



# 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 [<sup>F1</sup>, approved clinicians] , managers and staff of hospitals [<sup>F2</sup>, independent hospitals and care homes] and [<sup>F3</sup>approved mental health professionals] in relation to the admission of patients to hospitals [<sup>F4</sup>and registered establishments] under this Act [<sup>F5</sup>and to guardianship and [<sup>F6</sup>community patients] 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.
- [<sup>F7</sup>(1A) The Code which must be prepared, and from time to time revised, in relation to Wales shall also be for the guidance of independent mental health advocates appointed under arrangements made under section 130E below]
- (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 [<sup>F8</sup>appointed for the purposes of this section by the regulatory authority].
- [<sup>F9</sup>(2A) The code shall include a statement of the principles which the Secretary of State thinks should inform decisions under this Act.

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- (2B) In preparing the statement of principles the Secretary of State shall, in particular, ensure that each of the following matters is addressed—
- (a) respect for patients' past and present wishes and feelings,
  - (b) respect for diversity generally including, in particular, diversity of religion, culture and sexual orientation (within the meaning of section 35 of the Equality Act 2006),
  - (c) minimising restrictions on liberty,
  - (d) involvement of patients in planning, developing and delivering care and treatment appropriate to them,
  - (e) avoidance of unlawful discrimination,
  - (f) effectiveness of treatment,
  - (g) views of carers and other interested parties,
  - (h) patient wellbeing and safety, and
  - (i) public safety.
- (2C) The Secretary of State shall also have regard to the desirability of ensuring—
- (a) the efficient use of resources, and
  - (b) the equitable distribution of services.
- (2D) In performing functions under this Act persons mentioned in subsection (1)(a) or (b) [<sup>F10</sup>and subsection (1A)] shall have regard to the code.]
- (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 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.
- [<sup>F11</sup>(7) The Care Quality Commission may at any time make proposals to the Secretary of State as to the content of the code of practice which the Secretary of State must prepare, and from time to time revise, under this section in relation to England.]

#### Textual Amendments

- F1** Words in s. 118(1)(a) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 14(2)**, 56 (with [Sch. 10](#)); [S.I. 2008/1900](#), **art. 2(b)** (with [art. 3](#), [Sch.](#))
- F2** 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\(4\)-\(10\)](#))

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- F3** Words in s. 118(1)(a) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\), ss. 21, 56, Sch. 2 para. 9](#) (with [Sch. 10](#)); [S.I. 2008/1900, art. 2\(d\)](#) (with [art. 3, Sch.](#)); [S.I. 2008/2561, {art. 2\(b\)}](#) (with [art. 3, Sch.](#))
- F4** 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\(4\)-\(10\)](#))
- F5** Words in s. 118(1)(a) inserted (1.4.1996) by [1995 c. 52, ss. 1\(2\), 7\(2\), Sch. 1, para. 16](#)
- F6** Words in s. 118(1)(a) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\), ss. 32, 56, Sch. 3 para. 25](#) (with [Sch. 10](#)); [S.I. 2008/1210, art. 2\(b\)](#) (with [art. 4](#))
- F7** [S. 118\(1A\)](#) inserted (3.1.2012 for specified purposes, 2.4.2012 in so far as not already in force) by [Mental Health \(Wales\) Measure 2010 \(nawm 7\), ss. 39\(2\), 55\(3\)](#); [S.I. 2011/3046, arts. 2\(f\), 3\(f\)](#) (with [art. 5](#))
- F8** Words in s. 118(2) substituted (1.4.2009) by [Health and Social Care Act 2008 \(c. 14\), ss. 52, 170, Sch. 3 para. 6\(2\)](#); [S.I. 2009/462, arts. 1\(1\)\(b\), 2, Sch. 1 para. 33](#)
- F9** [S. 118\(2A\)-\(2D\)](#) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\), ss. 8, 56](#) (with [Sch. 10](#)); [S.I. 2008/1900, art. 2\(b\)](#) (with [art. 3, Sch.](#))
- F10** Words in [s. 118\(2D\)](#) inserted (3.1.2012 for specified purposes, 2.4.2012 in so far as not already in force) by [Mental Health \(Wales\) Measure 2010 \(nawm 7\), ss. 39\(3\), 55\(3\)](#); [S.I. 2011/3046, arts. 2\(f\), 3\(f\)](#) (with [art. 5](#))
- F11** [S. 118\(7\)](#) inserted (1.4.2009) by [Health and Social Care Act 2008 \(c. 14\), ss. 52, 170, Sch. 3 para. 6\(3\)](#); [S.I. 2009/462, arts. 1\(1\)\(b\), 2, Sch. 1 para. 33](#)

