DOCUMENT CONTROL	
Title:	**Section 136 Mental Health Act 1983**
Version:	**7**
Reference Number:	**CL021**
Scope:	
This policy applies to all staff employed (including bank / agency staff) by or seconded to Pennine Care NHS Foundation Trust who are responsible in any way for persons detained/ liable to be detained under section 136 of the Mental Health Act (MHA) 1983. The policy also provides guidance to detaining police officers and local authority Approved Mental Health Professionals regarding the application/use of s.136 of the MHA.	
Purpose:	
The purpose of this policy is to ensure that whenever section 136 of the MHA is used, the procedures that are followed comply with the Act, Statutory Regulations, the Department of Health and Home Office Guidance for the implementation of changes to Police powers and places of safety provision in the MHA (Published October 2017) and the good practice guidance (outside of the new amendments to the Act) contained within the MHA Code of Practice 2015 (Chapter 16).	
Requirement for Policy	
Mental Health Act Legislation Police and Crime Act 2017	
Keywords:	
S136, Police, Constable, Place of Safety, MHA, Detain, Consent to Treatment, Section 136, S.136, Custody	
Supersedes:	
Version 6	
Description of Amendment(s):	
Updated to reflect the amendments to S136 of the MHA by the Police and Crime Act 2017	
Owner:	
Mental Health Law Manager	

Individual(s) & group(s) involved in the Development:	
This document has been developed in collaboration with the following interested parties: • Greater Manchester Police • Approved Mental Health Professionals • Clinical and operational staff	
Individual(s) & group(s) involved in the Consultation:	
The document has been circulated for consultation and comments have been taken into consideration and the document amended accordingly: • Mental Health Law Scrutiny Group • Acute Care Forum • Local Borough Forums	
Equality Impact Analysis:	
Date approved:	29th July 2018
Reference:	CL021- EIA021
Freedom of Information Exemption Assessment:	
Date approved:	3rd July 2018
Reference:	POL2018-05
Information Governance Assessment:	
Date approved:	19th July 2018
Reference:	POL2018-05
Policy Panel:	
Date Presented to Panel:	9th July 2018
Presented by:	Mia Majid
Date Approved by Panel:	9th July 2018
Policy Management Team tasks:	
Date Executive Directors informed:	17th July 2018
Date uploaded to Trust's intranet:	30th July 2018
Date uploaded to Trust's internet site:	30th July 2018
Review:	
Next review date:	July 2021
Responsibility of:	

Other Trust documentation to which this guideline relates (and when appropriate should be read in conjunction with):	
CL032	Community Treatment Order Policy
CL002	Consent to Examination or Treatment Policy
Policy Associated Documents:	
TAD_CL021_01	Initial Police Response to people who may be suffering from Mental Ill Health
TAD_CL021_02	PCFT – Designated Places of Safety
TAD_CL021_03	Hospital Care – A & E Departments
TAD_CL021_04	Section 136 Guidance – Nursing Staff and On Call Managers
TAD_CL021_05	Section 136 MHA Communication and Monitoring Information
TAD_CL002_18	Power of Restraint and Detention
TAD_CL021_06	Management of Patients with Alcohol Intoxication and Known / Suspected Mental Illness
Other external documentation/resources to which this guideline relates:	
	https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/656025/Guidance_on_Police_Powers.PDF
CQC Regulations **This guideline supports the following CQC regulations:**	

Contents Page

i. GUIDING PRINCIPLES

It is essential that all those undertaking the functions under the Mental Health Act 1983 (MHA) understand the five sets of overarching principles which should always be considered when making decisions in relation to care, support or treatment provided under the Act. The five overarching principles are:

Least restrictive option and maximising independence

Where it is possible to treat a patient safely and lawfully without detaining them under the Act, the patient should not be detained. Wherever possible a patient's independence should be encouraged and supported with a focus on promoting recovery wherever possible.

Empowerment and involvement

Patients should be fully involved in decisions about care, support and treatment. The views of families, carers and others, if appropriate, should be fully considered when taking decisions. Where decisions are taken which are contradictory to views expressed, professionals should explain the reasons for this.

Respect and dignity

Patients, their families and carers should be treated with respect and dignity and listened to by professionals.

Purpose and effectiveness

Decisions about care and treatment should be appropriate to the patient, with clear therapeutic aims, promote recovery and should be performed to current national guidelines and/or current, available best practice guidelines.

Efficiency and equity

Providers, commissioners and other relevant organisations should work together to ensure that the quality of commissioning and provision of mental healthcare services are of high quality and are given equal priority to physical health and social care services. All relevant services should work together to facilitate timely, safe and supportive discharge from detention.

Staff must apply all the principles to all decisions. All decisions must be lawful and informed by good professional practice. Lawfulness necessarily includes compliance with the Human Rights Act 1998 (HRA) and Equality Act 2010. All five sets of principles are of equal importance, and should inform any decision made under the Act. The weight given to each principle in reaching a particular decision will need to be balanced in different ways according to the circumstances and nature of each particular decision.

Any decision to depart from the directions of the policy and the Code of Practice must be justified and documented accordingly in the patient's case notes. Staff should be aware that there is a statutory duty for these reasons to be cogent and appropriate in individual circumstances.

1. INTRODUCTION

This policy has been revised to support the implementation of changes to the police powers and places of safety provisions within the Mental Health Act (MHA) 1983 made by the Policing and Crime Act 2017 which come in to force on the 11 December 2017. These changes primarily relate to police powers to act in respect of people experiencing a mental health crisis for the purpose of ensuring their care and safety.

The main legislative changes are:

- Amendments to s135, 136 and 138
- Insertion of new sections 136A, 136B and 136C
- Making of new statutory regulations: The MHA (Places of Safety) Regulations 2017

A person experiencing a mental health crisis should receive the best possible care at the earliest possible point. The legal changes introduced by the Police and Crime Act 2017 are intended to improve immediate service responses to people who need urgent help with their mental health in cases where police officers are the first to respond.

The main changes to the police powers and places of safety provisions can be summarised as follows:

It will be illegal for police officers to take any person under the age of 18 who has been detained under s135 (warrant to search for and remove patients) or s136 (removal of mentally disordered persons without a warrant) of the MHA to a police station as a place of safety (even in circumstances where the person under 18 may be violent or display other particular challenging behaviour).

