SECTION 136 MENTAL HEALTH ACT 1983

PROTOCOL

AS AMENDED BY SECTION 44 OF THE MENTAL HEALTH ACT 2007

North Wales Police Policy Management Information

<table>
<thead>
<tr>
<th>Document Type:</th>
<th>Procedure</th>
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<tbody>
<tr>
<td>Parent Policy:</td>
<td>Public Protection Policy – 028/1.2</td>
</tr>
<tr>
<td>Document Owner:</td>
<td>Head of Crime Services</td>
</tr>
<tr>
<td>Department:</td>
<td>Public Protection – Mental Ill Health</td>
</tr>
<tr>
<td>Document Writer:</td>
<td>PC Public Protection Unit</td>
</tr>
<tr>
<td>Effective Date:</td>
<td>06/03/12</td>
</tr>
<tr>
<td>Lead Agency</td>
<td>North Wales Police</td>
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</tr>
<tr>
<td>Document approved date</td>
<td>****</td>
</tr>
<tr>
<td>Patient/Public involvement</td>
<td>Service User Involvement – Information document</td>
</tr>
<tr>
<td>Type of protocol</td>
<td>An Update To the Original North Wales Document created following the advice of the Welsh Codes of Practice in relation to Section 136 MHA 1983 /Section 44 MHA 2007</td>
</tr>
<tr>
<td>Document applicable to</td>
<td>All staff working in the area of Sections 135 and 136 MHA</td>
</tr>
<tr>
<td>If new protocol reason for development</td>
<td>Protocol is devised to take in amendments of the Mental Health Act, 2007</td>
</tr>
<tr>
<td>Synopsis outlining protocol aims</td>
<td>To assist professionals in carrying out their duties under Sections 135 and 136 MHA/Section 44 MHA 2007</td>
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<td>Implementation date</td>
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JOINT PROTOCOL BETWEEN:

NORTH WALES POLICE
WELSH AMBULANCE
BETSI CADWALADR UNIVERSITY HEALTH BOARD

SECTION 136 MENTAL HEALTH ACT 1983 PROCEDURES
AS AMENDED BY SECTION 44 OF THE MENTAL HEALTH ACT, 2007

North Wales Police is committed to improving its response to people with Mental Ill Health and/or learning disabilities. This policy and guidance is designed to assist police officers and staff through a number of processes that will afford these vulnerable people an effective and satisfactory response to their contact with the police. Police officers and staff are often the gateway to appropriate care – whether of a criminal justice or health care nature and it is imperative that people with mental ill health and/or learning disabilities are identified and assisted by officers from the very first point of contact.

All organisations and agencies named within the protocol support the treatment of individuals who may stand to be dealt with under this protocol, in such a way that unfair disadvantage does not occur to any individual on the basis of race or national origin or gender, religion or sexual orientation, disability etc.

Information Sharing
Information shared under the Mental Health Act 2007 is shared on the understanding that the person’s condition gives rise to concern for the health and safety of the person or for the safety of the public. See appendix for further information.

Duty of Care
North Wales Police does not have primary responsibility for every task relating to people with Mental Ill Health and/or learning disabilities and should not assume directly or indirectly responsibility for dealing with all related issues the public or other agencies may present them with. Police officers should always consider whether it is appropriate for them to accept responsibility for a particular situation when there are more appropriate agencies or methods of tackling the matter. North Wales Police does however have a continuing duty of care and should always be ready to support guide and assist but not necessarily to lead.

Definition of Principles
This documentation outlines the policy and procedure for effective application of Section 135 (1) and Section 136 of the Mental Health Act 1983 as amended by section 44 of the Mental Health Act 2007. The aim of the policy is to secure the competent and speedy assessment by a registered medical practitioner and an approved mental health professional (AMHP) of a person detained under the authority of Section 136.

The personnel directly involved in this protocol are:

- North Wales Police Officers and Staff
- Ambulance Personnel
- NHS Health Care staff, and Doctors
- Local Authority Staff – Approved Mental Health Professionals

* see section 6 page 10 for full details of points of contact for Mental Health units*
1. Policy Objectives

- To define the responsibilities of Police Officers, medical practitioners, Approved Mental Health Professional (AMHP) and others in relation to persons detained under Section 135 (1) and 136 of the Mental Health Act.

- To maintain the health and dignity of the detained person, ensuring their safety and the protection of others.

- To ensure that the detained person is kept fully informed of their legal rights under the Mental Health Act and Police and Criminal Evidence Act (PACE)

- To establish monitoring / lessons learnt through 135/136 group, 136 Audit

- Minimise the possibility of unnecessary criticism, complaint or litigation against one or more of the organisations.

2. Statement of Legislation – Section 135 (1)

Section 135 (1) of the Mental Health Act 1983 states:

“If it appears to an Approved Mental Health Professional, on information on oath laid by an approved social worker, that there is reasonable cause to suspect that a person believed to be suffering from mental disorder –

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

b) Being unable to care for him/herself, is living alone in such a place,

The justice may issue a warrant authorising any constable to enter if need be by force, any premises specified in the warrant in which that person is believed to be, and if thought fit, to remove him/her to a place of safety with a view to the making of an application in respect of him under part 2 of this act, or of other arrangements for his treatment or care”

2.1. This section provides for a magistrate to issue a warrant authorising a police officer to enter premises using force if necessary, for the purpose of removing a mentally disordered person to a place of safety in specific circumstances.

2.2. Under the Act these are when the AMHP has reasonable cause to suspect that a person who is believed to be suffering from mental disorder has been, or is being ill treated, or not kept under proper control within the county, or that they are not able to care for themselves or are living alone in such a place.
2.3. The warrant provides a means by which an entry, which would otherwise be a trespass become a lawful act. The warrant is executed once entry to the premises has been affected by a constable; either by invitation or by force. Once entry is gained, medical professionals will take the lead.

2.4. The warrant need not name the person, but must specify the premises to which it relates. In using the warrant the police officer must be accompanied by an AMHP and a registered medical practitioner.

2.5. As the result of a House of Lords decision (Ward v Commissioner of Police), Magistrates may not apply additional requirements, eg naming the AMHP, doctor or police officer who would have to attend.

2.6. The place of safety to which the person is taken could be a hospital, a Police Station, social services premises or any suitable place where the occupier is willing to receive the person. Section 44 of the Mental Health Act 2007 allows a person to be transferred to one or more places of safety. They can be taken there by an AMHP, police officer or somebody authorised by them. The person can be kept for up to 72 hours or until the assessment is completed whichever is sooner.

2.7. Due to the planned nature of Section 135, only in exceptional circumstances would the police station be considered an appropriate place of safety.

2.8. The warrant is valid for one month from the date of issue.

2.9. Under Section 135 (1) it should be noted, the power is confined to assessing whether the person should be removed to a place of safety. There is no power while in the premises to subject the person to an assessment for sectioning under Pt 2. The power to remove the person only applies if such action is thought to be necessary.

2.10. It is important to note that the warrant allows entry to the premises concerned on one occasion only. If the person is not found there, and at a later date the person again denies access, a further warrant will be needed. If on arrival at the premises with the warrant access is then given, the warrant should be retained as evidence in any future dispute that a right to entry had been obtained.

2.11. Whenever a warrant is executed the AMHP should make every attempt to explain to the person what is happening and why.

2.12. Prior to the warrant being executed, consideration must be given to securing the premises after entry has been made. This will need to be discussed beforehand by the AMHP, police and relatives. The National Assistance Act 1948 section 48 places a duty on the local authority in this respect.

2.13. Arrangements should be made for any damage to be made good, or the landlord/housing association informed so they can arrange for this. If a forced entry is needed then careful consideration should be given to make sure the least damaging means has been chosen and to agree who is to arrange and or pay for any short term or full repair: owner, occupier, police, social services or NHS Trust.
The police are acting to do two things:
1. Secure entry by force if needs be.
2. Prevent a breach of the peace – once entry is made and the dp located ideally Medical Practitioners / Social Services should be taking the lead.

3. Statement of Legislation Section 135 (2)

3.1 If it appears to a justice of the peace, on information on oath laid by any constable or other person who is authorised by or under this Act or under (article 8 of the Mental Health (care and treatment Scotland) Act 2003, to take a patient to any place, or to take into custody or retake a patient who is liable under this Act or under the said (article 8) to be so taken or retaken :

(a) That there is reasonable cause to believe that the patient is to be found on premises within the jurisdiction of the justice and:
(b) That admission to the premises has been refused or that a refusal of such admission is apprehended,

The justice may issue a warrant authorising any constable to enter the premises if need be by force and remove the patient.

4. Statement of Legislation – Section 136

4.1 Section 136 of the Mental Health Act 1983 states:

“If a constable finds in a place to which the public have access a person who appears to him/her to be suffering from mental disorder and to be in immediate need of care or control, the constable may, if he/she thinks necessary to do so in the interests of that person or for the protection of other persons, remove that person to a place of safety.”

A person removed to a place of safety under this Section may be detained there for a period not exceeding 72 hours for the purpose of enabling him to be examined by a registered medical practitioner, and to be interviewed by an Approved Mental Health Professional, and of making any necessary arrangements for his/her treatment or care.”

4.2 Section 44 of the Mental Health Act 2007 (the 2007 Act) amends sections 135 and 136 of the 1983 Act to enable a person detained at a place of safety to be transferred to one or more other places of safety, subject to the overall time limit for detention of 72 hours. The person may be taken to a different place of safety by a police officer, an AMHP or someone authorised by either of them. Section 44 of the 2007 Act came into force on 30th April 2008.

4.3 The decision whether to transfer a person to a different place of safety should reflect the individual circumstances of each case. For example, where the purpose of the transfer would be to move a person from a police station to a more appropriate health care setting, the benefit of that needs to be weighed against any delay it might cause in the persons assessment and any distress that the journey might cause them.
4.4 A person may be transferred before their assessment has begun, while it is in progress or after it is completed and they are waiting for any necessary arrangements for their care or treatment to be put in place. If it is unavoidable or it is in the persons interests, an assessment begun by one AMHP or registered medical practitioner may be taken over and completed by another, either in the same location or at another location to which the person is transferred.

4.5 Except in an emergency, the agreement of an Approved Mental health Professional (AMHP), a doctor or another healthcare professional competent To assess whether the transfer would put the persons health or safety (or that of other people) at risk should be obtained, before the person is transferred from none place of safety to another. It is for those professionals to decide whether they first need to examine the person.

4.6 Unless it is unavoidable, a person should not be moved from one place of safety to another until it has been confirmed that the new place of safety is willing and able to accept them.

4.7 Where it is necessary to move a person to a second or subsequent place of safety they may be taken there by a police officer, an AMHP or a person authorised by either a police officer or an Approved Mental Health Professional.

*N.B NPIA Mental Ill Health and Learning Disabilities Guidance 2010 clearly states that transfers should be via ambulance and not by police vehicles. Refer to transport protocol for further information.

5. Legal Criteria Required

5.1 Detention under Section 136 of the Mental Health Act 1983 can only be considered when all the relevant grounds exist:

- The person is in a place to which the public have access.
- The person appears to be suffering from mental disorder.
- He/She is in need of immediate care or control.
- It is necessary to remove that person in the interests of himself/herself or for the protection of others.

6. Police Officers Discretion

6.1 Police officers are not compelled to implement Section 136 in every case especially where the person is willing to co-operate with less formal arrangements. It is beneficial to, where possible, discuss cases with the EDT AMHP or the Local Mental Health Unit to discuss alternatives.

6.2 In such cases attempts should be made to contact the persons general practitioner, the Community Mental Health Team or other relevant agency so that the appropriate action can be discussed and agreed.
6.3 Section 136 may be used in relation to persons who have not committed an
offence, and also for those who have or are suspected of having committed a
minor offence.
The decision as to whether to use Section 136 or arrest for an offence rests
with the Police Constable at the scene (consulting with senior colleagues if
necessary).

6.4 The responsibility for assessing the level of risk posed by a detainee through
violence, breach of the peace or absconding is that of the detaining officer (or
custody officer if detention is in police custody prior to transfer) and should be
fully considered prior to handing over care of the individual to any other
approved practitioner.

