

| DOCUMENT CONTROL | |
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| Title: | Section 135 Mental Health Act 1983 – Warrant to Search & Remove Patients |
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| Scope: | |
| This policy applies to all PCNFT staff and its partner agencies (police & local authorities) when invoking the powers of Section 135. | |
| Purpose: | |
| The purpose of this document is to ensure that whenever section 135 of the Mental Health Act (MHA) 1983 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 provisions in the MHA (published October 2017) | |
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| Mental Health Law Manager – Mia Majid | |
| Individual(s) & group(s) involved in the Development: | |
| This document has been developed in collaboration with the following interested parties: <ul style="list-style-type: none"> • Mental Health Law Scrutiny Group | |

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|---|---|
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| Other Trust documentation to which this policy relates (and when appropriate should be read in conjunction with): | |
| CL002 | Consent to Examination and Treatment |
| CL021 | Section 136 Mental Health Act 1983 |
| CL061 | Admission, Entry and Exit Policy |
| CL122 | Safeguarding Families Policy |
| CO010 | Incident Reporting, Management and Investigation Policy |
| IG002 | Data Protection and Confidentiality Policy |
| MHL001 | Patients Absent Without Leave Policy |
| MHL002 | Leave of Absence |

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| MHL003 | Section132, 132A and 133 Policy |
| MHL006 | Absent without Leave |
| MHL009 | Community Treatment Orders. |
| Policy Associated Documents: | |
| TAD_MHL008_01 | Pennine Care NHS Foundation Trust Designated Places of Safety |
| TAD_MHL008_02 | To be obtained from the Mental Health Law Office or Charge Nurse |
| TAD_MHL008_03 | Risk Assessment Considerations when Dealing with Situations involving Mental Ill Health or Mental Incapacity |
| TAD_MHL008_04 | Greater Manchester Section 135 Mental Health Act Protocol |
| TAD_MHL008_05 | Section 135 (1) Warrants. Patient in the Community |
| TAD_MHL008_06 | Flowchart Section 135 (2) Warrant to remove and return a patient to the place where they are liable to be detained |
| Other external documentation/resources to which this policy relates: | |
| | Department of Health. Available from: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/656025/Guidance_on_Police_Powers.PDF |
| | Department of Health. 2015. Mental health act1983: code of practice. Norwich: The Stationery Office Available from: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/435512/MHA_Code_of_Practice.PDF |
| CQC Regulations | |
| This guideline supports the following CQC regulations: | |
| Regulation 9 | Person centred care |
| Regulation 10 | Dignity and respect |
| Regulation 12 | Safe care and treatment |
| Regulation 17 | Good governance |

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1. INTRODUCTION

This policy deals with a police officer's power to enter private premises under section 135 of the Mental Health Act (MHA) 1983, and if thought fit to do so temporarily remove a person who appears to be suffering from a mental disorder and taking them to a place of safety¹ for assessment.

The act of detention in common with other activities under the MHA is an infringement of a person's independence and civil liberties. The use of this section involves an interference with the person's home and private life that must be justified under art.8 (2) of the European Convention on Human Rights (ECHR). Entry to the person's home must be a proportionate measure in all circumstances and the reasons adduced to justify the search must be relevant and sufficient. It is therefore necessary that a clear procedure in accordance with the law is adhered to by all concerned. All professionals involved with assessments under Section 135 must be fully conversant 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 provisions in the MHA (published October 2017)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/656025/Guidance_on_Police_Powers.PDF and the good practice guidance (outside of the new amendments to the Act) contained within the *MHA Code of Practice 2015 (Chapter 16)*. To define and provide guidance on the procedure and legal requirements to ensure the Trust and its partner agencies follow best practice when invoking the powers of Section 135.

2. RESPONSIBILITIES, ACCOUNTABILITIES AND DUTIES

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).

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.

¹ As defined in s135(6) a "place of safety" means residential accommodation provided by a local social services authority under Part 1 of the Care Act 2014 or Part 4 of the Social Services and Well-being (Wales) Act 2014 a hospital as defined by this Act, a police station, an independent hospital or care home for mentally disordered persons or any other suitable place (with the consent of a person managing or residing at that place).

¹ MHA Code of Practice (Revised 2015) 16.37 – there is nothing that precludes other areas of a psychiatric hospital (such as a ward) being used as a temporary place of safety, provided that it is a suitable place and it is appropriate to use that place in the individual case.

All Staff – 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.

