

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 brought from the House of Commons on 9 July 2018 (HL Bill 120).

- These Explanatory Notes have been prepared by the Department of Health and Social Care, with the consent of Baroness Massey of Darwen, the peer 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 in connection with the use of force in mental health units. 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. The Bill completed all its stages in the House of Commons on 6 July 2018.
- 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 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 services under Part 1 of that Act.
- 6 During the registration, inspection and monitoring process, the Commission may take into account a provider's compliance with the requirements of any enactment which it considers to be relevant.¹ The Commission's website maintains a list of legislation "that may be relevant to health and social care".² The provisions of the Bill are likely to be "relevant requirements".

Territorial extent and application

- 7 Clause 17 sets out the territorial extent of the Bill, that is, the jurisdictions in which the provisions of the Bill form part of the law. The extent of the Bill can be different from its application. Application is about where a provision of a Bill produces a practical effect.
- 8 The Bill extends to England and Wales only.
- 9 The Bill applies only in relation to mental health units in England. The duties in Clause 12 apply to police officers in both England and Wales, but only in relation to mental health units in England.
- 10 There is a convention that Westminster will not normally legislate with regard to matters that are within the legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly without the consent of the legislature concerned.
- 11 The matters to which the provisions of the Bill relate are not within the legislative competence of the National Assembly for Wales. Accordingly no legislative consent motion is being sought in relation to any provision of the Bill. If there are amendments relating to matters within the

¹ These include section 12(2)(b) (grant or refusal of registration as a service provider); section 17(1)(c) and (4) (cancellation of registration); section 18(2)(b) (suspension of registration); section 29(1) and (7) (warning notice).

² <http://www.cqc.org.uk/guidance-providers/regulations-enforcement/regulations-service-providers-managers-relevant>

legislative competence of the Scottish Parliament, the National Assembly for Wales or the Northern Ireland Assembly, the consent of the relevant devolved legislature(s) will be sought for those amendments. See Annex A for more details.

Commentary on provisions of Bill

Clause 1: Key definitions

- 12 Clause 1 defines some important terms used in the Bill.
- 13 Subsection (2) provides that "mental disorder" has the same meaning as in the Mental Health Act 1983.
- 14 Subsection (3) defines "mental health unit" as a health service hospital or independent hospital in England (or part thereof) that provides treatment to in-patients for mental disorder. But an independent hospital (or part thereof) will only be a "mental health unit" if at least some of the treatment provided to in-patients for mental disorder is provided, or intended to be provided, for the purposes of the NHS.
- 15 Subsection (5) defines "patient" as a person who is in a mental health unit for the purpose of treatment for mental disorder or assessment.
- 16 Subsection (6) defines "use of force" as the use of physical, mechanical or chemical restraint on a patient, or the isolation of a patient. Subsection (7) further defines physical, mechanical and chemical restraint, and isolation.

Clause 2: Mental health units to have a responsible person

- 17 Clause 2 requires a relevant health organisation that operates a mental health unit to appoint a responsible person for that unit. "Relevant health organisation" is defined in Clause 13. The responsible person must be employed by the organisation and be of an appropriate level of seniority.
- 18 Subsection (3) sets out that if a relevant health organisation runs more than one mental health unit the same responsible person must be appointed in relation to all of the mental health units.

Clause 3: Policy on use of force

- 19 Clause 3 imposes a duty on the responsible person for each mental health unit to publish and keep under review a policy on the use of force on patients by staff who work in the unit. The effect of subsection (2) is that there is to be a single policy across all the mental health units operated by a relevant health organisation.
- 20 Subsection (3) requires the responsible person, before publishing the policy, to consult any persons that they consider to be appropriate. Subsections (4) and (5) also require the responsible person to keep the policy under review and to publish any revision of the policy.
- 21 Subsection (6) requires the responsible person to consult any persons that they consider appropriate when considering any revisions to the policy that would amount to a substantial change before they publish the revised policy.
- 22 Subsection (7) requires the policy to set out what steps will be taken to reduce the use of force by staff who work in the unit.

Clause 4: Information about use of force

- 23 Clause 4 imposes a duty on the responsible person to publish information for patients about the rights of patients in relation to the use of force by staff who work in the unit. This would include, for example, details of how to complain about a use of force.
- 24 Before publishing the information, the responsible person is required to consult any persons they consider appropriate (subsection (2)).
- 25 Subsection (3)(a) requires the responsible person to provide the information to each patient, and to any person who is in the unit and to whom the responsible person considers it appropriate to provide the information in connection with the patient, such as a family member (subsection (3)(b)). However, the duty to provide the information does not apply if the recipient refuses the information.
- 26 Subsection (4) requires the information to be provided to the patient as soon as reasonably practicable after the patient is admitted to the unit, or if the patient is already in the mental health unit when this provision comes into force, as soon as reasonably practicable after that time.
- 27 Subsection (5) requires the responsible person to take reasonably practicable steps to make sure the patient is aware of the information and understands it.
- 28 Subsections (6) and (7) require the responsible person to keep the information under review and to publish any revisions to the information. If the revisions would amount to a substantial change, the responsible person must also consult any person they consider appropriate before publishing the revised information (subsection (8)).

