



Section 136 MHA and Places of Safety

Strategic Intention:

- Ensure the safety, the dignity and the rights of the public are placed at forefront of all WMP decisions on policing and mental health.
- Ensure collaborative partnerships operate effectively.
- Ensure deployments to support MHA Assessments are timely, proportionate, necessary and lawful.
- Ensure WMP fulfils its responsibilities under the Mental Health Act 1983 and its Code of Practice.
- Ensure WMP is not operating beyond its legal authority.
- Ensure WMP officers are not operating beyond professional competence.

WMP recognises the importance of ensuring powers under s136 of the Mental Health Act 1983 are used correctly. Historically WMP has used s136 relatively sparingly, compared to other police forces, although it is assessed use of the power is rising nationally, for various reasons.

Officers should adhere to the following process after using s136 MHA (or where removing someone from private premises under s135(1) warrant) –

- **Arrest >> Ambulance >> Assess:** call for a 999 to every s136 detention. Decisions about whether to convey by police vehicle should be taken only once an ETA for WMAS is known.
- **Red Flags to ED:** anyone presenting as a medical emergency will be taken to ED by ambulance or police car as soon as possible.
- **Otherwise, remove to the MH unit Place of Safety:**
- **Police Stations may not be used as a place of safety for anyone under 18yrs old** – they are permitted for adults *in exceptional circumstances* only when authorised by an inspector or above (see below).

FURTHER CONSIDERATIONS

Removal to an Emergency Department: officers may be instructed to remain in ED with anyone detained under s136 until the person is transferred elsewhere or s136 has ended. This requirement can be set aside if *and only if* ED staff invite the police to leave (for example, if a patient is unconscious) and they accept legal responsibility.

Removal to a (MH Unit) Place of Safety: there is an agreed process by which to determine whether officers remain beyond a 1hr handover period and *objective* criteria are met for a risk assessment. Any risk may vary as time progresses and the risk assessment should remain under constant review:

- **LOW RISK >>** WMP officers leave the person with NHS staff within an hour.
- **HIGH RISK >>** WMP officers remain *in situ* to ensure safety
- **MEDIUM RISK >>** determined case-by-case: if there is disagreement, then WMP may agree to remain, but will retain the right to determine the resource level to stay.

All unresolved disagreements should be referred for multi-agency follow up.

USE OF s136 IN CUSTODY

If someone arrested for an offence is mentally unwell and in need of assessment or admission to hospital, their detention remains governed by the Police and Criminal Evidence Act 1984 until they are 'sectioned' after an MHA application has been made. The person must be released from custody if the evidential grounds for detention cease to apply. There is no authority to detain someone solely for the purpose of MHA assessment or admission. Detention beyond the use of PACE requires a written application for admission. Where this has not occurred, consideration may be given to use of s136 in custody for removal to a Place of Safety and completion of MHA processes. Consultation with a healthcare professional should occur prior to this decision, where practicable.

Section 136 of the Mental Health Act 1983 is a police-only power to intervene in a situation where someone appearing to suffer from a mental disorder is in immediate need of care or control, where this is necessary in that person's best interests or for the protection of other people. Use of this power may occur where an officer makes their own assessment that it is required or following a request by another agency for support in a situation where it may be applied.

- **Section 136 MHA may be used in any location (public or private) except for a private dwelling.** << [See WMP 'Offer' on Crisis Incidents in Private Premises.](#)
- Police officers may be legitimately called upon by the ambulance service or by healthcare settings, including Emergency Departments (ED), to consider the use of s136 Mental Health Act. ED cannot use s5(2) or s5(4) MHA because ED patients are not 'inpatients'.

However, there are some situations in which NHS organisations should consider alternatives –

- **Inpatients** – where someone is already an NHS *inpatient* (in an acute hospital or in a mental health unit), *any doctor* can rely upon s5(2) MHA and the Code of Practice to the MHA indicates they should do so, rather than call the police to consider s136 MHA.
- **Emergency Departments** – where police are request to attend a mental health crisis situation, it will **never** be appropriate to decline because someone “is already in a Place of Safety”. It may well be attendance is not appropriate or necessary, but it will **always** be for a different reason than the person already being at an Emergency Department:
- The “Place of Safety” concept, only applies once someone has already been detained under s136 (or s135(1)) – where an ED requests police support to make use of s136, the question for officers will be whether or not the risk and threat in that situation merits attendance. Officers can then consider what powers they may use if deployed.