Approved Mental Health Professionals (AMHP) – must obtain a warrant for s135(1) from a Magistrate and be responsible for coordinating the assessment. When a warrant issued under section 135(2) is being used, it is good practice for the police officer to be accompanied by a person with authority from the managers of the relevant hospital (or local authority, if applicable) to detain the patient and to take or return them to where they ought to be. When taking the person to a place of safety on a section 135 warrant, the AMHP, hospital managers or the local authority (as appropriate) should ensure that an ambulance or other transport is available to take the person to the place of safety or to the place where they ought to be in a lawful and humane manner.

There is a legal requirement for the police to be involved in the execution of both warrants under section 135(1) and 135(2).

Following entry under section 135(1), the AMHP and doctor between them should determine whether the person needs to be taken to a place of safety for further assessment or for arrangements to be made for their treatment or care.

The AMHP and the doctor may convene a mental health assessment in the person's home if it is safe and appropriate to do so with the consent of the occupier(s). In taking this decision, consideration should be given as to who else is present, particularly if a person might be distressed by the assessment taking place in these circumstances.

| Scenario | Agreement required |
|---|---|
| If the person believed to be suffering from a mental disorder is the sole occupier of the place | That person agrees to the use of the place as a place of safety |
| If the person believed to be suffering from mental disorder is an occupier of the place but not the sole occupier | Both that person and one of the other occupiers agree to the use of the place as a place of safety |
| If the person believed to be suffering from mental disorder is not an occupier of the place | Both that person and the occupier (or, if more than one, one of the occupiers) agree to the use of the place as a place of safety. |

Where it is reasonably practicable, the intended place of safety should be identified, and the necessary arrangements made, before a warrant is applied for under section 135(1). Proper planning should ensure that a police station is only ever used as a place of safety for adults removed under section 135(1) 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 warrant allows police to use force in the execution of the warrant if required. Case law would indicate that this use of force can include restricting the movement of persons within premises (DPP v Meaden 2003). The warrant gives any police officer the right to enter the premises, by force if necessary. The police officer may remain even if asked to leave, and may also search the premises for the person believed to be suffering from a mental disorder.

When acting on the warrant, the officer must be accompanied by an AMHP and a doctor. It may be helpful if the doctor who accompanies the police officer is approved for the purposes of section 12(2) of the Act. A person should be told the reasons for the removal before they are removed. The police officer may then remove the person to a place of safety, where they can be detained for up to 24 hours from the time of their arrival. The 24 hour detention period maybe 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.

Before the execution of the warrant, the AMHP should contribute to any assessment of the risk presented by the person that is carried out by the police, in order to plan to mitigate the risks identified and to help to keep that person safe during the process of their assessment or removal. A RAVE risk refers to: Resistance, Aggression, Violence (to self or others) or risk of Escape and a discussion with police and ambulance services may be required.

People taken to a health-based place of safety should be transported there by an ambulance or other health transport arranged by the police². The safe, timely and appropriate transport of the person to and between places of safety (bearing in mind that hospital or ambulance transport will usually be preferable to police transport, which should only be used exceptionally, such as in cases of extreme urgency or where there is an immediate risk of violence).

Reliance upon section 135 to gain entry in an emergency situation may be inappropriate due to the time it can take to obtain the necessary warrant. The police may use their power of entry under Section 17(1) (e) of the Police and Criminal Evidence Act 1984 (PACE) for the purposes of saving life or limb or preventing serious damage to property: however this does not confer on the police any power to remove the person to a place of safety or to detain them.

3. 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.

² MHA Code of Practice (2015) 16.41 and 16.32

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.

4. TRUST STATEMENT

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 came 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. The purpose of this policy is to ensure that whenever section 135 of the Mental Health Act (MHA) 1983 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 provisions in the MHA (published October 2017)

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/656025/Guidance_on_Police_Powers.PDF and the good practice guidance (outside of the new amendments to the Act) contained within the *MHA Code of Practice 2015 (Chapter 16)*.

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) 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 safety³ 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.

³ As defined in s135(6) a "place of safety" means residential accommodation provided by a local social services authority under Part 1 of the Care Act 2014 or Part 4 of the Social Services and Well-being (Wales) Act 2014 a hospital as defined by this Act, a police station, an independent hospital or care home for mentally disordered persons or any other suitable place (with the consent of a person managing or residing at that place).

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.

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/execution/assessment of s135 to a place of safety suite within Pennine Care NHS Foundation Trust must ensure a copy of the warrant, the details of the assessment/timeframes and outcome is sent to the local Mental Health Law (MHL) Office in the first instance.