6.5 Generally as detainees who are violent will be taken to police custody as the
appropriate place of safety, detainees taken to a designated Mental Health
Unit should therefore be appropriate to be left in the care of staff at the unit.
This should be agreed by the detaining officer and the receiving nurse. Taking
the person to a police station however should not be the automatic or default
second choice and violent behaviour should not necessarily of itself lead to
containment in police custody pending assessment. In particular individuals
who are suffering from drug or alcohol intoxication or are acutely disturbed or
floridly psychotic (such as those suffering from Excited Delirium) may be at
significant medical risk of underlying medical problems if they do not receive
medical care from trained professionals. On rare occasions this need will be
urgent and will preclude safe detention in police custody. (NPIA Doc 2010)

6.6 Where a detainee is calm and compliant there is normally no requirement for
the police to stay during an assessment when they are in an agreed place of
safety at health premises. In general the police should only need to stay
where in their professional judgement there is a medium to high risk of
violence or breach of the peace. The receiving unit must be informed of any
136 at the earliest opportunity.

6.7 If there is a perceived risk and an officer is required to remain at the unit
during assessment the timescale should not exceed 3 hours maximum from
the time of arrival at the unit. If a dispute occurs between the detaining
officer and receiving nurse about officers requirement to remain this should
be escalated to the on duty inspector and lead nurse to reach an agreement.

6.8 Ultimately the duty police inspector will have the final say on the use of
police resources in these circumstances and they are accountable for
that decision. The rational behind this decision must be clearly
documented with matters which require escalation beyond this level
being reported to the Criminal Justice Liaison Group for multi agency
discussion at a strategic level.

7. Place of Safety

7.1 For the purpose of Section 136 each area will have agreed and identified
places of safety for anyone detained under the act:

Area A - Heddfan Unit, Wrexham Maelor Hospital:
   Unit Manager Karen McCormack (Interim manager)
   01978 – 726800/726801 (ward reception) ask to bleep duty nurse.
Area B - Ablett Unit, Glan Clywd Hospital Bodelwyddan:
Unit Manager Gaynor Lewis
01745 – 585484 ask to bleep duty nurse.

Area C - Hergest Unit, Ysbyty Gwynedd Bangor:
Unit Manager Lena Henry
01248 – 384384 ask to bleep duty nurse.

Custody Units:
- Caernarfon
- Dolgellau
- St Asaph
- Wrexham

7.2 The unit where the detained person is to be taken would normally be the nearest to where the person was detained. The unit should be contacted by officers as soon as possible and notified of the impending arrival. This should assist in speeding up the assessment process as the relevant persons required can in turn be contacted and be on route.

7.3 It is essential that form MHA 136 is completed by the detaining officer with as much detail as possible including full circumstances leading up to the application of the 136. Event numbers should also be added to either the top or bottom of the form and the form should be scanned onto the event with a task sent to PC 2789 Gill Hughes (Force Mental Health Liaison Officer).

As the detaining officer you MUST sign and date the form otherwise the detention will be unlawful.

The white copy of the form MUST be returned via the internal mail system to PC 2789 Gill Hughes, Force Mental Health Liaison Officer, Public Protection Unit Crime Services Division St Asaph.

A CID16 form should also be completed and tasked to the relevant RMS area incorporating as much detail as is practicable.

7.4 Every effort should be made to ensure that a police station is used only on an exceptional basis in cases for example where the persons behaviour would pose an unmanageably high risk to patients, staff or users in a health care setting, where the person is under the influence of alcohol and / or drugs. Or it is impractical to take the detainee to a hospital because of the distance between the place of detention and the hospital. It is preferable for a person thought to be suffering from mental disorder to be detained in a hospital or other health care setting where mental health services are provided (subject of course to any urgent physical health care needs they may have).

7.5 Any person in need of urgent medical treatment for non mental health reasons may and should be taken to an A & E department en route to a place of safety. Obtaining necessary treatment does not make the A & E department the place of safety.
7.6 A person removed under section 136 is deemed to be “arrested” for purposes of the Police and Criminal Evidence Act 1984 (PACE). This means that police officers have the power to search a person they detain under section 136, as they would in the case of a person arrested for an offence. Furthermore, a person detained under S135/136 MHA who is detained at a police station, either in cells or side interview rooms should be accorded the full rights and provisions within the PACE codes of practice.

7.7 Section 26 and schedule 2 of the Police and Criminal Evidence Act 1984 (PACE) preserves the power to remove under section 136 (1) as a power of arrest. This allows for section 32 of that act to apply which enables a Police Officer to search a person at a place other than a Police Station. This power also enables the removed person to be detained under section 136 (2) of the Mental Health Act 1983 and for the custody officer to identify what items the detained person has in their possession.

8. Duty of the Approved Mental Health Professional and Doctor

8.1 If a Police Officer instigates a detention under Section 136 of the act, the individual cannot be released without having been given a Mental Health Assessment conducted by an Approved Mental Health Professional (AMHP) and an registered medical practitioner. Wherever possible the doctor undertaking the examination is approved under Section 12 (2) of the Act. If the examination has to be carried out by a doctor who is not approved, the reasons should be recorded.

8.2 A consultant psychiatrist in learning disabilities and an AMPH with special experience in learning disabilities should make a joint assessment if it appears the detained person has a learning disability. Similarly, if the detained person is under 18, or is known to have only recently moved into adult mental health services, a consultant psychiatrist in child and adolescent mental health services and an AMHP with special experience in CAMHS should carry out an assessment together.

8.3 Assessment should take place within 4 hours as per Health Good Practice Guidelines.

9. After the Assessment Takes Place

9.1 If the individual is not subsequently placed under a Section 2 or 3 of the Mental Health Act, Section 136 immediately ceases. It will be the responsibility of the Hospital to arrange transport back to the most appropriate place. As each case circumstances are individual a common sense approach should be utilised regarding the involvement of relatives/partners/friends. Where appropriate the detained person should be consulted regarding this.

9.2 If the individual is placed under a Section of the Mental Health Act, or voluntarily agrees to be admitted onto a Psychiatric Unit, it is desirable for the medical staff to inform the Force Control Room of the result of the procedure by quoting the assigned incident number.
10. **Place of Safety – Designated Police Custody Unit.**

10.1 When accepting the detainee, a custody record should be opened and the Custody Officer should endorse the reason why the Individual has been brought to a Police Station as opposed to a Section 136 Suite. Although the Welfare and supervision of the individual will be conducted under the Police And Criminal Evidence Act, (PACE) the individual will not be considered to be under arrest, however normal PACE Codes of Practice will apply for all detainees under the MHA.

10.2 The individual should be given a copy of the Section 136 information ie notice of rights (Appendix A), together with the appropriate custody PACE documents. The Custody staff should inform the on call AMHP as soon as the individual has been processed into the Custody Suite. The Custody Officer should relay to the AMHP a description of how the detainee is presenting including if the detainee is suspected to be under the influence of alcohol or drugs.

10.3 It will be the AMHP’s decision as to whether it is possible for the detainee to be assessed. In the event that the AMHP believes that an assessment would not be possible at the time he/she should make arrangements with the custody staff when he/she intends to visit the Police Station to carry out an assessment.

10.4 In the event that the detention takes place during out of normal duty hours and it is believed that the individual would not be fit to assess until the following day, the AMHP must handover details of the detention to the day AMHP (either in person or by telephone) in order for the assessment to be made as soon as possible.

10.5 A Forensic Medical Examiner (FME) will be contacted to attend the Police Station at the same time as the AMHP so that the full assessment can take place.

10.6 Wherever possible the Doctor undertaking the examination is approved under Section 12 (2) of the Act. If the examination has to be carried out by a doctor who is not approved, the reasons should be recorded on both the custody record and the 136 paperwork.

10.7 In the event that the detainee has any injuries or health concerns which do not require urgent medical attention, the detainee should be seen by a North Wales Police Custody Nurse, or if a Custody Nurse is not available the FME should be contacted and requested to attend if the custody officer perceives there to be a need.

10.8 The Section 136 form should be completed by all parties concerned and the Police Officer **who has detained the person** Must sign the bottom of the form.

10.9 If, in exceptional circumstances the doctor has completed the examination before the AMHP arrives and concluded that the person is not mentally disordered within the meaning of the Act, the authority to detain ends. The person can no longer be detained under section 136 and should be immediately released.
10.10 If the doctor concludes that the person is mentally disordered within the meaning of the Act but does not need to be admitted to hospital, or the person agrees to informal admission, the person should be given the option of seeing an AMPH.

10.11 The AMPH plays a significant part in the assessment process as they bring a social perspective to a process where the other participants are doctors. The variety of expertise is intended to promote a holistic approach to the consideration of a persons needs. (2.34 Welsh COP).

10.12 If it becomes apparent that persons are being repeatedly placed under Section 136 and discharged following assessment, a meeting should be arranged initially with police and mental health unit staff in order to discuss appropriate management of the person within the community in order to prevent this occurring.
Mental Health Act 1983

Sections 135 and 136 of the Mental Health Act 1983

Good Practice Guidance
Sections 135 and 136 of the Mental Health Act 1983: Good Practice Guidance

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Introduction

1. A significant number of people with a mental disorder come into contact with the police in Wales each year. This can be as victims of crime, witnesses, offenders, and those who simply require help or medical care. One of the ways in which the police may have contact with people with a mental disorder is through sections 135 and 136 of the Mental Health Act 1983 ("the 1983 Act").

2. Using a warrant from a justice of the peace generally obtained by an Approved Mental Health Professional (AMHP), a police officer may use powers of entry under section 135 of the 1983 Act when they need to gain access to a person believed to be mentally disordered who is not in a public place and, if necessary, remove them to a place of safety.

3. Section 136 of the 1983 Act allows for any person to be removed to a place of safety if they are found in a public place and appear to a police officer to be suffering from mental disorder and in immediate need of care and control.

4. This Guidance has been designed to help to promote good practice in the operation of both sections 135 and 136 of the 1983 Act.

Objectives of this guidance

5. To support good practice, the overriding objectives of this Guidance are to:
   a. promote the dignity and safety of individuals who may be subject to the powers of sections 135 or 136 of the 1983 Act;
   b. support safe and appropriate use of those powers;
   c. encourage effective joint working between health and social care agencies and police forces;
   d. encourage effective monitoring and on-going development in this area of the legislation.

Relationship of this Guidance to the Code of Practice for Wales

6. The Mental Health Act 1983 Code of Practice for Wales ("the Code") was prepared and issued under section 118 of the 1983 Act by the Welsh Ministers and came into force in November 2008.

7. The Code provides guidance to registered medical practitioners ("doctors"), approved clinicians, managers and staff of hospitals, and approved mental health professionals on how they should proceed when undertaking functions and duties under the 1983 Act. It also gives guidance to doctors and other professionals about certain aspects of medical treatment for mental disorder more generally.

8. These people are required to have regard to the Code in carrying out their relevant functions under the 1983 Act. Departures from the Code could give rise to legal challenge and a court, in reviewing any departure from the Code,
will scrutinise the reasons for the departure to ensure there is sufficiently convincing justification in the circumstances.

9. This Guidance has been prepared in support of Chapter 7 of the Code, which is concerned with places of safety and police powers (a copy of which is included at Annex A). The Guidance is intended to provide additional advice and support for those practitioners with health and social care services, including the Welsh Ambulance Service, and police officers and forces, who may from time to time become involved with the operation of sections 135 and 136 of the 1983 Act in Wales.

Local policies on police powers and places of safety

10. Paragraph 7.11 of the Code of Practice for Wales requires Local Health Boards (LHBs), local social services authorities (LSSAs), police forces and the ambulance service to ensure that they have jointly agreed policies for the use of section 135 and 136, as well as agreed places of safety in their areas.

11. The Code states that: “The policy should clearly define each agency’s responsibility, environmental expectations and risk-management standards, how the operation of the policy will be monitored and the timeframe for its review.” The Code goes on to set out (at paragraph 7.12) the areas that the policy should define responsibilities for, and in subsequent paragraphs other matters which the policy should address.

12. This Guidance aims to support the development and delivery of these areas in more detail below.

13. A list of further reading is also included at Annex B.

Structure of the Guidance

14. The Guidance is split into Chapters –

   a. Chapter 1 opens the guidance with an explanation of the key provisions of sections 135 and 136 of the 1983 Act;

   b. Chapters 2 to 5 cover key issues of practice –
      - places of safety
      - conveyance
      - receiving and assessing individuals at a place of safety
      - information and support for detained persons.

   c. Chapters 6 to 8 aim to support the development of good practice:
      - supporting practice (through training), and
      - monitoring the operation of the powers

15. Chapter 8 is particularly aimed at Chief Executives of Health Boards, Directors of Social Services and Chief Constables, and provides them with a suggested
tool for enabling a check to be made on whether this guidance is being followed.

