



House of Commons

Wednesday 25 April 2018

PUBLIC BILL COMMITTEE

New Amendments handed in are marked thus ★

☆ *Amendments which will comply with the required notice period at their next appearance*

MENTAL HEALTH UNITS (USE OF FORCE) BILL

NOTE

This document includes all amendments tabled to date and includes any withdrawn amendments at the end. The amendments have been arranged in accordance with the Order of the Committee [28 March 2018].

Mr Steve Reed

94

Clause 7, page 4, line 15, leave out subsection (1) and insert—

“(1) The responsible person for each mental health unit must keep a record of any use of force by staff who work in that unit in accordance with this section.”

Member’s explanatory statement

This amendment replaces Clause 7(1) and inserts a revised duty on responsible persons to record the use of force in mental health units in accordance with that clause.

Mr Steve Reed

88

Clause 7, page 4, line 15, at end insert—

“(1A) Subsection (1) does not apply in cases where the use of force is negligible.

(1B) Whether the use of force is “negligible” for the purposes of subsection (1A) is to be determined in accordance with guidance published by the Secretary of State.

(1C) Section 6(1B) to (3B) apply to guidance published under this section as they apply to guidance published under section 6.”

Member’s explanatory statement

This amendment would mean that the duty to record information regarding the use of force would not apply in cases where the use of force is negligible.

Mental Health Units (Use of Force) Bill, continued

- Mr Steve Reed 37
- Clause 7, page 4, line 16, leave out subsection (2)
Member's explanatory statement
This amendment removes the requirement for the Secretary of State to prescribe in regulations the information that must be recorded under Clause 7.
- Mr Steve Reed 38
- Clause 7, page 4, line 18, leave out lines 18 and 19 and insert "The record must include the following information—"
Member's explanatory statement
This amendment is consequential on Amendment 37.
- Mr Steve Reed 39
- Clause 7, page 4, line 19, at the end insert—
"() the reason for the use of force;"
Member's explanatory statement
This amendment would require the responsible person to record the reason for a use of force.
- Mr Steve Reed 40
- Clause 7, page 4, line 20, leave out "time" and insert "date"
Member's explanatory statement
This amendment replaces the requirement to record the time of a use of force with a requirement to record the date of a use of force.
- Mr Steve Reed 41
- Clause 7, page 4, line 21, leave out paragraph (b) and insert—
"(b) the type or types of force used on the patient;"
Member's explanatory statement
This amendment clarifies that the responsible person should record the types of force used in cases where more than one type of force is used.
- Mr Steve Reed 89
- Clause 7, page 4, line 21, at end insert—
"() whether the type or types of force used on the patient form part of the patient's care plan;"
Member's explanatory statement
The amendment inserts a requirement for responsible persons to record whether the force used on a patient formed part of the patient's care plan.
- Mr Steve Reed 43
- Clause 7, page 4, line 22, leave out "identity of the patient" and insert "name of the patient on whom force was used"
Member's explanatory statement
This amendment makes a drafting change to refer to "name" rather than "identity" in Clause 7(3)(c).