This policy must be read in conjunction with the Trust policy on section 136 of the MHA especially regarding guidance on assessments, place of safety and the use of police custody suite.

5. SECTION 135 STATEMENT OF THE LAW

This section is defined in MHA 1983 as follows:

(S135(1)) If it appears to a justice of the peace, on information on oath laid by an approved mental health professional, that there is reasonable cause to suspect that a person believed to be suffering from mental disorder—

- (a) has been, or is being, ill-treated, neglected or kept otherwise than under proper control, in any place within the jurisdiction of the justice, or
- (b) being unable to care for himself, is living alone in any such place, the justice may issue a warrant authorising any constable to enter, if need be by force, any premises specified in the warrant in which that person is believed to be, and, if thought fit, to remove him to a place of safety with a view to the making of an application in respect of him under Part II of this Act, or of other arrangements for his treatment or care.

(1A) If the premises specified in the warrant are a place of safety, the constable executing the warrant may, instead of removing the person to another place of safety, keep the person at those premises for the purpose mentioned in subsection (1).

(S135(2)) If it appears to a justice of the peace, on information on oath laid by any constable or other person who is authorised by or under this Act or under article 8 of the Mental Health (Care and Treatment)(Scotland) Act 2003 (Consequential Provisions) Order 2005 to take a patient to any place, or to take into custody or retake a patient who is liable under this Act or under the said article to be so taken or retaken—

- (a) that there is reasonable cause to believe that the patient is to be found on premises within the jurisdiction of the justice; and
- (b) that admission to the premises has been refused or that a refusal of such admission is apprehended, the justice may issue a warrant authorising any constable to enter the premises, if need be by force, and remove the patient.

(S135(3)) A patient who is removed to a place of safety in the execution of a warrant issued under subsection (1) or kept at the premises specified in the warrant under subsection (1A), may be detained there for a period not exceeding the permitted period of detention.

(3ZA) In subsection (3), “the permitted period of detention” means

- (a) the period of 24 hours beginning with
 - (i) in a case where the person is removed to a place of safety, the time when the person arrives at that place;
 - (ii) 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; or
- (b) where an authorisation is given in relation to the person under section 136B, that period of 24 hours and such further period as is specified in the authorisation.

- (3A) A constable, an approved mental health professional or a person authorised by either of them for the purposes of this subsection may, before the end of the permitted period of detention mentioned in subsection (3) above, take a person detained in a place of safety under that subsection to one or more other places of safety.
- (3B) A person taken to a place of safety under subsection (3A) above may be detained there for a period ending no later than the end of the permitted period of detention mentioned in subsection (3) above.

S135 (4)) In the execution of a warrant issued under subsection (1) above, a constable shall be accompanied by an approved mental health professional and by a registered medical practitioner, and in the execution of a warrant issued under subsection (2) above a constable may be accompanied

- (a) by a registered medical practitioner;
- (b) by any person authorised by or under this Act or under article 8 of the Mental Health (Care and Treatment)(Scotland) Act 2003 (Consequential Provisions) Order 2005 to take or retake the patient.

(S135(5)) It shall not be necessary in any information or warrant under subsection (1) above to name the patient concerned.

(S13(6)) In this section “place of safety” means residential accommodation provided by a local social services authority under Part 1 of the Care Act 2014 or Part 4 of the Social Services and Well-being (Wales) Act 2014 a hospital as defined by this Act, a police station, an independent hospital or care home for mentally disordered persons or any other suitable place.

(S135(7)) For the purpose of subsection (6)

- (a) a house, flat or room where a person is living may not be regarded as a suitable place unless**

- (i) if the person believed to be suffering from a mental disorder is the sole occupier of the place, that person agrees to the use of the place as a place of safety;
- (ii) if the person believed to be suffering from a mental disorder is an occupier of the place but not the sole occupier, both that person and one of the other occupiers agree to the use of the place as a place of safety;
- (iii) if the person believed to be suffering from a mental disorder is not an occupier of the place, both that person and the occupier (or, if more than one, one of the occupiers) agree to the use of the place as a place of safety;
- (b) a place other than one mentioned in paragraph (a) may not be regarded as a suitable place unless a person who appears to the constable exercising powers under this section to be responsible for the management of the place agrees to its use as a place of safety.

S135(8)) This section is subject to section 136A which makes provision about the removal and taking of persons to a police station under this section.

