



MULTI-AGENCY SECTION 135 (1) & (2) MENTAL HEALTH ACT 1983 PROTOCOL

Document Summary

This document outlines the roles and responsibilities of each organisation for the use of power to remove a person to a place of safety under Section 135 of the Mental Health Act 1983 amended 2007.

DOCUMENT NUMBER	POL/001/086
DATE RATIFIED	03/09/2019
DATE IMPLEMENTED	Sept 2019
NEXT REVIEW DATE	Sept 2022
ACCOUNTABLE DIRECTOR	Deputy Director, Mental Health & Learning Disabilities Commissioning Team, Cumbria Clinical Commissioning Group
POLICY AUTHORS	(Joint) – Development Officer for mentally Disordered Offenders & Criminal Justice Inspector Cumbria Constabulary.

Important Note:

The Intranet version of this document is the only version that is maintained.

Any printed copies should therefore be viewed as “uncontrolled” and as such, may not necessarily contain the latest updates and amendments.

Contents

Contents

1. Introduction.....	3
2. Scope.....	3
3. Purpose.....	3
4. Definitions.....	4
5. Duties.....	6
6. Place of Safety.....	6
7. Section 135(1) warrant.....	7
8. Pre- Assessment under Section 135(1).....	8
9. Executing the warrant: standards for practice.....	9
10. Undertaking the Mental Health Act assessment.....	10
11. Transfers between places of safety.....	12
12. Time Extensions.....	12
13. Section 135(2) warrant.....	13
14. Process for Implementation and Training.....	15
15. Equality Statement.....	15
16. Monitoring.....	15
17. Complaints.....	15
18. Case law in relation to Section 135:.....	16
19. References.....	16
Appendix 1 – Section 135 (1) Flow Chart.....	17
Appendix 2 – Section 135 (2) Flowchart.....	18
Appendix 3 – Cumbria County Council Guidance to obtain warrant.....	19
Appendix 4 - Flowchart for Assisnace to Secure Property.....	20
Appendix 5 - S 135 (1) Monitoring Form.....	211
Appendix 6 – Joint Risk Assessment (JRAM).....	222

1. Introduction

- 1.1. The Mental Health Act (MHA) Code of Practice (CoP) requires Local Social Services Authorities (defined in Section 145(1) Mental Health Act), the National Health Service (NHS) and the local Police Authority to establish a clear policy for the use of the power to remove a person to a place of safety under Section 135 Mental Health Act. This Protocol has therefore, been developed, with the co-operation and agreement of all the agencies, which are involved with the Section 135 process in Cumbria. It sets out the responsibilities and expectations of those involved, so that there is clarity and consistency in the way that working practices are implemented. This protocol takes account of the legislative requirements, arising from the Policing and Crime Act 2017.
- 1.2. This protocol is an all age protocol. It is acknowledged that at time Section 135 (1) & (2) Mental Health Act 1983 may be applied in relation to Children and Young Person, however should this situation occur it requires to be handled in a sensitive and appropriate manner.
- 1.3. This procedure outlines the roles and responsibilities of each of the organisations that are the signatory bodies and provides guidance for police officers and related civilian personnel, medical and/or other healthcare practitioners, and Approved Mental Health Professionals (defined in Section 114 Mental Health Act)

2. Scope

This document reflects the policy requirements of:

- Cumbria Constabulary
- Cumbria Partnership NHS Foundation Trust
- Cumbria County Council
- North West Ambulance Service (NWAS)

3. Purpose

- To fulfil the requirements of Section 135 Mental Health Act, the Human Rights Act 1998 and Police and Criminal Evidence Act 1984 and Policing and Crime Act 2017, in respect of medical and social assessment of circumstances of people brought by the police to a 'place of safety.'
- To ensure high quality assessments of people removed or detained under Section 135 Mental Health Act, and to provide a rapid and flexible service.
- To ensure assessments under Section 135 Mental Health Act meet the requirements of the Mental Health Act Code of Practice, Police and Criminal Evidence Act 1984 and the Policing and Crime Act 2017
- To maintain good standards of practice in relationships between Cumbria Constabulary, Cumbria Partnership NHS Foundation Trust, Cumbria County Council, and North West Ambulance Service.
- To maintain the professional expertise of police officers, Approved Mental Health Professionals, registered medical practitioners and authorised persons in ensuring the proper assessment of people detained under Section 135 Mental Health Act
- To obtain and monitor information in respect of the use of Section 135 (1) and (2) and to improve service delivery

- Whilst the person is detained under legal framework of Mental Health Act the agencies will protect and promote human rights enhancing the underlying principles of fairness, respect, equality and dignity.

