



# Health and Social Care Act 2012

## 2012 CHAPTER 7

### PART 1

#### THE HEALTH SERVICE IN ENGLAND

##### *Functions relating to mental health matters*

#### **43 Independent mental health advocates**

- (1) In section 130A of the Mental Health Act 1983 (independent mental health advocates: England), in subsection (1)—
  - (a) for “The Secretary of State” substitute “A local social services authority whose area is in England”, and
  - (b) at the end insert “for whom the authority is responsible for the purposes of this section”.
- (2) In subsection (4) of that section, for “the Secretary of State” substitute “a local social services authority”.
- (3) In section 130C of that Act (provision supplementary to section 130A), after subsection (4) insert—

“(4A) A local social services authority is responsible for a qualifying patient if—

  - (a) in the case of a qualifying patient falling within subsection (2)(a) above, the hospital or registered establishment in which he is liable to be detained is situated in that authority's area;
  - (b) in the case of a qualifying patient falling within subsection (2)(b) above, that authority is the responsible local social services authority within the meaning of section 34(3) above;
  - (c) in the case of a qualifying patient falling within subsection (2)(c), the responsible hospital is situated in that authority's area;
  - (d) in the case of a qualifying patient falling within subsection (3)—

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**Changes to legislation:** Health and Social Care Act 2012, Section 43 is up to date with all changes known to be in force on or before 17 April 2024. There are changes that may be brought into force at a future date. Changes that have been made appear in the content and are referenced with annotations. (See end of Document for details) View outstanding changes

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- (i) in a case where the patient has capacity or is competent to do so, he nominates that authority as responsible for him for the purposes of section 130A above, or
- (ii) in any other case, a donee or deputy or the Court of Protection, or a person engaged in caring for the patient or interested in his welfare, nominates that authority on his behalf as responsible for him for the purposes of that section.

(4B) In subsection (4A)(d) above—

- (a) the reference to a patient who has capacity is to be read in accordance with the Mental Capacity Act 2005;
- (b) the reference to a donee is to a donee of a lasting power of attorney (within the meaning of section 9 of that Act) created by the patient, where the donee is acting within the scope of his authority and in accordance with that Act;
- (c) the reference to a deputy is to a deputy appointed for the patient by the Court of Protection under section 16 of that Act, where the deputy is acting within the scope of his authority and in accordance with that Act.”

(4) In Schedule 1 to the Local Authority Social Services Act 1970 (social services functions), in the entry for the Mental Health Act 1983, at the appropriate place insert—

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“Section 130A

Making arrangements to enable independent mental health advocates to be available to help qualifying patients”.

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**Commencement Information**

**II** S. 43 in force at 1.4.2013 by [S.I. 2013/160](#), [art. 2\(2\)](#) (with [arts. 7-9](#))

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing SI 2012/1831 art. 10 by [S.I. 2012/2657 art. 15](#)

**Changes and effects yet to be applied to the whole Act associated Parts and Chapters:**

Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- Pt. 9 Ch. 1B inserted by [2022 c. 31 s. 96](#)
- s. 102(4)(ba) inserted by S.I. 2019/93, Sch. 1 para. 13(3) (as substituted) by [S.I. 2019/1245 reg. 28](#) (This amendment not applied to legislation.gov.uk. The affecting statutory instrument has no legal effect. It was made under a procedure which meant that it ceased to have effect 28 days after signing unless it was debated and approved in Parliament within that time. It was not debated and approved within 28 days, so it has expired with no effect.)
- s. 105(3A)(3B) inserted by [2013 c. 24 Sch. 14 para. 21](#)
- s. 106(3A)(3B) inserted by [2013 c. 24 Sch. 14 para. 22](#)
- s. 250(2)-(2B) substituted for s. 250(2) by [2022 c. 31 s. 95\(2\)\(a\)](#)
- s. 250(6)-(6D) substituted for s. 250(6) by [2022 c. 31 s. 95\(2\)\(d\)](#)
- s. 251251ZA substituted for s. 251 by [2022 c. 31 s. 95\(3\)](#)
- s. 251C(6A) inserted by [2022 c. 31 s. 95\(4\)\(a\)](#)
- s. 259(1)(aa)(b) substituted for s. 259(1)(b) by [2022 c. 31 s. 98\(b\)](#)
- s. 259(1)(aa) words substituted by [S.I. 2023/98 Sch. para. 17\(11\)\(a\)\(iii\)](#) (This amendment comes in force at the same time as 2022 c. 31, s. 98 comes into force)
- s. 259(10A)(10B) inserted by [2022 c. 31 s. 98\(h\)](#)
- s. 304(5)(ja) inserted by [2022 c. 31 s. 95\(5\)](#)