- Section 135 provides a means by which an entry which would otherwise be a trespass becomes a lawful act. The existence of a warrant does not mean that it must be executed; the decision to do so is that of the constable. The warrant is executed once entry to the premises has been effected by the constable either by force or by invitation if the occupier is aware of the warrant. However, if the occupier of the premises allows entry without knowledge of the existence of the warrant and without the constable producing the warrant, it is submitted that the warrant has not been executed as long as the occupiers consent is not withdrawn. Any police officer can execute the warrant.
- It should be noted that when seeking to enter 'premises' authority may be granted by a co-owner or possibly co-occupier. If permission is granted to enter premises such as a hotel, where members of the public can reside, a warrant under this section is not required to enter a room in the premises that the mentally disordered person is occupying if that person has no right of exclusive occupation of the room, for example a television lounge⁴. In determining whether or not a warrant is necessary or when a person doesn't have exclusive occupation of a room case law has asked the following questions to be answered:
 - Does the occupant have a right of exclusive occupation of the room?
 - Does the occupant have a right to exclude others from the room?
 - Does the occupant have the right to deny anybody access to the room?

If the answer is no to any of the above questions then a warrant is not needed.

⁴ R v Rosso (Rosario) (2003) EWCA Crim 3242

Sections 5 and 6 of the Mental Capacity Act 2005 (MCA) do not confer on police officers authority to remove mentally incapacitated persons to hospital or other places of safety for the purposes set out in this section. (R. (on the application Sessay) v South London and Maudsley NHS Foundation Trust):

Sections 2, 3 and 4 of the Mental Health Act 1983 comprise a comprehensive statutory scheme for the admission of non-compliant patients to hospital where a co-owner or co-occupier has allowed entry to a premises (which would otherwise be a trespass) in the absence of a s135(1) warrant being obtained or executed. Otherwise reliance on a warrant will be more appropriate where for instance it would be inappropriate to complete the assessment in the community because of risks in the property (weapons, other people etc.). Or where the person is being assessed cannot be properly interviewed in a suitable manner whilst in the property, perhaps because it becomes clear that an interpreter is needed to complete the assessment for example.

6. WHEN TO USE SECTION 135(1)

- Section 135(1) should be used where there is concern about a person who is NOT currently liable to be detained under the MHA 1983.
- To obtain a warrant under Section 135(1) there must be reasonable cause to suspect the person is suffering from mental disorder and has been, or is being, ill-treated, neglected, or kept otherwise than under proper control OR is unable to care for themselves and is living alone. Magistrates may ask for further information on form MH70 (information and application by an approved mental health professional to a District Judge/Justice of the Peace for a warrant to enter specific premises to search for and remove a patient) to support the application for a warrant.
- When an AMHP considers whether to apply for a warrant or not, under section 135(1), information can be sought from police to ensure that the application to the court reflects all risks identified. Please also refer to the police guidance in TAD_MHL_03 and TAD_MHL_04 for further information.
- The person empowered to obtain a warrant under this section is an AMHP. Therefore if a doctor, CPN or other is concerned about a person in private premises who may be mentally disordered and meet the conditions detailed above, an AMHP should be contacted.
- Local Authorities will have their own guidance on the application of Section 135 and the AMHP should check those policies in the first instance. This policy merely supports and does not replace the Local Authorities policies and procedures in relation to obtaining section 135 warrants.

- Section 135(4) requires the police constable must be accompanied by an AMHP and by a registered medical practitioner.

7. WHEN TO USE SECTION 135 (2)

The purpose of a section 135(2) warrant is to provide police officers with a power of entry to private premises for the purposes of removing a patient who is liable to be taken or returned to hospital or any other place or into custody under the Act. The warrant must be granted by a magistrate. It enables a police officer to enter the premises, search for, and remove the patient so they can be taken to, or returned to, where they ought to be in the following circumstances:

- Detained patients who are absent without leave (AWOL), including patients who have failed to return from authorised leave.
- Patients who have been detained under the MHA but have absconded whilst being conveyed to hospital i.e. the medical recommendations and application have been completed. The application will not yet have been accepted on behalf of the hospital managers and formal admission to hospital has not yet taken place.
- Patients subject to Guardianship who have absconded (AWOL) from a place where they are required to reside.
- Community Treatment Order patients who have not returned to hospital following recall by their Responsible Clinician or who have absconded whilst recalled.

