



## Section 135 Mental Health Act 1983 Warrant to Search for and Remove Patients

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<b>Responsible Committee/Sub Committee</b>	Clinical Standards Sub-Committee
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<b>Document consultation:</b>	MHA 2007 Task & Finish Group/Mental Health Act Network Group
<b>Patient and Public Involvement (outline any PPI input into policy and associated impact on service users and carers)</b>	Service user membership of MHA 2007 Task & Finish Group
<b>What type of document is this (delete as appropriate)</b>	Policy/Procedure
<b>Document applicable to (Identify by location and staff groups):</b>	Approved Mental Health Professionals/police and ambulance personnel/approved clinicians/A&E Nursing Staff
<b>If new document, reason for development:</b>	Existing document now shared ownership of Cheshire & Wirral Social Service Departments
<b>Synopsis outlining document aims:</b>	To establish appropriate procedures
<b>Implementation Date:</b>	April 2009
<b>How will the implementation of this document be monitored and reviewed</b>	Monitored and reviewed within the Trustwide Mental Health Act Network Group
<b>Review Date (default 2 years<sup>1</sup>):</b>	April 2011
<b>Document to be read in conjunction with:</b>	Section 136 MHA Policy Supervised Community Treatment Policy
<b>Financial resource implications of this document and how these are going to be addressed:</b>	N/A
<b>Is this document carried out wholly or in part by contractors, or organisations with which the Trust has a service level agreement, and if so state the relevant contractor</b>	N/A

<sup>1</sup> Check with Clinical Governance/Risk Manager to ensure that there is not an external requirement that determines review date

Document Change History (changes from previous issues of policy (if appropriate) :

Issue Number	Page	Changes made with rationale and impact on practice	Date

## CONTENTS

SECTION	SECTION HEADING	PAGE
1	Introduction	4
2	Content of policy and procedures	4
	Alternatives	4
	Process	4
	Grounds for section 135(1)	4
	Procedure for section 135(1)	5
	Grounds for section 135(2)	6
	Procedure for section 135(2)	6
	Community treatment orders	7
	Securing of premises	7
Place of safety	7	
3	Duties and responsibilities	7
4	References	8
5	Appendices	
	Appendix 1 - Training needs analysis	9
	Appendix 2 - Equality & diversity/human rights impact assessment	11

## 1 Introduction

There are two kinds of warrants which may be obtained under Section 135

### 135 (1)

To assess and if necessary remove a person to a place of Safety (see Section 9 below) with a view to making an Application under Part 2 of the Mental Health Act or of making alternative arrangements for the persons care or treatment. This part of the Act should only be used when all other reasonable attempts have been made. The requirements:

- Application by Approved Mental Health Professional to a Magistrate for warrant for a constable to enter premises specified (if need be by force);
- Where there is “reasonable cause to suspect” a person may be suffering from “mental disorder”;
- That person “has been or is being ill treated, neglected or kept otherwise than under proper control” or “being unable to care for himself is living alone”;
- The constable **must** be accompanied by an Approved Mental Health Professional and a Doctor.

### 135(2)

- Application to a magistrate by persons authorised to take or retake a detained or liable to be detained patient (i.e. hospital staff, Police Officer, Approved Mental Health Professional for a warrant for a constable to enter premises specified (if need be by force);
- When a detained patient has left hospital (or residence under Guardianship Order) without leave or is liable to be detained but has not yet been conveyed to hospital;
- “There is reasonable cause to believe that the patient is to be found on the premises”;
- “That admission to the premises has been refused or that a refusal of such admission is anticipated”;

The constable **may** be accompanied by an Approved Mental Health Professional or Doctor.

## 2.0 Content of policy and procedures

### 2.1 Alternatives

The first alternative to 135(2) may be Section 17(1)(d) of PACE 1984 - a Police Officer “may enter and search any premises for the purpose of recapturing a person who is unlawfully at large and whom he is pursuing” (must be actively in pursuit, even if only for a short distance or time).

The second alternative to 135(1) or (2) which can be used in very urgent situations under Section 17(1)(e) of PACE - the Police can enter and search any premises if such action is required to save “life and limb” or to prevent “serious damage to property”.

A third alternative under common law the Police have the power of entry to prevent a breach of the peace.

### 2.2 Process

Detailed arrangements have been made locally that include:-

- How to obtain warrants over 24 hour period;
- Process for disposing of warrants once executed (or not);
- Agreement on Place of Safety;
- Timescales for assessment following removal to a Place of Safety (POS);
- Procedure for records.

