Mental health – detention

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This section provides information on the law that provides protections for people with mental ill health, vulnerabilities and disabilities in society. It focuses on the role of the police, the use of police powers under the **Mental Health Act 1983 (MHA 1983)** and the relationship of those powers to multi-agency responses.

MHA 1983 provides powers to police, health and social care practitioners so that they may seek and provide appropriate assessment and treatment of those suffering from a mental disorder (as defined within the **MHA s 1**).

Note: The MHA s 1 states that a person with learning disability shall not be considered (by reason of that disability) to be suffering from mental disorder or requiring treatment in hospital for mental disorder unless that disability is associated with abnormally aggressive or seriously irresponsible conduct on their part.

Mental Health Act 1983 hospital admission provisions

The following sections of **MHA 1983** refer to admitting and treating people who are mentally disordered at hospital. These sections of the Act provide powers to approved mental health professionals (AMHPs, pronounced ‘amps’) rather than to the police. A working knowledge of these provisions will, however, support and inform police decision making and problem solving when responding to mental health-related incidents and calls for assistance.

Sections 2, 3 and 4 of the MHA 1983, are provisions to detain a person in hospital after an assessment. Where entry needs to be forced to private premises in order to undertake that assessment, a warrant under the MHA s 135(1) is required.

Sectioning

Detaining people who are mentally disordered under MHA 1983 is often referred to as sectioning or being sectioned. These terms are informal rather than legal language and this wording is not found in the Act itself. Sectioning relates to the decision of an AMHP and either one or two doctors (referred to as registered medical practitioners) to detain someone in hospital.

It is the AMHP's responsibility to make decisions about whether someone is sectioned by first exploring whether alternatives to hospital admission would be sufficient to ensure care for someone. Where this is not possible, an AMHP may make arrangements for someone to be admitted to hospital.

As with other medical issues, people may consent to enter hospital, and those who do are not sectioned once admitted. Where a person does not consent or cannot consent to admission, and where the AMHP has medical support from the doctor(s) involved, they make an application for that person's admission under the Act. It is the point at which the AMHP completes their application for admission that someone becomes sectioned.

Section 2 – Admittance to hospital for assessment

Section 2 of the MHA 1983 may be used by an AMHP to allow a person thought to be suffering from a mental disorder (where it is in the interests of their own health or safety, or the protection of other people) to be admitted to hospital as a patient. Hospital admission may last for up to 28 days for assessment of their condition and any treatment as deemed necessary.

The AMHP may make the application after they have received two medical recommendations from doctors involved, one of whom must be 'section 12 approved' and has a duty to consult the individual's 'nearest relative'. The nearest relative may also make the section 2 application themself.

Although the nearest relative cannot prevent an admission when it has been applied for by an AMHP, they do have the right to request a discharge from hospital.

Section 12 approved doctors

A doctor who is approved under **the MHA s 12** must have had specialist training and experience of patients with a mental disorder. A section 12-approved doctor is typically a psychiatrist, however

many GPs and some other doctors are also qualified in this way.

Detention under the MHA 1983 s 2 is not renewable. At the end of 28 days, the patient must either be discharged from hospital, further detained under another section of the Act or consent to remain in hospital on a voluntary basis. Patients have a right to appeal to a mental health tribunal to challenge detention under this section. A mental health tribunal is a court of law, convened by Her Majesty's Courts Service.

Section 3 – Admission for treatment

People who require treatment for a mental disorder may be admitted to hospital under section the MHA 1983 s 3. Admission lasts initially for up to six months. The application must be made by an AMHP based on two medical recommendations. One of those must be by a doctor who is approved under s 12. The nearest relative has a legal right to object to admission under the MHA 1983 s 3, and this objection can only be dismissed if an AMHP successfully makes an application to the county court.

Admission under this section can be extended by a second six-month period and then by further periods of twelve months as required. In theory, a MHA 1983 s 3 patient could remain in hospital for many years under this provision but they do have a right to challenge detention in a mental health tribunal, and an automatic tribunal review of detention occurs at certain points.

Section 4 – Emergency admission to hospital when only one doctor is available

Admission to hospital under **the MHA 1983 s 4** is an emergency admission provision that may only last 72 hours. When applying for admission under s 4, an AMHP (or nearest relative) requires one medical recommendation from a section 12-approved doctor. This provision may only be used in cases of urgent necessity where the wait for a second doctor would involve undue delay.

Section 4 ceases to have effect after the 72 hours has expired or once a second medical recommendation is made for admission under s 2. Therefore, a patient initially admitted by an AMHP and doctor under s 4 may subsequently become a s 2 patient when a second medical recommendation is received.

Section 5 – Holding powers

Under the **MHA 1983 s 5**, any doctor or any specialist nurse can detain a person who is already a hospital inpatient for a brief period of time, in order to allow for a MHA 1983 assessment.

All doctors and some nurses have an authority under the MHA 1983 s 5 to apply a ‘holding power’ to hospital inpatients where they believe a patient is in need of assessment for detention under the Act. A doctor’s authority (under the MHA 1983 s 5(2)) allows detention for up to 72 hours.

A nurse of the prescribed class, which usually means a mental health, learning disabilities or child/adolescent mental health nurse, may hold a patient for up to six hours (under the MHA 1983 s 5(4)).

These powers cannot be used in hospital emergency departments (ED) because the powers relate only to inpatients. Where officers are called to inpatient hospital wards and asked to consider implementing the MHA 1983 s 136, they should bear in mind paragraph 16.20 of the **MHA 1983 Code of Practice**. This requires nurses and doctors to consider holding powers for inpatients, ahead of calling the police to a situation of inpatient care.

If a patient absconds while subject to a holding power, an AMHP, constable or anyone else authorised by the hospital may return them to the hospital at any time during the remainder of that period. Where someone absents themself from detention one hour after being held (under the MHA 1983 s 5(2)), they may be re-detained at any time within the remaining 71 hours. After this period, other legal powers must be relied upon to intervene, such as the MHA 1983 s 135 or s 136.

