



## Section 135 and 136 of the Mental Health Act 1983

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Type of document	Multi-Agency Policy
Target audience	Approved mental health professionals, psychiatrists, A&E staff, mental health nursing staff – outside agencies, i.e. police
Document purpose	For use as guidance / procedure to Trustwide staff, Acute Hospital staff & Police authorities in the use of section 136.

Approving meeting	Patient Safety and Effectiveness Sub Committee	14/06/2018
Implementation date	10-Jul-18	

CWP documents to be read in conjunction with	
<a href="#">MH1</a>	Mental Health Law Policy Suite

Document change history	
What is different?	Updated to reflect changes to the Mental Health Act 1983, made by the Policing and Crime Act 2017, effective from 11 <sup>th</sup> December, 2017.
Appendices / electronic forms	N/A
What is the impact of change?	Changes in legislation have amended the circumstances in which Section 136 powers may be exercised, including a broadened definition of a place of safety and a reduced maximum detention period for both Section 135 and 136. These changes impact on procedures when considering the use of these powers, as well as bed management should further detention in hospital be required.

Training requirements	Yes - Training requirements for this policy are in accordance with the CWP Training Needs Analysis (TNA) with Education CWP.
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Document consultation	
East locality	Via policy discussion forum
Wirral locality	Via policy discussion forum
West locality	Via policy discussion forum
Corporate services	Via policy discussion forum and Patient Safety and Effectiveness Sub Committee
External agencies	Cheshire Police, Merseyside Police, Local Authorities, Acute Hospital staff.

Financial resource implications	None
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External references	
1.	Mental Health Act Code of Practice 2015 <a href="https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/435512/MHA_Code_of_Practice.PDF">https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/435512/MHA_Code_of_Practice.PDF</a>
2.	Reference Guide to the Mental Health Act 2015
3.	Richard Jones Mental Health Act Manual, 20 <sup>th</sup> Edition, 2017
4.	Department of Health. Guidance for the implementation of changes to police powers and places of safety provisions in the Mental Health Act 1983. October 2017

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/656025/Guidance\\_on\\_Police\\_Powers.PDF](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/656025/Guidance_on_Police_Powers.PDF)

5. The Royal College of Emergency Medicine. Mental Health in Emergency Departments – A toolkit for improving care. October 2017

<http://www.rcem.ac.uk/docs/RCEM%20Guidance/Mental%20Health%20Toolkit%202017.pdf>

6. The Royal College of Emergency Medicine, A brief guide to Section 136 for Emergency Departments. December 2017

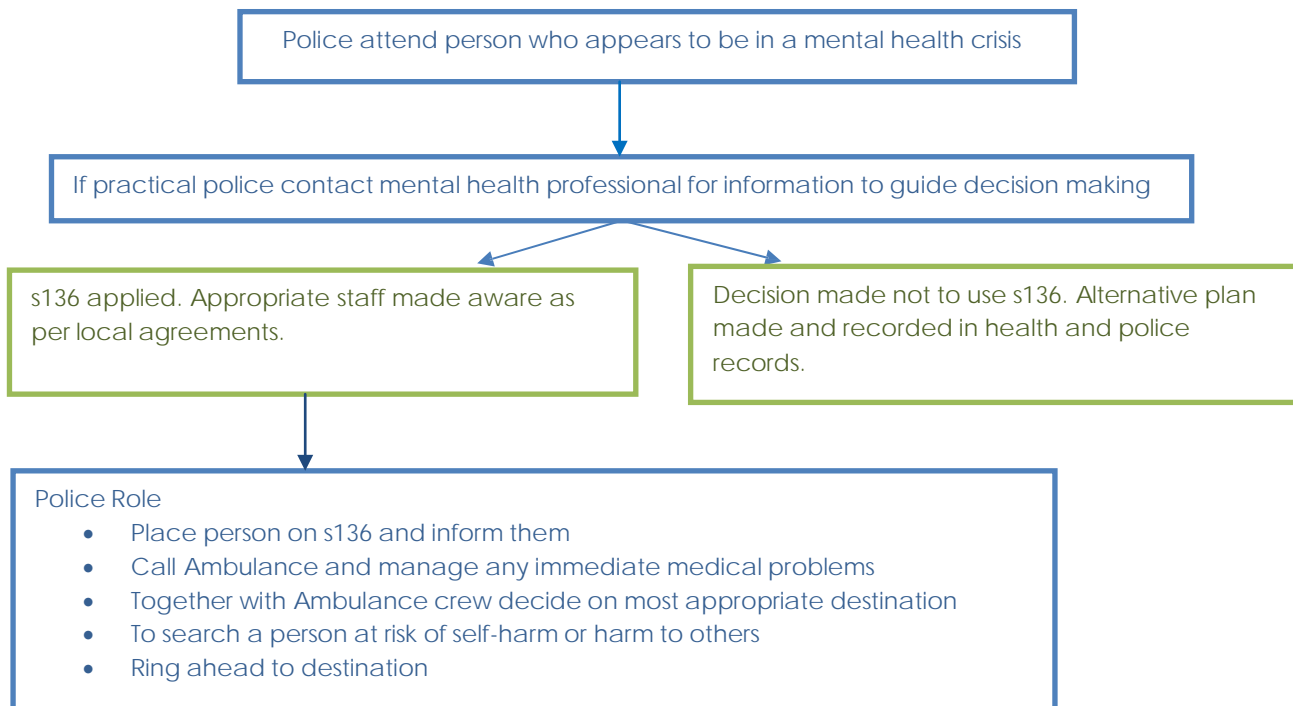
<https://www.rcem.ac.uk/docs/College%20Guidelines/A%20brief%20guide%20to%20Section%20136%20for%20Emergency%20Departments%20-%20Dec%202017.pdf>

Equality Impact Assessment (EIA) - Initial assessment	Yes/No	Comments
Does this document affect one group less or more favourably than another on the basis of:		
- Race	No	
- Ethnic origins (including gypsies and travellers)	No	
- Nationality	No	
- Gender	No	
- Culture	No	
- Religion or belief	No	
- Sexual orientation including lesbian, gay and bisexual people	No	
- Age	No	
- Disability - learning disabilities, physical disability, sensory impairment and mental health problems	No	
Is there any evidence that some groups are affected differently?	No	
If you have identified potential discrimination, are there any exceptions valid, legal and/or justifiable? N/A		
Is the impact of the document likely to be negative?	No	
- If so can the impact be avoided?	N/A	
- What alternatives are there to achieving the document without the impact?	N/A	
- Can we reduce the impact by taking different action?	N/A	
Where an adverse or negative impact on equality group(s) has been identified during the initial screening process a full EIA assessment should be conducted.		
If you have identified a potential discriminatory impact of this procedural document, please refer it to the human resource department together with any suggestions as to the action required to avoid / reduce this impact. For advice in respect of answering the above questions, please contact the human resource department.		
Was a full impact assessment required?	No	
What is the level of impact?	Low	

