

# **Mental Health Units (Use of Force) Bill**

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## EXPLANATORY NOTES

Explanatory notes to the Bill, prepared by the Department of Health, with the consent of Baroness Massey of Darwen, the member in charge, are published separately as HL Bill 120–EN.



# Mental Health Units (Use of Force) Bill

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**B I L L**

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Make provision about the oversight and management of the appropriate use of force in relation to people in mental health units; 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.

**B**E 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— 5
  - (a) a health service hospital, or part of a health service hospital, in England, the purpose of which is to provide treatment to in-patients for mental disorder, or
  - (b) an independent hospital, or part of an independent hospital, in England— 10
    - (i) the purpose of which is to provide treatment to in-patients for mental disorder, and
    - (ii) where at least some of that treatment is provided, or is intended to be provided, for the purposes of the NHS.
- (4) In subsection (3)(b)(ii) the reference to treatment provided for the purposes of the NHS is to be read as a service provided for those purposes in accordance with the National Health Service Act 2006. 15
- (5) “Patient” means a person who is in a mental health unit for the purpose of treatment for mental disorder or assessment.
- (6) References to “use of force” are to— 20
  - (a) the use of physical, mechanical or chemical restraint on a patient, or

- (b) the isolation of a patient.
- (7) In subsection (6) –
- “physical restraint” means the use of physical contact which is intended to prevent, restrict or subdue movement of any part of the patient’s body; 5
  - “mechanical restraint” means the use of a device which –
    - (a) is intended to prevent, restrict or subdue movement of any part of the patient’s body, and
    - (b) is for the primary purpose of behavioural control;
  - “chemical restraint” means the use of medication which is intended to prevent, restrict or subdue movement of any part of the patient’s body; 10
  - “isolation” means any seclusion or segregation that is imposed on a patient.

### *Accountability*

- 2 Mental health units to have a responsible person** 15
- (1) A relevant health organisation that operates a mental health unit must appoint a responsible person for that unit for the purposes of this Act.
  - (2) The responsible person must –
    - (a) be employed by the relevant health organisation, and
    - (b) be of an appropriate level of seniority. 20
  - (3) Where a relevant health organisation operates more than one mental health unit that organisation must appoint a single responsible person in relation to all of the mental health units operated by that organisation.
- 3 Policy on use of force**
- (1) The responsible person for each mental health unit must publish a policy regarding the use of force by staff who work in that unit. 25
  - (2) Where a responsible person is appointed in relation to all of the mental health units operated by a relevant health organisation, the responsible person must publish a single policy under subsection (1) in relation to those units.
  - (3) Before publishing a policy under subsection (1), the responsible person must consult any persons that the responsible person considers appropriate. 30
  - (4) The responsible person must keep under review any policy published under this section.
  - (5) The responsible person may from time to time revise any policy published under this section and, if this is done, must publish the policy as revised. 35
  - (6) If the responsible person considers that any revisions would amount to a substantial change in the policy, the responsible person must consult any persons that the responsible person considers appropriate before publishing the revised policy.
  - (7) A policy published under this section must set out what steps will be taken to reduce the use of force in the mental health unit by staff who work in that unit. 40

#### 4 Information about use of force

- (1) The responsible person for each mental health unit must publish information for patients about the rights of patients in relation to the use of force by staff who work in that unit.
- (2) Before publishing the information under subsection (1), the responsible person must consult any persons that the responsible person considers appropriate. 5
- (3) The responsible person must provide any information published under this section –
  - (a) to each patient, and
  - (b) to any other person who is in the unit and to whom the responsible person considers it appropriate to provide the information in connection with the patient, 10
 unless the patient (where paragraph (a) applies) or the other person (where paragraph (b) applies) refuses the information.
- (4) The information must be provided to the patient – 15
  - (a) if the patient is in the mental health unit at the time when this section comes into force, as soon as reasonably practicable after that time;
  - (b) in any other case, as soon as reasonably practicable after the patient is admitted to the mental health unit.
- (5) The responsible person must take whatever steps are reasonably practicable to ensure that the patient is aware of the information and understands it. 20
- (6) The responsible person must keep under review any information published under this section.
- (7) The responsible person may from time to time revise any information published under this section and, if this is done, must publish the information as revised. 25
- (8) If the responsible person considers that any revisions would amount to a substantial change in the information, the responsible person must consult any persons that the responsible person considers appropriate before publishing the revised information. 30

