

# Place of Safety changes from 11 December - Are you ready?

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## Summary

Ever since the Policing & Crime Act 2017 came onto the statute books earlier this year, we have known that significant changes were on their way in relation to police powers and place of safety provisions under Sections 135 and 136 Mental Health Act.

We now have a date for these changes - 11 December 2017 (from midnight).

Alongside the start date, we also now have national guidance about the practical implementation of the changes, plus new regulations placing stringent conditions on use of police stations as places of safety.

In this briefing, we look at the changes and what needs to be done to prepare for them.

## What is changing?

As of 11 December 2017, there will be a number of significant changes to the place of safety provisions under the Mental Health Act (MHA).

The changes relate to Section 135 MHA (which enables a warrant to be issued permitting police, AMHP and medical practitioner to enter private premises, including where there is reasonable cause to suspect that someone suffering from a mental disorder is being ill-treated/neglected or unable to care for themselves, and remove them to a place of safety) and Section 136 (which gives the police a power to remove a person appearing to be mentally disordered and in immediate need of care and control to a place of safety).

New guidance - '*Guidance for the implementation of changes to police powers and places of safety provisions in the Mental Health Act 1983*' ('the Guidance') - explains how the changes are expected to work in practice.

The key changes include:

### Power to 'keep' at place of safety

The changes will mean that - instead of having to be 'removed' to a place of safety - a person can be kept where they are for assessment if they are already at a place of safety.

This is likely to be most relevant in Section 135 cases, because - provided that the property specified in the warrant can itself be classed as a 'place of safety' (which a person's home can be, if the mentally disordered person, and other occupier if there is one, agrees) - it would allow for the AMHP and medical practitioner to remain at the property to carry out the assessment/MHA application rather than having to put the person through the potential distress of being taken elsewhere.

### Broadening when S.136 can be used

Currently, the police can only remove a mentally disordered person to a place of safety under Section 136 if the person is found '*in a place to which the public have access*'. This has meant a lot of uncertainty about exactly when S.136 can be used because it is not always clear whether a particular place can properly be classed as somewhere to which the 'public have access'.

Once the changes come into effect, the 'public access' element will go. Instead, police will be able to use the S.136 power anywhere except a private dwelling (defined as a '*house, flat or room where that person, or any other person, is living and any yard, garden, garage or other outhouse that is used [solely] in connection with the house, flat or room*').

As highlighted in the Guidance, this will mean the police being able to use their S.136 power (including a power to enter, if needs be by force) in locations such as railway lines, hospital wards, rooftops, offices, schools and non-residential parts of residential buildings with restricted entry.

### New requirement to consult

There will be a new requirement for police to consult with an AMHP, medical practitioner, nurse, occupational therapist or paramedic before using S.136 (if practicable).

As the Guidance explains, the legislation does not require the consultation to take any particular form. The precise nature of the consultation is likely to vary according to the circumstances - e.g. whether the health professional is providing advice on site or remotely.

The Guidance suggests a number of issues which police should seek to ascertain when consulting the health professional, including:

- An opinion on whether this appears to be a mental health issue
- Whether any physical health issues may be of concern/contributing to the person's behaviour
- Whether the person is known to local health service providers
- If so, whether there is an existing care plan/strategy for dealing with a mental health crisis
- Whether using the S.136 power is appropriate in the circumstances
- If so, identifying/facilitating access to an appropriate place of safety (or, if S.136 is not going to be used, helping identify and implement an alternative plan)

Deciding if it is practicable to consult will be down to the police officer - e.g. taking into account whether the person is likely to remain co-operative /present during the time taken to consult.

### Shorter detention period

For cases starting after midnight on 11 December, the length of time a person can be detained in a 'place of safety' under S.135 or S.136 will be much shorter - 24 hours instead of 72 hours as currently.

This can be extended by up to 12 hours by a registered medical practitioner if it is not practicable to carry out/complete a MHA assessment within the 24 hour window because of the person's mental or physical condition (e.g. if they are too intoxicated to cooperate with an assessment). The Guidance makes clear that a delay in attendance by an AMHP or medical practitioner will not be a valid reason for extending detention.

