SECTIONS
135 and 136
MENTAL HEALTH ACT 1983

JOINT-AGENCY

PROTOCOL

Somerset Partnership NHS
NHS Foundation Trust

Yeovil District Hospital NHS
NHS Foundation Trust

NHS
Musgrove Park Hospital

NHS
Somerset
Clinical Commissioning Group

South Western Ambulance Service NHS
NHS Foundation Trust

AVON & SOMERSET CONSTABULARY

SOMERSET
County Council

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APPENDIX

1. INTRODUCTION

1.1 The procedures in this document relate to Section 135(1) and Section 136 of the Mental Health Act (1983), other than S135(2) which does not involve the use of a place safety (PoS). Only Police Officers may detain a person under section 135/6 and support South West Ambulance Service Foundation Trust (SWASFT) to remove them to a place of safety.

1.2 The protocol has been developed between Avon & Somerset Constabulary, Somerset Partnership NHS Foundation Trust, Emergency Departments (ED) at Musgrove Park and Yeovil District hospitals and SWASFT.

1.3 The aim of this joint policy is to ensure that the principles of the Crisis Care Concordat are adhered to.

1.4 The guiding principle of this protocol is that, wherever possible, individuals will be removed to a mental health-based place of safety.

1.5 It is agreed between all parties that those detained are a joint management responsibility from the point of detention to the point of completion of the assessment and it is every organisation's responsibility to ensure support for the other(s) throughout the period of detention (including conveyance) in accordance with the legislation and guidance.

1.6 A named individual in each agency will be responsible for the implementation and on-going strategic management of this protocol and a formal, annual review of the operation of this protocol will occur.

1.7 A place of safety can be defined as a space where an individual who is detained and transported under S135\136 of the Mental Health Act 1983 can be managed safely whilst an appropriate assessment is undertaken. See Appendix 6 for full definition.

2. AIMS OF THE PROTOCOL

2.1 The aims in drawing up this protocol are to ensure that:-

(a) An individual detained under Section 135(1) or 136 receives the attention and the most appropriate form of care they need while respecting their rights as an individual;

(b) that attention and care is provided in the most appropriate safe place and by the people best qualified to provide it;

(c) attention and care is provided safely and as soon as possible with the minimum of disruption and stress to the individual concerned;

(d) to ensure the use of a dedicated health based Place of Safety (PoS) on the majority of occasions, exemplifying best practice;

(e) to ensure Emergency Departments are used and supported where this is consistent with concerns about urgent healthcare. Use of ED's as alternative places of safety in the event of lack of availability of a mental health PoS should be considered following discussion with mental health inpatient management;

(f) to ensure police stations are only used for individuals over the age of 18 in exceptional circumstances and where it is medically safe to do so as per the Policing and Crime Act. Young people under the age of 18 will not be removed, kept at or taken to a place of safety that is a police station.

2.2 This protocol takes account of the diverse needs of individuals and recognises the impact that social exclusion, deprivation and racial abuse can have on mental health. Whilst recognising ethnic, cultural and religious background, assumptions will not be made on the basis of these characteristics.

2.3 All agencies share a commitment to improving service user experience and service outcomes for people from black and ethnic minorities who experience mental health problems.

2.4 This protocol takes account of the provisions of the law and Home Office and Department of Health guidelines and reflects the commitment of all the agencies involved to work together to provide appropriate assistance to individuals with a mental disorder, in the belief that all individuals have the right to be treated with dignity and respect

2.5 The Policing and Crime Act received Royal Assent in Jan 2018. Its aim is to reform policing and enable important changes to the governance of fire and rescue services. The Act seeks to build capability, improve efficiency, increase public confidence and further enhance local accountability.

3. RELEVANT PROVISIONS OF THE MENTAL HEALTH ACT 1983

Section 136

3.1 Section 136 of the Mental Health Act (1983) provides a police officer with the power to remove to a place of safety, an individual, where the individual appears to them to be suffering from a mental disorder within the meaning of the Act, and be in immediate need of care and control. The police officer may, if they think it necessary to do so, in the interests of that individual or for the protection of other persons:

(a) remove an individual to a place of safety within the meaning of section 135(1) (see appendix 6), or

(b) if the individual is already at a place of safety within the meaning of that section, keep the individual at that place or remove them to another place of safety.

3.2 The power of the police officer may be exercised where the mentally disordered person is at 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.

3.3 Before deciding to remove an individual to, or keep an individual at, a place of safety, the police officer must, if it is practicable to do so, consult:

a) a registered medical practitioner,

b) a registered nurse

3.4 The new S136C has created a power for constables to undertake 'protective searches' for individuals subject to S135(1) or (2), and those detained under S136. See Appendix 7 for details.

3.5 The purpose of the legislation is to enable an individual to be both medically examined by a doctor and interviewed by an Approved Mental Health Professional (AMHP) and for an assessment to be made of the individual's relevant circumstances as quickly as possible, in their own interests and/or for the protection of others, so that any necessary arrangements can be made for on-going treatment and care.

3.6 An individual removed to a place of safety under this section may be detained there for a period not exceeding 24 hours from the time the individual arrives at the place of safety for the purpose of enabling them to be examined by a registered medical practitioner and to be interviewed by an AMHP and of making any necessary arrangements for their treatment or care.

3.7 The registered medical practitioner who is responsible for the examination of an individual detained under section 136 may, at any time before the expiry of the 24 hour period, authorise the detention of the individual for a further period not exceeding 12 hours, beginning immediately at the end of the 24 hour period. An extension may only be made when the condition of the individual detained is such that it would not be practicable (and is clinically justified) for the assessment to be carried out before the end of the 24 hour period. The form for recording an extension can be found at Appendix 8

3.8 If a police station is used as the place of safety the PACE Code of Practice C applies. This provides the benefit of many of the safeguards applicable to any person who is in police detention. A person should expect to receive a copy of the Notice of Rights and Entitlements, which states that an individual can tell the police if they want access to a solicitor, if they want someone to be told that they are at the police station, and if they want medical help. It also states that an individual can tell the police that they want to look at the PACE Codes of Practice.

3.9 In a police station PACE Code of Practice C also requires an appropriate adult to be available for a person who appears to be mentally disordered or mentally vulnerable, who can be a relative, guardian or other person responsible for their care or custody, someone experienced in dealing with mentally disordered or mentally vulnerable people but who is not a police officer or employed by the police or, failing these, some other responsible adult aged 18 or over who is not a police officer or employed by the police. Although an appropriate adult should be available, they have no role in the doctor's assessment or AMHP's interview of the patient and their presence is not required for these to be undertaken.

3.9 Where a hospital is used as a place of safety, the managers must ensure that the provisions of section 132 (giving of information) are complied with. In addition, access to legal advice should be facilitated wherever it is requested.