16. A glossary of key terms used in this guidance is included at Annex C.

**Acknowledgements**

17. In preparing this Guidance, the Welsh Government has paid particular regard to the Independent Police Complaints Commission report *Police Custody as a “Place of Safety”* (2008), and the National Policing Improvement Agency *Guidance on Responding to People with Mental Ill Health or Learning Disabilities* (2010). Regard has also been given to The Royal College of Psychiatrists report “Standards on the use of Section 136 of the Mental Health Act 1983 (England and Wales)” which was published in July 2011. The Welsh Government acknowledges the effort that has gone into researching and producing these reports, and appreciates the proactive and considered approach taken by these organisations in seeking to improve the operation of this particularly important and sensitive area of the legislation.

18. The Welsh Government also wishes to pay tribute to the work of the police officers and health and social care practitioners who have assisted in the development of this guidance.

19. Finally, the Welsh Government is particularly grateful for the support and commitment of the Association of Chief Police Officers Cymru to improving the operation and monitoring of sections 135 and 136 of the 1983 Act, and for their endorsement of this guidance to the police forces operating in Wales.
Chapter 1 – Explanation of the key provisions of sections 135 and 136 of the 1983 Act

20. This chapter of the guidance describes the provisions of the Mental Health Act 1983 (“the 1983 Act”) concerned with the powers of the police to take people who appear to have a mental disorder to a place of safety.

Warrants to search for and remove patients not receiving proper care and treatment (section 135(1))

21. An Approved Mental Health Professional (AMHP) acting on behalf of Local Social Services Authority may apply to a magistrate for a warrant authorising a police officer to enter specific premises, by force if necessary. The application should be made to a magistrate for the area where the premises are located.

22. Magistrates can issue warrants if satisfied, on the basis of information provided (on oath) by an AMHP, that there is reasonable cause to suspect that someone believing to be suffering from mental disorder:

   a. has been or is being ill-treated, neglected or “kept otherwise than under proper control” on the premises in question; or

   b. is living there alone and unable to care for themselves.

   A warrant can be issued even if the person’s name is not known.

23. The warrant gives a police officer the right to enter any premises specified in the warrant, by force if necessary, and (if it is thought fit) to remove the person concerned to a place of safety with a view to an application for detention or guardianship being made under Part 2 of the 1983 Act, or other arrangements being made for the person’s treatment or care.

Extract from Chapter 7 (paragraph 7.5) of the Code of Practice for Wales:
“Section 135 permits that force may be used in executing the warrant although only where absolutely necessary. The least restrictive means of controlling and restraining the person should always be used and the person should be treated humanely and with due sensitivity. Regard must be shown for the individual’s human rights, privacy and any particular care needs, for example, those associated with their physical health.”

24. The police officer must always be accompanied by an AMHP and a doctor in accordance with section 135(4) of the 1983 Act.

25. A place of safety for these purposes means:

   a. residential accommodation provided by a local social services authority under Part 3 of the National Assistance Act 1948;

   b. a hospital (including an independent hospital);
26. Further guidance on places of safety is given in Chapter 2 of this Guidance.

27. A person who is removed to a place of safety on the basis of a warrant may be detained there for a maximum of 72 hours. Within that period they may be transferred to one or more other places of safety by a police officer, an AMHP acting on behalf of an LSSA, or anyone authorised by such a police officer or AMHP.

Warrant to search for and remove patients who are liable to be taken or returned under the 1983 Act (section 135(2))

28. Magistrates can issue warrants to allow the police to enter premises and remove people who are liable to be taken or returned to hospital or any other place, or to be taken into custody, under the 1983 Act because (for example) they have gone absent without leave. This also applies to people who may be taken into custody under equivalent legislation relating to patients who have gone absent from Scotland.

29. A warrant may be applied for by a police officer or any other person who is authorised to take or return the patient to any place or take them into custody. A magistrate may issue a warrant, if satisfied on the basis of the information provided (on oath) by that person that:

   a. there is reasonable cause to believe that the patient in question is to be found on premises within the magistrate’s area; and

   b. admission to the premises has been refused or is expected to be refused.

30. The warrant gives a police officer the right to enter any premises specified in the warrant, by force if necessary, and remove the patient. The purpose of this is to allow the patient then to be taken wherever it is they should have been. The police officer may (but does not have to) be accompanied by a doctor or any person authorised to take or retake the patient (or both). In such circumstances, paragraph 7.4 of the Code states: “It is good practice for the police officer to be accompanied by the patient’s responsible clinician.”
Further guidance on applying for a warrant under section 135

31. Annex D provides further guidance on applying for a warrant under section 135 of the 1983 Act, and is reproduced from the National Policing Improvement Agency Guidance on Responding to People with Mental Ill Health or Learning Disabilities, published in 2010.

Powers of police to remove mentally disordered persons from public places to places of safety (section 136)

32. Under section 136 of the 1983 Act, the police have powers in relation to people they find in a public place who appear to be suffering from mental disorder and to be in immediate need of care and control. Any police officer can remove such a person to a place of safety (as described in paragraph 25 above) if they think it is necessary in the person’s interests or for the protection of others.

33. The National Policing Improvement Agency have issued the following advice:

“Where someone is experiencing a mental health crisis on private premises, it is inappropriate for an officer to invite the person to join them in the street outside their house in order to use section 136 to detain them. The power is to remove someone found in a public place, rather than someone put or encouraged there by the police.”

34. For these purposes, a “public place” can be taken to mean any place (whether indoors or outdoors) to which the public have access, whether by right, by explicit or implied permission, on payment, or otherwise.

35. People removed to a place of safety can be detained there for a maximum of 72 hours so that they can be examined by a doctor and interviewed by an AMHP in order that any necessary arrangements can be made for their treatment or care. The 72 hours runs from the time they are first detained in a place of safety.

Extract from Chapter 7(paragraph 7.10) of the Code of Practice for Wales:

“Section 136 is not an emergency admission order. It enables an individual to be detained in a place of safety for examination and interview. When that process has been completed within the 72-hour detention period or the doctor has decided that the person is not mentally disordered, the patient must be released, unless he has been admitted to hospital under the [1983] Act.”

Transfers between places of safety

36. During the 72-hour period of possible detention in a place of safety under section 135 or 136, the person concerned may be transferred to one or more other places of safety by a police officer, an AMHP acting on behalf of a local

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1 National Policing Improvement Agency (2010) Guidance on Responding to People with Mental Ill Health or Learning Disabilities
social services authority, or anyone authorised by such a police officer or AMHP.
Chapter 2 – Places of safety

37. This chapter provides good practice guidance for local partner agencies in relation to places of safety that should be used to develop local protocols for the operation of sections 135 and 136 in their area.

38. It is recognised that the choice of a place of safety can impact upon the individual and the outcome of the assessment process.

Statutory position

39. A place of safety within the context of sections 135 and 136 means:
   a. residential accommodation provided by a local social services authority under Part 3 of the National Assistance Act 1948;
   b. a hospital (including an independent hospital);
   c. a police station;
   d. a care home for mentally disordered persons;
   e. any other suitable place where the occupier is willing temporarily to receive the patient.

Police custody

40. Much of the debate historically around the use of section 136 in particular has centred on the high use of police custody as an inappropriate place of safety. The Code of Practice for Wales makes clear that only “…in exceptional circumstances would a police station be the most appropriate place [of safety] for [an individual] to be examined and assessed.”

41. The Welsh Government supports the National Policing Improvement Agency position that “using police officers and police facilities is not in an individual’s interests when they need mental health services rather than criminal justice services.” The Welsh Government also supports the conclusions of the Independent Police Complaints Commission in that the “…future has to be one in which police cells are not commonly used to lock up people who need medical assistance.”

42. At an individual level, it should be remembered that taking someone into police custody can have the effect of criminalising them for what is essentially a health need and that a police station may exacerbate an already fragile mental state.

Identifying an appropriate place of safety for an individual

Extract from Chapter 7 (paragraph 7.21) of the Code of Practice for Wales:

“In choosing the place of safety, the professionals should consider the impact that the proposed place of safety may have on the person held and on the examination and interview.”

43. The Code of Practice requires local policies to outline a process for identifying the most appropriate place of safety for an individual detainee.

44. The following good practice guidelines are suggested as a basis for the development of local policies –

**Health based facilities**

45. It is expected that these will be the normal, default, place of safety for the majority of detentions. Good practice is that they are used when the detained person –

   a. does not appear to present a serious risk of violence or danger,
   b. has not committed a serious criminal offence,
   c. has no physical illness or injury that would require emergency treatment, and
   d. is not excessively intoxicated by alcohol or drugs.

46. Violent behaviour need not necessarily, of itself, lead to containment in police based facilities – a health-based place of safety may still be appropriate with police officers present until such time as the person becomes calmer or can be safely managed. Local joint policies should set out the decision making process which should be followed in such cases. The Code of Practice for Wales makes clear that training programmes should be in place to equip healthcare staff to effectively manage patients who exhibit challenging behaviours (see Chapter 19 of the Code).

47. Guidance on intoxication is given below (see paragraph 58 onwards).

48. A hospital emergency unit should only be used as a place of safety where medical problems require urgent assessment and management. It is recognised that emergency departments are, generally, not appropriately equipped to operate as a place of safety and may not have suitable facilities for an individual to be detained whilst assessments are undertaken.

49. Where a hospital ward is used, for example on a mental health unit, the legal status of the individual should be understood by staff, and made clear to the individual. The individual may have been admitted to hospital (i.e. under section 135 or 136 of the 1983 Act), and may well occupy a bed, but they have not been admitted to hospital within the meaning of the 1983 Act (i.e. detained for assessment or treatment under sections 2 or 3 of the 1983 Act). Therefore at the end of the process of assessment under section 135 or 136, where a decision has been made not to use the 1983 Act, the individual may leave the hospital.

**Police based facilities**

50. As noted earlier, such facilities should only be used in exceptional circumstances.
51. Where police based facilities are used, the Code of Practice for Wales requires that “Every effort should be made to ensure that [they are] only used where it is absolutely necessary to provide short-term containment, for example, if the person is considered too violent for the available hospital, or they pose a high risk to other patients or staff.”

52. Where an individual poses a risk of serious violence or danger, or has committed a serious offence, or is excessively intoxicated, it may not be possible to use an alternative place of safety to police based facilities. Where this is required, specific custody suites should be used where arrangements can be made for mental health professionals to undertake timely assessments.

**Alternative places of safety**

53. Other place of safety options may include a residential care home or the home of a relative or friend who is willing to accept the person for that purpose.

54. LHBs, Local Authorities and Police Forces are advised that local joint policies should clearly set out the names and addresses of alternative places of safety and the circumstances when such facilities should be used.

55. Paragraph 7.3 of the Code of Practice for Wales gives the example of a frail elderly mentally disordered person possibly being removed to a care home rather than a hospital.

**Places of safety for children and young people**

56. The Code of Practice for Wales makes clear (at paragraph 7.17) that the most appropriate place of safety for children and young people must be considered especially carefully.

57. Evidence on the use of section 136 in Wales in recent years indicate that the detention of children and young people is not as uncommon as may first be thought, and therefore all local joint policies should make specific provision for this age group. Suitable places of safety may include child and adolescent inpatient units (although note advice above), suitable paediatric wards, or alternative places of safety taking account of local authority accommodation and facilities. In general, it is advised that adult mental health units should not be used, however the welfare and safety of the child must take precedence at all times.

**Persons under the influence of alcohol or drugs**

58. The local joint policy should make clear the agreed approach that will be taken in respect of persons who appear to be under the influence of alcohol or drugs. It is recommended that the policy take account of the following good practice guidance.

59. Although an individual may be intoxicated, that is not sufficient grounds on its own to indicate that a health based facility should not be used. It is recognised that individuals who are suffering from alcohol or drug intoxication, or are
acutely disturbed or floridly psychotic, may be at significant medical risk of underlying medical problems if they do not receive care from trained professionals, and may be better cared for at a health-based place of safety rather than at a police station.

60. Joint policies should set out the decision making process for determining whether the consumption of alcohol or drugs has unduly affected the individual’s ability to be coherent, understanding and responsive so as to indicate whether or not they are fit to be assessed.

61. Where an individual is intoxicated to a point as to represent a health risk to them self it is recommended that the police follow the normal ‘intoxicated and incapable’ procedures – for example, take the person to hospital for medical assessment. If however the intoxicated person presents such a risk of harm to themselves or others that they cannot be safely managed in this way, then they should be taken to a police station. If necessary, arrangements should then be made for the mental health assessment to take place whilst they are detained at the police station. It may be helpful for organisations to consider the ACPO NPIA document "Template Protocol for the management of detainees that are intoxicated and incapable in a public place" and agree local protocols.

