

# RadcliffesLeBrasseur



**Healthcare Briefing**

**December 2009**

## **New Powers for NHS Staff to deal with Nuisance Behaviour**

On 30th November 2009 Sections 119 and 120 of the Criminal Justice and Immigration Act 2008 [1] (“the Act”) brought into force the criminal offence of causing a nuisance or disturbance on NHS premises, together with a power for Police Constables or authorised NHS staff to remove a person suspected of committing that offence.

The Department of Health have produced Guidance [2], which gives an overview of the offence and power of removal, together with guidance on how NHS Trusts should implement the new powers. The Section 119 offence of causing a nuisance or disturbance on NHS premises will be committed if all of the following are present:

1. a person causes, without reasonable excuse and while on NHS premises, a nuisance or disturbance to an NHS staff member who is working there or is otherwise there in connection with their work, and
2. a person refuses, without reasonable excuse, to leave the NHS premises when asked to do so by a constable or an NHS staff member, and
3. a person is not on the NHS premises for the purpose of obtaining medical advice, treatment or care for himself or herself [3].

In England, “NHS Premises” are defined by Section 119 as any hospital vested in or managed by a

relevant English NHS body, any connected hospital grounds or any building, structure or vehicle associated with the hospital and situated on hospital grounds. There is an equivalent definition for Wales, however the new offence under Section 119 & 120 has yet to be enacted into Welsh law.

Section 120 of the Act provides Police Constables and authorised officers of the NHS with the power to remove a person reasonably suspected of committing an offence under Section 119. Reasonable force can be used if necessary although it should be noted that an authorised officer cannot remove a person where they believe that person requires medical advice, treatment or care or that removal would endanger the physical or mental health of the person being removed.

Whilst the Act does not define what behaviour amounts to nuisance or disturbance, the Department of Health Guidance gives the following inexhaustive list:

- “Using foul language and verbal abuse;
- Using intimidating gestures towards NHS staff, patients or visitors;
- Creating excessive noise in waiting areas, wards and other areas of the NHS premises;
- Generally preventing or impeding staff from carrying out their duties;
- Failing to comply with any reasonable request to stop a particular activity which may be endangering other persons or property;
- Obstructing thoroughfares;
- Smoking;
- Disregard for visiting hours” [4].

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The Guidance makes it clear that if the behaviour goes beyond merely creating a nuisance or disturbance (e.g. physical assault on staff or visitors), then those acts are covered by existing criminal offences and should be dealt with accordingly.

One of the interesting aspects of the new offence is that a person who is in an NHS hospital for the purposes of seeking medical advice, treatment or care cannot commit the offence. However, the Guidance confirms that if an individual has already received the advice, treatment or care that they say they are seeking, they could then commit the offence. In addition, the Guidance goes on to confirm that "A person that has received medical advice treatment or care, or who is seeking medical advice, treatment or care which he or she has been refused less than 8 hours before is not on the premises for the purpose of obtaining medical advice, treatment or care and is capable of committing the offence." [5] This provision may be of particular interest to Trusts who have difficulty with patients refusing to leave once discharged or returning to the hospital shortly thereafter.

Part 4 of the Guidance provides helpful detail on who can become an authorised officer for the purposes of Sections 119-120 and how an NHS Trust can go about authorising the members of staff chosen. As would be expected, before an NHS member of staff can be authorised to act under the provisions of the Act, they will need to have undergone extensive training on the powers and procedures set out in Sections 199-120 [6].

The introduction of these powers will be welcomed. Not only will authorised Trust staff now be able to legally remove offending individuals themselves, in addition, the threat to use the powers may provide a future deterrent to those who behave in such a manner. Unfortunately, the powers do not apply to private sector hospitals who will have to rely on the existing common law.

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## Footnotes

[1] See the Criminal Justice and Immigration Act 2008 (Commencement No. 13 and Transitory Provision) Order 2009 SI 2009/3074

[2] Department of Health, *Guidance on provisions to deal with nuisance or disturbance behaviour on NHS premises in England* 30th November 2009

[3] Criminal Justice and Immigration Act 2008, s.119(1)

[4] *Guidance on provisions to deal with nuisance or disturbance behaviour on NHS premises in England* page 4

[5] Ibid page 9

[6] Ibid, see pages 23-26 for further guidance on the training necessary



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