

MENTAL HEALTH UNITS (USE OF FORCE) BILL

EXPLANATORY NOTES

What these notes do

These Explanatory Notes relate to the Mental Health Units (Use of Force) Bill as introduced in the House of Commons on 19 July 2017 (Bill 8).

- These Explanatory Notes have been prepared by Steve Reed MP, the Member in charge of the Bill, in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by Parliament.
- These Explanatory Notes explain what each part of the Bill will mean in practice; provide background information on the development of policy; and provide additional information on how the Bill will affect existing legislation in this area.
- These Explanatory Notes might best be read alongside the Bill. They are not, and are not intended to be, a comprehensive description of the Bill.

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Overview of the Bill

- 1 The purpose of the Mental Health Units (Use of Force) Bill is to increase the oversight and management of the use of force in mental health units.
- 2 The Bill imposes requirements regarding the use of force in mental health units, and makes provision for deaths that occur during, or result from, the use of force in mental health units to be investigated. The Bill also makes provision for police officers to wear and operate body cameras when attending a mental health unit.

Policy background

- 3 The Mental Health Units (Use of Force) Bill is a Private Member's Bill brought forward by Steve Reed MP.
- 4 The Bill aims to increase the oversight and management of the use of force in mental health units. It follows the death of Olaseni Lewis on 4 September 2010, who died after being restrained by police officers in a mental health unit.

Legal background

- 5 The Care Quality Commission, which is required by clause 6 to publish guidance about compliance with the Bill's requirements regarding the use of force in mental health units, is a body corporate established by section 1 of the Health and Social Care Act 2008. It has functions relating to the registration, review and investigation of providers of regulated health and social care under Part 1 of that Act.

Territorial extent and application

- 6 Clause 20 sets out the territorial extent of the Bill. The Bill extends to England and Wales only. The duties on registered managers only apply in relation to mental health units in England. The duties on police apply to police in both England and Wales, but only in relation to mental health units in England.

Commentary on provisions of Bill

Clause 1: Key definitions

- 7 Clause 1 defines some important terms used in the Bill.
- 8 Subsection (3) defines "mental health unit" as a hospital, independent hospital, care home or registered establishment, in England, that provides treatment for mental disorders.
- 9 "Mental disorder", "care home", "hospital", "independent hospital" and "registered establishment" have the same meaning as in the Mental Health Act 1983.
- 10 Subsection (6) defines "registered manager" as a person registered under the Health and Social Care Act 2008 as a manager of a mental health unit.
- 11 Subsection (7) and (8) provide that "use of force" includes the use of, or a threat to use, physical, mechanical or chemical restraint against a person.

Clause 2: Mental health units to have a registered manager

- 12 Clause 2 requires a person that operates a mental health unit to be subject to a registered manager condition under section 13 of the Health and Social Care Act 2008. A registered manager condition is a requirement to appoint a registered manager as a condition of registration as a provider of health or social care under the 2008 Act.

Clause 3: Policy on use of force

- 13 Clause 3 imposes a duty on a registered manager of a mental health unit to produce and review a written policy on the use of force on patients in its mental health units, which must set out what steps will be taken to minimise and reduce the use of force.
- 14 Subsection (6) requires the registered manager to take all reasonable steps to ensure that force is only used in its mental health units in accordance with this policy.
- 15 Subsection (7) requires the registered manager, before producing the policy, to consult the local police force and other persons considered to be appropriate.

Clause 4: Information about use of force

- 16 Clause 4 requires a registered manager of a mental health unit to inform a patient of their rights regarding the use of force, both when the patient first attends the mental health unit and at regular intervals thereafter.
- 17 Subsection (2) provides that the precise information to be provided to the patient, and the manner in which the information must be provided, is to be prescribed by the Secretary of State in regulations. The information must include an explanation of the mental health unit's policy on the use of force, the person to whom a patient can complain about the use of force, and details of an organisation which can give the patient free, independent advice about the use of force.
- 18 Subsection (4) provides that the information must be provided in a form prescribed by the Secretary of State in regulations, and in an accessible format having regard to the patient's communication needs and capacity to understand the information provided.

Clause 5: Training in appropriate use of force

- 19 Clause 5 requires a registered manager to take all reasonable steps to ensure that front-line staff in a mental health unit complete relevant training on induction. The training must cover equality considerations, a trauma-informed approach to care, as well as techniques and strategies to avoid or reduce the use of physical restraint.

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Clause 6: Guidance about functions under this Act

- 20 Clause 6 requires the Care Quality Commission to issue guidance about compliance with the Bill's requirements regarding the use of force in mental health units.

Clause 7: Recording of use of force

- 21 Clause 7 imposes a duty on a registered manager to keep a record of any use of force on a patient. The precise information to be recorded is to be prescribed by the Secretary of State in regulations, but must include the place, time and duration of the use of force, the identity of the patient, and the identity and job title of any person who used force on the patient.
- 22 Subsection (4) provides that the registered manager must retain the record for 10 years, at the mental health unit to which the record it relates, or if the unit closes, at a place directed by the Secretary of State.

Clause 8: Statistics prepared by mental health units

- 23 Clause 8 requires a registered manager to prepare statistics regarding the use of force at a mental health unit during the previous year. Subsection (2) requires those statistics to be sent to the Secretary of State.
- 24 The statistics must include data regarding the number of times force was used at the mental health unit, the effect of each use of force on the patient, how each use of force was performed, and the patient's characteristics.
- 25 Subsection (4) allows the Secretary of State to prescribe categories of force. Once a category is prescribed, the statistics must identify whether a use of force was in one of these categories.