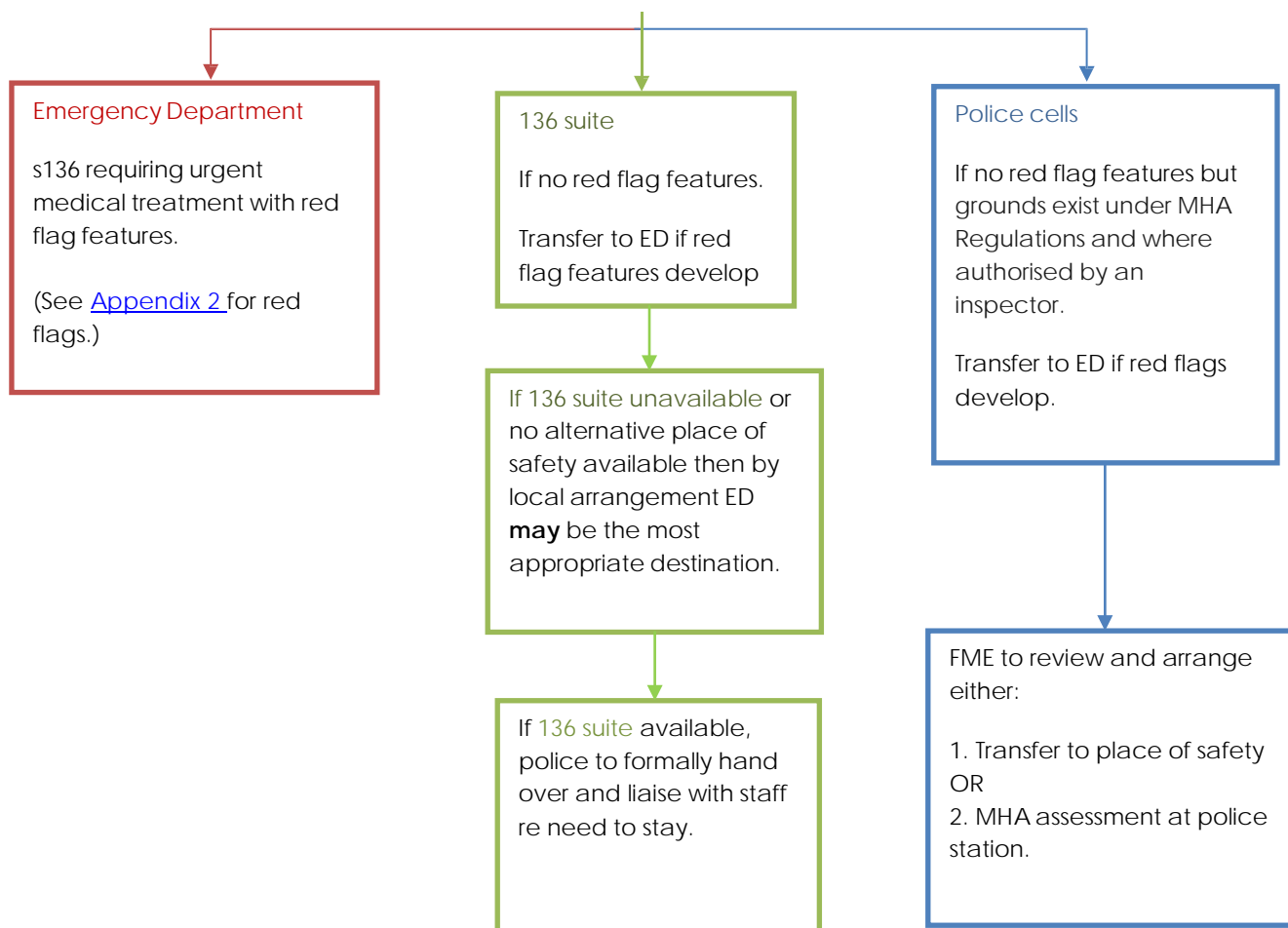
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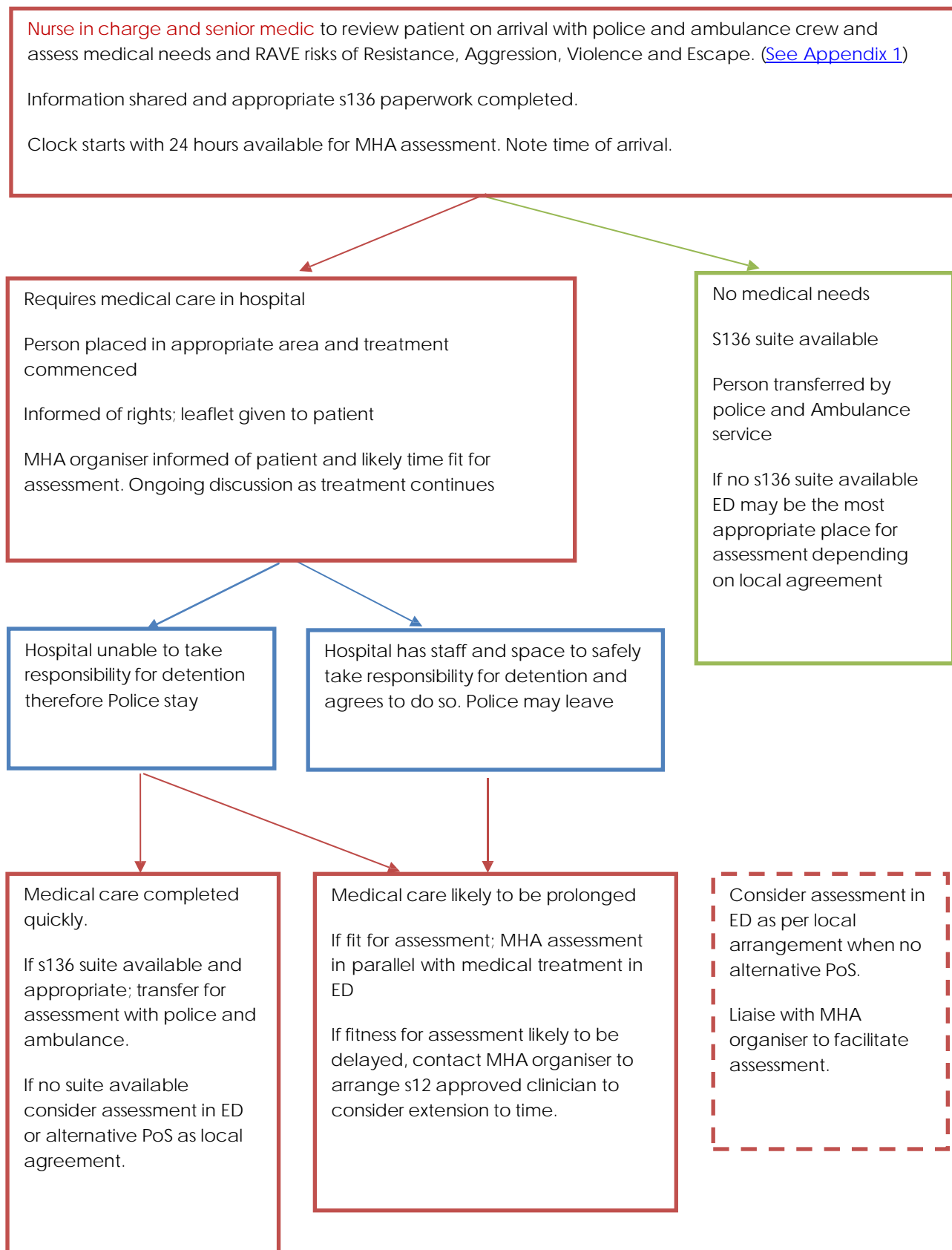
## Section 136 Flowchart – Pre-hospital



