



# Mental Health Act 1983

## 1983 CHAPTER 20

### PART VIII

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

#### *[<sup>F1</sup> Approved mental health professionals]*

##### Textual Amendments

- F1** S. 114 and cross-heading substituted (1.4.2008 for certain purposes, otherwise 3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 18, 56** (with [Sch. 10](#)); [S.I. 2008/745](#), **arts. 2(a), 3(b)**; [S.I. 2008/1900](#), **art. 2(c)** (with [art. 3, Sch.](#)); [S.I. 2008/2156](#), **art. 2(a)** (with [art. 3, Sch.](#))

#### **[<sup>F2</sup>114 Approval by local social services authority.**

- (1) A local social services authority may approve a person to act as an approved mental health professional for the purposes of this Act.
- (2) But a local social services authority may not approve a registered medical practitioner to act as an approved mental health professional.
- (3) Before approving a person under subsection (1) above, a local social services authority shall be satisfied that he has appropriate competence in dealing with persons who are suffering from mental disorder.
- (4) The appropriate national authority may by regulations make provision in connection with the giving of approvals under subsection (1) above.
- (5) The provision which may be made by regulations under subsection (4) above includes, in particular, provision as to—
  - (a) the period for which approvals under subsection (1) above have effect;
  - (b) the courses to be undertaken by persons before such approvals are to be given and during the period for which such approvals have effect;

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- (c) the conditions subject to which such approvals are to be given; and
  - (d) the factors to be taken into account in determining whether persons have appropriate competence as mentioned in subsection (3) above.
- (6) Provision made by virtue of subsection (5)(b) above may relate to courses approved or provided by such person as may be specified in the regulations (as well as to courses approved under section [<sup>F3</sup>114ZA or] 114A below).
- (7) An approval by virtue of subsection (6) above may be in respect of a course in general or in respect of a course in relation to a particular person.
- (8) The power to make regulations under subsection (4) above includes power to make different provision for different cases or areas.
- (9) In this section “ the appropriate national authority ” means—
- (a) in relation to persons who are or wish to become approved to act as approved mental health professionals by a local social services authority whose area is in England, the Secretary of State;
  - (b) in relation to persons who are or wish to become approved to act as approved mental health professionals by a local social services authority whose area is in Wales, the Welsh Ministers.
- (10) In this Act “ approved mental health professional ” means—
- (a) in relation to acting on behalf of a local social services authority whose area is in England, a person approved under subsection (1) above by any local social services authority whose area is in England, and
  - (b) in relation to acting on behalf of a local social services authority whose area is in Wales, a person approved under that subsection by any local social services authority whose area is in Wales.]

#### **Textual Amendments**

- F2** S. 114 and cross-heading substituted (1.4.2008 for certain purposes, otherwise 3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 18**, 56 (with [Sch. 10](#)); [S.I. 2008/745](#), **arts. 2(a)**, 3(b); [S.I. 2008/1900](#), **art. 2(c)** (with [art. 3](#), [Sch.](#)); [S.I. 2008/2561](#), **art. 2(a)** (with [art. 3](#), [Sch.](#))
- F3** Words in s. 114(6) inserted (1.8.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 217(3)**, 306(4); [S.I. 2012/1319](#), **art. 2(4)**

#### **[<sup>F4</sup>114ZA] Approval of courses: England**

- (1) The Health and Care Professions Council may approve courses for persons who are, or wish to become, approved to act as approved mental health professionals by a local social services authority whose area is in England.
- (2) The Council must publish a list of—
- (a) the courses which are approved under this section, and
  - (b) the courses which have been, but are no longer, approved under this section and the periods for which they were so approved.
- (3) The functions of an approved mental health professional are not to be considered to be relevant social work for the purposes of Part 4 of the Care Standards Act 2000.

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- (4) Where the function under subsection (1) is, in accordance with the Health and Social Work Professions Order 2001, exercisable by a committee of the Council, the committee may arrange for another person to exercise the function on the Council's behalf.]

