

Mental Health Units (Use of Force) Bill

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TO

Make provision about the oversight and management of the appropriate use of force in relation to people in mental health units and similar institutions; to make provision about the use of body cameras by police officers in the course of duties in relation to people in mental health units; and for connected purposes.

BE IT ENACTED by the Queen’s most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Key definitions

1 Key definitions

- (1) This section applies for the purposes of this Act.
- (2) “Mental disorder” has the same meaning as in the Mental Health Act 1983.
- (3) “Mental health unit” means a hospital, independent hospital, care home or registered establishment, in England, that provides treatment for mental disorders. 5
- (4) In subsection (3)—
 - “care home” has the same meaning as in the Care Standards Act 2000;
 - “hospital”, “independent hospital” and “registered establishment” have the same meaning as in the Mental Health Act 1983. 10
- (5) “Patient” means, in relation to a mental health unit or a registered manager, a person being assessed or receiving treatment for a mental disorder at the unit which is managed by the manager.
- (6) “Registered manager” means an individual who, by virtue of section 2, is registered as a manager of a mental health unit under Chapter 2 of Part 1 of the Health and Social Care Act 2008 (the Care Quality Commission: registration in respect of provisions of health or social care). 15

- (7) References to “use of force” are to the use of force by a person against a patient where the person uses, or threatens to use, physical, mechanical or chemical restraint against the patient.
- (8) In subsection (7) –
- “physical restraint” means an act which is intended to – 5
- (a) restrict the patient’s liberty of movement, whether or not the patient resists, and
- (b) secure the doing of an act which the patient resists;
- “mechanical restraint” means the use of a device or aid which –
- (a) is intended to restrict, prevent or subdue the patient’s liberty of movement, the patient’s body or part of the body, whether or not the patient resists, 10
- (b) is a use of force or a threat to use force and is done with the intention of securing the doing of an act which the patient resists, or 15
- (c) for the primary purpose of behavioural control or management;
- “chemical restraint” means the use of medication which is prescribed and administered which is intended to –
- (a) restrict the patient’s liberty of movement, whether or not the patient resists, and 20
- (b) secure the doing of an act which the patient resists;
- where the medication is not prescribed for the treatment of a diagnosed physical or mental illness of the patient.

Accountability

- 2 Mental health units to have a registered manager** 25
- (1) A person registered as a service provider that operates a mental health unit must be subject to a registered manager condition under section 13 of the Health and Social Care Act 2008 (condition requiring registered manager).
- (2) A person that operates a mental health unit is to be treated as not registered under the Health and Social Care Act 2008 if the person is not subject to a registered manager condition under section 13 of that Act. 30
- (3) In this section “service provider” means a service provider under Chapter 2 of Part 1 of the Health and Social Care Act 2008 (the Care Quality Commission: registration in respect of provision of health or social care).
- 3 Policy on use of force** 35
- (1) A registered manager must make and publish a written policy regarding the use of force on patients.
- (2) The registered manager must keep under review the policy published under this section.
- (3) The registered manager may amend the policy published under this section if the registered manager considers it appropriate to do so. 40
- (4) If the registered manager amends the policy, the policy must be published as amended.

- (5) A policy made under this section must set out what steps will be taken to minimise and reduce the use of force at the mental health unit.
- (6) The registered manager must take all reasonable steps to ensure that force is used at the mental health unit only in compliance with the policy published under this section. 5
- (7) Before publishing a policy under this section, the registered manager must consult—
- (a) the police force for the area in which the mental health unit is located, and
 - (b) such other persons as the registered manager considers appropriate. 10

4 Information about use of force

- (1) A registered manager must provide a patient with such information about the patient's rights in relation to the use of force as must be prescribed by the Secretary of State in regulations.
- (2) The information prescribed under subsection (1) must include— 15
- (a) the registered manager's policy for the use of force;
 - (b) the person to whom any complaint about the use of force may be made;
 - (c) details of an organisation which can give the patient free independent advice about the use of force.
- (3) The information must be provided to the patient— 20
- (a) as soon as is reasonably practicable after the patient is admitted to the mental health unit, and
 - (b) at regular intervals thereafter.
- (4) The information must be provided—
- (a) in such form as must be prescribed by the Secretary of State in regulations made under this section, and 25
 - (b) subject to paragraph (a), in an accessible format with regard to—
 - (i) the patient's communication needs, and
 - (ii) the patient's capacity to understand the information.
- (5) In this section "capacity" has the same meaning as in the Mental Capacity Act 2005. 30