#### 5 Training in appropriate use of force

- (1) The responsible person for each mental health unit must provide training for staff that relates to the use of force by staff who work in that unit.
- (2) The training provided under subsection (1) must include training on the following topics – 35
  - (a) how to involve patients in the planning, development and delivery of care and treatment in the mental health unit,
  - (b) showing respect for patients' past and present wishes and feelings,
  - (c) showing respect for diversity generally,
  - (d) avoiding unlawful discrimination, harassment and victimisation, 40
  - (e) the use of techniques for avoiding or reducing the use of force,
  - (f) the risks associated with the use of force,
  - (g) the impact of trauma (whether historic or otherwise) on a patient's mental and physical health,
  - (h) the impact of any use of force on a patient's mental and physical health, 45

- (i) the impact of any use of force on a patient’s development,
  - (j) how to ensure the safety of patients and the public, and
  - (k) the principal legal or ethical issues associated with the use of force.
- (3) Subject to subsection (4), training must be provided –
- (a) in the case of a person who is a member of staff when this section comes into force, as soon as reasonably practicable after this section comes into force, or
  - (b) in the case of a person who becomes a member of staff after this section comes into force, as soon as reasonably practicable after they become a member of staff.
- (4) Subsection (3) does not apply if the responsible person considers that any training provided to the person before this section came into force or before the person became a member of staff –
- (a) was given sufficiently recently, and
  - (b) is of an equivalent standard to the training provided under this section.
- (5) Refresher training must be provided at regular intervals whilst a person is a member of staff.
- (6) In subsection (5) “refresher training” means training that updates or supplements the training provided under subsection (1).

#### *Reporting* 20

### 6 Recording of use of force

- (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.
- (2) Subsection (1) does not apply in cases where the use of force is negligible.
- (3) Whether the use of force is “negligible” for the purposes of subsection (1) is to be determined in accordance with guidance published by the Secretary of State. 25
- (4) Section 11(3) to (6) apply to guidance published under this section as they apply to guidance published under section 11.
- (5) The record must include the following information – 30
- (a) the reason for the use of force;
  - (b) the place, date and duration of the use of force;
  - (c) the type or types of force used on the patient;
  - (d) whether the type or types of force used on the patient formed part of the patient’s care plan; 35
  - (e) name of the patient on whom force was used;
  - (f) a description of how force was used;
  - (g) the patient’s consistent identifier;
  - (h) the name and job title of any member of staff who used force on the patient; 40
  - (i) the reason any person who was not a member of staff in the mental health unit was involved in the use of force on the patient;
  - (j) the patient’s mental disorder (if known);



- (k) the relevant characteristics of the patient (if known);
  - (l) whether the patient has a learning disability or autistic spectrum disorders;
  - (m) a description of the outcome of the use of force;
  - (n) whether the patient died or suffered any serious injury as a result of the use of force; 5
  - (o) any efforts made to avoid the need to use force on the patient;
  - (p) 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.
- (6) The responsible person must keep the record for 3 years from the date on which it was made. 10
- (7) In subsection (5)(g) the “patient’s consistent identifier” means the consistent identifier specified under section 251A of the Health and Social Care Act 2012.
- (8) This section does not permit the responsible person to do anything which, but for this section, would be inconsistent with— 15
- (a) any provision of the data protection legislation, or
  - (b) a common law duty of care or confidence.
- (9) In subsection (8) “the data protection legislation” has the same meaning as in the Data Protection Act 2018 (see section 3 of that Act).
- (10) In subsection (5)(k) the “relevant characteristics” in relation to a patient mean— 20
- (a) the patient’s age;
  - (b) whether the patient has a disability, and if so, the nature of that disability;
  - (c) the patient’s status regarding marriage or civil partnership;
  - (d) whether the patient is pregnant; 25
  - (e) the patient’s race;
  - (f) the patient’s religion or belief;
  - (g) the patient’s sex;
  - (h) the patient’s sexual orientation.
- (11) Expressions used in subsection (10) and Chapter 2 of Part 1 of the Equality Act 2010 have the same meaning in that subsection as in that Chapter. 30

## 7 Statistics prepared by mental health units

- (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.
- (2) 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 6. 35
- (3) In subsection (2) “relevant information” means the information falling within section 6(5)(b), (c), (k), (l) and (n).

