

To: CCG Clinical Leaders & Accountable Officers  
All Provider Chief Executives, Medical Directors, Directors of Nursing  
Regional Directors  
Regional Medical Directors  
Regional Directors of Nursing

31 October 2017

Gateway reference number: **07203**

Dear colleague

### **Commencement of amendments to the Mental Health Act 1983**

We are writing to inform you that the government has formally announced through [regulations laid in Parliament](#) that [changes in law to sections 135 and 136 of the Mental Health Act 1983 \(s135/6 MHA\) through the Policing and Crime Act 2017](#) will come into effect on **11 December 2017**.

These are important changes for which you will need to be fully prepared, working in partnership with your local authorities and local police forces. To this end, we would ask all commissioners and providers to ensure they have fully assessed their readiness for the changes, set out in further detail below, and to ensure that all relevant staff have been adequately briefed on the forthcoming changes and their implications. Key considerations and resources are set out in the annex that accompanies this letter.

### **Changes to the MHA set out in the Policing and Crime Act**

Sections 80-83 of the Policing and Crime Act 2017 amend s135/6 MHA in the following ways, with the four highlighted changes having the most significant implications for the NHS:

- section 136 powers may be exercised anywhere other than in a private dwelling;
- **it is unlawful to use a police station as a place of safety for anyone under the age of 18 in any circumstances;**
- **a police station can only be used as a place of safety for adults [in specific circumstances, which are set out in regulations](#);**
- **the previous maximum detention period of up to 72 hours will be reduced to 24 hours (unless a doctor certifies that an extension of up to 12 hours is necessary);**
- **before exercising a section 136 power police officers must, where practicable, consult a health professional;**
- where a section 135 warrant has been executed, a person may be kept at their home for the purposes of an assessment rather than being removed to another place of safety (in line with what is already possible under section 136);
- a new search power will allow police officers to search persons subject to section 135 or 136 powers for protective purposes.

[The government has also published guidance](#) to support local partners' interpretation of these changes.

It is important to recognise that the NHS in England – in partnership with local authorities and police forces – has done an excellent job responding to the original challenging target set in the 2014 national Mental Health Crisis Care Concordat to reduce the use of police custody as a place of safety by 50%. The number of cases where police cells were used as places of safety for people of all ages detained under s136 MHA dropped by more than 50% between 2011/12 and 2014/15, surpassing the target. [The 2015/16 National Police Chiefs Council \(NPCC\) figures](#) suggest that within that one year there was a further reduction of over 50%, and [Home Office Annual Data Requirement](#) figures for the use of custody in 2016/17 published last week suggest a 90% reduction over 5 years – so that last year, police custody accounted for less than 4% of all s136 detentions (all ages). The figures for

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under-18s fell from 145 in 2014/15 to [just 20 in 2016/17](#). The fact that the percentage of s136 detainees taken to an NHS health-based place of safety for assessment under the MHA appears to continue to rise proportionately according to [the latest complete NHS Digital national figures from 2015/16](#) is testament to the hard work of NHS staff and their local partners. We know that further work needs to be done across health and policing to improve data quality and move beyond experimental statistics within the new datasets (see Annex below).

It is vital that the improvements in NHS mental health services' responses to these cases continue. We now need to build on this progress to ensure that police custody is never used for under-18s, and used only in exceptional circumstances for adults, not only as a matter of good practice but in line with the revised law. Several police force areas have seen significant reductions, including to zero detentions in police custody of anyone of any age in Merseyside over several years – and have thereby shown and set the benchmark for what is achievable through effective partnership working at a local level.

**Changes to the broader urgent and emergency mental health care pathway**

The change in legislation creates an added imperative for NHS partners to take a multi-agency approach to implementing existing local plans to improve NHS' response to mental health crises, with the associated benefits of reductions in admissions to acute, paediatric and children and young people's mental health inpatient and adult mental health wards.

In particular, there has been a recent focus on ramping up the package of urgent and emergency mental health care available for children and young people and the plans set out in *Next Steps on the Five Year Forward View* for expanding Tier 4 beds in under-served parts of the country.

In order to respond most effectively to these imminent changes, we would urge commissioners and providers to consider their preparation in light of wider local pathways for urgent and emergency and acute mental health care for people of all ages. These correspond to national *Five Year Forward View for Mental Health* priorities, including new national investment in acute hospital liaison mental health services and for the expansion of Crisis Resolution Home Treatment teams to help drive the elimination of non-specialist out-of-area placements for adults by 2020/21. Progress over recent years along with the implementation of service improvement plans mean that local systems should be ready to absorb the implications of these changes.

We will seek to keep you updated as all of this work progresses, and will work with regional teams to support preparedness.

Yours sincerely,

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National Mental Health Director  
NHS England

Professor Tim Kendall  
National Clinical Director for Mental  
Health  
NHS England & NHS Improvement

Ruth May  
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## Annex: Key considerations and resources in responding to the changes to the MHA