**Textual Amendments**

- F4** S. 114ZA inserted (1.8.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 217(2)**, 306(4); S.I. 2012/1319, art. 2(4)

**[<sup>F5</sup>114A [<sup>F6</sup>Approval of courses: Wales]**

[<sup>F7</sup>(1) The [<sup>F8</sup>Social Care Wales] may, in accordance with rules made by it, approve courses for persons who are, or wish to become, approved to act as approved mental health professionals by a local social services authority whose area is in Wales.]

[<sup>F9</sup>(2) For that purpose—

- (a) subsections (2), (3), (4)(a) and (7) of section 114 of the Regulation and Inspection of Social Care (Wales) Act 2016 apply as they apply to approvals given, rules made and courses approved under that section, and
- (b) sections 73 to 75 and section 115 of that Act apply accordingly.]

<sup>F10</sup>(3) . . . . .

(4) The functions of an approved mental health professional shall not be considered to be relevant social work [<sup>F11</sup>for the purposes of Parts 3 to 8 of the Regulation and Inspection of Social Care (Wales) Act 2016] .

(5) The <sup>F12</sup>... [<sup>F13</sup>Social Care Wales] may also carry out, or assist other persons in carrying out, research into matters relevant to training for approved mental health professionals.]

**Textual Amendments**

- F5** S. 114A inserted (1.10.2007) by [Mental Health Act 2007 \(c. 12\)](#), **ss. 19**, 56 (with Sch. 10); S.I. 2007/2798, **art. 2(a)**
- F6** S. 114A title substituted (1.8.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 217(8)**, 306(4); S.I. 2012/1319, art. 2(4)
- F7** S. 114A(1) substituted (1.8.2012) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 217(5)**, 306(4); S.I. 2012/1319, art. 2(4)
- F8** Words in s. 114A(1) substituted (3.4.2017) by [Regulation and Inspection of Social Care \(Wales\) Act 2016 \(anaw 2\)](#), s. 188(1), **Sch. 3 para. 38(a)**; S.I. 2017/309, art. 2(j) (with arts. 3, 4Sch.)
- F9** S. 114A(2) substituted (3.4.2017) by [Regulation and Inspection of Social Care \(Wales\) Act 2016 \(anaw 2\)](#), s. 188(1), **Sch. 3 para. 38(b)**; S.I. 2017/309, art. 2(j) (with arts. 3, 4Sch.)
- F10** S. 114A(3) omitted (1.8.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 217(6)**, 306(4); S.I. 2012/1319, art. 2(4)
- F11** Words in s. 114A(4) substituted (3.4.2017) by [Regulation and Inspection of Social Care \(Wales\) Act 2016 \(anaw 2\)](#), s. 188(1), **Sch. 3 para. 38(c)**; S.I. 2017/309, art. 2(j) (with arts. 3, 4Sch.)
- F12** Words in s. 114A(5) omitted (1.8.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 217(7)**, 306(4); S.I. 2012/1319, art. 2(4)

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**F13** Words in s. 114A(5) substituted (3.4.2017) by [Regulation and Inspection of Social Care \(Wales\) Act 2016 \(anaw 2\)](#), s. 188(1), [Sch. 3 para. 38\(d\)](#); S.I. 2017/309, art. 2(j) (with arts. 3, 4Sch.)

### **[<sup>F14</sup>115 Powers of entry and inspection.**

- (1) An approved mental health professional may at all reasonable times enter and inspect any premises (other than a hospital) in which a mentally disordered patient is living, if he has reasonable cause to believe that the patient is not under proper care.
- (2) The power under subsection (1) above shall be exercisable only after the professional has produced, if asked to do so, some duly authenticated document showing that he is an approved mental health professional.]

#### **Textual Amendments**

**F14** S. 115 substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 21, 56, [Sch. 2 para. 8](#) (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.)

