

# **Policing and Crime Bill**

## **Mental Health Measures**

### Background

1. The Mental Health Act 1983 (“the 1983 Act”) provides for people with mental disorders to be detained, where necessary, so that they get the assessment, care and treatment they need for their own health or safety, or for the protection of other people, even if the individual concerned does not consent to the action being taken. It sets out the criteria that must be met and the procedures to be followed, before such measures to compel compliance can be taken, along with protections and safeguards for patients. The 1983 Act sets out both the civil procedures under which people can be detained, and the procedures concerning the treatment and care of those accused of, and those convicted of, a criminal offence.
2. The provisions in the 1983 Act seek to balance the need to detain a person, for health and safety reasons, with the need to safeguard a person’s civil liberties.
3. Sections 135 and 136 of the 1983 Act confer powers on the police to remove people who appear to be suffering from a mental disorder from private premises (section 135) or a public place (section 136) and take them to a ‘place of safety’ (such as a hospital, a care home or a police station), so that a mental health assessment can be carried out and appropriate arrangements made for their ongoing care if necessary.
4. In 2014 the Department of Health and Home Office undertook a joint Review of the operation of sections 135 and 136. The Review was informed by views from a wide range of stakeholders via an online survey that received over 1,000 responses, and dedicated practitioner workshops. Contributors included health, care and policing professionals, relevant organisations, users of mental health services and members of the public. The published Review<sup>1</sup> included recommendations for changes to sections 135 and 136.
5. These changes (see paragraphs 6 and 7) form part of a number of measures designed to improve the experience for people in mental health crises, such as the Mental Health Crisis Care Concordats for England<sup>2</sup> and Wales<sup>3</sup>. Both national Concordats set the standard of response that a person experiencing a crisis should expect. In particular, these Concordats emphasise that people experiencing a mental health crisis should have rapid access to appropriate health and care services, and that police cells should be used as places of

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<sup>1</sup> <https://www.gov.uk/government/consultations/review-of-the-operation-of-sections-135-and-136-of-the-mental-health-act>

<sup>2</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/281242/36353\\_Mental\\_Health\\_Crisis\\_accessible.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/281242/36353_Mental_Health_Crisis_accessible.pdf)

<sup>3</sup> <http://gov.wales/topics/health/nhswales/healthservice/mental-health-services/?lang=en>

safety only in exceptional circumstances. This is further emphasised in the statutory Code of Practice on the 1983 Act, updated in April 2015<sup>4</sup>.

6. Additionally, the Government has committed up to £15 million to improve the provision of health and community based places of safety in 2016-17 and further reduce the use of police cells.

#### Issues addressed by the mental health measures

7. The Bill makes a number of amendments to sections 135 and 136 of the 1983 Act. These address the following issues identified by the 2014 Review:
  - **Police stations are being used as a place of safety too often.** Although the number of times that police stations were used in the case of people detained under section 136 of the Act reduced from 6,667 in 2013/14 in England and Wales to 4,537 in 2014/15<sup>5</sup>, we know that in some areas police stations are still being used in over half of all local section 136 detentions. This may be because health based places of safety are unavailable (already in use or insufficiently staffed), or because the detainee is excluded from a place of safety on the basis, for example, they are under the influence of alcohol or drugs. There is widespread agreement that for a detainee of any age, being taken to a police cell despite not being suspected of any crime, adds unnecessary distress and stigma; there is also widespread agreement that no detainee under 18 should ever be taken to a police cell;
  - **Concerns about the length of time for which people can be detained.** As it stands, the law allows someone detained under these sections to be held for a maximum of 72 hours in a place of safety, including a police cell. This is in contrast to somebody suspected of a criminal offence who can normally be detained for a maximum of 24 hours. Someone detained under these sections needs assessment and, potentially, treatment by health and care professionals without undue delays. There have been reported examples of individuals being held in police stations for over 24 hours pending an assessment.
  - **The current wording of sections 135 and 136 is considered dated and can be a barrier to a more effective response to the individual's health needs.** These issues, particularly the overuse of police custody as a place of safety, have been consistently raised as concerns by Parliament (Home Affairs Select Committee report on Policing and Mental Health, March 2015<sup>6</sup>; All Party Parliamentary Group on Children, November 2015<sup>7</sup>) and in reports by independent experts and national regulatory bodies (Independent

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<sup>4</sup> <https://www.gov.uk/mwg-internal/de5fs23hu73ds/progress?id=Smwb1NwNv1fRckm76nqqbdzPZgPcQBfq7HwOjxOPM4M.&dl>

<sup>5</sup> <http://www.npcc.police.uk/documents/edhr/2015/Section%20136%20MHA%20201415%20Data.pdf>

<sup>6</sup> <http://www.publications.parliament.uk/pa/cm201415/cmselect/cmhaff/202/202.pdf>

<sup>7</sup> [http://ncb.org.uk/media/1237461/one\\_year\\_on\\_report\\_-\\_final\\_copy.pdf](http://ncb.org.uk/media/1237461/one_year_on_report_-_final_copy.pdf)

Commission on Mental Health and Policing, May 2013<sup>8</sup>; A Criminal Use of Police Cells, July 2013<sup>9</sup>; A safer place to be, November 2014<sup>10</sup>; Right here right now, June 2015<sup>11</sup>). The Government shares these concerns, as evidenced in the Concordat and Mental Health Act Code of Practice for England.

### Amendments to the Mental Health Act 1983

8. A number of recommendations for legislative change from the 2014 Review are being taken forward in the Bill. These will:
- further reduce the use of police stations as a place of safety by providing that they can never be used in the case of under 18s, and making provision for their use to be restricted to exceptional circumstances in the case of adults;
  - provide a wider definition of “places of safety” (for example to encompass the third sector) and give the flexibility to use suitable premises on a temporary basis to extend local capacity of places of safety to meet local need;
  - enable the police to act promptly under the Act to protect individuals or the public from harm on private property (such as railway lines, work places, building rooftops), without the need to seek a warrant (a warrant will still be required for private dwellings);
  - reduce the maximum time period for which a person can be detained under section 135 or 136 from 72 hours to 24 hours (with an extension to 36 hours possible exceptionally);
  - require the police to consult a health professional (where practicable) before detaining a person under section 136;
  - clarify that mental health assessments can take place in the private home if appropriate; and
  - enable police officers to search a person subject to section 135 or section 136(2) or 136(4) if officers have reasonable grounds for believing that the person has a dangerous item concealed on them and presents a danger to themselves or to others.

**Home Office  
July 2016**

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<sup>8</sup> [http://www.turning-point.co.uk/media/621030/independent\\_commission\\_on\\_mental\\_health\\_and\\_policing\\_main\\_report.pdf](http://www.turning-point.co.uk/media/621030/independent_commission_on_mental_health_and_policing_main_report.pdf)

<sup>9</sup> <https://www.justiceinspectorates.gov.uk/hmic/media/a-criminal-use-of-police-cells-20130620.pdf>

<sup>10</sup> <http://www.cqc.org.uk/content/safer-place-be>

<sup>11</sup> <http://www.cqc.org.uk/content/new-report-looking-peoples-experience-care-during-mental-health-crisis>