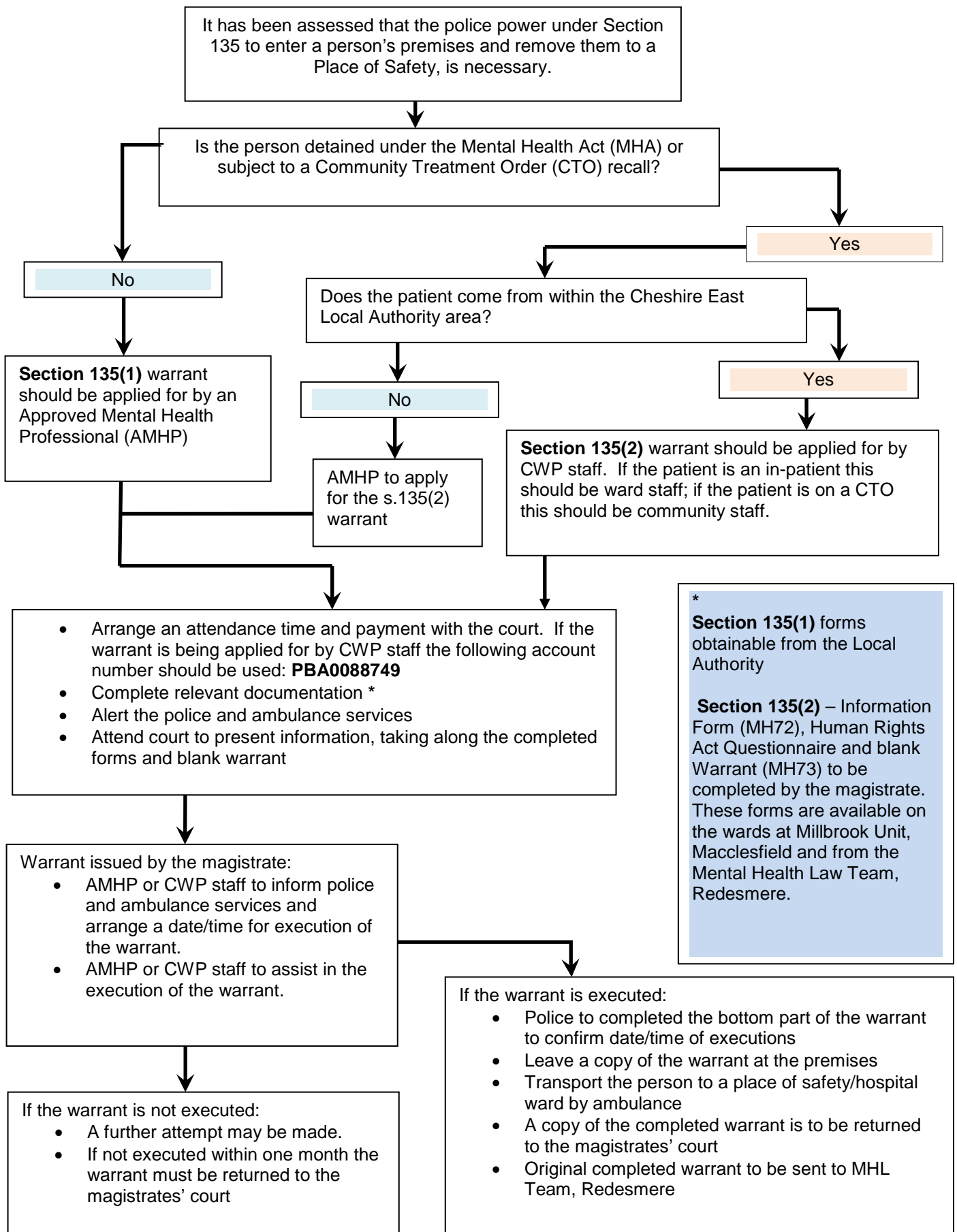
----- NOTE once ED or 136 suite reached, the clock starts, MHA assessment must be complete by 24 hours -----



## Section 136 Flowchart – At the Emergency Department



## Flowchart on How to Obtain a Section 135 Warrant



## 1. Introduction

This policy aims to provide a guide to those involved in the use of Sections 135 and 136 of the Mental Health Act 1983 (amended 2007) (MHA), taking into account amendments as a result of the Policing and Crime Act 2017 effective from 11<sup>th</sup> December, 2017. Reference to the MHA Code of Practice 2015, Chapter 16 will be made throughout, however caution should be taken as the current Code does not reflect the latest amendments.

This policy has been developed in accordance with the five Guiding Principles set out within the Code of Practice 2015. All multi-agency staff must apply these principles to all decisions. A decision to depart from these principles and therefore, the Code of Practice, must be justified and documented. The principles are as follows:

1. **Least Restriction option and maximising independence**
2. **Empowerment and involvement**
3. **Respect and dignity**
4. **Purpose and effectiveness**
5. **Efficiency and equity**

Reference to mental disorder throughout this policy is in accordance with the definition set out in Section 1(2) of the Mental Health Act 1983 – ‘*Any disorder or disability of mind*’. Further guidance on clinically recognized conditions which fall into this category can be found in Chapter 2 of the MHA Code of Practice, 2015.

This is a joint policy between Cheshire & Wirral Partnership NHS Foundation Trust, Cheshire Constabulary, Merseyside Constabulary, North West Ambulance Service, Cheshire East Local Authority, Cheshire West Local Authority and Wirral Local Authority.

## 2. Section 135

The purpose of Section 135 is to allow a magistrate to issue a warrant authorising a police officer to enter premises, using force if necessary, for the purpose of removing a mentally disorder person to a place of safety (refer to [section 12](#) for further details on the definition of a place of safety).

## 3. Obtaining a Warrant

A warrant may be obtained by an Approved Mental Health Professionals (AMHP), a police officer or a member of hospital staff.

Local processes are in place for Cheshire East with regards to obtaining a Section 135(2) warrant. Information packs providing guidance to CWP staff on how to apply for a warrant are available on the wards at Millbrook Unit and in the Community Mental Health Teams.

It is not a precondition to obtaining a warrant that access to the premises has been refused. An application may be sought where access is likely to be given, but the person is thought to be violent or will immediately abscond following entry. In such cases a warrant would be sought to provide the police with appropriate authority to manage identified risks.

The existence of a warrant does not mean that it must be executed, the decision being that of the police officer. The warrant is executed once entry to the premises has been made, either by force or by invitation if the occupier is aware of the warrant. A warrant is not executed if the occupier allows access to the premises without knowledge of the warrant and without the police officer producing that warrant. Warrants not executed must be returned to the court within 1 month of issue.

A fee of £75 (as at the date of this policy) is payable to the courts on the issue of a warrant.

#### 4. Execution of the Warrant

Entry into a person's home must be proportionate according to the circumstances. Use of Section 135 involves interference with a person's home and private life and so must be justified under Article 8(2) of the European Convention on Human Rights (Right to respect for private and family life).

Execution of the warrant also includes a power to search the premises in order to find the person believed to be suffering from mental disorder.

#### 5. Transportation

The transportation of persons following the execution of warrants will not normally fall with the police. The police officer will request an ambulance to transport the person to the place of safety in line with the [North West Policy and Guidance for Conveying Mental Health Patients](#). Further guidance on the transportation of patients can be found in the [Code of Practice Chapter 17](#).

#### 6. Section 135(1)

<b>Criteria</b>	It appears to a Justice of the Peace 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 with the jurisdiction of the justice, or b) being unable to care for himself, is living alone in any such place.
<b>Evidence</b>	Evidence provided on oath by an AMHP should include risk, whether attempts have already been made to enter the premises and the impact on the individual's rights.
<b>Effect of a warrant</b>	The warrant authorizes any constable to enter, if necessary by force, any premises specified in the warrant and remove the person to a place of safety with a view to making an application under the MHA. Where practicable the intended place of safety should be identified prior to applying for a warrant. When executing the warrant the police officer must be accompanied by an AMHP and a doctor (preferably Section 12(2) approved).
<b>Removal to a Place of Safety</b>	If the premises specified on the warrant are a place of safety the constable may keep the person at those premises with the agreement of relevant persons to allow an assessment to take place. Alternatively the person may be removed to an appointed place of safety. In both instances the person should be told the reasons for the course of action taken.
<b>Duration</b>	Following execution of a warrant under Section 135(1), the person may be held in custody for up to 24 hours, extendable to 36 hours in specific circumstances for clinical reasons.  The period begins: a) Where a person has been removed to a place of safety, the time when he arrives at that place b) Where a person is being kept at the premises specified on the warrant, the time when the constable first entered the premises to execute the warrant, or c) Where an authorization has been given to extend the period of 24 hours (see section 4)
<b>Patient Rights</b>	Upon arrival at the place of safety the person must be given information on how Section 135 affects them. In most cases this may be verbal, however, a patient information leaflet is available ( <a href="#">Appendix 4</a> ) and wherever possible should be given to the person.
<b>Ending Section 135(1)</b>	The period of detention will end when a decision has been made for further detention, for further alternative care and treatment, or that no further action is required