### *Visiting patients*

### **116 Welfare of certain hospital patients.**

- (1) Where a patient to whom this section applies is admitted to a hospital [<sup>F15</sup>independent hospital or care home] in England and Wales (whether for treatment for mental disorder or for any other reason) then, without prejudice to their duties in relation to the patient apart from the provisions of this section, the authority shall arrange for visits to be made to him on behalf of the authority, and shall take such other steps in relation to the patient while in the hospital or nursing home as would be expected to be taken by his parents.
- (2) This section applies to-
  - [<sup>F16</sup>(a) a child or young person—
    - (i) who is in the care of a local authority by virtue of a care order within the meaning of the <sup>M1</sup>Children Act 1989, or
    - (ii) in respect of whom the rights and powers of a parent are vested in a local authority by virtue of section 16 of the <sup>M2</sup>Social Work (Scotland) Act 1968;]
  - (b) a person who is subject to the guardianship of a local social services authority under the provisions of this Act <sup>F17</sup>. . . ; or
  - (c) a person the functions of whose nearest relative under this Act <sup>F17</sup>. . . are for the time being transferred to a local social services authority.

#### **Textual Amendments**

**F15** Words in s. 116(1) substituted (1.4.2002 for E.W and otherwise (prosp.)) by [2000 c. 14](#), s. 116, [Sch. 4 para. 9\(5\)](#); 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\(4\)-\(10\)](#))

**F16** S. 116(2)(a) substituted (14.10.1991) by [Courts and Legal Services Act 1990 \(c. 41, SIF 76:1\)](#), s. 116, [Sch. 16 para. 42](#); S.I. 1991/1883, art. 3, [Sch.](#)

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**F17** Words in s. 116(2)(b)(c) repealed (S.) (27.9.2005) by virtue of [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Modification of Enactments\) Order 2005 \(S.I. 2005/465\)](#), art. 3, [Sch. 2](#) and words in s. 116(2)(b)(c) repealed (E.W.) (5.10.2005) by [The Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Consequential Provisions Order\) 2005 \(S.I. 2005/2078\)](#), art. 16, [Sch. 3](#)

#### Marginal Citations

**M1** 1989 c.41 (20).

**M2** 1968 c.49 (81:3).

### After-care

#### 117 After-care.

(1) This section applies to persons who are detained under section 3 above, or admitted to a hospital in pursuance of a hospital order made under section 37 above, or transferred to a hospital in pursuance of [<sup>F18</sup>a hospital direction made under section 45A above or] a transfer direction made under section 47 or 48 above, and then cease to be detained and [<sup>F19</sup>(whether or not immediately after so ceasing)] leave hospital.

(2) It shall be the duty of the [<sup>F20</sup>clinical commissioning group or]<sup>F21</sup>... [<sup>F22</sup>Local Health Board] and of the local social services authority to provide [<sup>F23</sup>or arrange for the provision of], in co-operation with relevant voluntary agencies, after-care services for any person to whom this section applies until such time as the [<sup>F24</sup>clinical commissioning group or]<sup>F21</sup>... [<sup>F22</sup>Local Health Board] and the local social services authority are satisfied that the person concerned is no longer in need of such services [<sup>F25</sup>, but they shall not be so satisfied in the case of a [<sup>F26</sup>community patient while he remains such a patient.] .]

<sup>F27</sup>(2A) <sup>F28</sup>.....

(2B) Section 32 above shall apply for the purposes of this section as it applies for the purposes of Part II of this Act.

[<sup>F29</sup>(2C) References in this Act to after-care services provided for a patient under this section include references to services provided for the patient—

(a) in respect of which direct payments are made under [<sup>F30</sup>—

(i) sections 31 to 33 of the Care Act 2014 (as applied by Schedule 4 to that Act),

(ii) sections 50, 51 and 53 of the Social Services and Well-being (Wales) Act 2014 (as applied by Schedule A1 to that Act), or

(iii) regulations under] section 12A(4) of the National Health Service Act 2006, and

(b) which would be provided under this section apart from [<sup>F31</sup>those sections (as so applied) or] the regulations.]

