

Appendix B: Legal and Policy Context

Legislation

a) **Care Act 2014**

Section 1 – Wellbeing and prevention

Section 6 – Carers

Section 9 - Assessment

Section 42 – Safeguarding enquiry (neglect, abuse and self- neglect)

- b) **Public Health Act 1936** allows District/Borough Councils to give notice to owners or occupiers of premises if those premises are *"in such a filthy or unwholesome condition as to be prejudicial to health"*. The notice can require the owner or occupier to clean the premises. If they do not, the District/Borough Council can arrange to carry out the works themselves.
- c) **Health Services and Public Health Act 1968** – including S.45: Duty to make arrangements for promoting the welfare of old people.
- d) **Health and Social Care Act 2008** introduced a new single regulatory framework for health and social care. The registered person - usually the owner or manager - has a duty to inform the registration authority within 24 hours of any event that threatens the well-being of any resident (Regulation 18 notification). The registration authority is the Care Quality Commission.
- e) **Mental Health Act 1983** (revised and extended in 2007) provides a comprehensive legislative framework to support the needs of both children and adults. It is based on the presumption that the right of people who have been assessed as having a 'disorder or disability of mind or brain' is safeguarded when they are being admitted to or treated within a psychiatric hospital. In addition, as much care and treatment as possible, both in hospital and outside, should be given on an informal basis – where the individual patient is able to exercise their own judgement in the matter (with certain additional safeguards in place for children and young people) - and in the least restrictive conditions possible. The Act also presumes that the main emphasis of care is care within local communities, not within hospital settings. S.135 specifically provides the authority to seek a warrant authorising a police officer to enter premises if it is believed that someone suffering from mental disorder is *being ill-treated or neglected or kept otherwise than under proper control anywhere within the jurisdiction of the Court or, being unable to care for himself, is living alone in any such place.* [Mental Health Act 1983 \(revised 2007\)](#)

Section 3

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- f) **Mental Capacity Act 2005** became operational during 2007. Underpinning the Act are five statutory principles, the most important of which centre on the presumption of capacity unless proven otherwise, and the requirement to enable mentally capable individuals (aged 16+) to make decisions for themselves, even where those decisions may be at variance with what other people and organisations feel would be best. The MCA also provides a statutory framework to enable social care (and allied disciplines) to intervene in the lives of a person (aged 16+) where it can be demonstrated that, in relation to a specific decision that needs to be taken, the person lacks mental capacity to make that decision and therefore a decision needs to be made by a third party in the person's best interests. From April 2009, the Mental Capacity Act 2005 has made it unlawful to deprive of his/her liberty any adult person lacking mental capacity who is living in a care home or staying in a hospital. This can only be lawful if a Deprivation of Liberty Standard Authorisation is in place or a decision has been made to this effect by the Court of Protection.

Statutory Guidance:

[Care Act 2014 - Statutory Guidance](#)

[Mental Capacity Act Code of Practice 2007](#)

Hampshire and Isle of Wight Policies and Guidance:

[Hampshire 4LSAB Multi-Agency Safeguarding Adults Policy and Guidance \(2015\)](#)

[Hampshire 4LSAB Information Sharing Guidance for Adult Safeguarding \(2015\)](#)

[Hampshire 4LSAB Guidance on Prevention and Early Intervention in Safeguarding \(2015\)](#)