### 2.3 Grounds 135(1)

Before applying for a warrant, the Approved Mental Health Professional must obtain information from as many sources as possible to provide evidence to support the application. Efforts should have been made by the Approved Mental Health Professional and others to access and assess the person.

The Approved Mental Health Professional is then able to establish whether there are grounds to support an application, as follows:

- Reasonable cause to suspect suffering from mental disorder;
- Has been or is being ill-treated or neglected or kept otherwise than under proper control or being unable to care for himself is living alone;
- Is living in the area under the jurisdiction of the Magistrate who may issue a warrant following application by an Approved Mental Health Professional.

#### **2.4 Procedure 135(1)**

Sections 15 and 16 of PACE apply to these warrants, so that in addition to provisions of S135, requirements of PACE must be satisfied. The application is usually “ex-parte” and the information supporting the warrant should be in writing.

**Note: In the light of S5 of HRA magistrates may require further written notice of proceedings to be served on the person.**

Two forms are required - the warrant (MH71) x 4 (one to be left at the house or handed to “the occupier”, one retained by the Police, one for the Place of Safety and the top copy to be returned to the Magistrate) and the information (M70) x 1 (to be retained by the Magistrate).

No formal copy is available for the client file - Approved Mental Health Professional should take a photocopy.

Contact with the Police may be made before the warrant is obtained so that the availability of resources is checked.

The warrant will specify the applicant’s name, date of issue, address of person being sought and that it is issued under the Mental Health Act. N.B. The name of the person being sought is not required if unknown.

Use of the warrant to enter the premises can only be made once, even if the person is not found.

Entry must be made within a month. It must be made at a reasonable time unless the constable thinks that the search will be “frustrated”.

- The warrant allows any constable to enter the premises specified in the warrant, using force if necessary;
- and **MUST** be accompanied by an Approved Mental Health Professional (does not have to be the applicant) and a registered medical practitioner. Case law (appeal hearing on 5<sup>th</sup> May 2005 in Ward v Commissioner of Police for the Metropolis and Epsom and St Helier NHS Trust) has confirmed that the Approved Mental Health Professional making application for the warrant does not have to be the same Approved Mental Health Professional who is involved in the execution of the warrant.

If the occupier is present when the warrant is executed, the constable should identify him/herself, produce the warrant, and give him/her a copy. If the occupier is not present, but someone else who appears to be in charge is, the same procedure should be followed. If no one is there who appears to be in charge, a copy of the warrant should be left in a prominent place in the property.

The search can only be to the extent required to carry out the purposes of the warrant.

The constable should endorse the warrant, stating whether or not the person was found.

If the warrant is not executed within a month, it should be returned to the Magistrate’s Clerk, who should retain it for 12 months.

- When executed an assessment by the Approved Mental Health Professional and doctor is undertaken.
- AND if it is thought necessary, the patient is removed to a Place of Safety with a view to making an application under Part 2 of the Act or to arrange other care or treatment.

The doctors may complete a medical recommendation at this stage. It may be appropriate to undertake a full assessment by two doctors and an Approved Mental Health Professional, rather than removing to a Place of Safety (POS). If the person is removed to a POS, then full assessment for further detention, under the Act, should be carried out as soon as practical, though the warrant allows detention for up to 72 hours. A Constable, Approved Mental Health Professional or person authorised by either of them may transfer the person to one or more other places of safety within the 72 hour period. A transfer to another place of safety does not extend the original 72 hour period of detention.

It would be usual to convey the person to the POS by ambulance and the police should usually attend until the person is at the POS. The person should not be conveyed by private car. The Approved Mental Health Professional should attend the POS with the detained person.

The police have a duty to protect persons and property, but they should recognise that the Approved Mental Health Professional is experienced in dealing with mentally disordered persons, and where it is not inconsistent with their duties, the Police should comply with any directions or guidance given by the Approved Mental Health Professional.

The warrant authorises detention for up to 72 hours and no other form of detention is necessary. Detention ceases once a decision not to take further action under the Mental Health Act is made. The 72 hours starts from arrival at the POS.

The POS used is a matter for local agreement, but should normally be hospital. A Police Station should only be used in very exceptional circumstances, usually where there is likely to be a considerable risk of violence that would be unreasonable / unsafe to contain in a hospital environment.