[<sup>F32</sup>(2D) Subsection (2), in its application to the clinical commissioning group, has effect [<sup>F33</sup>as if the words “provide or” were omitted.]

(2E) The Secretary of State may by regulations provide that the duty imposed on the clinical commissioning group by subsection (2) is, in the circumstances or to the extent prescribed by the regulations, to be imposed instead on another clinical commissioning group or the National Health Service Commissioning Board.

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- (2F) Where regulations under subsection (2E) provide that the duty imposed by subsection (2) is to be imposed on the National Health Service Commissioning Board, subsection (2D) has effect as if the reference to the clinical commissioning group were a reference to the National Health Service Commissioning Board.
- (2G) Section 272(7) and (8) of the National Health Service Act 2006 applies to the power to make regulations under subsection (2E) as it applies to a power to make regulations under that Act.]
- (3) In this <sup>F34</sup>section “ the <sup>F35</sup>clinical commissioning group or <sup>F36</sup>... <sup>F22</sup>Local Health Board ]” means the <sup>F37</sup>clinical commissioning group or <sup>F36</sup>...<sup>F22</sup>Local Health Board], and “the local social services authority” means the local social services authority <sup>F38</sup>—
- (a) if, immediately before being detained, the person concerned was ordinarily resident in England, for the area in England in which he was ordinarily resident;
  - (b) if, immediately before being detained, the person concerned was ordinarily resident in Wales, for the area in Wales in which he was ordinarily resident; or
  - (c) in any other case] for the area] in which the person concerned is resident or to which he is sent on discharge by the hospital in which he was detained.
- <sup>F39</sup>(4) Where there is a dispute about where a person was ordinarily resident for the purposes of subsection (3) above—
- (a) if the dispute is between local social services authorities in England, section 40 of the Care Act 2014 applies to the dispute as it applies to a dispute about where a person was ordinarily resident for the purposes of Part 1 of that Act;
  - (b) if the dispute is between local social services authorities in Wales, section 195 of the Social Services and Well-being (Wales) Act 2014 applies to the dispute as it applies to a dispute about where a person was ordinarily resident for the purposes of that Act;
  - (c) if the dispute is between a local social services authority in England and a local social services authority in Wales, it is to be determined by the Secretary of State or the Welsh Ministers.
- (5) The Secretary of State and the Welsh Ministers shall make and publish arrangements for determining which of them is to determine a dispute under subsection (4)(c); and the arrangements may, in particular, provide for the dispute to be determined by whichever of them they agree is to do so.]
- <sup>F40</sup>(6) In this section, “ after-care services ”, in relation to a person, means services which have both of the following purposes—
- (a) meeting a need arising from or related to the person's mental disorder; and
  - (b) reducing the risk of a deterioration of the person's mental condition (and, accordingly, reducing the risk of the person requiring admission to a hospital again for treatment for mental disorder).]

#### Textual Amendments

- F18** Words in s. 117(1) inserted (1.10.1997) by 1997 c. 43, s. 55, **Sch. 4**, para. 12(17); S.I.1997/2200, **art. 2(2)**
- F19** Words in s. 117(1) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 15(2)