- **Ensure plans for the designation, and appropriate staffing of CCG-commissioned health-based places of safety**, which Chapter 16 of [the current Mental Health Act Code of Practice](#) suggests should be a hospital or other health based place of safety where mental health services are provided.
  - Further resources and recommendations to CCGs, providers and partnerships are available from the Royal College of Psychiatrists' publication, [Guidance for commissioners: service provision for Section 136 of the Mental Health Act 1983](#) (2013), and in two Care Quality Commission (CQC) reports: [A safer place to be](#) (2014) and [Right here, right now](#) (2015). We would advise you to revisit these important and helpful publications and to consider your current commissioning and provision against their recommendations, with the new legal provisions in mind.
  - NHS England has funded 3 areas to pilot digital tools to inform the development of capacity and demand management functionality. These tools show the capacity of local services to health and social care professionals, joint 'triage' teams and the police, providing them with real-time access to information on the nearest available s136 suites. We expect to make the evaluation reports from these pilot areas available shortly.
  - We would also like to take this opportunity to remind commissioners that, as detailed in Chapter 14 of [the MHA Code of Practice](#), section 140 of the MHA provides CCGs with a statutory duty to specify to local authorities which hospitals can receive people as patients in cases where there is 'special urgency', and adds that facilities should also be appropriate and safe to receive children and young people. This helps to provide local authority Approved Mental Health Professionals (AMHPs) with a clearer picture of the up-to-date, local commissioned provision to support them to make appropriate and lawful applications for detention where necessary.
- **Local partnerships will need to work quickly to update their local policies, protocols and joint working arrangements as stipulated in the Code of Practice** if they have not already done so.
  - Local Mental Health Crisis Care Concordat groups are ideally placed to continue hosting these partnerships and fulfilling their effective strategic and operational functions, feeding into Urgent & Emergency Care Networks and STP-led mental health and urgent & emergency care planning.
  - NHS England (London region) and NHS Improvement (London region) are working closely with the Healthy London Partnership (HLP) to improve the pathway for people detained by the police under s135/6 MHA. Following significant engagement across the system, [the pan-London section 136 pathway and Health Based Place of Safety specification](#) was developed last year. The guidance has been endorsed by all organisations involved in the pathway. To operationalise the pan-London guidance, HLP has been working in partnership with London's police forces, local authorities, NHS acute and mental health trusts, and commissioners, to review the provision of London's health-based places of safety and to identify ways to support an improved model of care. HLP have organised multi-agency training sessions across London to support local areas prepare for these forthcoming legislative changes. This positive regional leadership role is helpful for other regions and sub-regions to learn from.
- **Ensure all providers of health-based places of safety implement a clear reporting mechanism**, if one is not already in place, to make sure that the board, or relevant sub-group, are made aware of key issues relating to the health-based place of safety on a regular basis. The CQC has also recommended that all CCGs ensure that multi-agency groups exist and meet regularly to oversee the operation of s135/6 MHA, adding that CCGs should also attend multi-agency meetings and oversee the review, implementation and quality assurance of agreed policies. NHS services' ownership and leadership of these issues is important.

- **Ensure suitable alternatives to Emergency Departments (EDs) are provided.**
  - While of course adherence to the new law will be the primary consideration for partners, we would nonetheless urge partners to plan to mitigate against EDs being considered the automatic default option as a place of safety. People with no immediate physical health needs who are detained and then brought to EDs often receive poor care and experience undue delays – particularly children and young people. Planning will require proactive conversations with policing partners as well as reviews of the capacity and staffing of commissioned section 136 suites.
  - At the same time, we are aware of reports of a number of EDs in certain parts of the country refusing access to patients detained under s135/6 MHA. This is clearly unacceptable and in circumstances where there are system capacity concerns, any steps taken should be in line with local or regional escalation protocols. The refusal of any NHS service to accept detained patients that results in prolonged periods in a police or ambulance vehicle due to the inability to identify an appropriate NHS service should constitute a serious incident under the Serious Incident Framework.
- **Ensure there are arrangements in place that allow for police officers to fulfil the requirement to consult with a mental health practitioner before using s136 where practicable.** Almost all police force areas in England now operate some sort of joint ‘triage’ scheme, and communication channels between police officers and mental health services through, for example, single points of access for professionals, 999 control room triage models or potential links to the NHS 111 Clinical Assessment Service should be considered.
- **It is vital that commissioners and providers work together to maximise the completeness and accuracy of all MHA data returns to the Mental Health Services Data Set (MHSDS), including for s136, and monitor this in real-time within appropriate governance structures;** this in turn maximises the opportunities for meaningful patient-level analysis at a local level to inform strategic planning – for example, opportunities to examine repeat detentions of the same individual – as well as contributing to a more reliable and interpretable national picture. National partners are considering MHA MHSDS data issues further in light of [NHS Digital's 2016/17 annual MHA data report, published on 10 October](#), and the significant data quality issues highlighted in the report.
  - As part of their new regulatory approach, CQC’s key lines of enquiry for the provider-level ‘well-led’ reviews will include an increased focus on data submission and data quality, including MHA data. The submission of data to national bodies will be monitored on an ongoing basis including via reports from the Data Quality Maturity Index and MHA data in MHSDS – particularly provider performance in coding MHA legal status and closing MHA episodes – and will be incorporated into the assessment of the ‘well-led’ domain where issues are identified. Data quality and submission will be scrutinised to inform the rating of services and regulatory powers will be used to drive any required improvements. CQC will be contacting providers in the coming months as they develop their new approach to the assessment and monitoring of this issue.
  - Concordat groups can and should also draw upon rich sources of non-NHS data from policing and local authority AMHP colleagues. This can highlight to NHS partners where there may be specific operational issues less directly visible to them. One notable and specific example has been raised by the NPCC regarding delays for people arrested for a criminal allegation, who are then assessed under the MHA in police custody after a potential mental health need is identified. Following a MHA assessment, in some cases AMHPs face long waits before they are able to complete an application for someone deemed in need of inpatient care on account of their having not been able to work with mental health services to identify an appropriate bed. This can lead to the statutory maximum time for someone arrested to be held in police custody under Police and Criminal Evidence Act 1984 (PACE) being reached, leaving police officers with a limited number of undesirable and potentially unlawful options.