#### Modifications etc. (not altering text)

- C1** [S. 118\(1\)\(a\)](#) modified (3.11.2008) by [The Mental Health Act 2007 \(Commencement No. 6 and After-care under Supervision: Savings, Modifications and Transitional Provisions\) Order 2008 \(S.I. 2008/1210\), art. 6\(k\)](#)
- C2** [S. 118\(2\)](#): functions transferred (1.4.2009) by [Health and Social Care Act 2008 \(c. 14\), ss. 52\(1\)\(g\), 170](#) (with [s. 96](#)); [S.I. 2009/462, arts. 1\(1\)\(b\), 2, Sch. 1 para. 20](#)

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

- (1) [<sup>F12</sup>The regulatory authority] may make such provision as [<sup>F13</sup>it] 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 [<sup>F14</sup>by the authority] 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 <sup>F15</sup>. . . for the purposes of the provisions mentioned in subsection (1) above may, for the purpose of exercising his functions under those provisions [<sup>F16</sup>or under Part 4A of this Act] , at any reasonable time—
- (a) visit and interview and, in the case of a registered medical practitioner, examine in private any patient detained [<sup>F17</sup>in a hospital or registered establishment or any community patient in a hospital or [<sup>F18</sup>regulated establishment (other than a hospital)] or (if access is granted) other place] ; and
- (b) require the production of and inspect any records relating to the treatment of the patient [<sup>F19</sup>there] .
- [<sup>F20</sup>(3) In this section “regulated establishment” means—
- (a) an establishment in respect of which a person is registered under Part 2 of the Care Standards Act 2000; or

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- (b) premises used for the carrying on of a regulated activity, within the meaning of Part 1 of the Health and Social Care Act 2008, in respect of which a person is registered under Chapter 2 of that Part.]

#### Textual Amendments

- F12** Words in s. 119(1) substituted (1.4.2009) by [Health and Social Care Act 2008 \(c. 14\)](#), ss. 52, 170, [Sch. 3 para. 7\(2\)\(a\)](#); S.I. 2009/462, [arts. 1\(1\)\(b\)](#), 2, Sch. 1 para. 33
- F13** Word in s. 119(1) substituted (1.4.2009) by [Health and Social Care Act 2008 \(c. 14\)](#), ss. 52, 170, [Sch. 3 para. 7\(2\)\(b\)](#); S.I. 2009/462, [arts. 1\(1\)\(b\)](#), 2, Sch. 1 para. 33
- F14** Words in s. 119(1) substituted (1.4.2009) by [Health and Social Care Act 2008 \(c. 14\)](#), ss. 52, 170, [Sch. 3 para. 7\(2\)\(c\)](#); S.I. 2009/462, [arts. 1\(1\)\(b\)](#), 2, Sch. 1 para. 33
- F15** Words in s. 119(2) repealed (1.4.2009) by [Health and Social Care Act 2008 \(c. 14\)](#), ss. 52, 166, 170, [Sch. 3 para. 7\(3\)](#), [Sch. 15 Pt. 1](#); S.I. 2009/462, [arts. 1\(1\)\(b\)](#), 2, Sch. 1 para. 36 (with Sch. 4)
- F16** Words in s. 119(2) inserted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 35\(2\)\(a\)\(i\)](#), 56 (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(k\)](#) (with [art. 3](#), [Sch.](#))
- F17** Words in s. 119(2)(a) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 35\(2\)\(a\)\(ii\)](#), 56 (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(k\)](#) (with [art. 3](#), [Sch.](#))
- F18** Words in s. 119(2)(a) substituted (1.10.2010) by [The Health and Social Care Act 2008 \(Consequential Amendments No.2\) Order 2010 \(S.I. 2010/813\)](#), arts. 1(1), [5\(4\)\(a\)](#)
- F19** Words in s. 119(2)(b) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), [ss. 35\(2\)\(a\)\(iii\)](#), 56 (with [Sch. 10](#)); S.I. 2008/1900, [art. 2\(k\)](#) (with [art. 3](#), [Sch.](#))
- F20** S. 119(3) substituted (1.10.2010) by [The Health and Social Care Act 2008 \(Consequential Amendments No.2\) Order 2010 \(S.I. 2010/813\)](#), arts. 1(1), [5\(4\)\(b\)](#)

#### Modifications etc. (not altering text)

- C3** S. 119(1): functions transferred (1.4.2009) by [Health and Social Care Act 2008 \(c. 14\)](#), [ss. 52\(1\)\(h\)](#), 170 (with s. 96); S.I. 2009/462, [arts. 1\(1\)\(b\)](#), 2, Sch. 1 para. 20