4. Definitions

- 4.1. **Absent without Leave (AWOL)** – When a patient absconds from legal custody in the following circumstances: when a detained patient leaves hospital without getting permission first or does not return to hospital when required to do so; when guardianship patients leave the place their guardian says they should live; and when Community Treatment Order patients and conditionally discharged restricted patients don't return to hospital when recalled, or leave the hospital without permission after they have been recalled.
- 4.2. **The Act** – Unless otherwise stated, the Mental Health Act 1983 (as amended, including by the Mental Health Act 2007, the Health and Social Care Act 2012, the Care Act 2014 and the Policing and Crime Act 2017).
- 4.3. **Application for detention** – An application made by an Approved Mental Health Professional, or a nearest relative, under Part 2 of the Act for a patient to be detained in a hospital either for assessment or for medical treatment. Applications may be made under Section 2 (application for admission for assessment), Section 3 (application for admission for medical treatment) or Section 4 (emergency application for admission for assessment).
- 4.4. **Approved Mental Health Professional** – A social worker or other professional approved by a local authority to carry out a variety of functions under the Act.
- 4.5. **Care Coordinator** – professional responsible for coordinating the person's care under the framework of the Care Programme Approach.
- 4.6. **Care Programme Approach (CPA)** – A system of care and support for individuals with complex needs which includes an assessment, a care plan and a care coordinator
- 4.7. **Code of Practice (CoP)** – A publication from the Department of Health published in 2015 outlining the Mental Health Act 1983 Amended 2007.
- 4.8. **Community Treatment Order** –The legal authority for the discharge of a patient from detention in hospital, subject to the possibility of recall to hospital for further medical treatment if necessary. Community patients are expected to comply with the conditions specified in the community treatment order.
- 4.9. **Convey** – Transporting a patient under the Act to hospital (or anywhere else), compulsorily if necessary.
- 4.10. **Doctor approved under Section 12** – A doctor who has been approved under the Act by the Secretary of State for Health as having special experience in the diagnosis or treatment of mental disorder, or by a body which the Secretary of State has authorised to exercise the approval function under the Act, or by Welsh Ministers. Some medical recommendations and medical evidence to courts under the Act can only be made by a doctor who is approved under Section 12. (Doctors who are approved clinicians are automatically treated as though they have been approved under Section 12.).

- 4.11. **Duly authorised health care professional** – for the purposes of S135 (2) a duly authorised health care professional can be a member of the multi-disciplinary team, a care coordinator, a ALIS team member who can apply for a S135 (2) warrant.
- 4.12. **European Convention of Human Rights (ECHR)** – The European Convention for the Protection of Human Rights and Fundamental Freedoms; the substantive rights it guarantees are largely incorporated into UK law by the Human Rights Act (HRA) 1998. The HRA places a duty on public authorities to respect and protect people’s human rights.
- 4.13. **Guardianship** – The appointment of a guardian to help and supervise patients (aged 16 or over) in the community for their own welfare or to protect other people. The guardian may be either a local authority or someone else approved by a local authority (a private guardian).
- 4.14. **Hospital Managers** – The organisation (or individual) responsible for the operation of the Act in a particular hospital (e.g. an NHS trust, an NHS foundation trust or the owners of an independent hospital).
- 4.15. **Medical Recommendation** – Normally means a recommendation provided by a doctor in support of an application for detention or a guardianship application
- 4.16. **Mental disorder** – Any disorder or disability of the mind, as well as mental illnesses, it includes conditions like personality disorders, autistic spectrum disorders and learning disabilities
- 4.17. **Place of Safety** – A place in which people may be temporarily detained under Section 135 or 136 of the Act, as defined in Section 135(6).
- 4.18. **Police and the Criminal Evidence Act 1984 and Policing and Crime Act 2017**– Legislation that regulates police powers and whilst protecting public rights.
- 4.19. **Recall (and recalled)** – A requirement that a patient who is subject to the Act return to hospital, it can apply to patients who are on leave of absence, who are on a community treatment order, or who have been given a conditional discharge from hospital.
- 4.20. **Responsible Medical Practitioner**- responsible for the examination of the person detained under a Section135
- 4.21. **Responsible Clinician** –The approved clinician with overall responsibility for a patient’s case; certain decisions (such as renewing a patient’s detention or placing a patient on a community treatment order) can only be taken by the responsible clinician.
- 4.22. **Section 12 approved doctor** – A doctor who has been approved under the Act by the Secretary of State for Health as having special experience in the diagnosis or treatment of mental disorder, or by a body which the Secretary of State has authorised to exercise the approval function under the Act, or by Welsh Ministers. Some medical recommendations and medical evidence to courts under the Act can only be made by a doctor who is approved under Section 12. (Doctors who are approved clinicians are automatically treated as though they have been approved under Section 12.)
- 4.23. **Section 135** – A Section 135 warrant provided by a magistrate (which may be issued if certain circumstances are met) enables a police officer to enter premises to either:

remove a person to a place of safety to make an application under part 2 or other arrangements for their care or treatment; or take or retake into custody a patient who is liable to be detained under the Act or relevant Scottish law.

5. Duties

- 5.1. **Approved Mental Health Professionals** – have a duty under S135 (1) to apply for a warrant and to accompany the police to serve the warrant and to undertake a Mental Health Act assessment of the person and to arrange transport
- 5.2. **Duly authorised health care professional** – has a duty under S135 (2) to apply for a warrant for a person who is absent without leave or absconded from a place where they are required to reside or has not complied with Community Treatment Order recall.
- 5.3. **Hospital Managers** – have responsibility to ensure locally agreed procedures exist in relation to obtaining warrants both in and outside of working hours and that these procedures are subject to periodic review to ensure effectiveness.
- 5.4. **Police** – have the power under a S135 (1) to affect entry using force if necessary to private premises for the purpose of removing a person to a place of safety.
- 5.5. **Responsible Clinician** – makes certain decisions for those people subject to the Act such as recall of a patient subject to a Community Treatment Order.
- 5.6. **Section 12 doctor** – to accompany the AMHP and police officers to serve the warrant and to jointly identify the place of safety and undertake a Mental Health Act assessment of the person and make any medical recommendation necessary for person's detention under the Act.

6. Place of Safety

- 6.1. The Policing and Crime Act 2017 defines a place of safety as:
 - a hospital
 - an independent hospital or care home for mentally disordered persons
 - a police station(but see 6.3)
 - residential accommodation provided by a local social services authority
 - any other suitable place (with the consent of a person managing or residing at that place) See 6.7.
- 6.2. The Policing and Crime Act Section 136A (1) means a police station may not be used as a place of safety for a person under the age of 18 years under any circumstances.
- 6.3. A police station may now only be used as a place of safety for a person aged 18 and over in the specific circumstances set out in the Mental Health Act 1983 (Places of Safety) Regulations 2017, namely, where:
 - The behaviour of the person poses an imminent risk of serious injury or death to themselves or another person
 - because of that risk, no other place of safety in the relevant police area can reasonably be expected to detain them, and
 - so far as reasonably practicable, a healthcare professional will be present at the police station and available to them.

