

From: Graham Gibbens, Cabinet Member for Adult Social Care
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To: Adult Social Care Cabinet Committee - 20 July 2017

Subject: **IMPLICATIONS OF THE POLICING AND CRIME ACT 2017 FOR ADULT SOCIAL CARE**

Classification: Unrestricted

Past Pathway of Paper: Social Care, Health and Wellbeing Directorate Management Team - 28 June 2017

Future Pathway of Paper: None

Electoral Division: All

Summary: The policy objective of the Policing and Crime Act 2017 (the 2017 Act) is to improve the democratic accountability of police forces and fire and rescue services, improve the efficiency and effectiveness of emergency services through closer cooperation and building public confidence in the criminal justice system.

This report focuses on the key measures of the 2017 Act that may have a direct impact on councils with adult social care responsibilities, in particular duties under the Mental Health Act 1983 and relevant service provision.

Recommendations: The Adult Social Care Cabinet Committee is asked to **CONSIDER** and **COMMENT** on the key issues set out in this report.

1. INTRODUCTION

- 1.1 The Policing and Crime Bill was introduced in the House of Commons on 10 February 2016 and the legislation completed its passage through Parliament on 19 December 2016. The Bill received Royal Assent on 31 January 2017.
- 1.2 The chapter on policing powers (Sections 52 to 120) has the most impact on local authorities, in so far as the duties placed on councils flowing from the Mental Health 1983 Act (the 1983 Act) are concerned.
- 1.3 The Policing and Crime Act 2017, Sections 80 to 83 have had the effect of amending Sections 135 and 136 of the Mental Health 1983 Act. Section 135 gives the police powers to remove a person who appears to be experiencing a mental health crisis from a private dwelling and under Section 136, from a public place. Additionally, the 1983 Act enables the police force to subsequently take the individual to a “place of safety” so that a mental health assessment could be undertaken and where appropriate, arrangements made

for their ongoing care and/or treatment. The Mental Health 1983 Act (the 1983 Act) also provides for the police to temporarily detain a person in a mental health crisis in order to protect their health and safety, which do not require the consent of the individual to be detained.

- 1.4 The purpose of presenting this report is to inform the Adult Social Care Cabinet Committee about the key changes which affect Local Authority duties for the Approved Mental Health Practitioner (AMHP) Service and have been introduced by the 2017 Act and also to set out the implications for Adult Social Care in Kent and, more importantly, to describe the steps being taking to manage the associated risks.

2. POLICY CONTEXT

- 2.1 The mental health policy landscape is influenced by a number of government policy objectives outlined in amongst other publications; the Government's mandate to NHS England 2017-18, in which "24/7 access to mental health crisis care in both community and A&E settings" is a core objective. Similarly, there are delivery objectives for 2017-18 under the Mental Health Five Year Forward View implementation plan.
- 2.2 The Mental Health Crisis Care Concordat (MHCCC), which was published in February 2014, is also shaping developments in this area. The Concordat is a national agreement between services and agencies involved in the care and support of people in crisis. There is no additional or dedicated MHCCC budget identified in the national Crisis Care Concordat.
- 2.3 The four main areas of focus for the Concordat are:
 1. Access to support before crisis point
 2. Urgent and emergency access to crisis care
 3. Quality of treatment and care when in crisis
 4. Recovery and staying well.
- 2.4 The Crisis Care Concordat is mirrored in Kent through a multiagency collaborative partnership through the MHCCC. This is the strategic concordat group supported by three geographical based local concordat groups across Kent and Medway to drive the programme forward. A number of Kent County Council's and Kent Clinical Commissioning Group's service plans and intentions for 2017/18 have been developed which align with the MHCCC requirements and policy objectives.
- 2.5 It should be noted that the aims and objectives of the 'Your life, your well-being, a new vision and strategy for adult social care 2016 – 2021' as well as some features of mental health in the Kent and Medway Sustainability and Transformation Plan (STP) are wholly in line with the national objectives described above. The Joint Health and Wellbeing Strategy for Kent also has strategic focus on mental health through its theme 4 which, aims to improve physical and mental health and wellbeing for people. The existing and planned mental health service developments being spear headed by Adult Social Care, together with key health partners, demonstrate the determination to make

changes which make a difference to people's lives about which the policy objectives have a bearing.

