V. Sections 136/135 Mental Health Act 1983
– Policy And Procedure Guidelines

1. Policy Summary

The purpose of this policy paper is to offer guidance to those involved in dealing with people detained at Police Stations under Section 136 of the Mental Health Act 1983. It takes into account the requirements of the Mental Health Act 1983 and the Criminal Evidence Act 1984.

The key aim of this multi-agency protocol (updated in 2003 by the operational subgroup of the Criminal Justice Agencies Group) is to ensure and maintain an effective response to the police on behalf of those individuals who have been detained pursuant to the provisions of Section 136 of the Mental Health Act 1983.

In support of this key aim the policy provides good practice points and an operational flow chart relating to the use of Section 135 of the Act.

N.B. A copy of the updated and agreed policy is provided to each ASW in each Community Mental Health Team and ASWs in other teams. This document should be kept with the ASW ‘Policy & Procedure and Guidance’ folder for reference.

2. Operational Policy

The requirements placed on the Department, Approved Social Workers (ASWs) in particular are clearly outlined in the policy. Practice issues will form an on-going part of the A.S.W. Refresher Training Programme.

Particular attention should be paid to the timescales for action, which are highlighted in the policy. All participating agencies in this policy area are committed to ensuring a prompt response to individual situations within the available resources.

3. Equal Opportunities Policy

All of the agencies participating in adopting this document subscribe to policies, which promote equal opportunities.

At all stages of implementation of this policy document, all staff involved will ensure that persons detained or assessed are provided with adequate information as to their rights of access to legal or other representation. The provision of this information will
take particular account of the person’s ethnical or cultural needs or for the need for access to interpreting services.

4. **Guidance – Assessing Those Subject To Section 136**

4.1 **Introduction**

Section 136 of the Mental Health Act 1983 provides a Police Officer with the power to remove to a place of safety,\(^1\) a person found in a place to which the public have access, who appears to be suffering from a mental disorder within the meaning of the Act, and in immediate need of care and control. The purpose of detaining a person under this section is to enable him/her to be examined by a doctor and interviewed by an ASW. The person may be detained for a maximum of 72 hours. The power in this Section may be used in relation to persons who have not committed an offence, and for those who have, or are suspected of having committed an offence but where it is not considered necessary or in the public interest to arrest that person for an offence. Under Section 136 the person detained in custody has rights under the Police and Criminal Evidence Act 1984: the right to have another person of his/her choice informed of his/her removal and the right to consult a solicitor privately at any time.\(^2\)

Local policy is that every effort will be made to ensure that the assessment is completed within 6 hours of the arrival of the person detained at the place of safety.\(^3\)

4.2 **Assessment Procedure**

- The Custody Officer should attempt to obtain the following information from the detained person:
  - Name;
  - Date of Birth;
  - Address or if No Fixed Address the place of arrest or detention;
  - GP’s name.

- The Custody Officer will contact the Duty ASW immediately and give as much background information as possible.

- The ASW should attempt to gain whatever further information may be available from other sources, e.g. case records.\(^4\)

- If it appears that the detained person has a learning difficulty, it is desirable for a consultant psychiatrist in learning disabilities and an ASW with experience of

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1 Mental Health Act 1983, Code of Practice, Para. 10.5. See Mental Health Act 1983, S. 135(6) for definition.
2 Code of Practice, Paras. 10.9(a)(b)(c), 10.10 and 10.11.
3 Code of Practice, Para. 10.13.
4 Code of Practice, Para. 10.15.
working with learning disabilities to jointly assess,\textsuperscript{5} although this will depend on availability.

- The role of the ASW includes:\textsuperscript{6}
  - ensuring formal assessment by a registered medical practitioner who should wherever possible be approved under Section 12 of the Act.
  - interviewing the person and if possible ensuring that the detained person is aware of his/her situation and why he/she is detained.
  - contacting any relevant relatives/friends.
  - ascertaining whether there is a psychiatric history.
  - considering any possible alternatives to admission to hospital.
  - making arrangements for compulsory admission to hospital.
  - making any other necessary arrangements.

