



Department
of Health



Home Office

Guidance for the implementation of changes to police powers and places of safety provisions in the mental health act 1983

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1. Introduction

Background

- 1.1 This guidance has been produced to support the implementation of changes to the police powers and places of safety provisions in the Mental Health Act 1983 (“the 1983 Act”) made by the Policing and Crime Act 2017 (“the 2017 Act”). These changes primarily relate to police powers to act in respect of people experiencing a mental health crisis for the purposes of ensuring their care and safety.
- 1.2 The main legislative changes are:
 - amendments to sections 135, 136 and 138;
 - insertion of new sections 136A, 136B and 136C;
 - making of new regulations: The Mental Health Act 1983 (Places of Safety) Regulations 2017.
- 1.3 These changes come into force on 11 December 2017. The changes will not apply to cases in train at the start of 11 December 2017 (see Annex).

Status of the guidance

- 1.4 This guidance is not statutory. It is intended to provide assistance to relevant organisations and professionals in identifying and understanding the implications of the various changes. Since the 1983 Act applies to England and Wales, this guidance is also relevant in both countries. This guidance should be used in conjunction with other relevant guidance and standards, a number of which are listed in Chapter 6.
- 1.5 Both England and Wales have existing statutory Codes of Practice in relation to the 1983 Act. These statutory Codes of Practice remain in force and healthcare professionals must continue to have regard to the Codes in the exercise of their functions under the 1983 Act (although where there has been a subsequent change in the legislation, this may be a good reason to depart from what is set out in the Code). It is intended that both Codes will be amended to reflect the legislative changes and to incorporate relevant information from this guidance when they are next due for review. Revisions will be subject to the normal consultation processes.

Purpose and content of the guidance

- 1.6 A person experiencing a mental health crisis should receive the best possible care at the earliest possible point. The legal changes introduced by the 2017 Act are intended to improve immediate service responses to people who need urgent help with their mental health in cases where police officers are the first to respond.
- 1.7 The impact of the changes and the implementation action required may vary depending on current local arrangements or circumstances. For example, in localities where there has previously been a significant reliance on use of police stations as places of safety, the urgent identification of suitable alternatives will clearly be important. This guidance is not intended to dictate local partnership arrangements,

which will have developed over time and in accordance with local needs, but to highlight issues that may need consideration when reviewing those arrangements. Proactive joint working, as driven by local Crisis Care Concordat groups across both England and Wales, will remain key to successful implementation of the legislative changes.

- 1.8 The main changes to the police powers and places of safety provisions can be summarised as:
- section 136 powers may now be exercised anywhere other than in a private dwelling;
 - it is now unlawful to use a police station as a place of safety for anyone under the age of 18 in any circumstances;
 - a police station can now only be used as a place of safety for adults in specific circumstances, which are set out in regulations ;
 - the previous maximum detention period of up to 72 hours has been reduced. to 24 hours (unless a doctor certifies that an extension of up to 12 hours is necessary);
 - before exercising a section 136 power police officers must, where practicable, consult one of the health professionals listed in section 136(1C), or in regulations made under that provision;
 - a person subject to section 135 or 136 can be kept at, as well as removed to, a place of safety. Therefore, where a section 135 warrant has been executed, a person may be kept at their home (if it is a place of safety) for the purposes of an assessment rather than being removed to another place of safety;
 - a new search power allows police officers to search persons subject to section 135 or 136 powers for protective purposes.
- 1.9 This guidance addresses the legislative changes as they might apply chronologically in a typical engagement, rather than in the order they appear in the legislation. It therefore starts with initial interactions between a police officer and a person believed to be suffering from mental disorder, followed by identification of places of safety, procedures to be followed at those places, and suggestions for reviewing and monitoring implementation of the changes. The guidance tries to anticipate and address the most likely issues that may arise from the legislative changes. However, if in doubt in any particular circumstances, professionals within organisations involved in such cases should seek specific legal advice or procedural guidance.
- 1.10 The organisations with the most direct interest in this guidance are police forces, mental health trusts in England, clinical commissioning groups in England, mental health services within Local Health Boards in Wales, NHS Wales, local authority social services departments, and ambulance services. It may also be of interest to people who may be subject to the police powers and places of safety provisions, as well as to their families.

Acknowledgements

This guidance has been developed by the Department of Health and the Home Office informed by consultation with expert health, policing and social care stakeholders, including the following organisations:

AMHP leads network	Mental Health Alliance
Association of Ambulance Chief Executives	Mind
Association of Police and Crime Commissioners	National Policing Lead for Custody
British Association of Social Workers	National Policing Lead for Mental Health and Policing
British Transport Police	NHS England
Care Quality Commission	NHS Providers
Centre for Mental Health	PCC Working Party on Mental Health
College of Policing	Rethink
Experts by experience (x2)	Royal College of Nursing
Faculty of Forensic and Legal Medicine	Royal College of Psychiatrists
Her Majesty's Inspectorate of Constabulary	Welsh Government
Independent Police Complaints Commission	Welsh Government Police Liaison Office

2. Exercising powers to remove to, or keep at, a place of safety

Summary of provisions :

- A police officer may keep a person at, as well as remove them to, a place of safety under both section 135 and section 136.
- A police officer may exercise powers under 136(1) at any place other than a private dwelling and its associated buildings or grounds (as defined by the new section 136(1A)).
- Before using the section 136(1) powers, a police officer is required by new section 136(1C) to consult one of a number of specified health professionals, provided it is practicable to do so.
- New section 136C enables a police officer to search a person subject to section 135, 136(2) or 136(4) who they reasonably believe may present a danger to themselves or others and is concealing a dangerous item, for the purpose of discovering and seizing that item.

