Changes to legislation: Mental Health Act 1983, Cross Heading: Functions of the Secretary of State is up to date with all changes known to be in force on or before 21 January 2019. 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)

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 [F1, approved clinicians] , managers and staff of hospitals [F2, independent hospitals and care homes] and [F3 approved mental health professionals] in relation to the admission of patients to hospitals [F4 and registered establishments] under this Act [F5 and to guardianship and F6 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.

[F7(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 [F8 appointed for the purposes of this section by the regulatory authority].

[F9(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—

(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) [F10 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.

[F11(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.]
In this section “regulated establishment” means—

A registered medical practitioner or other person appointed for the purposes of section 57(2)(a) above.

[1] The regulatory authority may make such provision as 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 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 for the purposes of the provisions mentioned in subsection (1) above may, for the purpose of exercising his functions under those provisions 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 in a hospital or registered establishment or any community patient in a hospital or (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 there.

(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.]

Annotations:

Amendments (Textual)
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)(b), 170 (with s. 96); S.I. 2009/462, arts. 1(1)(b), 2, Sch. 1 para. 20

\[\text{[21]}\]

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,
   (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.]

Annotations:

Amendments (Textual)
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

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).

Annotations:

Amendments (Textual)

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.

Annotations:

Amendments (Textual)

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.

(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.

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.

121 Mental Health Act Commission.
122 Provision of pocket money for in-patients in hospital.

(1) [F24Welsh Ministers may (in relation to Wales)] pay to persons who are receiving treatment as in-patients (whether liable to be detained or not) in [F25 special hospitals or other hospitals, being hospitals] wholly or mainly used for the treatment of persons suffering from mental disorder, such amounts as [F26 the Welsh Ministers think fit] in respect of [F27 those persons’] occasional personal expenses where it appears to [F28 the Welsh Ministers] that [F29 those persons] would otherwise be without resources to meet those expenses.

(2) For the purposes of [F30... [F31the National Health Service (Wales) Act 2006] , the making of payments under this section to persons for whom hospital services are provided under [F32that Act] shall be treated as included among those services.
### Annotations:

#### Amendments (Textual)

**F33**  
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)

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**F34**  
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.

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**F35**  
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
Changes to legislation:
Mental Health Act 1983, Cross Heading: Functions of the Secretary of State is up to date with all changes known to be in force on or before 21 January 2019. 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.

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

- Act applied by [1996 c. 46 Sch. 2 para. 9](replaceing [1968 c. 20 s. 23]) (Act applied (prosp.) by 1968 c. 20, s. 23(4) (as substituted (prosp.) by 1996 c. 46, ss. 8, 36(2), Sch. 2, para. 9 which said amending provision was repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(2), 60, Sch. 11; S.I. 2005/579, art. 3(h)(i)(ix))
- Act applied by [1996 c. 46 Sch. 2 para. 4](replaceing [1957 c 53 s. 63]) (Act applied (prosp.) by 1957 c. 53, s. 63C(6) (as substituted (prosp.) by 1996 c. 46, ss. 8, 36(2), Sch. 2, para. 4 which said amending provision was repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(2), 60, Sch. 11; S.I. 2005/579, art. 3(h)(i)(ix))
- Act applied by [1996 c. 46 Sch. 2 para. 1](replaceing [1955 c 19 s. 116]) (Act applied (prosp.) by 1955 c. 19, s. 116C(6) (as substituted (prosp.) by 1996 c. 46, ss. 8, 36(2), Sch. 2 para. 1 which said amending provision was repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(2), 60, Sch. 11; S.I. 2005/579, art. 3(h)(i)(ix))
- Act power to applied by [1996 c. 46 Sch. 2 para. 4](replaceing [1957 c 53 s. 63]) (Act: Power to apply conferred (prosp.) by 1957 c. 53, s. 63B(4)(c) (as substituted (prosp.) by 1996 c. 46, ss. 8, 36(2), Sch. 2, para. 4 which said amending provision was repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(2), 60, Sch. 11; S.I. 2005/579, art. 3(h)(i)(ix))
- Act power to applied by [1996 c. 46 Sch. 2 para. 1](replaceing [1955 c 19 s. 116]) (Act: Power to apply conferred (prosp.) by 1955 c. 19, s. 116B(4)(c) (as substituted (prosp.) by 1996 c. 46, ss. 8, 36(2), Sch. 2 para. 1 which said amending provision was repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(2), 60, Sch. 11; S.I. 2005/579, art. 3(h)(i)(ix))
- Act power to applied by [1996 c. 46 Sch. 2 para. 1](replaceing [1955 c 18 s 116]) (Act: Power to apply conferred (prosp.) by 1955 c. 18, s. 116B(4)(c) (as substituted (prosp.) by 1996 c. 46, ss. 8, 36(2), Sch. 2 para. 1 which said amending provision was repealed (31.3.2005) by Domestic Violence, Crime and Victims Act 2004 (c. 28), ss. 58(2), 60, Sch. 11; S.I. 2005/579, art. 3(h)(i)(ix))

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

- s. 74(8) inserted by [2015 c. 2 Sch. 3 para. 3(3)]
- s. 114ZA(5)(6) inserted by S.I. 2018/893 reg. 39(5) (This amendment comes into force on the date that 2017 c. 16, s. 39(1) comes into force. That provision is not yet in force.)