5 Training in appropriate use of force

- (1) A registered manager must arrange a training programme for the induction of front-line staff that includes training in— 35
- (a) equality, non-discrimination and conduct prohibited under the Equality Act 2010,
 - (b) a trauma-informed approach to care, and
 - (c) techniques for avoiding, and strategies for reducing, the use of force.
- (2) In this section, "front-line staff" means all people— 40
- (a) whom the registered manager might reasonably expect to use force, or authorise the use of force, on a patient, and
 - (b) who work in the mental health unit (whether as an employee, a contractor, a volunteer, or otherwise).

6 Guidance about functions under this Act

- (1) The Care Quality Commission must publish guidance about the exercise of functions by registered managers under this Act.
- (2) Guidance under this section may—
 - (a) operate by reference to provisions of other documents specified in it (whether published by the Commission or otherwise); 5
 - (b) provide for any reference in it to such a document to take effect as a reference to that document as revised from time to time;
 - (c) make different provision for different cases or circumstances.
- (3) The Commission may from time to time revise guidance published by it under this section and, if it revises the guidance, it must publish the guidance as revised. 10

Reporting

7 Recording of use of force

- (1) The registered manager must keep a record of any use of force on a patient. 15
- (2) The Secretary of State must make regulations prescribing the information that the record kept under this section must contain.
- (3) The information regarding the use of force that must be prescribed by the Secretary of State under this section must include—
 - (a) the place, time and duration of the use of force; 20
 - (b) the type of force used;
 - (c) the identity of the patient;
 - (d) the identity and job title of those who restrained the patient;
 - (e) the reason anyone not employed by the registered manager was involved in the use of force on the patient; 25
 - (f) the patient’s mental disorders or main mental disorder;
 - (g) the relevant characteristics of the patient;
 - (h) whether the patient had a learning disability or autism;
 - (i) any medication administered to the patient during the use of force, or in order to achieve or facilitate the restraint; 30
 - (j) death of, or any serious injury sustained by, the patient during or as a result of the use of force, including where, on the facts known to the registered manager, a reasonable person would believe the use of force to have contributed to the death or serious injury;
 - (k) all efforts made to avoid the need to restrain the patient; 35
 - (l) whether consent for the use of force had been given by the patient, and the time and form in which consent was given.
- (4) The registered manager must keep an entry in the record for at least 10 years from the date on which it was made, and must keep the record—
 - (a) at the mental health unit to which its entries relate, or 40
 - (b) if the mental health unit closes, at such place as the Secretary of State may direct.
- (5) In subsection (3)(g) the “relevant characteristics” in relation to a patient mean—
 - (a) the patient’s age;

- (b) whether the patient has a disability, and if so, the nature of that disability;
- (c) whether the patient's gender is going to be, is being or has been reassigned;
- (d) the patient's status regarding marriage or civil partnership; 5
- (e) whether the patient is pregnant or has maternal responsibility for the care of a child;
- (f) the patient's race;
- (g) the patient's religion or belief;
- (h) the patient's sex; 10
- (i) the patient's sexual orientation.
- (6) In subsection (5) the meaning of each relevant characteristic is to be interpreted by reference to its equivalent protected characteristic in Chapter 1 of Part 2 of the Equality Act 2010.
- 8 Statistics prepared by mental health units 15**
- (1) As soon as practicable after the end of each calendar year, a registered manager must prepare statistics regarding the use of force at the unit during the previous year.
- (2) The registered manager must send a copy of the statistics to the Secretary of State. 20
- (3) The statistics prepared under this section must include statistics regarding—
- (a) the number of times force was used at the mental health unit during the previous year;
- (b) the effect of each use of force on the patient (for example, whether the patient died or sustained a serious injury); 25
- (c) who conducted and managed each use of force;
- (d) whether any medication was used for the purpose of conducting each use of force;
- (e) how each use of force was performed and whether the force was in a prescribed category; 30
- (f) the relevant characteristics of the patient who was subject to each use of force.
- (4) In subsection (3)(e) “prescribed category” means such categories of force as may be prescribed by regulations made by the Secretary of State for the purposes of this section. 35
- (5) In subsection (3)(f) “relevant characteristics” has the same meaning as in section 7(5).
- 9 Annual report by the Secretary of State**
- (1) As soon as practicable after the end of each calendar year, the Secretary of State must prepare an annual report which must include— 40
- (a) any statistics sent to the Secretary of State under section 8, and
- (b) a response to each relevant finding made during that year.
- (2) The Secretary of State's response to a relevant finding under this section must include the Secretary of State's proposals for implementing any