Where section 136(1) power can be used

2.3 A police officer has a power under section 136(1)(a) to remove a person who appears to be suffering from a mental disorder and to be in need of immediate care or control to a place of safety (or keep them at a place of safety). Previously, a person could only be removed to a place of safety if he or she was found in a place “to which the public have access”. Following the changes, this power can now be exercised where the person is in any place other than, broadly, a “private dwelling” or its associated buildings or grounds.

2.4 The term “private dwelling” is used in this document for ease. The new section 136(1A) states that the power under section 136(1) may be exercised where the person is in any place other than:

“(a) any house, flat or room where that person, or any other person, is living, or

(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.”

Locations in which section 136(1) powers may be applied

2.3 There are a number of locations from which a person can now normally be removed to a place of safety under section 136(1)(a), where previously that was not the case or there was confusion as to whether the public had access to the place. These include for example:

- Railway lines
- Hospital wards¹
- 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

2.4 New section 136(1B) enables a police officer to enter any place in which section 136(1) applies (if necessary by force) to remove a person.

Locations in which section 136(1) powers do not apply

2.5 The places in which section 136(1) does not apply should be clear in the majority of cases – for example if the person is located in a living room or garden of a self contained private dwelling. However, in other scenarios it may be less clear-cut. Section 136(1)(a) would not normally apply if the person is located in a private room in a care or residential home where a person lives.

Circumstances of the encounter

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

¹ See Mental Health Act 1983 Code of Practice (England) paragraph 16.20 in relation to in-patients in hospital wards

Consulting before using section 136(1)

- 2.7 A police officer is now required by new section 136(1C) to consult one of a list of specified healthcare professionals, where it is practicable to do so, before deciding whether or not to keep a person at, or remove a person to, a place of safety under section 136(1).
- 2.8 Legislation sets out the healthcare professionals that the officer can consult, which, at the time this guidance is published, are:
- an Approved Mental Health Professional;
 - a registered nurse;
 - a registered medical practitioner;
 - an occupational therapist;
 - a paramedic².

The purpose and nature of the consultation

- 2.9 The purpose of the consultation is for the police officer – who is considering using their powers under section 136 – to obtain timely and relevant mental health information and advice that will support them to decide a course of action that is in the best interests of the person concerned.
- 2.10 The legislative changes do not require the consultation to take any particular form. The precise nature of the consultation, and how it may inform the decisions made by the police officer, will vary depending on the individual circumstances of each case. These will include, for example, whether the healthcare professional is on site and able to interact with the person or providing advice remotely, and whether the person is known to local health services and appropriate medical records can be accessed.
- 2.11 The police officer should seek to ascertain, and the healthcare professional being consulted should offer, where possible, information or advice regarding:
- an opinion on whether this appears to be a mental health issue based on professional observation and, 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 local health service providers;

² Occupational therapists and paramedics are specified in regulation 8 of the Mental Health Act 1983 (Places of Safety) Regulations 2017.

- if so, whether it is possible to access medical records or any care plan to determine medical 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 (such as escorting the person home, to their own doctor, to hospital, or to a community place of calm/respice).

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

Deciding whether it is practicable to consult

- 2.13 It is for the police officer considering using section 136(1) to determine whether or not it is practicable in the specific circumstances to consult a health professional. The officer's judgement as to whether it is practicable to consult is likely to be informed by a number of potential factors. These will include:
- whether there are established local arrangements for undertaking such consultation (for example, street triage schemes – see below);
 - the time it is likely to take to carry out the consultation;
 - whether the person appearing to suffer from a mental disorder is likely to remain co-operative and present during the time taken to undertake a consultation; and
 - whether it is safe to undertake a consultation or whether the behaviour of the person requires immediate action in the interests of safety.
- 2.14 It is not expected that police officers should themselves have to canvass a wide list of local GPs or other healthcare services to seek advice. Police officers should be supported through local arrangements, and know – or be able quickly to establish – if such advice is readily available to them. Such advice may for example be available as part of a local 'street triage' initiative, through control room or call centre arrangements or via the local crisis care point of contact with mental health services. If such arrangements are not in place locally, it is less likely to be practicable to consult. Similarly, communications equipment failure or signal "dead zones" might render a consultation impracticable.

- 2.15 In cases where a consultation has begun, it may be terminated without conclusion if, for example, the behaviour of the individual concerned changes - requiring an immediate decision, or the response to a request for advice is significantly delayed or interrupted for some reason.
- 2.16 Locally agreed protocols detailing when information can be shared between local agencies for the purposes of safeguarding the person and the protection of others, if there is thought to be a risk of harm, should be in place in all areas (see paragraph 16.31 of the Mental Health Act 1983: Code of Practice (England) and paragraph 16:38 of the Mental Health Act 1983 Code of Practice for Wales (2016).
- 2.17 The police officer should ensure that any decision not to consult before using section 136(1) powers, and the reason, is recorded.

