

Understanding Section 136/ 135 of the Mental Health Act, Practicalities and Responsibilities CNTW

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It isn't always easy....



Areas covered

- Section 136 and 135 (1) & (2) – Legal Frameworks
- Place of Safety
- Roles and Responsibilities
- Practicalities
- Assessment
- Difficulties and areas of work being undertaken.

Section 136 – What is it?

- Section 136 is a police emergency power which allows for the removal of a person for a mental health act assessment.
- If a person appears to a constable to be suffering from mental disorder **and** to be in immediate need of care or control, the constable **may**, if he thinks it necessary to do so in the interests of that person or for the protection of other persons:
 - (a) remove the person to a place of safety or
 - (b) if the person is already at a place of safety within the definition, keep the person at that place or remove the person to another place of safety.

Section 136 MHA - Where can it be used?

The power of a constable under S136 may be exercised where the mentally disordered person is at any place, other than—

- any house, flat or room where that person, or any other person, is living, or
- any yard, garden, garage or outhouse that is used in connection with the house, flat or room, other than one that is also used in connection with one or more other houses, flats or rooms.

For the purpose of exercising the power a constable may enter any place where the power may be exercised, if need be by force.

The aim of the detention is for the person to have an assessment, and any necessary arrangements should be made for their on-going care.

Section 136 – Where else can this be used?

- There are a number of locations from which a person can be removed to a place of safety under section 136.

These include for example:

- Railway lines
- **Hospital wards**
- Rooftops (of commercial or business buildings)
- **Police stations**
- Offices
- Schools
- Gardens and car parks associated with communal residential property
- Non-residential parts of residential buildings with restricted entry

Section 136 enables a police officer to enter any place in which Section 136 applies (if necessary by force) to remove a person.



Section 136 – Police Officers



- The use of Section 136 of the MHA is a decision only a Police Officer can make, they cannot be instructed to use this power by another Police Officer or professional. It will be based on the Police Officers judgement at the time of the incident and they must be satisfied all criteria is met.
- A Police officer under the legislation has a duty to consult regarding this power where practicable. This will normally be with CNTW staff.
- It should not be used as way to gain quick access to MH services, where other less restrictive options are available, Police may escort/support person in contact with appropriate service if person happy to do so.
- Police officer must inform the person they are detained and reason for this. Contact must be made with Crisis/IRS locality team as soon as possible to discuss available and best Place of Safety.

Section 136 MHA – Duty to Consult

- **Duty to Consult** - There is now a requirement for police to consult with an AMHP, medical practitioner, nurse, occupational therapist or paramedic before using S.136 (if practicable). Normally in CNTW Street Triage or Crisis Team. The police officer retains ultimate responsibility for the decision to use their section 136 powers, having considered the advice given to them as part of any consultation.

The Consultation will depend on the individual circumstances of each case/needs of person. Staff should offer info and clinical advice/opinion on:

- whether this appears to be a mental health issue based on information/professional observation, and/or, if possible, questioning of the person;
- Whether other physical health issues may be of concern or contributing to behaviour (e.g. substance misuse, signs of physical injury or illness)
- Whether the person is known to CNTW services
- any care plan to determine history and suggested strategies for appropriately managing a mental health crisis Whether in the circumstances, the proposed use of section 136 powers is appropriate
- Where it is determined that use of section 136 powers is appropriate - identification of a suitable health based place of safety, and facilitation of access to it
- Where it is determined that use of section 136 powers is not appropriate - identification and implementation of alternative arrangements.

Section 136 – Detention timescale



Timescale: 24 hours – possible extension up to 12 hours, in specific circumstances.

The detention period for those detained under section 136 begins:-

- Where a person is removed to a place of safety under section 136 – at the point when the person physically enters a place of safety. Time spent travelling to a place of safety or spent outside awaiting opening of the facility does not count;
- Where a person is kept at a place of safety under section 136 – at the point the police officer takes the decision to keep them at that place.

Extension: Extension can be made in limited circumstances, because of the person's condition (physical or mental), it is not practicable to complete an assessment within the 24 hour period. E.g. heavily intoxicated with alcohol or drugs, needing medical treatment and cannot co-operate with the assessment process.

- A delay in attendance by an Approved Mental Health Professional or medical practitioner is not a valid reason for extending detention.
- A decision to extend the detention period can only be taken by the responsible medical practitioner. This is defined as “The registered medical practitioner who is responsible for the examination of a person detained under section 136”. This will be the Section 12 doctor from CNTW, in these cases.
- The reason for this extension must be detailed documented within the healthcare record, progress notes. This should be highlighted within the Section 135/136 form on Rio also.
- If the person is being held at a police station in exceptional circumstances , and it is intended for the assessment to take place at a police station, the authorisation must also be approved by a police officer of the rank of Superintendent.