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- F20** Words in s. 117(2) inserted (27.3.2012 for specified purposes, 1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), ss. 40(2)(a), 306(1)(d), (4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F21** Words in s. 117(2) omitted (27.3.2012 for specified purposes, 1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 40(2)(b), 306(1)(4)**; S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F22** Words in s. 117(2)(2A)(3) substituted (1.4.2007) by The References to [Health Authorities Order 2007 \(S.I. 2007/961\)](#), art. 3, **Sch. para. 13(9)**
- F23** Words in s. 117(2) inserted (1.4.2015) by [Care Act 2014 \(c. 23\)](#), **ss. 75(1)**, 127(1); S.I. 2015/993, art. 7(1)(a) (with transitional provisions in S.I. 2015/995)
- F24** Words in s. 117(2) inserted (27.3.2012 for specified purposes, 1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 40(2)(c), 306(1)(d), (4)**; S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F25** Words in s. 117(2) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 15(3)
- F26** Words in s. 117(2) substituted (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 32, 56, **Sch. 3 para. 24** (with **Sch. 10**); S.I. 2008/1210, **art. 2(b)** (with art. 4)
- F27** S. 117(2A)-(2B) inserted (1.4.1996) by 1995 c. 52, ss. 1(2), 7(2), **Sch. 1**, para. 15(4)
- F28** S. 117(2A) repealed (3.11.2008) by [Mental Health Act 2007 \(c. 12\)](#), ss. 55, 56, **Sch. 11 Pt. 5** (with **Sch. 10**); S.I. 2008/1210, **art. 2(d)** (with art. 4)
- F29** S. 117(2C) inserted (19.1.2010) by [Health Act 2009 \(c. 21\)](#), s. 40(1), **Sch. 1 para. 3**; S.I. 2010/30, art. 2(b)
- F30** Words in s. 117(2C)(a) substituted (1.4.2015 for specified purposes, otherwise 6.4.2016) by [Care Act 2014 \(c. 23\)](#), **ss. 75(11)(a)**, 127(1); S.I. 2015/993, art. 7(3) (with art. 7(4)) (with transitional provisions in S.I. 2015/995); S.I. 2016/464, art. 2(d)
- F31** Words in s. 117(2C)(b) inserted (1.4.2015) by [Care Act 2014 \(c. 23\)](#), **ss. 75(11)(b)**, 127(1); S.I. 2015/993, art. 7(3) (with transitional provisions in S.I. 2015/995)
- F32** S. 117(2D)-(2G) inserted (27.3.2012 for specified purposes, 1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 40(3)**, 306(1)(d), (4); S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F33** Words in s. 117(2D) substituted (1.4.2015) by [Care Act 2014 \(c. 23\)](#), **ss. 75(2)**, 127(1); S.I. 2015/993, art. 7(1)(a) (with transitional provisions in S.I. 2015/995)
- F34** Words in s. 117(3) substituted (28.6.1995 for certain purposes, otherwise 1.4.1996) by 1995 c. 17, ss. 2(1), 9(3), **Sch. 1, Pt. III, para. 107(8)(b)** (with ss. 2(3), 8)
- F35** Words in s. 117(3) inserted (27.3.2012 for specified purposes, 1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 40(4)(a), 306(1)(d), (4)**; S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F36** Words in s. 117(3) omitted (27.3.2012 for specified purposes, 1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by virtue of [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 40(4)(b), 306(1)(d), (4)**; S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F37** Words in s. 117(3) inserted (27.3.2012 for specified purposes, 1.2.2013 for specified purposes, 1.4.2013 in so far as not already in force) by [Health and Social Care Act 2012 \(c. 7\)](#), **ss. 40(4)(c), 306(1)(d), (4)**; S.I. 2012/2657, art. 2(4); S.I. 2013/160, art. 2(2) (with arts. 7-9)
- F38** S. 117(3)(a)-(c) inserted (1.4.2015) by [Care Act 2014 \(c. 23\)](#), **ss. 75(3)**, 127(1) (with s. 75(12)); S.I. 2015/993, art. 7(1)(a) (with transitional provisions in S.I. 2015/995)
- F39** S. 117(4)(5) inserted (1.4.2015) by [Care Act 2014 \(c. 23\)](#), **ss. 75(4)**, 127(1) (with s. 75(12)); S.I. 2015/993, art. 7(1)(a) (with art. 7(2)) (with transitional provisions in S.I. 2015/995)
- F40** S. 117(6) inserted (1.4.2015) by [Care Act 2014 \(c. 23\)](#), **ss. 75(5)**, 127(1); S.I. 2015/993, art. 7(1)(a) (with transitional provisions in S.I. 2015/995)