Section 6 – Delegated power to detain and convey

Once an AMHP has made an application for a person’s admission as an inpatient under any of the above provisions, the MHA 1983 s 6 provides authority for them to detain and convey the patient to hospital. The patient is liable to be detained when the application is completed by the AMHP and that person is then, by virtue of the MHA 1983 s 137, in the AMHP’s legal custody (sectioned). Reasonable force may be used (by the AMHP) to detain and convey the patient as necessary and proportionate.

The AMHP may delegate their authority under s 6 to others. This would typically be to a police officer and/or paramedic who would then also have the right to use reasonable force to detain and convey the patient to hospital. Nothing obliges another person to accept the AMHP’s delegated authority under s 6. Once authority has been delegated to another person (a police officer or

paramedic), decisions about conveyance and the use of restraint lie with the person with delegated authority.

For further operational considerations relevant to the moving and supervising a patient, see **Transfer and supervision**, and **Moving and transporting detainees**.

Sections 35, 36 and 38 – Re-detention of patients subject to hospital orders

Section 35 and **section 36** of the MHA 1983 allow patients who have been charged with a criminal offence to be remanded to hospital for treatment and psychiatric reports (s 35) or for treatment pending trial (s 36).

Section 38 allows courts to impose an interim hospital order following conviction in court. This allows clinicians to form a view as to whether a full hospital order under s 37 would be an appropriate disposal for a defendant.

Where a person absconds under any of these three forensic sections, there are particular powers of re-detention which differ from other AWOL patients. **Section 35(10)**, **s 36(8)** and **s 38(7)** allow patients detained under these sections to be re-detained by police officers, who then have a duty to return the person to the court in which the relevant order to detain them in hospital was granted.

Section 18 of the MHA 1983 does not apply to those patients detained under s 35, s 36 or s 38 and a warrant under **s 135(2)** would still be required to force entry to any premises, unless officers have grounds to enter under the **Police and Criminal Evidence Act (PACE) s 17** or common law.

For further information on the MHA s 18 see **AWOL Patients**.

Police involvement

Police vehicles should only be used when it is the most appropriate method of transport.

Paragraph 17.14 of the **MHA Code of Practice** for England indicates that the police may be involved in moving the patient to suitable healthcare facilities if they are likely to be ‘violent or dangerous’.

Paragraph 17.13 of the **MHA Code of Practice** for England, also states that it may be appropriate for the police to assist with patients who are ‘unwilling to be moved’.

Paragraph 17.17 of the **MHA Code of Practice** for Wales provides a list of factors that should guide this decision.

Forces should consider how they assess the level of risk associated with a detainee’s violent or dangerous behaviour. They should clarify and promote a joint understanding of the local procedure in local multi-agency protocols and training with healthcare partners and the ambulance service.

Police powers to enter and detain

When responding to incidents that require police officers to enter a person’s home (or place to which the public do not have access) and detain a person who is mentally disordered or vulnerable for assessment under the MHA 1983, the police are able to use two main powers:

Section 17 of the Police and Criminal Evidence Act 1984 – saving life or limb

Under section 17 of the PACE, a police constable may enter and search any premises for the purpose of saving life or limb or preventing serious damage to property. Therefore, in order to force entry to premises to re-detain an AWOL patient, the police can only use PACE s 17 if they have a genuine belief that life is imminently at risk.

Outside these circumstances, a warrant under **the MHA 1983 s 135(2)** is required.

Case law

In the case of **D’Souza v DPP** (Court of Appeal, 1992, 1 WLR 1073) a police force was sued after officers sought to rely on PACE s 17 to force entry where the patient’s life was not at risk. The court stated that a warrant under section 135(2) would be required.

In 2010 the case of **Syed v DPP** (Court of Appeal, 2010, EWHC 81 (Admin)) again challenged any justification to enter private property when the reason for their entry was a concern for someone’s welfare. The court ruled that this is altogether too low a threshold and that officers need to have reasonable grounds to believe that life or limb is literally and imminently at risk.

Section 18 of the Mental Health Act 1983 – power to re-detain an AWOL patient

Section 1 of the MHA 1983 provides a power for any patient absent without leave to be re-detained and returned to the hospital by:

- an AMHP
- anyone on the staff of the hospital
- a constable
- anyone authorised (in writing) by hospital managers

Entry cannot be forced to a premises for this purpose and a warrant under **the MHA 1983 s 135(2)** would be required if consent to enter the premises is not provided.

The authorised professional practice (APP) on **AWOL patients** provides additional guidance on police powers under the MHA 1983:

- s 138 (re-detention of absconded patients)
- s 17 leave of absence from hospital (patients that fail to return)
- s 18 power to re-detain an AWOL patient

Warrants

Where entry to premises cannot be obtained without using force, a warrant is required from a magistrates' court under **the MHA 1983 s 135(2)**. A magistrate may issue a warrant following application by an AMHP, a constable or anyone authorised (in writing) by relevant hospital managers in order to detain or re-detain someone who is liable to be detained or absent without leave, as defined in **the MHA s 18(1)**. Most assessments conducted under the MHA 1983 in people's homes, are not conducted with a warrant, however, and do not involve the police.

Section 135 of the MHA 1983 allows two different warrants to be issued in connection with people experiencing mental disorder on any specified premises – see **s 135(1) and s 135(2)**.

Section 135(1) – Warrant to enter and remove to a place of safety

Section 135(1) of the MHA 1983 relates to entering premises to search for people who are to be assessed under MHA 1983 for potential admission to hospital.

Warrants may be issued by a magistrate under s 135(1) following an application by an AMHP where there are reasonable grounds to suspect that a person thought to have a mental disorder is being or has been ill-treated, neglected or kept otherwise than under proper control, or, if living alone, is unable to care for themself.

