

MENTAL HEALTH ACT 2007

EXPLANATORY NOTES

COMMENTARY

Part 1 – Amendments to Mental Health Act 1983

Chapter 1 – Changes to Key Provisions

Section 8: The fundamental principles

41. **Section 8** amends section 118 of the 1983 Act to insert new subsections (2A) to (2D) into the existing provision regarding the requirement to have a Mental Health Act Code of Practice.
42. The new subsection (2A) requires the Secretary of State to include in the Code of Practice a statement of principles that he or she thinks should inform decisions made under the 1983 Act.
43. New subsection (2B) contains a list of issues that the Secretary of State must ensure are addressed in the statement of principles when preparing it. Under new subsection (2C) the Secretary of State must also have regard to the desirability of ensuring the efficient use of resources and the equitable distribution of services.
44. The responsibility for preparing and revising the Code of Practice in relation to Wales was transferred to the National Assembly for Wales, but, by virtue of the Government of Wales Act 2006, this function transferred to and is now exercisable by the Welsh Ministers.
45. New subsection (2D) provides that the people listed in section 118(1)(a) and (b) shall have regard to the Code of Practice. This is to confirm in statute the status of the Code of Practice, as elaborated on by the House of Lords in the case of *R v Ashworth Hospital Authority (now Mersey Care National Health Service Trust) ex parte Munjaz* [2005] UKHL 58. Those people listed in section 118(1)(a) and (b) (as amended by the 2007 Act) are registered medical practitioners, approved clinicians, managers and staff of hospitals, independent hospitals and care homes, and approved mental health professionals dealing with patients admitted to hospital, or subject to guardianship or SCT under the 1983 Act; and registered medical practitioners and members of other professions dealing with patients suffering from a mental disorder.