## 7. Section 135(2)

<b>Criteria</b>	To allow a patient to be retaken into custody where the person concerned is either liable to be detained or is required to reside at a particular place under the terms of guardianship or Community Treatment Order.
<b>Evidence</b>	<p>Provided on oath by an AMHP, police officer or member of the hospital staff. The criteria being that the professional believes that:</p> <ol style="list-style-type: none"> <li>There is reasonable cause to believe that the patient is to be found on the premises within the jurisdiction of the magistrate; <b>and</b></li> <li>That admission to the premises has been refused or that a refusal of such admission is apprehended</li> </ol> <p>Magistrates will only issue the warrant if access to the premises has already been refused, or refusal is anticipated. Information to be provided will include current MHA status, risk factors, and the place to which the patient will be taken.</p>
<b>Effect of the warrant</b>	<p>The warrant authorizes any constable to enter, if necessary by force, any premises specified in the warrant and remove the person. When executing the warrant it is good practice for the police officer to be accompanied by a health professional.</p> <p><u>Community Patients:</u> The Code of Practice Ch 16.15 clarifies that for patients on a CTO it is good practice for this to be a member of the multi-disciplinary team responsible for the patient's care.</p> <p>The patient should be told the reasons for them being re-taken.</p>
<b>Removal to a place of safety</b>	<p>Once the warrant has been executed the patient may be removed to the place where they are required to be ie: hospital ward.</p> <p>In the case of a CTO patient, this may be to a hospital ward if they are subject to CTO recall or A&amp;E if there is concern for their physical health.</p>
<b>Duration</b>	<p>Following the execution of the warrant under Section 135(2) by a constable, the person may be held in custody for up to 24 hours, extendable to 36 hours in specific circumstances for clinical reasons.</p> <p>The period begins:</p> <ol style="list-style-type: none"> <li>Where a person has been removed to a place of safety, the time when he arrives at that place</li> <li>Where a person is being kept at the premises specified on the warrant, the time when the constable first entered the premises to execute the warrant, or</li> <li>Where an authorization has been given to extend the period of 24 hours (see section 4)</li> </ol>
<b>Patient Rights</b>	Upon arrival at the place of safety the person must be given information on how Section 135 affects them. In most cases this will be verbal, however, a patient information leaflet is available ( <a href="#">Appendix 4</a> ) and where practicable should be given to the person.
<b>Ending Section 135(2)</b>	The period of detention will end when the patient arrives on the ward, or residence where they are required to reside.

**NB:** Access to premises may not require the use of Section 135 if a co-owner, or co-occupier of the premises gives permission to the mental health professionals to enter. Such circumstances may be a hotel where members of the public can reside – a warrant would not be required to enter a room occupied by a person if that person has no exclusive right of occupation; or where permission is granted by a landlord where the tenant does not have exclusive right of occupancy (see Section 115 MHA for further clarification). However, the powers of Section 115 do not authorize forced entry or removal to a place of safety.

## 8. Section 136

<b>Purpose</b>	To provide police officers with the power to remove a person to a place of safety for assessment.				
<b>Evidence</b>	<p>If a person appears to a constable to be suffering from mental disorder and to be in immediate need of care and 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:</p> <ol style="list-style-type: none"> <li>a) Remove the person to a place of safety, within the meaning of section 135, or</li> <li>b) If the person is already at a place of safety, within the meaning of that section, keep the person at that place or remove the person to another place of safety.</li> </ol> <p>See section 7 for the definition of a Place of Safety.</p>				
<b>Implementation</b>	<p>The powers of Section 136 may be exercised where the mentally disordered person is at any place other than:</p> <ol style="list-style-type: none"> <li>a) any house or flat where that person, or any other person, is living, or</li> <li>b) 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.</li> </ol> <p>Locations at which Section 136(1) powers <b>may be</b> used include:</p> <ul style="list-style-type: none"> <li>• railway lines</li> <li>• hospital wards</li> <li>• rooftops of commercial or business buildings</li> <li>• police stations</li> <li>• offices</li> <li>• schools</li> <li>• gardens and car parks associated with communal residential property</li> <li>• non-residential part of residential buildings with restricted entry</li> <li>• cars</li> <li>• cinemas</li> <li>• A&amp;E Departments</li> </ul> <p>Locations at which Section 136(1) powers <b>may not</b> be used:</p> <ul style="list-style-type: none"> <li>• in a private room in a care or residential home where the person lives</li> <li>• the living room or garden of a self-contained private dwelling</li> </ul>				
<b>Requirement to Consult</b>	<p>Prior to implementing Section 136 the police officer is required, under Section 136(1C) to consult a healthcare professional where it is practicable to do so.</p> <p>Arrangements for police consultation with a mental health professional are as follows (please note the telephone numbers are not dedicated lines):</p> <table border="1" data-bbox="389 1666 1466 2069"> <tr> <td data-bbox="389 1666 603 1935">Cheshire</td> <td data-bbox="603 1666 1466 1935"> <p>Street Triage contacted via Police control room: 8am – 1am Monday to Thursday 1pm – 1am Friday to Sunday</p> <p>Outside Street Triage operating hours: Cheshire West - Crisis Team on 01244 397537 Cheshire East - No provision currently in place</p> </td> </tr> <tr> <td data-bbox="389 1935 603 2069">Merseyside</td> <td data-bbox="603 1935 1466 2069"> <p>Street Triage contacted via Police control room: 12 noon - midnight 7 days a week.</p> <p>Outside Street Triage operating hours:</p> </td> </tr> </table>	Cheshire	<p>Street Triage contacted via Police control room: 8am – 1am Monday to Thursday 1pm – 1am Friday to Sunday</p> <p>Outside Street Triage operating hours: Cheshire West - Crisis Team on 01244 397537 Cheshire East - No provision currently in place</p>	Merseyside	<p>Street Triage contacted via Police control room: 12 noon - midnight 7 days a week.</p> <p>Outside Street Triage operating hours:</p>
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Merseyside	<p>Street Triage contacted via Police control room: 12 noon - midnight 7 days a week.</p> <p>Outside Street Triage operating hours:</p>				

		Wirral Home Treatment Team – 0151-488-8448 Young People – Choice: 0151-488-8450
<b>Removal to a Place of Safety</b>	<p>It has been agreed between the relevant Clinical Commissioning Groups, Local Authorities and Police forces that the designated '<b>Places of Safety</b>' for the purpose of Section 136 are:</p> <ul style="list-style-type: none"> <li>• <b>Wirral</b> - Arrowe Park Hospital, A&amp;E Department</li> <li>• <b>Chester</b> - Countess of Chester Hospital, A&amp;E Department.</li> <li>• <b>Macclesfield</b> - Macclesfield General District Hospital, A&amp;E Department</li> </ul> <p><b>NB</b> – Leighton Hospital, Crewe, is not a designated place of safety</p> <p>See Section 4.1 below for further details regarding places of safety.</p>	
<b>Duration</b>	<p>Following the implementation of Section 136 by a constable, the person may be held in custody for up to 24 hours, extendable to 36 hours in specific circumstances for clinical reasons.</p> <p>The period begins:</p> <ol style="list-style-type: none"> <li>a) Where a person has been removed to a place of safety, the time when he arrives at that place</li> <li>b) Where a person is being kept at the premises specified on the warrant, the time when the constable first entered the premises to execute the warrant, or</li> <li>c) Where an authorization has been given to extend the period of 24 hours (see section 4)</li> </ol>	
<b>Response Times following arrival at Place of Safety</b>	<p>In order to ensure the continuance of good practice, the needs of the detained person must be responded to as quickly as possible. As per the Code of Practice Ch 16.47, it is good clinical practice for the doctor and AMHP to attend within 3 hours of the patient's arrival. Where the doctor does not arrive within this timeframe this must be escalated to the duty manager.</p> <p>This target will be monitored by Cheshire &amp; Wirral Partnership NHS Foundation Trust.</p>	
<b>Patient Rights</b>	<p>Upon arrival at the place of safety the person must be given information on how Section 136 affects them. A patient information leaflet is available (<a href="#">Appendix 5</a>) and should be given to the person, as well as discussed with them to assist in their understanding of the effect of Section 136.</p>	
<b>Assessment</b>	<p>A person detained under Section 136 may be held in a place of safety for the purpose of being examined by a RMP (identified on the Section 136 rota for each area within CWP) and interviewed by an AMHP in order to ascertain the most appropriate course of action and to make any necessary arrangements (s. 136(2)).</p> <p>The Mental Health Act Code of Practice states that "<i>doctors examining patients should, wherever possible, be approved under section 12 of the Act. Where the examination has to be conducted by a doctor who is not approved under section 12, the doctor concerned should record the reasons for that.</i>" Code of Practice Chapter 16.46</p> <p>Where the examining doctor is NOT section 12(2) approved, the assessment process must include liaison with a section 12(2) approved doctor for advice.</p>	

Should a Section 12(2) doctor not be required to attend the place of safety to undertake further assessment, reasons must be recorded on the Section 136 form.