3. HEADLINE PROVISIONS OF THE 2017 ACT

3.1 The 2017 Act is comprised of nine parts which are divided into a number of chapters. In addition, there are 19 Schedules to the 2017 Act. Below is a list of the chapter headings and the corresponding Sections

Part 1: Emergency services collaboration (Sections 1-12)

Part 2: Police discipline, complaints and inspection (Sections 13 - 37)

Part 3: Police workforce and representative institutions (Sections 38 - 51)

Part 4: Police powers (Sections 52 – 120)

Part 5: Police and Crime Commissioners and police areas (Sections 121 – 124)

Part 6: Firearms and pyrotechnics refreshments articles (Sections 125 – 134)

Part 7: Alcohol and late night refreshment (Sections 135 – 142)

Part 8: Financial sanctions (Sections 143 – 156)

Part 9: Miscellaneous and general (Sections 157 – 184)

3.2 The following paragraphs now turn to Sections 80 to 83 of the provisions of the 2017 Act, which are of most interest to Adult Social Care because they have direct impact on the AMHPS service and associated provision.

3.3 Widening the definition of “place of safety” so that any place may be considered a “place of safety” if it is appropriate and safe to do so (Section 80 subsections (2) and (3)).

3.3.1 This section widens the definition of a “place of safety” in the 1983 Act so that anywhere the police consider to be suitable can be a “place of safety”. This may include community centres and multiple use buildings in addition to police stations, local authority residential accommodation, hospital settings or care homes for people with mental health needs, (which were already designated as “places of safety” in the 1983 Act).

3.3.2 It is the Government's expectation that broadening the list of “places of safety” will assist the identification of additional “places of safety”, facilitating local premises to be used on an ad hoc or contingency basis, in turn enabling the person in crisis to be assessed without delay (whilst simultaneously preventing the need to transport the individual to a different “place of safety”).

3.4 Enabling, in certain circumstances, a mental health assessment for an individual detained under Section 135 to take place either in the person's own home or until a suitable hospital bed is identified. (Section 80 subsection 4).

3.4.1 The 2017 Act makes provision for a mental health assessment to take place in the individual's own home provided that the police considers it appropriate to do so, and the person in crisis agrees that the place where they are living can be used as a “place of safety” (if there is more than one occupier, the consent of

the other occupiers is also required). This reduces the need for a person to be transferred to an alternative “place of safety”.

- 3.5 Requiring whenever practicable that under Section 136 detentions, the police seek advice from a health professional prior to taking or keeping a person in a “place of safety” (Section 80 subsection 5).
 - 3.5.1 This section introduces a statutory requirement on the police to consult a health professional such as a registered medical practitioner, a registered nurse or an approved mental health professional prior to taking or keeping a person at a “place of safety” (unless in the Police officer’s professional judgment it would not be practicable to do so).
- 3.6 Restricting the circumstances in which police cells can be used as “places of safety” for adults aged 18 years or over (Section 81).
 - 3.6.1 The 2017 Act confers on the Secretary of State the power to make regulations when police cells may be used as a “place of safety” for adults, and to make provision for their treatment whilst detained, including provision for the review of their detention.
- 3.7 Reducing the permitted period of detention in a “place of safety” from 72 to 24 hours with the provision of an extension of time on the basis of clinical need (Section 82).
 - 3.7.1 The new requirement ensures that the individual’s fundamental rights are not restricted beyond the 24 hour period with the new detention time period aligning with the detention timeframe for those detained for a suspected criminal offence.
 - 3.7.2 This is of particular significance since an individual detained under the 1983 Act has not committed a criminal offence (where previously the 1983 Act allowed a person detained under Sections 135 and 136 to be held pending mental assessment for up to 72 hours, including being held in a police cell).
 - 3.7.3 Additionally, the 2017 Act makes provision for an extension beyond the 24 hour period applicable only, when due to the condition of the individual it is felt that the assessment would not be achieved in the first 24 hours, for example in cases where the person may be intoxicated or requiring physical health treatment.
 - 3.7.4 At the end of the 24 hour period, a 12 hour maximum extension can be authorised by the registered medical practitioner responsible for assessing the detained person. Where both the “place of safety” at which the detainee is being held and the intended place of assessment is a police station, authorisation to extend the permitted period of detention will also require the approval of a police officer of the rank of Superintendent or above. This brings the maximum period of detention under Sections 135 and 136 of the 1983 Act into line with that which can be authorised by a Superintendent under the Police and Criminal Evidence Act 1984 (PACE).

3.8 The application of Section 136 powers without a warrant now extends to private property, enabling Section 136 detentions to apply anywhere apart from domestic dwellings (Section 83).