Mental Health Units (Use of Force) Bill, *continued*

- Mr Steve Reed 44
- Clause 7, page 4, line 22, at end insert—
“() a description of how force was used;”
Member’s explanatory statement
This amendment inserts a requirement for responsible persons to record how force was used. For example, if physical restraint was used, the responsible person would need to record what particular technique was used on the patient.
- Mr Steve Reed 45
- Clause 7, page 4, line 22, at end insert—
“(ca) the patient’s consistent identifier;”
Member’s explanatory statement
This amendment inserts a requirement for responsible persons to record the patient’s consistent identifier, which the patient’s “NHS number”.
- Mr Steve Reed 46
- Clause 7, page 4, line 23, leave out “identity” and insert “name”
Member’s explanatory statement
This amendment makes a drafting change to refer to “name” rather than “identity” in Clause 7(3)(d).
- Mr Steve Reed 90
- Clause 7, page 4, line 23, leave out “those who restrained” and insert “any member of staff who used force on”
Member’s explanatory statement
This amendment ensures consistency of language with the rest of Clause 7.
- Mr Steve Reed 48
- Clause 7, page 4, line 24, leave out “anyone not employed by the registered manager” and insert “any person who was not a member of staff in the mental health unit”
Member’s explanatory statement
This amendment makes a drafting change to clarify that the responsible person needs to record whether a person who was not a member of staff at the mental health unit was involved in a use of force.
- Mr Steve Reed 49
- Clause 7, page 4, line 26, leave out “disorders or main mental disorder” and insert “disorder (if known)”
Member’s explanatory statement
This amendment clarifies that the responsible person only needs to record a patient’s mental disorder if it is known. It also makes the language consistent with the Mental Health Act 1983.
- Mr Steve Reed 50
- Clause 7, page 4, line 27, after “patient” insert “(if known)”
Member’s explanatory statement
This amendment clarifies that the responsible person only needs to record a patient’s relevant characteristic if they are known.

 Mental Health Units (Use of Force) Bill, *continued*

- Mr Steve Reed 51
- Clause 7, page 4, line 28, leave out “had” and insert “has”
Member’s explanatory statement
This amendment is a drafting change so that Clause 7(3)(h) uses the present tense.
- Mr Steve Reed 52
- Clause 7, page 4, line 28, leave out “autism” and insert “autistic spectrum disorders”
Member’s explanatory statement
This amendment ensures consistency with the Autism Act 2009 and the Code of Practice published under the Mental Health Act 1983.
- Mr Steve Reed 53
- Clause 7, page 4, line 29, leave out paragraph (i)
Member’s explanatory statement
This amendment leaves out the requirement to record whether any medication was administered during the use of force. This information should be recorded by virtue of Amendment 44.
- Mr Steve Reed 54
- Clause 7, page 4, line 30, at end insert—
 “() a description of the outcome of the use of force;”
Member’s explanatory statement
This amendment requires a responsible person to record a description of the outcome of a use of force.
- Mr Steve Reed 91
- Clause 7, page 4, line 31, leave out paragraph (j) and insert—
 “(j) whether the patient died or suffered any serious injury as a result of the use of force;”
Member’s explanatory statement
This amendment requires a responsible person to record whether a use of force resulted in a death or serious injury.
- Mr Steve Reed 56
- Clause 7, page 4, line 35, leave out “all” and insert “any”
Member’s explanatory statement
This amendment makes a drafting change.
- Mr Steve Reed 57
- Clause 7, page 4, line 35, leave out “restrain” and insert “use force on”
Member’s explanatory statement
This amendment ensures consistency of language with the rest of Clause 7.

Mental Health Units (Use of Force) Bill, *continued*

- Mr Steve Reed 92
- Clause 7, page 4, line 35, at end insert—
 “() whether a notification regarding the use of force was sent to the person or persons (if any) to be notified under the patient’s care plan;”
Member’s explanatory statement
This amendment requires a responsible person to record whether a notification regarding a use of force on the patient was sent in accordance with the patient’s care plan.
- Mr Steve Reed 59
- Clause 7, page 4, line 36, leave out paragraph (l)
Member’s explanatory statement
This amendment removes the requirement for a responsible person to record whether consent was given by the patient before force was used on the patient.
- Mr Steve Reed 60
- Clause 7, page 4, line 38, leave out “registered manager” and insert “responsible person”
Member’s explanatory statement
This amendment is consequential on Amendment 7.
- Mr Steve Reed 61
- Clause 7, page 4, line 38, leave out “an entry in”
Member’s explanatory statement
This amendment ensures consistency of language with Clause 7(1).
- Mr Steve Reed 62
- Clause 7, page 4, line 38, leave out “at least 10” and insert “3”
Member’s explanatory statement
This amendment reduces the number of years that records must be kept under Clause 7 from 10 years to 3 years.
- Mr Steve Reed 64
- Clause 7, page 4, line 39, leave out from “made” to end of line 42
Member’s explanatory statement
This amendment removes the requirement for records to be kept at a mental health unit.
- Mr Steve Reed 65
- Clause 7, page 4, line 42, at end insert—
 “() In subsection (3)(ca) the “patient’s consistent identifier” means the consistent identifier specified under section 251A of the Health and Social Care Act 2012.”
Member’s explanatory statement
This amendment is linked to Amendment 45 and defines “patient’s consistent identifier”.

