an independent hospital or a care home]; and
  - (b) require the production of and inspect any records relating to the treatment of any person who is or has been a patient in [<sup>F10</sup>an independent hospital or a care home].
- (6) The Secretary of State may make such provision as he may with the approval of the Treasury determine for the payment of remuneration, allowances, pensions or gratuities to or in respect of persons exercising functions in relation to any such review as is mentioned in subsection (4) above.
- (7) The Commission shall review any decision to withhold a postal packet (or anything contained in it) under subsection (1)(b) or (2) of section 134 below if an application in that behalf is made—
  - (a) in a case under subsection (1)(b), by the patient; or
  - (b) in a case under subsection (2), either by the patient or by the person by whom the postal packet was sent;

and any such application shall be made within six months of the receipt by the applicant of the notice referred to in subsection (6) of that section.

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- (8) On an application under subsection (7) above the Commission may direct that the postal packet which is the subject of the application (or anything contained in it) shall not be withheld and the managers in question shall comply with any such direction.
- (9) The Secretary of State may by regulations make provision with respect to the making and determination of applications under subsection (7) above, including provision for the production to the Commission of any postal packet which is the subject of such an application.
- (10) The Commission shall in the second year after its establishment and subsequently in every second year publish a report on its activities; and copies of every such report shall be sent by the Commission to the Secretary of State who shall lay a copy before each House of Parliament.
- (11) Paragraph 9 of Schedule 5 to the said Act of 1977 (pay and allowances for chairmen and members of [<sup>F11</sup>Special Health Authorities]) shall have effect in relation to the Mental Health Act Commission as if references in sub-paragraphs (1) and (2) to the chairman included references to any member and as if [<sup>F12</sup>the reference to a member in subparagraph (4) included a reference to the chairman].

#### Textual Amendments

- F8** Words in s. 121(1) substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8, **Sch. 1 Pt. III para. 107(9)**
- F9** Words in s. 121(4) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(7)(a)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (subject to transitional provisions in Sch. 1-3 and art. 3(4)-(10))
- F10** Words in s. 121(5)(a)(b) substituted (1.4.2002) by 2000 c. 14, s. 116, **Sch. 4 para. 9(7)(b)**; S.I. 2001/4150, **art. 3(3)** (subject to transitional provisions in art. 4 and S.I. 2002/1493, **art. 4**); S.I. 2002/920, **art. 3(3)(d)** (subject to transitional provisions in Schs. 1-3 and art. 3(4)-(10))
- F11** Words in s. 121(11) substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, ss. 2(1)(3), 8, **Sch. 1 Pt. III, para. 107(9)**
- F12** Words substituted by **Health and Social Security Act 1984 (c. 48, SIF 113:1), s. 6(4)**

#### Marginal Citations

- M1** 1977 c. 49.

## 122 Provision of pocket money for in-patients in hospital.

- (1) The Secretary of State may pay to persons who are receiving treatment as in-patients (whether liable to be detained or not) in [<sup>F13</sup>special hospitals or other hospitals, being hospitals]wholly or mainly used for the treatment of persons suffering from mental disorder, such amounts as he thinks fit in respect of their occasional personal expenses where it appears to him that they would otherwise be without resources to meet those expenses.
- (2) For the purposes of the <sup>M2</sup>National Health Service Act 1977, the making of payments under this section to persons for whom hospital services are provided under that Act shall be treated as included among those services.



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**Textual Amendments**

**F13** Words in s. 122(1) repealed (1.4.2000 for E.W.) by 1999 c. 8, s. 65, Sch. 4 para. 66, Sch. 5; S.I. 1999/2793, art. 2(3)(a), Sch. 3

**Marginal Citations**

**M2** 1977 c. 49.

**123 Transfers to and from special hospitals.**

- (1) Without prejudice to any other provisions of this Act with respect to the transfer of patients, any patient who is for the time being liable to be detained<sup>F14</sup> . . . under this Act (other than under section 35, 36 or 38 above) [<sup>F15</sup>in a hospital at which high security psychiatric services are provided] may, upon the directions of the Secretary of State, at any time be removed into any [<sup>F16</sup>other hospital at which those services are provided].
- (2) Without prejudice to any such provision, the Secretary of State may give directions for the transfer of any patient who is for the time being liable to be so detained into a hospital [<sup>F17</sup>at which those services are not provided].
- (3) Subsections (2) and (4) of section 19 above shall apply in relation to the transfer or removal of a patient under this section as they apply in relation to the transfer or removal of a patient from one hospital to another under that section.

**Textual Amendments**

**F14** Words in s. 123(1) repealed (1.4.2000) by 1999 c. 8, s. 65, Sch. 4 para. 67(a), Sch. 5; S.I. 1999/2793, art. 2(3), Sch. 3

**F15** Words in s. 123(1) inserted (1.4.2000) by 1999 c. 8, s. 65(1), Sch. 4 para. 67(a); S.I. 1999/2793, art. 2(3), Sch. 3

**F16** Words in s. 123(1) substituted (1.4.2000) by 1999 c. 8, s. 65(1), Sch. 4 para. 67(a); S.I. 1999/2793, art. 2(3), Sch. 3

**F17** Words in s. 123(2) substituted (1.4.2000) by 1999 c. 8, s. 65(1), Sch. 4 para. 67(b); S.I. 1999/2793, art. 2(3), Sch. 3

**F18 124** .....

**Textual Amendments**

**F18** S. 124 repealed (1.4.1993) by National Health Service and Community Care Act 1990 (c. 19), s. 66(2), Sch. 10; S.I. 1992/2975, art. 2(2), Sch.

**125 Inquiries.**

**F19** .....



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#### Textual Amendments

**F19** S. 125 repealed (7.6.2005) by [Inquiries Act 2005 \(c. 12\)](#), ss. 48, 49, 51, Sch. 2 para. 9, [Sch. 3](#) (with ss. 44, 50); [S.I. 2005/1432](#), [art. 2](#)

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