Section 135(1)

3.9 Section 135(1) of the Mental Health Act 1983 provides for a Justice of the Peace to issue a warrant authorising a police officer to enter private premises, if need by force, to gain access to and, if thought fit, remove an individual within to a place of safety, with a view to the making of an application under the Mental Health Act Part II, or of other arrangements for their treatment or care. Information must be provided under oath by an AMHP that there is reasonable cause to suspect that an individual is believed to be suffering from a mental disorder (and):

- Has been or is being ill-treated, neglected or kept otherwise than under proper control in any place within the jurisdiction of the justice or;

- being unable to care for him/herself, is living alone in any such place.

3.10 A place of safety is defined in the same way for people detained under either S135 or 136. See Appendix 10.

3.11 If the premises specified in the warrant are a place of safety, the police officer executing the warrant may instead of removing the person to another place of safety, keep the person at those premises.

3.12 The police officer may carry out a protective search of the individual at any time during the period beginning with the time when the officer enters the premises specified in the warrant and ending when the person ceases to be detained under section 135. The officer may seize and retain anything found, if he or she has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or herself or to others. See Appendix 7 for details.

CHILDREN

3.14 The MHA itself does not prescribe a minimum age for S136 or S135 use. As Somerset Partnership does not have a designated Child & Adolescent In-patient Mental Health place of safety unit, the options available to police using S136 powers is to take the child or young person to a hospital based place of safety.

3.15 When a child or young person is admitted to a health based place of safety, every effort should be made to secure involvement of staff from Somerset's CAMHS service. Regardless of whether CAMHS staff become involved, a rapid assessment and quick detainee move on from the place of safety to a more appropriate environment should be achieved in each instance. [Appendix 4).

3.16 The new S136A states that a police station may never be used as a place of safety for a child (i.e. anyone aged 17 or under)

4. ACTION FOLLOWING DETENTION

Detention to Health Based Place of Safety

4.1 Only police officers may detain a person under sections 135/6 of the MHA and remove them to a place of safety. Following an initial decision to detain, an ambulance must be requested for conveyance (organised in advance if detention is likely to arise following execution of a warrant under section 135).

4.2 A flowchart for mental health incident (Appendix 1) and escalation directory (Appendix 2) has been developed and should be followed. Of note, wherever possible and practicable the Police services will make contact with the Mental Health service (Control room triage / Local CRHT) before detention.

4.3 Where a Mental Health hospital is used as a place of safety, it will be either a designated unit on the Summerlands Hospital site in Yeovil, or a designated unit on the Wellsprings Hospital site in Taunton.

4.4 The new S136A has created Regulations which describe the exceptional circumstances when a police station may be used for an adult as a place of safety. The police may only allow a police station to be a place of safety when they are satisfied that:

(i) the behaviour of the individual poses an imminent risk of serious injury or death to the individual, or to another person,

(ii) because of that risk, no place of safety other than a police station in the relevant police area can reasonably be expected to detain the individual and

(iii) so far as is reasonably practicable, a healthcare professional will be present and available to the individual throughout the period in which they are detained at the police station.

See Appendix 9 for the full Regulations.

4.5 In the event that the first choice place of safety is unable to accept, the individual may be removed to another hospital based place of safety, and exceptionally, an emergency department or the police station. Removal to Police custody can only occur for adults and on an exceptional basis (see 4.4 above) after consideration of other contingencies and in line with the agreed escalation plan.

4.6 Where a police station is used as a place of safety for individuals over the age of 18, it will be either Yeovil or Bridgwater custody suite for police districts covering the Partnership area.

4.7 Somerset Partnership's hospital places of safety will normally only accept detainees arrested within the Somerset boundary. Detainees arrested outside Somerset, even if they may be a Somerset resident, should be taken to a place of safety relevant to the area in which the police officer exercises their Section 136 powers. The detainee should be assessed in this place of safety as Somerset Partnership will not normally accept a transfer to one of its hospital places of safety.

4.8 An individual is defined as arriving at a place of safety (and the 24 hours start) when their care has been accepted by the NHS professionals managing that location (or by the custody officer at a police station). If there is a dispute regarding the use of the health based POS the Police will remain with the individual whilst the situation is escalated through the escalation process.

4.9 The police officer accompanying a Section 136 detainee should have completed, or will complete on arrival at the hospital site, an initial monitoring form providing brief details of the circumstances of the arrest and whatever patient details are known (name, age, means of conveyance etc).

4.10 If it is indicated that a Mental Health Act Assessment is required, it is the AMHP's duty to arrange the attendance of the appropriate doctors following discussion with the Nurse in Charge to establish that the assessment should continue and that there are no clinical grounds to delay.

4.11 Once the detainee has been accepted the health based place of safety in either Taunton or Yeovil should be used or if this is disputed the escalation process will apply:

SWASFT responsibility

a) To handover the clinical details and assessments undertaken and to confirm the current health status of the individual.

The Police Officer's responsibility:

a) To provide assistance to the hospital staff to help ensure, at all times, the safety and security of the detainee and all other patients and staff.

b) To search the detainee and remove and log anything that may be used to put the detainee or others at risk. This should be done before acceptance at the place of safety (see Appendix 7).

c) To remain at the unit until the nurse responsible for the place of safety, having, where appropriate, consulted those undertaking the assessment feels that a police presence is no longer necessary to ensure the safety of the detainee and staff.

d) To agree to return to the hospital when called back by staff in circumstances where the staff or the detainee are placed at significant and unmanageable risk and regain control.

e) To remove the detainee from the hospital to an alternative place of safety, in those exceptional circumstances where the detainee is likely to be or is unmanageable, when requested by the nurse in charge to do so. The nurse in charge should take account of all relevant circumstances before making the decision to have the detainee removed, and this should only be in exceptional circumstances. If requested, the nurse's risk assessment underpinning their reasons should be shared with the police as per the agreed escalation process.

f) Once a police officer has implemented their S136 powers, the detainee cannot be released from detention until the appropriate assessment has taken place. Procedures detailed in this joint-protocol must be followed once the S136 has been used.

4.12 **The nurse's responsibility**:

a) To ensure the designated 136 suite is ready to receive the individual.

b) To ensure the safety of all concerned by making sure sufficient staff remain with the detainee at all times.

c) To ensure the AMHP is aware the detainee has arrived at the place of safety.

d) To check whether Somerset Partnership knows the individual or, if an address is known, any other area, and whether there are any recorded concerns about their physical health.

e) To identify any RiO alerts.

f) To determine, before they enter the building, whether or not the detainee has been searched by the police. If no search has been done, ensure an appropriate search is undertaken by the police and any property removed is logged (See Appendix 7).

g) Meet the police officer and individual and immediately escort them to the 136 suite and make them aware of health and safety issues and welfare facilities.

h) To contact a doctor, which may be the duty doctor in training, if there are urgent concerns about the detainee's physical health.

i) If practicable, to discuss the situation with a CAMHS service manager if the detainee is under 18 years of age.

j) To endeavour to inform the detainee of the provisions of S136 or s135 and, if appropriate, provide them with an explanatory leaflet.

k) To ask the detainee whether they would like a relative or friend informed of their detention and inform the relative/friends should the detainee want them informed.

l) To ensure the referral form has been completed by the police.

m) To open a RiO monitoring file, noting the time the detainee was taken into the place of safety, and ensure the form is completed appropriately.

n) To ensure the person detained is comfortable and has access to appropriate facilities and refreshments.

o) To complete any missing information in the police officer's S136 monitoring form.

p) If necessary, initiate transfer from hospital to an Emergency Department or police station place of safety.

q) To ensure the safety of any items removed from the patient and return those items to them if they are not detained following the MHA assessment.