Mental Health Units (Use of Force) Bill, *continued*

Mr Steve Reed

95

Clause 7, page 4, line 42, at end insert—

“() This section does not permit the responsible person to do anything which, but for this section, would be inconsistent with—

(a) any provision made by or under the Data Protection Act 1998, or

(b) a common law duty of care or confidence.”

Member’s explanatory statement

This amendment clarifies that the responsible person’s duty to keep a record of any use of force on a patient and to retain that information is subject to the Data Protection Act 1998 and the common law duties of care and confidence.

Mr Steve Reed

66

Clause 7, page 5, line 3, leave out paragraph (c)

Member’s explanatory statement

This amendment removes a paragraph from the definition of “relevant characteristics” that deals with gender reassignment.

Mr Steve Reed

67

Clause 7, page 5, line 6, leave out from “pregnant” to the end of line 7

Member’s explanatory statement

This amendment removes from the definition of “relevant characteristics” whether a patient has maternal responsibility for the care of a child.

Mr Steve Reed

68

Clause 7, page 5, line 12, leave out subsection (6) and insert—

“() Expressions used in subsection (5) and Chapter 2 of Part 1 of the Equality Act 2010 have the same meaning in that subsection as in that Chapter.”

Member’s explanatory statement

This amendment make a drafting change to ensure that the relevant characteristics in Clause 7 are interpreted by reference to the meaning of the protected characteristics in the Equality Act 2010.

Mr Steve Reed

69

Clause 8, page 5, line 16, leave out subsections (1) to (5) and insert—

“(1) The Secretary of State must ensure that at the end of each year statistics are published regarding the use of force by staff who work in mental health units.

(1A) The statistics must provide an analysis of the use of force in mental health units by reference to the relevant information recorded by responsible persons under section 7.

(1B) In subsection (1A) “relevant information” means the information falling within section 7(3)(a), (b), (g), (h) and (j).”

Member’s explanatory statement

This amendment replaces the provisions of Clause 8 with a duty imposed on the Secretary of State to ensure that statistics are produced regarding the use of force in mental health units.

Mental Health Units (Use of Force) Bill, *continued*

As an Amendment to Mr Steve Reed's proposed Amendment (No. 69):—

Luciana Berger

(a)

Line 7, at end insert—

“(1C) The Secretary of State must make an annual statement to Parliament, as soon as practicable following the publication of the statistics under subsection (1).”

Mr Steve Reed

1

Clause 12, page 6, line 34, end insert—

“(1A) A person appointed under this section must be independent of the NHS and of private providers of mental health services.”

Member's explanatory statement

This amendment would ensure that the person appointed to investigate deaths is independent of the NHS and of private providers of mental health services.

Jackie Doyle-Price

73

Page 6, line 30, leave out Clause 12

Member's explanatory statement

This amendment would leave out Clause 12 (independent investigations of deaths). NC6 is intended to replace Clause 12.

Mr Steve Reed

93

Clause 13, page 7, line 20, leave out subsections (1) and (2) and insert—

“(1) If a police officer is going to a mental health unit on duty that involves assisting staff who work in that unit, the officer must take a body camera if reasonably practicable.

(1A) While in a mental health unit on duty that involves assisting staff who work in that unit, a police officer who has a body camera there must wear it and keep it operating at all times when reasonably practicable.

(1B) Subsection (1A) does not apply if there are special circumstances at the time that justify not wearing the camera or keeping it operating.