Clause 9: Annual report

- 26 Clause 9 requires the Secretary of State to produce an annual report on the use of force in mental health units in the previous calendar year.
- 27 The report must include statistics sent to the Secretary of State under clause 8.
- 28 The report must also contain the Secretary of State's response to relevant findings which relate to the death of a patient during or as a result of the use of force. The relevant findings are verdicts given in court proceedings, determinations made following a senior coroner's investigation, and reports published by the Care Quality Commission during the previous year. Subsection (3) provides that the Secretary of State's response to the relevant findings must include his or her proposals for implementing any recommendations made, and remedying any failings identified, in those findings.
- 29 Subsection (4) requires the Secretary of State to lay a copy of the report before Parliament.

Clause 10: Requiring information regarding the use of force

- 30 Clause 10 allows the Secretary of State to make regulations requiring a registered manager to provide information that the Secretary of State considers necessary for the preparation of a report under clause 9.

Clause 11: Duty to notify Secretary of State of deaths

- 31 Clause 11 requires a registered manager to notify the Secretary of State of a death which occurred during, or as a result of, the use of force on a patient at a mental health unit. The registered manager must notify the Secretary of State within seven days of becoming aware of the death.

Clause 12: Independent investigation of deaths

- 32 Under clause 12, upon being notified of a death under clause 11, the Secretary of State must appoint an independent person to investigate and report on the circumstances of the death. The person appointed must report to the Secretary of State within three months of being appointment.
- 33 Subsection (3) requires the Secretary of State to publish the independent person's report within 14 days of receiving it, unless publication would be contrary to the public interest (which includes prejudice to court proceedings, or to the conduct of a senior coroner's investigation). If publication of the report would be contrary to the public interest, the Secretary of State may instead publish a statement that a report has been received. Under subsection (5), the statement must also contain details of the deceased, the date and place of the death, the person who operates the mental health unit, and the reason why publication of the report is considered to be contrary to the public interest.

Clause 13: Police body cameras

- 34 Clause 13 imposes a duty on on-duty police officers to wear an operational body camera whenever they attend a mental health unit. The police officer must ensure the camera is recording as soon as reasonably practicable after receiving the request to attend and until the officer leaves the unit.
- 35 Under subsection (3), the police officer must also, as soon as it is reasonably practicable to do so, inform anyone they encounter at the unit that the officer is wearing a body camera and that the person is being, or may be, recorded.

Clause 14: Retention and destruction of video recordings

- 36 Clause 14 makes provision for police forces to retain and destroy recordings made by body cameras under clause 13. The police force that employed the police officer at the time the officer wore the body camera will be responsible for the retention and destruction of the recording.
- 37 Subsection (2) provides that if a recording does not contain evidence relating to a use of force, it must be destroyed as soon as practicable after 31 days from the date the recording was made.
- 38 Subsection (3) provides that where a recording does contain evidence relating to the use of force, the police force must destroy the recording as soon as practicable after 12 months from the date of the recording; or the conclusion of any relevant court proceedings; or the conclusion investigation by a senior coroner (whichever is the latest date).

Clause 15: Right of access to video recordings

- 39 Clause 15 allows a patient who has been the subject of the use of force to obtain a copy of a video recording of that incident within 10 days of the request, free of charge and in a generally accessible format. If the patient is deceased or lacks capacity, his or her nearest relative may request and obtain a copy of the recording instead.
- 40 Under subsection (4), the relevant police force may redact the recording before supplying a copy in order to protect the medical information of persons other than the patient who was subject to the use of force.
- 41 The recording can also be redacted in accordance with an order of the High Court under subsection (6). A High Court must make an order permitting redaction if satisfied that redaction is necessary to protect a person's rights under the European Convention on Human Rights. If such an order is made, a copy of the recording must be provided to the person who requested it as soon as reasonably practicable following the conclusion of proceedings.

Clause 16: Independent investigator's right of access to video recordings

- 42 Clause 16 provides that an independent person appointed to investigate the circumstances of a death under clause 12 can obtain a copy of any video recording relevant to that investigation within 10 days of applying for a copy.

Clause 17: Sections 13 to 16: interpretation

- 43 Clause 17 defines key terms used in clauses 13 to 16.

Commencement

- 44 As provided for in clause 20 of the Bill, the Bill's provisions are to be brought into force, for the purpose of making regulations, on the day on which the Bill is passed. For all other purposes, the Bill's provisions are to be brought into force six months after the Bill is passed.

Financial implications of the Bill

- 45 It is possible the Bill will require expenditure to fund certain provisions.
- 46 The Bill is likely to result in some implementation costs, including for the Department of Health, the police and mental health units. For the Department this is likely to include costs relating to the appointment of an independent person, and the administrative costs relating to publication of reports. For the police this is likely to be in the implementation of body cameras, and administrative costs associated with the processing and redaction of recordings made by body cameras. For mental health units this is likely to include preparation of statistics, record-keeping, and implementation of extra induction training. Steve Reed MP is in discussions with the government to determine the precise costs of the Bill and how these are to be funded.

Parliamentary approval for financial costs or for charges imposed

- 47 If the Bill requires expenditure to fund certain provisions, a money resolution will be required. A money resolution is required where a Bill gives rise to, or creates powers that could be used so as to give rise to, new charges on the public revenue (broadly speaking, new public expenditure).

Compatibility with the European Convention on Human Rights

- 48 This is a Private Member's Bill. Accordingly, a statement of compatibility with the Human Rights Act 1998, in accordance with section 19(1)(a) of that Act, is not required.

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