

Brief overview of amendments to Sections 135 & 136 MHA introduced by the Policing & Crime Act 2017: The Policing & Crime Act 2017 received Royal Assent on 31st January 2017 and the changes to s135 & 136 MHA come into force on the 11th December 2017. The Department of Health and Home Office have published non-statutory Guidance for the implementation of changes to police powers and places of safety provisions in the mental health act 1983- October 2017. The Police, England and Wales Mental Health Act 1983 (Places of Safety) Regulations 2017 (no 1036) set out details of circumstances in which a police station may be used as a place of safety and the requirements when it is. Further details can be found in both documents.

The DH/HO Guidance summarises the main changes (from 11/12/2017) as follows:

- Section 136 powers may now be exercised anywhere other than in a private dwelling
- Unlawful to use a police station as a place of safety for anyone under age of 18 in any circumstances
- Police station can only be used as a place of safety for adults in specific circumstances, set out in the regulations above;
- The previous maximum detention period of up to 72 hrs reduced to 24 hrs (unless a doctor certifies that an extension of up to 12 hrs is necessary);
- Before exercising a s136 power police officers must, where practicable, consult one of the health professionals listed in s136C or regulations above;
- A person subject to s135 or 136 can be kept at, as well as removed to, a place of safety. Therefore, where a s135 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 s135 or 136 powers for protective purposes.

PLACES OF SAFETY:

Section 135(6) amended- defines places of safety as ‘residential accommodation provided by a local authority under part 1 of the Care Act 2014, a hospital, including an independent hospital, a police station, a care home or any other suitable place’

NEW ADDITION s135(1A) if the premises in the warrant are a place of safety (PoS), the constable executing the warrant may, instead of removing to PoS, keep the person at the premises for the purposes in s135(1)

NEW ADDITION s135(7)(a) Places of safety would not include a house, flat or room where a person is living unless they (or if not the sole occupier, they and another occupier) agree. See Table from DH/HO Guidance 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 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 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.

And **(s135(7)(b))** a place other than one mentioned in s135(7)(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.

Guidance on seeking consent from the person to remaining in their home as a place of safety:
DH/HO Guidance referenced above gives details on how this consent should be sought and, (at Para 3.10) makes it clear that this is a decision for the police officer who must also record the decision. It states (at Para 3.1) that 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'. It further states (at Para 3.3) that consideration needs to be made as to whether the place itself is a suitable place and whether the person believed to be suffering from mental disorder is able to agree (including that they must not be coerced or pressured). There is no explicit reference to the Mental Capacity Act 2005 or a right to remain on the premises when a person cannot consent due to incapacity. Rather, guidance indicates that where no consent can be given, the place cannot be a place of safety for these purposes.

Police stations as a place of safety: **s136A** Unlawful for under 18s. For adults, the Regulations set out the requirements, which include that the behaviour of the person poses an imminent risk of serious injury or death to themselves or another person and because of that risk, no other place of safety could reasonably be expected to detain them and (as far as reasonably practicable) a healthcare professional will be present and available to the person at the police station. There are detailed regulatory requirements for checking on the welfare of a patient at a police station.

TIMESCALES

Section 135 and s136 reduced to 24hrs (**s135**) (**S2A**). The 24 hrs start at the time the person arrives at the place of safety. Or, if kept at the premises, the time when the constable first entered the premises to execute the warrant. 24 hrs can be extended in **s136B** for a further 12hrs if the registered medical practitioner considers it necessary because the condition of the person detained means it would not be practicable for the assessment to be carried out before the end of 24hrs. If someone goes AWOL whilst being taken to or detained at a place of safety, the timescale for re-taking reduces to 24hrs starting from when he first escaped or was liable to be detained- whichever expires first.

SECTION 136 CHANGES- title to change from 'mentally disordered persons found in public places' to 'removal etc of mentally disordered persons without a warrant'

DH/HO Guidance summarises the main change to s136 at Para 2.6 as follows: s136(1) no longer requires that the police officer "finds" the person concerned. So it is now clear that s136(1) can apply regardless of how the police officer comes into contact with the person including in circumstances where the officer has already been with the person for some time or where the officer has encountered the person following a call to respond to an incident.

Where and how can s136 be used?

s136 (1A) can be used anywhere OTHER than a house, flat or room where that person or any other person is living, or any yard, garden, garage or outhouse connected with that place. It CAN be used if the yard, garden, garage or outhouse is communal.

S136(1B) Police can also use force to enter any place where the power may be exercised for the purposes of s136.

S136(1C) Before deciding to use s136, the constable must consult with a registered medical practitioner, a registered nurse, an AMHP or a person described in regulations (Paramedic or OT) *if practicable*.

S136C Protective searches. If the constable has reasonable grounds for believing that a person (subject to s135(1) or (2) or a person removed to or detained at a place of safety on s136) may present a danger to themselves or others and is concealing on their person an item that could be used to cause physical injury to self or others, the constable may search the person (and in certain circumstances can seize and retain the item)