Section 135(1) then allows a constable (who must be accompanied by an AMHP and a doctor) to enter the premises specified, if need be by force (s 135(4)), in order to search for the individual named in the warrant. The warrant further authorises the officer to remove that person to a place of safety, for consideration of whether to make an application for their admission to hospital under the MHA 1983.

The warrant authorises two legal powers for police officers:

- entry to the premises, if need be by force
- removal of the person concerned to a place of safety

A common mistake

A potential misconception about s 135(1) warrants is that they may not be issued by magistrates unless the AMHP has already attempted to gain entry to the premises, or unless there is reason to anticipate that access will be refused. This is not correct for s 135(1) warrants and only applies to s 135(2) warrants.

Operational considerations

The warrant may be issued even if it is suspected that only one of the powers will be necessary. It allows entry:

- by permission, (by someone with capacity to consent to granting access)

and

- by force

It allows assessment within the premises (if the person consents to assessment) and for removal to a place of safety if the assessment would be more appropriately conducted outside the home – see **Transfer and supervision**.

Section 135(2) – Warrant to enter and remove an absent patient

Section 135(2) of the MHA 1983 allows a warrant to be issued by a magistrate on application by an AMHP, a constable or anyone authorised by hospital managers, in order to re-detain someone who is 'liable to be detained' or already 'absent without leave' (as defined in the **MHA 1983 s 17**). The person applying for the warrant should be the professional with the most relevant and accurate information in that case.

Although there is no legal necessity for an AMHP and/or doctor to be present when a s 135(2) warrant is executed, s 135(4) states that an officer may be accompanied by a doctor or anyone authorised under the MHA 1983 to re-detain a patient.

Liable to be detained

The s 135(2) warrant can only be issued if access to the premises has already been attempted or if there is reason to anticipate that access would be refused.

This legal provision allows a constable to enter by force and search for the person named in the warrant to remove them to the relevant hospital.

Issue of a warrant for the recall of a patient to hospital

Section 42 of the MHA 1983 allows a patient who has been or is subject to a criminal justice process, who has been detained on a restricted hospital order (MHA 1983 s 37 or **s 41**), to be conditionally discharged to receive community care, sometimes with conditions and restrictions attached.

During this period of conditional discharge, patients are liable to be recalled to hospital by the secretary of state who may issue a warrant under **the MHA 1983 s 42(3)** ordering the recall. A warrant under this section is not a warrant of arrest for the purposes of **PACE s 17**. It will be usual for the police to be involved in this process, however, given that conditionally discharged patients

were, by definition, thought previously to have posed a risk of serious harm to the public.

Where entry needs to be forced in connection with this recall, a warrant under the **MHA 1983 s 135(2)** is required unless grounds exist under PACE.

Section 136 of the MHA – power to remove a mentally disordered person without a warrant

Under **the MHA s 136**, if a person appears to be suffering from a mental disorder and in immediate need of care or control, a constable may, if they think it's necessary to do so in the interests of that person or for the protection of others, remove the person to a place of safety or, keep the person at a safe place.

Section 136(1A) allows this power to be exercised in any public or private place other than:

- a house
- flat or room where that person, or another person lives
- any yard
- garden garage or outhouse that is used in connection with the house, flat or room, other than one used in connection with one or more houses, flats or rooms

The circumstances of people in hotel rooms or other forms of temporary accommodation, including how long they are staying there, need to be considered when assessing whether that place should be considered as where the person 'lives'. Although the legislation and guidance does not provide further clarification, concerns raised by a coroner (January 2020) caused the issue to be examined. Taking into account the views of the coroner, the agreed position between the Home Office, College of Policing and NPCC is that if a person was staying at a hotel for a night or short period this would not fall within subs 1A. However, if the person was staying in a hotel room on a more permanent basis (for example if they are housed there for an extended period by the local authority), this is likely to fall within subs (1A) and the police would not be able to exercise their s136 powers.

Relevant definitions

Mental disorder

Section 1 (2) of the MHA 1983 defines a mental disorder as any disorder or disability of the mind.

Places where s 136 may be exercised

Section 136 may be exercised in any public or private place except a private dwelling. This includes railway lines, work areas like offices or factories as well as A&E departments and in police custody, where the grounds in s 136(1) are satisfied. It excludes someone's front garden, unless that garden is shared with another dwelling, and circumstances where a vulnerable person is in another person's home without permission.

A place of safety

Section 135 (6) of the MHA 1983 defines a place of safety as:

- residential accommodation provided by a local social services authority under the Care Act 2014 **Part I** or the Social Services and Well-being (Wales) Act 2014 **Part IV**
- a hospital (as defined by this Act)
- a police station
- an independent hospital or care home for people who are mentally disordered
- any other suitable place

Police cells are not suitable places to detain people thought to have mental health problems. Under 18 years should not be detained in a police station as a Place of Safety, in any circumstances. Adults should only be used in exceptional circumstances. A person's condition may be exacerbated by being held in this environment.

Exceptional circumstances are defined in the Mental Health Act (Place of Safety) Regulations 2017. These exceptional circumstances include:

- the decision-maker is satisfied that the behaviour poses an imminent risk of serious injury or death, to that person or another person
- because of that risk, no place of safety other than a police station can reasonably be expected to detain that adult, and
- where the decision-maker is not an officer of the rank of inspector or above, an officer of that rank or above authorises that adults' removal to police station

Under Regulation 4, ongoing healthcare presence should be available and a healthcare check should be carried out every half an hour by a healthcare professional. Where the custody sergeant cannot ensure compliance with this requirement, they must arrange to transfer the person to another place of safety.

Exceptional circumstances

Officers should consider the decision with reference to the **national decision model**, and record the rationale in the custody record.