A police station can only be used as a place of safety for an adult in exceptional and very limited circumstances. This means that police stations would only be used when certain conditions are met, for example, where the person's behaviour is so extreme (i.e. imminent risk of serious injury or death to that person or others) that they cannot be safely managed in any health based place of safety. The decision to use a police station as a place of safety must be authorised by an officer of the rank of inspector or above. The custody officer must ensure that the welfare of the adult is checked at least every thirty minutes by a healthcare professional, and any appropriate action is taken for their treatment and care, and that so far as reasonably practicable a healthcare professional is present and available to the adult at all times. In any case where it is no longer possible for those requirements to be met, the adult must be taken to another place of safety. Regulations also require the custody officer to review the adult's behaviour at least once an hour, so that the custody officer can consider (if reasonably practicable, with the advice of a healthcare professional) whether it is still the case that the adult's behaviour presents an imminent risk that no other place of safety in the police area can manage.
The new amendments will allow for the police and health partners to use anywhere which is considered suitable and safe as a place of safety providing the occupier or the person managing the premises agrees. This increases the range of practical options for frontline professionals to use in times of particular urgency.

The police will have to consult a suitable healthcare professional (so a registered doctor, nurse, occupational therapist, paramedic, or an Approved Mental Health Professional (AMHP)) prior to detaining a person under s136 providing it is feasible and possible to do so. This means the police contacting one of the above listed registered healthcare professionals through the street triage arrangements that are currently in place across the Trust. The purpose of the consultation is for a police officer who is considering using their powers under s136 – to obtain timely and relevant mental health information and advice that will support them to decide a course of action that is in the best interests of that person concerned.

The police will now be able to apply s136 anywhere except any residence where that person or any other person is living or any yard, garden, garage, or outhouse that is used in connection with the house, flat or room etc. This means that the police will be able to consider the use of s136 where the criteria is met on railway lines, hospitals (including all areas of A&E), rooftops of buildings, workplaces with restricted access etc. as well as in police custody. This will ensure that people who are in mental health crisis can be promptly taken to a place of safety or kept at the place of safety if they are already there. New s136 (B) enables a police officer to enter any place in which s136 applies (if necessary by force) to remove a person.

Detentions under s135 and s136 cannot exceed 24 hours unless there are clinical or medical reasons. This means that a mental health assessment by a doctor and an AMHP and any further arrangements required for that person's treatment or care (i.e. hospital admission/application for further detention under s2 or s3) must be made/completed within the 24 hour detention period. The 24 hour detention period can only be extended by a further period not exceeding 12 hours by the assessing registered medical practitioner (doctor) because of the person's condition (physical or mental), which means it is not practicable to complete an assessment within the 24 hour period. This might arise, for example, if the person is too mentally distressed, or is particularly intoxicated with alcohol or drugs and cannot co-operate with the assessment process. A delay in attendance by an AMHP or doctor is not a valid reason for extending the detention or for the purpose of finding a suitable hospital inpatient bed for admission/further detention for instance. If an adult is in police custody as the place of safety and a doctor authorises a further 12 hour period of detention this also has to be agreed by a police superintendent or above.
If a person subject to section 135 or 136 is taken first to A&E of a hospital for treatment of an illness or injury (before being removed to another place of safety) the detention period begins at the point when the person arrived at A&E (because a hospital is a place of safety). If the person subject to s135 in a case where the person is kept at the premises specified in the warrant, the time when the constable first entered the premises to execute the warrant will be when the period of detention commences.

Police officers will be able to conduct protective searches if they have reasonable grounds to believe that the person is concealing a dangerous item and poses a threat to themselves or others under s135 or s136(2) or (4) thereby maintaining the safety of all concerned.

Where a person escapes in the course of being removed to a place of safety under section 135(1) or 136 (1) (s)he may not be retaken under this provision after a period of 24 hours has expired from the time of that escape. Where a person escapes after arrival at a place of safety, (s)he may not be retaken under this provision after the maximum time that they could have been detained in that place. In most cases that will be a total period of 24 hours but account also needs to be taken of any extension to that period (up to a maximum of 12 hours), where this has already been authorised by the medical practitioner under section 136B, at the point of any escape.

The police and healthcare professionals involved in the application/assessment of s136 must complete the Trust s136 monitoring form in all instances and ensure this is sent to the local Mental Health Law (MHL) Office.

Further guidance on the implementation of changes to police powers and places of safety provisions in the MHA can be found here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/656025/Guidance_on_Police_Powers.PDF

2. PURPOSE

The purpose of this policy is to provide staff with a process that promotes efficient and appropriate responses to section 136 detentions.

Staff and the external multi agencies that we liaise with whilst detaining and assessing a patient under section 136 should be supported by this policy and able to apply the processes contained within in their service areas.

3. RESPONSIBILITIES, ACCOUNTABILITIES AND DUTIES

The Medical Director; is responsible for ensuring the requirements of this policy are adhered to via the Mental Health Law Scrutiny Group (MHLSG) and the Trust wide Acute Care Forum (ACF).

All managers are responsible for escalating issues to the MHLSG for investigation and monitoring the use of this policy within the local boroughs through the Mental Health Law / Acute Care Forums.

All Associate, Service and Managing Directors, Service Line Managers, Lead Managers, Team Supervisors, Health and Social Care Staff are responsible for the implementation of this policy.

It is the responsibility of all health and social care staff to ensure they are competent and familiar with their individual responsibilities identified within this policy.

To support staff who are applying this policy the Mental Health Law Manager will make sure the management of patients detained under section 136 is covered within the Trust training programs on the MHA and that any learning requirements identified through the monitoring of this policy are included in future training programs. This will be monitored by the Organisational Learning and Development Department and the Mental Health Law Manager.

The application of the section 136 process and the completion the s136 monitoring form is the responsibility of the practitioner designated locally to co-ordinate the s136 assessment (this maybe a member of the Rapid Assessment Interface and Discharge (RAID) team, Street Triage team, the bleep holder /charge nurse or any other suitable nominated practitioner) in conjunction with the medical practitioners, the Approved Mental Health Professional (AMHP) and the police.