## 8 Annual report by the Secretary of State 40

- (1) As soon as reasonably practicable after the end of each calendar year, the Secretary of State—

- (a) must conduct a review of any reports made under paragraph 7 of Schedule 5 to the Coroners and Justice Act 2009 that were published during that year relating to the death of a patient as a result of the use of force in a mental health unit by staff who work in that unit, and
  - (b) may conduct a review of any other findings made during that year relating to the death of a patient as a result of the use of force in a mental health unit by staff who work in that unit. 5
- (2) Having conducted a review under subsection (1), the Secretary of State must publish a report that includes the Secretary of State’s conclusions arising from that review. 10
- (3) The Secretary of State may delegate the conduct of a review under subsection (1) and the publication of a report under subsection (2).
- (4) For the purposes of subsection (1)(b) “other findings” include, in relation to the death of a patient as a result of the use of force in a mental health unit, any finding or determination that is made— 15
- (a) by the Care Quality Commission as the result of any review or investigation conducted by the Commission, or
  - (b) by a relevant health organisation as the result of any investigation into a serious incident.

*Investigation of deaths* 20

**9 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); 25
- (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); 30
- (e) a person prescribed by regulations made by the Secretary of State.

*Delegation*

**10 Delegation of responsible person’s functions** 35

- (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. 40
- (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.

*Guidance*

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**11 Guidance about functions under this Act**

- (1) The Secretary of State must publish guidance about the exercise of functions by responsible persons and relevant health organisations under this Act.
- (2) In exercising functions under this Act, responsible persons and relevant health organisations must have regard to guidance published under this section. 10
- (3) Before publishing guidance under this section, the Secretary of State must consult such persons as the Secretary of State considers appropriate.
- (4) The Secretary of State must keep under review any guidance published under this section.
- (5) The Secretary of State may from time to time revise the guidance published under this section and, if this is done, must publish the guidance as revised. 15
- (6) If the Secretary of State considers that any revisions would amount to a substantial change in the guidance, the Secretary of State must consult such persons as the Secretary of State considers appropriate before publishing any revised guidance. 20

*Video recording*

**12 Police body cameras**

- (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. 25
- (2) 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.
- (3) Subsection (2) does not apply if there are special circumstances at the time that justify not wearing the camera or keeping it operating. 30
- (4) A failure by a police officer to comply with the requirements of subsection (1) or (2) does not of itself make the officer liable to criminal or civil proceedings.
- (5) 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. 35
- (6) 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.

### *Interpretation*

## 13 Interpretation 10

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; 15

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

“responsible person” means a person appointed under section 2(1);

“relevant health organisation” means—

- (a) an NHS trust; 20
- (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— 25

- (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 30
- (c) has the function of providing general authority for the use of force in the unit.

### *Final provisions*

## 14 Transitional provision

The Secretary of State may by regulations make such transitional, transitory or saving provision in connection with the coming into force of any provision of this Act. 35

## 15 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 40
- (b) any increase attributable to this Act in the sums payable under any other Act out of money so provided.

**16 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 (other than regulations made under section 17(3)).

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**17 Commencement, extent and short title**

- (1) This Act extends to England and Wales only.
- (2) This section and section 16 come into force on the day on which this Act is passed.
- (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.
- (5) This Act may be cited as the Mental Health Units (Use of Force) Act 2018.

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# **Mental Health Units (Use of Force) Bill**

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## **B I L L**

To make provision about the oversight and management of the appropriate use of force in relation to people in mental health units; 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.

*Brought from the Commons on 9th July 2018*

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