62. It is recommended that joint policies make clear statements around the use of alcoholometers (including calibration of the machines) and the training of health staff to use them. The use of such measuring tools should only be one part of the decision making process as to the appropriate place of safety. It is not appropriate to base the decision to accept a person into a place of safety solely on the basis of the findings of an alcoholmeter.

Ensuring that appropriate places of safety are available

63. The Code of Practice for Wales requires that joint policies clearly define the “...environmental expectations...” in relation to places of safety, together with defining the responsibilities for “...planning and providing safe and secure clinical facilities for the containment of a person requiring examination or interview”.

64. This guidance recommends that local health, social services and police partnerships be established to oversee the development, staffing and monitoring of adequate numbers of non-police based places of safety across Wales.

65. As a starting point in making such arrangements, it is recommended that the local partnerships pool their existing data on the use of places of safety in their area over recent years. This information can form the basis of estimates for how many individuals are likely to require accommodation in places of safety in their area in the future.

66. The local joint partnerships will also need to consider the appropriate size and location of any additional places of safety which are judged to be necessary, how funding for these places of safety will be provided (including staffing costs),
and the facilities which will be required in those places of safety. Consideration should be given to the on-going suitability of existing places of safety, and the need for any upgrading or replacement to meet the standards agreed by the local partnership.

67. It is advised that local policies set out the environmental standards for each place of safety that may be used, and should be clear on the arrangements for –

   a. accessing facilities for fresh and clean clothing;
   b. appropriate toileting and bathing facilities;
   c. rest and sleeping facilities;
   d. food and drinks to be provided;
   e. access to physical healthcare;
   f. meeting the religious and cultural needs of individuals who are held in the place of safety.

68. Consideration ought to be given to meeting the needs of children, young people, and persons with a learning disability or other disabilities, within places of safety. Such considerations may include the skills, qualifications and experience of the staff operating in the place of safety together with the physical and environmental standards of the place of safety.

69. The Welsh Government has looked at the evidence to support stand-alone section 136 suites. It has concluded that there is insufficient evidence, at this time, to recommend these arrangements as good practice. That is not to say that services should not proceed with such facilities if the local partnerships are in agreement as to the appropriateness of such services for their local needs, it is simply that there is insufficient evidence to commend these as good practice at this time. It is noted that across England and Wales there are some facilities that combine places of safety with more generic mental health assessment arrangements, and local partnerships may wish to consider a more combined approach in their planning.
Chapter 3 – Conveyance

70. This chapter provides good practice guidance for local partner agencies in relation to conveyance that may be used to inform the development of local protocols for the operation of sections 135 and 136 in their area.

Guidance in the Code of Practice for Wales

71. Chapter 9 of the Code of Practice for Wales gives guidance on the conveyance of individuals from one place to another in the circumstances set out in the 1983 Act.

72. It is worth considering the guidance in the Code given under the heading ‘General matters’ at paragraphs 9.4 and 9.5 –

Extract from Chapter 9 of the Code of Practice for Wales:

“9.4 Authorities, including the ambulance service and the police, who are involved in conveying patients should agree joint policies, procedures and protocols to include:
• a clear statement of the roles and obligations of each authority and its staff
• the form of any authorisation to be given, for example by the approved mental health professional (AMHP) to ambulance staff
• guidance on powers relating to conveying patients
• responsibility for conveying patients outside authority areas.

9.5 Those responsible for taking patients from one place to another must ensure the most humane and least threatening method of conveying the patient is used, consistent with ensuring that no harm comes to the patient or to others. The factors to be taken into account when deciding the most appropriate method for conveyance include:
• the guiding principles in chapter 1
• the wishes and views of the patients, including any relevant care plan or advance statement
• the nature of the mental disorder and its course
• any physical disability the patient has
• the impact that any particular transport will have on the patient’s relationship with the community to which he or she will return
• the availability of various transport options
• the distance to be travelled
• the patient’s need for support and supervision during travel
• the availability of transport to return home those who accompany the patient (including whether the professionals will need to return to their own vehicles)
• the risk of the patient absconding and the risk of harm in the event of the patient absconding before admission to hospital.”

Appropriate transport

73. In relation to transporting individuals between hospitals or places of safety, the Code makes clear that “…it is necessary to consider the most appropriate method of securing the transfer, taking into consideration the patient’s views as well as the need to manage any risks to the safety of the patient or others.” The Code also states that it is “…not always necessary for transport to be by ambulance but where this is most appropriate, an ambulance should be provided.”
74. Clearly ambulance paramedic staff have the skills to assist in assessing the medical condition of an individual, and may well be key to early identification of medical matters which are contributing to the presentation of an individual.

75. The Code of Practice requires local policies on section 135 and 136 to define the responsibilities for taking an individual to the place of safety safely and promptly. The following good practice guidelines are suggested as a basis for the development of local policies.

**Promoting the use of appropriate vehicles for conveyance**

76. The Independent Police Complaints Commission, the Association of Chief Police Officers Cymru, the Royal College of Psychiatrists and the National Policing Improvement Agency, all support the reduction of the use of police vehicles as a method of transporting individuals subject to detention under sections 135 or 136 of the 1983 Act. There are a number of reasons to support this approach, but primarily these relate to the safety and dignity of the detained person.

77. To support the appropriate use of police vehicles and other vehicles (including ambulance transport), the following broad principles are recommended –

   a. a dynamic risk assessment should be used to determine the levels of risk posed by the person who is to be conveyed;

   b. full account is given to the ambulance response model, and if on arrival of ambulance paramedic staff the individual’s clinical condition has been categorised as non-critical but further medical intervention is required, then the patient should be conveyed to the most appropriate place of safety by ambulance;

   c. where there is significant risk to ambulance staff due to the violence of the individual, a police vehicle should be considered;

   d. similarly where failure to use a police vehicle would increase risks to the individual and others, or would heighten the individual’s distress, a police vehicle should be used.

78. When local joint protocols are being developed, and alternative transport options being considered, reference should be made to paragraph 9.11 of the Code of Practice for Wales

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*Paragraph 9.11 of the Code of Practice for Wales:*

“The patient should not normally be transported by car unless the [approved mental health professional] AMHP is satisfied that they do not present a danger to themselves or others and that this is the most appropriate method. In these circumstances there should always be an escort for the patient in addition to the driver.”
79. Although this extract from the Code relates particularly to the conveyance of a person to hospital for admission under the 1983 Act (using the powers set out in section 6 of the 1983 Act), this principle may inform local policies.
Chapter 4 – Receiving individuals at a place of safety, and subsequent assessment

80. This chapter provides good practice guidance for local partner agencies in relation to the process of receiving a detained person at a place of safety, and making arrangements for the assessment of that individual following the use of section 135 or section 136 of the 1983 Act. This guidance should be used to inform the development of local protocols for the operation of these sections within the partner agencies.

Reception of detained persons

81. When a warrant under section 135 of the 1983 Act has been sought, it will have been done so as a multi-agency process and all relevant parties will be aware of its use and will have made prior provision for the reception of the individual concerned at a place of safety.

82. This will not be the case for use of section 136, as its use cannot be planned in advance. The Code of Practice for Wales gives recommendations (at paragraph 7.22) for police officers to notify health and social care staff of the use of section 136

Extracts from the Code of Practice for Wales:

“If the place of safety is a hospital, the police should make immediate contact with the hospital and the LSSA [local social services authority] before arrival…”

“If a police station is to be used as a place of safety, health and social care agencies should be contacted to discuss supporting the care and welfare of the person while in police detention. Contact should be made quickly with the LSSA and the appropriate doctor (most likely the forensic examiner who works with the police)…”

“Agencies should work together to ensure no unnecessary delay in the examination and interview process.”

83. It is advised therefore that local joint policies clearly guide all agencies on the:

a. arrangements for notification of intended arrival at a place of safety (for example, contact information for each place of safety in the area);

b. arrangements for contacting approved mental health professionals and doctors (for example, whose responsibility it is to arrange for an AMHP and/or a doctor, how to access duty rota’s, whether different arrangements apply depending on the place of safety used, etc);

c. the management and prioritisation of assessments when there are multiple uses of section 135 or 136 occurring at the same time.

Preparing for reception

84. This good practice guidance recommends that staff with responsibilities for operating a place of safety understand the importance of preparing for arrival of an individual. It is advised that such preparations include ensuring that:
a. accommodation is available for the detained person, and that it meets the environmental standards set out in the joint local policy for that place of safety;
b. appropriately trained staff are available to receive the individual, and be available to support the assessment where necessary;
c. the expected arrival times of the approved mental health professional and doctor are known;
d. the police bringing the individual to the place of safety know the name of the person who will be receiving the person, and how to contact them on arrival;
e. the police know the location and access requirements for the place of safety.

85. On arrival of the police at the place of safety, the receiving team of staff ought to ensure:

a. a full handover is given by the police of the circumstances of the detention and what is known about the detained individual;
b. documentation relating to the use of sections 135 or 136 is completed and handed over to the place of safety;
c. a clear record is made of the arrival time at the place of safety, and where a person has been transferred from another place of safety, the time that the detention commenced;
d. the detained individual understands, so far as is practicable, that they are detained under the 1983 Act and what this means, and what will happen next. Information of this kind should be given both orally and in writing.

86. In relation to the searching of an individual, the guidance in the Code of Practice for Wales at paragraph 7.23 should be followed –

“Section 26 and schedule 2 of the Police and Criminal Evidence Act 1984 (PACE) preserves the power to remove under section 136(1) as a power of arrest. This allows for section 32 of that Act to apply which enables a police officer to search a person at a place other than a police station. This power also enables the removed person to be detained under section 136(2) of the Mental Health Act 1983 and for the custody officer to identify what items the detained person has in their possession.”

87. It is recommended that as part of the handover process from the police to place of safety staff that an immediate assessment of the individual should be undertaken to identify and evaluate any risks, and any emergency medical treatment or other actions which may be required before the examination and interview by the doctor and AMHP. As such an assessment will include checking whether the person is in need of any urgent medical assessment or treatment which may necessitate their transfer to another, more appropriate, place of safety, it is advisable that this takes place before the police officer or ambulance team leave.
88. The handover of a detained individual ought to be undertaken so that police officers or ambulance staff are able to leave the place of safety promptly and resume their other duties.

89. Once the handover is complete, staff at the place of safety should ensure that the individual is made as comfortable as possible, and supervised appropriately.

**Continuing police presence at non police based places of safety**

90. Local joint protocols and any associated service level agreements should clarify the role of the police once a person has been taken to, and accepted by, a place of safety that is not a police facility.

91. There is normally no reason for the police to stay with a detained individual during an assessment when health based places of safety are being used. Generally, police should only need to stay where, in their professional judgement, there is a medium to high risk of violence, a breach of the peace occurring or the individual absconding.

92. Health based staff may, dependent on the locally agreed joint policies, request that police personnel remain. Where such requests are made it is important that the police assess the likely harm and benefits of their decision, and should consider what is known about the detainee (for example, from police information systems and those of other agencies).

93. Local policies should make clear the arrangements for escalating differences of opinion on whether, in an individual case, the police should remain once the detainee has been received at the place of safety.

**Purpose of assessment**

94. The purpose of removing a person to a place of safety under section 135(1) of the 1983 Act is to enable an assessment to be made with a view to making an application for detention in hospital under Part II of the Act.

95. Section 135(2) of the 1983 Act is used where the person concerned is either liable to be detained or is required to reside at a particular place under the terms of guardianship\(^2\), a community treatment order\(^3\) or under the legislation of Scotland for the care and treatment of mentally disordered persons. In this case there is no assessment of the individual within the meaning of the 1983 Act.

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\(^2\) Within the meaning of sections 7 or 37 of the 1983 Act; an individual subject to guardianship has a guardian appointed to help and supervise them in the community for their own welfare or to protect other people. A patient under guardianship can be required to reside at a particular place.

\(^3\) Within the meaning of section 17A of the 1983 Act; a community treatment order is the written authorisation for the discharge of a patient from detention in hospital onto supervised community treatment (SCT). Patients on SCT are expected to comply with conditions set out in the community treatment order (which may include being required to reside at a particular place) and can be recalled to hospital if treatment in hospital is necessary again.
96. The purpose of removing a person to a place of safety under section 136 of the 1983 Act is to enable the individual to be examined by a doctor and interviewed by an approved mental health professional, and to make any subsequent arrangements for his or her treatment or care.

97. Within this chapter of the good practice guidance, references to assessment therefore relate to individuals in a place of safety because section 135(1) or section 136 of the 1983 Act has been used.