S136 – Search and Conveyance

- **Power of search** Section 136 allows a police officer to search a person subject to section 136 if the officer has reasonable grounds to believe that the person may be a danger to themselves or others and is concealing something on them which could be used to physically injure themselves or others.
- Any search conducted by the officer under section 136 is limited to actions reasonably required to discover an item that the officer believes that the person has or may be concealing. The officer may only remove outer clothing. The officer may search the person's mouth, but the new power does not permit the officer to conduct an intimate search.
- **Conveyance** It will be the responsibility of Police officers to request an ambulance for conveyance following detention under Section 136. The ambulance service is the preferred method of transport to convey the individual from the location of detention to the PoS.
- It is essential that the person in crisis is screened by a healthcare professional as soon as possible. In the majority of cases it will be the ambulance service that will screen the person to exclude medical causes or complicating factors. Where an ambulance is unavailable or delayed the Police officers will make a dynamic risk assessment in conjunction with their supervision after receiving information regarding the estimated time of arrival.

Understanding Legal framework – Section 135 (1) & (2)

- 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 and can only be applied for by an AMHP, who must justify the reason for this warrant;
- It must be justified as why a warrant is needed, and why entry cannot be gained;
- The process is co-ordinated by AMHP, in ensuring all meet before going to address and plan is formulated with arrangements made for - Police, S12 doctors x 2 and ambulance to all be ready at same time.
- Good Plan and Risk assessment occurs before going to address, including notifying/putting staff on standby at the POS if this is indicated.
- In most cases the best place for assessment to take place is at the person address, if they have capacity to do so and consent, so this must be ready to occur once warrant executed to entry of home.
- Some occasions removal to Place of Safety is required and the Suite must be contacted and briefed of the plans, risks etc. Ensure booking of the POS in advance so this is there is needed.

Police role – Section 135(1)

- 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.
- Remove person to ambulance and support in travel to suite where indicated.
- Healthcare staff, including ambulance staff, should take responsibility for the person as soon as possible, including preventing the person from absconding before the assessment can be carried out.
- The police officer should not be expected to remain until the assessment is completed; the officer should be able to leave when the situation is agreed to be safe for the patient and healthcare staff

Section 135 (1) Continued...

- Assessment in Property:
- 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. 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.
- The person must be told reason for removal if this occurs.

Legal Position

- Section 135(1) remains in place until assessment completed and necessary arrangements made for care and treatment or 24 hours are up. This is similar to the Section 136.

Legislation : S135 (2) MHA

- 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 (For examples they are Section 3 and have absconded or a CTO recall) they should be taken to the allocated hospital bed.
- The warrant can be applied for by an AMHP/Police/Hospital Authority – whoever has the most relevant and is most informed.
- 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.
- It is good practice for the police officer to be accompanied by a person with authority from the managers of the relevant hospital, community team (or local authority, if applicable) to detain the patient and to take or return them to where they ought to be.

Places of Safety – Legislation

- A place of safety is defined in the Act as:
 - **A hospital**
 - **An independent hospital or care home for mentally disordered persons**
 - **A police station**
 - **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**
- 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.
- The expectation remains that, with limited exceptions, the person's needs will most appropriately be met by taking them to a 'health-based' place of safety - a dedicated section 136 suite where they can be looked after by properly trained and qualified mental health and other medical professionals.
- There will however, be situations in which it is appropriate to use other suitable places, or where other suitable places can supplement the use of health-based places of safety

Places of Safety (PoS)– Mental Health Suite

First and best option always a MH PoS – CNTW – All age, open 24/7 all year around.



Suites are managed and staffed by Crisis Clinicians, to ensure HBT an option and MH support to person in crisis. Localities differences currently*

Cumbria look at County approach so if suites full in North – LSCFT should be contacted to look at South, as they do with CNTW.

MH PoS - Practicalities and CNTW role

The allocated crisis clinician would attend the allocated suite and support the person at the suite. They will:

- Communicate with AMHP/Doctors – alert and handover
- Read the person their rights and ensure they understand, and explain the process
- Complete a screening for level of intoxication, (relating to alcohol or any other substances) if appropriate and review if the person is able to understand and engage within the assessment. The nurse's view following this screening will be discussed with the AMHP and Doctor to make a decision around fitness for assessment. At no time is it appropriate or lawful to use breathalysers in this screening.
- Ensure the person's immediate needs are met, with food and drinks etc
- Conduct the joint risk discussion /matrix
- Seek additional resource to support the suite, if Police not required to stay. National guidance is Police should be able to leave asap, if safe to do so. NB At no time will any health/social care professional be left alone with the individual in the suite.
- The person will always be accompanied in the suite and must not be left alone in the suite at any time.
- Consideration of family members/ carers in supporting those in crisis, and communication with them.
- Gather information from the healthcare record (RIO) and discussions with the person to handover to the AMHP and Doctors on arrival
- Ensure full and completed documentation within healthcare record (RIO) including the Section 135/136 form.