3.8.1 The application of Section 136 powers now extends to private property where under preceding provisions a warrant would be necessary to detain the individual presenting in crisis. In this context private property may include workplaces with restricted access.

4. IMPLICATIONS FOR ADULT SOCIAL CARE

4.1 The Council through its Adult Social Care function has the lead role in the provision of the Approved Mental Health Practitioner (AMHP) Service. An Approved Mental Health Practitioner is an officer of the Council who is warranted, or authorised, to make certain legal decisions and applications under the Mental Health Act 1983. Usually, the officer will be a Social Worker who has undertaken additional training to be warranted. In 2007 the law was changed to allow other mental health professionals to undertake this role. As a result it is now possible for psychiatric nurses, occupational therapists or psychologists to become AMHPs.

4.2 The Council's statutory responsibilities for the AMHP Service is delegated and delivered as part of the Section 75 partnership agreement between Kent County Council and the Kent and Medway NHS and Social Care Partnership Trust (KMPT). The Service is provided around the clock and has seen a gradual increase in demand over the last three years.

4.3 The very fact that the 2017 Act restricts the use of police cells as a "place of safety" (for detainees under the age of 18 and subject to regulations, restrict the circumstances in which police cells may be used as a "place of safety" for adults 18 years or over), would put further pressure on the Council's mental health services. The need for the Police, Health and the Council to work together to find a better way to address this pressure, forms an essential part of the work of the MHCCC mentioned in paragraph 2.2 above.

4.4 The fact the period of detention has been reduced from 72 hours to 24 hours (even though provision exists for extensions under certain criteria), will impact on the AMHP Service as the window within which to carry out statutory assessment has been reduced. In certain circumstances it may not be possible especially when the condition of the individual is such that assessment would not be possible to be completed in the first 24 hours, for example in cases where the person may be intoxicated or requiring physical health treatment. There is a direct resource impact which the Council has had to address.

4.5 The Council's initial response to meeting this new requirement has had to be managed within current resources and as an interim arrangement two additional posts have been made available to the 24/7 dedicated service in order to meet current, and potentially new demand. This will allow KMPT and the Council work through what these new arrangements will have on the service response

time and if necessary additional resources to meet this pressure will need to be found. It is also important to find different ways to provide for individuals who are assessed under Section 136 Mental Health Act 1983 but are not subsequently detained under the Mental Health. Work is in progress in looking into how a new service could be put in place in partnership with Mental Health Matters. This forms a key part of the how to address the pressures brought about by the changes in the 2017 Act. As well as looking at increased administration and back up support for AMHP.

5. LEGAL IMPLICATIONS

- 5.1 The Policing and Crime Act 2017 has made consequential changes to Sections 135 and 136 of the Mental Health Act 1983. Sections 135 and 136 give Police powers to detain and remove persons who appear to be suffering from a mental disorder and take them to a designated “place of safety” for their mental health needs to be assessed. The changes carry a number of implications as outlined in the previous section above.

6. CONCLUSION

- 6.1 Councils with Adult Social Care responsibilities are required to operate within certain legislation, secondary regulations and statutory guidance. These are duties and obligation from which the Council must not depart. In other words, the Council is compelled to follow them. The changes to Sections 135 and 136 of the Mental Health Act 1983, introduced by the Policing and Crime Act 2017 has extended the Council’s legal duties which impact on resources, practice, commissioning and partnership working, with a lasting effect.

7. RECOMMENDATIONS

7.1 Recommendations: The Adult Social Care Cabinet Committee is asked to **CONSIDER** and **COMMENT** on the key issues set out in this report.

8. BACKGROUND DOCUMENTS

Policing and Crime Act 2017 (Get in on the Act) -
<https://www.local.gov.uk/policing-and-crime-act-2017-get-act>

Five Year Forward View for Mental Health
<https://www.england.nhs.uk/wp-content/uploads/2016/02/Mental-Health-Taskforce-FYFV-final.pdf>

Kent and Medway Sustainability and Transformation Plan
<http://kentandmedway.nhs.uk/stp/>

Joint Health and Wellbeing Strategy 2014-2017
<http://www.kent.gov.uk/about-the-council/strategies-and-policies/health-policies/joint-health-and-wellbeing-strategy>

Kent and Medway Mental Health Crisis Concordat Report 2016/17

<https://democracy.kent.gov.uk/documents/s70091/Item%206%20Kent%20HWB%20Concordat%20July%202016.pdf>

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