The person detained should be seen by both a doctor and an AMHP. The only exception to this is where the doctor arrives in advance of the AMHP and concludes that the patient does not have a mental disorder of a nature or degree that warrants detention under the Mental Health Act. In these circumstances, the authority to detain a person under Section 136 will cease. *Caselaw (Winterwerp v Netherlands (1979))* held that “except in emergency cases” an individual should not be deprived of his liberty unless assessed as having a mental disorder. Therefore, continued detention of a person subsequent to the doctor finding that there is no mental disorder present would contravene Article 5(1)(e) of the European Convention on Human Rights (ECHR). However, the AMHP should still see the person regarding any arrangements that may need to be made in relation to aftercare.

If, following assessment under Section 136, the person requires detention under the Mental Health Act, the AMHP must make arrangements for the appropriate doctors to attend to undertake a full Mental Health Act assessment.

#### Assessment of Children and Young People under 18 years

If the detained person is under the age of 18 years, a CAMHS clinician should be contacted as soon as possible for advice about any relevant developmental or child related issues. For further guidance on the assessment of young people see CWP Policy **CA3 Guidelines for the assessment and management of psychiatric emergency in young people under 18 years**. In cases where the young person has complex or multiple needs, other clinicians may need to be involved, eg: LD CAMHS clinician where a young person has a learning disability ([Code of Practice 2015 Chapter 16.49](#)).

However, the Section 136 assessment must not be delayed whilst waiting to seek CAMHS.

#### Assessment of Person with Learning Disabilities

If it is likely that the detained person has a learning disability, it is desirable for a joint assessment to be made, wherever possible by a senior section 12(2) doctor in learning disabilities and an AMHP experienced in working with people with learning disabilities. ([Code of Practice 10.29](#)).

#### Assessment in Police Custody Suite

The person detained in the Custody Suite must be examined by the Forensic Medical Examiner (FME) and interviewed by the AMHP within the 3 hour target time in order to complete the assessment. Wherever possible a joint assessment should take place. The FME must liaise with a senior section 12(2) approved doctor from the appropriate mental health unit within Cheshire & Wirral Partnership NHS Foundation Trust (via the hospital switchboard), who will advise on the outcome of the assessment.

#### Assessment of Patients already subject to Mental Health Act 1983

- a) Patients on Section 17 leave of absence – contact should be made with the patient’s Responsible Clinician (RC) (or on-call RC if out of hours) who may consider rescinding Section 17 leave and arrange for the patient’s return to the ward.
- b) Patients subject to Community Treatment Orders (CTO) – contact should be made with the patient’s RC who may consider formal recall under the

	<p>provisions of the CTO, and arrange for the patient's to be transferred to the responsible hospital</p> <p>c) Patients subject to conditional discharge – contact should be made with the consultant psychiatrist in charge of the patient's treatment who may consider making arrangements for recall to hospital.</p>
<b>Ending Section 136</b>	<p>Section 136 ends either:</p> <p>a) When a RMP has assessed and deemed that there is no mental disorder</p> <p>b) When both the RMP and AMHP have assessed and have agreed that no further arrangements regarding care or treatment are required, or an application is made for further detention under MHA.</p> <p>Possible outcomes of Section 136 are:</p> <ul style="list-style-type: none"> <li>• Discharge with/or without community follow-up</li> <li>• Informal admission to hospital</li> <li>• Compulsory admission to hospital</li> <li>• CTO recall to hospital if person subject to a Community Treatment Order</li> <li>• Section 17 rescinded if person currently detained and on leave</li> </ul>

### 9. Extension of detention under Sections 135 and 136

The registered medical practitioner (RMP) responsible for the examination of the person detained may authorize continued detention for a further period not exceeding 12 hours. This power may only be exercised prior to the expiry of the 24 hour period, and the reasons for the extension fully documented.

An extension may only be authorized if the RMP considers that it is necessary because the person's condition is such that it would not be practicable for the assessment to be carried out, or completed, before the end of the 24 hour period. An example where this may be applicable is if the person is too intoxicated to assess. An extension cannot be granted due to a delay in the AMHP or doctor attending or in order to source a bed.

In the rare circumstances where the place of safety is a police station, authorization to extend the permitted period of detention must also be approved by a police officer ranked superintendent or above.

### 10. Consent to Treatment provisions

Persons detained under Section 135 and 136 are not subject to the provisions of Part 4 of the MHA. This means that there are no powers to treat. However, treatment may be given if:

- a) the person has capacity and consents to the care and treatment, **or**
- b) where the person lacks capacity to consent to the care and treatment, the Mental Capacity Act may be used if it is deemed to be in the person's best interests, providing that the treatment or the exercise of giving the treatment does not deprive the person of their liberty as laid out in section 4A MCA 2005. If it does not a person appointed as an attorney or deputy to look after a person's health and welfare may consent to treatment decisions if that decision does not amount to a deprivation of liberty and it is within their powers. Where a deprivation of liberty for life sustaining treatment is required practitioners must comply with section 4B MCA. Treating professionals as part of the best interest process must comply with any advanced decision the person has in place relating to treatment. (MCA Code of Practice para 9.56). An advance decision does not apply to treatment decisions if the person is detained under sections 2 and 3 and some part 3 sections of the MHA apart from ECT.

**NB:** If the person has capacity and refuses treatment, it cannot be given.

Where a person detained under Section 135 is to be returned to the place where they are required to be, but requires emergency treatment for a physical injury or disorder, he may first be taken to the A&E department to receive such treatment. The consent to treatment provisions described above

apply; the decision maker under the MCA for physical health treatment will be the relevant health care professional skilled in that field of medicine. In such cases, if in agreement, A&E may be used as a place of safety. The duration of Section 135 will commence upon arrival and arrangements should be put in place for relevant assessments to take place during the permitted timeframe.

### **11. The Requirement to consult prior to implementation of Section 136**

The purpose of the consultation is for the police officer to obtain timely and relevant information and advice regarding the individuals' mental health. This will inform the decision making process and may lead to alternative action being taken. The police officer should be provided with information/advice regarding:

- whether the person is known to mental health services, and if so, whether it is possible to access records to obtain further information (e.g.: there may already be a care plan in place to manage mental health crisis)
- whether any physical issues may be of concern/contribute to the behavior (e.g.: substance misuse)
- whether the presentation appears to be a mental disorder
- whether the use of Section 136 is appropriate.

However, the ultimate responsibility for the use of Section 136 is the police officer, having considered all available information.

#### When is it 'practicable' to consult?

The police officer will determine whether or not it is practicable to consult, dependent upon the individual circumstances. A number of factors will influence this decision:

- whether it is safe to undertake a consultation ie: the person's behavior requires immediate action
- the time it is likely to take to consult
- whether the person is likely to remain co-operative while consultation takes place
- whether there are established local arrangements for undertaking a consultation.

