

**Mental Health Act 2007 (Commencement No. 5 and Transitional Provisions)
Order 2008 – guidance on transfers between places of safety**

SECTIONS 135 AND 136 OF THE MENTAL HEALTH ACT 1983

Under section 135(1) of the Mental Health Act 1983 (the 1983 Act) a police officer can, on the authority of a magistrate, enter premises and remove to a place of safety a person who is thought to have a mental disorder and who has been or is being ill-treated or neglected or, if living alone, is unable to care for himself. Under section 136 of the 1983 Act, a police officer can remove from a public place to a place of safety a person who appears to have a mental disorder and to need immediate help. In both instances, the person can be detained at the place of safety for up to 72 hours.

2. Places which may be used as a place of safety include a hospital, a care home for mentally disordered persons, a police station or any other suitable place whose occupier is willing to receive the patient temporarily.

TRANSFERS BETWEEN PLACES OF SAFETY

3. 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 approved social worker (until approved social workers are replaced at the introduction of approved mental health professionals) or someone authorised by either of them. Section 44 of the 2007 Act comes into force on 30 April 2008.

4. 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 person's assessment and any distress that the journey might cause them.

5. 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 person's interests, an assessment begun by one approved social worker or doctor may be taken over and completed by another, either in the same location or at another place to which the person is transferred.

6. Except in an emergency, the agreement of an approved social worker, a doctor or another healthcare professional competent to assess whether the transfer would put the person's health or safety (or that of other people) at risk should be obtained before

the person is transferred from one place of safety to another. It is for those professionals to decide whether they first need to examine the person.

7. 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.

8. 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 approved social worker or a person authorised by either a police officer or an approved social worker.

POLICE STATIONS AS PLACES OF SAFETY

9. Every effort should be made to ensure that a police station is used only on an exceptional basis in cases, for example, where the person's behaviour would pose an unmanageably high risk to patients, staff or users in a health care setting. 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).

10. A police station should not be assumed to be the automatic second choice if the first choice place of safety is not immediately available. Other available options, e.g. a residential care home or the home of a relative or friend of the person who is willing to accept them temporarily, should also be considered. If a police station must be used, health and social care agencies should work with the police in supporting the care and welfare of the person while in police custody and assist in arranging, where appropriate, the transfer of the patient to a more suitable place of safety.

11. In identifying the most appropriate place of safety for an individual, consideration should be given to the impact that the proposed place of safety (and the journey to it) may have on the person and on their examination and interview. It should always be borne in mind that the use of a police station can give the impression that the person detained is suspected of having committed a crime. This may cause distress and anxiety to the person concerned and may affect their co-operation with, and therefore the effectiveness of, the assessment process.

SECTION 44 OF THE MENTAL HEALTH ACT 2007

12. The text of section 44 of the 2007 Act is set out below:

44 Places of safety

(1) The 1983 Act is amended as follows.

(2) In section 135 (warrant to search for and remove patients), after subsection

(3) insert—

“(3A) A constable, an approved mental health professional¹ or a person authorised by either of them for the purposes of this subsection may, before the end of the period of 72 hours mentioned in subsection (3) above, take a person detained in a place of safety under that subsection to one or more other places of safety.

(3B) A person taken to a place of safety under subsection (3A) above may be detained there for a period ending no later than the end of the period of 72 hours mentioned in subsection (3) above.”

(3) In section 136 (mentally disordered persons found in public places), after subsection (2) insert—

“(3) A constable, an approved mental health professional¹ or a person authorised by either of them for the purposes of this subsection may, before the end of the period of 72 hours mentioned in subsection (2) above, take a person detained in a place of safety under that subsection to one or more other places of safety.

(4) A person taken to a place of a safety under subsection (3) above may be detained there for a purpose mentioned in subsection (2) above for a period ending no later than the end of the period of 72 hours mentioned in that subsection.”

¹ Until sections 18 and 21 and Schedule 2 of the 2007 Act come fully into force, these references to “an approved mental health professional” are to be read as references to “an approved social worker”

**SECTIONS 135 AND 136 OF THE MENTAL HEALTH ACT 1983
(AS AMENDED BY SECTION 44 OF THE MENTAL HEALTH ACT 2007)**

13. The text of sections 135 and 136 of the 1983 Act as amended by section 44 of the 2007 Act is set out below:

135 Warrant to search for and remove patients

(1) If it appears to a justice of the peace, 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 any place within the jurisdiction of the justice, or
- (b) being unable to care for himself, is living alone in any such 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 to a place of safety with a view to the making of an application in respect of him under Part II of this Act, or of other arrangements for his treatment or care.

(2) 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 (Consequential Provisions) Order 2005 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.

(3) A patient who is removed to a place of safety in the execution of a warrant issued under this section may be detained there for a period not exceeding 72 hours.

(3A) A constable, an approved mental health professional² or a person authorised by either of them for the purposes of this subsection may, before the end of the period of 72 hours mentioned in subsection (3) above, take a person detained in a place of safety under that subsection to one or more other places of safety.

(3B) A person taken to a place of safety under subsection (3A) above may be detained there for a period ending no later than the end of the period of 72 hours mentioned in subsection (3) above.

² Until sections 18 and 21 and Schedule 2 of the 2007 Act come fully into force, this reference to “an approved mental health professional” is to be read as a reference to “an approved social worker”.

(4) In the execution of a warrant issued under subsection (1) above, a constable shall be accompanied by an approved social worker and by a registered medical practitioner, and in the execution of a warrant issued under subsection (2) above a constable may be accompanied—

- (a) by a registered medical practitioner;
- (b) by any person authorised by or under this Act or under article 8 of the Mental Health (Care and Treatment) (Scotland) Act 2003 (Consequential Provisions) Order 2005 to take or retake the patient.

(5) It shall not be necessary in any information or warrant under subsection (1) above to name the patient concerned.

(6) In this section “place of safety” means residential accommodation provided by a local social services authority under Part III of the National Assistance Act 1948, a hospital as defined by this Act, a police station, an independent hospital or care home for mentally disordered persons or any other suitable place the occupier of which is willing temporarily to receive the patient.

[Subsections (3A) and (3B) inserted by section 44(2) of the 2007 Act.]

136 Mentally disordered persons found in public places

(1) If a constable finds in a place to which the public have access a person who appears to him to be suffering from mental disorder and to be in immediate need of care or control, the constable may, if he thinks it 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 within the meaning of section 135 above.

(2) 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 social worker and of making any necessary arrangements for his treatment or care.

(3) A constable, an approved mental health professional³ or a person authorised by either of them for the purposes of this subsection may, before the end of the period of 72 hours mentioned in subsection (2) above, take a person detained in a place of safety under that subsection to one or more other places of safety.

(4) A person taken to a place of a safety under subsection (3) above may be detained there for a purpose mentioned in subsection (2) above for a period ending no later than the end of the period of 72 hours mentioned in that subsection.

[Subsections (3) and (4) inserted by section 44(3) of the 2007 Act.]

³ Until sections 18 and 21 and Schedule 2 of the 2007 Act come fully into force, this reference to an “approved mental health professional” is to be read as a reference to an “approved social worker”.