A Magistrate may issue a warrant under Section 135(2) provided they are satisfied that:

- there is reasonable cause to believe that the patient is to be found on the premises, and
- admission to the premises has been refused, or that a refusal of such admission is expected.

Unlike Section 135(1) a warrant under Section 135(2) does not necessarily have to be obtained by an AMHP (see section 10 (2)).

All staff should bear in mind the need for strategies of pro-active care as an alternative to the use of Section 135: e.g. calling repeatedly, calling at different or unexpected times, approaches through relatives or friends. Use of such methods may, in any case, prove necessary in order to persuade a magistrate to issue a warrant under Section 135.

When a warrant issued under section 135(2) is being used, it is good practice for the police officer to be accompanied by a person with authority from the managers of the relevant hospital (or local authority, if applicable) to detain the patient and to take or return them to

where they ought to be. For patients on a community treatment order (CTO) it is good practice for this person to be a member of the multi-disciplinary team responsible for the patient's care. The patient should be told why they are being detained, taken or retaken, before this happens.

8. ENTRY TO PRIVATE PREMISES WITHOUT A WARRANT

AMHPs should bear in mind their powers under Section 115 to enter and inspect premises where a mentally disordered person is believed to be living if they have reasonable cause to believe that the person is not under proper care and the potential consequences of Section 129 (obstruction) on the person denying access. On occasion this may provide an alternative to Section 135, but does not permit entry in the absence of consent. AMHPs should carry authenticated documents to prove their AMHP status for example ID card.

The Police have some powers of entry to private premises, both under Common Law and under the Police and Criminal Evidence Act 1984⁵. However, these are only likely to be a possible alternative to Section 135 in circumstances where there is an imminent danger to life or limb; or breach of the peace; or likelihood of serious damage to property. This can be used to protect someone from themselves, as well as someone else. However, the constable must reasonably believe serious bodily injury is imminent⁶.

9. PROCEDURE FOR OBTAINING A SECTION 135 WARRANT

Section 135 (1)

It is the role of the AMHP to obtain a warrant under Section 135(1). They must apply to a Magistrate to issue a warrant allowing access to a person believed to be suffering from mental disorder who is in private premises.

The application should be made to a magistrate for the area where the premises is located – This information can be obtained from your Local Mental Health Laws Office or the local bleep holder.

Magistrates are likely to ask the AMHP applying for a Section 135 warrant why they are applying for one and if reasonable attempts to enter without a warrant have been made. The AMHP should be prepared for this and be able to provide a report to read with documented reasons for seeking a warrant if they have not already tried to gain access by informal means.

It is not a precondition for the making of an application that admission to the premises has been refused. An application could be made where consent to entry is likely to be given in

⁵ Section 17(1)(e)

⁶ Baker v CPS [2009] EWHC (Admin) 299

circumstances where the person is likely to be either violent or to immediately abscond once entry has been effected. In other words, the warrant is being sought not to gain entry but to provide authority to the police to effectively manage the risks which will have been identified in the application. In the absence of a warrant, the legal powers of the police in such a situation would be limited to using their powers under either s.3 of the Criminal Law Act 1967, or to prevent a breach of the peace.

Section 135 (2)

This provides for the issue of a warrant to a policeman to enter premises using force if necessary, for the purposes of taking or retaking a patient who is already liable to be detained into custody. The warrant can only be issued if admission to premises has been refused or that refusal can be anticipated. Any officer authorised under the MHA can apply for a warrant under Section 135(2). This can be an AMHP, nurse, Care Coordinator or police officer. In practice it should be an appropriate person who knows the patient well. An AMHP may be able to assist if required.

The officer applying for the warrant should contact the Clerk to the Justices of the Magistrates' Court, serving the Borough in which the patient resides – This information can be obtained from your Local Mental Health Law Office or the local bleep holder.

General

The general requirements of obtaining warrants are as follows: The application for the warrant shall be made without notice and the information laid before the magistrate must be in writing (s.15(3)).

- The warrant shall authorise an entry on one occasion only unless it specifies that it authorises multiple entries (either unlimited or limited to a specified maximum) (s.15(5), (5A)).
- The warrant shall specify the name of the person who applies for it, the date on which it is issued, and the fact that it was issued under the Mental Health Act (s.15(6)).
- The warrant shall identify, so far as is practicable, the person to be sought (s.15(6)).
- Apart from a warrant that authorises multiple entries where as many copies as are reasonably required may be made, two copies shall be made of the warrant and the copies shall be clearly certified as copies (s.15(7), (8)). One copy is retained by the police and the other is handed to the occupier of the premises. It is suggested that a third copy be taken for retention by the person in charge of the place of safety to which the patient is removed.
- Entry and search under the warrant must be within three months from the date of its issue (s.16(3)).