Case law

The **MS v UK, ECHR (2012) ECHR 804** case concluded that the police had violated **Article 3 of the European Convention on Human Rights** (prohibiting torture, and inhuman or degrading treatment or punishment) when a person was detained in a police cell under the **MHA 1983 s 136** for a prolonged period after it was identified that he was in urgent need of psychiatric treatment.

Although it was accepted that there was no intention by the police to degrade the subject, and that there were no prolonged physical or mental consequences, the violation had still occurred.

Where local protocols exist between police forces and healthcare service providers, it may be useful to consider including criteria and guidance that help determine which place of safety is appropriate to particular circumstances. Designating particular locations should not prevent officers making decisions outside that protocol, however, where individual circumstances make it the most appropriate choice in the interests of safety.

The decision to use section 136 of the MHA 1983

When considering whether it is necessary and appropriate to detain a person using the **MHA 1983 s 136**, police officers should use the **national decision model** to guide their approach.

The decision to use the MHA s 136 is a police decision, and should be based on all available information and intelligence, risk and threat assessment. It should also be based on a strategic approach that requires officers to always consider de-escalation and act in the least restrictive way to protect the safety and welfare of the individual, public and professionals concerned.

Where the use of the Mental Health Act s 136 is considered, officers should consult with a healthcare professional (where practicable), prior to detaining someone.

Officers may consult with any of the following types of professional:

- doctor
- nurse
- AMHP
- paramedic
- occupational therapist

During this consultation process, those that appear to have a mental vulnerability are under no obligation to remain with the officer. The Mental Health Act does not specify what form or content the consultation should take. The legal decision to detain remains with the officer, not the healthcare professional. The office may ask the healthcare professional to share information and opinion relevant to the formation of the officer's final judgement.

Forces should ensure that procedures consultation, including crisis metnal health care, or street triage, are known to officers

For further information on sources of information, communication, de-escalation and decision making see **Mental Vulnerability and illness**.

Repeated detention of an individual that does not lead to further mental health treatment should trigger a multi-agency case review. See **Multi-agency working** (**Introduction and strategic considerations**).

For further guidance see **Decision making** (**Mental Vulnerability and illness**).

Explanation of detention (avoid the use of 'arrest' terminology)

When it is necessary to detain any person, **PACE s 28** requires that the detainee must be told that they have been arrested and the grounds for the arrest as soon as is practicable. However, arrest or detention by the police is normally associated with suspicion of criminal behaviour, therefore, telling a person who is mentally vulnerable (detained under the MHA 1983), without any further explanation, that they have been arrested or are being detained may cause considerable additional distress. This is likely to be exacerbated if the person is taken to a police station instead of a more appropriate place of safety.

When using **the MHA 1983 s 136**, officers should make it clear to people that they will have to come with the police because of the officer's concern for their wellbeing, and that they have no choice in the matter.

Using professional judgement of the circumstances, the officer should explain to the individual in a considered and empathetic manner:

- why they are being removed under the MHA 1983 s 136
- where they are being taken to
- what is likely to happen

The caution

There is no requirement to caution a person detained under the MHA 1983 s 136 and officers should not do so.

Children and the use of Section 136 of the Mental Health Act 1983

Children must not be taken to a police station as a place of safety under the Mental Health Act 1983, regardless of whether the child has been detained under s 135 or s 136.

When responding to incidents involving children who are experiencing mental health problems or distress, the overriding consideration should always be the welfare of the child, ensuring protection from harm and access to assessment where appropriate.

Children of any age may be detained using the **MHA 1983 s 136**, and any person under 18 years of age may be taken into police protection using the **Children Act 1989 s 46**.

Where officers have the option to use both statutes, a police protection order (PPO) under the Children Act 1989 may be used, as this is more likely to ensure that the child is not unnecessarily institutionalised or stigmatised by the process. A PPO provides additional flexibility and does not require a police officer to make judgement as to whether a child is likely to be suffering from a mental disorder and 'in need of care and control'. A PPO may be used if a police officer 'has reasonable cause to believe that a child would otherwise be likely to suffer significant harm'.

There is no restriction on using a PPO in a home, so police officers may use a PPO to move a disturbed child who is at home, in the interests of their health and safety. The maximum duration of detention under a PPO is 72 hours whereas detention in a place of safety may only last 24 hours, in the first instance. During this time, officers are able to request that the child has access to all necessary assessments (including, if required, an assessment for detention under the MHA 1983 **s 2** or **s 3**, or a social care assessment).

For operational guidance on responding to concerns for a child and the detention of children (including under the MHA 1983) see:

- **Concern for a child** (APP on Major Investigation and public protection)
- **Children and young persons** (APP on Detention and custody)

Information about applying the MHA 1983 powers to children and young people (under the age of 18) is provided in the **MHA Code of Practice chapter 36** for England and the **MHA Code of Practice chapter 19** for Wales.

Calculating the period of detention

Detention in a place of safety under **the MHA 1983 s 135(1**) or **s 136** may last for a maximum of 24 hours. This time is calculated from the point at which the person arrives at the first place of safety to which they are removed. Paragraphs 16.26 (in England) and 16.46 (in Wales) of the respective MHA 1983 Code of Practice highlight a contradiction in guidance between England and Wales, however, paragraph 4.4 of the 2017 Guidance which accompanied the Policing and Crime Act 2017 amendments to the MHA resolves this and is fully agreed by the Welsh Assembly Government.

Extension of detention under s 135 and s 136 of the MHA

Where applicable, detention in a place of safety may extend beyond the initial 24 hours period. Detention up to 36 hours may occur if the condition of the person is such that it would not be practicable for the assessment of the person to be carried out before the end of 24 hours.

Where someone has been removed to a place of safety other than a police station, the decision to extend detention rests solely with the doctor conducting the examination under s 135 or s 136. Where a police station has been relied upon in exceptional circumstances, the decision must also

be authorised by an officer not below the rank of superintendent.