After discussion with the appropriate Doctor, the ASW remains responsible for coordinating the process of the assessment\textsuperscript{7} and will keep the Custody Officer informed regarding the process of the assessment.

As a matter of good practice, both the Doctor and the ASW should carry out a joint assessment.\textsuperscript{8}

During office hours, the first approach should be made to any Psychiatrist who has had previous responsibility for treating the person. If this fails a Section 12 Doctor should be contacted.\textsuperscript{9}

Decisions regarding the format of the interview should be made on the basis of the patient’s mental state and needs, and the perception of risk formed in discussion with the Custody Officer.\textsuperscript{10}

\textsuperscript{5} Code of Practice, Para. 10.14(b).
\textsuperscript{6} Ibid.
\textsuperscript{7} Code of Practice, Para. 2.11.
\textsuperscript{8} Code of Practice, Para. 10.14.
\textsuperscript{9} Code of Practice, Para. 10.12.
\textsuperscript{10} Code of Practice, Para. 2.13. It may not be advisable to give the patient the opportunity of being interviewed alone.
4.3 Outcomes Of Assessment

- If the doctor assessed the patient before the ASW and decides that no compulsory admission is necessary the patient is discharged from the Section 136 and no ASW assessment need be made. However, the ASW should consult with the doctor about any other arrangements for treatment or care.\(^\text{11}\)

- Where compulsory admission to hospital is deemed necessary, the appropriate section of the Mental Health Act 1983 will be implemented upon completion of the assessment.\(^\text{12}\)

- It is the responsibility of the Section 12 Doctors to ensure that a bed is available\(^\text{13}\) and to liaise with the Duty Doctor at the receiving hospital regarding the immediate treatment plan for the patient.

- Where the decision is taken not to admit to Hospital, negotiations will then take place between those involved as to the most appropriate action. The ASW and Doctor may need to consider alternative arrangements for the person’s treatment and care.\(^\text{14}\)

- If the Police wish to interview the person with regard to any offence, which may have been committed, it is important that an Appropriate Adult should be a different person from the ASW who did the Mental Health Assessment.\(^\text{15}\) See ‘Appropriate Adult Guidelines’.

- The Section 136 lapses as soon as the assessment has been completed or after 72 hours from the time the person arrives at the place of safety.\(^\text{16}\)

- If the detained person is to be admitted to hospital and is likely to be violent or dangerous, the ASW should ask the Police to help in conveying him/her to Hospital. Where possible an Ambulance should be used otherwise a Police vehicle suitable for conveying such a person should be used. See guidance on ‘Conveyance Of Patients To Hospital’.\(^\text{17}\)

- While the Police may have to exercise their duty to protect persons or property while the patient is being conveyed they should, where this is not inconsistent with their duty, comply with any directions or guidance given by the ASW.\(^\text{18}\)

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\(^{11}\) Code of Practice, Paras. 10.8(a), 10.14(a) and 10.3(b). There is still debate about whether the patient can be held once the decision has been made not to section. See Jones’ comments (Jones, R., Mental Health Act Manual, 8th Ed. S&M, 2002), p. 358.

\(^{12}\) Code of Practice, Para. 10.18(a)(b)(c).

\(^{13}\) Mental Health Act 1983, S. 6(1). See Jones’ comment, supra at fn. 11, p. 48. Code of Practice, Para. 2.22(d).

\(^{14}\) Code of Practice, Para. 10.17.

\(^{15}\) See Jones’ comments, supra at fn. 11 at p. 355.

\(^{16}\) Mental Health Act 1983, S. 136(2). See Jones’ comments, ibid, pp. 357-358.

\(^{17}\) Section 136, Mental Health Act 1983, Operational Protocol, For Devon, Cornwall and the Isles of Scilly, 01/10/03, Appendix 3, Peninsula Inter Agency Agreement, ‘Conveyance Of Patients To Hospital’ (p. 15).