New protective search power

- 2.18 The new section 136C allows a police officer to search a person subject to section 135, 136(2) or 136(4) 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. This addresses a previous lack of specific search powers in some circumstances, including where the police attend people's homes in support of a section 135 warrant.
- 2.19 The search power is designed to ensure the safety of all involved and should be used appropriately to support policing and health agencies to effectively care for and support the person. The new power does not include any restrictions around age or any other characteristic of the person to be searched. However, the power does not require a person to be searched. Any search conducted by the officer under new section 136C 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.
- 2.20 The new section 136C power does not affect the applicability of other existing search powers – including powers under sections 32 and 54 of the Police and Criminal Evidence Act 1984, and powers of health professionals to search patients detained in hospitals in some circumstances.

3. Places that can be used as a place of safety

Summary of provisions:

- A place of safety is now 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).
- By virtue of the new section 136A(1) a police station may not be used as a place of safety for a person under the age of 18 years under any circumstances.
- 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:
 - (i) the behaviour of the person poses an imminent risk of serious injury or death to themselves or another person;
 - (ii) because of that risk, no other place of safety in the relevant police area can reasonably be expected to detain them, and
 - (iii) so far as reasonably practicable, a healthcare professional will be present at the police station and available to them
- 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
- 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.

Using the most appropriate place of safety

- 3.1 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, there will 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.

- 3.2 The use of other suitable places should not reduce the number or use of health-based places of safety. However local commissioners may wish to consider increasing local place of safety capacity by entering into formal arrangements with third parties (such as charities, voluntary sector or private providers) to establish additional, bespoke places of safety; or by undertaking contingency planning with local partners to identify potential temporary places should all other facilities be unavailable for some reason; or both.

Other suitable places

What is a “suitable place”?

- 3.3 There are two principle requirements for determining whether a place (other than one specifically named) is a “suitable place” – and can therefore be used as a place of safety
 - i. The first is whether the place itself is suitable.
- 3.4 This will involve evaluation of a number of inter-related factors including for example, the physical environment, the condition and behaviour of the person, and potentially any relationship between the person and that place.
- 3.5 A suitable place of safety should, ideally, provide a therapeutic environment as part of, or associated with, local health and care services. Standards for places of safety are set out in guidance issued by the Royal College of Psychiatrists and considerations in relation to use of suitable places of safety are set out in the English and Welsh Codes of Practice.
- 3.6 As a minimum, and when contemplating contingency arrangements, there should be a quiet, comfortable and private space for the person to wait, and potential physical risks should be identified and mitigated so far as is possible.
- 3.7 When considering the suitability of a place, the behaviour of the person being detained is likely to be a key consideration. A temporary or ad hoc space such as a private dwelling, which is not inherently secure or professionally staffed, may not for example be suitable for someone who is unresponsive and unco-operative.
- 3.8 In some circumstances a person may be less distressed if taken to or kept at a place of safety with which they are familiar. This may be particularly true for example, in

relation to children or older people, or possibly those who have experienced mental health crises on several occasions and who may have a relationship with a particular support organisation. However no assumptions should be made about potential personal preferences. In addition, if contemplating using a private dwelling the police officer should have regard to any information – readily available to the police and their partner agencies – indicating that use of that address as a place of safety could be detrimental to the detainee’s welfare (for example, safeguarding concerns, or previous incidents at the address).

ii. The second is that appropriate agreement is given to the use of the place as a place of safety.

3.9 Different provisions in relation to the relevant agreement apply depending on whether the place is a private dwelling (and the number of occupiers there) or another type of premise.

(a) Where it is contemplated using a private dwelling (house, flat or room where a person is living) as a place of safety, section 135(7)(a) requires that the person believed to be suffering from a mental disorder and, if they are not the sole occupier of the premises, at least one of the occupiers of that dwelling, agree to that place being used as a place of safety. This is set out in summary form below:

Scenario	Agreement required
If the person believed to be suffering from a mental disorder is the sole occupier of the place.	That person agrees to the use of the place as a place of safety;
If the person believed to be suffering from 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.

Being satisfied that the person believed to be suffering from a mental disorder is able to agree to use of a private dwelling as a place of safety may in some circumstances be difficult. However mental ill health issues take a wide range of forms, and while a person may appear to be suffering from a mental disorder this does not necessarily mean that (s)he is unable to agree to use of a place as a place of safety. It will be relevant whether the person can understand the information relevant to the decision, retain that information, use or weigh that information as part of the process of making the decision, and communicate that decision. Good practice recommends a person centric approach, with the person actively involved in their care arrangements where possible. The person must not however be coerced or pressured into giving such agreement or expressing a preference to remain at a private dwelling. If they are clearly unable to understand or communicate with police or mental health

professionals, the necessary agreement cannot be sought or obtained.

(b) Where it is contemplated using premises other than a private dwelling, section 135(7)(b) requires that a person who appears to the police officer to be responsible for managing the place must agree to its use as a place of safety. In the case of a workplace or community-based organisation the agreement of a senior manager of the organisation based in that location at the time should suffice.

- 3.10 When seeking agreement to use a private dwelling or other premises as a place of safety, the police officer should ensure that the relevant persons understand the purpose for which the place will be used, and the support arrangements that will be put in place to safeguard the person (and any others present) pending an assessment. It should be made clear that there is no legal obligation on them to accede to such a request. The request for and giving of this agreement should be recorded.

When it is appropriate to use a suitable place as a place of safety

- 3.11 Even where a place may appear to be suitable and relevant persons likely to agree to its use as a place of safety – it does not necessarily follow that such a place should be used. In particular such places should not be used simply because they appear to be the easiest or most convenient place of safety. In all considerations, the best interests of the person requiring a place of safety should be paramount when deciding which place should be used.