Supporting timely assessment

98. It is advised that assessments are undertaken promptly and any arrangements for hospital admission or other care and treatment made as quickly as possible, primarily for the benefit of the detained person. Prompt assessment will also minimise the amount of time and capacity agencies expend on the process. Police forces have previously reported concerns that detaining people in police custody, or deploying officers to accompany detainees while they wait for assessment in health-based facilities, is costly and diverts resources from other duties.

Availability of practitioners

99. Paragraphs 7.24 to 7.30 of the Code of Practice cover examination and interview, and in support of the requirements of the Code, this good practice guidance recommends that through the agreement of local joint policies arrangements are in place which support—

   a. sufficient provision and access to approved mental health professionals, including via emergency duty teams and via out of hours services;
   b. sufficient provision and access to doctors, including out of office hours;
   c. access to consultant psychiatrists and AMHPs with special experience in learning disabilities; and
   d. access to consultant psychiatrists and AMHPs with special experience in child and adolescent mental health services.

100. Although the 1983 Act requires the patient detained under section 136 to be examined by a doctor, the Code of Practice for Wales (at paragraph 7.25) requires that local policies should ensure that the doctor undertaking the examination is, wherever possible, approved under section 12(2) of the 1983 Act. For this reason, it is important that partner agencies regularly assess the likely number of section 12(2) approved doctors that will be required to ensure that timely assessments can be undertaken.

101. Efforts should be made to encourage take up of approval4 under section 12(2) by general practitioners and doctors (from a range of grades) working for Health Boards; approval is undertaken, on behalf of the Welsh Ministers, by Betsi Cadwaladr University Health Board. Police forces may wish to ensure

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4 Registered medical practitioners who are approved under the 1983 Act as ‘approved clinicians’, are by virtue of their approval as approved clinicians, also approved under section 12(2) of the 1983 Act.
that their forensic medical examiners are, wherever possible, also approved under section 12(2) of the 1983 Act.

Target times

102. Local partnerships should consider including target times for the commencement of assessments within jointly agreed policies. The Royal College of Psychiatrists recommends that all assessments should begin within three hours of the detained individual being brought to the place of safety⁵. If targets are to be included the policy should also recognise that there will be occasions when the assessment may have to be deferred, for example because the detained individual is severely intoxicated, or the administration of emergency sedation makes assessment impossible until the effects of the medication have subsided. Where target times are included, these should be closely monitored against adherence to the policy.

⁵Royal College of Psychiatrists (2011) CR159: Standards on the use of Section 136 of the Mental Health Act 1983 (England and Wales)
Chapter 5 – Information and support for detained persons

103. This chapter outlines the range of information and support which detained individuals are entitled to whilst they are held in a place of safety. It also provides good practice guidance for local agencies to consider when developing their jointly agreed policies in relation to the operation of sections 135 and 136 of the 1983 Act.

Process of detention

104. Police officers need to be sensitive to the process of detention, which may be very visible and can take place within the individual’s own community, and may be stigmatising.

105. The process of examination and interview following detention must be undertaken in light of the Guiding Principles of Chapter 1 of the Code of Practice for Wales – key extracts of which are summarised below:

Extracts from Chapter 1 of the Code of Practice for Wales:

- “Patient well-being and safety should be at the heart of decision-making.”
- “Retaining the independence, wherever practicable, and promoting the recovery of the patient should be central to all interventions under the Act.”
- “Practitioners performing functions under the Act should pay particular attention to ensuring the maintenance of the rights and dignity of patients, and their carers and families, while also ensuring their safety and that of others.”
- “Practitioners must respect the diverse needs, values and circumstances of each patient.”
- “Practitioners should ensure that effective communication takes place between themselves, patients and others.”

Police and Criminal Evidence Act 1984 (PACE)

106. Where a detained person is held in police custody they are subject to the provisions of PACE Code C ‘Detention, Treatment and Questioning of Persons by Police Officers’. Under Code C the detained person is entitled to a legal representative and to have a person of their choice informed of their whereabouts. Where detention is not in a police based place of safety, every effort should be made to facilitate an individual’s request for access to a relative, friend or advocate. Individuals who have had experience of detention under section 136 have spoken of the relief in knowing that an appropriate person has been notified of their detention – it is clear that such communication has wider implications for care, safety and support beyond the use of the 1983 Act. The Code of Practice for Wales to the 1983 Act also makes clear at

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6 Advocate in this context indicates a person who can advocate on behalf of the individual, rather than an independent mental health advocate within the meaning of the 1983 Act.
paragraph 7.37 that hospital managers must also provide access to legal advice if requested.

107. Individuals detained in police custody should also have access to an appropriate adult, especially if they are being interviewed in relation to a criminal offence. The role of the appropriate adult is to ensure the person has received and, where possible, understood their rights. The appropriate adult has the right to inspect the custody record.

108. Police forces should make use of the National Policing Improvement Agency’s Safer Detention Guidelines (2006).

Information

109. It is a requirement under both PACE and the 1983 Act that individuals detained under section 135 and 136 are provided with oral and written information in relation to their detention. Joint policies should therefore set out the arrangements for providing this information. In developing these policies, consideration should be given to –

a. adopting a standard patient information leaflet that is easy to understand for use in all places of safety (the Welsh Government has developed a sample patient information leaflet, the text of which is reproduced at Annex E);

b. the skills and knowledge of the staff who will provide the information to detained individuals;

c. meeting the communication needs of individuals;

d. how translation and interpretation facilities will be provided and accessed in respect of individuals whose first language is not English or Welsh.

110. It is important that individuals clearly understand that they are detained under the 1983 Act – saying “a doctor will see you” is insufficient and disingenuous. Individuals are empowered by good information and support to understand their rights.

Physical environment

111. The needs of distressed and disorientated individuals are for a safe environment where the crisis can be de-escalated and restrictions minimised over the period that the assessment will take place, and where all basic human needs can be addressed. Local policies should set out the environmental standards for each place of safety that may be used, and will need to set out how the religious and cultural requirements of individuals will be met.
Returning after detention

Extracts from Chapter 7 (paragraph 7.38) of the Code of Practice for Wales:

“As soon as detention in a place of safety … ends, the individual must be informed. Where they are free to leave they must be advised of this promptly and clearly.”

112. While paragraph 7.38 of the Code of Practice relates to people detained under section 136 only, when a detained person has been assessed as not requiring admission to hospital (either under the provisions of the 1983 Act or informally), and detention under section 135(1) or 136 has therefore ended, the AMHP would normally take the lead role in:

a. notifying the police of the end of the detention (where a police based place of safety has been used, or the police have remained during the assessment at a non-police based place of safety);

b. making appropriate arrangements for the person to return safely to their community.

113. Local joint policies should set out the approaches that should be taken for making arrangements, where these are required, for returning people to their community. The following approaches, amongst others, could be considered –

a. hospital transport, ambulances or police vehicles may be called upon if the person has been removed some distance to a place of safety, or if the assessment has been concluded at a time which may make public transport difficult;

b. supporting the individual to contact a relative, friend or carer to come and collect them;

c. providing funds for public transport or taxi hire.

114. If providing funds is an approach included in the local arrangements, it is important to ensure that the AMHP will have access to these funds throughout a 24-hour period.

115. Local partnerships should also consider the potential implications of transporting a person from one police force area to another, or one local authority area to another, or to an area outside of Wales. Such issues are likely to require regional solutions and as such should be considered when planning for the use of sections 135 and 136 and developing local joint policies.
Chapter 6 – Improving knowledge

116. The successful operation of sections 135 and 136 of the 1983 Act and implementation of joint local policies, will require that all staff connected with these powers (police, health, social care, and ambulance) be familiar with:

a. the legislative detail of sections 135 and 136, and associated case law and the Code of Practice for Wales;
b. how these powers fit within the wider provisions of the 1983 Act;
c. the duties that fall to their organisation; and
d. their own legal and professional responsibilities, as applicable.

117. This good practice guidance does not prescribe specific training resources or approaches, but does suggest some areas where it is advisable for training or guidance to be made available; the objectives that such training should seek to achieve, and the professions and disciplines for whom training should be provided.

118. This Chapter also briefly considers approaches for reducing the use of section 136 within police forces.

Responsibilities for providing appropriate training

119. It is the responsibility of the police forces operating in Wales, the Health Boards and Local Authorities, and the Welsh Ambulance Service Trust, to ensure all relevant staff within their organisations receive appropriate training and advice in relation to the use of sections 135 and 136. Where police officers, health or social care professionals will be, or are likely to be, directly involved with these powers, specific joint training which enables them to understand their role and the roles of others, should be considered. Such an approach can assist them to understand and confidently undertake their functions, and understand and support the functions being undertaken by others.

120. In developing their local joint policies, local partnerships should seek to identify any training, informal or formal, which is already provided with agencies and consider whether this is adequate and fit for purpose. Formal training materials should reflect the current legislative requirements and the arrangements that have been agreed within the area under the local joint policy.

Promoting good practice

121. Local partnerships should seek to identify good practice where this exists, both in their own areas and others, and should aim to adopt similar approaches where these are identified as appropriate.
122. For example, in the 2008 report⁷ of the Independent Police Complaints Commission on use of section 136, it was identified that some police forces had developed practices to try to ensure more accurate identification of mental disorder by officers on the street:

“In one…force, officers were expected to call the control room to check if there was any information on the potential section 136 detainee or call a named contact at the local hospital and ask if the individual’s potential mental disorder seemed likely. To help them make a decision officers had also been issued with an aide memoire which listed factors that may lead to a section 136 detention.

“In [another] force custody officers stated that they had a card pinned to the custody suite wall setting out the criteria for detaining someone under section 136 and how they should be dealt with. The custody staff would then talk the arresting officer through this list when they phone to inform then that they were bringing in a section 136 detainee … There was also a pilot scheme in one area of the force where police officers could contact the ‘on-call’ [AMHP] and ask their advice about a particular individual’s behaviour.”

Training for particular professionals

Police officers and custody sergeants

123. Police officers are the ‘front line’ in the operation of section 136, as it is they who are required to use their experience and expertise to initiate the use of the power. Therefore, this guidance recognises the importance of police officers receiving suitable training in relation to understanding and recognising mental disorders.

124. The National Policing Improvement Agency (NPIA) have observed that it “…is not the role of training to provide police officers with clinical skills, but rather to provide sufficient knowledge and awareness to respond confidently to situations involving mental ill-health.”

125. Local partnerships may wish to consider using the NPIA Mental Ill Health Learning Programme during joint training between police, health and social care.

126. In addition there are areas in Wales where police forces have entered into arrangements with their partner Health Boards to enable all police recruits to spend time with mental health practitioners and service users in hospital settings as part of their initial training. Such an approach is recommended as good practice, and local partnerships should consider whether similar approaches should also be provided to existing police staff who are involved in section 136 procedures but may not have received such opportunities during their basic training.

Health and social care staff

127. Staff operating and managing places of safety, and those involved in the examination and interview process, ought to be trained in risk assessment and management, observational skills, use of the 1983 Act, use of physical interventions and resuscitation equipment. They will need expertise in the assessment and management of substance misuse, including withdrawal symptoms and physical healthcare issues. Such staff also ought to be familiar with rapid tranquillisation procedures in case these need to be carried out.

Reducing the use of section 136

128. Local monitoring of the use of section 136 should enable the identification of the repeated use of section 136 for the same person. Repeated use of the powers for the same individual should prompt a multi-agency review to enable support and other arrangements to be considered for that person. To assist individuals in accessing appropriate care and treatment, the partner agencies should consider the development of preventative outreach services.
Chapter 7 – Monitoring the use of section 135 and 136

129. It is recognised that the monitoring of the use of section 135 and 136 would need to take place at both a local and national level in order to ensure that individual issues and concerns can be resolved, as well as local and national trends identified and, where necessary, responded to.

130. Where lessons can be learned, locally or nationally, these can be used to improve the detention process and the care that individuals receive.

Working with partners to monitor use at a local level

131. The Code of Practice for Wales makes clear at paragraph 7.15 that the policy that is expected to be in place between partners should include provision for monitoring. Such monitoring will “…enable checks to be made of how [section 136] is being used, including its use in relation to people from black, minority ethnic communities and children, and the parties to the policy to consider any changes in mental health services that might result in reducing its use.”

132. It is good practice for the monitoring arrangements to also include the use of section 135 of the 1983 Act.

133. The Welsh Government supports a multi-agency partnership approach to monitoring and review. Such groups could comprise representation from:

a. the NHS (including emergency departments, liaison psychiatry, ambulance services, in addition to mental health services);

b. local social services authorities (including emergency duty teams, out of hours teams, and AMHP managers);

c. third sector organisations;

d. police forces (including mental health/vulnerable group leads, custody officers, and police officers who institute the use of section 136).