The extension may be used where the examination is delayed because of urgent medical attention in A&E, or to allow for a period of sobriety in someone temporarily affected by drugs or alcohol. The doctor may not extend detention because of difficulties in securing an AMHP or whilst awaiting the identification of a hospital into which a patient may be admitted.

Transfer to a health-based place of safety as a result of section 136 detention

When an officer detains an individual in a public place using their power under the MHA 1983 s 136, they must request an ambulance. The ambulance service is required to transport all s 136 detentions. If the individual is also being restrained due to their behaviour, this will be escalated to an immediate, high-priority response time as ambulance services recognise the increased risk this presents to the individual. This commitment is detailed in the **National Ambulance section 136 Protocol 2014** for England and supported by the **Crisis Care Concordat for Wales**.

It is for the paramedics to decide, having assessed the individual's health, whether the individual should go directly to the appropriate emergency department (ED) or to the place of safety (if they are different). Police custody should only be used in exceptional circumstances and the health needs of the individual must always come first.

It is the responsibility of the police to phone the relevant MHA 1983 s 136 suite to ensure that there is space for the individual. If there is not a space, the relevant mental health trust will inform police of where the ambulance is to take the individual.

- It is not a police responsibility to find an alternative place of safety and it is not appropriate for police officers to simply take the person to the nearest place of safety.

Alcohol and drug intoxication

Nothing in law prevents using the MHA 1983 s 136 in respect of someone who is intoxicated by drugs and alcohol. Officers should be wary of making a judgement that behaviour arises from a mental health problem, however, where the subject is known to have consumed a considerable quantity of alcohol or drugs.

Officers should consider using legal powers other than those under the MHA 1983 to detain intoxicated people unless there is objective information or intelligence that suggests that the person is experiencing a mental health crisis (for example, the person has a history of mental health problems, or they are at imminent risk of death or serious injury because of their own actions).

If a paramedic believes that an individual who is mentally vulnerable has a health risk due to drink and/or drugs, they are likely to recommend that the individual is taken to an ED in the first instance. If a person is legally detained under the MHA 1983 and safe, a health care professional may decide to delay assessment until the person is able to adequately engage and respond.

The **Mental Health Crisis Care Concordat (2014)** for England and the **Mental Health Crisis Care Concordat for Wales (2014)** make it clear that the presence of alcohol and/or drugs will not be a routine reason for a health-based place of safety to refuse to admit a mental health detainee. The concordats also state that it is inappropriate and unacceptable for healthcare staff to use breathalysers to support decision making. Forces should consider including plans for managing these issues in local multi-agency mental health response protocols.

See also guidance on managing and handling **drunk and incapable** people (namely, highly intoxicated) and those **under the influence of drugs or alcohol** in police custody.

Handover to the health based place of safety

On arrival at the health-based place of safety, the ambulance staff will complete a handover procedure based on the individual's health needs. Officers will then handover the individual, detailing the reasons for the s 136 detention. Where the vulnerability assessment framework (ABCDE/VAF tool) has been used, then this may provide a framework for this handover.

Officers should remain at the health-based place of safety until a handover has been completed. The length of time that officers remain with the detainee will depend on the circumstances and risks associated with the individual, however the police should not normally be expected to stay for longer than one hour (Royal College of Psychiatrists Guidance). This handover period should enable the health-based place of safety to become appropriately staffed.

If, during this process, a disagreement arises between police response officers and the duty senior nurse, this should be escalated to the relevant duty inspector or mental health liaison officer and a resolution reached according to agreed local protocols.

Lack of space or hospital beds

This is not an issue for police to resolve, and may be managed appropriately by police officers phoning ahead to agree the place of safety they are to attend. Bed space is only relevant when a MHA 1983 assessment has been completed at the health-based place of safety and the individual is being admitted either under the MHA 1983 or voluntarily. This issue cannot be resolved by the police, however.

Section 136 of the MHA 1983 detainees should not be turned away from the health-based place of safety for any of the following reasons:

- the individual detained lives outside of the relevant mental health trust boundaries
- the individual is of no fixed abode
- the individual is under 18 years of age
- lack of availability of beds
- the health-based place of safety is too busy (phoning ahead may prevent this)
- there is a guardianship order in place
- that the s 136 detention appears now to have been unlawful on the basis that the individual's health appears to have improved over time (lawful detention under s 136 relates to the individual's behaviour at the time of the detention, irrespective of whether they subsequently improve)

Police custody must not be used because of a 'lack of space/beds' and should only ever be used in exceptional circumstances.

Restraint

Although the word 'arrest' is not used in the MHA 1983 s 136, detention or removal under this section is a preserved power of arrest under **PACE Schedule 2** and therefore officers may use reasonable force. Officers should not use methods of restraint on people with mental ill health or vulnerabilities, however, unless absolutely necessary. They should reserve this for emergencies and circumstances in which the safety of the subject, the public, police officers and other professionals is at risk.

The **national decision model** has been designed to support appropriate and proportionate risk assessment. When control or restraint tactics are necessary, officers should follow the Personal

Safety Manual and local procedures on safe restraint to minimise the risk of harm.

For further information see **principal risk factors that can contribute to death during restraint**.

Police guidance on restraint

- **APP on Detention and Custody – Control, restraint and searches**
- Police Mental Health training resources, the Personal safety manual and associated personal safety training resources are available via **College Learn**
- The **Independent Advisory Panel (IAP) on Deaths in Custody** has published **common principles for safer restraint**

Hospital patients presenting healthcare management problems

If a call for police assistance is made concerning a patient who presents healthcare staff with management problems, police control room operatives and supervisors should consider the full circumstances leading to the call for the police, including the behaviour or threat that led to the call for assistance. If and where practicable, and to avoid improvising at the scene, partner agencies should meet before going to an address. This allows them to share information and intelligence, plan and agree the command structure and set up contingencies.

Is police deployment appropriate?