Clause 5: Training in appropriate use of force

- 29 Clause 5 requires the responsible person to provide training for staff about the use of force by staff who work in the mental health unit on the use of force. "Staff" is defined in Clause 13.
- 30 The training must cover the specific topics set out in subsection (2), including: techniques for avoiding or reducing the use of force, the risks associated with the use of force, the impact of trauma on a patient's health, the impact of a use of force on a patient's health and development, and the principal legal or ethical issues around the use of force.
- 31 Subsection (3) requires training to be provided as soon as reasonably practicable after a person becomes a member of staff, and for people who are already a member of staff at the time this clause comes into force as soon as is reasonably practicable after that time. However, subsection (3) does not apply if the responsible person considers that a member of staff was provided with training of an equivalent standard sufficiently recently.
- 32 Subsection (5) requires refresher training to be carried out at regular intervals for staff at the unit. "Refresher training" is defined in subsection (6) as training that updates or supplements the training provided under subsection (1).

Clause 6: Recording of use of force

- 33 Clause 6(1) imposes a duty on the responsible person to keep a record of any use of force on a patient by staff who work in that unit.
- 34 The duty to keep a record does not apply if the use of force is "negligible" (subsection (2)). Whether a use of force is "negligible" is to be determined in accordance with guidance published by the Secretary of State (subsection (3)). By virtue of subsection (4), the Secretary of State must consult such persons as he or she considers appropriate before publishing the guidance or any substantial changes to it, and must keep the guidance under review (see Clause 11(3)-(6)).

- 35 The precise information to be recorded is set out in subsection (5). Subsections (7), (10) and (11) give further details about the information set out in subsection (5).
- 36 The responsible person must keep the record for three years from the date it was made under subsection (6). Subsection (8) provides that nothing in Clause 6 permits the responsible person to do anything that is inconsistent with data protection legislation or the common law duty of care or confidence. This has the effect of preserving the patient's legal rights in relation to their information.

Clause 7: Statistics prepared by mental health units

- 37 Clause 7 requires the Secretary of State to ensure that at the end of each year statistics are published regarding the use of force by staff who work in mental health units.
- 38 Subsection (2) provides that the statistics must provide an analysis of the use of force by reference to some of the information that the responsible person is required to record under Clause 6. This includes: the place, date and duration of the use of force; the type or types of force used on a patient; the patient's relative characteristics; whether the patient has a learning disability or autistic spectrum disorder; and whether the patient died or suffered any serious injury as a result of the use of force.

Clause 8: Annual report by the Secretary of State

- 39 Clause 8(1) requires the Secretary of State to conduct a review of any reports published during the year under paragraph 7 of Schedule 5 to the Coroners and Justice Act 2009 (known as "regulation 28 reports") which relate to the death of a patient as a result of the use of force by staff in a mental health unit. The Secretary of State may also review any other findings made during that year relating to the death of a patient as a result of a use of force by staff in a mental health unit. The review is to be conducted as soon as reasonably practicable after the end of each calendar year.
- 40 Once the review has been conducted under subsection (1), the Secretary of State must publish a report that includes any conclusions as a result of the review.
- 41 Subsection (3) provides that the Secretary of State is able to delegate the responsibility to conduct the review and the publication of the report following the review.

Clause 9: Investigation of deaths or serious injuries

- 42 Under Clause 9, if a patient dies or suffers from a serious injury in a mental health unit the responsible person must have regard to any guidance relating to the investigations of deaths or serious injuries that is published by any of the bodies specified in Clause 9(a) to (d). The Secretary of State has a power to prescribe further persons whose guidance a responsible person must have regard to under this clause (Clause 9(e)).

Clause 10: Delegation of responsible person's functions

- 43 Clause 10 provides that the responsible person for each mental health unit may delegate their functions under the Bill to a "relevant person" in accordance with subsections (2), (3) and (4). A "relevant person" is defined in subsection (5) as a person employed by the relevant health organisation that operates the mental health unit.
- 44 Subsection (2) requires that the relevant person to whom a function is delegated must be of an appropriate level of seniority.
- 45 Subsection (3) provides that any delegation of a function does not affect the responsible person's responsibility for the exercise of the function.
- 46 Subsection (4) provides that the delegation of any function does not prevent the responsible person from exercising the function.

Clause 11: Guidance about functions under this Act

- 47 Clause 11 requires the Secretary of State to publish guidance about the exercise of functions by the responsible persons and relevant health organisations.
- 48 Subsection (2) requires that when a responsible person or relevant health organisation exercises functions under the Act they must have regard to the guidance published under Clause 11.
- 49 Subsection (3) requires the Secretary of State to consult anyone that he or she thinks is appropriate before publishing guidance under Clause 11.
- 50 Subsection (4) requires the Secretary of State to keep the guidance under review. If the revisions amount to a substantial change, the Secretary of State must consult with anyone he or she thinks is appropriate before publishing the revised guidance (subsections (5)-(6)).