134. It is recommended that the experiences and perceptions of individuals who have been detained under sections 135 or 136 be considered within the monitoring processes. Such knowledge and understanding of the experiences of these individuals could help improve the detention process and the care that people receive.

135. It is advised that monitoring also covers the demography of the detainees, length of time they are detained and the outcome of detention, to see what happens to individuals. This will help to understand whether the powers are being used appropriately and consistently across the LHB and police force area. Information gathered through monitoring and analysis should be used to inform training, and identify changes needed in local procedures and/or service delivery.

136. This Guidance builds on the clear position in the Code of Practice for Wales that police custody should only be used as a place of safety in exceptional
circumstances. The Welsh Government advises that all local monitoring arrangements will include consideration of the use of different types of places of safety in the LHB and police force area, so that Health Boards can be clear they are meeting the expectations of the Code in this area.

**Working together to monitor use at a local and national level**

137. All Local Health Boards should collect individual records for every use of section 135 and 136 in their area, and collate this information into a regular report to Healthcare Inspectorate Wales. The regular report ought not contain individual patient names, or other information from which the identity of an individual who has been detained could be determined.

138. The Welsh Government is very pleased that the Association of Chief Police Officers Cymru agrees that monitoring of the use of the powers is necessary, and that ACPO Cymru are instructing all police forces operating in Wales to provide information on the use of section 136 by police officers to the Local Health Board for the area where the individual was detained.

139. To help to ensure that consistent information is recorded, collected and analysed, the following approach will need to be put in place –

   a. A standard form needs to be used by LHBs and Police forces across the whole of Wales to record each use of section 136. To this end the Welsh Government has issued such a form to all Local Health Boards. A copy of the form is set out in Annex G to this guidance.

   b. A copy of the form used in each individual case (including those instances where the place of safety was not operated by the LHB) ought to be sent to a named individual in the LHB with responsibility for monitoring the use of these powers. To support this each LHB is advised to nominate such an individual and to notify the relevant police force of the arrangements for receiving copies of section 136 forms.

   c. The collated data from the forms ought to be used by local partners to meet the requirements of monitoring as set out in paragraph 7.15 of the Code of Practice for Wales.

   d. The collated data ought to be reported on a quarterly basis to Healthcare Inspectorate Wales (HIW).

   e. HIW will monitor, on behalf of the Welsh Ministers, the operation and use of sections 135 and 136 of the 1983 Act. Such monitoring will form part of HIW’s regular and on-going monitoring arrangements, and their findings may be included in their annual report that is laid before the National Assembly for Wales.

140. These arrangements will be in place from 1st of April 2012.
Chapter 8 – Ensuring implementation of this good practice guidance

141. It is advised that Directors of Social Services, Chief Executives and Vice-Chairs of Local Health Boards, and Chief Constables assure themselves and their senior management teams that this good practice guidance is being implemented and the overarching objectives (set out in the Introduction) are being met. To do this, they should ask –

a. is there a joint policy in place between the LHB, Local Authorities, Police Force and the Welsh Ambulance Service NHS Trust on the operation and monitoring of section 135 and 136?

b. does this policy meet the requirements of Chapter 7 of the Mental Health Act 1983 Code of Practice for Wales?

c. is there a range of appropriate and designated places of safety available in the locality, and is there a clear process in place for identifying when a particular place of safety should be used for an individual detention?

d. is police custody being used as a place of safety in anything other than exceptional circumstances (a requirement of Chapter 7 of the Mental Health Act 1983 Code of Practice for Wales)?

e. where police custody is being used, is there appropriate health based provision within those places of safety?

f. is there a range of options for conveyance of individuals to, between and from places of safety, and do these options promote dignity and safety of detained individuals and others?

g. are there clear arrangements in place for the receipt of individuals at each identified place of safety?

h. has there been assessment of the number and availability of section 12(2) approved doctors in the area of the partnership, and are there processes in place to support doctors’ work towards and gain approval?

i. is there an agreed standard patient information leaflet in place across all partners?

j. are there available and accessible facilities in place for meeting the communication needs of detained individuals?

k. is there an accessible and available translation and interpretation service in place, for individuals whose first language is not English or Welsh?
l. does joint training between health, social care and the police take place, and does this training consider the care and treatment of individuals with mental health problems?

m. are there clear and workable arrangements in place for the sharing of information between agencies?

n. do the arrangements for the operation of sections 135 and 136 differ between normal working hours and out of hours, and if there are differences do these adversely impact on the individual being detained?

o. is the national standard form for recording the use of section 136 being used in all cases?

p. is there a lead, in the LHB, for collecting, collating and analysing the use of section 135 and 136?

q. is there a mechanism in place for all partners to meet regularly and consider practice issues in relation to the operation of these sections, the effectiveness of the agreed policy, and to identify solutions to any problems?
Annex A – Chapter 7 of the Mental Health Act 1983 Code of Practice for Wales

Places of safety and police powers

7.1 This chapter provides guidance on the police powers to remove a person to a place of safety under provisions in the Act. It also gives guidance on the assessment of a person removed to a place of safety, and any later transfer to another place of safety.

Understanding the legal framework

Section 135: Warrant to search for and remove patients

7.2 Using a warrant from a justice of the peace, a police officer may use powers of entry under section 135(1) or (2) when they need to gain access to a mentally disordered person who is not in a public place and, if necessary, remove them to a place of safety.

7.3 Local authorities should develop guidance for approved mental health professionals (AMHPs) outlining how, and when, they should make applications for a warrant under section 135. The guidance should include advice on the information to include in applications, such as what alternatives to applying for a warrant have been considered. If a suitable place of safety has been identified, this information should also be included. In most cases this would be a hospital, but section 135(6) provides for other places to be used - for example, a frail elderly mentally disordered person might be removed to a place of safety in a care home rather than a hospital.

7.4 In executing a warrant under section 135(1), the police officer must be accompanied by an AMHP and a doctor. Where the warrant is executed on a patient who is liable to detention or recall, the officer may be accompanied by a doctor and/or by any person authorised under the Act to take or retake the patient. It is good practice for the police officer to be accompanied by the patient’s responsible clinician.

7.5 Section 135 permits that force may be used in executing the warrant although only where absolutely necessary. The least restrictive means of controlling and restraining the person should always be used and the person should be treated humanely and with due sensitivity. Regard must be shown for the individual’s human rights, dignity, privacy and any particular care needs, for example, those associated with their physical health.

Section 136: Mentally disordered persons found in public places

7.6 Section 136 allows for any person to be removed to a place of safety if they are found in a public place and appear to a police officer to be suffering from mental disorder and in immediate need of care or control.

7.7 Removal may take place if the police officer believes it necessary in the interests of that person, or for the protection of others. An officer may use reasonable force where necessary.

7.8 The least restrictive means of controlling and restraining the person should always be used, with the person being treated humanely and with due sensitivity. Regard must be shown for their human rights, dignity, privacy and any particular care needs such as those associated with their physical health.

7.9 The purpose of removing the person in these circumstances is so they can be examined by a doctor and interviewed by an AMHP to ensure any necessary arrangements are made for their care and treatment.

7.10 Section 136 is not an emergency admission order. It enables an individual to be detained in a place of safety for examination and interview. When that process has been completed within the 72-hour detention period or the doctor has decided that the person is not mentally disordered, the patient must be released, unless he has been admitted to hospital under the Act.
Local policies on police powers and places of safety
7.11 Local Health Boards (LHBs), NHS Trusts, local social services authorities (LSSAs), police forces and the ambulance service should ensure they have jointly agreed policies for the use of section 135 and section 136, as well as agreed places of safety in their areas. The policy should clearly define each agency’s responsibility, environmental expectations and risk-management standards, how the operation of the policy will be monitored and the timeframe for its review.

7.12 In particular the policy should define responsibilities for:

- planning and providing safe and secure clinical facilities for the containment of a person requiring examination or interview
- identifying and agreeing the most appropriate place of safety in individual cases
- providing prompt assessment and, where appropriate, admission to hospital for assessment and/or treatment
- securing the attendance of police officers where needed to protect a patient’s health or safety, or the health or safety of others
- taking the person to the place of safety, safely and promptly
- dealing with people who are under the effects of alcohol or drugs
- dealing with people who are behaving or have behaved violently
- deciding whether it is appropriate to transfer the person from one place of safety to another
- returning the person to the local community (where the assessment has not led to admission to hospital or other accommodation).

The policy must ensure due regard is given to the person’s individual circumstances, in accordance with the guiding principles set out in chapter 1 of this Code.

7.13 Local policies should ensure that police officers know whom to contact before removing someone to a place of safety under section 136.

7.14 A person who is removed to a place of safety under section 136 may be subject to supervised community treatment (SCT), conditional discharge, or may be on leave of absence and their recall to hospital may need to be considered. The policy should set out the arrangements, in these circumstances, for contacting the patient’s responsible clinician as quickly as possible. Similar provisions in the policy will need to relate to patients who are subject to guardianship.

7.15 The policy should include provision for the use of section 136 to be monitored. This will enable checks to be made of how it is being used, including its use in relation to people from black, minority ethnic communities and children, and the parties to the policy to consider any changes in mental health services that might result in reducing its use.

7.16 Where local policies establish target times for the start of the examination or interview, NHS bodies and LSSAs should review local practice against these targets.

Identifying an appropriate place of safety
7.17 The process for identifying the most appropriate place of safety must be clearly outlined in the local policy. While this is a matter for local agreement, consideration must be given to the availability and appropriateness of such facilities, depending on individual circumstances. The most appropriate place of safety for children and young people must be considered especially carefully.

7.18 A person thought to be suffering from mental disorder should be detained in a hospital if possible. Only in exceptional cases would a police station be the most appropriate place for them to be examined and assessed.

7.19 Every effort should be made to ensure that a police station is only used where it is absolutely necessary to provide short-term containment, for example, if the person is considered too violent for the available hospital, or they pose a high risk to other patients or staff.

7.20 Save in certain circumstances, it is not acceptable for a police station to be the first option as a
place of safety, or an automatic option in cases where more suitable accommodation is not immediately available.

7.21 In choosing the place of safety, the professionals should consider the impact that the proposed place of safety may have on the person held and on the examination and interview. Therefore, a police station should be used either in the exceptional circumstances outlined above or when it is considered the safest option for the person, other patients or staff.

7.22 Where someone is removed to a place of safety by the police under section 136, the following are recommended:

- If the place of safety is a hospital, the police should make immediate contact with the hospital and the LSSA before arrival. This will allow the hospital and the LSSA to make arrangements to receive the person and for the examination and interview to begin as soon as practicable.

- If a police station is to be used as the place of safety, health and social care agencies should be contacted to discuss supporting the care and welfare of the person while in police detention. Contact should be made quickly with the LSSA and the appropriate doctor (most likely the forensic medical examiner who works with the police). This will enable the examination and interview to begin as quickly as possible, and allow the professionals to consider a transfer to an alternative place of safety as soon as it is safe and appropriate.

- Agencies should work together to ensure no unnecessary delay in the examination and interview process.

7.23 Section 26 and schedule 2 of the Police and Criminal Evidence Act 1984 (PACE) preserves the power to remove under section 136(1) as a power of arrest. This allows for section 32 of that Act to apply which enables a police officer to search a person at a place other than a police station. This power also enables the removed person to be detained under section 136(2) of the Mental Health Act 1983 and for the custody officer to identify what items the detained person has in their possession.

Examination and interview

7.24 Wherever possible, the examination and interview should be carried out jointly by the doctor and AMHP. There may also need to be an appropriate adult present, particularly if the patient is a child. The examination should begin as soon as possible after arrival at the place of safety.

7.25 Local policies should ensure the doctor undertaking the examination is, wherever possible, approved under section 12(2) of the Act. If the examination has to be carried out by a doctor who is not approved, the reasons should be recorded.

7.26 If, in exceptional circumstances, the doctor has completed the examination before the AMHP arrives and concluded that the person is not mentally disordered within the meaning of the Act, the person can no longer be detained under section 136 and should be immediately released. If the doctor concludes that the person is mentally disordered within the meaning of the Act but does not need to be admitted to hospital, or the person agrees to informal admission, the person should still be seen by an AMHP.

7.27 A consultant psychiatrist in learning disabilities and an AMHP with special experience in learning disabilities should make a joint assessment if it appears the detained person has a learning disability.