recommendations made, or remedying any failings identified in, the relevant finding.

- (3) In this section “relevant finding” means, in relation to the death of a patient during, or as a result of, the use of force –
- (a) a verdict given during the year in court proceedings; 5
 - (b) a determination made during the year at the conclusion of a senior coroner’s investigation under the Coroners and Justice Act 2009;
 - (c) a response of the Care Quality Commission published during the year.
- (4) The Secretary of State must lay before Parliament a copy of each report prepared under this section. 10

10 Requiring information regarding the use of force

- (1) The Secretary of State may require a registered manager to provide the Secretary of State with information of a kind specified in regulations made under this section.
- (2) The regulations may in particular specify – 15
- (a) the kind of information to be supplied under this section, and
 - (b) the dates by which the information is to be provided.
- (3) The kind of information that may be specified in regulations under this section is information which the Secretary of State considers necessary for the purpose of preparing a report under section 9. 20

Investigation of deaths

11 Duty to notify Secretary of State of deaths

- (1) A registered manager must within 7 days of becoming aware of a death to which this section applies notify the Secretary of State in writing of that death.
- (2) This section applies to a death if – 25
- (a) the death occurred during, or as a result of, the use of force on the deceased patient, and
 - (b) the use of force occurred at a mental health unit managed by the registered manager.

12 Independent investigation of deaths 30

- (1) On being notified of a death under section 11, the Secretary of State must appoint an independent person –
- (a) to investigate the circumstances of the death, and
 - (b) to prepare a report regarding that death.
- (2) A person appointed under this section must provide a report within 3 months of that appointment. 35
- (3) The Secretary of State must within 14 days of receiving the report publish –
- (a) the report, or
 - (b) a statement that a report under this section has been received.

- (4) The Secretary of State may only publish a statement under subsection (3)(b) if satisfied that the publication of the report would be contrary to the public interest, which includes causing prejudice to –
- (a) any potential or ongoing court proceedings;
 - (b) the conduct of a senior coroner’s investigation under the Part 1 of the Coroners and Justice Act 2009. 5
- (5) A statement published under subsection (3)(b) must include –
- (a) the name and date of birth of the deceased,
 - (b) the date and place of the death,
 - (c) the place at which the use of force occurred, if different from the place of the death, 10
 - (d) the identity of the registered manager in relation to the mental health unit, and
 - (e) how the publication of the report would, in the opinion of the Secretary of State, be contrary to the public interest. 15
- (6) The Secretary of State must publish the report as soon as practicable upon the conclusion of the proceedings or investigation.

Video recording

13 Police body cameras

- (1) An on-duty police officer that attends a mental health unit for any reason must wear an operational body camera. 20
- (2) The police officer must ensure that his or her body camera is recording –
- (a) from as soon as reasonably practicable after the officer receives the request to attend the mental health unit, and
 - (b) until the officer leaves the unit. 25
- (3) A police officer wearing an operational body camera under this section must inform any person, as soon as it is reasonably practicable to do so –
- (a) that the person is being, or may be, recorded by the body camera;
 - (b) that the body camera is being worn by a police officer;
 - (c) the purpose of recording by the body camera; 30
 - (d) any further information that the policy officer considers necessary.