All staff have a responsibility to follow Trust policies.

4. THE LAW

4.1 Where Section 136 (1) power can be used

A police officer has a power under s136(1)(a) to remove a person who appears to be suffering from a mental disorder and to be in need of immediate care or control to a place of safety (or keep them at a place of safety if they are already there).

A person kept at or removed to a place of safety under section 136 may be detained for a period not exceeding 24 hours (with the possibility of this period being extended by a further 12 hours but only in in very specific circumstances) in order for him or her to examined by a registered medical practitioner (wherever possible section 12(2) approved doctor, and to be interviewed by an AMHP and for any necessary arrangements to be made for his or her treatment or care. The 24 hour detention period would commence at the time of arrival to a place of safety or when the decision is made to keep the person at a place of safety if they are already there).

Previously a person could only be removed to a place of safety if he or she was found in a place 'to which the public have access to'. Section 136 can now be exercised where the person is in any place other than where that person or any other person is living or any yard, garden, garage, or outhouse that is used in connection with the house, flat or room, other than the one that is also used in connection with one or more other houses, flats or rooms.

New s136(B) enables a police officer to enter any place in which s136(1) applies (if necessary by force) to remove a person[1].

Section 136(1) no longer requires that the police officer 'finds' the person concerned. So it is now clear that s136(1) can apply regardless of how the police officer comes into contact with the person, including in circumstances where the officer had already been with the person for some time or where the officer has encountered the person following a call to respond to an incident.

[1] For example, railway lines, hospitals (but not if the person is already an inpatient in hospital – in this case section 5 holding powers should be considered), rooftops (of commercial or business buildings), police stations, offices, schools, gardens and car parks associated with communal residential property, non-residential parts of residential buildings with restricted entry).

4.2 Consulting before using s136 (1)

A police officer is now required by new section 136(C) to consult one of a list of specified healthcare professionals, where it is practicable to do so, before deciding to remove a person to, or keep a person at, a place of safety under s136(1). The MHA Code of Practice (2015) requires us to operate in the least restrictive way available, so there may be times when the formality of section 136 is not necessary. Police officers should consider other powers available to them in consultation with one of the specified healthcare professionals set out below (see also TAD_CL021_01 – initial police response to people who may be suffering from mental ill health).

Please note Section 5 and 6 of the Mental Capacity Act (MCA) do not confer on police officers authority to remove non-compliant mentally incapacitated persons to hospital or other places of safety for the purposes set out in section 136 (R. (on the application Sessay) v South London and Maudsley NHS Foundation Trust). In this instance the police will need to consider their powers under s135/136 of the MHA.

Legislation sets out the healthcare professionals that the officer can consult are as follows:

- A registered medical practitioner
- A registered nurse
- An approved mental health professional
- A registered occupational therapist
- A registered paramedic

The purpose of the consultation is for a police officer – who is considering using their powers under s136 – to obtain timely and relevant mental health information and advice that will support them to decide a course of action that is in the best interests of that person concerned. Guidance issued by the Department of Health and the Home Office which can be found here:

(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/656025/Guidance_on_Police_Powers.PDF) suggests a number of issues which police should seek to ascertain when consulting the health professional through the Street Triage arrangements (details of which are contained withinTAD_CL021_02), including:

- An opinion on whether this appears to be a mental health issue
- Whether any physical health issues may be of concern/contributing to the person's behaviour
- Whether the person is known to local health service providers
- If so, whether there is an existing care plan/strategy for dealing with a mental health crisis
- Whether using the s136 power is appropriate in the circumstances
- If so, identifying/facilitating access to an appropriate place of safety (or, if s136 is not going to be used, helping identify and implement an alternative plan)

The police officer retains ultimate responsibility for the decision to use their section 136(1) powers, having considered the advice given to them as part of any consultation. The police officer should ensure that any consultation is clearly recorded – including who was consulted and the advice they gave on part 1 of the Trusts s136 monitoring form.

It is for the police officer considering using s136 (1) to determine whether or not it is practicable in the specific circumstances to consult a healthcare professional. This decision is likely to be informed by the time it is likely to take to carry out the consultation, whether the person appearing to suffer from a mental disorder is likely to remain co-operative and present during the time taken to undertake a consultation; and whether it is safe to undertake a consultation or whether the behaviour of the person requires immediate action in the interests of safety.

In cases where a consultation has begun it may be terminated without conclusion if for example the behaviour of the person concerned changes – requiring an immediate decision, or the response to the request for advice is significantly delayed or interrupted for some reason.

The police officer should ensure that any decision not to consult before using s136(1) powers, and the reason is clearly recorded on part 1 of the Trusts s136 monitoring form.

The numbers for the Trust places of safety and street triage are contained within TAD_CL021_02

4.3 Places that can be used as a place of safety

A place of safety is now defined in the Act as:

- A hospital (including A&E departments)
- An independent hospital or care home for mentally disordered persons
- A police station (for those who are 18 or over and where the behaviour of the person poses an imminent risk of serious injury or death to self or others and because of that risk no other place of safety can reasonably be expected to detain them)
- Any other suitable place (with the consent of a person managing or residing at that place).

5. DESIGNATED PLACES OF SAFETY WITHIN PENNINE CARE NHS FOUNDATION TRUST

For the purpose of this policy, and as stated within the MHA Code of Practice, places of safety should be identified. The places of safety for each borough are identified in local protocols as well as in TAD_CL021_02 & 03, this identifies specific procedures to follow when an A & E Department is used as a place of safety or for the administration of urgent medical treatment.

The locally identified section 136 suites across the Trust should only be used for their intended function. If a decision is made for the room to be used for another purpose in an emergency situation the authorisation must be granted by a senior manager. An incident grade 4 must also be completed; use of the rooms for other purposes will be monitored by the Trust MHLSG

6. PREFERRED PLACES OF SAFETY

In general terms the choice of place of safety will depend upon the condition, circumstances, behaviour and risk of the person in question at the time, but should primarily fall within a healthcare setting.

In identifying the most appropriate place of safety for an individual, consideration should be given to the impact that the proposed place of safety (and the journey to it) may have on the person and on their examination and interview.