## **2.5 Grounds 135(2)**

The person has to be already detained under the Mental health Act - either in hospital **or** subject to Guardianship **or** be liable to be detained but has not yet been admitted to hospital **and** be absent without leave of responsible Clinician or Guardian - either from hospital or place of residence specified in Care Plan for Guardianship Order

It is important to check that the person is still liable to be detained and good practice to obtain written confirmation of the legal status and date of detention from the Hospital Trust or Local Authority.

- There must be reasonable cause to believe they will be found on the premises;
- That admission will or has been refused;
- That the premises are in the area under the Magistrate's jurisdiction;
- The Magistrate may issue a warrant.

## **2.6 Procedure 135(2)**

The Magistrate may issue a warrant following application by Hospital Trust, Police Officer, Approved Mental Health Professional or other person authorised to take or retake a detained patient.

There are two forms to be completed for 135(2) - the warrant (MH73) x 3 copies (one to be left at the house, or handed to the occupier, one retained by the Police and one returned to the Magistrate) and the Information (MH72) x 1 copy (to be retained by the Magistrate).

The process is then the same as for S135(1) above.

Note - constable may enter the premises by force if necessary, but they do not have to be accompanied, only may be accompanied by an ASW, doctor or other authorised person. However, good practice may well dictate that having a person known to the patient in attendance is desirable.

In executing the warrant the constable should follow the same procedure.

Once the patient is found they can be returned to hospital or residence specified in Care Plan for Guardianship Order

No further action is then required.

Rules relating to conveyance apply as 135(1).

## **2.7 Community treatment orders**

Where a patient has been recalled under a Community Treatment Order a Sec 135(2) may be applied for when the notice of recall has been 'handed' to the patient or left at the premises for a minimum of 24 hours.

In a situation where there is urgent need to assess/remove the patient AND the criteria for Sec 135(2) cannot be met, consideration can be given for an application for a Sec 135(1) warrant.

***Please refer to the specific information in the Community Treatment Order Policy.***

## **2.8 Securing of premises**

If Social Services staff have been instrumental in removing a patient to hospital, it will be necessary to ensure that the property is secure. The Police will be able to advise of emergency security firms, though financial responsibility would be that of the Local Authority.

## **2.9 Place of Safety**

Is defined as a place of safety means a hospital defined under the Act, residential care home provided under the National Assistance Act 1948, Police Station, Independent hospital or care home for mentally disordered persons or any other suitable place the occupier of which is willing to temporarily receive the patient.

**Each locality will have its stated preferred places of safety for use in Section 135.** (Refer to Section 136 Policy for designated places of safety).

## **3.0 Duties and responsibilities**

### **The Directors for Adult Social Care:**

Have the responsibility for implementation and review of this policy in partnership with Cheshire and Wirral Partnership NHS Foundation Trust and relevant other agencies, including, police and ambulance services

### **Authors of this document:**

Have the responsibility to ensure that it is kept up to date and distributed to appropriate staff – approved mental health professionals, approved clinicians, responsible clinicians, Mental Health Act Administrators and staff of the designated places of safety

### **Approved mental health professionals, approved clinicians, responsible clinicians Mental Health Act Administrators:**

Have a responsibility to keep up to date with this policy and ensure that section 135 procedures are followed in accordance with code of practice and MHA legislation.

### **Mental Health Act Administrators:**

Have a responsibility to ensure that section 135 documents are recorded on the information system.

#### **4.0 References**

Mental Health Act Code of Practice

Mental Health Act 1983

Reference Guide to Mental Health Act 1983



## Appendix 1

### Training needs analysis for the approved document

Please tick as appropriate

There <b>is no</b> specific training requirements- awareness for relevant staff required, disseminated via appropriate channels (Do not continue to complete this form-no formal training needs analysis required)	✓
There <b>is</b> specific training requirements for staff groups (Please complete the remainder of the form-formal training needs analysis required- link with learning and development department.	

Staff Group	✓ if appropriate	Frequency	Suggested Delivery Method (traditional/ face to face / e-learning/handout)	Is this included in Trustwide essential learning programme for this staff group (✓ if yes)
Career Grade Doctor				
Training Grade Doctors				
Locum medical staff				
Inpatient Registered Nurse				
Inpatient Non-registered Nurse / Care Assistant				
Community Registered Nurse				
Community Non Registered Nurses / Care Assistants				
Psychologists / Pharmacists				
Therapists				
Clinical bank staff regular worker				
Clinical bank staff infrequent worker				
Non-clinical patient contact				
Non-clinical non patient contact				

Please give any additional information impacting on identified staff group training needs (if applicable)

Approved Mental Health Professionals will require the training for the implementation of this policy through their practice placements on their AMHP training. Already qualified AMHPS who come from other Trusts/LA's will receive this training via their induction.