Use of private dwellings as a place of safety

- 3.12 It should not be assumed that the person might prefer to remain at, or be taken to a family home. In some circumstances, for example, relationships within the home may contribute to mental distress.
- 3.13 In cases where a section 135(1) warrant has been used to enter a private address, the use of that same address as a place of safety – with the person subject to the warrant thereby remaining in familiar surroundings – may avoid any distress that the person might otherwise experience if transported to another place of safety. In such cases a mental health professional will already be present and it may be in the best interests of the person that an assessment be carried out on the spot.
- 3.14 In section 136 cases, the use of a private dwelling as a place of safety would usually involve the person being taken – on the authority of a police officer – to their home or the home of someone they know, such as a family member, guardian, or friend, where they might be able to benefit from familial support and reassurance pending a Mental Health Act assessment.

Voluntary sector provision of places of safety

- 3.15 Increasingly, local areas have developed a range of informal help and support facilities, such as crisis cafés, drop-in centres, calm spaces and other similar establishments. These are often run by third sector organisations or local community-based groups. Such places are generally designed to support individuals on a self-referral or drop-in basis. They may, therefore, be of particular assistance to police officers where, for example, it is thought that use of the power to exercise section 136 powers is not appropriate. However, there may be occasions when such facilities could be considered for use as a suitable place of safety.
- 3.16 Local policies on the use of police powers and places of safety should identify new places of safety and the circumstances in which those places can be used (for example, whether as bespoke places of safety, or as additional, contingency support for use on an ad-hoc basis). While voluntary sector places of safety can be an important additional resource, health service commissioners remain responsible for ensuring the provision of sufficient health-based places of safety.
- 3.17 Where formal arrangements can be concluded with local organisations on the use of premises as places of safety, these might cover such issues as the provision of specific facilities, understanding of safety and welfare arrangements and the circumstances in which they might be used. However, when using such a place the police officer must still check, in each individual case, that the responsible person agrees (as required in section 135(7)(b)) to the use of the premises as a place of safety. Ad hoc decisions to use premises as a place of safety where no prior understanding or arrangements exist will require greater care and checking that the responsible person understands what he or she is agreeing to.

Use of a police station as a place of safety

Children and young people aged under 18 years

- 3.18 New section 136A(1) means that a police station may now not be used as a place of safety for a person under 18 years of age under any circumstances. There are no exceptions to this total ban.
- 3.19 Local protocols should set out clearly the provision made for places of safety appropriate for children and or young persons aged under 18 years. Where such places are in short supply, partners may wish to explore the feasibility of cross-boundary co-operation with neighbouring areas. In cases where the child or young person aged under 18 years exhibits violent or volatile behaviour, this behaviour will need to be safely managed in a health-based place of safety (or place of safety other than a police station). Local partners should plan for this eventuality.

Adults – circumstances in which a police station can be used

3.20 A police station can now only be used as a place of safety for a person aged 18 years or over in very limited circumstances. The Mental Health Act 1983 (Places of Safety) Regulations 2017 specify the conditions which must be satisfied before a police station can be used as a place of safety and the safeguards that need to be applied in such cases.

3.21 The three conditions which must be satisfied before a police station can be used as a place of safety are:

(1) the behaviour of the person poses an imminent risk of serious injury or death to that person or others (regulation 2(1)(a)(i))

3.22 The decision-maker must be satisfied that the person's behaviour poses an imminent risk of serious injury or death to the person or to others. 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.

3.23 Such judgements will inevitably be partly subjective and informed by wider experience of dealing with potentially dangerous or volatile detainees. For example, a verbal threat to use violence may not of itself meet the threshold. However, if the person has already been violent towards officers the consideration may be different. The likely ability of the person to inflict the degree of serious injury is also a factor (thus for example issues like stature, strength, and co-ordination may be relevant considerations).

3.24 Being intoxicated and/or uncooperative may not necessarily, of themselves, meet the threshold. Past behaviour (for example a criminal record for a violent offence) can be relevant, but should not be taken as an indication, in isolation from any demonstrable current behaviour, that the person poses an imminent risk of serious injury or death to themselves or others.

(2) because of the risk posed, no place of safety other than a police station in the relevant police area³ can reasonably be expected to detain the person (regulation 2(1)(a)(ii))

3.25 The decision-maker must be satisfied that no place of safety in the area other than a police station can reasonably be expected to detain the person in the light of the risk posed. Consultation with healthcare professionals, as specified under section 136(1C),

³ "Relevant police area" is the police force area in which detained person was situated when section 135 or 136 powers were the initially exercised.

will serve to help officers identify the availability and capacity of places of safety, and will assist with facilitating access to them.

3.26 This condition may be satisfied where:

- a place of safety that could normally manage the person's behaviour is not available – for example because it is temporarily out of commission or already fully occupied (and cannot be cleared readily);
- a place of safety is available but is not reasonably able to manage the person – for example because of a lack of sufficiently trained and equipped staff, or because the physical characteristics of the facility, including security and the ability to safeguard other patients (for example in shared assessment areas), are inadequate in the circumstances.

3.27 Although this condition requires the decision-maker to consider the availability of places of safety in the “relevant” police force area, this does not prevent a place of safety in a different police force area from being used if deemed necessary and appropriate. The availability and suitability of such facilities will most likely depend upon existing regional/cross-border agreements.

(3) so far as is reasonably practicable, a healthcare professional is present and available to the detainee throughout the period in which he or she is detained at the police station (regulation 2(1)(a)(iii)).