All boroughs in Pennine Care now operate street triage arrangements and police officers must wherever practicable consult with one of the specified healthcare professionals for advice and decision making, including the police undertaking the appropriate safety/intelligence checks before applying their s136 powers wherever practicable or soon after – for further information on the consultation requirement.

Where the place of safety is a hospital, the police should make contact as soon as is practicable with the hospital's RAID/Street Triage Team before the person's arrival at the place of safety. (TAD_CL021_04). This will allow arrangements to be made by the identified s136 co-ordinator to take charge over arranging the assessment and for the person to be interviewed by an AMHP and examined by a doctor (preferably s12 (2) approved) as soon as possible at the place of safety

People taken to a health-based place of safety should be transported there by an ambulance or other health transport arranged by the police who must, in the case of section 136, also escort them in order to facilitate hand-over to healthcare staff and complete their part of the s136 monitoring form.

If a police officer needs to take a person to A&E after detaining that person under section 136 for treatment of a physical illness or injury (before being removed to another place of safety or kept at that place of safety for an assessment for their mental health if that is in the best interests of the person) the detention period begins at the point when the person arrives at A&E (because a hospital is a place of safety). A&E should provide a safe and suitable place for the immediate care for that person. Please note that the time of arrival at A&E must be noted, documented and communicated to all relevant professionals in line with the process set out in 7.3 below. The police are required at this point to obtain a copy of the Pennine Care Trust s136 monitoring form from the A&E RAID/Street Triage Team to clearly document the date and time of arrival at A&E which will then be used to calculate the 24 hour detention period. It is common practice for the police to remain with the person whilst the person is receiving treatment in A&E until such time the person's care and custody has been formally handed over to the health based place of safety staff. However the police officer should not be expected to remain until the mental health assessment is

completed; the officer should be able to leave when the situation is agreed to be safe for the patient and healthcare staff.

In all other instances a person should be taken to the alternative place of safety that has been identified locally.

Arrival and stay at Places of Safety

Maximum detention period – The maximum period for which a person can be detained at a place of safety under s136 is now 24 hours, with a possibility of this being extended by a further 12 hours in specific and limited circumstances.

The detention period for those detained under s136 begins:

- Where the person is removed to a place of safety under s136 – at the point when the person physically enters the place of safety. Time spent travelling to a place of safety or spent outside awaiting opening of the facility does not count;
- Where the person is kept at a place of safety under s136 – at the point the police officer takes the decision to keep them at that place of safety.

The clock continues to run during any transfer (if this is necessary) of a person between one place of safety to another.

If a person subject to s136 is taken to A&E first for treatment of an illness or injury (before being removed to another place of safety) the detention period begins at the point when the person arrived at A&E (because a hospital is a place of safety).

Police officers must complete part 1 of the Trust 136 monitoring form following arrival at one of the Trust places of safety suites or following a transfer in from A&E for example.

Extending the detention period – (only the responsible registered medical practitioner responsible for the examination of the detained person can certify that an extension of up to 12 hours is necessary in specified circumstances)

The new maximum period of detention can be extended up to a further 12 hours – to a maximum of 36 hours in total from the time of arrival at the first place of safety – but only in very limited circumstances.

A decision to extend the detention period can only be taken by the responsible medical practitioner (doctor) who is responsible for the examination of a person detained under section 136 for clinical/medical reasons only. These are that, because of the person's condition (physical or mental), it is not practicable to complete a mental health assessment within a 24 hour period. This might arise for example, if the person is too mentally distressed, or is particularly intoxicated with alcohol or drugs and cannot co-operate with the assessment process. A delay in attendance by an AMHP or doctor is not a valid reason for extending detention or for the purpose of finding a suitable hospital inpatient bed for admission/further detention for instance. The doctor must clearly record their rational for extending the detention period on the Trust s136 monitoring form before the expiry of the initial 24 hour detention period.

If a person is unable to be assessed due to being intoxicated by alcohol or under the influence of illicit drugs, the level of intoxication should be carefully considered and not be used as an automatic refusal for the person's admission to a specific place of safety.

People who are detained by police under section 136 who are believed to be under the influence of alcohol or drugs should initially be medically assessed. A joint risk assessment by police and health care staff should be undertaken to ascertain whether it is appropriate for police to remain with the person at the hospital at the time, and if so, the suitable place they are required to wait in (seeTAD_CL021_06). Any person made subject to s136 powers who is in need of urgent medical treatment must be taken to an A&E Department en route to a designated place of safety. Obtaining necessary treatment will make the A&E Department the first place of safety so documenting and communicating the time of arrival to calculate the 24 hour detention period by the police and staff at A&E/RAID is vital.

If the adult person is being held at a police station, and it is intended for the assessment to take place at a police station, the authorisation to extend the maximum detention period must also be approved by a police officer of a rank of superintendent or higher (since it is expected that it would be unusual for a person to continue to meet the criteria to be held at a police station following an authorisation by the doctor and inspector to extend the detention period by a further 12 hours where it has not been possible for the doctor to assess the person in the first 24 hours due to the patient's condition (physical or mental)).

Again the period of detention needs to be accurately calculated, recorded and communicated between agencies, particularly where they 'hand over' responsibility for care of that person, since the clock continues to run during any transfer.

7. TRANSFERS BETWEEN PLACES OF SAFETY

The MHA enables a person detained at a place of safety to be transferred to one or more other places of safety, subject to the overall time limit for detention of 24 hours (taking into account any extension period already authorised for clinical/medical reasons by the responsible registered medical practitioner and not exceeding a further 12 hours (or 36 hours in total) from the time of arrival to the first place of safety). The person may be taken to a different place of safety by a police officer, an AMHP or someone authorised by either of them. If a person is to be transferred to a different place of safety where the police are involved then a further consultation needs to take place with the appropriate practitioners, where this is practicable.

The decision whether to transfer a person to a different place of safety should reflect the individual circumstances of each case. For example, where the purpose of the transfer would be to move a person from a police station to a more appropriate health care setting, the benefit of that needs to be weighed against any delay it might cause in the person's assessment and any distress that the journey might cause them.