Clause 12: Police body cameras

- 51 Clause 12(1) imposes a duty on police officers to take a body camera if it is reasonably practicable to do so whenever they attend a mental health unit on duty that involves helping staff who work in that unit.
- 52 Subsection (2) requires that if the police officer has a body camera they must wear it and keep it operating at all times when reasonably practicable, unless, as set out in subsection (3), there are special circumstances that justify not wearing or not operating the camera.
- 53 Subsection (4) provides that any failure to comply with the requirements of subsection (1) or (2) does not of itself make the police officer liable to criminal or civil proceedings.
- 54 Subsection (5) sets out that if the requirements of subsection (1) or (2) are relevant to any question that arises in criminal or civil proceedings, those requirements must be taken into account to determine that question.
- 55 Subsection (6) provides a definition of “police officer” for the purpose of this clause.

Clause 13: Interpretation

- 56 Clause 13 defines key terms used in the Bill.

Clause 14: Transitional provision

- 57 Clause 14 gives the Secretary of State a regulation-making power to make transitional, transitory or saving provision in connection with the coming into force of the Bill.

Clause 15: Financial provisions

- 58 There are provisions in the Bill which may lead to increases in public expenditure under other Acts. Clause 15 provides for Parliament to authorise any increase in public expenditure attributable to the Bill.

Clause 16: Regulations

- 59 Clause 16 provides that regulations under the Bill are to be made by statutory instrument. Under subsection (2), regulations are subject to the negative procedure (annulment in pursuance of a resolution in either House of Parliament), save for the regulations made under Clause 17(3) (commencement), which are not subject to a parliamentary procedure.

Clause 17: Commencement, extent and short title

- 60 Clause 17(1) sets out that the Bill extends to England and Wales only.
- 61 Subsection (2) provides that Clauses 16 and 17 will come into force on the day on which the Bill is passed.

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- 62 Subsection (3) provides that the other provisions of the Bill will come into force on a day that the Secretary of State appoints by regulations. The regulations may appoint different days for different purposes or areas (subsection (4)).
- 63 The Bill may be cited as the Mental Health Units (Use of Force) Bill 2018.

Financial implications of the Bill

- 64 The financial implications of the Bill are set out in the impact assessment which is published on the Government's website.
- 65 The Bill will result in implementation costs for the Department of Health and Social Care and for mental health units. For the Department this will include costs relating to publication of reports. For mental health units this will include costs relating to the preparation of statistics and record-keeping. The estimated costs (discounted) range from £1.8 million in year 1 to £1.0 million in year 10, and amount to £12.1 million over a 10-year period.

Parliamentary approval for financial costs or for charges imposed

- 66 A money resolution is required for the Bill. A money resolution is required where a Bill authorises new charges on the public revenue – broadly speaking, new public expenditure. If the Bill requires expenditure to fund certain provisions, a money resolution will be required.
- 67 There are provisions in the Bill which may lead to increases in public expenditure under other Acts, in particular under section 40 of and Schedule 5 to the National Health Service Act 2006.
- 68 A money resolution authorising the increase in public expenditure was passed on 24 April 2018.

Compatibility with the European Convention on Human Rights

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

Related documents

- 70 The following documents are relevant to the Bill and can be read at the stated locations:
- Mental Health Units (Use of Force) Bill: Delegated powers memorandum (2018), to be found on the Bill's Parliamentary webpage (<https://services.parliament.uk/Bills/2017-19/mentalhealthunitsuseofforce/documents.html>)

Annex A – Territorial extent and application in the United Kingdom

71 As the Bill is a Private Member’s Bill, the English votes provisions in the Standing Orders of the House of Commons relating to Public Business do not apply.

Provision	Extends to E & W and applies to England?	Extends to E & W and applies to Wales?	Extends and applies to Scotland?	Extends and applies to Northern Ireland?	Legislative Consent Motion needed?
Clause 1	Yes	No	No	No	No
Clause 2	Yes	No	No	No	No
Clause 3	Yes	No	No	No	No
Clause 4	Yes	No	No	No	No
Clause 5	Yes	No	No	No	No
Clause 6	Yes	No	No	No	No
Clause 7	Yes	No	No	No	No
Clause 8	Yes	No	No	No	No
Clause 9	Yes	No	No	No	No
Clause 10	Yes	No	No	No	No
Clause 11	Yes	No	No	No	No
Clause 12	Yes	Yes	No	No	No
Clause 13	Yes	No	No	No	No
Clause 14	Yes	No	No	No	No
Clause 15	Yes	No	No	No	No
Clause 16	Yes	No	No	No	No
Clause 17	Yes	No	No	No	No

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