The pressure will therefore be on to ensure that MHA assessments are arranged and carried out quickly.

### Changes to 'place of safety'

There will be a number of changes to what counts as a 'place of safety'. These focus on stringent new limitations on when police stations can be used as places of safety.

Under the new provisions, a 'place of safety' can be:

- Residential accommodation provided by social services; or
- A hospital; or
- A police station (but only in very limited circumstances - see section below); or
- An independent hospital or care home for mentally disordered persons; or
- 'any other suitable place', with the agreement of the person who appears to the police officer to be *'responsible for the management of the place'*.

'Any other suitable place' can include someone's home, provided the person thought to be suffering from a mental disorder agrees and - if it is not their home or they live with others - another person residing there also agrees.

The Guidance highlights that, in practice, health-based places of safety will generally be the best option:

*'The expectation remains that, with limited exceptions, the person's needs will most appropriately be met by taking them to a 'health-based' place of safety - a dedicated section136 suite where they can be looked after by properly trained and qualified mental health and other medical professionals'.*

### New limitations on police stations as places of safety

Once the changes come into effect, the circumstances in which police stations can be used as a place of safety will be very limited.

Most importantly, there will be a total ban on police stations being used as a place of safety for anyone under 18 (no exceptions).

Even in relation to adults, there will be tough restrictions introduced via new regulations - The Mental Health Act 1983

Three conditions will have to be satisfied before a police station can be used as a place of safety:

- The person's behaviour presents an imminent risk of serious injury or death to them or others;
- As a result, no other place of safety can reasonably be expected to detain them; and
- The person will - so far as is reasonably practicable - have access to a healthcare professional throughout the period in which they are detained at the police station.

The regulations also specify how people must be treated if a police station is being used as a place of safety. This includes having their welfare checked by a healthcare professional at least every 30 minutes and having their behaviour reviewed by the custody officer at least once an hour (or every three hours if they are sleeping) to consider if this still presents an imminent risk that no other place of safety can manage.

If these conditions are not met, the person should be moved to another place of safety.

## Are you ready?

The changes coming into effect on 11 December are likely to have a significant impact both at system level in terms of local place of safety arrangements/resource and at individual practitioner level in terms of ensuring that professionals understand how the changes may impact on their practice.

It will be important to anticipate and plan for the challenges that some of these changes could bring - e.g. the reduction in detention period if a bed cannot be found within 24 hours, which could be a particular issue for CAMHS or where a bed in a particular specialist unit is needed.

Given that the changes have been in the pipeline for some time, we anticipate that many areas will already have reviewed (or will be in the process of reviewing) local partnership arrangements to reflect, for example, how the new requirement to consult will work locally and how to ensure good liaison/ information sharing about place of safety availability and capability.

Steps also need to be taken to ensure that relevant policies/procedures and training for practitioners are updated to reflect the changes, especially in relation to matters such as the health professional's new consultation role, when someone's home may be used as a place of safety, the impact of the reduced detention period and the medical practitioner's power to extend.

## How we can help

Our national team of mental health and mental capacity specialists have extensive experience in advising health and social care providers - both in the NHS and the independent sector - in relation to all aspects of the law in this area, including:

- Advice on all aspects of the Mental Health Act, including issues arising in relation to use of police powers and place of safety
- Advice on drafting and implementing policies that are compliant with legislative change and will withstand regulatory scrutiny
- Staff training around legislative and policy change
- Representation at First Tier Tribunals
- Advice on the interface between the Mental Capacity Act and Mental Health Act
- Advice and representation in Court of Protection proceedings

We also provide training on all aspects of the Mental Health Act and Mental Capacity Act, including induction and refresher courses for S.12 Approved Clinicians.

If you need advice in relation to the changes addressed in this briefing or any related matter, please contact [Gillian Weatherill](mailto:gweatherill@dacbeachcroft.com) on: +44 (0)191 4044045 or [gweatherill@dacbeachcroft.com](mailto:gweatherill@dacbeachcroft.com).

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