A person may be transferred before their assessment has begun, while it is in progress, or after it is completed and they are waiting for any necessary arrangements for their care or treatment to be put in place (ensuring this does not exceed the 24 hour detention period or the extension period already authorised by the responsible medical practitioner for the reasons specified. If it is unavoidable, or it is in the person's interests, an assessment begun by one AMHP or doctor may be taken over and completed by another, either in the

same location or at another place to which the person is transferred subject to the limits in the reduced detention period.

Except in an emergency, the agreement of an AMHP, a doctor or another healthcare professional competent to assess whether the transfer would put the person's health or safety (or that of other people) at risk should be obtained (by the person with authority to effect a transfer to proceed wherever possible) before the person is transferred from one place of safety to another. It is for those professionals to decide whether they first need to examine the person.

Unless it is unavoidable, a person should not be moved from one place of safety to another until it has been confirmed that the new place of safety is willing and able to accept them.

Where it is necessary to move a person to a second or subsequent place of safety they may be taken there by a police officer, an AMHP or a person authorised by either a police officer or an AMHP.

The safe, timely and appropriate conveyance between places of safety must be considered by staff (bearing in mind that hospital or ambulance transport will generally be preferable to police transport, which should be used exceptionally, such as in cases of extreme urgency or where there is a risk of violence) .

8. RECEPTION AT THE PLACE OF SAFETY AND MENTAL HEALTH ASSESSMENT

8.1 Place of Safety other than a Police Station

When the police use their powers under section 136 they should immediately inform the person that they are being taken to a place of safety where they may be detained for up to 24 hours (subject to any extension of the period of detention authorised by the responsible registered medical practitioner for a further period not exceeding 12 hours on clinical grounds only).

Whenever a person is removed to a place of safety other than a police station, the police officer(s) will remain in attendance whilst the person's health, safety, or the protection of others necessitates this, and in any event until specialist mental health staff formally accepts responsibility for care and custody. A joint risk assessment can be undertaken at this point (which should also include a discussion regarding any further police support that maybe required if the patient becomes a risk management once the police have left the place of safety). Risks should be regularly reviewed so the police can leave at the earliest opportunity.

The period of detention starts immediately from the time the person arrives at the first place of safety (this may well be A&E in which case the 24 hour detention period would commence at this point). A record of the time of arrival at the first place of safety must be kept. This will need to be recorded in part 1 of the section 136 monitoring form (TAD_CL021_05), by the detaining police officer and communicated very clearly to the designated s136 co-ordinator receiving the patient either in A&E or at the place of safety. A supply of the section 136 monitoring forms should be kept in the section 136 suites and is the responsibility of the designated s136 co-ordinator where the patient is brought to a

Pennine Care facility or based at A&E. Part 1 of the form is to be completed in full by the police officer.

8.2 Role of the S136 Co-Ordinator, AMHP, Doctor

There must be a clearly identified person available at the place of safety to receive the person subject to s136 and take charge over the co-ordination of the assessment. The s136 co-ordinator must confirm with the police that the person is subject to s136 and ask them to complete all of part 1 of the s136 monitoring form including documenting the date and time of arrival at the first place of safety used. The s136 co-ordinator is ultimately responsible for record keeping on behalf of the hospital managers.

The s136 co-ordinator will also check that the person is aware that they are subject to the powers of s136. After checking the person is on s136 both the s136 co-ordinator and the police will undertake a joint risk assessment (which should also include a discussion regarding any further police support that maybe required if the patient becomes a risk management once the police have left the place of safety). Risks should be regularly reviewed so the police can leave at the earliest opportunity.

The s136 co-ordinator will ensure any relevant details regarding the person during handover from the police are clearly documented in the patients' history/clinical recording sheets and this information is communicated/ made available to the assessing doctor and AMHP following their arrival. The same must also be uploaded onto Paris.

The s136 co-ordinator will check whether the person is in need of any urgent medical attention/assessment before the psychiatric assessment can take place, in which case they will need to be transferred to an appropriate place such as A&E.

The detained individual will be informed verbally and in writing about their detention under s136 of the MHA, the reasons for this and their rights. The s136 co-ordinator will also be responsible for checking whether an interpreter is needed and ensure this is arranged as quickly as possible. The s136 co-ordinator will also ask the person whether they wish to have a relative or friend contacted, who may be invited to attend the place of safety. This will be documented on part 2 of the s136 monitoring form by the s136 co-ordinator. The s136 co-ordinator will also ensure that the person is kept comfortable in the place of safety, and is offered beverages and snacks whilst they are awaiting their assessment by a doctor and interview by the AMHP.

The s136 co-ordinator must ensure that the duty doctor and the duty AMHP are immediately contacted following the arrival of the person to the place of safety and that this is also documented on the s136 form as directed.

The s136 co-ordinator will ensure the assessing doctor and AMHP have access to the persons notes including the documented joint handover between the police and the s136 co-ordinator following the circumstances of the detention, any concerns during conveyance at the time of arrival and during their admission at the place of safety and any other risk information relevant to the assessment.

Where a person escapes in the course of being removed to a place of safety under section 136 (1) (s)he may not be retaken under this provision after a period of 24 hours has

expired from the time of that escape. Where a person escapes after arrival at a place of safety, (s)he may not be retaken under this provision after the maximum time that they could have been detained in that place. In most cases that will be a total period of 24 hours but account also needs to be taken of any extension to that period (up to a maximum of 12 hours), where this has already been authorised by the medical practitioner under section 136B, at the point of any escape.

An individual detained under section 136 must not be allowed to leave before the end of the 24 hour detention period without an assessment having been made by a doctor and an AMHP within that period, and consideration having been given to any other arrangements that might need to be made for his or her treatment and care.

However, if the doctor has completed an examination prior to the arrival of the AMHP and concludes that the person is not mentally disordered, the person can no longer be detained and must immediately be released. If this is the case the patient should be offered the opportunity to be seen by the AMHP, if the patient refuses this must be documented on the s136 monitoring form.

If the doctor sees the person first and concludes that they have a mental disorder and that compulsory admission to hospital is not necessary, but that they may still need treatment or care (whether in or out of hospital), the person should still be seen by an AMH. If the AMHP refuses to attend or be part of the assessment this must be recorded on the s136 form by the doctor or the s136 coordinator.