In cases where consultation has begun, it may be terminated without conclusion if the behavior of the person changes requiring immediate action.

### **12. Places of Safety**

A place of safety is defined under Section 135 as being:

- 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 permission of the occupier/person managing the accommodation.

#### **13.1 Alternative Places of Safety**

##### Children and young people aged under 18 years

Section 136A(1) means that, without exception, a police station may no longer be used as a place of safety for young people.

##### Adults

A police custody suite may be used as an alternative place of safety for persons aged 18 and over in very limited circumstances. Three conditions must be satisfied before a police station may be used as a place of safety:

- a) The person's behaviour poses an imminent risk of serious injury or death to that person or others
- b) As a result of the risk posed no place of safety other than a police station can be reasonably expected to detain the person

- c) A healthcare professional is present and available throughout the period of detention to undertake regular healthcare checks. The decision to use a police station as a place of safety requires the authorisation of a senior police officer (Inspector or above), prior to the detained person arriving at the police station.

Police custody suites which may be used as a place of safety:

**Wirral Custody Suite**

Cavendish Street  
Birkenhead  
Wirral  
CH41 8BE  
Tel: 0151-777-2751

**Chester Custody Suite**

Blacon Avenue  
Blacon  
Chester  
CH1 5BD  
Tel: 01606 366270

**Middlewich Custody Suite**

Sanderson Way  
Middlewich  
Cheshire  
CW10 0GY  
Tel: 01606 366370

**13.2 Police attendance at a Health-based Place of Safety**

Police officers will routinely carry out police intelligence checks on arrest and the results of these checks will be discussed with the person in charge of the Place of Safety. The length of time that the police remain in attendance will then be dependent on this information and the risk factors ([See Appendix 1 – Police Risk Assessment Flowchart](#)). Generally this will be mutually agreed between the person in charge of the place of safety and the police officer in attendance. Although the police will make the final decision, this must be following consultation with either the AMHP or section 12(2) doctor.

Where there is disagreement, the police officer concerned must contact their local Duty Inspector who will make the final decision following consultation with relevant professionals in attendance at the place of safety.

**13.3 Transfer between Places of Safety**

A person removed to a place of safety under Section 136 may be transferred to a different place of safety. This is a joint decision between the AMHP, the doctor, nurse in charge of A&E and the police officer. A person may be transferred at any point on the basis of individual circumstances, including level of risk.

If a police station is used as the place of safety regular health and welfare checks must be undertaken. The custody officer must review whether the circumstances require continued use of the police station, if not the person must be transferred to a health-based place of safety. However, transfer need not take place if it would be likely to cause a delay in the assessment process, or cause distress to the individual.

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. Where transfer is necessary the police officer, or anyone authorised by the AHMP, will take the person to the new place of safety using the most appropriate form of transport. This will be determined following risk assessment of the person's behaviour and condition. NWAS to co-ordinate and transport (see NWAS [link to Conveyance Policy above](#)).

Where a person is transferred from one place of safety to another, a copy of the original Section 136 form must be taken with the person to the new place of safety to ensure relevant details are available and accurate records of the Section 136 detention can be maintained

## 14. Documentation Requirements for Section 136

Section 136 forms ([see Appendix 3](#)) are available in all designated Places of Safety and must be completed as follows:

**Part A** must be completed by the arresting officer

**Part B** must be completed by person in charge of the place of safety

**Part C** must be completed by assessing doctor to authorise an extension of s.136 for up to 36 hours

**Part D** must be completed by when there is a transfer from one place of safety to another

**Part E** must be completed by the assessing doctor and AMHP on completion of the assessment

**It is essential that in all cases, all relevant parts of the form are completed.**

**It is the responsibility of the AMHP or doctor to send the top copy of the completed Section 136 form to the Mental Health Law Team at Redesmere, Countess of Chester Health Park, Liverpool Road, Chester, CH2 1BQ.**

## 15. Police Power to Search

Where a warrant is issued under Section 135, or a person is detained under Section 136, a police constable may search the person if they believe that the person:

- a) May present a danger to himself or herself or to others, and
- b) Is concealing on his or her person an item that could be used to cause physical injury to himself or to others.

The power to search is only a power to the extent that it is reasonably required for the purpose of discovering the item that the person is believed to be concealing. It does not require the person to remove clothing other than outer coat, jacket or gloves. Any item found may be seized and retained by the police constable if they believe that the person may use it to cause physical injury to him/herself or others.

## 16. Retaking a person who absconds whilst detained under sections 135 and 136

Section 138 deals with powers to retake a person who has escaped from custody.

- If a person absconds during their removal to a place of safety, they may not be retaken after the period of 24 hours has expired.
- If a person absconds from the 'place of safety' before an assessment has been completed, the person can be brought back within the 24 hour period. If an extension to that period (up to a maximum of 12 hours) has already been authorised by the medical practitioner, this period should also be taken into account. Beyond this time scale, the absconding person may only be brought back with the authority of a new detention order.

### 16.1 Young people under the age of 18

If the person who absconds is under the age of eighteen then the person with parental responsibility must be informed by the person in charge of the place of safety.

If the person who absconds is known to Children's Social Care, then the Local Authority where the person resides must be informed by the person in charge of the place of safety

## 17. Safeguarding – Adults and Young People

This section is to be read in conjunction with the Safeguarding policies and procedures of each of the agencies involved in the Section 136 process. Any safeguarding issues that need to be referred must be done so using the relevant agency's referral protocols.

## 18. Relevant Contact Numbers

WIRRAL		
Social services contact	During Office Hours	Central Advice & Duty Team:



	09:00 - 17:00	Tel: 0151-606-2006
	Out of Office Hours 16:30 - 09:00 plus weekends & Bank Holidays	Emergency Duty Team Tel: 0151-677-6557 Or bleep 0763605131
<b>Clatterbridge hospital switchboard</b>	0151-334-4000	

<b>CHESHIRE</b>		
<b>Social services contact</b>	During Office Hours 08:30 - 1700	West Access - 01244 603400 Central Access - 01606 814900 East Access - 01625 534700
	17.00 - 08.30 Monday to Thursday 16:30 Friday – 08.30 Monday All Bank Holidays	Emergency Duty Team Tel: 0300 1235022
<b>Hospital switchboards</b>	Chester:01244 365000	
	Macclesfield - 01625 421000	

## 19. Further Guidance

Further guidance on the framework and implementation of Section 135 and 136 can be found via the following links:

### **MHA Code of Practice 2015. Chapter 16**

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/435512/MHA\\_Code\\_of\\_Practice.PDF](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/435512/MHA_Code_of_Practice.PDF)

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

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/656025/Guidance\\_on\\_Police\\_Powers.PDF](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/656025/Guidance_on_Police_Powers.PDF)

### **The Royal College of Emergency Medicine. Mental Health in Emergency Departments – A toolkit for improving care. October 2017**

<http://www.rcem.ac.uk/docs/RCEM%20Guidance/Mental%20Health%20Toolkit%202017.pdf>

### **The Royal College of Emergency Medicine, A brief guide to Section 136 for Emergency Departments. December 2017**

<https://www.rcem.ac.uk/docs/College%20Guidelines/A%20brief%20guide%20to%20Section%20136%20for%20Emergency%20Departments%20-%20Dec%202017.pdf>