3.28 The decision-maker must be satisfied that a healthcare professional will be present and available throughout the period of detention, so far as is reasonably practicable (regulation 4(1)(b)).

Other requirements relating to use of a police station

(a) Consultation

3.29 Where a decision-maker is a police officer, he or she is required under regulation 2(2) to consult one of the healthcare professionals specified in legislation (see Chapter 2 above) – where reasonably practicable – on the use of a police station as a place of safety. In practice, a consultation with a healthcare professional under section 136(1C) on whether to exercise section 136 powers may flow seamlessly into further consideration of the most appropriate place of safety. If however, for whatever reason, there is a gap between the two decisions a police officer must, if practicable, seek a fresh consultation on this decision. This need not necessarily be the same healthcare professional as was involved in any earlier decision to use section 136 if they are no longer readily available.

(b) Authorisation

- 3.30 The decision to use a police station as a place of safety requires authorisation of a police officer of the rank of at least inspector (senior officer). If the decision-maker is themselves a police officer of the rank of inspector or higher, no authorisation is required.
- 3.31 The authorisation of a senior officer must be given before the detained person arrives at the police station (or if the person is already at a police station, before a decision to keep him/her there is implemented). This authorisation is likely to be required quickly – given the likely urgency involved in such cases – and therefore police forces may wish to review whether suitable local arrangements are in place.
- 3.32 In deciding whether to authorise the use of a police station, the senior officer will need to assess the available information as to whether the conditions appear to be met. In respect of the second and third conditions, it is expected that they will use their knowledge of the capabilities of local health-based places of safety, and whether the intended police station can comply with the requirement for an on-site healthcare professional. In respect of the level of risk posed by the detained person, it is unlikely that the authorising officer will have direct contact with the detainee and be able to form their own assessment. Their decision will therefore, of necessity, rely on their judgement of the assessment of the decision-maker proposing to use a police station and whether they believe in the round that the officer's assessment is reasonable in the described circumstances – including with any input from a health professional who has been consulted.

4. Arrival and stay at places of safety

Summary of provisions:

- The permitted period of detention, during which a person can be detained at a place of safety, under section 135 or 136, is now 24 hours (reduced from a maximum of 72 hours).
- The responsible medical practitioner can extend that period by up to 12 hours if a Mental Health Act assessment cannot be completed within the permitted period due to the person's mental or physical condition. Where the person is being detained in a police station, a police officer of the rank of superintendent or above must also approve the extension.
- If a police station is used as a place of safety – under The Mental Health Act 1983 (Places of Safety) Regulations 2017 – the officer must ensure that:
 - the person's welfare is checked by a healthcare professional at least once every thirty minutes, and any appropriate action is taken for their treatment and care; and
 - so far as is reasonably practicable, a healthcare professional is 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 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.
- A person does not however, need to be taken to another place of safety if this would cause a delay in carrying out a Mental Health Act assessment, which would be likely to cause them distress.
- Changes are made to Section 138 of the 1983 Act reducing the period during which a person subject to removal to, or detention in, a place of safety under section 135 and 136 may be retaken if they escape, bringing this in line with the total period of detention now permitted under sections 135 and 136.

Maximum detention period

- 4.1 The maximum period for which a person can be detained at a place of safety under section 135 or 136 is now 24 hours (reduced from 72 hours), with the possibility of this period being extended by a further 12 hours in specific circumstances.

Calculation of the detention period

- 4.2 The detention period for those detained under section 135 or 136 begins:-
- (i) where a person is removed to a place of safety under section 135 or 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;
 - (ii) where the person is kept at the address specified in the warrant under section 135 - the time at which the police officer first enters the premises; and
 - (iii) where a person is kept at a place under section 136 – at the point the police officer takes the decision to keep them at that place.
- 4.3 The clock continues to run during any transfer (if this is necessary) of a person between one place of safety and another.
- 4.4 If a person subject to section 135 or 136 is taken first to an Emergency Department of a hospital for treatment of an illness or injury (before being removed to another place of safety) the detention period begins at the point when the person arrived at the Emergency Department (because a hospital is a place of safety).

Extending the detention period

- 4.5 The new maximum period of detention of 24 hours can be extended by up to a further 12 hours – to a maximum of 36 hours – but only in very limited circumstances.
- 4.6 These are that, because of the person's condition (physical or mental), it is not practicable to complete a Mental Health Act assessment within the 24 hour period. This might arise, for example, if the person is too mentally distressed, or is particularly intoxicated with alcohol or drugs and cannot co-operate with the assessment process. A delay in attendance by an Approved Mental Health Professional or medical practitioner is not a valid reason for extending detention.
- 4.7 A decision to extend the detention period can only be taken by the responsible medical practitioner⁴ if the person is being held at a police station, and it is intended for the assessment to take place at a police station, the authorisation to extend the maximum detention period must also be approved by a police officer of the rank of superintendent or higher (since it is expected that it would be unusual for a person to continue to meet the criteria to be held at a police station for up to 36 hours).

⁴ The responsible medical practitioner is defined by the new section 136B as "The registered medical practitioner who is responsible for the examination of a person detained under section 135 or 136".

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

Retaking a person who escapes – section 138

- 4.9 Section 138 deals with powers to retake a person subject to section 135 or 136 who escapes from custody. Section 138(3) previously made provision that the power to retake a person who escaped while being taken to or detained in a place of safety under sections 135 or 136 of the Act could not apply after the expiration of 72 hours from the time of the escape, or period for which (s)he was liable to be detained, whichever expired first. This was in line with the time periods for which a person could previously be detained under sections 135 or 136 for the purposes of an assessment.