- Entry and search under the warrant must be at a reasonable hour unless it appears to the constable executing it that the purpose of the search may be frustrated on an entry at a reasonable hour (s.16(4)).
- If the occupier of the premises is present at the time when the constable seeks to execute the warrant, the constable shall (a) identify himself; (b) produce the warrant to him; and (c) supply him with a copy of it. If the occupier of the premises is not present but some other person who appears to the constable to be in charge of the premises is present, the above procedure will be followed in respect of that other person. If there is no person present who appears to the constable to be in charge of the premises, he shall leave a copy of the warrant in a prominent place on the premises (s.16(5), (6), (7)).
- A search under the warrant may only be a search to the extent required for the purpose for which the warrant was issued (s.16(8)).
- The constable executing the warrant shall make an endorsement on it stating whether the person sought was found (s.16(9)).
- A warrant which has been executed, or which has not been executed within the time authorised for its execution, shall be returned to the designated officer for the local justice area in which the justice was acting who shall retain it for a period of 12 months. During this period the occupier of the premises to which the warrant relates shall be allowed to inspect the warrant (s.16 (10), (10A), (11), (12)).

Magistrates' Courts are normally open from Monday to Friday between 9am and 5pm, but closed on Sundays, Christmas Day and Good Friday. On Saturdays and Bank Holidays what are termed occasional courts may sit if there are custody overnight cases from police stations to be dealt with. Every Magistrate's Court will have a list of justices who are prepared to hear applications for warrants in their homes out of normal business hours, at weekends and on Bank Holidays. The local police will have a list of such justices with their home telephone numbers. To avoid what may be unnecessary delay through having to contact the police for such a list in an emergency, officers making applications are advised to contact the Clerk to the Justices of their local Magistrates' Court to obtain a copy of the list of out of hours justices and to keep this safely⁷.

10. EXECUTING A SECTION 135 WARRANT AND THE ROLE OF THE POLICE

Mental Health Act Assessments may occur on private premises with or without police support. Police officers should be requested to support the process where this is consistent with their duty to prevent crime and protect life and property.

⁷ Staff should be aware that due to Paragraph 16.1 of schedule 1, Magistrates Courts Fees Order 2008 a charge may be applied for applications for warrants. This is usually £18.00

Assessments on private premises with police support may occur with or without a warrant issued under Section 135(1) MHA. The police will support an Approved Mental Health Professional (AMHP) at a pre-planned mental health assessment on private premises both where a warrant is applied for and in other circumstances where appropriate, following an assessment of risk.

Where the police attend, they are responsible for controlling the operation for the purposes of entry into the premises and for ensuring the mitigation of identified risks.

As soon as it has been decided that there is the need for access under Section 135 and a warrant has been obtained, the AMHP (for Section 135(1)) or the Officer authorised under the MHA (Section 135(2)), as the person responsible for co-ordinating the assessment, will take the following action.

- Contact the local police and brief them about the time and address of the proposed assessment, name and date of birth of the person to be assessed
- The name and telephone number of the AMHP who will be responsible for the proposed assessment;
- Details of other persons likely or known to be on the premises
- Details of any history of violence
- Any other known or potential risk factors (e.g. dogs) (see section 11)

On receipt of this information, the police will create a Force Wide Incident Number (FWIN) and consider information held by police which may need to be shared as part of any risk assessment prior to police or health professionals attending the address.

- The co-ordination of the section 135 assessment will also include arranging for the police and doctor to attend at the agreed time, date and place.
- Provisional arrangements should be made with the ambulance service for the conveyance of a person to place of safety or hospital.

Before a warrant is applied for under Section 135(1), the AMHP with responsibility for co-ordinating the assessment will identify a preferred place of safety to be used in the event that assessment cannot occur within the premises. This location will be used unless it becomes apparent that the detainee requires urgent physical health assessment and management, in which case they will be taken to the nearest appropriate Emergency Department

If a warrant has been issued under Section 135(1) the police officer must be accompanied by an AMHP and at least one doctor.

The police officer's role is to gain entry to the premises and to ensure the safety of all persons present including that of the doctor and the AMHP whose joint role is to assess whether the patient should be removed to a place of safety.

If a warrant has been issued under Section 135 (2), the police officer need only be accompanied by one person authorised to retake the patient (this could be a doctor, Care Coordinator or AMHP).