THREE OPTIONS

- **Disturbance in progress** – where a 999 call indicates that there is a crisis incident in progress at any location involving a disturbance, a crime or an imminent / ongoing Breach of the Peace, deployment of officers may be required in accordance with routine deployment procedures.
- **Removal from healthcare settings** – where agencies seek removal of patients from a location to a 'Place of Safety' under s136 MHA, it will be necessary to ask questions to determine whether grounds for the use of the power exist; or whether other approaches by those professionals are more appropriate (eg, s5(2) MHA, above). Agencies should not be permitted to rely on officers and their powers under s136 MHA as a matter of convenience as it involves deprivation of liberty. << [Refer to Force Contact or Force Response supervisors, as necessary.](#)
- **Imminent prison release** – occasionally, HMP Birmingham may be required to release someone from custody at short notice where they were pending transfer to hospital under the MHA but where this has not occurred prior to release. The need for deployment and/or use of s136 should be assessed on the basis of threat and risk, in accordance with the NDM.

Use of s136 MHA should be carefully considered and other approaches may be more appropriate in the circumstances. There is a requirement to consult, *where practicable*, before using this power.

- **Presentations affected by drugs and alcohol:** nothing prevents the use of s136 MHA where someone is temporarily affected by drugs or alcohol, *however this needs careful consideration*. It can impact upon, and complicate, assessment of whether behaviour causing concern is due to substances, a mental disorder *or both*. As a general rule, officers should avoid using of s136 where presentations involve drugs or alcohol unless it is *objectively* known the person has a history of mental health issues or they are attempting self-harm or suicide.
- **Presentations involving suspected offences:** all cases should be considered on their individual merits, but nothing prevents use of s136 MHA to divert people from the justice system, where this is appropriate. In the first instance, those accused of offending should be investigated and, if necessary, arrested in order to facilitate this. Nothing prevents wellbeing being prioritised over offences where those offences are comparatively trivial or where victims have sought police support for someone's mental health rather than to report a crime.

Regardless of any specific decisions that are made about detention, any crimes should be *recorded and investigated in the usual way*. Nothing prevents an investigation of any incidents initially handled as a mental health emergency. << [See WMP 'Offer' on Crime Investigation](#).

Section 136 MHA can be used within an Emergency Department and NHS staff working in those environments cannot detain patients under s5(2) or s5(4) MHA – s136 may be the only lawful way to keep someone safe and it is irrelevant that the person is 'already in a Place of Safety'.

KEEP IN VIEW

Section 136 – where officers have detained someone under this provision, the following process will *always* apply, regardless of NHS policy and practice in your area of the force –

- **Arrest >> Ambulance >> Assess:** call for a 999 ambulance to *every* s136 detention.
- Decisions about whether to convey by police vehicle should be taken only once an ETA for WMAS is known in light of a dynamic assessment of the specific risks.
- **Red Flags to ED:** anyone presenting as a medical emergency will be taken to ED by ambulance or police car as soon as possible.
- **Otherwise, remove to the MH unit Place of Safety in your part of the force area.**

Police Stations may not be used as places of safety for anyone under 18yrs – they are permitted for adults *in exceptional circumstances* only where authorised by an inspector or above.

There is no legal power under the MHA to detain someone against their will for the purpose of consulting a mental health professional or using the mental health triage car. Where officers are required to act *urgently* to keep someone safe and this requires restraint, a lawful basis must be identified and applied. Options available include s3 Criminal Law Act (to prevent crime), arresting for an offence under PACE or detention under the MHA, most usually under s136. Proceeding in the least restrictive way is best practice where immediate restraint is not required.

Supervisory support for officers who have used s136 or s135(1) MHA to remove someone to a Place of Safety is essential. There are agreed protocols with the NHS for the operation of Places of Safety which have not always been adhered to.

- **Removal to an Emergency Department:** there will be a presumption that WMP officers remain in ED until the person is transferred from there or s136 legally ends. This requirement can be set aside if *and only if* ED staff accept legal responsibility for the patient (the *Webley case*, *Webley v St George's Hospital NHS Trust [2014] EWHC 299 (QB)*) and invite the police to leave.
- **Removal to a (MH Unit) Place of Safety:** there is an agreed process by which to determine whether officers remain beyond a 1hr handover period and objective criteria for risk assessment. Risk can alter as time progresses it should remain under constant review:
 - **LOW RISK** >> WMP officers leave the person with NHS staff within an hour.
 - **HIGH RISK** >> WMP officers remain in situ to ensure safety
 - **MEDIUM RISK** >> determined case-by-case: if there is disagreement, then WMP will agree to remain, but we retain the right to determine the resource level to stay.