\(^{18}\) See guidance on ‘Conveyance Of patients To Hospital’, ibid.
If the person is released into the community, the ASW must ensure the coordination of any follow-up care and that arrangements to return the person to the community are appropriate.

5. **Guidance – Obtaining A Warrant To Enter Private Premises – Section 135**

5.1 **Introduction**

Section 135 of the Mental Health Act 1983 deals with warrants to search for and remove patients. It 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 a person within to a place of safety, with a view to an assessment under the Mental Health Act Part II or other arrangements for treatment or care. The ASW must lay information on oath that there is reasonable cause to suspect that a person believed to be suffering from a mental disorder:

(a) has been or is being ill-treated, neglected or kept otherwise than under proper control;

or

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

5.2 **General Information**

- The Police Officer must be accompanied by an ASW and a registered medical practitioner (when warrant issued under sub-section (1)).

- The warrant need not name the patient but must specify the premises to which it relates.

- Entry and search under the warrant must take place within one month of issue and on only one occasion. If the person sought is not found there and at a later date denies access a further warrant will be needed.

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19 Code of Practice, Para. 10.19.
20 See Jones’ comments, pp. 350-351 (i-xi) re P.A.C.E. requirements, which Jones maintains, should be complied with in this Section.
21 Only an ASW may apply for a warrant.
22 Mental Health Act 1983, S. 135(1).
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- A person removed to a place of safety\(^{23}\) may be detained there for a period not exceeding 72 hours from the time of arrival at the place of safety.\(^{24}\)

- This Section is used only when lawful access to private premises cannot be obtained.\(^{25}\)

- **It is important to emphasise that access must be lawful.** In a situation where the person concerned lives alone and access is arranged by someone else who themselves have no lawful authority to enter the premises, ASWs must consider the use of Section 135.

- There are two Sub-Sections to Section 135.
  
  (a) Sub-Section (1) – is used where there is concern about a person who is not already liable to be detained under this Act.

  (b) Sub-Section (2) – is used where the person concerned is already liable to be detained.

5.3 **Procedure – Section 135(1)**

- When it appears that a warrant will be necessary to obtain access to a person’s home for the purpose of carrying out an assessment under the Mental Health Act,\(^{26}\) the ASW should:
  
  - Discuss this with the Mental Health Team Manager.\(^{27}\) This should not involve protracted delay in an urgent situation.

  - Consider whether an application under Section 47 of the National Assistance Act 1948 might be more appropriate.

- Consult with the medical personnel to be involved. It may be appropriate (although not a legal requirement) to have both GP and Section 12 approved doctor attend when the warrant is executed.

- Contact the Clerk of the Court to ask for them to arrange for you to swear information before a Justice of the Peace.

- Where possible, ASWs should obtain warrants during normal office hours. If out of office hours, the local Police should provide a number to contact.

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\(^{24}\) See Mental Health Act 1983, Memorandum, Para. 315 for when a police station is used.

\(^{25}\) See Jones’ comments regarding when it might be appropriate to use this section, *supra* at fn. 11, pp. 352-353.

\(^{26}\) Code of Practice, Para. 2.24.

\(^{27}\) The decision to apply for a warrant remains with the ASW.
Inform the Police about the application for a warrant and that their assistance will be required at a later point. Arrange to meet with Officers to discuss how to action the warrant.

Go to the Justice of the Peace taking the warrant itself and your identification/authorisation card.

- There should be three copies of the original warrant. The original is given to the police, the first copy is given to the occupier of the premises or left on the premises, the second copy to be retained by the person in charge of the place of safety to which the person is removed. The third copy to be placed on the client’s file.

Before the Justice of the Peace, swear on oath or on affirmation stating the reasons you believe the person to be suffering from a mental disorder. You may include information received from other people.

If the Magistrate agrees to issue a warrant, he/she signs and keeps the Information Form and signs the warrant form that is to be the original, and the other two certifying that they are a true copy.

Take the search warrants to the Police and give the original to the Police Officer who is going to enter the premises.