Doctors examining patients should, wherever possible, be approved under section 12 of the Act. Where the examination has to be conducted by a doctor who is not approved under section 12, the doctor concerned should record the reasons for this. They must include:

- Details of the consultation that has taken place between the assessing doctor and the section 12 doctor
- The contents of this conversation must also be clearly documented

This record should be made on the s136 monitoring form by the assessing doctor.

Although the Act allows up to24 hours for assessment (unless a doctor has certified that an extension of up to 12 hours is necessary because of the patient's condition (physical or mental) which means it is not possible to undertake the assessment before the initial 24 hour detention period expires), best practice recommendations made by the Royal College of Psychiatrists state that the assessment process will commence within 3 hours from the time of arrival at the place of safety where there are no clinical grounds to delay the assessment (16.47). Where possible the assessment should be undertaken jointly by the doctor and the AMHP. Where the place of safety is within a Pennine Care mental health unit the first stage in the process may be carried out by a duty psychiatrist who is not a section 12 approved doctor. The duty psychiatrist may conclude, in telephone consultation with the duty consultant psychiatrist (or other section 12 approved doctor), that the formal assessment may be deferred for a period longer than 3 hours from time of arrival to the place of safety. Circumstances where this may occur are:

- At night time and the patient is asleep or drowsy;

- The patient is found to be too intoxicated/unfit to be assessed.
- If the assessment cannot take place within the initial 24 hour period due to clinical reasons specified the responsible registered medical practitioner responsible for the examination of the detained patient must authorise the extension period for a period not exceeding a further 12 hours on part 2 of the Trust s136 monitoring form before the initial 24 hour period expires.

The AMHP and doctor must make every effort to liaise with each other to ensure that they see the person together unless there are overriding reasons why this is not possible. The reasons for not being able to conduct a joint assessment should be recorded within the AMHP assessment report.

If the doctor and AMHP conclude that the person is not in need of compulsory admission, the reasons for such a decision must be recorded as part of the assessment.

Where the patient appears to have a learning disability either a consultant psychiatrist in learning disabilities or AMHP with knowledge and experience of working with people with learning disabilities should be available to make the assessment if possible. This will also apply where the person is under 18 and a Child and Adolescent Mental Health Services (CAMHS) consultant or an AMHP with knowledge and experience of caring for this age group should undertake the assessment, if possible. If arranging for a CAMHS specialist to assess the person would result in a substantial delay, then those assessing the person should at least discuss the case with an appropriately qualified person.

Once the assessment has been completed it is the responsibility of the doctor and the AMHP to jointly consider if any necessary arrangements for the person's treatment or care have to be made. If compulsory admission to hospital is required then this should be under section 2 or 3 of the MHA as appropriate. Where the decision is taken not to admit to hospital, and the person is deemed to have a mental disorder or is suffering from mental distress, it becomes the responsibility of the AMHP and assessing doctor to make any other necessary follow up arrangements which could be supported as an alternative to admission.

At the point of discharge, the person must be informed that they have been discharged from the section136 by the doctor or the AMHP and this must be documented in the patients' assessment records and on the s136 monitoring form.

The professionals in attendance at the time of discharge have a duty of care to take reasonable steps to ensure the person is returned satisfactorily to the community, irrespective of whether that person is deemed to have a mental disorder.

The AMHP will have ultimate responsibility for ensuring these reasonable steps are undertaken. In the absence of the AMHP it is the doctor's responsibility in consultation with the AMHP to undertake the necessary arrangements/steps required if they conclude that hospital/compulsory admission is not required. Steps to be taken will depend on prevailing circumstances, but are likely to include: where known contacting the nearest relative or any other person of choice.

As soon as detention under section 136 ends the individual must be advised of this by either the AMHP or the doctor. Appropriate details will be entered on the Trust 136

monitoring form by the doctor and the AMHP to record the ending of section 136 detention and the outcome of this. All parts of the section 136 monitoring form must be completed in full. Non-compliance regarding the full completion of the monitoring form will be communicated and escalated by the Mental Health Law (MHL) Office with the relevant police liaison officers / in-patient services managers/associate directors for action where applicable.

8.3 Patients subject to Community Treatment Order

If it becomes apparent during the s136 assessment that the person is subject to section17A – Community Treatment Order (CTO) the patients RC should be contacted in the first instance during working hours or the on call RC if formal admission is required. This can only be done by the RC using the power of recall under section17E (completing statutory form CTO3 naming the hospital the patient is to be recalled to), a copy of the CTO3 will be retained in the patients notes and sent to the hospital the patient is recalled to (if different from where the s136 suite is located), the original will be served on the patient by the RC or the nurse, the nursing staff will complete form CTO4 to commence the start of the 72 hour detention period and ensure the patient is informed of their legal rights. The RC will then need to decide within the 72 hours if admission to hospital is necessary beyond the 72 hours and commence the proceedings to revoke the CTO with an AMHP on statutory form CTO5. The revocation process must be completed within the 72 hour detention period. Please refer to the trust policy CL32 on CTOs for further guidance on the process and procedure to follow including the CTO rules and regulations in relation to treatment.

Failure to complete the s136 monitoring form will result in a safeguarding incident at Grade 4 where the MHL Office are not provided with the necessary information to process the statutory use of s136 or unable to ascertain the date and time and outcome of the assessment.

8.4 Police Station as a Place of Safety

New s136A (1) means that a police station cannot be used as a place of safety for a person under 18 years of age under any circumstances. There are no exceptions to this total ban.

In cases where the child or young person aged under 18 years exhibits violent or volatile behaviour, this behaviour will need to be safely managed in a health based place of safety (or a place of safety other than a police station).

A police station can now only be used as a place of safety for a person aged 18 years or over and in very limited circumstances. The MHA Statutory Places of Safety Regulations 2017 specify the conditions which must be satisfied before a police station can be used as a place of safety.

A police officer is required to consult one of the healthcare professionals specified in legislation and where reasonably practicable on the use of a police station as a place of safety. In practice, a consultation with a healthcare professional under s136 (1C) on

whether to exercise s136 powers may flow seamlessly into further consideration of the most appropriate place of safety. If however, for whatever reason, there is a gap between the two decisions a police officer must, if practicable, seek a fresh consultation on this decision. This does not necessarily have to be with the same healthcare professional as was involved in any earlier decision to use s136 if they are no longer readily available.