7.28 Similarly, if the detained person is under 18, or is known to have only recently moved into adult mental health services, a consultant psychiatrist in child and adolescent mental health services (CAMHS) and an AMHP with special experience in CAMHS should carry out an assessment together.

7.29 The role of the AMHP includes:

- interviewing the person
- contacting any relevant carers, relatives and friends
• finding out if the person has a psychiatric history, through collaboration with other professionals.

7.30 The AMHP should consult the doctor about any arrangements that might need to be made for the person’s treatment or care, and the AMHP should:

• consider any possible alternatives to admission to hospital
• or make arrangements for compulsory admission to hospital
• or make any other necessary arrangements.

Treatment of a person removed to a place of safety
7.31 Parts 4 and 4A of the Act, do not apply to someone detained under section 135 or 136. In other words, they are in exactly the same position in respect of consent to treatment as patients who are not detained under the Act (see also chapter 16).

Transfer between places of safety
7.32 As a result of changes made by the Mental Health Act 2007, the Act now allows for the person to be transferred between places of safety before the end of the maximum 72-hour period. The maximum period of detention begins from the time of the person’s arrival at the first place of safety; this cannot be extended if the person is transferred to another place of safety.

7.33 In the exceptional circumstances where the place of safety is a police station, this should be for as short a time as possible and transfer to a more appropriate place made as quickly as possible.

7.34 The person may be taken to the second or subsequent place of safety by a police officer, an AMHP or a person authorised by either the officer or the AMHP. Matters to be considered in transferring the detained person under these provisions are set out in chapter 9 of this Code.

Information for people detained under section 136
7.35 If someone has been removed to a place of safety under section 136, they are entitled to have another person, of their choice, informed of the removal and of their whereabouts.

7.36 If the place of safety is a police station, the person has a right of access to legal advice. The conditions of detention and treatment of the person must be in accordance with PACE Code C (paragraph 1.10). This requires, among other things, that the person must be told their rights and entitlements orally and in writing. Although section 132 of the Mental Health Act 1983 would not apply to someone in police detention, local policies should require that the same information is given to the person on their arrival as would be given to them if the place of safety were a hospital.

7.37 If the place of safety is a hospital, the hospital managers must ensure that the provisions of section 132 of the Act are complied with. They must also provide access to legal advice if requested.

7.38 As soon as detention in a place of safety under section 136 ends, the individual must be informed. Where they are free to leave they must be advised of this promptly and clearly.

Making ‘necessary arrangements’
7.39 After the examination and interview, the doctor and the AMHP are jointly responsible for considering if any arrangements are necessary to provide for the person’s care and treatment needs.

7.40 Where compulsory admission is indicated and hospital is the place of safety, the person should be admitted under section 2 or 3 of the Act. A person detained under section 136 should not have their detention extended by use of sections 5(2) or 5(4) of the Act.

7.41 If the police station is the place of safety, compulsory admission to hospital should be under section 2 or 3 as appropriate. It is unlikely that section 4 would be appropriate if there was an urgent need to secure the transfer of the patient to hospital, as the powers of transfer between places of safety should be used.
7.42 If the patient is on SCT and compulsory admission is required, the community treatment order should be revoked.

**Record keeping**

7.43 A record of the person's time of arrival at the place of safety should be made immediately. If the person is later transferred to an alternative place of safety, this should be recorded and the information about their original time of arrival passed to the new place of safety.

7.44 Records should also be made of any visitors to the person detained in the place of safety, the purpose of the visit, any interventions necessary and requests made by the person.

7.45 A record should be made of the time the period of detention under section 136 comes to an end, and the outcome of the examination and interview.

7.46 These records should be subject to monitoring as part of the local policy arrangements.
Annex B – Further reading


National Policing Improvement Agency (2010) Guidance on Responding to People with Mental Ill Health or Learning Disabilities

Royal College of Psychiatrists (2011) CR159: Standards on the use of Section 136 of the Mental Health Act 1983 (England and Wales)

### Annex C – Glossary of key terms and abbreviations

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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<tbody>
<tr>
<td><strong>The 1983 Act</strong></td>
<td>Unless otherwise stated, the Mental Health Act 1983</td>
</tr>
<tr>
<td><strong>Approved clinician</strong></td>
<td>A mental health professional approved by the Welsh Ministers (or the Secretary of State) to act as an approved clinician for the purposes of the 1983 Act. In practice, Betsi Cadwaladr University Local Health Boards take these decisions on behalf of the Welsh Ministers. Some decisions under the 1983 Act can only be undertaken by people who are approved clinicians; a responsible clinician must be an approved clinician.</td>
</tr>
<tr>
<td><strong>Approved mental health professional</strong></td>
<td>A professional with training in the use of the 1983 Act, approved by a local social services authority to carry out a number of functions under the 1983 Act.</td>
</tr>
<tr>
<td><strong>AMHP</strong></td>
<td>Approved mental health professional</td>
</tr>
<tr>
<td><strong>Assessment</strong></td>
<td>Examining a patient to establish whether the patient has a mental disorder and, if they do, what treatment and care they need. It is also used to mean examining or interviewing a patient to decide whether an application for detention or guardianship should be made.</td>
</tr>
<tr>
<td><strong>Child (or children)</strong></td>
<td>A person under the age of 16</td>
</tr>
<tr>
<td><strong>Child and Adolescent Mental Health Services (CAMHS)</strong></td>
<td>Specialist mental health services for children and adolescents. CAMHS covers all types of provision and intervention - from mental health promotion and primary prevention and specialist community-based services through to very specialist care, such as that provided by in-patient units for children and young people with mental disorder.</td>
</tr>
<tr>
<td><strong>Community treatment order (CTO)</strong></td>
<td>Written authorisation (on a prescribed form) for the discharge of a patient from detention in hospital on to supervised community treatment.</td>
</tr>
<tr>
<td><strong>Convey (and conveyance)</strong></td>
<td>Transporting a patient under the 1983 Act to hospital (or anywhere else), compulsorily if necessary.</td>
</tr>
<tr>
<td><strong>Doctor approved under section 12 (also ‘section 12 doctor’)</strong></td>
<td>A doctor who has been approved by the Welsh Ministers (or the Secretary of State) under the 1983 Act as having special experience in the diagnosis or treatment of mental disorder. In practice, Betsi Cadwaladr University Local Health Boards take these decisions on behalf of the Welsh Ministers. Some medical recommendations and medical evidence to courts under the 1983 Act can only be made by a doctor who is approved under section 12. Doctors who are approved clinicians are automatically treated as though they have been approved under section 12.</td>
</tr>
<tr>
<td><strong>Guardianship</strong></td>
<td>The appointment of a guardian to help and supervise patients in the community for their own welfare or to protect other people. The guardian may be either a local social services authority (LSSA) or someone else approved by the LSSA (a so-called ‘private guardian’).</td>
</tr>
<tr>
<td><strong>Independent hospital</strong></td>
<td>A hospital which is not managed by the NHS.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Informal patient</td>
<td>Someone who is being treated for mental disorder in hospital and who is not detained under the 1983 Act; also sometimes known as a voluntary patient</td>
</tr>
<tr>
<td>Local social services authority (LSSA)</td>
<td>The local authority (or council) responsible for social services in a particular area of the country</td>
</tr>
<tr>
<td>Mental disorder</td>
<td>Any disorder or disability of the mind; as well as mental illness, it includes conditions like personality disorders, autistic spectrum disorders and learning disabilities</td>
</tr>
<tr>
<td>PACE</td>
<td>Police and Criminal Evidence Act 1984</td>
</tr>
<tr>
<td>Part II</td>
<td>The Part of the 1983 Act which deals with detention, guardianship and supervised community treatment for civil (i.e. non-offender) patients. Some aspects of Part 2 also apply to some patients who have been detained or made subject to guardianship by the courts or who have been transferred from prison to detention in hospital by the Secretary of State for Justice under Part 3 of the 1983 Act.</td>
</tr>
<tr>
<td>Patient</td>
<td>A person who is, or appears to be, suffering from mental disorder. The use of the term is not a recommendation that the term ‘patient’ should be used in practice in preference to other terms such as ‘service user’, ‘client’ or similar. It is simply a reflection of the terminology used in the 1983 Act itself.</td>
</tr>
<tr>
<td>Place of safety</td>
<td>A place in which people may be temporarily detained under the 1983 Act. In particular a place to which the police may remove a person for the purpose of assessment under section 135 or 136 of the 1983 Act. (A place of safety may be a hospital, a residential care home, a police station, or any other suitable place)</td>
</tr>
<tr>
<td>Supervised community treatment</td>
<td>Arrangements under which patients can be discharged from detention in hospital under the 1983 Act but remain subject to the 1983 Act in the community rather than in hospital. Patients on SCT are expected to comply with conditions set out in the community treatment order (CTO) and can be recalled to hospital if treatment in hospital is necessary again.</td>
</tr>
<tr>
<td>Welsh Ministers</td>
<td>Ministers in the Welsh Government</td>
</tr>
<tr>
<td>Young person</td>
<td>A person aged 16 or 17</td>
</tr>
</tbody>
</table>
Annex D – Applying for and executing a warrant under section 135 of the 1983 Act

The following guidance is given in the National Policing Improvement Agency Guidance on Responding to People with Mental Ill Health or Learning Disabilities, published in 2010. It is reproduced here with the kind permission of the Association of Chief Police Officers.

6.8.7 Applying for a Section 135(1) Warrant

Although it is the responsibility of the AMHP to apply to the court for a section 135(1) warrant under the MHA 1983, the police can increase the likelihood of the warrant being granted by providing information to help construct a report to magistrates in support of the application. Topics could include:

**Subject**
- Show full details.

**Grounds**
- What information is known to demonstrate that this subject has been violent, has threatened violence, has self-harmed or absconded or attempted to abscond?
- What information is known to indicate that other people likely to be present on the premises may increase these risks or be violent themselves?
- What causes you to believe that the above risks apply, for example, recent information from contact with the person, the person’s, family, neighbours or friends?
- What other information is known that highlights further areas of risk, for example, the person is known to carry or use weapons?
- In light of the above risks, set out that a warrant is sought for the following reasons and quote all that apply:
  - a warrant will allow the person to be restrained or contained in an area of the premises, thereby preventing the person entering other areas of the property where access to balconies/weapons may be obtained (refer to R Regina (Munjaz) v Mersey Care NHS Trust and Others; Regina (s) v Airedale NHS Trust and Others [2003] EWCA Civ 1036, [2004] QB 395);
  - a warrant will permit a degree of control of others within the premises to ensure the safety of everyone present, thereby reducing the risks highlighted earlier in this application (refer to the case of DPP v Meaden [2003] EWHC 3005 (Admin), [2004] 1 WLR 945, 953 and the case of Connor v Chief Constable of Merseyside Police (2006) EWCA Civ 1549 [2007] HRLR 6);
  - in the event of attempting to abscond or self-harm, a warrant will allow immediate removal of that person.

**Other considerations**
- Where it is expected that consent to entry will be granted – particularly in the case of shared premises where a co-occupier permits access – point out to the magistrates in the application that a warrant is not being sought to gain entry but to permit the management of the risks highlighted that cannot safely be managed without a warrant.
- It could also be pointed out that if violence occurs and a warrant is not available, the police would need to detain for a breach of the peace or a criminal matter. This would mean the service user would be taken immediately to a police station, which is a less suitable environment and would delay any mental health assessment.

6.8.8 A Section 135(2) Warrant
A warrant under section 135(2) allows the police to enter and take someone already liable to be detained (for example, someone who has gone absent without leave (AWOL) from hospital). This warrant can be obtained by a constable or someone else authorised by the MHA to take a patient to any place or to retake a patient. In practice this could be, for example, a member of staff from the hospital where the person went missing.

When an application under section 135(2) is made (eg, for entry to retake an AWOL patient), it is necessary to satisfy the court that entry has been refused or refusal can be anticipated.

6.8.9 Executing Section 135 Warrants

According to section 135(4) MHA 1983:

- When executing a warrant issued under section 135(1) a constable must be accompanied by an AMHP and by a registered medical practitioner;

- When executing a warrant issued under section 135(2) a constable may be accompanied by a registered medical practitioner.

The law, therefore, allows the officer to be accompanied by someone with the power to retake the patient, and good practice is that they should be accompanied by such a person.
Annex E – Patient information leaflets for section 136


**Why am I in hospital?**
You have been brought to this hospital by a police officer so that you can be seen by a doctor and an approved mental health professional. You can be kept in this way because of section 136 of the Mental Health Act 1983. This means that the police officer who brought you here feels that you may have a mental disorder for which you must be in hospital.