4.13 **The AMHP's responsibility**:

a) To comply with S136 by making contact with the nurse in charge of the ward and agreeing if the individual is available for assessment and attending if appropriate at the earliest opportunity to assess, together with a doctor, the detainee. Ideally, the assessment should begin within 3 hours. In cases where there are no clinical grounds to delay assessment, it is good practice for the doctor and AMHP to attend within 3 hours.

b) If necessary, coordinate a MHA assessment process by securing the attendance of a second doctor. The MHA assessment should take place as soon as is practicable. The provisions of Section 12 of the Act should be interpreted in such a way as to limit delay in assessing the detainee.

c) Where there is a delay, the reason(s) should be clearly documented on the 136 form on the patient's electronic patient record (RiO).

d) To assess the detainee under the MHA and, if appropriate, make an application to detain.

e) Should the patient be detained under the MHA or admitted informally, arrange the conveyance to the identified bed.

f) To arrange an ambulance to transport the individual between places of safety, where the transfer is from a police station to a hospital in conjunction with the Mental Health Manager (on call).

g) If a MHA assessment is not required, to liaise with the examining doctor, ward staff, any relevant community services (statutory or non-statutory) and/or any family/carers in order to consider, and make, any necessary arrangements for the detainee's treatment or care.

4.14 **The doctor's responsibility**:

a) In the case of the duty doctor in training, responding to requests from the unit to attend when there are immediate concerns about the detainee's physical or mental health should be exceptional.

b) In the case of a Somerset Partnership Section 12(2) approved doctor, attend as quickly as possible once informed of the need for an assessment under S135 or 136, bearing in mind the need to ensure where possible that the detainee is assessed within three hours. The Somerset Partnership Section 12(2) approved doctor should arrange an appropriate bed in the Trust for the detainee if an application for admission under the Mental Health Act needs to be made (or liaise with the local unit manager if no bed is immediately available and escalation to the on call manager is needed).

c) The Somerset Partnership Section 12(2) approved doctor should, if within their working hours, consult with the inpatient Consultant and the Home Treatment Team who would ordinarily gate-keep admissions to the ward (but not if the individual is detained). They should ensure that appropriate clinical information is handed over to in-patient nursing and medical staff.

d) In the case of the doctor assessing to provide the second medical recommendation, attend as quickly as is practicable.

4.15 The 24 hour time limit on detention under section 136 commences at the point of acceptance at the first place of safety, this includes first arrival at the Emergency Department, if used, because of additional medical problems.

5. CONVEYANCE

5.1 It will be the responsibility of police officers to request an ambulance for conveyance following detention under section 136. It will be the responsibility of an AMHP to pre-arrange an ambulance for assessments under section 135. The ambulance service is the preferred method of transport to convey that individual from the location of initial detention to the place of safety and to undertake any further conveyance requirements should the individual be subsequently transferred.

5.2 It is the responsibility of the ambulance crew to consider the presentation of the patient detained by the police. Where paramedics or technicians believe that the patient has a red flag presentation they should advise that person's removal to an emergency department. In consideration of the journey to the emergency department or place of safety, particular thought should be given to managing this safely where the person is agitated. The police officer must accompany the detainee in the ambulance.

5.3 Where police officers take a decision to expedite conveyance themselves, this should be in cases of some urgency or where it is necessary in order to safely manage a risk of violence. This must be balanced against whether or not a patient is presenting with a red flag trigger condition (see appendix 1), in which case an ambulance must be used.

5.4 Should it be considered advisable to use a police vehicle to transport the detainee, the highest qualified member of the ambulance crew should be asked to accompany the police and detained in the police vehicle, with the ambulance following behind.

6. REMOVAL OR TRANSFER TO A PLACE OF SAFETY

6.1 Before exercising their powers under Section 136, the arresting officer must, if it is practicable to do so, consult:

(a) a registered medical practitioner,

(b) a registered nurse,

(c) an approved mental health professional (AMHP), or

(d) a person of a description specified in regulations made by the Secretary of State:

(a) an occupational therapist,

(b) a paramedic.

6.2 The detaining officer should make contact with their control centre and the nurse in charge of the place of safety, and obtain permission from the nurse in charge before bringing the detainee to the hospital. The nurse should then immediately alert the duty AMHP of the detention under Section 136.

6.3 The police will remain with the detainee upon arrival at the place of safety for at least the duration of the handover period. Following this, police officers and place of safety staff will undertake a risk assessment in order to agree on whether the police officers may leave the patient with the place of safety staff, or whether they should remain until any risks reduce or until the MHA assessment is concluded.

6.4 Risk assessments should be regularly subject to joint review and the police should be released, recalled or reinforced where risk/threats alter.

7. REMOVAL OR TRANSFER TO A&E

7.1 Where it appears to the arresting officer that the individual's physical health is such that they may require medical treatment they must contact the ambulance service, who will arrange for a health care professional to undertake an assessment and determine if conveyance to the Emergency Department is needed. The police officer should stay with the detainee until such time as the officer can transport them, after negotiation with the clinical team, to an appropriate place of safety.

7.2 Where the individual has already arrived, but not yet been accepted, at a place of safety, and is identified as being in need of urgent medical treatment at an Emergency Department, they should be transported immediately to the Emergency Department by ambulance. The police officer should stay with the detainee until such time as they can be returned to a place of safety.

7.3 Where a general hospital is being used as a place of safety, any deterioration in the person's physical condition will be addressed by use of current emergency provisions. The nurse in charge will make urgent arrangements for assessment at the Emergency Department (ED), as is current practice. If this is the case the nurse in charge at the Emergency Department should be contacted to inform of the individuals ETA. A member of the staff will escort the patient to the Emergency Department and remain until they return to the place of safety, or other arrangements are made.

7.4 Where the person is transferred from the Emergency Department to a ward at MPH or YDH, the police (if the person has been taken straight to the Emergency Department from the community or a police station) or Somerset Partnership ward staff (if they have been taken to the Emergency Department from a mental health place of safety) will remain with them until they have been seen by an AMHP and a Section 12 approved doctor, or until such time as the nurse in charge of the ward is satisfied that the ward can, with regard to the safety of others in the ward environment, safely manage the welfare of the patient. Only in exceptional circumstances will the police remain on the ward for longer than 1 hour. In the above circumstances, the ward at MPH or YDH will constitute the place of safety.

7.5 Once admitted to a ward at MPH or YDH, it is the responsibility of the nurse in charge of the ward to ensure that the site manager is aware and a mental

health act assessment is, or has been, initiated. The nurse in charge should inform an AMHP, if outside normal working hours, an AMHP in Somerset's Emergency Duty Team. AMHP Hub – 01823 368244, EDT – 01458 253241

8. REMOVAL OR TRANSFER TO A POLICE STATION (see Appendix 9)

8.1 Detention at a police station should only be accepted by the custody sergeant where it is considered medically safe to do so.