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

- C1** S. 117(2)(2A): functions of local authority may be responsibility of an executive of the authority (1.4.2000) by virtue of S.I. 2000/695, reg. 3(2)(b), **Sch. 2**

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- C2** S. 117(2) 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\(j\)](#)

**[<sup>F41</sup>117A After-care: preference for particular accommodation**

- (1) The Secretary of State may by regulations provide that where—
- (a) the local social services authority under section 117 is, in discharging its duty under subsection (2) of that section, providing or arranging for the provision of accommodation for the person concerned;
  - (b) the person concerned expresses a preference for particular accommodation; and
  - (c) any prescribed conditions are met,
- the local social services authority must provide or arrange for the provision of the person's preferred accommodation.
- (2) Regulations under this section may provide for the person concerned, or a person of a prescribed description, to pay for some or all of the additional cost in prescribed cases.
- (3) In subsection (2), “additional cost” means the cost of providing or arranging for the provision of the person's preferred accommodation less the amount that the local social services authority would expect to be the usual cost of providing or arranging for the provision of accommodation of that kind.
- (4) The power to make regulations under this section—
- (a) is exercisable only in relation to local social services authorities in England;
  - (b) includes power to make different provision for different cases or areas.]

**Textual Amendments**

- F41** S. 117A inserted (1.10.2014 for specified purposes, otherwise 1.4.2015) by [Care Act 2014 \(c. 23\)](#), [ss. 75\(6\)](#), [127\(1\)](#); [S.I. 2014/2473](#), [art. 2\(1\)\(u\)](#); [S.I. 2015/993](#), [art. 7\(1\)\(b\)](#) (with transitional provisions in [S.I. 2015/995](#))

**[<sup>F42</sup>117B After-care: exception for provision of nursing care**

- (1) Section 117 does not authorise or require a local social services authority <sup>F43</sup>..., in or in connection with the provision of services under that section, to provide or arrange for the provision of nursing care by a registered nurse.
- (2) In this section “nursing care by a registered nurse” means a service provided by a registered nurse involving—
- (a) the provision of care, or
  - (b) the planning, supervision or delegation of the provision of care,
- other than a service which, having regard to its nature and the circumstances in which it is provided, does not need to be provided by a registered nurse.]



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### Textual Amendments

- F42** S. 117B inserted (1.4.2015) by [The Care Act 2014 and Children and Families Act 2014 \(Consequential Amendments\) Order 2015 \(S.I. 2015/914\)](#), art. 1(2), **Sch. para. 28** (with arts. 1(3), 3)
- F43** Words in s. 117B(1) omitted (6.4.2016) by virtue of [The Social Services and Well-being \(Wales\) Act 2014 \(Consequential Amendments\) Regulations 2016 \(No. 413\)](#), regs. 2(1), **36**

## 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—
- for the guidance of registered medical practitioners [<sup>F44</sup>, approved clinicians], managers and staff of hospitals [<sup>F45</sup>, independent hospitals and care homes] and [<sup>F46</sup>approved mental health professionals] in relation to the admission of patients to hospitals [<sup>F47</sup>and registered establishments] under this Act [<sup>F48</sup>and to guardianship and [<sup>F49</sup>community patients] under this Act]; and
  - 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>F50</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>F51</sup>appointed for the purposes of this section by the regulatory authority].

[<sup>F52</sup>(2A) The code shall include a statement of the principles which the Secretary of State thinks should inform decisions under this Act.