## Appendix 1 – RAVE Risk Assessment Matrix used by police

RISK ASSESSMENT MATRIX		
LOW RISK	MEDIUM RISK	HIGH RISK
Current / recent indicators of risk	Current / recent indicators of risk	Current / recent indicators of risk
<p>No currently present behavioural indicators (other than very mild substance use)</p> <p><b>AND</b></p> <p>no recent criminal / medical indicators that the individual is violent OR poses and escape risk OR is a threat to their own or anyone else's safety</p> <p><b>OR</b></p>	<p>Some currently presented behavioural indicators (including substance use)</p> <p><b>AND / OR</b></p> <p>some recent criminal / medical indicators that the individual may be violent OR poses an escape risk OR is a threat to their own or anyone else's safety</p> <p><b>BUT</b></p>	<p>Currently presented behavioural indicators (including significant substance intoxication)</p> <p><b>OR</b></p> <p>significant recent criminal or medical indicators that an individual is violent AND poses an escape risk OR is an imminent threat to their own or anyone else's safety OR</p>
Previous indicators	Previous indicators	Previous indicators
<p>Which are few in number AND historic OR irrelevant;</p> <p><b>BUT</b></p> <p>Excluding violence graver than ABH and not involving weapons, sexual violence or violence towards NHS staff or vulnerable people</p>	<p>Limited in number OR historic OR irrelevant; including violence graver than ABH or involving weapons, sexual violence, violence towards NHS staff or vulnerable people</p> <p><b>OR</b></p> <p>LOW RISK patients who have disengaged from treatment and where there are MEDIUM RISKS threats when disengaged.</p>	<p>Neither limited NOR historic NOR irrelevant; including violence graver than ABH or involving weapons, sexual violence, violence towards NHS staff or vulnerable people</p> <p><b>OR</b></p> <p>LOW or MEDIUM RISK patients who have disengaged from treatment and where there are MEDIUM RISKS threats when disengaged.</p>
Police support is NOT required	Police support MAY be required	Police support is VITAL
<ul style="list-style-type: none"> <li>Where there is dispute within this framework, NHS professionals will have the <b>right to insist</b> upon police support where they believe they require it – police supervisors will have the <b>right to insist</b> on what that support should be. <b>Each agency will accommodate the other, through this compromise.</b></li> <li>Where the police feel that the NHS have insisted upon support inappropriately or where the NHS feel the police have provided too much or too little support, this should be referred to the MHA Liaison Group for resolution and feedback should be provided by managers to ALL professionals involved.</li> </ul>		

## Appendix 2 - Red Flag criteria used by Police and Ambulance Services S136 RED FLAG

### CRITERIA (this is not an exhaustive list) Police Officer / Paramedic triggers for conditions requiring Treatment or Assessment in an Emergency Department

<p>Dangerous Mechanisms:</p> <p>Patient has been hit by Taser Blows to the body (significant potential) Falls &gt; 4 Feet Injury from edged weapon or projectile Throttling / strangulation Hit by vehicle Occupant of vehicle in a collision Ejected from a moving vehicle Evidence of drug ingestion or overdose</p>	<p>Serious Physical Injuries:</p> <p>Noisy Breathing Not rousable to verbal command Head Injuries:</p> <ul style="list-style-type: none"> <li>• Loss of consciousness at any time</li> <li>• Facial swelling</li> <li>• Bleeding from nose or ears</li> <li>• Deep cuts</li> <li>• Suspected broken bones</li> </ul>
<p>Actual (current) Attempt of self-harm:</p> <p>Actively head banging Actual use of edged weapon (to self-harm) Ligature use Evidence of overdose or poisoning Psychiatric Crisis (with self-harm) Delusions / Hallucinations / Mania</p>	<p>Possible Excited Delirium (agitated patient):</p> <p>Two or more from:</p> <ul style="list-style-type: none"> <li>• Serious physical resistance / abnormal strength</li> <li>• High body temperature</li> <li>• Removal of clothing •</li> </ul> <p>Profuse sweating or hot skin</p> <ul style="list-style-type: none"> <li>• Behavioural confusion / coherence</li> <li>• Bizarre behaviour</li> </ul>
<p>Senior Clinical Staff where available.</p> <p><b>ONLY AT THE REQUEST OF PARAMEDICS / TECHNICIANS – ACCESSED VIA EOC</b></p> <p>Where immediate management of RED FLAG conditions necessitates the intervention or skills of a Senior Clinician or where without medical oversight the journey would involve too much risk, ether to the patient, the paramedics or the police officers. This should include situations where rapid tranquilisation is considered necessary, in accordance with NICE GUIDELINES 2005.</p>	<p>Conveyance to the nearest ED:</p> <p>Should NOT be undertaken in a police vehicle UNDER ANY CIRCUMSTANCES where a RED FLAG trigger is involved.</p> <p>This includes remaining in ED until the person is medically fit for discharge to PoS, to Police Station or from s136 detention. It is the responsibility of the Police to outline to ED the LEGAL ASPECTS of detention; it is the responsibility of the Ambulance Service to outline the MEDICAL ASPECTS.</p>

Appendix 3 - Section 136 Form

SECTION 136 RECORD

<b>PART A – TO BE COMPLETED BY POLICE OFFICER</b>			
<b>NAME OF PLACE OF SAFETY:</b> MDGH / COCH / WUTH *delete as applicable			
Name of Person:		DOB:	Gender Male/Female
Address:		Date of Arrest:	Time of Arrest:
Location of Arrest:		Reason for Arrest:	
Name of Police Officer		ID Number	Police Station
<b>Time of Arrival:</b> (24 hr clock)			<b>Date:</b>
<b>PART B – TO BE COMPLETED BY PERSON IN CHARGE OF THE PLACE OF SAFETY</b>			
Name of Nurse:			
Ethnic Group: (see front cover of book for coding list)		Interpreter Required:	Yes <input type="checkbox"/> No <input type="checkbox"/>
		Does the detainee have a disability:	Yes <input type="checkbox"/> No <input type="checkbox"/>
		If yes, please state:	
Was the hospital/custody suite pre-warned of impending arrival: Yes <input type="checkbox"/> No <input type="checkbox"/>		Have Police remained in attendance: Yes <input type="checkbox"/> No <input type="checkbox"/>	Time Police left:
Time Registered Medical Practitioner (RMP) was contacted:			
Time Approved Mental Health Practitioner (AMHP) contacted:			
<b>PART C – TO BE COMPLETED IF THE PERIOD OF DETENTION IS EXTENDED UP TO 36 HRS</b>			
Name of RMP authorising extended period:			
Reason for extension:			Duration of extension:
Has a Section 12(2) doctor been consulted Yes <input type="checkbox"/> No <input type="checkbox"/>			
<b>PART D – TO BE COMPLETED IF TRANSFERRED TO ANOTHER PLACE OF SAFETY</b>			
<b>Please ensure a copy of this form goes with the person and when fully completed sent to the MHL Team</b>			
Place transferred to:			Date and time of transfer:
Reason for transfer:		Has an assessment been carried out by: Doctor Yes <input type="checkbox"/> No <input type="checkbox"/> AMHP Yes <input type="checkbox"/> No <input type="checkbox"/>	
<b>PART E – TO BE COMPLETED BY RMP AND AMHP ON COMPLETION OF ASSESSMENT</b>			
Name of RMP:		Time of Arrival:	Date:
Name of AMHP:		Time of Arrival:	Date:
Liaison with Section 12(2) Doctor (if examining doctor is not)		Yes <input type="checkbox"/>	No <input type="checkbox"/>
Is Section 12(2) doctor required to attend for further assessment:		Yes <input type="checkbox"/>	No <input type="checkbox"/>
If 'no' give brief reasons why section 12(2) doctor is not required:			
<b>Outcome of Assessment:</b>			
Section 2 <input type="checkbox"/> Section 3 <input type="checkbox"/> Section 4 <input type="checkbox"/> CTO recall <input type="checkbox"/> Informal Admission <input type="checkbox"/>			
Section 17 leave rescinded <input type="checkbox"/> Discharge <input type="checkbox"/>			
If admitted, name of ward:		Alternative arrangements:	
<b>Date Assessment completed:</b>		<b>Time Assessment completed:</b>	
Signed: RMP		Print Name:	
Signed: AMHP		Print Name:	

**TOP COPY OF FULLY COMPLETED FORMS TO BE SENT TO: MHL TEAM, REDESMERE, COUNTRESS OF CHESTER HEALTH PARK, LIVERPOOL ROAD, CHESTER, CH2 1BQ**

## Appendix 4 – Patient Information Leaflet Section 135

### PATIENT INFORMATION

S135

#### ADMISSION OF PATIENTS REMOVED BY POLICE UNDER A COURT WARRANT (Section 135 of the Mental Health Act 1983)

1. Patient's name	
2. Name of hospital and ward	

#### Why am I in hospital?

You have been brought to this hospital under section 135 of the Mental Health Act because an approved mental health professional thinks that you have a mental disorder and you may need treatment or care.