- 4.10 Given the reduction in the usual maximum time for which a person may now be detained under section 135 or 136 to 24 hours, the timescales in section 138 have been reduced accordingly. Amendments to section 138(3) provide:

(i) Escape during removal to a place of safety

Where a person escapes in the course of being removed to a place of safety under section 135(1) or 136 (1) (s)he may not be retaken under this provision after a period of 24 hours has expired from the time of that escape.

(ii) Escape from a place of safety

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

- 4.11 By way of examples:

- If a person is detained under section 136(1) at 10:30 and escapes while being transported to the place of safety at 11:30 (s)he may be retaken up to but not beyond 11:30 the following day.
- If a person is taken to a place of safety and escapes after being there for three hours - and no extension to the 24 hour period has been authorised at that stage - (s)he may be retaken under these provisions within the following 21 hours but not beyond that period.
- If a person has been at a place of safety for 20 hours and a medical practitioner has authorised a further period of detention of 6 hours, and the person then escapes, (s)he may be retaken under these provisions within the following 10 hours, but not beyond that period.

Safe management of people detained at places of safety

- 4.12 In some cases a person being detained under section 135 or section 136 may display violent behaviour, or threaten to do so. Health and policing professionals already work successfully together in many instances to manage such situations safely and this partnership working should be supported through local agreements.

Managing safety at health based places of safety

- 4.13 As Chapter 3 sets out, a police station can only be used as a place of safety for an adult in the limited circumstances set out in the Regulations. Where a person displays verbal aggression or is inebriated and uncoordinated, for example, which does not in itself satisfy the conditions for use of a police station, the person will need to be managed in a place of safety other than a police station.

- 4.14 In some cases, it may be pragmatic for police officers to support health professionals by working with them to help ensure that the person is safely admitted to the health based place of safety (after which police officers should be able to leave the facility to resume other duties). Such joint working should be subject to locally agreed protocols with all parties clear about their respective roles (informed by the nationally agreed Memorandum of Understanding on police attendance at mental health settings – see details at Chapter 6).

Managing safety at “other suitable places”

- 4.15 It is envisaged that the use of contingency or ad-hoc places of safety – such as those provided by community or voluntary groups, or the use of private dwellings domestic dwellings – will be a relatively rare occurrence. The suitability of such a place will depend to a large extent on the condition and behaviour of the person.
- 4.16 Nevertheless, in such cases the police officer, health professional (if involved) and, where appropriate, the person responsible for managing a place, will need to determine what support or contingency would be needed to keep the person safely at that place pending the Mental Health Act assessment, including what to do if behaviour suddenly changes.

Managing safety and welfare at police stations

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

- 4.18 Regulation 4(1)(b) requires the custody officer to ensure that a healthcare professional is present and available to the detained person throughout the duration of their time at the police station, so far as reasonably practicable. It is envisaged that relatively short periods in which the healthcare professional is dealing with another person or on a short comfort break would not of themselves breach the condition. If the healthcare professional were unexpectedly unavailable (for example if taken ill or having been injured) it might be deemed reasonable to wait for a short period for an on-call healthcare professional to arrive to continue the cover.
- 4.19 At all times the custody officer retains overarching responsibility to ensure the wellbeing of the person being detained and to make any arrangements they deemed necessary for their care, including transfer (see below). While accessible healthcare is an important safeguard it remains the case that police stations are not the preferred environment for someone believed to be suffering from a mental disorder and nothing in the 2017 Regulations overrides provisions in PACE Code C on the custody officer sending for an ambulance or referring the person to a hospital for emergency treatment if deemed necessary.
- 4.20 Regulation 4(1)(a) requires the custody officer to ensure that a healthcare professional check the welfare of the detained person at least every half hour and that any appropriate action be taken for their treatment and care. The details of these checks should be recorded.
- 4.21 Regulation 5(1) requires the custody officer to review, at least hourly, whether the circumstances in regulation 2(1)(a)(i) and (ii) continue to exist – namely that their behaviour poses an imminent risk of serious injury or death to themselves or others, and that because of that risk no place of safety other than a police station in the relevant police area can reasonably be expected to detain them. This will require an assessment of whether the person's behaviour has moderated to the point where they could now be safely managed in another (preferably health based) place of safety. Such a judgement should also include an assessment of whether the person's behaviour would pose the imminent risk were it not for the fact that they were in a police station. This is to avoid a person being shuttled back and forth between places of safety because of changes in behaviour.
- 4.22 When making this assessment the custody officer must, where this is practicable, consult the healthcare professional who carried out the most recent of the half-hourly welfare checks. Situations in which such consultation may not be practicable include where the health professional is dealing with another detainee, or is temporarily absent or unavailable, or where there has been a shift change in health staff. The consultation is likely to include whether the act of transferring a person who now appears calm and compliant is likely to trigger a recurrence of previously agitated behaviour, and whether a transfer would involve a delay in conducting a mental health assessment.