8.2 In those exceptional circumstances where a police station is used as a place of safety, the detaining police officer will ensure the S136 monitoring form is completed.

8.3 Where detention at a police station is accepted, the custody sergeant will immediately inform a registered medical practitioner (police surgeon) and an AMHP.

8.4 On arrival at the police station, the Custody Officer will ensure the provisions of the P.A.C.E. Act Code of Practice are adhered to.

8.5 The medical practitioner will be responsible for assessing whether the detainee is fit to be detained and whether they have any immediate physical healthcare needs.

8.6 Any transfer under S136 to a subsequent place of safety must be authorised by the registered medical practitioner or AMHP.

8.7 At all times, the custody sergeant will monitor the ongoing need for the individual to remain detained in police custody and will expedite all opportunities to remove them to an appropriate health based setting.

9. TRANSFER BETWEEN PLACES OF SAFETY

9.1 Initial management in an Emergency Department or police station should be for as short a period as possible and individuals should be transferred at the earliest opportunity. Transfer must be authorised by the AMHP or medical practitioner to ensure the transfer would not put the individual's health at risk.

9.2 Except in exceptional circumstances, all patients detained under sections 135 or 136 will be assessed in the place of safety at which they first arrive.

9.3 Other than in exceptional circumstances, an ambulance should be used to transfer between places of safety. This may be, where appropriate, a private ambulance.

9.4 As the AMHP retains responsibility for arranging to convey the individual to hospital following the assessment process, they will also be responsible for ensuring the detainee is appropriately conveyed between places of safety pending completion of the assessment. Where possible, the AMHP will assess and ensure the appropriateness of the transport. Where it is not possible for

them to be physically present to assess the appropriateness of the transport and coordinate the conveying, they should discuss the matter with the custody sergeant or nurse in charge and satisfy themselves that suitable arrangements are in place.

9.5 Following an assessment of risk, the police will either travel in or follow the transport to the new place of safety and ensure the safe acceptance of the person at that place of safety.

10. TREATMENT AND RESTRAINT

10.1 A section135 or section136 detainee can only be treated in the absence of consent in accordance with provision of the Mental Capacity Act, or in extremis under the common law doctrine of necessity. The doctor proposing the treatment must first believe the detainee lacks capacity to consent to or refuse the treatment, and is in need of the treatment in their best interests, before the treatment can be given. Or, if the detainee has capacity and is refusing treatment, that treatment is required urgently in order to prevent harm coming to the patient or others. The treatment must be the minimum to ensure an improvement or no further deterioration in the detainee's condition. Treatment must also be provided with the principle of least restrictive intervention.

10.2 The same principle applies to control and restraint in that proportional restraint can be used to prevent detainees lacking capacity from hurting themselves. If an individual needs to be restrained in order to remain 'detained' under Section 135/6 then the restraint will form part of the detention, and the guidance in the Code of Practice about restraint should be followed. All nursing staff working within the section 136 suites will have confirmed training for teamwork restraint.

11. LEARNING DISABILITIES ASSESSMENT

11.1 Where it is known or where it becomes suspected that an individual removed to any place of safety has a learning disability, early contact must be made with the Learning Disabilities Service.

11.2 Contact with the Learning Disabilities Service will ensure that if the individual is known, information is shared at the earliest possible opportunity.

12. CONCLUSION OF ASSESSMENT

12.1 The authority to detain a person under section 135/6 ends as soon as it has been decided to make no application for further detention or other arrangements for their treatment, or if the examining doctor concludes that the person is not suffering from a mental disorder (note that this may happen before an AMHP has attended) .

12.2 Where assessment concludes that the individual requires admission to hospital as a voluntary or detained (under the MHA) patient, the police should only

become re-involved in supporting any conveyance where the risk assessment has altered.

12.3 Securing arrangements for admission to hospital or follow up care/support in the community is the responsibility of the AMHP.

12.4 Where an individual is admitted to a mental health ward, either informally or under the Mental Health Act the ward will notify the individual's GP of the date of admission, name of the Care Coordinator and Consultant. It is good practice for the section 12 doctor undertaking the assessment (irrespective of whether subsequently detained or not) to write to the individuals GP to notify them of the assessment.

13. ABSCONDING FROM LEGAL CUSTODY UNDER SECTION 135/6

13.1 Where an individual absents themselves from detention under either Section 135 or Section 136, the police and the AMHP will ensure a co-ordinated approach to recovering the patient.

13.2 Local procedures on patients going AWOL under the MHA must be referred to and initiated, because they include procedures for people who have absconded from custody, as well as those who have gone AWOL.

13.3 If an individual escapes detention under Section 135 or Section 136 prior to arrival at the place of safety, they may be retaken into custody. If they absent themselves after arrival at the place of safety, they may be retaken into custody within the 24 hour period after their acceptance at the first place of safety to which they had been taken under Section 138 of the MHA (1983). They shall not be retaken under this Section after the expiration of the period 24 hours beginning with the time when they escaped or the period during which they are liable to be detained, which ever expires first. In this case, the Trust AWOL and Missing Persons policy should be followed.

13.4 There is no power to force entry to a premises in order to secure the re-detention of someone who is missing under the MHA and this extends to a person who has absconded from detention under Section 135/6. Where entry needs to be achieved (using force if necessary) in order to re-detain the person, this must be undertaken under the terms of a warrant issued under section 135(2).

13.5 The reason for the escape should be strongly considered when risk assessment decisions are made about the appropriate place of safety to be used and/or whether the police should remain at that location pending assessment.

13.6 The overall time for assessment and conclusion of place of safety, including absences is 24 hours from the point of acceptance at the first place of safety, unless the registered medical practitioner authorises the detention of the individual for a further period not exceeding 12 hours (36 hours overall) because the condition of the individual is such that it would not be practicable

for the assessment to be carried out before the end of the 24 hour period (and is therefore clinically justified).