### [<sup>F21</sup>120 General protection of relevant patients.

- (1) The regulatory authority must keep under review and, where appropriate, investigate 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 their reception into guardianship or to relevant patients.
- (2) Relevant patients are—
  - (a) patients liable to be detained under this Act,
  - (b) community patients, and
  - (c) patients subject to guardianship.
- (3) The regulatory authority must make arrangements for persons authorised by it to visit and interview relevant patients in private—
  - (a) in the case of relevant patients detained under this Act, in the place where they are detained, and
  - (b) in the case of other relevant patients, in hospitals and regulated establishments and, if access is granted, other places.
- (4) The regulatory authority must also make arrangements for persons authorised by it to investigate any complaint as to the exercise of the powers or the discharge of the duties conferred or imposed by this Act in respect of a patient who is or has been detained under this Act or who is or has been a relevant patient.

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- (5) The arrangements made under subsection (4)—
- (a) may exclude matters from investigation in specified circumstances, and
  - (b) do not require any person exercising functions under the arrangements to undertake or continue with any investigation where the person does not consider it appropriate to do so.
- (6) Where any such complaint as is mentioned in subsection (4) is made by a Member of Parliament or a member of the National Assembly for Wales, the results of the investigation must be reported to the Member of Parliament or member of the Assembly.
- (7) For the purposes of a review or investigation under subsection (1) or the exercise of functions under arrangements made under this section, a person authorised by the regulatory authority may at any reasonable time—
- (a) visit and interview in private any patient in a hospital or regulated establishment,
  - (b) if the authorised person is a registered medical practitioner or approved clinician, examine the patient in private there, and
  - (c) require the production of and inspect any records relating to the detention or treatment of any person who is or has been detained under this Act or who is or has been a community patient or a patient subject to guardianship.
- (8) The regulatory authority may make provision for the payment of remuneration, allowances, pensions or gratuities to or in respect of persons exercising functions in relation to any review or investigation for which it is responsible under subsection (1) or functions under arrangements made by it under this section.
- (9) In this section “regulated establishment” means—
- (a) an establishment in respect of which a person is registered under Part 2 of the Care Standards Act 2000, or
  - (b) premises used for the carrying on of a regulated activity (within the meaning of Part 1 of the Health and Social Care Act 2008) in respect of which a person is registered under Chapter 2 of that Part.]

#### Textual Amendments

**F21** S. 120 substituted (1.4.2009) by [Health and Social Care Act 2008 \(c. 14\)](#), ss. 52, 170, [Sch. 3 para. 8](#); [S.I. 2009/462](#), [arts. 1\(1\)\(b\)](#), 2, Sch. 1 para. 33

#### Modifications etc. (not altering text)

**C4** S. 120: functions transferred (1.4.2009) by [Health and Social Care Act 2008 \(c. 14\)](#), [ss. 52\(1\)\(i\)](#), 170 (with s. 96); [S.I. 2009/462](#), [arts. 1\(1\)\(b\)](#), 2, Sch. 1 para. 20

### [<sup>F22</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).

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- (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

**F22** 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

### 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

**F22** 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

### 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.

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- (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

**F22** 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

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

#### Textual Amendments

**F22** 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.

F23  
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#### Textual Amendments

**F23** S. 121 repealed (1.4.2009) by Health and Social Care Act 2008 (c. 14), ss. 52(4), 166, 170, **Sch. 15 Pt. 1**; S.I. 2009/462, **art. 1(1)(b)**, 2, Sch. 1 para. 36

### 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>F24</sup> special hospitals or other hospitals, being

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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 [F25National Health Service Act 2006 and the National Health Service (Wales) Act 2006] , the making of payments under this section to persons for whom hospital services are provided under [F26either of those Acts] shall be treated as included among those services.

**Textual Amendments**  
F24 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  
F25 Words in s. 122(2) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), Sch. 1 para. 67(a) (with Sch. 3 Pt. 1)  
F26 Words in s. 122(2) substituted (1.3.2007) by National Health Service (Consequential Provisions) Act 2006 (c. 43), ss. 2, 8(2), Sch. 1 para. 67(b) (with Sch. 3 Pt. 1)

**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>F27</sup> . . . under this Act (other than under section 35, 36 or 38 above) [F28in 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 [F29other 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 [F30at 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**  
F27 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  
F28 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  
F29 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  
F30 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

<sup>F31</sup>124 .....



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**Textual Amendments**

**F31** 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.**

**F32** .....

**Textual Amendments**

**F32** 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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