Police officers may be called to a hospital inpatient ward (or other location for detained and voluntary patients) in connection with one or more of the following requests:

- to restore control to a situation on the ward which has become dangerous for staff or patients
- to assist staff in restraining patients for various purposes under the MHA 1983
- to record and investigate allegations of crime

Pre-deployment considerations

Officers and staff should take the following factors into account when deciding whether police involvement might be appropriate.

- Whether healthcare staff trained in control and restraint are available and details of assistance that staff require from the police.
- The legal powers that healthcare staff are acting under.
- Whether healthcare staff are reporting a crime and how this may best be investigated.
- The risk of harm to the patient and others (including whether the patient has a weapon). This will include:
  - any known clinical risks that exist if the police restrain the patient (for example, drug or alcohol intoxication, claustrophobia or other known relevant fears that may result in the patient becoming upset, angry or traumatised by police intervention)
  - any other physical medical issues, including those that could be exacerbated if restraint is used
  - environmental risks presented by the hospital environment (for example, balconies, windows, medical equipment)
- Whether information about the individual is held on police information systems.

Healthcare facilities should be advised to ensure that there are medical staff ready and available to cope with a medical emergency (for example, if the patient collapses).

When responding to any request for police assistance in a medical ward setting, officers must understand the precise purpose of their attendance and the basis for intervention. When it is safe to do so, officers should always consider attempting to contain any risk of harm and negotiating with the individual (see Communication). It may also be useful to consider requesting a hostage negotiator for advice or to attend the scene (in accordance with local arrangements).

The police role and duties

In a mental health unit, it is the legal responsibility of the police to:

- protect life (where risk of death or serious injury have developed)
- investigate allegations of crime

NHS trusts, local health boards and other health service providers have legal obligations under the **Health and Safety at Work etc. Act 1974** to provide sufficient, competent staff available to undertake those activities which are a foreseeable implication of their role (being a mental health care and treatment provider).

While nothing prevents an officer from using their implied MHA 1983 powers (listed below) when they choose to support NHS staff in some way, they should only consider such action in exceptional circumstances (see **When do the police have a duty to respond?**).

Exceptional circumstances and legal powers

Police officers should carefully consider which powers they use when intervening in a healthcare setting. Police personal safety training techniques and equipment may be highly unsuitable for use with people experiencing mental ill health and vulnerabilities and in such a setting. This applies especially in situations where the intention is treatment and care (in connection with applying the MHA 1983).

Mental Health Act 1983 powers

The MHA 1983 does not explicitly empower mental health staff (or anyone else) to undertake restraint-related interventions, search or to control hospital patients. Powers to control, restrain and search patients are implied, however, when patients are detained under the MHA 1983 **s 2**, **s 3**, and **s 37**.

Police powers (For response in mental health medical wards and hospitals)

When it is necessary for the police to become actively involved in a ward-based situation, the following legal powers are available to officers.

- Implied authority from the MHA 1983 to restrain a patient for the purposes of secluding, medicating or transferring them in connection with treatment or care.
- Restraint in accordance with the **Mental Capacity Act s 5** and **s 6** as the least restrictive intervention in relation to someone who lacks the capacity to take a decision in their own best interests (see APP on Restraint and use of force and Mental capacity).
- Reasonable force to prevent crime under the **Criminal Law Act 1967 s3**.
- Powers of arrest, search and seizure under **PACE** where a criminal offence has been alleged.
- Common law powers (including self-defence, the doctrine of necessity and to prevent a **breach of the peace**).

Criminal law and PACE powers are only available in connection with crimes in progress, or when arresting and investigating suspects accused of offending. These powers should not be used if the

real intention of using force is an objective under MHA 1983, such as moving a patient to a seclusion room.

Case law (using arrest powers to preserve the peace)

The **Hicks and Others v The Commissioner of the Police of the Met (2012) EWHC 1947 (Admin)** case and the subsequent **(civil) Court of Appeal case (2014) EWCA Civ 3** concluded that, when making an arrest, the arresting police officer must have the intention to bring the person 'before a competent legal authority' (namely, a magistrate or justice of the peace), otherwise the arrest violates Article 5(1)(c) **European Convention on Human Rights (ECHR)**.

This case is highly relevant to policing mental ill health and officers should consider it when deciding on the appropriate use of the **Criminal Law Act 1967 s3** to prevent a breach of the peace. Police officers are required to consider whether they are trying to place that person before a court, or whether they are at risk of using this power as a proxy arrest to deal with a situation MHA 1983 doesn't cater for. If this is the case, the action could be considered a legal violation of the subject's human rights.

Administering medicines

Police assistance should not normally be required to enable medical staff to administer medication, even when restraint is used. Health organisations are required by law to have sufficient trained staff to handle such situations, and have the authority under the **Mental Capacity Act 2005** to restrain a patient when the following three conditions are satisfied (**Royal College of Nursing 'Let's talk about restraint' Rights, risks and responsibility**).

- The client lacks capacity in relation to the matter in question.
- The nurse reasonably believes that it is necessary to do the act in order to prevent harm to the client.
- The act is a proportionate response to the likelihood of the client's suffering harm and the seriousness of that harm.

Reports that provide information on restraint in hospital (by healthcare professionals)

- **Mental health crisis care: physical restraint in crisis. A report on physical restraint in hospital settings in England (June 2013)**

- **NICE (2015) Violence and aggression: short-term management in mental health, health and community settings**
- **Royal College of Nursing "Let's talk about restraint" Rights, risks and responsibility**

Searching Mental Heath Act detainees

Section 32 of PACE provides a police officer with the power to search a person (while they are detained by the police) whenever they have reasonable grounds for believing that they present a danger to themself or to others, (see **Searching detainees**). Officers can search for anything which might be used to assist in escape from lawful custody. The search of a person with mental ill health or vulnerabilities will usually be for weapons or harmful substances rather than evidence (as would be the case when arresting for a criminal offence).

Powers of search have been introduced by s 136C for those detained under s 135 and s 136.