By law the decision to use a police station as a place of safety requires authorisation of a police officer of the rank of at least inspector (senior officer), the police officer exercising the s136 power is themselves a police officer of the rank of inspector or higher, no separate authorisation is required.

The three conditions that MUST be satisfied before a police station can be used as a place of safety are:

- The behaviour of the person poses an imminent risk of serious injury or death to that person or others;
- As a result, no other health based place of safety in the relevant police force area other than a police station can reasonably be expected to detain them;
- Where the adult is detained in the police station a custody officer at the police station must ensure the welfare of the person is checked by a healthcare professional at least once every 30 minutes, and any appropriate action is taken for the treatment and care of that person and so far as is reasonably practicable, a healthcare professional will be present and available throughout the period of detention at the police station.

The regulations also specify how people must be treated if a police station is being used as a place of safety – so as well as having a healthcare professional check the persons welfare at least every 30 minutes the custody officer also has a duty to review the persons behaviour at least once an hour (or every 3 hours if the person is sleeping) to consider if this still presents an imminent risk that no other place of safety can manage. If these conditions are not met, the person should be moved to another place of safety.

Transfers between places of safety may take place but must be in accordance with the process within this policy.

Where an Inspector has authorised the use of a police station as a place of safety for persons who are 18 and over and because the specified conditions contained within the statutory regulations and described above are met an assessment should be made as quickly as possible and made a priority by the doctor and AMHP. Alternatively, a transfer to a more appropriate place of safety should be made unless it is clearly in the best interests of the person not to move them and where they continue to pose an imminent risk of serious injury or death to self or others or where moving them to a health based place of safety would cause the person distress.

Custody officers should liaise with local street triage services to commence the assessment process as soon as possible and to discuss whether the assessment needs to take place at the police station as the place of safety or at another health based place of safety.

Street triage will contact the mental health service for an AMHP and the appropriate doctor and to communicate any other relevant details about the person subject to s136 detention powers at the police station.

During the persons period of detention at the police station, the custody officer will remain responsible for 'booking-in' the person and overseeing their period of detention in accordance with the Policing and Criminal Evidence Act (PACE) 1986, PACE Code C, as well as the additional safeguards set out by regulations 4-7 of the Mental Health Act 1983 (Places of Safety) Regulations 2017.

The custody officer should open a custody record as soon as possible for anyone brought into the police station as a place of safety under section 136, and a record of the time of arrival should be kept. A copy of the s136 form should be obtained by email from the street triage team for completion by the police and the health care professionals involved in the assessment and sent to the local mental health office for monitoring.

The custody officer (unless this has been delegated to street triage services) should contact the duty AMHP and the duty doctor (preferably s12 approved) as soon as possible, prior to the person arriving at the police station. The AMHP is then responsible for contacting the second relevant section 12 approved doctor where required to undertake/complete the assessment process for further detention under section 2 or 3 under the MHA

A person detained under section 136 MHA must be assessed where possible by a doctor approved under section 12(2) of the MHA and AMHP as soon as possible. As with other venues ideally this should be within 3 hours from the time of arrival. However, there may be reasons why an assessment cannot be carried out within 3 hours. These are likely to be:

- At night time and the patient is asleep or drowsy;
- The patient is found to be too intoxicated/unfit to be assessed;
- Please note that a decision to extend the initial 24 hour detention period can only be taken by the responsible medical practitioner and if the person is being held at police station at the time, and it is intended for the assessment to take place a police station, the authorisation to extend the maximum detention period must also be approved by a police officer of a rank of a superintendent or higher (since it is expected that it would be unusual for a person to continue to meet the criteria to be held at a police station for a further period not exceeding 12 hours on top of the initial 24 hour detention period from the time of arrival).

A decision as to whether or not this is the case should be made by the AMHP in conjunction with the police and by telephone consultation with the duty section 12 approved doctor.

In accordance with the requirements of the Code of Practice, once both the doctor and AMHP have assessed the person they are responsible for making any necessary arrangements for the care or treatment of the person. If compulsory admission to hospital is required this will normally require two medical recommendations, one from the psychiatrist who has examined the person and one from either the person's GP or another

doctor who has been approved under section 12 of the MHA as having specialist knowledge of mental health. Only when the necessary documentation has been completed can the AMHP make an application for admission and the person be conveyed to the hospital named in the application with police assistance where necessary.

9. RIGHTS OF PERSONS DETAINED IN PLACES OF SAFETY

Where a hospital is used as a place of safety staff must apply section132 (provision of information to patients detained under the Act) and ensure all provisions are applied with. This includes giving the patient their rights and informing them that the maximum length of detention under section136 is 24 hours (unless the responsible registered medical practitioner certifies an extension period not exceeding 12 hours on clinical/medical grounds before the 24 detention period expires) . The recording of rights must be clearly documented on part 2 of the 136 monitoring form by the designated s136 co-ordinator.

Access to legal advice should be offered and facilitated where the patient is in a place of safety other than a police station. A list of solicitors that specialise within mental health law will be made available in the section 136 suites, however free legal aid may not be available and this must be fully explained to the patient before contact with a solicitor is made. If a police station has been used then they have a right of access to legal advice under PACE. The conditions of their detention and treatment must be in accordance with PACE Code of Practice C.

The person must be informed of their statutory rights both orally and in writing and this must clearly be evidenced on part 2 of the section 136 monitoring form. Dependent upon the place of safety used this may be either through a patient's rights leaflet which are available in the 136 suites or when in a police station they may be given a copy of the Notice of Rights and Entitlement.

10. SEARCH POWERS

New s136(C) allows a police officer to search a person subject to police detention powers under the MHA if the officer has reasonable grounds to believe that the person maybe a danger to themselves or others and is concealing something on them which could be used to physically injure themselves or others. The search is designed to ensure the safety of all involved and should be used appropriately to support policing and health agencies to effectively care for and support the person to be searched. . However the powers do not require the person to be searched. Any officer conducting a search is limited to actions reasonably required to discover an item that the officer believes that the person has or maybe concealing. The officer may only remove outer clothing. The officer may search a person's mouth, but the new power does not permit the officer to conduct an intimate search.