- 4.23 Regulation 6 provides that the interval at which the custody officer reviews the person's continued detention at the police station – as required by regulation 5 – may be extended to no less than once every three hours if the person is sleeping, and provided that the healthcare professional carrying out the 30 minute checks has not identified any risk that would require them to be woken more frequently. This provision is intended to promote the person's welfare where a period of rest may assist in calming previously volatile behaviour and help recovery. However, a custody officer can wake a person within the maximum three-hour time period for the purposes of assessing whether the conditions for use of the police station continue to be met.
- 4.24 The regular half-hourly welfare checks required by regulation 4(1)(a) (and described above) must continue during this period. The healthcare professional should assess whether the person is genuinely sleeping, whether such a period of sleep may be beneficial, or whether apparent sleep may be masking other physical symptoms such as a fit or unconsciousness and for which urgent medical attention will be required. The healthcare professional should determine whether it is necessary to wake a person who is sleeping during this period for the purposes of checking or ensuring their welfare. A decision to wake a person may trigger a further behavioural review by the custody officer, depending on timings.
- 4.25 Regulations 4 and 5 both require a minimum frequency of reviews which must be conducted. This does not prevent checks and monitoring from being carried out more frequently or indeed on a constant basis, if that is deemed appropriate locally.
- 4.26 The Regulations require a custody officer to arrange for a person to be taken to another place of safety in certain circumstances, namely:
- if either the requirement that a welfare check be carried out at least every half hour, or that (so far as practicable) a healthcare professional be present and available throughout the detention are not met – the person must be taken to another place of safety; or
 - if the criteria for using the police station as a place of safety (behaviour poses imminent risk of serious injury or death, and no place of safety in the relevant area other than a police station can be reasonably expected to detain person) no longer exist – the person must be taken to another place of safety that is not a police station.
- 4.27 Regulation 7 provides for an exception to the above requirements to transfer the person to another place of safety, if arrangements have been made for a mental health assessment to take place at the police station and postponing the assessment would cause distress to the person. This is most likely where the Approved Mental Health Professional is known to be en route and the assessment is likely to commence within a few hours at most, and where transferring the person to another place of safety would be likely to take longer than for the healthcare professional to arrive at the police station.

- 4.28 Local partners should establish effective liaison arrangements so that a transfer from a police station to another place of safety will be accomplished as smoothly as possible. In particular, it will be important to avoid undue delays in admission to another place of safety so as to minimise additional stress on the person detained. It will also be essential to ensure that the Approved Mental Health Professional and doctor contacted to conduct an assessment know of any change of venue.

5. Supporting monitoring and reviewing the changes

This section suggests some additional issue that steps that health, policing and other partners may wish to consider for implementing and monitoring the changes in their local area.

Considerations for local partnerships

- 5.1 The impact of the changes is likely to vary across organisations and from geographical area to area – depending on previous practice. Local Crisis Care Concordat Partnerships, in which all relevant organisations are represented, are likely to provide the most appropriate forum for ensuring smooth implementation in many areas.
- 5.2 It is recommended that local partners make full use of available local and national data to assess current and potential future demand on different parts of the system as a result of the changes.
- 5.3 Existing training courses should be reviewed where necessary to ensure that they reflect the legislative changes.
- 5.4 Local partners may wish to consider how best to monitor the impacts of the new legislative provisions and how to identify and resolve any early confusion or difficulties in operating any new protocols introduced.
- 5.5 Decisions in cases where the behaviour of a person experiencing a mental health crisis is particularly challenging will inevitably involve difficult judgements by all parties and will require close partnership working under pressure.
- 5.6 In revising local policies, partnerships may wish to strengthen local liaison and information systems relating to the availability and capabilities of their various places of safety to ensure that timely decisions can be taken on the appropriate place to use. Partnerships may also wish to consider whether it is necessary or advisable to establish processes for quickly resolving any potential situations where it has been decided that the person does not meet the conditions relating to the use of a police station as a place of safety, but staff at other places of safety are reluctant to admit the person on behavioural or other grounds.
- 5.7 In addition, given that the use of police stations is now prohibited for those under 18 years and restricted to the circumstances set out in the Regulations for adults, partners may wish to review and consider any learning from those cases where police stations are used as places of safety under the new provisions.

Considerations for national bodies

Standard setting

5.8 There are a number of nationally set standards or published guidance, with a bearing on the operation of sections 135 and 136, which may need to be adapted to reflect the amendments. These include:

- the Mental Health Act Code of Practice, Department of Health 2015
- the Mental Health Crisis Care Concordat, HM Government, 2014
- the Mental Health Crisis Care Concordat, Welsh Government and Partners
- the Mental Health Act 1983 Code of Practice for Wales (2016); and
- the College of Policing Approved Professional Practice on Mental ill health and learning disabilities.

5.9 Links to these (and other) relevant publications are provided at section 6.

Regulatory bodies

5.10 Regulatory and investigatory bodies with an interest in the activities and performance of local agencies with responsibilities around section 135 and 136 (including for example the Care Quality Commission, Healthcare Inspectorate Wales, Her Majesty's Inspectorate of Constabulary, Independent Police Complaints Commission, NHS Protect) will take account of the legislative changes in future inspection processes or investigations.

6. Related material

Please note: The materials and associated links listed here are current as at the date of the publication of this guidance, in October 2017.