Discuss with the Police and the medical personnel how best to safely execute the warrant. Consider the safety of all staff involved, as well as that of the patient. Agree where the place of safety will be should there be a need to remove the patient. This would usually be either a hospital or the police station. If both doctors are available, it may be possible to move straight to the assessment procedure on the entered premises.

If the warrant is issued under sub-section (1), the Police Officer must be accompanied by an ASW and a Registered Medical Practitioner.

If the warrant is issued under sub-section (2) the Police Officer may be accompanied by a Registered Medical Practitioner or by any person authorised under the Act to “take” or “retake” the patient. This can be an ASW or any Officer on the staff of the hospital to which the person is to be taken.

Prior to the warrant being executed, consideration must be given to securing the premises after entry has been made.

28 Code of Practice, Para. 2.9.
29 Mental Health Act 1983, S. 135(4). See Jones’ comments on doctor’s powers, supra at fn. 11, p. 353.
30 Ibid.
If on arrival at the premises access is then given, the warrant should be retained as evidence in any future dispute that a right of entry had been obtained.

The ASW should when the warrant is executed make every attempt to explain to the patient what is happening and why.\(^{(31)}\)

It is the role of the Police to gain entry and ensure the safety of the doctor(s) and ASW. It is the joint role of the doctor(s) and ASW to assess the need for removal to a place of safety or an application under the Mental Health Act for hospital admission.

Should the patient be removed to a place of safety or be admitted to hospital under the Mental Health Act, the ASW should consider the protection of their property. See Part K: Guidance In Relation To Protection Of Property During A Period Of Admission To Hospital Or Care.

### 5.4 Procedure – Section 135(2)

Once a patient is liable to detention under the Mental Health Act 1983 any Police Officer or other person authorised, which includes an ASW, under the Act to retake a patient may lay information on oath before a Justice of the Peace and a warrant may be issued to recapture a person “unlawfully at large”\(^{(32)}\) when:

- there is reasonable cause to believe that the patient is to be found on the premises.
- entry to the premises has been refused or refusal is likely.

When meeting with the Justice of the Peace, the applicant will need to take:

- Form MH72 – the written information which should not be signed until the applicant has sworn the oath.
- Form MH73 – the warrant which can be prepared prior to the meeting and of which 3 copies will be required.
- Their ASW identification/authorisation card.

When appearing before the Justice of the Peace, the applicant must swear on oath (or affirm) and give the reasons why the person is liable to be taken or retaken.

- The applicant should give evidence of the steps that have been taken to gain entry to premises concerned. This may include information from other people.

\(^{(31)}\) Code of Practice, Para. 2.11.

\(^{(32)}\) Memorandum, Para. 316. See General Notes to this Section in Jones, supra at fn. 11, p. 351. It may be appropriate to use other powers.
If the Justice of the Peace decides to issue the warrant he/she signs and keeps MH72 showing acceptance of the information. This is given to the Justice’s Clerk.

The Justice of the Peace then signs MH73 and this original warrant is given to the applicant to give to the Police Officer who will execute the warrant by entering the premises. The first copy (pink) is given to the occupier of the premises or left on the premises. The second copy (green) is given to the unit to which the person is returned. The third copy (yellow) to be placed on the client’s file.

When the warrant is executed, the Police Officer need not be accompanied by a Registered Medical Practitioner or any other authorised person. However, any ASW who is involved in obtaining a warrant should be prepared to be present when the warrant is executed.

The detained person can be taken or re-taken into custody and returned to hospital, or in the case of Guardianship, returned to their placement.\(^{33}\)

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Mental Health Act 1983 (S135(1))

– Information For A Warrant To Search For And Remove Patient

CENTRAL DEVON MAGISTRATES' COURT  (code 1292)

Date:

Informant:

Of (name of local social services authority)

Information: The above-named informant who is an approved social worker states upon oath/affirmation pursuant to S135(1) of the Mental Health Act that there is reasonable cause to suspect that a person

(If name is available) ………………………………………………………………………………………………………………………………..

