

*Status: Point in time view as at 01/04/2009.*

*Changes to legislation: There are currently no known outstanding effects for the Health and Social Care Act 2008, SCHEDULE 3. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 3

Section 52

#### AMENDMENTS OF MENTAL HEALTH ACT 1983

1 In this Schedule “the MHA” means the Mental Health Act 1983 (c. 20).

##### Commencement Information

**I1** Sch. 3 para. 1 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), Sch. 1 para. 33 (with art. 11, Sch. 4)

2 In section 57 of the MHA (treatment requiring consent and a second opinion), in subsection (2)(a), for “the Secretary of State” (in both places) substitute “ the regulatory authority ”.

##### Commencement Information

**I2** Sch. 3 para. 2 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), Sch. 1 para. 33 (with art. 11, Sch. 4)

3 In section 58 of the MHA (treatment requiring consent or a second opinion), in subsection (3)(a), for “the Secretary of State” substitute “ the regulatory authority ”.

##### Commencement Information

**I3** Sch. 3 para. 3 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), Sch. 1 para. 33 (with art. 11, Sch. 4)

4 (1) Section 61 of the MHA (review of treatment) is amended as follows.  
(2) For “the Secretary of State” (wherever occurring) substitute “ the regulatory authority ”.  
(3) In subsection (3), after “to him” insert “ (whether in England or Wales) ”.

##### Commencement Information

**I4** Sch. 3 para. 4 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), Sch. 1 para. 33 (with art. 11, Sch. 4)

5 In section 64H of the MHA (certificates: supplementary provision), in subsections (4) and (5), for “appropriate national authority” substitute “ regulatory authority ”.

##### Commencement Information

**I5** Sch. 3 para. 5 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), Sch. 1 para. 33 (with art. 11, Sch. 4)

6 (1) Section 118 of the MHA (code of practice) is amended as follows.

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- (2) In subsection (2), for “appointed for the purposes of this section by the Secretary of State” substitute “ appointed for the purposes of this section by the regulatory authority ”.
- (3) After subsection (6) insert—
- “(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.”

**Commencement Information**

**I6** Sch. 3 para. 6 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), Sch. 1 para. 33 (with art. 11, Sch. 4)

- 7 (1) Section 119 of the MHA (practitioners approved for Part 4 and section 118) is amended as follows.
- (2) In subsection (1)—
- (a) for “The Secretary of State” substitute “ The regulatory authority ”,
  - (b) for “he” substitute “ it ”, and
  - (c) for “by him” substitute “ by the authority ”.
- (3) In subsection (2), omit “by the Secretary of State”.

**Commencement Information**

**I7** Sch. 3 para. 7 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), Sch. 1 para. 33 (with art. 11, Sch. 4)

- 8 For section 120 of the MHA substitute—

**“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

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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.

- (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.”

#### Commencement Information

**18** Sch. 3 para. 8 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), Sch. 1 para. 33 (with art. 11, Sch. 4)

9 After section 120 of the MHA insert—

#### “120A Investigation reports

- (1) The regulatory authority may publish a report of a review or investigation carried out by it under section 120(1).

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- (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).

### **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.

### **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.

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## 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.”

### Commencement Information

- I9** Sch. 3 para. 9 partly in force; Sch. 3 para. 9 in force for specified purposes at Royal Assent, see s. 170
- I10** Sch. 3 para. 9 in force at 1.4.2009 in so far as not already in force by S.I. 2009/462, art. 2(1), Sch. 1 para. 33 (with art. 11, Sch. 4)

- 10 In section 129 of the MHA (obstruction), in subsection (1), after paragraph (c) insert—
- “(ca) fails to comply with a request made under section 120C; or”.

### Commencement Information

- I11** Sch. 3 para. 10 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), Sch. 1 para. 33 (with art. 11, Sch. 4)

- 11 (1) Section 134 of the MHA (correspondence of patients) is amended as follows.
- (2) In subsection (3), after paragraph (c) insert—
- “(ca) the Care Quality Commission;”.
- (3) In subsection (6), for “section 121(7) and (8) above” substitute “ section 134A(1) to (4) ”.
- (4) In subsection (9), after “this section” insert “ and section 134A ”.

### Commencement Information

- I12** Sch. 3 para. 11 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), Sch. 1 para. 33 (with art. 11, Sch. 4)

- 12 After section 134 of the MHA insert—

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### “134A Review of decisions to withhold correspondence

- (1) The regulatory authority must review any decision to withhold a postal packet (or anything contained in it) under subsection (1)(b) or (2) of section 134 if an application for a review of the decision is made—
  - (a) in a case under subsection (1)(b) of that section, by the patient; or
  - (b) in a case under subsection (2) of that section, either by the patient or by the person by whom the postal packet was sent.
- (2) An application under subsection (1) must be made within 6 months of receipt by the applicant of the notice referred to in section 134(6).
- (3) On an application under subsection (1), the regulatory authority may direct that the postal packet (or anything contained in it) is not to be withheld.
- (4) The managers of the hospital concerned must comply with any such direction.
- (5) The Secretary of State may by regulations make provision in connection with the making to and determination by the Care Quality Commission of applications under subsection (1), including provision for the production to the Commission of any postal packet which is the subject of such an application.
- (6) The Welsh Ministers may by regulations make provision in connection with the making to them of applications under subsection (1), including provision for the production to them of any postal packet which is the subject of such an application.”

#### Commencement Information

**I13** Sch. 3 para. 12 partly in force; Sch. 3 para. 12 in force for specified purposes at Royal Assent, see s. 170

**I14** Sch. 3 para. 12 in force at 1.4.2009 in so far as not already in force by S.I. 2009/462, art. 2(1), **Sch. 1 para. 33** (with art. 11, Sch. 4)

- 13 In section 145 of the MHA (general interpretation), in subsection (1), insert at the appropriate place—

““the regulatory authority” means—

- (a) in relation to England, the Care Quality Commission;
- (b) in relation to Wales, the Welsh Ministers;”.

#### Commencement Information

**I15** Sch. 3 para. 13 in force at 1.4.2009 by S.I. 2009/462, art. 2(1), **Sch. 1 para. 33** (with art. 11, Sch. 4)

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