



Report on the Legislative Consent Memorandum for the Policing and Crime Bill

Background

1. On 22 June 2016, the Minister for Social Services and Public Health laid a [Legislative Consent Memorandum](#) ("the Memorandum") for the Policing and Crime Bill currently before the UK Parliament.
2. On 28 June 2016, the Business Committee referred the LCM to the Health, Social Care and Sport Committee for consideration. In referring the Memorandum, the Business Committee set a reporting deadline of 22 September 2016.
3. A Legislative Consent Motion, seeking the Assembly's consent to the relevant provisions in the Bill (as outlined in the LCM) has been scheduled for debate in plenary on 27 September 2016.

Policing and Crime Bill

4. The Policing and Crime Bill ('the Bill') is sponsored by the Home Office. The UK Government's stated policy objectives for the Bill are to further improve the efficiency and effectiveness of police forces; enhance the democratic accountability of police forces and fire and rescue services; build public confidence in policing; strengthen the protections for persons under investigation by, or who come into contact with, the police; ensure that the police and other law enforcement agencies have the powers they need to prevent, detect and investigate crime; and further safeguard children and young people from sexual exploitation.

5. The Bill is arranged into nine parts. The Memorandum refers to Parts 4 and 9, which seek to amend the powers of the police under the Mental Health Act 1983, and to combat the sexual exploitation of children.

Provisions in the Bill for which consent is sought

6. The consent of the National Assembly is sought for the provisions in the Bill concerning police powers under the Mental Health Act 1983 and the provisions dealing with child exploitation matters.
7. The Memorandum states that, in the view of the Welsh Government, it is appropriate to deal with the relevant parts of the Bill in UK Parliament legislation as it represents the most practicable and proportionate way for these parts of the Bill to apply in Wales. It states: “the inter-connected nature of the relevant Welsh and English administrative systems means that it is most effective and appropriate for provisions for both Governments to be taken forward at the same time in the same legislative instrument”.

Committee consideration and conclusion

8. We considered the Memorandum at our meeting on 14 July.
9. In relation to the amendments to combat the sexual exploitation of children, we note that the Bill amends the definition of “sexual exploitation” in the Sexual Offences Act 2003 so that references to “recording” indecent images of a child cover situations where images are streamed or transmitted by some other technological means (such as CCTV). We are content with these provisions.
10. In relation to the amendments to the powers of the police under the Mental Health Act 1983, we agreed to write to the Minister seeking clarification of a number of issues about the requirements on the police to consult a “relevant health professional” before removing a person from a public place; and the restrictions on places that may be used as places of safety for adults. We also asked about the financial implications associated with the relevant provisions in the Bill. A copy of our letter is attached at Annex 1.
11. We considered the Minister’s response (attached at Annex 2) on 15 September, and were content with the information she provided.
12. Finally, we note the Minister’s statements that national guidance will accompany the Bill and that the Welsh Government will be able to contribute to this. Given the importance of this guidance to the practical operation of the Bill once enacted, we ask that she takes this opportunity to ensure that the guidance is both timely and sufficiently robust.

Rebecca Evans AM
Minister for Social Services and Public Health

29 July 2016

Legislative Consent Memorandum (“LCM”): Policing and Crime Bill

Dear Minister,

The Committee considered the LCM for the Policing and Crime Bill on 14 July 2016, and agreed that I should write to you about the points listed below.

The deadline for the Committee to report on the LCM is 22 September. On this basis, I would be grateful to hear from you by **Friday 2 September** to enable Members to consider your response during our meeting on 15 September.

1. Clause 74

This extends section 136 of the 1983 Act (powers for the police to remove persons suffering from mental disorders from public places without a warrant). One of the two safeguards in place regarding the use of this power is that, before removing a person from a public place, the police must consult a relevant health professional “if practicable to do so”.

- i. Could you set out your understanding of the practical effect of the phrase “if practicable to do so”, including the circumstances in which it may not be practicable for such consultation to take place;
- ii. In relation to the availability of qualified doctors and Approved Mental Health Practitioners (AMHPs), are there sufficient numbers of AMHP available both in and outside usual working hours to provide the necessary advice to meet operational needs? Further, how effective are



the current arrangements for liaison between officers and mental health practitioners at the point of crisis?

2. Clause 75

This places restrictions on places that may be used as places of safety for adults by providing that they can be used only in circumstances specified in regulations.

Can you provide further detail about the circumstances that are likely to be provided for in these regulations?

3. Financial implications

We note your statement in the LCM that the provisions amending the 1983 Act "may attract some additional cost burden", likely to be in the region of £2.98 million per annum (which would secure resources for four additional psychiatric beds). You state that "such costs are only likely to arise if the anticipated rise in need cannot be met from existing resources."

Based on your calculations, how likely is it that existing resources will be sufficient to meet an increased demand? Do you have any plans to make additional funding available?

4. Overall provision

Given the changes proposed in the Bill, are you confident that existing health based places of safety are sufficient to meet reasonable demand. If not, what plans are in place to enhance this provision, and to what extend do such plans involve the third sector?