Environment/ Suites – Legalities



- The person is not 'admitted' to suite, so the legal status is different to that of an inpatient.
- Guidance on Medication – No legal powers to treat, including enforcing.
- Seclusion cannot be used on S136 – Emergency and making safe.
- There must be a CNTW incident report completed, and clear detailed justification in the person health records of actions taken and rationale for this
- Emergency Medical Treatment - Mental Capacity Act.

Places of Safety – Emergency Department

- Emergency Departments (ED) should only ever be used when there is red flag trigger and a medical assessment/treatment is required of their physical health condition.
- Intoxication alone is not a reason for a person to be taken to an ED, however should the intoxication be so severe that it leads to other health related issues then an ED must be considered.
- The Police must stay with the person throughout the time in ED.
- If the person is admitted to the general hospital, then a discussion must take place between police, Crisis team, the appropriate S12 doctor and AMHP about completing the S136 assessment and/ or discharging the Section 136 and an appropriate support or plan being put in place for a later assessment.
- An admission should not lead to a lengthy stay for police in the hospital and should not unduly delay the formal S136 assessment being undertaken.
- Crisis team should still be notified and needs to be some discussion on how the person will have the rights read and the RIO form still completed as much as possible.

Places of Safety – Police Station

- **Its now unlawful for someone under age of 18 to be taken/kept at Police Station as PoS under S136.**
- Crisis team should still be notified and needs to be some discussion on how the person will have the rights read and the RIO form still completed as much as possible.
- 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;
 - The decision-maker should consider whether, if no preventative action is taken:
 - The person's behaviour presents a risk of physical injury to the person or to others of a level likely to require urgent medical treatment and that risk already exists or is likely to exist imminently. □
 - Because of that risk, no other place of safety in the relevant police area can reasonably be expected to detain them, and ...

Places of Safety – Police Station continued...

- So far as reasonably practicable, a healthcare professional will be present at the police station and available to them. This within Northumbria & Cumbria Police area will be provided by Nurse Practitioners in Custody, and can be supported in relation to mental health needs by Criminal Justice Liaison Nurses and locality crisis service where appropriate.
- The Nurse Practitioner should check the person's welfare at least once every thirty minutes, and any appropriate action is taken for their treatment and care; and so far as is reasonably practicable, the nurse remains present and available to the person throughout the period in which they are detained at the police station; and if either of these conditions cannot be met arrangements must be made for the person to be taken to another place of safety.
- 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.
- The custody officer must review at least hourly whether the circumstances which warranted the use of a police station still exist. If they do not, the person must be taken to another place of safety that is not a police station.
- **MUST BE INCIDENT REPORTED AS SERIOUS INCIDENT DUE TO RISKS AND SERIOUS NATURE.**

Handover & Risk Discussions



- Joint Risk Discussion – sharing information known to both, current situation, presentations, what is lead up to S136 and level of capability, threat and risk. The imminent risk
- National guidance states where possible Police should be able to leave the PoS as soon as 30 minutes after arrival where it is safe to do so. The decision for Police to leave the MH PoS suite is joint decision with Police and staff at suite assessing current and imminent risks together.
- Staff must be happy to take over the S136 detention, and accept this, until then it remains with police. This would be transfer of duty and responsibility. Thorough handover must be given to discharge this duty.
- If there is dispute this must be escalated immediately in both organisations, to resolve and come to an agreement, but Police should remain until resolved, as this is a Police power.
- Staff should accept responsibility from Police for the person, only when they feel it's safe to do so. Best practice indicates this should happen as quickly as safe and practicable, releasing Police to leave as appropriate. If there is an escalation in risk, for example violence, damaging property, AWOL etc. then Police must be called back urgently via 999. Please note British Transport Police (BTP), or a force from outside of the MH PoS area (e.g. Durham Police when person detained in Sunderland) cannot be called back, so this should be taken into account as part of the risk assessment, when the decision is made about Police leaving. If Police assistance is required in such circumstances, it would be the local force (Cumbria/Northumbria) called via 999 to support.

Practicalities

- Food and drink;
- Mental Health Support;
- Physical Health
- Suite support – sensory and specifics – children
- Alarms and support – no one staff alone in suite
- Managing violence and aggression
- Medication

Assessment

- Crisis contact/support around HBT options also
- Who involved – S12s and AMHPs
- MHAA – Afterwards – legal frameworks
- S136 form – Completed for S136s in suite. S135s where brought to suite.
- Record keeping – ensuring all completed on RIO, risk updated, progress notes/assessment core documentation.
- Post assessment awaiting bed ‘limbo’

Family/Children

- Suites are ageless, but may need to consider what's in suites for young people to be supported.
- Young persons may have a guardian with them if deemed safe to do so.
- Visiting suite – family may want to see person but need to keep limited and clinical judgement on this. May be about ensuring good communication if consent around updates.

At End

- Ensuring person get safely home – considering risks, distance and costs. CNTW to organise.
- Bed – Bed management will be seeking bed and linking with Crisis.
- Conveyance to Bed – AMHP will organise if detained. Informal this will be CNTW.
- Not 'detained' until 2 medical recommendations AND application made.



Any Questions