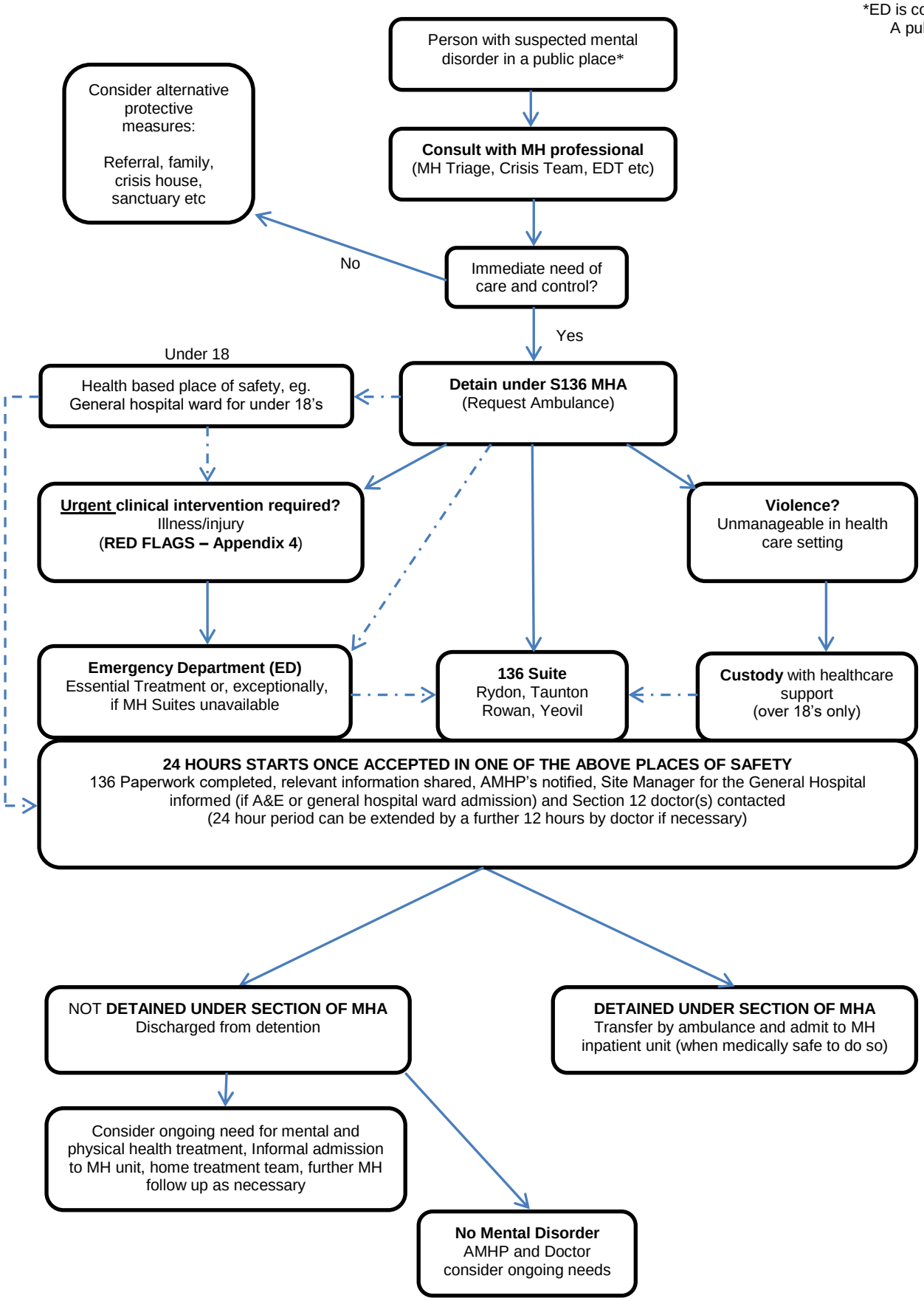
14. INTER-AGENCY CO-OPERATION

14.1 The overall management of Sections 136 and 135 involves discussion and planning across disciplines and agencies. This may occasionally give rise to differences of opinion, which will need to be resolved. Statistics will be collated from the monitoring forms and made available to the Crisis Concordat, 135/136 Monitoring Groups and the Partnership's Mental Health Legislation Committee. Operational issues will be monitored by both agencies and will also be discussed in the above multi-agency groups. Serious operational issues will be resolved at the earliest opportunity through immediate contact between the respective agency representatives initially at local levels.

15. COMPLAINTS

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

*ED is considered
A public place



AVON & SOMERSET CONSTABULARY

Somerset Partnership NHS Foundation Trust

Escalation Contact Details

Avon and Somerset Police	Somerset Partnership NHS Foundation Trust Mental Health Services
Office Hours 0800-2400	**Office Hours 0900-1700**
Duty Bronze (Local Inspector) 101	Head of Inpatient & Urgent Care Tim Young 07825257111
Duty Silver (Chief Inspector) 101	Deputy Service Director Neil Jackson 07824547421
Duty Gold (Chief Officer) 101	Chief Operating Officer Andy Heron 01278 432000
On Call	**On Call**
Duty Bronze (local Inspector) 101	Service Manager On Call (Mental Health) 0844 5689280
On Call Superintendent 101	On Call Director 08445689283

Somerset Clinical Commissioning Group – On Call 0303 033 9944

RED FLAG criteria

RED FLAG CRITERIA

Police Officer / Paramedic triggers for conditions requiring Treatment or Assessment in an Emergency Department

Dangerous Mechanisms:

Blows to the body
Falls > 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

Serious Physical Injuries:

Noisy Breathing
Not rousable to verbal command
Head Injuries:

- Loss of consciousness at any time
- Facial swelling
- Bleeding from nose or ears
- Deep cuts
- Suspected broken bones

Attempting self-harm:

Head banging
Use of edged weapon (to self-harm)
Ligatures
History of overdose or poisoning

Psychiatric Crisis

Delusions / Hallucinations / Mania

Possible Excited Delirium:

Two or more from:

- Serious physical resistance / abnormal strength
- High body temperature
- Removal of clothing
- Profuse sweating or hot skin
- Behavioural confusion / coherence
- Bizarre behaviour

BASICS Doctors:

ONLY AT THE REQUEST OF PARAMEDICS / TECHNICIANS – ACCESSED VIA Ambulance Clinical Hub (Control room)

Where immediate management of RED FLAG conditions necessitates the intervention or skills of a Doctor 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**.

Conveyance to the nearest ED:

Should NOT be undertaken in a police vehicle **UNDER ANY CIRCUMSTANCES** where a **RED FLAG** trigger is involved.

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**.

ADMISSION OF CAMHS PATIENTS TO THE HEALTH BASED PLACE OF SAFETY

Wessex House is not currently a designated place of safety for use under section 136 of the MHA.

The Police will not take children held on a 136 to Police custody under any circumstances.

1. Where possible the Police officer should make contact with Control room triage / Local Home Treatment team prior to detention under Sec 136

2. Contact should be made by the police with Rydon ward in the first instance and then Rowan to seek availability of the suite.

3. The Accepting ward will make contact with the AMHP hub/EDT and ensure that it is explicit that the person is under the age of 18 and where possible an AMHP with CAMHS experience is identified.

4. The ward contact the CAMHS service to make them aware of the admission and request support for an identified member of staff and notify the CAMHS consultant who will be required for the assessment.

5. The CAMHS team in conjunction with the CAMHS manager /on call manager will provide an additional member of staff, who will be made available for the duration of the assessment and further stay.

6. An identified CAMHS worker will be the contact person for the ward staff.

7. The Nurse in charge of the PoS will ensure CAMHS staff are supported during the admission.

8. If a placement is required and not readily available identified workers from the ward and CAMHS teams will liaise daily until the person is transferred.

All other aspects of the 136 protocol will be applied.

Actions when Designated Health Based Place of Safety (PoS) is not available

Designated PoS unavailable

Police Officer to discuss with Nurse in Charge (NiC) of 136 to establish potential availability and timescales

Consider other designated PoS

If not available liaise with local or on call manager

Consider ED in local DGH as temporary alternative.
NB: *Exceptional circumstances thresholds may differ in acute trust*.
136 protocol applies in Acute Trust

NiC of PoS to liaise with AMHP to prioritise assessments and liaise with nominated individual in Acute Trust

Request support of Psychiatric Liaison

Complete assessment in ED or transfer to Designated PoS when available.