14 Retention and destruction of video recordings

- (1) In this section and sections 15 and 16 “video recording” means a recording made by body camera worn by a police officer under section 13.
- (2) If a video recording does not contain evidence relating to a use of force, the relevant police force must destroy the video recording as soon as practicable after 31 days from the date the recording was made. 35
- (3) If a video recording contains evidence relating to the use of force, the relevant police force must destroy the video recording as soon as practicable after the later of the following –
- (a) 12 months from the date the video recording was made;
 - (b) the conclusion of any court proceedings in relation to which the video recording is relevant; 40

- (c) the conclusion of an investigation by a senior coroner under Part 1 of the Coroners and Justice Act 2009 to which the video recording is relevant.
- (4) In this section and sections 15 and 16 “relevant police force” means the police force that employed the police officer at the time the officer wore the body camera that made the recording under section 13. 5

15 Right of access to video recordings

- (1) A relevant person may apply to the relevant police force for a copy of a video recording of a relevant use of force.
- (2) When the relevant police force receives an application under subsection (1), a copy of the video recording of the relevant use of force must be provided – 10
- (a) within 10 days of receiving the application, or
 - (b) if the police force applies to the High Court under subsection (5), as soon as practicable after the conclusion of those proceedings.
- (3) The relevant police force must provide the video recording free of charge and in a generally accessible format. 15
- (4) Before providing a copy of a video recording, the relevant police force may redact the copy, but only –
- (a) to protect the medical information of people other than the patient who was subject to the use of force, or 20
 - (b) in accordance with an order of the High Court, on an application made under subsection (5).
- (5) A relevant police force may apply to the High Court for an order under this section permitting the redaction of the copy of a video recording before giving it to a relevant person. 25
- (6) The court must make an order permitting redaction that specifies the parts of the copy of the video recording the relevant police force may redact, if the court is satisfied that the redaction is necessary to protect a person’s Convention rights (within the meaning of section 1 of the Human Rights Act 1998).
- (7) In this section – 30
- “relevant person” means –
 - (a) a patient who was subject to a use of force, or
 - (b) if the patient is dead or lacks capacity, the patient’s nearest relative;
 - “relevant use of force” means the force that was used on the patient. 35
- (8) For the purposes of this section –
- (a) whether a person lacks capacity is to be read in accordance with section 2 of the Mental Capacity Act 2005;
 - (b) whether a person is the nearest relative of a patient is to be read in accordance with section 26 of the Mental Health Act 1983. 40

16 Independent investigator’s right of access to video recordings

- (1) A person appointed under section 12 may apply to the relevant police force for a copy of any video recording of a use of force to which section 11 applies.

- (2) The relevant police force must provide a copy of the video recording requested by the person appointed under section 12 within 10 days of receiving the application.
- (3) The relevant police force must provide the video recording free of charge and in a generally accessible format. 5

17 Sections 13 to 16: interpretation

In sections 13 to 16—

- “body camera” means a device capable of recording audio and video;
- “community support officer” means a person designated by the chief officer of police of a police force as a community support officer under section 38 of the Police Reform Act 2002 (police powers for police authority employees); 10
- “police force” means any of the following—
 - (a) any police force maintained under section 2 of the Police Act 1996; 15
 - (b) the Metropolitan police force;
 - (c) the City of London police force;
 - (d) the British Transport Police Force;
- “police officer” means a member of a police force or a community support officer. 20

Final provisions

18 Regulations

- (1) Regulations under this Act are to be made by statutory instrument.
- (2) Regulations under this Act are subject to annulment in pursuance of a resolution of either House of Parliament. 25

19 Financial provisions

There is to be paid out of money provided by Parliament—

- (a) any expenditure incurred under or by virtue of this Act, and
- (b) any increase attributable to this Act in the sums payable under any other Act out of money so provided. 30

20 Commencement, extent and short title

- (1) This Act extends to England and Wales only.
- (2) This section and section 18 come into force on the day on which this Act is passed.
- (3) Sections 4, 7, 8 and 10 come into force, for the purpose of making regulations, on the day on which this Act is passed. 35
- (4) The remaining provisions of this Act otherwise come into force 6 months after the day this Act was passed.
- (5) This Act may be cited as the Mental Health Units (Use of Force) Act 2017.

Mental Health Units (Use of Force) Bill

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To make provision about the oversight and management of the appropriate use of force in relation to people in mental health units and similar institutions; to make provision about the use of body cameras by police officers in the course of duties in relation to people in mental health units; and for connected purposes.

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