Constables may search anyone specified in a warrant issued under either of the subsections of s 135, if they have reasonable grounds to believe that the person may present a danger to themselves or others; and is concealing an item that could be used to cause physical injury to someone.

The power can be exercised in respect of:

- s 135(1) warrants at any time after the execution of the warrant until the person ceased to be detained under s135
- s 135(2) warrants at any time whilst the person is being removed under the authority of the warrant
- of anyone removed to or transferred to a place of safety under s 135/6

Transfer and supervision

When a person is taken to a place of safety to be assessed by an AMHP and registered medical practitioner, an ambulance should be used in all but exceptional circumstances.

From the time the person is detained until the time the examination and assessment are completed, the person is deemed to be in lawful custody (under the **MHA 1983 s 137**) and can be detained at the place of safety by the police and/or members of healthcare staff (**MHA 1983 s 136(2)**). It may

be appropriate for a police presence to remain with the individual if they are deemed to pose a risk to themself or others.

The person may be transferred from one place of safety to another to be assessed. To enable this assessment to take place, the person can be detained at the place of safety for up to 24 hours (which commences at the time of arrival at the initial place of safety). It is not necessary under the MHA 1983 s 136 for a police officer to be present during this period.

Under **PACE s 56** and **Code C**, the detainee is entitled to have one person who is known to them, or is likely to take an interest in their welfare, informed of their whereabouts. Officers should also ensure that, wherever possible, others are informed of the situation if the detainee requests this.

Long distance transfer

Where officers re-detain an absent (**MHA 1983 s 18**) or absconded (**MHA 1983 s 138**) patient and the journey to return them to the unit is a considerable distance away, extra care should be taken before undertaking the journey. This includes requests for the detaining hospital whose responsibility it is to arrange return of their patient or the local ambulance service to undertake the transfer. Detainees should be afforded the opportunity to wash, eat, drink and be medically examined for their fitness to undertake the journey.

In particular, officers should consider that, if a patient has received medication to sedate them, transfer should not occur without an appropriate healthcare professional to monitor and supervise them. For sedated patients, this will normally not be ambulance crews but will require a mental health nurse or doctor.

Transfer between places of safety

Section 136(3) of the MHA enables a person detained at a place of safety to be transferred to another place of safety within the time limit for detention (24 hours).

This means that an individual detained under the MHA 1983 **s 135** or **s 136** who has been taken to a police station as the initial place of safety, may be transferred to a suitable hospital as appropriate for medical assessment and treatment within the 24 hour overall detention limit. Regulation 4 of the Mental Health Act (Place of Safety) Regulations 2017 outline this should take place as soon as the original grounds for using the police station as a place of safety no longer applies.

When transferring a person detained under the MHA 1983 from one place of safety to another, the subsequent place of safety must be willing to formally accept and receive the patient. If the individual is to be transferred out of police custody (at a police station) to an alternate place of safety, they should, as a minimum be accompanied by a:

- person escort record (PER) form
- detainee medical assessment form (450)
- detainee medication form (450a)

These forms require confidential cover.

Transport requests from external agencies

People with mental ill health or vulnerabilities should not usually be transferred in a police vehicle. **National Ambulance section 136 Protocol 2014** states that ambulances services across the country will transport all s 136 cases, unless the individual is violent, in which case ambulance staff will accompany police in a police van.

An external agency may ask the police to assist in moving a violent or potentially violent person to a mental health establishment after they have been detained under the MHA 1983 **s 135** or **s 136**. Officers and staff should assess the needs of the individual and the circumstances to determine the safest method of transport. At least two staff should be involved in transporting such detainees. Where a person has been sedated or given medication by healthcare professionals before being transported, this may influence the decision-making process above.

For further information, see **ACPO/Department of Health (2011) Template Protocol for the Management of Detainees Who Require Hospital Treatment**.

Decision-making escalation protocol

Forces are advised to consider and include a decision making escalation plan in local multi-agency protocols to enable custody officers to raise an issue to senior managers in their force, local mental health trusts and social care services for expedient resolution.

Mental health applications from police custody

Detention in police custody should be managed in accordance with:

- **PACE**
- **PACE Code of Practice C**

Additional guidance on managing and caring for people in custody is provided in the APP on **Detention and custody** module.

PACE gives police officers 24 hours from the point someone arrives at a police station to charge them with the criminal offence for which they were arrested or to release them without charge, either with or without police bail. This period can occasionally be extended to 36 hours by a superintendent, but only for ongoing criminal investigations and more serious crimes. Specific difficulties may arise when a suspect is arrested for a criminal offence and it then becomes apparent that they may be mentally vulnerable or mentally disordered and require hospital admission while in police custody.

Further information on **Liaison and diversion services** and **Diversion from prosecution** is available within the **Crime and criminal justice page**.

Transfer to detention under the Mental Health Act 1983 from police custody

Section 34(2) of PACE obliges the custody officer to release the person from police detention once a decision is taken not to charge the suspect. This may be either with or without bail, or under investigation depending on whether the investigation will continue after release.

If, following assessment by an AMHP (and/or s 12 doctor), the detainee is to be transferred to a hospital or other mental health unit for treatment and care, the individual enters a condition of legal custody under the MHA 1983 (**s 137**) at the point where an AMHP makes a written application for that person's admission to a hospital. After completing a MHA 1983 assessment in police custody, the person's detention remains governed by PACE until the AMHP completes this application for admission.

Once a custody officer learns that the AMHP wishes to apply for admission under the MHA 1983 or admit the patient voluntarily, they need to decide whether or not criminal charges will still be immediately brought (for example, because the alleged crime is an especially serious one). If this is not the case, the custody officer is required under PACE to release the person without charge if

diversion (away from a criminal justice outcome and towards healthcare support) will fully end the consideration of any prosecution. If prosecution may be still considered at a later stage, they are required to release the person on bail.