(1C) A failure by a police officer to comply with the requirements of subsection (1) or (1A) does not of itself make the officer liable to criminal or civil proceedings.

(1D) But if those requirements appear to the court or tribunal to be relevant to any question arising in criminal or civil proceedings, they must be taken into account in determining that question.”

Member's explanatory statement

This amendment brings the effect of failing to wear or use a body camera into line with contraventions of the PACE codes, and takes into account whether it is reasonably practicable and whether particular circumstances justify not wearing or using a camera.

Mental Health Units (Use of Force) Bill, continued

Mr Steve Reed

75

Clause 13, page 7, line 26, leave out subsection (3)

Member's explanatory statement

Clause 13(3) is omitted because the protection provided by the Data Protection Act 1998 and guidance on use of body cameras is sufficient.

Mr Steve Reed

96

Clause 13, page 7, line 31, at end insert—

“() In this section—

“body camera” means a device that operates so as to make a continuous audio and video recording while being worn;

“police officer” means—

- (a) a member of a police force maintained under section 2 of the Police Act 1996,
- (b) a member of the metropolitan police force,
- (c) a member of the City of London police force,
- (d) a special constable appointed under section 27 of the Police Act 1996, or
- (e) a member or special constable of the British Transport Police Force.”

Member's explanatory statement

This amendment reproduces definitions from Clause 17, except for minor amendments to the definition of “body camera”, and omitting community support officers and adding special constables in the definition of “police officer”.

Mr Steve Reed

77

Page 7, line 32, leave out Clause 14

Member's explanatory statement

The subject-matter of this clause is covered by existing provision, in particular the Data Protection Act 1998, and additional guidance can be given as required about the use of body cameras in mental health units.

Mr Steve Reed

78

Page 8, line 7, leave out Clause 15

Member's explanatory statement

The subject-matter of this clause is covered by existing provision, in particular the Data Protection Act 1998 and guidance issued by the Information Commissioner's Office. The Clause is not consistent with that provision, and would create extra burdens for the police.

Mental Health Units (Use of Force) Bill, *continued*

Mr Steve Reed

79

Page 8, line 41, leave out Clause 16

Member's explanatory statement

The Clause is unnecessary because of the changes proposed to Clause 12 and the omission of Clause 15.

Mr Steve Reed

80

Page 9, line 6, leave out Clause 17

Member's explanatory statement

Amendment 76 supersedes this Clause.

Mr Steve Reed

81

Clause 18, page 9, line 25, at end insert “(other than regulations made under section 20(3))”

Member's explanatory statement

This amendment provides that commencement regulations under Clause 20 are not subject to any parliamentary procedure.

Mr Steve Reed

83

Clause 20, page 9, line 35, leave out subsections (3) and (4) and insert—

“(3) The other provisions of this Act come into force on such day as the Secretary of State may appoint by regulations.

(4) Regulations under this section may appoint different days for different purposes or areas.”

Member's explanatory statement

This amendment gives the Secretary of State the power to commence the Bill by regulations.

Mr Steve Reed

NC1

To move the following Clause—

“Independent investigation of deaths: legal aid

(1) Schedule 1 to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 (civil legal services) is amended as follows.

Mental Health Units (Use of Force) Bill, *continued*

(2) After paragraph 41 (inquests) insert—

“41A Investigation of deaths resulting from use of force in mental health units

- (1) Civil legal services provided to an individual in relation to an investigation under section 12 of the Mental Health Units (Use of Force) Act 2018 (independent investigation of deaths) into the death of a member of the individual’s family.
- (2) For the purposes of this paragraph an individual is a member of another individual’s family if—
 - (a) they are relatives (whether of the full blood or half blood or by marriage or civil partnership),
 - (b) they are cohabitants (as defined in Part 4 of the Family Law Act 1996), or
 - (c) one has parental responsibility for the other.”