**How long will I be here?**
You can be kept here for 72 hours (three days) so that you can be seen by a doctor and an approved mental health professional. If they agree you need to remain in hospital another doctor will be called. You must not leave during this time unless a doctor tells you that you may. If you try to go, the staff can stop you, and if you leave you can be brought back.

If the doctor and an approved mental health professional have not seen you by the end of the 72 hours, you will be free to leave, but you may decide to stay on a voluntary basis. If you do want to leave, please talk to a doctor first.

**What happens next?**
When the doctor and an approved mental health professional have seen you, they may say that you need to stay in hospital for a longer time. They will tell you why and for how long it is likely to be, and you will be given another leaflet to tell you what can happen. If they decide that you do not need to stay, someone will talk to you about what other help you should have.

**Can I appeal?**
No. You cannot appeal against the decision to detain you in hospital under section 136.

**Will I be given treatment?**
The approved clinician in charge of treatment will tell you about any treatment he or she thinks you need. Only in special circumstances, which would be explained to you, can you be given treatment you do not want.

**How do I complain?**
If you want to complain about the way you are being treated in hospital, you should speak to the person in charge or the ward, or a nurse or social worker. If you are not happy with the answer you may write to the Hospital Managers. You can write to the Managers at the following address: [insert here]

If you are not happy with the Managers' reply, you can ask the Review Service for Mental Health to help. The Review Service was set up to make sure that the mental health law is used properly and that patients are cared for properly while they are in hospital.

You can write to them at:
- Review Service for Mental Health
- Healthcare Inspectorate Wales
- Bevan House
- Caerphilly Business Park
- Van Road
- Caerphilly CF83 3ED

Or you can telephone: 029 2092 8858
Or you can fax: 029 2092 8904
or you can speak to a Reviewer when they visit. The ward manager can tell you the date of the next visit.

You can also write to the Review Service after you have left the hospital.

**Letting your nearest relative know**
A copy of this leaflet will be given to your nearest relative who we understand to be: [insert here]

If you do not want the person mentioned above to receive a copy of this leaflet please tell the person in charge of the ward, or your responsible clinician, or the Hospital Managers.

Your nearest relative will have certain set rights under the Mental Health Act 1983. They include:
- The right to ask for you to be admitted to hospital for an assessment or treatment;
- The right to ask for you to be discharged.

For more information about the role of the nearest relative and what rights they have please ask for a copy of the nearest relative leaflet.

**Changing your nearest relative**
If you do not think this person is suitable to be your nearest relative, you can apply to the County Court for someone else to be treated as your nearest relative instead. The hospital staff can give you a leaflet that explains this.

**Code of Practice for Wales**
The Code of Practice for Wales gives advice to staff about the Mental Health Act 1983. They have to think about what the Code says when they take decisions about your care. You can ask to look at a copy of the Code or you can ask for a copy of the ‘Peace of Mind’ booklet on the Code of Practice for Wales.

**Further information and help**
If there is anything you do not understand about your care and treatment, a member of staff will try to help you. Please ask a member of staff to explain if there is anything in this leaflet you do not understand or if you have other questions that this has not answered.
Annex F – Further information

For further information in relation to this guidance, please contact:

Mental Health & Vulnerable Adults Division
Welsh Government
Cathays Park
Cardiff CF10 3NQ

Email: mentalhealthandvulnerablegroups@wales.gsi.gov.uk
Annex G –Section 136 Form
Record of removal of a suspected mentally disordered person to a place of safety under section 136 of the Mental Health Act 1983

Personal Details

Name

Address

Date of birth

Ethnicity

Gender

Preferred language

Person was removed from a public place, namely

and taken to:
tick one and name

Hospital

Police station

Other

Detaining officer
(including collar number)

Police station

Time person is detained

Date person is detained

Time

Date

Person accepted at first place of safety

Section expires
Please enter brief details of the circumstances that led up to the Officer detaining the person under section 136

The following considerations may assist your decisions in using section 136 to detain an individual who appears to have a mental disorder in a public place and is in need of immediate care or control.

- The person may be engaging in irrational conversation or behaviour.
- The person may be talking about seeing things or hearing voices which you cannot see or hear.
- The person may be putting themselves in danger, for example walking into the path of moving traffic or on railway lines.
- The person may be engaging in threatening behaviour towards others for no obvious reason.
- The person may be threatening or engaged in self harm.
- The person may be threatening or attempting suicide.
- The person may be removing clothing for no apparent reason.
- The person may be confused or agitated or unresponsive to others.
- There may be an immediate risk of harm through perhaps assaults on others or self harm.

At the time of being detained was the person
Enter Yes or No

Note that although an individual may be intoxicated, that is not sufficient grounds on its own to indicate that a health based facility should not be used as a place of safety.
### Place of Safety

<table>
<thead>
<tr>
<th>Time of arrival at 1st place of safety</th>
<th>Date</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Rights explained?</th>
<th>Person subject to criminal investigation?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Y/N</td>
<td>Y/N</td>
</tr>
</tbody>
</table>

**Who explained the person’s rights to them?**

Name and signature

<table>
<thead>
<tr>
<th>Time AMHP informed of detention</th>
<th>Time Doctor informed of detention</th>
</tr>
</thead>
</table>

If transfer to another Place of Safety is required then enter details in table below.

<table>
<thead>
<tr>
<th>Date</th>
<th>Time of transfer</th>
<th>Next place of safety</th>
<th>Reason for transfer</th>
<th>Print and Sign</th>
</tr>
</thead>
<tbody>
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</tbody>
</table>

**THIS FORM MUST ACCOMPANY THE DETAINED PERSON WITH COPIES RETAINED BY THE POLICE AND THE LOCAL HEALTH BOARD**
**Assessment**

<table>
<thead>
<tr>
<th>AMHP</th>
<th>Doctor</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
<tr>
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</tr>
</tbody>
</table>

**Outcome of assessments**

- [x] Admitted voluntarily to hospital
- Admitted to hospital under section 2 of the Mental Health Act 1983
- Admitted to hospital under section 3 of the Mental Health Act 1983
- Released from section 136 referred to community services
- Released from section 136 no mental disorder
- Other

Detention under section 136 ended at (time) on (Date)

Any other issues

**Monitoring**

Received at Mental Health Act Department by:

<table>
<thead>
<tr>
<th>Name</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**THIS FORM MUST ACCOMPANY THE DETAINED PERSON WITH COPIES RETAINED BY THE POLICE AND THE LOCAL HEALTH BOARD**
Cofnod o symud person yr amheuir bod ganddo anhwylder meddyliol i fan diogel o dan adran 136 o Ddeddf Iechyd Meddwl 1983

**Manylion Personol**

<table>
<thead>
<tr>
<th>Enw</th>
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</table>

<table>
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<tr>
<th>Cyfeiriad</th>
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</table>

<table>
<thead>
<tr>
<th>Dyddiad geni</th>
<th>Rhyw</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Ethnigrwydd</th>
<th>Cyfeirnod Dalfa (lle bo’n berthnasol)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Dewis iaih</th>
</tr>
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</table>

<table>
<thead>
<tr>
<th>Cafodd y person ei symud o le cyhoeddus, sef</th>
</tr>
</thead>
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ac aed á’r person i:

ticiwch un, a rhowch enw’r lle

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<tr>
<th>Ysbyty</th>
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<table>
<thead>
<tr>
<th>Gorsaf heddlu</th>
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</thead>
</table>

<table>
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<tr>
<th>Arall</th>
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</thead>
</table>

<table>
<thead>
<tr>
<th>Swyddog cadw (gan gywnwys rhif coler)</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Gorsaf heddlu</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Amser cadw’r person</th>
<th>Dyddiad cadw’r person</th>
</tr>
</thead>
</table>

**Amser**

<table>
<thead>
<tr>
<th>Amser</th>
<th>Dyddiad</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Derbyn y person yn y man diogel cyntaf</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Terfyn y cyfnod cadw</th>
</tr>
</thead>
</table>
Yn gryno, rhowch fanylion yr amgylchiadau a arweiniodd at y Swyddog yn cadw’r person o dan adran 136

Mae’n bosibl y bydd yr ystyriaethau canlynol o gymorth ichi wrth benderfynu ar ddefnyddio adran 136 i gadw unigolyn sy’n ymddangos fel pe bai ganddo anhwylder meddyliol mewn man cyhoeddus, ac sydd angen gofal neu reolaeth ar unwaith.

- Efallai y bydd y person yn siarad neu’yn ymddwyn mewn ffordd nad yw’n rhesymegol
- Efallai y bydd y person yn sôn am weld pethau nad ydych chi’n gallu eu gweld neu am glywed lleisiau nad ydych chi’n gallu eu clywed.
- Efallai y bydd y person yn rhoi ei hun mewn perygl, er enghraifft drwy gerdded o flaen traffig sy’n symud neu drwy fynd ar linell reilffordd.

- Efallai y bydd y person yn ddefnyddio adran 136 i gadw unigolyn sy’n ymddangos fel pe bai ganddo anhwylder meddyliol mewn man cyhoeddus, ac sydd angen gofal neu reolaeth ar unwaith.

- Efallai y bydd y person yn niweidio’i hun.
- Efallai y bydd y person yn rhoi ei hun mewn perygl, er enghraifft drwy gerdded o flaen traffig sy’n symud neu drwy fynd ar linell reilffordd.
- Efallai y bydd y person yn tynnu ei ddillad heb reswm amlwg.
- Efallai y bydd y person yn ddryslyd neu’n gynhyrfus, neu ddim yn ymateb i bobl eraill.
- Efallai y bydd risg bod niwed ar fin digwydd – o bosibl drwy i’r person ymosod ar eraill neu niweidio ei hun.

Pan gafodd y person ei gadw, a oedd yn
Rhowch ‘Oedd’ neu ‘Nac oedd’

<table>
<thead>
<tr>
<th>dioddef effaith cyffuriau?</th>
<th>dioddef effaith alcohol?</th>
</tr>
</thead>
</table>

Sylwer: er y gallai unigolyn fod dan ddylanwad cyffuriau neu alcohol, nid yw hynny’n ddigon o sail ar ei ben ei hun i ddweud na ddylai safle sy’n cynnig gofal iechyd gael ei ddefnyddio fel man diogel.

RHAID I’R FFURFLEN HON FYND GYDA’R PERSON A GEDWIR, A DYLLAI’R HEDDLU A’R BWRDD IECYHD LLEOL GADW COPI
<table>
<thead>
<tr>
<th>Dyddiad</th>
<th>Amser trosglwyddo</th>
<th>Man diogel nesaf</th>
<th>Rheswm dros drosglwyddo</th>
<th>Printiwch a Llofnodwch</th>
</tr>
</thead>
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</tbody>
</table>

Os oes angen trosglwyddo’r person i Fan Diogel arall, rhowch y manylion yn y tabl isod.
**Enw’r Meddyg a oedd yn bresennol**
ticiwch os oedd yn gymeradwy dan adran 12(2)

<table>
<thead>
<tr>
<th>Proffesiynol Iechyd Meddwl Cymeradwy (AMHP)</th>
<th>Meddyg</th>
</tr>
</thead>
<tbody>
<tr>
<td>Amser gweld y person</td>
<td></td>
</tr>
<tr>
<td>Amser gorffen yr asesiad</td>
<td></td>
</tr>
<tr>
<td>Unrhyw sylwadau</td>
<td></td>
</tr>
</tbody>
</table>

**Enw’r ail Feddyg a oedd yn bresennol**
ticiwch os oedd yn gymeradwy dan adran 12(2)

**Enw’r AMHP a oedd yn bresennol**
Enw’r oedolyn priodol (os defnyddiwyd un)

**Canlyniad yr asesiadau**

- Ei anfon i’r ysbyty o’i wirfodd
- Ei anfon i’r ysbyty dan adran 2 o Ddeddf Iechyd Meddwl 1983
- Ei anfon i’r ysbyty dan adran 3 o Ddeddf Iechyd Meddwl 1983
- Ei ryddhau o adran 136 a’i gyfeirio at y gwasanaethau cymunedol
- Ei ryddhau o adran 136 - dim anhwylder meddyliol

**Cyfnod cadw dan adran 136 wedi dod i ben am (amser)**

**Monitro**

Derbyniwyd yn Adran y Ddeddf Iechyd Meddwl gan:

<table>
<thead>
<tr>
<th>Enw</th>
<th>Dyddiad</th>
</tr>
</thead>
</table>

**Llofnod**

RHAID I’R FFURFLEN HYNDYA’R PERSON A GEDWIR, A DYLAI’R HEDDLU A’R BWRDD IECHYD LLEOL GADW COPI