- (2B) In preparing the statement of principles the Secretary of State shall, in particular, ensure that each of the following matters is addressed—
- respect for patients' past and present wishes and feelings,
  - 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),
  - minimising restrictions on liberty,
  - involvement of patients in planning, developing and delivering care and treatment appropriate to them,
  - avoidance of unlawful discrimination,
  - effectiveness of treatment,
  - views of carers and other interested parties,
  - patient wellbeing and safety, and

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- (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>F53</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>F54</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

- F44** 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.](#))
- F45** 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\(4\)-\(10\)](#))
- F46** 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.](#))
- F47** 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\(4\)-\(10\)](#))
- F48** Words in s. 118(1)(a) inserted (1.4.1996) by [1995 c. 52](#), **ss. 1(2), 7(2), Sch. 1, para. 16**
- F49** 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](#))
- F50** [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](#))
- F51** 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](#)
- F52** [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.](#))

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- F53** 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)
- F54** 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)**

- C3** 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)**
- C4** 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>F55</sup>The regulatory authority] may make such provision as [<sup>F56</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>F57</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>F58</sup>. . . for the purposes of the provisions mentioned in subsection (1) above may, for the purpose of exercising his functions under those provisions [<sup>F59</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>F60</sup>in a hospital or registered establishment or any community patient in a hospital or [<sup>F61</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>F62</sup>there] .
- [<sup>F63</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
- (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**

- F55** 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
- F56** 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
- F57** 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
- F58** 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)
- F59** 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.)

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- F60** 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.](#))
- F61** 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\(4\)\(a\)](#)
- F62** 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.](#))
- F63** 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)**

- C5** 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>F64</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.
- (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,

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- (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**

**F64** 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)**

**C6** 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>F65</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**

**F65** [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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## 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

**F65** 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.
- (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

**F65** 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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- (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**

**F65** 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.**

**F66** .....

**Textual Amendments**

**F66** 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) [<sup>F67</sup>Welsh Ministers may (in relation to Wales)] pay to persons who are receiving treatment as in-patients (whether liable to be detained or not) in [<sup>F68</sup>special hospitals or other hospitals, being hospitals] wholly or mainly used for the treatment of persons suffering from mental disorder, such amounts as [<sup>F69</sup>the Welsh Ministers think fit] in respect of [<sup>F70</sup>those persons'] occasional personal expenses where it appears to [<sup>F71</sup>the Welsh Ministers] that [<sup>F72</sup>those persons] would otherwise be without resources to meet those expenses.
- (2) For the purposes of <sup>F73</sup>... [<sup>F74</sup>the National Health Service (Wales) Act 2006] , the making of payments under this section to persons for whom hospital services are provided under [<sup>F75</sup>that Act] shall be treated as included among those services.

**Extent Information**

**E1** S. 122 ceases to apply to Scotland (1.4.2013) by virtue of the amendment of s. 146 by Health and Social Care Act 2012 (c. 7), **ss. 41(4)**, 306(4); S.I. 2013/160, **art. 2(2)** (with arts. 7-9)

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**Textual Amendments**

- F67** Words in s. 122(1) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 41\(2\)\(a\), 306\(4\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F68** 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](#)
- F69** Words in s. 122(1) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 41\(2\)\(b\), 306\(4\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F70** Words in s. 122(1) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 41\(2\)\(c\), 306\(4\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F71** Words in s. 122(1) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 41\(2\)\(d\), 306\(4\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F72** Words in s. 122(1) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 41\(2\)\(e\), 306\(4\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F73** Words in s. 122(2) omitted (1.4.2013) by virtue of [Health and Social Care Act 2012 \(c. 7\), ss. 41\(3\)\(a\), 306\(4\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)
- F74** 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)
- F75** Words in s. 122(2) substituted (1.4.2013) by [Health and Social Care Act 2012 \(c. 7\), ss. 41\(3\)\(b\), 306\(4\); S.I. 2013/160, art. 2\(2\)](#) (with arts. 7-9)

**F76 123 Transfers to and from special hospitals.**

.....

**Textual Amendments**

- F76** S. 123 omitted (1.7.2012) by virtue of [Health and Social Care Act 2012 \(c. 7\), ss. 42\(1\), 306\(4\)](#) (with s. 42(5)); S.I. 2012/1319, art. 2(3)

**F77 124 .....**

**Textual Amendments**

- F77** 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.**

**F78** .....

**Textual Amendments**

- F78** 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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