- 6.4. The authority of an officer of at least the rank of Inspector must be given for the use of a police station in such circumstances – unless the person making the decision is themselves of such a rank or higher.
- 6.5. A place that is not specifically named in the legislation as a place of safety can be a “suitable place” (and thus a place of safety) if it is suitable, and with the agreement of relevant parties. In the case of a private home this is the agreement of the person believed to be suffering from a mental disorder and, unless the detained person lives alone at the property, one person residing there. Where the place is not a private home, the agreement of the person who appears to manage that place is required.
- 6.6. This amendment came about to clarify the operation of this power; prior to this there had been lack of clarity about whether or not, having gained entry with a warrant, it was legal to undertake the mental health assessment in the place where the warrant was executed rather than always having to remove the person to a place of safety. This change to the law now makes it clear that, with agreement of the person or householder, and if safe to do so, an assessment could take place in the home rather than removing the person to a hospital-based place of safety. The table below summarises the consent that is required

<i>Scenario</i>	<i>Consent required</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.
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.
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.

- 6.7. The legislation continues to provide for a range of locations to be used as a place of safety, which allows for local flexibility to respond to different situations. A person in mental health crisis should be taken to or kept at a place of safety that best meets their needs.

7. Section 135(1) warrant

- 7.1. The purpose of a Section 135(1) warrant is to provide police officers with a power of entry to private premises, for the purposes of removing the person to a place of safety for a mental health assessment or for other arrangements to be made for their treatment or care. The warrant must be applied for by an AMHP and can be granted by a magistrate when the person is believed to be:
- i. suffering from mental disorder and is being ill-treated, neglected or kept otherwise than under proper control, in any place within the jurisdiction of the Justice, or
 - ii. Being unable to care for themselves, is living alone in any such place

- 7.2. 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.
- 7.3. 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, or if they are kept at the premises specified in the warrant at the time the constable first entered the premises to execute the warrant.
- 7.4. 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 it is not necessary to use a police station as a place of safety for people removed under Section 135(1), other than in the exceptional circumstances described in CoP16.38 and the Policing and Crime Act Section 136A (1).

8. Pre- Assessment under Section 135(1)

- 8.1. Having established that the grounds for a warrant application are met and that an application is justified in terms of the Human Rights Act, the AMHP will contact the Police, (with as much notice as possible). The AMHP will telephone the Force Communication Centre on the priority line 03301247165.
- 8.2. Upon receiving the request Police will create a Log and generate a unique reference number.
- 8.3. On receiving a request for assistance the Police and AMHP will jointly risk assess the execution of the warrant (see Appendix 3 relevant form contained in guidance document).
- 8.4. All agencies involved will enquire into the background of the patient (as known to his/her agency) and exchange relevant information for example:
 - The time and place of the proposed assessment
 - The identity of the person to be assessed and any background information
 - The premises to be entered
 - The type of any equipment required to gain entry
 - The identity of the professionals involved
 - The location of the "place of safety"
 - The name and telephone contact number of the AMHP responsible for organising the assessment and the subsequent conveyance of the patient.
- 8.5. The AMHP will meet with the Magistrate(s) and give information to support the need for the warrant (details from the risk assessment may be relevant).
- 8.6. Local authorities and hospital managers should ensure that there are procedures in place for obtaining warrants, both during and outside court hours. These procedures should describe the necessary processes, the evidence which individuals may be reasonably expected to produce, and the documents that should be prepared to help

the process run smoothly and quickly – see Appendix 3 guidance contained within this documents

- 8.7. The decision to grant a warrant to a constable or to an AMHP by a court is usually in a process that is 'ex parte' – without giving notice to the person affected. The court will therefore need to be assured that, in accordance with Articles 5 and 6 of the European Convention of Human Rights, it is absolutely necessary that such an urgent and serious procedure is required in order to achieve the safety or protection of the person concerned.
- 8.8. In order for Magistrates to be satisfied that it is appropriate to issue a warrant they are likely to ask AMHPs:
- why they are applying for a warrant, i.e. there is reason to suspect the person is suffering from a mental disorder, there are significant risks to the persons health and safety, and/or the safety of others
 - whether reasonable attempts to enter without a warrant have been made i.e. details of what has been tried and by whom and
 - if not, why not
- 8.9. Although it is not necessary for permission to enter to have been refused in order for a Section 135(1) warrant to be granted, applicants should provide documented reasons for seeking a warrant if they have not already tried to gain access.
- 8.10. 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.
- 8.11. Entry to the premises must take place within 3 months of the date of issue of the warrant. A Section 135(1) warrant can only be executed once. An electronic Section 135 (1) warrant cannot be held on the person's electronic case record or email system, for any future use once it has been executed.
- 8.12. The original warrant must be returned to the Clerk to the Justices by the AMHP as soon as possible after it has been executed or if not executed its expiry date (3 months after issue). The warrant will then be kept by the Clerk to the Justices for a minimum of twelve months. It will be made available for inspection by the occupier of the premises concerned on request.

9. Executing the warrant: standards for practice

- 9.1 The AMHP will liaise with the Single Point of Access Line (SPA) to identify an appropriate Health Based Place of Safety (HBPoS) should the Police be required to remove the person for further assessment to a HBPoS.