If there is dispute at any point during this process the escalation process Appendix 2 should be used.

If either of the designated PoS are unavailable for other reasons the NiC will contact the Service manager/On call manager and advise the Police.
If this situation should continue, use of an additional temporary PoS should be considered.

APPENDIX 6

Definition of a Place of Safety (s135 (6) and (7) Mental Health Act

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

For the purpose of subsection 6

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

  (i) if the person believed to be suffering from a mental disorder is the sole occupier of the place, that person agrees to the use of the place as a place of safety;

  (ii) if the person believed to be suffering from a mental disorder is an occupier of the place but not the sole occupier, both that person and one of the other occupiers agree to the use of the place as a place of safety;

  (iii) if the person believed to be suffering from a mental disorder is not an occupier of the place, both that person and the occupier (or, if more than one, one of the occupiers) agree to the use of the place as a place of safety;

(b) a place other than one mentioned in paragraph (a) may not be regarded as a suitable place unless a person who appears to the constable exercising powers under this section to be responsible for the management of the place agrees to its use as a place of safety.

APPENDIX 7

Protective Searches- S136C

136C Protective searches

(1) Where a warrant is issued under section 135(1) or (2), a constable may search the person to whom the warrant relates if the constable has reasonable grounds for believing 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 herself or to others.

(2) The power to search conferred by subsection (1) may be exercised:

(a) in a case where a warrant is issued under section 135(1), at any time during the period beginning with the time when a constable enters the premises specified in the warrant and ending when the person ceases to be detained under section 135;

(b) in a case where a warrant is issued under section 135(2), at any time while the person is being removed under the authority of the warrant.

(3) Where a person is detained under section 136(2) or (4), a constable may search the person, at any time while the person is so detained, if the constable has reasonable grounds for believing 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 herself or to others.

(4) The power to search conferred by subsection (1) or (3) is only a power to search to the extent that is reasonably required for the purpose of discovering the item that the constable believes the person to be concealing.

(5) The power to search conferred by subsection (1) or (3):

(a) does not authorise a constable to require a person to remove any of his or her clothing other than an outer coat, jacket or gloves, but

(b) does authorise a search of a person's mouth.

(6) A constable searching a person in the exercise of the power to search conferred by subsection (1) or (3) may seize and retain anything found, if he or she has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or herself or to others.

(7) The power to search a person conferred by subsection (1) or (3) does not affect any other power to search the person.

Record of authorisation to extend the detention of a person subject to section 135 or 136

I ……, being the registered medical practitioner responsible for the examination of ……(*insert name of detainee*) who has been detained under section **135 136** (*delete as appropriate*) do hereby authorise that the period of detention shall be extended for a further period not exceeding 12 hours starting immediately at the end of the period of 24 hours after the detention started (*See below for details of timings*).

The extension is necessary because the condition of the person detained is such that it would not be practicable for the assessment for the purpose of section **135 or 136** (delete as appropriate) to be carried out (or completed) before the end of the period of 24 hours.

I have reached this conclusion based on the following reasons (*N.B- a delay in attendance by an AMHP or medical practitioner is not a reason for extending detention. Valid reasons could be that the person is too mentally distressed, or is particularly intoxicated with alcohol or drugs and cannot cooperate with the assessment process.*):

Continue overleaf if necessary

Details of timings:

The 24 hours of detention start 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. The clock continues to run during any transfer between one place of safety and another. 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).

Time and date of start of the 24 hour detention	
Time and date of start of 12 hour extension (*will always be the expiry time of the 24 hours above*)	
Time and date the 12 hour extension will end	

Signed……..

Time and date of signature……

STATUTORY INSTRUMENTS

2017 No. 1036

POLICE, ENGLAND AND WALES

MENTAL HEALTH, ENGLAND AND WALES

The Mental Health Act 1983 (Places of Safety) Regulations 2017

Made - - - - 24th October 2017
Laid before Parliament 31st October 2017
Coming into force - - 11th December 2017

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 136(1C)(d) and 136A(2) and (3) of the Mental Health Act 1983:

Citation, commencement and interpretation

1. (1) These Regulations may be cited as the Mental Health Act 1983 (Places of Safety) Regulations 2017 and come into force on 11th December 2017.

(2) In these Regulations:

"the Act" means the Mental Health Act 1983;
"custody officer" means a person who is appointed as, or who is performing the functions of, a custody officer within the meaning given in section 36 of the Police and Criminal Evidence Act 1984;
"healthcare professional" means a person who is a member of a profession mentioned in section 60(2) of the Health Act 1999.

Circumstances in which a police station may be used as a place of safety

2. (1) An adult ("A") may only be removed to, kept at, or taken to, a place of safety that is a police station in the exercise of a power to which section 136A of the Act applies where:

(a) the decision-maker is satisfied that:

(i) the behaviour of A poses an imminent risk of serious injury or death to A, or to another person,
(ii) because of that risk, no place of safety other than a police station in the relevant police area can reasonably be expected to detain A, and
(iii) the requirement in sub-paragraph (b) of regulation 4(1) will be met, and

(b) where the decision-maker is not an officer of the rank of inspector or above, an officer of that rank or above authorises that A may be removed to, kept at, or taken to a place of safety that is a police station.

(2) Before determining that the circumstances in paragraphs (i) to (iii) of paragraph (1)(a) exist, a decision-maker who is a constable must, if it is reasonably practicable to do so, consult:

(a) a registered medical practitioner,
(b) a registered nurse,
(c) an approved mental health professional, or
(d) a person of a description specified in regulation 8(1).

(3) In this regulation “decision-maker” means:

(a) in relation to the exercise of a power under section 135(1) or 136(1) of the Act, the constable exercising that power,
(b) in relation to the exercise of a power under section 135(3A) or 136(3) of the Act, the constable or approved mental health professional who:

(i) exercises that power, or
(ii) authorises a person to exercise that power,

“relevant police area” means the police area in which A is located when a power to which section 136A of the Act applies begins to be exercised in relation to A.

Requirements when a police station is used as a place of safety

3. Regulations 4 to 7 apply when an adult is detained at a police station under section 135 or section 136 of the Act.

4. (1) A custody officer at the police station must ensure that:

(a) the welfare of the detained adult (“D”) is checked by a healthcare professional at least once every thirty minutes, and any appropriate action is taken for the treatment and care of D, and
(b) so far as is reasonably practicable, a healthcare professional is present and available to D throughout the period in which D is detained at the police station.

(2) Subject to regulation 7, in any case where either or both of the requirements in paragraph (1)(a) and (b) is not met, the custody officer must arrange for D to be taken to another place of Safety

.

5. (1) A custody officer at the police station must, subject to paragraph (2) and regulations 6 and 7:

(a) review the behaviour of D at least once an hour and determine whether the circumstances in regulation 2(1)(a)(i) and (ii) exist, and
(b) where those circumstances are determined not to exist, arrange for D to be taken to a place of safety other than a police station.