An approved mental health professional is someone who has been specially trained to help decide whether people need to be in hospital.

A magistrate has issued a warrant saying that you can be brought here and kept here even if you do not want to come.

#### How long will I be here?

You can be kept here (or in another in a place where you will be safe) for 24 hours so that you can be seen by a doctor and an approved mental health professional. This can be extended to 36 hours if it is felt that it is not possible to assess you properly because of physical health concerns. An approved mental health professional is someone who has been specially trained to help decide whether people need to be kept in hospital.

If these people agree that you need to remain in hospital, a second doctor may be asked to see you, to confirm their decision.

During this time you must not leave unless you are told that you may. If you try to go, the staff can stop you, and if you leave you can be brought back.

If the doctors and the approved mental health professional have not seen you by the end of the 24 hours, you will be free to leave. You may decide to stay on as a voluntary patient. But if you do want to leave, please talk to a member of staff first.

In your case the 24 hours end at:

Date	Time
------	------

### **What happens next?**

When the doctors and an approved mental health professional have seen you, they may say that you need to stay in hospital for longer. They will tell you why and for how long this is likely to be. You will be given another leaflet that explains what will happen.

If they decide that you do not have to stay, someone will talk to you about what other help you should have.

### **Can I appeal?**

No. Even if you do not agree that you need to stay in hospital now, you cannot appeal against a decision to keep you here under section 135.

### **Will I be given treatment?**

The hospital staff will tell you about any treatment they think you need. You have the right to refuse any treatment you do not want. Only in special circumstances, which would be explained to you, can you be given treatment you do not agree to.

### **Letting your nearest relative know**

A copy of this leaflet will be given to the person the Mental Health Act says is your nearest relative.

There is a list of people in the Mental Health Act who are treated as your relatives. Normally, the person who comes highest in that list is your nearest relative. The hospital staff can give you a leaflet which explains this and what rights your nearest relative has in connection with your care and treatment.

In your case, we have been told that your nearest relative is:

If you do not want this person to receive a copy of the leaflet, please tell your nurse or another member of staff.

### **Changing your nearest relative**

If you do not think this person is suitable to be your nearest relative, you can apply to the County Court for someone else to be treated as your nearest relative instead. The hospital staff can give you a leaflet that explains this.

### **Your letters**

All letters sent to you while you are in hospital will be given to you. You can send letters to anyone except someone who has said they do not want to get letters from you. Letters to these people can be stopped by the hospital staff.

### **Code of Practice**

There is a Code of Practice that gives advice to the staff in the hospital about the Mental Health Act and treating people for mental disorder. The staff have to consider what the Code says when they take decisions about your care. You can ask to see a copy of the Code, if you want.

### **How do I complain?**

If you want to complain about anything to do with your care and treatment in hospital, please speak to a member of staff. They may be able to sort the matter out. They can also give you information about the hospital's complaints procedure, which you can use to try to sort out your complaint locally. They

can also tell you about any other people who can help you make a complaint, for example an independent mental health advocate (see above).

If you do not feel that the hospital complaints procedure can help you, you can complain to an independent Commission. This is called the Care Quality Commission and it monitors how the Mental Health Act is used, to make sure it is used correctly and that patients are cared for properly while they are in hospital. The hospital staff can give you a leaflet explaining how to contact the Commission.

#### Further help and information

If there is anything you do not understand about your care and treatment, a member of staff will try to help you. Please ask a member of staff to explain if there is anything in this leaflet you do not understand or if you have other questions that this leaflet has not answered.

Please ask if you would like another copy of this leaflet for someone else.

## Appendix 5 – Patient Information Leaflet Section 136

### PATIENT INFORMATION

S136

#### ADMISSION OF MENTALLY DISORDERED PERSONS FOUND IN A PUBLIC PLACE

(Section 136 of the Mental Health Act 1983)

1. Patient's name	
2. Name of hospital and ward	

#### Why am I in hospital?

You have been brought to this hospital by a police officer because they are concerned that you may have a mental disorder and should be seen by a mental health professional.

You are being kept here under section 136 of the Mental Health Act 1983 so that you can be assessed to see if you need treatment.

#### How long will I be here?

You can be kept here (or in another place where you will be safe) for up to 24 hours so that you can be seen by a doctor and an approved mental health professional. This can be extended to 36 hours if it is felt that it is not possible to assess you properly because of physical health concerns.

An approved mental health professional is someone who has been specially trained to help decide whether people need to be kept in hospital.

If the doctor and the approved mental health professional agree that you need to remain in hospital, a second doctor may be asked to see you to confirm their decision.

During this time you must not leave unless you are told that you may. If you try to go, the staff can stop you, and if you leave you can be brought back.

If the doctors and the approved mental health professional have not seen you by the end of the 24 hours, you will be free to leave. You may decide to stay on as a voluntary patient. But if you do want to leave, please talk to a member of staff first.

In your case the 24 hours end at:

Date	Time
------	------

#### What happens next?

When the doctors and an approved mental health professional have seen you, they may say that you need to stay in hospital for longer. They will tell you why and for how long this is likely to be. You will be given another leaflet that explains what will happen.

If they decide that you do not have to stay, someone will talk to you about what other help you should have.

#### Can I appeal?



No. Even if you do not agree that you need to be in hospital, you cannot appeal against the decision to keep you here under section 136.

### **Will I be given treatment?**

The hospital staff will tell you about any treatment they think you need. You have the right to refuse any treatment you do not want. Only in special circumstances, which would be explained to you, can you be given treatment you do not agree to.

### **Letting your nearest relative know**

A copy of this leaflet will be given to the person the Mental Health Act says is your nearest relative.

There is a list of people in the Mental Health Act who are treated as your relatives. Normally, the person who comes highest in that list is your nearest relative. The hospital staff can give you a leaflet which explains this and what rights your nearest relative has in connection with your care and treatment.

In your case, we have been told that your nearest relative is:

If you do not want this person to receive a copy of the leaflet, please tell your nurse or another member of staff.

### **Changing your nearest relative**

If you do not think this person is suitable to be your nearest relative, you can apply to the County Court for someone else to be treated as your nearest relative instead. The hospital staff can give you a leaflet that explains this.

### **Your letters**

All letters sent to you while you are in hospital will be given to you. You can send letters to anyone except someone who has said they do not want to get letters from you. Letters to these people can be stopped by the hospital staff.

### **Code of Practice**

There is a Code of Practice that gives advice to the staff in the hospital about the Mental Health Act and treating people for mental disorder. The staff have to consider what the Code says when they take decisions about your care. You can ask to see a copy of the Code, if you want.

### **How do I complain?**

If you want to complain about anything to do with your care and treatment in hospital, please speak to a member of staff. They may be able to sort the matter out. They can also give you information about the hospital's complaints procedure, which you can use to try to sort out your complaint locally. They can also tell you about any other people who can help you make a complaint, for example an independent mental health advocate (see above).

If you do not feel that the hospital complaints procedure can help you, you can complain to an independent Commission. This is called the Care Quality Commission and it monitors how the Mental Health Act is used, to make sure it is used correctly and that patients are cared for properly while they are in hospital. The hospital staff can give you a leaflet explaining how to contact the Commission.

**Further help and information**

If there is anything you do not understand about your care and treatment, a member of staff will try to help you. Please ask a member of staff to explain if there is anything in this leaflet you do not understand or if you have other questions that this leaflet has not answered.

Please ask if you would like another copy of this leaflet for someone else.