The power does not affect the applicability of the other existing search powers – including powers under sections 32 and 54 of PACE 1984 and the powers of health professional to search patients detained in hospitals in some circumstances.

11. AFTER THE ASSESSMENT

If the person is suffering from a mental disorder within the meaning of the Act and requires and consents to voluntary admission to hospital in line with the guidance set in the Trust's Admission, Entry & Exit Policy then the section 12(2) doctor will make the necessary arrangements for the informal admission to take place. Please note this should not be regarded as an absolute rule, especially if the reason for considering admission is that the patient presents a clear risk to themselves or others because of their mental disorder. Compulsory admission should, in particular, be considered where a patient's current mental state, together with reliable evidence of past experience, indicates a strong likelihood that they will have a change of mind about informal admission, either before or after they are admitted, with a resulting risk to their health or safety or to the safety of other people.

If the person is suffering from a mental disorder within the meaning of the Act and requires, but is refusing/non-compliant with the admission (regardless of capacity) then detention under section 2 or 3 should be considered. If the person's GP is not available and it would cause undue delay to get another doctor who is approved under section 12 of the Act then the patient may be admitted using section136 until a second doctor is available to complete the supporting medical recommendation required followed by the AMHP completing their application as long as this is within the detention period allowed under s136, otherwise consider the use of section 4 of the MHA.

If the patient lacks capacity to consent to admission and an admission is considered in their best interest (but as a result of the admission the patient will be under supervision and or control and not free to leave) and the patient does not object to being admitted to hospital, or to some or all the treatment they will receive then detention under MHA should be considered. If the criteria for detention under the MHA are not met then consider an application under the Deprivation of Liberty Safeguards. Please refer to the guidance in the Trust's Admission, Entry & Exit Policy and Chapter 13 para. 13.49 of the 2015 revised MHA Code of Practice.

If there is no hospital accommodation available locally then it is the doctor's responsibility to find a bed elsewhere using the agreed bed management protocol.

If the person is to be admitted to another hospital it is the responsibility of the AMHP to arrange for the person to be conveyed to the relevant hospital in the most suitable manner possible.

Once an assessment and decision is made any further arrangements for care and treatment must take place within the 24 hour detention period (taking into account any extension period already authorised by the responsible registered medical practitioner not exceeding a further 12 hour period where the assessment could not take place within the initial 24 hour detention period due to clinical reasons).

If it becomes apparent that the person is subject to section17A – Community Treatment Order (CTO) during the assessment then please refer to section 8.3 above and the Trust Policy CL032 on CTOs for further guidance on the process and procedure to follow including the CTO rules and regulations in relation to treatment.

12. CONSENT TO TREATMENT

The power to treat a person forcibly under s136 of the MHA does not apply. Treatment could only be given if the person has capacity and consents to the proposed treatment or, if they lack capacity to consent to treatment, by considering the powers of the Mental Capacity Act (MCA). You must document/evidence the assessment of capacity and the legal authority used to proceed with treatment.

13. EQUALITY IMPACT ANALYSIS

As part of its development, this document was analysed to consider / challenge and address any detrimental impact the policy may have on individuals and or groups protected by the Equality Act 2010. This analysis has been undertaken and recorded using the Trust's analysis tool, and appropriate measures will be taken to remove barriers and advance equality of opportunity in the delivery of this policy / procedure

14. FREEDOM OF INFORMATION EXEMPTION ASSESSMENT

Under the Freedom of Information Act (2000) we are obliged to publish our policies on the Trust's website, unless an exemption from disclosure applies. As part of its development, this policy was assessed to establish if it was suitable for publication under this legislation. The assessment aims to establish if disclosure of the policy could cause prejudice or harm to the Trust, or its staff, patients, or partners. This assessment has been undertaken using the Trust's Freedom of Information Exemption Guide, and will be reviewed upon each policy review.

15. INFORMATION GOVERNANCE ASSESSMENT

This Policy has been analysed to ensure it is compliant with relevant information law and standards as in place at the time of approval, and are consistent with the Trust's interpretation and implementation of information governance components such as data protection, confidentiality, consent, information risk, and records management.

Compliance will be reviewed against any changes to legislation / standards or at the next review of this document.

16. SAFEGUARDING

All staff have a responsibility to promote the welfare of any child, young person or vulnerable adult they come into come into contact with and in cases where there are safeguarding concerns, to act upon them and protect the individual from harm.

All staff should refer any safeguarding issues to their manager and escalate accordingly in line with the Trust Safeguarding Families Policy and Local Safeguarding Children/Adult Board processes.

17. MONITORING

The Hospital Managers will monitor the use of this policy through the Local Mental Health Law Forum / Acute Care Forum on a yearly basis. Governance Managers are responsible for escalating issues with the procedures and policy to the Mental Health Law Scrutiny Group as necessary.

Trust wide figures on the number of uses of section 136 will be submitted to the Mental Health Law Scrutiny Group and the Hospital Managers' Committee on at least a yearly basis.

The Mental Health Law Scrutiny Group will be responsible for ensuring an audit of the use of this policy is carried out bi-annually.

As part of the review, monitoring and audit of section136 usage the Acute Care Forum and the Mental Health Law Scrutiny Group will consider how any learning requirements will be addressed with staff. This includes incorporation of section136 policy and process in to the MHL Training provided across the Trust.

All records of section 136 usage should include as a minimum key demographic details such as age, gender and ethnicity, along with the duration and outcome of the detention (for example, whether the individual was taken to hospital, all occasions where the assessment was carried out by a doctor who was not s.12 approved, reasons for this and all uses of the power to transfer between places of safety.

The effective application of this policy including adherence to any standards identified within will be subject to monitoring using an appropriate methodology and design, such as clinical audit.

18. REVIEW

This policy will be reviewed three-yearly unless there is a need to do so prior to this; e.g. change in national guidance.

19. REFERENCES

Mental Health Act 1983

Police and Crime Act 2017

Department of Health and Home Office

Guidance for the implementation of changes to police powers and places of safety provisions in the Mental Health Act 1983 - October 2017

Mental Health Act Code of Practice 2015

The Royal College of Psychiatrists Standards on the use of Section 136 of the Mental Health Act 1983 (England and Wales) July 2011