(2) Before making a determination under paragraph (1)(a), the custody officer must, where reasonably practicable, consult the healthcare professional that carried out the most recent check by virtue of regulation 4(1)(a).

6. The frequency of the reviews referred to in regulation 5(1)(a) may be reduced, to no less than once every three hours, where:

(a) D is sleeping, and
(b) a healthcare professional who has checked D’s welfare by virtue of regulation 4(1)(a) has not, in the most recent check, identified any risk that would require D to be woken more frequently.

7 The requirements to take D to a place of safety in regulation 4(2) and regulation 5(1)(b) do not apply where:

(a) arrangements have been made which would enable an assessment of D for the purpose of section 135 or (as the case may be) section 136 of the Act to be commenced sooner at the police station than at another place of safety, and
(b) to postpone the assessment would be likely to cause distress to D.

Persons to be consulted

8. (1) The following persons are specified for the purposes of section 136(1C)(d) of the Act:

(a) an occupational therapist,
(b) a paramedic.

(2) For the purposes of paragraph (1):

(a) an occupational therapist is a person registered in the register established and maintained by the Health and Care Professions Council under article 5 of the Health and Social Work Professions Order 2001, in the part relating to occupational therapists, and

(c) a paramedic is a person registered in that register, in the part relating to paramedics.

Sarah Newton
Parliamentary Under Secretary of State
24th October 2017 Home Office

EXPLANATORY NOTE
(This note is not part of the Regulations)

These Regulations specify the circumstances in which a police station can be used as a place of safety for an adult, for the purposes of powers in sections 135 and 136 of the Mental Health Act 1983 (that is, powers to remove or take an adult to, or to keep an adult at, a place of safety), as amended by the Policing and Crime Act 2017. Where a police station is used, the Regulations also describe the safeguards and steps to be taken to protect the person detained.

Regulation 2 provides that a police station can only be used as a place of safety for an adult where the person exercising, or authorising the exercise of, the power under section 135 or section 136 is satisfied that: (a) the behaviour of the adult presents an imminent risk of serious injury or death to that adult or to others; (b) as a result, no other place of safety in the police area in which the adult is located can reasonably be expected to detain them; and (c) the adult will have access to a healthcare professional, so far as is reasonably practicable, throughout the period in which they are detained at the police station.

Regulation 2 further provides that, where the person considering using a police station as a place of safety is a police officer, they must, if reasonably practicable, consult with a registered medical practitioner, a registered nurse, an approved mental health professional, an occupational therapist or a paramedic, before making the decision.

The decision to use a police station as a place of safety must be authorised by an officer of the rank of inspector or above.

Regulations 4 to 7 set out how adults detained at a police station must be treated during the period that they are detained.

They require the custody officer to ensure that the welfare of the adult is checked at least every thirty minutes by a healthcare professional, and any appropriate action is taken for their treatment and care, and that so far as reasonably practicable a healthcare professional is present and available to the adult at all times. In any case where it is no longer possible for those requirements to be met, the adult must be taken to another place of safety. (However, there is no requirement to transfer the adult to another place of safety where arrangements have been made for a mental health assessment to be carried out at the police station, the transfer would delay such an assessment taking place, and the delay would be likely to cause the adult distress.)

They also require the custody officer to review the adult's behaviour at least once an hour, so that the custody officer can consider (if reasonably practicable, with the advice of a healthcare professional) whether it is still the case that the adult's behaviour presents an imminent risk that no other place of safety in the police area can manage. If the custody officer determines that those circumstances no longer exist, the adult must be transferred to another place of safety that is not a police station. (Again, there is no requirement to transfer the adult where arrangements have been made for a mental health assessment to be carried out at the police station, the transfer would delay the assessment taking place, and the delay would be likely to cause the adult distress.) The frequency of the reviews may be reduced to no less than once every three hours if the adult is sleeping, and a healthcare professional has not identified any risk sufficient to warrant waking them more frequently.

The Regulations do not apply where a person's removal began, or the warrant for their removal was issued, before the coming into force of these Regulations.

The Mental Health Act 1983 requires that, before making a decision to remove a person to, or to keep a person at, a place of safety under section 136(1) the constable must, if it is reasonably practicable to do so, consult a registered medical practitioner, a registered nurse, an approved mental health professional, or a person of a specified description. These Regulations specify an occupational therapist and a paramedic for the purposes of that provision.

A full regulatory impact assessment has not been produced for this instrument as no impact on the private or voluntary sector is foreseen.

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Mental Capacity (adapted from the College of Policing guidelines)

Definition of mental capacity

Under the Mental Capacity Act 2005 (MCA), a person (aged 16 or older) lacks capacity in relation to a matter if, at the material time, they are unable to make a decision for themselves in relation to the matter because of an impairment or disturbance in the functioning of the mind or brain. It does not matter whether the impairment or disturbance is permanent or temporary.

A lack of capacity cannot be established merely by reference to:

•a person's age or appearance

•a condition or an aspect of their behaviour, which might lead others to make unjustified assumptions about their capacity.

Any question about whether a person lacks capacity within the meaning of this Act must be decided on the balance of probabilities.

Principles

The following five principles should govern police responses when applying the MCA:

1.officers must assume that a person has capacity unless it is established that they lack capacity

2.officers should not treat a person as unable to make a decision unless they have taken all practicable steps to help the person to do so without success

3.officers should not treat a person as unable to make a decision merely because they make an unwise decision

4.officers should act or make decisions under this Act for or on behalf of a person who lacks capacity in that person's best interests

5.before acting or making the decision, officers must have regard to whether they can achieve the purpose for which it is needed as effectively in a way that is less restrictive of the person's rights and freedom of action.

Purpose of the Mental Capacity Act 2005

The MCA provides a statutory framework for people who lack capacity to make specific decisions for themselves, or who have capacity and want to make preparations for a time when they may lack capacity in the future.

Examples of an impairment or disturbance in the functioning of the mind or brain may include conditions associated with some forms of mental ill health, significant learning disabilities, dementia, brain damage, physical or mental conditions that cause confusion, drowsiness or lack of

consciousness, delirium, concussion following a head injury or the symptoms of drug and alcohol abuse. The impairment or disturbance does not have to be permanent. It also covers temporary incapacity due to drug or alcohol abuse and mental ill health.

Some people will experience fluctuating capacity. A person can lack capacity to make a decision at the time it needs to be made, even if the loss of capacity is partial, the loss of capacity is temporary or their capacity changes over time.

The MCA sets out who can take decisions, and in which situations, and how they should go about this. This legal framework is supported by two codes of practice:

•Mental Capacity Act Code of Practice

•Code of Practice for the Deprivation of Liberty Safeguards

These codes provide guidance on how the law should work in practice and they have statutory force.

Police role applying the Mental Capacity Act 2005

The MCA gives a legal basis for providing care and treatment for people aged 16 years and over who lack the mental capacity to give their consent to such care and treatment.