Member’s explanatory statement

This new clause would ensure that legal aid was available to family members in relation to an investigation under Clause 12, which would be launched in the event of a death as described in Clause 11.

Mr Steve Reed

NC3

To move the following Clause—

“Delegation of responsible person’s functions

- (1) The responsible person for each mental health unit may delegate any functions exercisable by the responsible person under this Act to a relevant person only in accordance with this section.
- (2) The responsible person may only delegate a function to a relevant person if the relevant person is of an appropriate level of seniority.
- (3) The delegation of a function does not affect the responsibility of the responsible person for the exercise of the responsible person’s functions under this Act.
- (4) The delegation of a function does not prevent the responsible person from exercising the function.
- (5) In this section “relevant person” means a person employed by the relevant health organisation that operates the mental health unit.”

Member’s explanatory statement

This new clause gives a power to the responsible person to delegate functions under the Bill subject to the limitation that the person to whom functions are delegated is of an appropriate level of seniority. The obligations associated with the functions remain with the responsible person despite any delegation.

Mental Health Units (Use of Force) Bill, *continued*

Mr Steve Reed

NC4

To move the following Clause—

“Transitional provision

The Secretary of State may by regulations make transitional, transitory or saving provision in connection with the coming into force of any provision of this Act.”

Member’s explanatory statement

This new clause gives a power to the Secretary of State to make transitional provision in relation to the implementation of the Bill.

Mr Steve Reed

NC7

To move the following Clause—

“Interpretation

In this Act—

“health service hospital” has the same meaning as in section 275(1) of the National Health Service Act 2006;

“independent hospital” has the same meaning as in section 145(1) of the Mental Health Act 1983;

“the NHS” has the same meaning as in section 64(4) of the Health and Social Care Act 2012;

“responsible person” has the meaning given by section 2(1);

“relevant health organisation” means—

- (a) an NHS trust;
- (b) an NHS foundation trust;
- (c) any person who provides health care services for the purposes of the NHS within the meaning of Part 3 of the Health and Social Care Act 2012;

“staff” means any person who works for a relevant health organisation that operates a mental health unit (whether as an employee or a contractor) who—

- (a) may be authorised to use force on a patient in the unit,
- (b) may authorise the use of force on a particular patient in the unit, or
- (c) has the function of providing general authority for the use of force in the unit.”

Member’s explanatory statement

This new clause compiles various definitions for terms that are used throughout the Bill.

Mental Health Units (Use of Force) Bill, *continued*

Jackie Doyle-Price

NC6

To move the following Clause—

“Investigation of deaths or serious injuries

When a patient dies or suffers a serious injury in a mental health unit, the responsible person for the mental health unit must have regard to any guidance relating to the investigation of deaths or serious injuries that is published by—

- (a) the Care Quality Commission (see Part 1 of the Health and Social Care Act 2008);
- (b) Monitor (see section 61 of the Health and Social Care Act 2012);
- (c) the National Health Service Commissioning Board (see section 1H of the National Health Service Act 2006);
- (d) the National Health Service Trust Development Authority (which is a Special Health Authority established under section 28 of the National Health Service Act 2006);
- (e) a person prescribed by regulations made by the Secretary of State.”

Member’s explanatory statement

This new clause imposes a duty for responsible persons to have regard to guidance that relates to the investigation of deaths or serious injuries when those occur in a mental health unit.

ORDER OF THE COMMITTEE [28 MARCH 2018]

That—

- (1) the Bill be considered in the following order, namely, Clauses 1 to 6, Clauses 9 to 11, Clauses 7 and 8, Clauses 12 to 20, new Clauses, new Schedules, remaining proceedings on the Bill.

NOTICES WITHDRAWN

The following Notices were withdrawn on 13 March 2018:

82

The following Notices were withdrawn on 16 March 2018:

18, 25, 26, 27, 36, 42, 47, 55, 58, 74, NC2 and NC5

The following Notices were withdrawn on 13 April 2018:

35, 63, 76