If the occupier of the premises is present at the time when the police officer seeks to execute the warrant, the police officer shall:

- Identify themselves to the occupier
- Produce the warrant for the occupier, and supply them with a copy;
- Complete and sign the endorsement section at the bottom of the Warrant to Search and Remove the Patient
- Leave a copy of the warrant on the premises (if the occupier is not present and entry has been executed).

It should be borne in mind however that a warrant under Section 135(1) gives powers but does not compel the police to force entry to the premises or convey the service user to hospital if the service user is cooperating with the assessment. Professionals involved should use their judgment and discretion depending on the circumstances. However, the police should remain in attendance as the person being assessed may change their mind at any point during the course of the assessment and police assistance may then be required.

It is a criminal offence under Section 129 of the Mental Health Act 1983 to obstruct those exercising their functions under the Act. Therefore if an authorised person wants to search premises for a mentally disordered person and they are obstructed in their search it may be helpful to remind any person(s) causing the obstruction of the offence they are committing as a means of persuasion to gain access to the property.

The warrant is executed once entry to the premises has been implemented by the police, either by force or by invitation. If the occupier of the premises allows entry without knowledge of the existence of the warrant and without the constable producing the warrant, it is submitted that the warrant has not been executed as long as the occupier's consent to the entry is not withdrawn. Any warrants not exercised must be returned to the magistrates court by the AMHP.

In exceptional circumstances, in case of urgency and where it is necessary to manage a risk of violence or prevent escape, a police officer may decide to expedite conveyance themselves. It may be necessary for the highest qualified member of an ambulance crew to ride in the same vehicle.

11. LEVEL OF POLICE RESPONSE

The Operational Communications Branch (OCB) will contact divisional police supervision in order that they can assign appropriate police officers to respond to the request for assistance and liaise with the AMHP at the earliest opportunity. It will be the responsibility of the police supervisor to determine the level of response required at the address based on shared risk

assessments and to ensure that appropriate police resources are identified, tasked and briefed.

12. SECTION 135 ASSESSMENT

Once entry has been gained, Section 135(1) allows a person to be initially assessed and, if their mental state and general condition warrants it, to be removed to a place of safety for up to 24 hours for a full Mental Health Act assessment. The 24 hours start at the time the person arrives at the place of safety. Or, if kept at the premises named within the warrant as a place of safety subject to consent from the occupier(s), the time when the constable first entered the premises to execute the warrant. The 24 hours can be extended in s136B for a further 12hrs if the registered medical practitioner considers it necessary because the condition of the person detained means it would not be practicable for the assessment to be carried out before the end of 24hrs for clinical reasons. The authorisation must be given before the initial 24 hours expires. If someone goes AWOL whilst being taken to or detained at a place of safety, the timescale for re-taking reduces to 24 hours starting from when he first escaped or was liable to be detained- whichever expires first. The place of safety will be in line with the arrangements for Section 136 (TAD_MHL008_01).

Following assessment if the doctor concludes on his/her initial examination that the person is not mentally disordered, the power to remove the person to a place of safety and for the professionals to remain on the premises lapses.

If the outcome of the assessment is that the person does not need, and does not meet the criteria for detention, the person should be offered alternative care and treatment plans as appropriate.

13. TRANSPORTATION TO HOSPITAL

When the outcome is removal to hospital/place of safety, an ambulance will normally be used.

The Police should remain in attendance until the person has been removed from the premises and taken into the ambulance unless there is evidence that staff would face resistance (active), aggression, violence or escape (RAVE) may occur and as a result a police vehicle/assistance is required.

Under Section 135 (1) the AMHP has the ultimate responsibility to ensure that the patient is conveyed to hospital in a lawful and humane manner and should give guidance to those asked to assist.

The AMHP or a delegated other should accompany the patient and the police should follow where RAVE risks apply as part of a joint risk assessment completed by the AMHP, police and ambulance.

If there is a clear history of risk and/or is likely to be violent or dangerous, in removing a person to hospital, the police should manage the overall process of entering and securing the premises and the safe removal of the service user by the police, using police transport if necessary, with the AMHP or the ambulance following behind.

People removed to a place of safety can be detained there for a maximum of 24 hours so that they can be examined by a doctor and interviewed by an AMHP in order that any necessary arrangements can be made for their treatment or care. The 24 hours can be extended in s136B for a further 12 hours if the registered medical practitioner considers it necessary because the condition of the person detained means it would not be practicable for the assessment to be carried out before the end of 24hrs for clinical reasons. The authorisation must be given before the initial 24 hours expires.