Police officers may need to make immediate decisions that relate to containing, controlling and potentially restraining an individual who lacks the capacity to make the decision in question for themselves, while awaiting further input or direction from a heath or social care professional.

The MCA protects decision makers where they take reasonable steps to assess someone's capacity and then act in the reasonable belief that the person lacks capacity, and that such action is in their best interests.

When is police intervention appropriate?

The MCA is most likely to be necessary in emergency situations when officers are faced with someone lacking mental capacity, whose life may be at risk or who may suffer harm if action is not taken. For example:

•people attempting and threatening suicide

•victims of serious assaults

•casualties of major incidents

•individuals with serious injuries who decline medical aid.

In non-emergency situations (such as a pre-planned mental health assessment) other powers and tactical approaches may be more appropriate. If there is a chance that the subject may regain capacity to make a particular decision, and the matter is not urgent, then the decision should be delayed until later.

In emergency circumstances (such as those that are life-threatening) police intervention will be justified when it is the least restrictive option in the best interests of someone who lacks capacity. Section 4B, section 5, and section 6 of the MCA are legal instruments that allow police forces to defend their officers' actions.

The MCA Code of Practice provides that:

'In emergencies, it will almost always be in the person's best interests to give urgent treatment without delay'.

How will this work in practice?

When faced with a situation where death or serious harm may occur to someone who refuses treatment or help, officers may not have time to discuss, negotiate or explain their actions.

In situations where health or social care professionals are on the scene, police should defer to their expertise and provide support as appropriate and in accordance with local protocols

The MCA does not specifically apply to any agency or individual, and chapter 6 of the MCA Code of Practice outlines where the police, other agencies and individuals may justify action taken by the police to detain, restrain and convey a person to hospital (this includes actions taken in private premises).

If police officers are the only professionals present at an incident in which questions of mental capacity are raised, they are accountable for ensuring that any assessment or intervention is lawful under the MCA.

In any such situation, if it is necessary to restrain or remove a person, the officer must first consider and decide whether they are comfortable that any restraint and removal is lawful and proportionate given the circumstances.

Police officers may refuse a request from an approved mental health professional (AMHP), doctor or any other health care professional to restrain or remove that person where this is not the case.

Assessing capacity

Does the person lack the capacity to make their own decisions in their best interests?

Everyone is presumed to have capacity unless there is evidence that they cannot make a decision because of an impairment or disturbance in the functioning of their mind or brain.

People may be **deemed unable to make a particular decision** if they cannot do one or more of the following four things:

- **understand information given to them about the decision to be made**
- **retain that information long enough to be able to make the decision**
- **use or weigh up that information as part of the decision-making process**
- **communicate their decision.**

It does not matter whether the impairment or disturbance is permanent or temporary.

Can you ID a CURE?

A useful tool for remembering these criteria is ID CURE. To use the MCA to briefly detain somebody, the following criteria must be satisfied –

•a person is suffering from either **an Impairment** or **Disturbance** of the mind or brain

and

•they cannot **Communicate, Understand, Retain or Evaluate** information relevant to a particular decision.

Officers have to observe **one** of the things in the first bullet point and just **one** of the four things in the second bullet point.

Questions to ask

Police officers may ask questions such as: 'do you realise you have an injury?' and 'do you realise how serious it is?' and note the responses to help them decide if the person concerned has capacity to make decisions about their need for emergency treatment. In addition, such questions may prevent officers from unlawfully and inappropriately using restraint.

If ID CURE indicates that the person lacks capacity, then the officer must do the least restrictive thing. In some circumstances (for example, those that are life-threatening) police intervention (that includes restraint and use of force) will be justified when it is the least restrictive option in the best interests of someone who lacks capacity.

Suicidal intent and mental capacity

Removal to hospital and deprivation of liberty

R (Sessay) v South London and Maudsley NHS Trust and Commissioner of the Police for the Metropolis. QBD, [2011] EWHC 2617 (QB).

The Sessay case is the judgment which highlighted that the MCA and common law doctrine of necessity cannot be used by the police to remove a person from a private premises as an alternative to using section 135 MHA 1983 (where a warrant must be obtained) or section 136 (where the power can only be used in a place to which the public has access).

Life-threatening situations

Removing a person who lacks the mental capacity to take the decision in question for themselves will usually amount to a deprivation of liberty (section 4B MCA) and may only occur where it is necessary to provide a life-sustaining treatment or to do a 'vital act' necessary to prevent a serious deterioration in their health.

Officers may only continue to rely on section 4B MCA regarding any intervention while a decision on their detention is sought from the Court of Protection. It would most usually be a matter for the hospital to make any application to the court that it felt was required. If a hospital confirms that it will not seek such an order, the police officer's ability to continue to deprive a person of their liberty in this way ends.

There is no specific power under the MCA to remove somebody to hospital (and compulsory removal may not be justified) in less serious circumstances.

Where police officers have attended a mental health crisis incident in private premises and the life-threatening criteria are not satisfied (under section 4B MCA), officers should consider that:

•AMHPs have the power to make urgent applications (under section 4 MHA 1983)

•the police are able to request that an AHMP considers applying for a warrant for removing the individual to a place of safety (for assessment) under section 135(1) MHA 1983.

Forces should work with partners to ensure access to AMHPs, where required, and may find it useful to develop a joint understanding with partners about roles and responsibilities through an agreement or joint training around the operation of the MCA.

How does this work in less life-threatening situations?

The statutory framework for removing patients to a place of safety is section 135 and section 136 MHA 1983 and the framework for urgent assessment and admission is section 4 MHA 1983.

When officers have attended a mental health crisis incident on private premises and considered the MCA's relevance to keep someone safe from harm but have concluded that no justification exists to remove someone from where they were found for urgent treatment, they should consider using MHA 1983.

When the incident has occurred in someone's own home or a private place, then police powers under section 136 MHA 1983 cannot be used. ***Section 5 and section 6 MCA do not confer on police officers any authority to remove people to hospital or other places of safety for the purposes of mental health assessment.***

In such situations, officers should consider contacting the duty AMHP (see Sessay case above). The AMHP may then consider arranging a statutory assessment under MHA 1983. Such an assessment will involve a doctor (approved under section 12 MHA 1983) and, if need be, removal to a place of safety using a warrant under section 135(1) MHA 1983.

Restraint and use of force

Reasonable force may be used to protect and control someone who does not have the mental capacity to take action to protect themself. The officer must reasonably believe that it is necessary to use restraint or other force in order to prevent the subject being harmed or harming themself.

The degree of force used must be proportionate to:

•the likelihood of that person suffering harm, and

•the seriousness of that harm.

The power to restrain a person under the MCA does not interfere with existing powers of arrest for criminal offences or detention under section 136 MHA 1983.

Recording decisions about mental capacity

Having assessed someone as not having mental capacity to make the decision in question, and taking action in their best interests, officers should supply a rationale for their decisions.

The record should include:

•the information used to decide the person lacked capacity, including questions asked and the person's replies

•what options were considered (including each one's potential benefits and harms, and whether each one was lawful, necessary and proportionate)

•any other factors taken into account (eg, powers and policies)

•the action that was taken

•the effect of the action taken.