All unresolved disagreements should be referred for multi-agency follow up.

INSPECTOR'S AUTHORITY – POLICE STATIONS

Exceptional Circumstances: where an officer needs to remove someone to a Place of Safety under these provisions, a police station may only be used for adults (18yrs) *in exceptional circumstances*:

- **The person's behaviour poses an imminent risk of serious injury or death to themselves or another person.**
- **No Place of Safety in the Force area can guarantee to safely manage that risk.**
- **Legal authority must be obtained from an officer not below the rank of inspector.**

Inspectors should consider all circumstances very carefully before granting this authority: it may often be clinically inappropriate even where it is legally justified. Consideration should be given to the duration and intensity of any restraint; and to the potential that challenging behaviour is indicating a (RED FLAG) **medical emergency** – resistant presentations can be attributable to a wide variety of medical conditions from ABD to serotonin syndrome or meningitis.

Consideration should also be given instead to offering police support to an NHS hospital as an alternative – where police support can be given which negates the second criteria, this removes the requirement for lawful authority being given and ensures the person's access to clinical care and supervision. [A 2015 patient safety alert from NHS England](#) outlines the need for clinical observation for hours after any high-intensity or prolonged restraint. This cannot usually occur in police custody.

Where an inspector authorises use of a police station: it remains the custody officer's decision to authorise detention in a designated custody area subject to the considerations in PACE, inc Code C, especially paragraph 9.5 and Annex H to Code C. The custody officer may still choose to decline, despite the inspector's authority and this becomes a matter for the PACE superintendent to resolve.

Police stations cannot **ever** be used as a Place of Safety for anyone under 18yrs of age, and may only be used for adults in *exceptional circumstances*. They are defined as meaning –

- **The person’s behaviour poses an imminent risk of serious injury or death to themselves or another person.**
- **No “Place of Safety” in the Force area can guarantee to safely manage that risk.**
- **Legal authority must be obtained from an officer not below the rank of inspector.**

Custody officers remain responsible for determining whether or not to authorise detention in police custody and must do so with reference to PACE Code C – **detention may be clinically inappropriate even where it is legally justified**. Consideration should be given to the duration and intensity of any ongoing or previous restraint as well as to the possibility of a challenging presentation being attributable to a medical emergency (ie, Acute Behavioural Disturbance). A 2015 patient safety alert from NHS England highlights the need for clinical observations and supervision for several hours after a high-intensity or prolonged restraint. Removal to ED may be required.

KEEP IN VIEW – MHA (Place of Safety) Regulations 2017

- Detainees in police custody must be checked by a healthcare professional **every thirty minutes**: where this cannot occur the person should be removed to another place of safety.
- A healthcare professional should be present throughout the duration of someone’s detention, wherever reasonably practicable.
- The custody officer must review the detention of the detained person every hour to determine whether the original criteria for removal to a police station still exist: where they do not, they should be removed to another place of safety after consultation with the healthcare professional who last checked them, where practicable.
- Custody officers’ hourly reviews may be reduced in frequency to three hours, if the detainee is sleeping and this is approved after a healthcare check.
- The requirement to remove a detained person from a police station does not apply if arrangements to ensure s135 or s136 assessment would be further delayed by transfer to another place of safety AND where this would cause distress to the individual.

USE OF SECTION 136 IN CUSTODY

If someone arrested for an offence is mentally unwell and in need of assessment or admission to hospital, detention continues to be governed by PACE until they are ‘sectioned’ after an MHA application **has been made**. The person must be released (NFA / bail / RPI) if grounds for PACE detention cease to apply as there is no authority to detain someone for the purpose of MHA assessment or admission. Detention after PACE expires requires a written application for hospital admission. Consideration should be given to the use of s136 upon release for removal to a Place of Safety and completion of MHA processes. Consultation with a healthcare professional should occur prior to this decision, where practicable. **The Mental Capacity Act cannot be relied upon to hold people in custody.**