- 9.2. Police and AMHP will agree a location to meet for tactical briefing and for all Police officers to be shown a copy of the warrant. During the briefing each party should define his/her individual roles and how they intend to carry them out.
- 9.3. Police in consultation with the AMHP should consider whether it is necessary to advise relatives of what is happening.
- 9.4. Warrants will only be executed by the constable if, in the event, entry to the premises can only be achieved by the use of the warrant. To that extent the level of police intervention and force must be proportionate to the assessed level of risk at the premises.
- 9.5. Entry and search under the warrant must be at a reasonable hour unless it appears to the constable executing it that the purpose of a search may be frustrated at a reasonable hour, following the principles set out in the Police and Criminal Evidence Act 1984 and the Policing and Crime Act 2017.
- 9.6. On arrival at the premises the AMHP must request entry, (unless the Risk Assessment deems that it is not appropriate for the AMHP to attempt access without Police presence) .If entry is refused or not attempted due to the above reason, the police will be asked to execute the warrant. In this respect the constable shall:
 - identify himself/herself
 - produce the warrant to the occupier of the premises
 - supply the occupier with a copy of the warrant
 - if the subject of the warrant is NOT present but another person is present and apparently “in charge” of those premises, then the procedure described above shall be followed
 - if, upon entry, no one is found to be present then a copy of the warrant must be left in a “prominent” place on the premises (Police and Criminal Evidence Act s16 (5) (6) (7))5.4
- 9.7. Local Authorities have a duty to ensure the temporary protection of property for persons admitted to hospital or accommodation provided under the Care Act 2014.
- 9.8. If damage has been caused to the premises whilst effecting entry and there is a need to secure the property, the AMHP should ensure this is done. The local authority must ensure information is available during working hours of locksmiths, and approved maintenance services that can be used. Outside of working hours, the police can, at their request, access a suitable service, which will be charged to the relevant authority. The Police will remain at the premises until the property has been secured. See Flow Diagram Appendix 4)

10. Undertaking the Mental Health Act assessment

- 10.1. Following entry under Section 135(1), 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 and the

person consents to this (See 6.6 & 6.7 for additional guidance). 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.

- 10.2. If it is jointly identified that the person will be removed to a place of safety then it is the responsibility of those involved to ensure arrangements are in place for the person to be received at a place of safety and obtain agreement with those responsible for those premises for its use.
- 10.3. The agreed method of conveyance is via the North West Ambulance Service (NWAS). This is to ensure that persons detained under the Mental Health Act are conveyed to hospital in an appropriate way consistent with the Codes of Practice.

This agreement allows for booking appropriate transport in the following circumstances and the following numbers should be used by HCP's(Doctors, AMHP's, etc.):

	Emergency Admission (S.4, 135, 136)	Admission Transfer within 1-4 hours (S.2 & 3)	Booking Enquiry
Cumbria & Lancs	01772 867701	01772 867721	01772 867761

The use of police vehicles for conveyance should only be used in exceptional circumstances. The Codes of Practice do allow for the assistance of the police where a patient is likely to be violent or dangerous, but still stress that an ambulance should be used for conveyance where possible

- 10.4. Within 30 minutes of arrival at the identified Hospital place of safety, Police Officers must complete the documents: Part A of Form 135 (1) & (2) Monitoring Form, Part B will be completed by NHS Staff (Appendix 5) and the Joint Risk Assessment Matrix (Appendix 6), this should be completed in conjunction with NHS Staff. These forms are located at the reception area of each Hospital Place of Safety.
- 10.5. When the Form 135 (1) & (2) and Form 137 are completed , this will identify any potential risks to the patient and/or staff and determine the subsequent involvement of police officers, in remaining and supporting nursing staff, until the assessment is complete. The cumulative score on the Form 137 will place the patient, in one of three categories, using the traffic light method.
 - Green (Low Risk) – Police will leave the patient in the care of NHS staff (and staffing levels should be sufficient 24 hours a day to ensure that the police can leave promptly after the handover period).
 - Amber (Medium Risk) – Police will remain with the patient initially for 2 hours. If the patient becomes compliant during this time, the situation can be re-assessed and a joint decision made to release officers. If the patient's score has not reduced at the 2hours review point, a further review will be done at 4 hours.

- Red (High Risk) – Police will remain to protect and support NHS Staff and the patient, until the assessment process is complete.
- 10.6. Where a patient is violent or threatens to use violence, the police officer should, if time constraints allow and deemed appropriate, consult with the health care professionals to determine the most appropriate method of restraint.
 - 10.7. If the person being assessed leaves the premises before the assessment process is complete they may be detained under Section 136 of the Mental Health Act 1983.
 - 10.8. The power to detain a person under Section 135(1) ceases once an application for further detention has been made under the Act, other arrangements have been made for their treatment or care, or it has been decided that no further action is to be taken in respect of the person.

11. Transfers between places of safety

- 11.1. A person removed to a place of safety under Section 135(1) may be moved to a different place of safety within the maximum 24 hour period for which they may be detained. Transfers should take place only when it is in the person's best interests. The maximum period of detention begins from the time of the person's arrival at the first place of safety to which they are taken and cannot be extended if the person is transferred to another place of safety unless in circumstances outlined below (12. Time Extensions).
- 11.2. The person may be taken to the second or subsequent place of safety by transport arranged by a police officer, the AMHP or a person authorised by either a police officer or the AMHP.
- 11.3. 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. 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.
- 11.4. Although it may be helpful for local policies to outline circumstances in which a person is usually to be transferred between places of safety, the decision in each case should reflect the individual circumstances, including the person's needs and the level of risk. The benefit of that move needs to be weighed against any delay it might cause in the person's assessment and any distress that the journey might cause them.
- 11.5. Any delays resulting from transferring the person cannot result in an overall period of detention which exceeds 24 hours (CoP 16.56), Policing and Crime Act 2017 unless the extension is authorised by the Responsible Medical Practitioner. This is most likely to be one of the doctors involved in the Mental Health Act assessment who decides that the criteria are met to authorise an extension of up to 12 hours.
- 11.6. A person should never be moved from one place of safety to another unless it has been confirmed that the new place of safety is willing and able to accept them.