Where the obligation to release someone from PACE detention creates a situation where the health and safety of the detainee is at risk due to their mental health, detention under s 136 may be considered and may be lawfully relied upon in a police station. Any decision to remove someone to a place of safety should be taken as if that person had just been encountered. Under PACE persons should not be solely held in police custody pending a mental health assessment or pending the identification of a bed for that person's admission. Detention under PACE must be justified against the evidential and investigative criteria in s 34 and s 37 PACE and reconsidered by the review officers in s 40 or s 41.

Appropriate adults

Whenever a custody officer has any suspicion or has been told in good faith that a suspect may be mentally disordered (as defined in the **MHA s 1**) or otherwise mentally vulnerable, they must request an appropriate adult to be present. See **PACE Code C paragraph 1.4**.

Note 1G of PACE Code C states that, where the custody officer has any doubt about the mental state or capacity of a person detained, they should treat the person as mentally vulnerable and call an appropriate adult. This duty remains even if a health care professional's view is that an individual does not meet the formal definition of experiencing a mental disorder.

Under PACE Code C paragraph 11.15, a person who is mentally disordered or otherwise mentally vulnerable must not be interviewed regarding their involvement or suspected involvement in a criminal offence or offences, or asked to provide a written statement under caution in the absence of an appropriate adult. There are exceptions to this, however, and these are set out in **paragraphs 11.1** and **11.18 to 11.20**.

Role of an appropriate adult

An appropriate adult can provide support, advice and assistance to the suspect and be present at any interview conducted by the police. Custody officers should try to find and use an adult who understands the detainee's mental health condition/learning disability and has the skills necessary

to communicate with them.

Every person acting as an appropriate adult should be issued with **Home Office (2011) Guide for Appropriate Adults**. They should be given time to read it. Staff should inform the person that, after they have read the document, the custody officer will be available to answer questions about the document and the appropriate adult role. Staff should ask trained appropriate adults attending on behalf of a formal scheme if they require the document.

An appropriate adult may request the presence of a legal representative on behalf of the detainee even if the detainee has not asked for this, but the detainee cannot be forced to see the legal representative.

If the suspect is mentally disordered or otherwise mentally vulnerable, **PACE Code C Annex E paragraph 11** specifies that, where the decision has been made to proceed with a prosecution, the resulting action – primarily the charging – should be undertaken in the presence of an appropriate adult. The appropriate adult's presence is required, however, only if that person is already at the police station.

There is no power under PACE to detain a person and delay action solely to await the arrival of the appropriate adult (**PACE Code C paragraphs 16.1** and **Note 16C**). Custody officers should provide notice to the appropriate adult when reviews and the charging decision might be made so the appropriate adult can make arrangements to be involved, (whether or not this is to be conducted remotely) (**PACE Code C 15.3(b) and (c)**, **Note 15C** and **Note 16C**).

For further information see **Home Office (2011) Guide for Appropriate Adults**.

Assessment

The detained person's agreement to an assessment should always be sought where possible and they should be taken to a place of safety to be assessed for any unmet medical or social care needs.

MHA 1983 assessments for admission to hospital must be carried out by an AMHP and either one or two doctors (registered medical practitioners). One of the doctors must be approved by the secretary of state under the **MHA 1983 s 12** as having special experience in diagnosing or treating mental disorders.

The outcome of the assessment

Following clinical assessment, detention under the MHA 1983 s 136 will cease to have effect in one of two ways:

- the doctor will confirm that the person is not suffering from a mental disorder

or

- the AMHP will make and complete the necessary arrangements for that person's treatment or care

No mental disorder

If, following clinical assessment, the registered medical practitioner concludes that the individual is not mentally disordered under the terms of the MHA 1983, the detainee may no longer be detained under this section and is to be immediately discharged from detention. (See the **MHA 1983 Code of Practice (England)** or the **MHA 1983 Code of Practice (Wales)** for additional detail on making any necessary arrangements for onward treatment and care.)

Mental disorder suspected

If, however it is decided that the individual should be subject to detention under the MHA 1983 **s 2**, **s 3** and **s 4**, then the MHA 1983 s 6 provides a power for an applicant (usually the AMHP) to take that individual to hospital once the application is completed.

Disagreement

It is possible for a detainee in police custody to be considered mentally disordered or otherwise mentally vulnerable (using the **PACE Code C (Paragraph 1.4) definition)** and yet, following clinical assessment, they may not be considered mentally ill and in need of further detention, treatment or care under the MHA 1983. (An example of this might be somebody who is feeling suicidal but is not otherwise mentally unwell.)

Options when there is no legal authority to hold a vulnerable detainee that requires further support

There are occasions when it becomes apparent through pre-release risk assessment that a detainee is extremely vulnerable and that there is a real and credible risk to that individual on release (including the risk of suicide).

If a MHA 1983 assessment has been completed in police custody and no hospital or mental health trust bed is available for the person's admission, the custody sergeant must decide whether or not to release the detainee (under **PACE s 34(2)**). Before this decision can be made, however, the custody officer is likely to require a period of discussion with the investigating officer and their supervisor. They may also need to refer the matter to the Crown Prosecution Service for a statutory decision about whether to bring charges.

If, following this discussion and referral period, no application for admission has yet been made, and if the AMHP cannot or will not make the application, the custody officer must legally release the person from police detention. The custody officer should advise the investigating officer and AMHP of their legal position so that they may then take whatever action is deemed necessary.

Officers may consider use of the MHA s136 on release from custody. Where a MHA assessment has been conducted during detention, this would require a change of risk or circumstances to justify a new assessment.

Forces may take the view that, based on a risk assessment and for the dignity and safety of the person concerned, they will allow the individual to remain in the police station (although the individual will not be subject to legal detention) while escalating the problem to managers on all sides for resolution.

Officers should be guided by **Risk of self-harm and suicide after release** within the APP on Detention and Custody.

Tags

Mental health