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T/ASSISTANT CHIEF CONSTABLE

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28 July 2015

Dr Kathryn Aiken
Ad Hoc Joint Committee on Mental Capacity Bill
Room B32
B Parliament Buildings
Stormont
Belfast BT4 3XX

Dear Kathryn,

RE: INTRODUCTION OF THE MENTAL CAPACITY BILL

Thank you for your letter of 9 June 2015. I am pleased to note the introduction of the Mental Capacity Bill to the Northern Ireland Assembly. The responsibility for Police Service of Northern Ireland liaison with the Department of Justice for Northern Ireland on the proposed Mental Capacity Bill is within my area of responsibility. Please find below my comment in response to your letter. I have formulated this response in consultation with those officers that have worked directly with DOJNI.

Members of the Police Service have worked closely with both the Department of Justice and the Department of Health and Social Services in the preparatory work for the Bill. This early involvement has afforded the PSNI to be involved at an early stage of drafting and this consultation has been included in the Bill as introduced. As the Bill is cross-cutting in scope I will confine my submission to those clauses that are most relevant to criminal justice and policing.

Part 1 – Principles

The approach proposed in the Bill appropriately recognises the advances in mental health since the 1986 Order, most notably the principles endorsed by the Bamford Review. I note that the general scope of the Bill is limited to persons 16 years of age or over. I welcome the emphasis on supported decision making within clause 5.

Part 2 - Protection from Liability and Safeguards

I note the protections within this part, however initially it was intended to replace the common law defence of necessity with statutory provisions codifying it. I would be grateful for clarity if this approach has now changed. If it is intended to abolish common law necessity I would be concerned at whether this created a lacuna whereby necessity would be unavailable for person under 16 years.

Part 9 – Power of Police to Remove Person to Place of Safety

I welcome the proposal to retain the place of safety provisions in the format of a power to be exercised. Members of the Police Service have assisted colleagues in the Department of Justice in developing these provisions. I am pleased to see that those views have been incorporated into the current proposed clauses; in particular I welcome the clarity brought in respect of the powers available to officers to exercise the power under clause 137 to ensure the safety and rights of persons subject to it.

Clause 139 states a person removed under section 137 is to be taken as having been arrested at the time for the purposes of Article 34 of PACE. I welcome the clarity that ss(4) provides, that this power does not authorise a search of premises or searches for evidence of an offence.

Clause 141 - I welcome the retention of, in exceptional circumstances, a police station as a place of safety for persons removed under section 137.

Clause 144 - I welcome the reduction in the maximum detention period for the purposes of this part to 24 hours.

Clause 145 and 146 – This provision replaces an existing provision within Article 130(2) of the 1986 Order and replicates similar provision for those in police detention at a police station.

Clause 147 – This provision will require records, similar to custody records, to be kept for all persons removed under the place of safety provisions. This is a new provision. The Service has engaged with the Department of Justice on this issue and whilst we are supportive of the thrust of the provision we are exploring IT solutions to deliver the records. Existing records in relation to Article 130 of the 1986 Order are non-searchable and it is an accepted gap in our data. Once an IT solution is delivered it should result in accessible and auditable records being available to the Service. In the interim the duty to make a record can be discharged by individual officers within existing provisions.

Clause 148 – This provision clarifies that the Police and Criminal Evidence (NI) Order 1989 [PACE] provisions relating to the treatment of detained persons shall apply to persons removed under this Part. Currently a person removed under Article 130 of the 1986 Order is not within the definition of “police detention”. The Service is supportive of the provision.

Clause 149 – This provision replicates, with some modification, the review provisions within PACE. Subsection (2) provides review intervals of 6 hours; however this deviates from PACE provisions. Accordingly whilst I am supportive of the formalisation of the review periods I would have preferred intervals of 6 hours initially followed by 9-hour intervals, which would mirror PACE. Potential reviewing officers would easily understand such a structure.

I do not support such reviews being conducted by constables, as per clause 158, I would recommend that clause 149 be amended replacing “appropriate officer” with “reviewing officer”.

Assistant Chief Constable's Office

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This would require a definition within clause 158 such as

“The reviewing officer”, in relation to a person who is detained in a place of safety means -

- (a) Where the place of safety is a hospital, the sergeant who has responsibility for policing area from where the person was taken;
- (b) Where the place of safety is a police station, the custody officer at that police station;

I believe it is more appropriate for a supervisory rank to review the continuing detention of a person at a place of safety regardless of whether it is a hospital or a police station.

Clause 150 – Whilst I am supportive of the provision of legal advice I would welcome clarity as to who is responsible for ensuring the access when the person is detained at a place of safety which is a hospital. There are practical difficulties with police officers ensuring access is provided at a hospital such as access to solicitor contact lists. I would suggest this part should clarify whether the responsibility falls to the police officer or the HSC trust.

Clause 151, 152 and 153 – I welcome the clarity that this clause provides. Currently there is not explicit authority to search persons removed under Article 130 of the 1986 Order.

Clause 154 – I am content with this clause however I note the recording requirement is triggered by detention. I would recommend the requirement is triggered upon removal as below;

“(c) the number of persons removed under this Part;”

Clause 155, 156 and 157– I welcome the clarity and succinct approach taken in this clause. The key principles within this clause are capable of being applied to existing service training and procedures. The succinct approach taken in clause 156 provides clarity that the approach within this part, although similar to the rest of the Act, is distinct.

Clause 158 – I would recommend the following amendments to the proposed clause

“Custody Officer” means a person who under Article 37 of the Police and Criminal Evidence (NI) Order 1989 is a custody officer or is performing the functions of a custody officer at a designated police station”

Clause 159 – I am unclear as to the significance of subsection (2). Is it the intention of the clause that by virtue of (2) and (2)(a) a person ceases to be liable for detention under this Part? If so I would recommend the clause is amended as below;

(2) If, while a person is detained in or being taken to a place of safety under any provision of this Part, the person is arrested for an offence and the relevant provisions of PACE apply then that person ceases to be liable to be detained under this Part or taken to a place of safety under this Part.

This would make clear that, as a consequence of having been arrested for an offence, detention under this Part must cease. I would recommend that this clause make clear that any period of detention under this Part does not count towards detention limits within PACE.

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I would be most grateful for your consideration of those comments, above. Ms Yvonne Cooke, Head of Reducing Offending/Safer Custody has day to day responsibility for mental health. Please contact Yvonne directly on 02890561553 or yvonne.cooke@psni.pnn.police.uk should you have any enquiries regarding this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'C Noble', enclosed within a thin black rectangular border.

CHRIS NOBLE
T/Assistant Chief Constable
Service Improvement Department