12. Time Extensions

- 12.1. There is provision for the Responsible Medical Practitioner responsible for the examination of the person detained under Section 135 to authorise a further period of detention to commence at the end of the 24 hours, not exceeding a further 12 hours (Section 135, 3ZA). The grounds are that the, "condition of the detained person is such that it would not be practicable for the assessment of the person..... to be carried out before the end of the period of 24 hours" or if it were to commence to be completed.
- 12.2. It is expected to relate to individuals whose assessment is delayed due to their presentation (such as intoxication) or their need for medical treatment (overdose). Staff shortages, delays in attending or the lack of other resources such as hospital beds are not considered to be aspects relating to the condition of the detained person and therefore would not be grounds that would justify an extension.
- 12.3. The decision to extend the time period must be made within the 24 hour period and recorded by the Responsible Medical Practitioner on the patient's electronic record (RiO) and the form Section 135 (1) & (2) Monitoring form.
- 12.4. The authorisation to extend the time should state:
 - The time the authorisation is granted
 - The reason for the authorisation
 - The new end date and time for the Section 135
 - The doctor's name and status

13. Section 135(2) warrant

- 13.1. 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. This includes:
 - Those liable to be detained but for whom conveyance has not been possible due to refusal of entry to the premises where they are. (AMHP will be the responsible person for the warrant application)
 - Patients under Guardianship who have absconded from a place where they are required to reside (AMHP will be the responsible person for the warrant application)
 - People subject to a Community Treatment Order (Community Treatment Order) who have not complied with a Community Treatment Order recall (Hospital Ward Staff, Care Co-ordinator or member of the ALIS Team will be the responsible person for the warrant application)
 - Those who have absconded from hospital detention under the Act and are in premises refusing entry. (Hospital Ward Staff, Care Co-ordinator or member of the ALIS Team will be the responsible person for the warrant application)
- 13.2. Patients who are absent without leave from hospital, or from the place where they are required to live under guardianship, can be re-taken up to six months after going absent

(if detained under Section 3, or until the expiry date of the current authority for their detention or guardianship, whichever is the later. (These time scales do not apply to persons subject to restriction under Section 41 or 49 of the Act). Moreover a patient cannot be forcibly returned to hospital if the period for which they were liable for detention under Section 2, 4, 5(2), 5(4) has expired.

- 13.3. In carrying out procedures for Section 135 (2) the basic principles of safety and good practice established in respect of Section 135 (1) apply.
- 13.4. Having established the need for Section 135 (2), any duly authorised person (Care coordinator, Access and Liaison Integrated Service (ALIS), AMHP, member of the multi-disciplinary team, ward staff) should contact the Magistrates Court. The authorised person will meet with the Magistrate(s) and give information to support the need for the warrant (details from the risk assessment may be relevant). Only in very exceptional circumstances should the application for a warrant be made by a police officer. (see Guidance document in Appendix 3)
- 13.5. There should not be a delay because there is a dispute between professionals over who is the appropriate authorised person to attend the Magistrates Court to seek a warrant. Should this happen advice should be sought from the Service Manager or On Call Manager, if out of hours, to make a decision and avoid any delay which may increase risk to the patient.
- 13.6. The warrant 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. Such a warrant may be used, for example to help return a patient who has absconded, or who needs to be transported to hospital, if access to the premises where they are staying has been refused or is likely to be refused. (CoP chapter 28 provides detailed guidance on patients who are absent from hospital without leave.)
- 13.7. 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 it is good practice for this person to be the designated Care Co-ordinator or from the Access and Liaison Integrated Service. The patient should be told why they are being detained, taken or retaken, before this happens. (See CoP chapters 29 and 31 for further information on Community Treatment Orders).
- 13.8. A constable may act alone and remove the patient under the authority of the warrant but this should only be the case in very exceptional circumstances. Normally, a constable will be accompanied by a suitably qualified mental health professional such as a care coordinator, member of the Access and Liaison Integrated Service, or AMHP, who is authorised to take or re-take the patient.
- 13.9. When taking the person to a place of safety on a Section 135 warrant, the duly authorised person 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, (see Para. 10.3 above). The police should not normally be needed to transport the person or to escort them for a Section 135 (2) warrant.
- 13.10. Entry to the premises must take place within 28 days of the date of issue of the warrant. A Section 135(2) warrant can only be executed once. An electronic Section 135 (2)

warrant cannot be held on the person's electronic case record or email system, for any future use once it has been executed.

- 13.11. The original warrant must be returned to the Clerk to the Justices by the duly authorised person for Section 135 (2) Mental Health Act Warrant as soon as possible after it has been executed or if not executed its expiry date (28 days after issue). The warrant will then be kept by the Clerk to the Justices for a minimum of twelve months. It will be made available for inspection by the occupier of the premises concerned on request.