14. RIGHTS FOR PERSONS DETAINED IN A PLACE OF SAFETY (UNDER SECTION 135(4))

Where a hospital is used as a place of safety, it is the responsibility of staff on behalf of the hospital managers to ensure that the provisions of Section 132 (giving of information) are complied with.

Patients should be told that the maximum period of detention under section 135 is 24 hours and under what circumstances the detention may be extended for a further period not exceeding 12 hours.

If the patient is in agreement, their relative or another person of their choice should be informed of their detention at the hospital.

In addition, if a patient makes a request they should be supported in obtaining legal advice.

Patients have a right to complain about the process and this should be in accordance with the standard Trust process.

15. CONSENT TO TREATMENT

Detaining a patient in a place of safety under Section 135 **does not confer any power under Part IV of the MHA 1983 to treat them without their consent.** They are in exactly the same position as patients who are not detained under the MHA in respect of consent to treatment. Please refer to the Trust policy on Consent to Examination and Treatment (CL2) for further information.

In emergencies, however, it may be possible to provide treatment if the patient lacks capacity to consent. If it is in the best interests of the patient to do so, treatment could be provided under the provisions of the Mental Capacity Act. This must be documented clearly in the patient's health records.

16. TRANSFER BETWEEN PLACES OF SAFETY

The Mental Health Act introduced a power to transfer patients detained under Section 135 from one place of safety to another as long as this is now within the 24 hour period allowed (taking into account any authorisation to extend the 24 hours by a further period not exceeding 12 hours before the initial 24 hour detention expires).

Detentions under Section 135 (1) are normally arranged in advance. Therefore as the local mental health unit will usually be the identified place of safety it will be less likely that transfers between places of safety will be required.

Any decision by a doctor or AMHP to transfer to another place of safety must be based on clinical need in the interest of the patient's health and safety.

The decision whether to transfer a person to a different place of safety should reflect the individual circumstances of each case. For example, transfer to A&E to deal with a medical emergency.

The original time of detention and time of any transfer should be clearly recorded and this information shared between the transferring and receiving place of safety.

17. TERMINATING SECTION 135 (1)

The authority for detention under this section ends after the assessment process has been completed and no other arrangements are needed for instance informal or formal admission to hospital, or the provision of community care services in the person's own home.

A person who is detained in hospital under Section 135 pending completion of their assessment cannot have their detention extended by the use of a Section 5(2) or Section 5(4).

Local considerations to be made by assessors as to how patients should be returned home.

18. COMMUNITY TREATMENT ORDER PATIENTS

Where a patient is under CTO and compulsory admission is indicated the recall power should be used and consideration given to revoking the CTO. However where the patient's whereabouts is known but access to the patient cannot be obtained, Section 135 (2) can be used for a CTO patient who has not returned to hospital following recall by the Responsible Clinician. Please also refer to the Trust policy on Community Treatment Orders (CL32).

For patients under CTO it is good practice for the police officer executing the warrant to be accompanied, if possible, by a member of the multi-disciplinary team responsible for the patient's care.

19. MONITORING OF THIS POLICY

The Hospital Managers will monitor the use of this policy through the Local Mental Health Law Forums and local incident reporting processes and procedures as and when this is considered appropriate. Governance/Service and Line 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 Section 135 patients will be submitted to the Mental Health Law Scrutiny Group 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 completed only where incidents indicate there is a need to do so.

As part of the review, monitoring and audit of incidents Local Governance/Service/Line Managers and the Mental Health Law Scrutiny Group will consider how any learning requirements will be addressed with staff. This includes incorporation of Section 135 policy and process in to the MHL Training provided across the Trust.

Local Authorities will create their own versions of this document that offer further local process. These documents should be stored by the Mental Health Law Offices in each site for reference purposes.

20. 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

21. 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.

22. 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.

23. SAFEGUARDING

All staff have a responsibility to promote the welfare of any child, young person or vulnerable adult they 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.

24. 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.

25. REFERENCES

Department of Health and Home Office, 2017. *Guidance for the implementation of changes to police powers and places of safety provisions in the mental health act 1983*. Department of Health. Available from:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/656025/Guidance_on_Police_Powers.PDF [Accessed 19 March 2019]

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Equality Act 2010

Freedom of Information Act 2000

Mental Health Act 1983

Police and Crime Act 2017