6.1 Relevant legislation

The amendments to sections 135, 136 and 138 of the Mental Health Act 1983, made by the Policing and Crime Act 2017, Part 4, Chapter 4 “Powers under the Mental Health Act” <http://www.legislation.gov.uk/ukpga/2017/3/part/4/chapter/4/enacted>

Explanatory notes for the Policing and Crime Act 2017 (prepared by the Home Office to assist the reading of the 2017 Act) http://www.legislation.gov.uk/ukpga/2017/3/pdfs/ukpgaen_20170003_en.pdf

The Mental Health Act 1983 (Places of Safety) Regulations 2017 <http://www.legislation.gov.uk>

6.2 National standards and guidance

Mental Health Act 1983: Code of Practice (England) (January 2015) <https://www.gov.uk/government/publications/code-of-practice-mental-health-act-1983>

Mental Health Act 1983 Code of Practice for Wales (October 2016) <http://gov.wales/docs/dhss/publications/160920mentalacten.pdf>

Authorised Professional Practice (APP) Mental Ill Health and Learning Disabilities (October 2016) <https://www.app.college.police.uk/mental-health-index-2/#mental-health-detention>

PACE Code C 2017 (Requirements for the detention, treatment and questioning of suspects not related to terrorism in police custody) (February 2017) <https://www.gov.uk/government/publications/pace-code-c-2017>

Achieving Better Access to 24/7 Urgent and Emergency Mental Health Care (November 2016)

<https://www.england.nhs.uk/mental-health/resources/>

<http://www.rcpsych.ac.uk/workinpsychiatry/nccmh/mentalhealthcarepathways/urgentandemergencycare.aspx>

Standards on the use of Section 136 of the Mental Health Act 1983 (England and Wales) (July 2011) <http://www.rcpsych.ac.uk/files/pdfversion/CR159x.pdf>

Guidance for commissioners: service provision for Section 136 of the Mental Health Act 1983 (April 2013) http://www.rcpsych.ac.uk/pdf/PS02_2013.pdf

Memorandum of Understanding – The Police Use of Restraint in Mental Health and Learning Disability Settings (January 2017) http://www.college.police.uk/What-we-do/Support/uniformed-policing-faculty/Documents/ERG_Final_Copy.pdf

Care Quality Commission: ‘Right here, right now’ (a national report looking at people’s experiences of help, care and support during a mental health crisis) (June 2015) https://www.cqc.org.uk/sites/default/files/20150611_rightthere_mhcrisiscare_summary_3.pdf

6.3 National data sources

Inpatients formally detained in hospitals under the Mental Health Act 1983 and patients subject to Supervised Community Treatment: 2015/16, Annual figures (October 2016)

<https://digital.nhs.uk/catalogue/PUB22571>

Detentions under the Mental Health Act (1983): police powers and procedures year ending 31 March 2017. <https://www.gov.uk/government/statistics/police-powers-and-procedures-england-and-wales-year-ending-31-march-2017>

Mental Health Five Year Forward View Dashboard (September 2017) <https://www.england.nhs.uk/mental-health/taskforce/imp/mh-dashboard/>

Care Quality Commission: 'A safer place to be' (findings from a survey of health-based places of safety for people detained under section 136 of the Mental Health Act) (October 2014) <http://www.cqc.org.uk/publications/themed-work/safer-place-be>

6.4 Other materials

Review of the operation of Sections 135 and 136 of the Mental Health Act (April 2014) <https://www.gov.uk/government/consultations/review-of-the-operation-of-sections-135-and-136-of-the-mental-health-act>

Alternative place of safety: West Sussex pilot evaluation 2015 (October 2015)

<https://www.gov.uk/government/publications/alternative-place-of-safety-west-sussex-pilot-evaluation-2015>

Annex A

Advice on transition to the amended legislation

Transitional provisions in the legislation

The changes to the police powers and places of safety provisions in the 1983 Act and the Regulations limiting the use of police stations as places of safety come into force at 00:00 on 11 December 2017.

The changes do not apply to cases in train at 00:00 hours on 11 December 2017 by virtue of saving provisions in the Policing and Crime Act 2017 (Commencement No. 4 and Saving Provisions) Regulations 2017. Consequently, the changes do not apply where:

- (a) The warrant authorising a person's removal under section 135 was issued at or before 23:59 on 10 December 2017; or
- (b) the removal of the person to a place of safety under section 136 started on or before 23:59 on 10 December 2017.

For example:

- if a section 135 warrant is issued at 18:35 on 10 December, but the police officer does not start to remove the person to a place of safety until 01:15 hours on 11 December, the person will be subject to the old regime (i.e. the changes will not apply);
- if a police officer starts to remove a person to a place of safety under section 136 at 23:30 hours on 10 December, no matter when that person arrives at the place of safety, he or she will be subject to the old regime (i.e. the changes will not apply);
- if a person escapes while being removed to a place of safety under section 136 at 23:10 hours on 10 December, and is retaken at 05:00 hours on 11 December 2017, he or she will be subject to the old regime (i.e. the changes will not apply).

Considerations for policing and health partners

As a consequence, there will be an overlap period of up to three days following 00:00 on 11 December 2017 within which some people detained under the 1983 Act will be subject to the pre-commencement provisions (old regime), while others will be subject to the post-commencement provisions (new regime) (and thus subject to different procedures).

The most critical changes for which there is potential for two different systems to be operating in parallel in the overlap period are:

- the coming into effect of a ban on the use of police stations as places of safety in the case of children under 18 years of age;
- restrictions on the circumstances in which police cells can be used as places of safety for adults; and

- a reduction in the period for which people can be detained under the provisions from 72 to 24 hours (subject to a 12 hour extension authorised by a registered medical practitioner, where necessary given the person's condition).

Managing cases around the transition period

It will be critical that during the transitional period, that local agencies are very clear during any handover of individuals subject to the section 135 or 136 provisions whether the pre- or post-commencement provisions apply (influencing detention times etc.), and that clear records are kept on these issues.