14. Process for Implementation and Training

- 14.1. The Mental Health Act CoP 16.31 states that all professionals involved in implementation of the Section 135 powers should understand them and their purpose, the roles and responsibilities of other agencies involved, and follow the local policy.
- 14.2. This procedure will be available to all staff on the HealthTrust, Cumbria County Council and Cumbria Constabularies respective intranet sites, so that all staff are able to access this and to understand the roles and responsibilities of all agencies that are involved in this operational procedure.
- 14.3. Ward/Unit and team manager will brief staff about key aspects and enforce the importance of adherence to this procedure in their supervision of staff
- 14.4. Professionals involved in implementation of the powers should receive the necessary training to be able to carry out fully the role ascribed to their agency (CoP 16.31).

15. Equality Statement

- 15.1. Admission to hospital and in particular admission under the Mental Health Act, can be affected by ethnicity and result in disproportionate admissions/detentions of (especially black) ethnic groups. Care and treatment decisions can also be affected by ethnicity. The Trust's monitoring of Section 135 use will take particular notice of ethnic status and concerns will be raised as appropriate at the Mental Health and Criminal Justice Steering Group.

16. Monitoring

- 16.1. Any issues of concern in relation to the operational use of Section 135 (1) and (2), will be discussed in the monthly Agency Leads Meeting which will provide an opportunity to learn what went well and what needs to be improved in order to ensure the procedures are effective for people who use our services.
- 16.2. This procedure will be monitored and reviewed on an annual basis by the Criminal Justice and Mental Health Steering Group. The purpose of the annual review will be to receive a progress report on achieving the standards outlined in this document. Reports will be submitted on the use of Section 135 the Mental Health and Criminal Justice Steering Group.

17. Complaints

- 17.1. In the event that the detainee should wish to make a complaint, the existing complaints procedures from the appropriate agencies should be followed.

18. Case law in relation to Section 135:

R (Sessay) v South London and Maudsley NHS Foundation Trust and another (2011)
[2011] EWHC 2617 (QB)

The police entered the claimant's private accommodation, unaccompanied and without a S135 warrant, purporting to be acting under ss5-6 MCA 2005 in her best interests; she was taken to hospital and, after a 13-hour delay in the S136 suite, detained under S2 MHA 1983. (1) Sections 135 and 136 MHA 1983 are the exclusive powers available to police officers to remove persons who appear to be mentally disordered to a place of safety. Sections 5 and 6 MCA 2005 do not confer on police officers authority to remove persons to hospital or other places of safety for the purposes set out in sections 135 and 136.

Ward v Metropolitan Police Commissioner and another (2005)
[2005] UKHL 32

Place of safety order — Validity of detention — Warrant naming health professionals to accompany constable — Named persons absent when warrant executed — Whether warrant and execution valid — Whether power in magistrate to specify names — Mental Health Act 1983 (as amended by Police and Criminal Evidence Act 1984, s 119(1)(2), Sch 7, Pt I), s135(1). A condition imposed by a magistrate issuing a warrant under s135 of the Mental Health Act 1983 specifying named persons to accompany the constable executing the warrant had been invalid.

R V Rosso (2003)
[2003] EWCA Crim 3242

The police had been entitled to force entry into a hotel room in order to detain the defendant pursuant to an application under S2; no warrant under S135 was required as they had the owners' permission and the defendant had no right to deny them entry; therefore the appeal against conviction was refused; (2) the appeal against the restriction order was also refused.

19. References

Mental Health Act Code of Practice, 2015, TSO
Reference Guide to the Mental Health Act, 2015, TSO
Jones R. Mental Health Act Manual, 19th Edition
Police and the Criminal Evidence Act 1984
Policing and Crime Act 2017
Care Act 2014
Guidance for the implementation of changes to police powers and places of safety provisions in the mental health act 1983, Department of Health, October 2017

Section 135 (1) Mental Health Act 1983

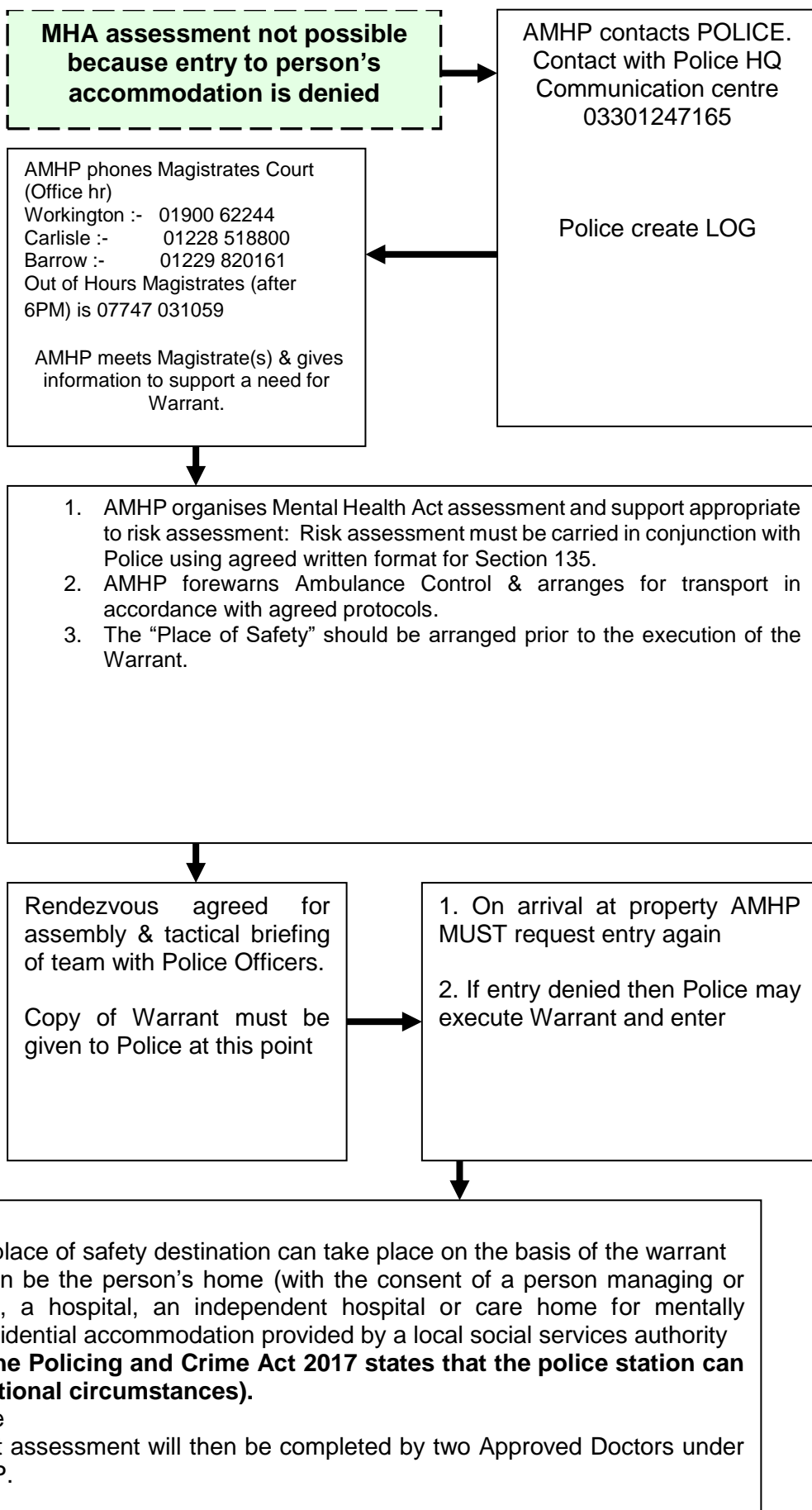
Warrant to search and remove:

A process for use where the person IS NOT already subject to any form of MHA detention

Note 1: The person can be detained in a "place of safety" for up to 24 hours

Note 2: There is a requirement for at least one Responsible Medical Practitioner (who does NOT need to be s12 approved) to be present in order to confirm suitability of admission to place of safety under the authority of the Warrant.

POLICE MUST ALWAYS BE PRESENT TO EXECUTE WARRANT UNDER Section 135 (1)



Section 135 (2) Mental Health Act 1983

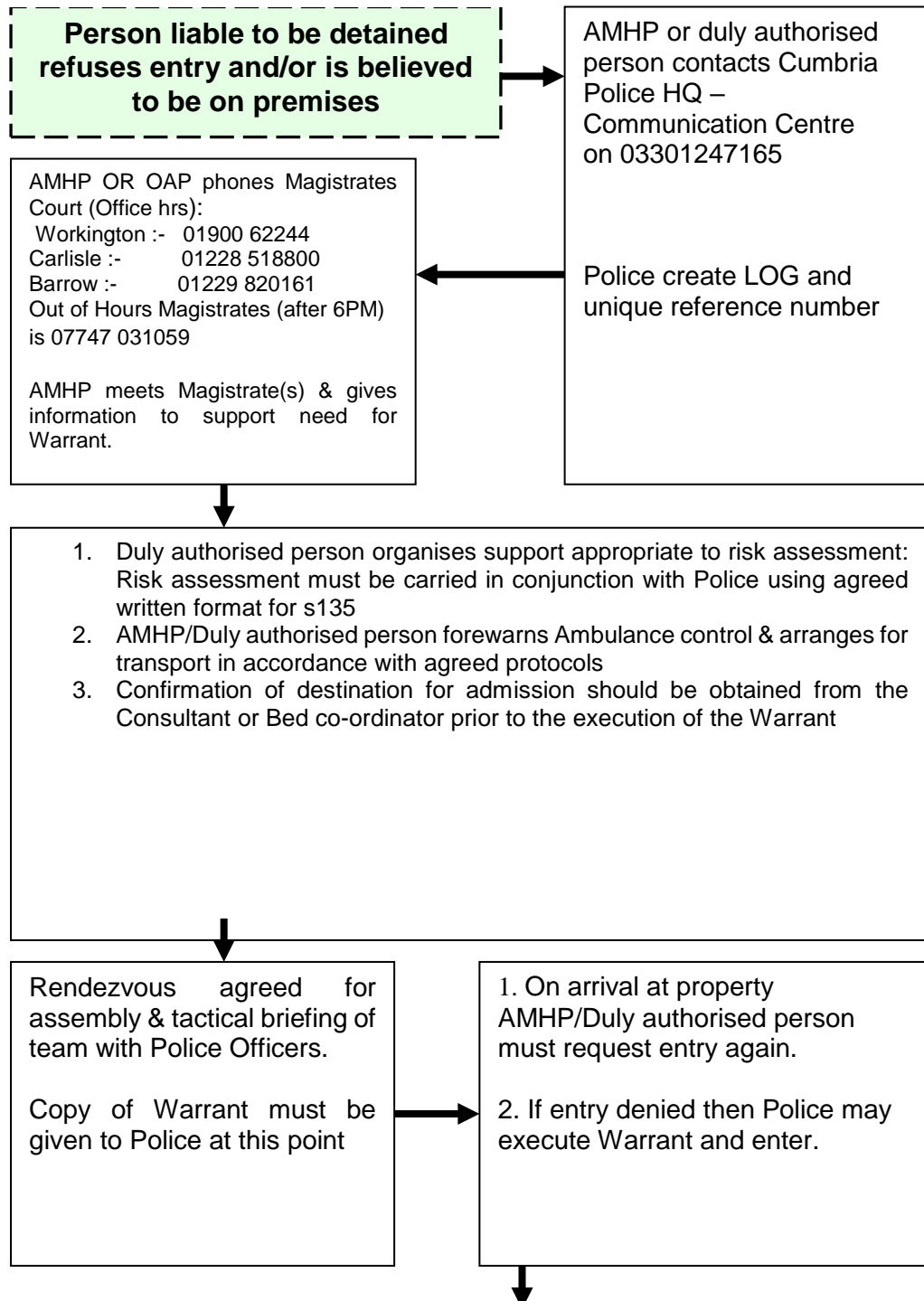
Warrant to search and remove:

A process for use where the person IS ALREADY subject to detention UNDER MHA (either AWOL or absconded prior or during conveyance to hospital)

Note 1

In the execution of the warrant, a constable **may** be accompanied by a responsible medical practitioner or by any person duly authorised by or under this act to take or retake the patient

POLICE MUST ALWAYS BE PRESENT TO EXECUTE WARRANT UNDER S135 (2)



Once entry is gained:

- Removal to an agreed destination can take place on the basis of the warrant only.
- The Place of Safety can be the person's home (with the consent of a person managing or residing at that place),
- a hospital,
- an independent hospital or care home for mentally disordered persons,
- residential accommodation provided by a local social services authority
- A police station (**NB: The Policing and Crime Act 2017 states that the police station can only be used in exceptional circumstances**).
- Any other suitable place

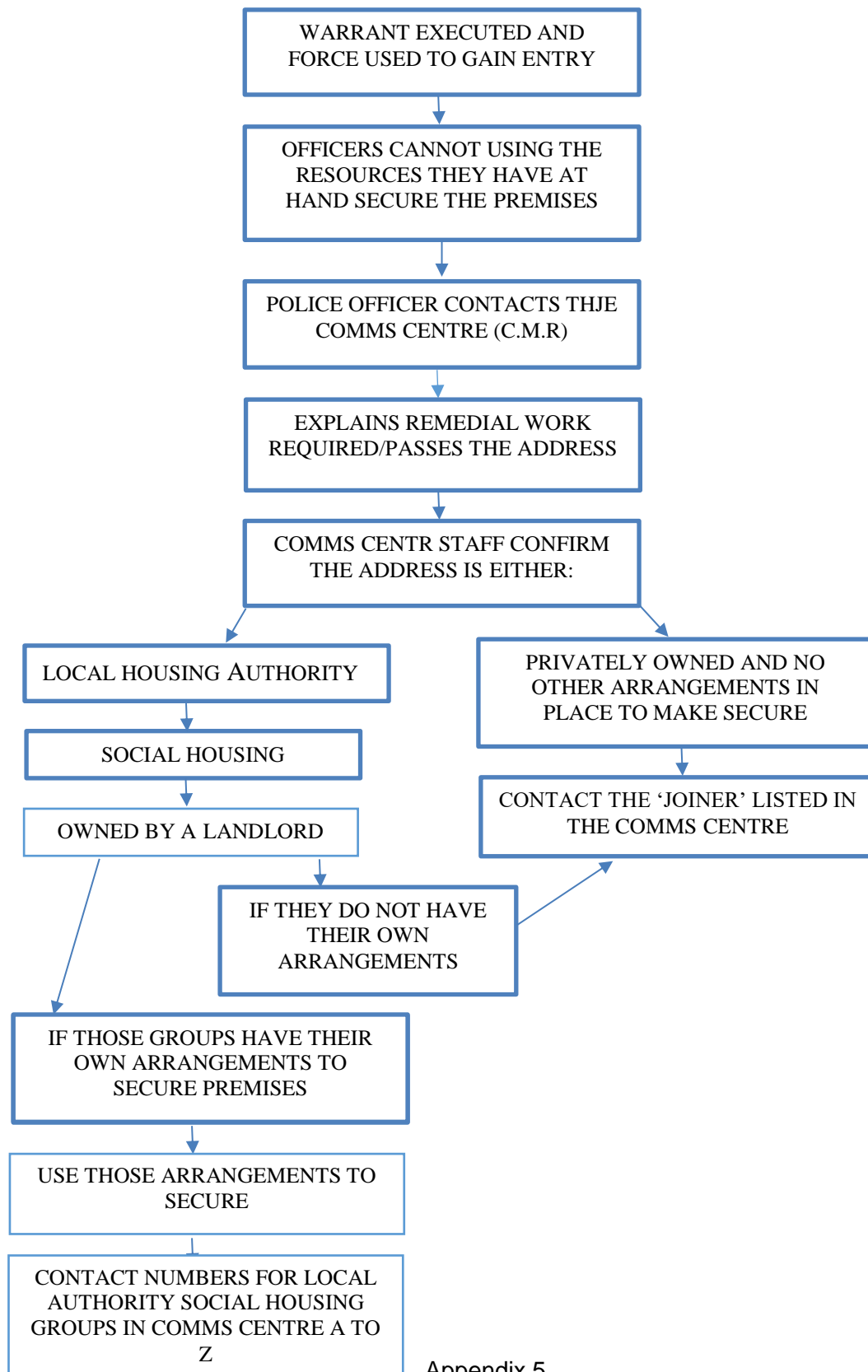
Appendix 3



Cumbria County
Council Guidance o

Appendix 4

OBTAINING POLICE CONTRACTOR TO SECURE A PREMISE AFTER THE EXECUTION OF A WARRANT UNDER SECTION 135 MHA



Appendix 5

S 135 (1) Monitoring Form



135 Monitoring
form V1 May 2019.pdf

Appendix 6

Joint Risk Assessment (JRAM Form)



137 Joint Risk
Assessment JRAM.pdf