believed to be suffering from a mental disorder

a) has been (or is being) ill-treated, neglected or kept otherwise than under proper control at

(name of premises) ………………………………………………………………………………………………………………………………..

or

b) being unable to care for himself/herself is living alone at

(name of premises) ………………………………………………………………………………………………………………………………..

and the grounds for the said suspicion are (as below and continued overleaf if appropriate)

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Signature of Informant

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Taken before me

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Justice of the Peace

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Time:
Mental Health Act 1983 (S135(1))
– Warrant To Search For And Remove Patient

CENTRAL DEVON MAGISTRATES' COURT  (code 1292)

Date:

Informant:

Of (name of local social services authority)

Information: The above-named informant who is an approved social worker states upon oath/affirmation pursuant to S135(1) of the Mental Health Act that there is reasonable cause to suspect that a person

(Name if available)……………………………………………………………………………………………………………………
believed to be suffering from a mental disorder

a) has been (or is being) ill-treated, neglected or kept otherwise than under proper control at
(name of premises)………………………………………………………………………………………………………………
or

b) being unable to care for himself/herself is living alone at
(name of premises)………………………………………………………………………………………………………………

and the grounds for the said suspicion are (as below and continued overleaf if appropriate)

And the undersigned Justice of the Peace being satisfied that there is such reasonable cause to suspect.

Direction: To a Constable of the Devon and Cornwall Police Force. You are hereby authorised on one occasion within one month of the date hereof to enter if need be by force premises specified herein and shall be accompanied by an approved social worker and by a registered medical practitioner and if it is thought fit, to remove the said person to a place of safety with a view to the making of an application in respect of him/her under Part II of the Mental Health Act 1983 or of other arrangements for his/her treatment or care.

Taken before me

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Justice of the Peace
6.3 Mental Health Act 1983 (S135(2)) – Information For A Warrant To Search For And Remove Patients When Access Has Been Refused Or Such A Refusal Is Apprehended

CENTRAL DEVON MAGISTRATES' COURT     (code 1292)

Date:

Informant:

Of: (name of local social services authority)

Information: The above-named informant who is a constable or otherwise authorised person under the Mental Health Act 1983 or under Section 83 of the Mental Health (Scotland) Act 1984 states upon oath/affirmation pursuant to S135(2) of the said Act that:

a) that there is reasonable cause to believe that the patient (name of patient)
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is to be found on premises (name of premises)
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and

b) that admission to the premises has been refused or that such a refusal is apprehended

and makes application for a warrant to authorise any constable to enter those premises and remove the patient and the grounds for the said belief are: (as below and continued overleaf if appropriate)

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Signature of Informant

Taken before me

..........................................................

Justice of the Peace

Time:
Mental Health Act 1983 (S135(2)) – Warrant To Search For And Remove Patients When Access Has Been Refused Or Such A Refusal Is Apprehended

CENTRAL DEVON MAGISTRATES' COURT     (code 1292)

Date:

Informant: SAMPLE

Of: (name of local social services authority)

Information: The above-named informant who is a constable or otherwise authorised person under the Mental Health Act 1983 or under Section 83 of the Mental Health (Scotland) Act 1984 states upon oath/affirmation pursuant to S135(2) of the said Act that:

c) that there is reasonable cause to believe that the patient (name of patient)

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is to be found on premises (name of premises)

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and

d) that admission to the premises has been refused or that such a refusal is apprehended

and makes application for a warrant to authorise any constable to enter those premises and remove the patient and the grounds for the said belief are: (as below and continued overleaf if appropriate)

And the undersigned Justice of the Peace being satisfied that there is such reasonable cause to believe.

Direction: To a Constable of the Devon and Cornwall Police Force. You are hereby authorised on one occasion within one month of the date hereof, to enter and if need be by force remove the above-named patient from 

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and may be accompanied by a registered medical practitioner and/or by any person authorised by or under the Mental Health Act 1983 or under Section 83 Mental Health (Scotland) Act 1984 to take or retake the patient.

Taken before me

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Justice of the Peace