Yours sincerely,



Dr Dai Lloyd AM
Chair, Health, Social Care and Sport Committee



Rebecca Evans AC/AM

Gweinidog Iechyd y Cyhoedd a Gwasanaethau Cymdeithasol
Minister for Social Services and Public Health

Annexe 2



Eich cyf/your ref NAW/HSC&SP Committee
Ein cyf/Our ref: MA-L RE/5157/16

Llywodraeth Cymru
Welsh Government

Dr Dai Lloyd
Chair
Health, Social Care and Sport Committee
National Assembly for Wales
Cardiff Bay
Cardiff
CF 99 1NA

22 August 2016

Dear



Legislative Consent Motion (“LCM”): Policing and Crime Bill

Thank you for your letter about the above matter, sent on behalf of the Health, Social Care and Sport Committee.

Responding to people with a Mental Health crisis and in particular those where police powers under the Mental Health Act are likely to be used has been a focus for both the Welsh Government and its partners for some time. The Crisis Care Mental Health Concordat – published in December 2015 – sets out the principles on how all partners should respond to crisis where 135 &136 powers are being considered with a key focus on operational planning, training and how best to avoid crises escalating. The Mental Health Act 1983 Code of Practice for Wales – Revised 2016, also provides both legal and operational guidance.

To answer the points raised, I will use your headings.

Clause 74: The requirement for the police to consult a relevant health professional “if practical to do so”, and the approach necessary when circumstances are such that it may not be possible, is an important matter. The purpose of the provision is to help ensure, without compromising anyone’s wellbeing, that police officers make the best possible decisions about whether or not to use powers under section 136 of the Mental Health Act 1983.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and responding in Welsh will not lead to a delay in responding.

There will be national guidance that will accompany the Bill and this will provide relevant staff with definitions and examples of ‘practicability’. The Home Office are intending to publish guidance in early 2017 to which Welsh Ministers will contribute as part of the consultation phase.

Across Wales, it is anticipated that police officers will use established arrangements currently in place in contacting health professionals. Examples include accessing street triage initiatives, contacting health professionals such as nurses co-located within police control rooms, and accessing 24 hour help line services or out of hours duty officer schemes. It is recognised that in some cases it would not be sensible to delay taking action to remove a person; the most obvious example being when they are in immediate danger. This will also account for cases where no such advice in a realistic timeframe can be provided - for example, when no appropriate mental health professional is available. Due to the rural nature of Wales issues may also arise where mobile or radio communication might not always be possible. The guidance will expand on these types of scenarios.

The availability of qualified doctors and Approved Mental Health Practitioners (AMPHs) are the responsibility of health boards and local authorities respectively. It is not anticipated that the requirements of the Bill will create an increased demand for services, as the number of detentions under section 135/136 is not expected to rise and their statutory role in that regard will not change.

Arrangements for liaison between police officers and mental health practitioners at the point of crisis are under regular scrutiny and are receiving significant attention by regional mental health criminal justice partnership boards.

Clause 75: The current Mental Health Act makes clear that police stations should only ever be used as places of safety in exceptional circumstances. However, this has not always been the case. In some areas over 40% of people detained under section 135/136 were taken to police stations. Whilst the number of people being taken to police based places of safety is already dropping significantly, the mental health element of this Bill will help further reduce the inappropriate use of police custody for people suffering from mental illness, and is therefore welcomed.

The Department of Health, England, and the Home Office are now scoping the regulations which relate to use of places of safety and their restrictions. Welsh Ministers will be fully consulted and will have input into these regulations. At this stage it anticipated that the regulations will focus on supporting practitioners on how to decide when a person detained under section 135 or 136 could not otherwise be safely managed in a health based place of safety. The regulations will reference the assessment of risk(s), the decision making process and the care necessary should a police station be used. The emphasis will inevitably focus on the presentation of violence but will also be clearer when, for example, intoxication – through drugs and/or alcohol – is evident. The use of police custody to detain children and young people under these powers will end.

Financial Implications: The early Home Office projections for costs in relation to Wales using proxy data across England (2013/14) indicated that the use of detentions appeared to be rising. However, the most recent, as yet unpublished, data for 2015-16 and Quarter 1 for 2016 -17 is indicating a decrease in overall numbers.

Our policy is to reduce the numbers of individuals detained under section 135 & 136, and to promote the development of alternative facilities where people in crisis can be taken. I see no need to propose making additional funding available at this stage, nor I understand are there proposals to make available additional funding in England.

Overall Provision: There has been an increase in the number of health based places of safety in Wales over the past several years with fifteen assessment facilities now available. The existing health based places of safety appear sufficient to meet current overall need across Wales. The third sector, through Wales Alliance for Mental Health, are chairing the Concordat's national task and finish board and have been instrumental in the promotion of alternative places of safety away from police custody and hospitals. This initiative forms part of area delivery plans, and once developed, will help to further reduce the use of section 135 &136 powers. It is an approach I am keen to see developed.

I am determined to ensure that the regulations and guidance that will accompany this Bill will recognise the delivery arrangements across Wales and the good work partners are already doing.

Thank you again for raising these matters.

A handwritten signature in black ink, appearing to read "Rebecca Evans".

Rebecca Evans AC/AM

Gweinidog Iechyd y Cyhoedd a Gwasanaethau Cymdeithasol
Minister for Social Services and Public Health