Please give the source that has informed the training requirement outlined within the policy i.e. National Confidential Inquiry/NICE guidance etc  
General Social Care Council, minimum standards for AMHP

**ADDITIONAL INFORMATION FOR CONSIDERATION:**

NAME \_\_\_\_\_

DATE \_\_\_\_\_

## Appendix 2

### Equality and diversity/Human Rights impact assessment

	IS IT RELEVANT?		HOW RELEVANT IS IT?	
	Does the policy include anything that ... Eliminates discrimination and/or Promotes equal opportunities (Answer yes, no or N/A for each category listed)	Is there evidence to believe that groups could be treated different- if so, which groups within each category(e.g. under 16 year olds in age category)	How much evidence do you have  1. None or a little 2. Some 3. Substantial	Is there public concern that the policy is discriminatory <sup>2</sup>  (Answer yes, no or N/A for each category listed)
Race	NO	NO	N/A	N/A
Gender	NO	NO	N/A	N/A
Disability	NO	NO	N/A	N/A
Age	NO	NO	N/A	N/A
Sexual orientation	NO	NO	N/A	N/A
Religion or beliefs	NO	NO	N/A	N/A

**Now evaluate your answers by using the criteria provided and underline which describes your policy**

Relevance	Rationale	Monitoring <sup>3</sup>
High relevance	If there is substantial evidence that indicates that groups could be treated differently because of the policy	You need to start monitoring the impact of this policy within a year of it being introduced
Medium relevance	If there is some evidence that indicates that groups could be treated differently because of the policy	You need to start monitoring the impact of this policy within 2 years of it being introduced:
<b><u>Low relevance</u></b>	If there is little/no evidence that indicates that groups could be treated differently because of the policy	Impact monitored at least every 3 years

<sup>2</sup> Could be gauged from surveys, audit data, complaints etc,

<sup>3</sup> Policy Reviews Group working with Equality & Diversity/Human Rights Group must monitor the impact of policies through the following channels: results from the national service user survey, the national mental health and ethnicity census, complaints data, PALS feedback, individual systems within clinical services through which ward and community staff liaise with service users and carers i.e. ward meetings, modern matron meetings

<sup>4</sup> This assent will be reviewed by the Equality and Diversity/Human Rights group

## Human Rights

When developing any policies, policy writers should ask themselves 'does the policy engage/restrict anyone's Human Rights?'

<p><b>What is the Convention of Human Rights?</b></p>	<p>There are 16 basic rights in the Human Rights Act, all taken from the European Convention on Human Rights. There are 3 types of rights detailed as follows:</p> <table border="1" data-bbox="478 448 1457 1164"> <tr> <td data-bbox="478 448 925 739"> <p><b>Absolute- cannot opt out of these rights under any circumstance-</b> cannot be balanced against any public interest</p> </td> <td data-bbox="925 448 1457 739"> <ul style="list-style-type: none"> <li>- Right to life</li> <li>- Prohibition of torture</li> <li>- Prohibition of slavery and forced labour</li> <li>- No punishment without law</li> <li>- Right to free elections</li> <li>- Right to marry</li> <li>- Abolition of the death penalty</li> </ul> </td> </tr> <tr> <td data-bbox="478 739 925 840"> <p><b>Limited-</b> these rights are subject to predetermined exceptions</p> </td> <td data-bbox="925 739 1457 840"> <ul style="list-style-type: none"> <li>- Right to liberty and security</li> <li>- Right to a fair trial</li> </ul> </td> </tr> <tr> <td data-bbox="478 840 925 1164"> <p><b>Qualified-</b> these rights can be challenged in order to protect the rights of other people</p> </td> <td data-bbox="925 840 1457 1164"> <ul style="list-style-type: none"> <li>- Respect for private and family life</li> <li>- Right to Freedom of thought, conscience and religion</li> <li>- Freedom of expression</li> <li>- Freedom of assembly and association</li> <li>- Prohibition of discrimination</li> <li>- Protection of property</li> <li>- Right to education</li> </ul> </td> </tr> </table>	<p><b>Absolute- cannot opt out of these rights under any circumstance-</b> cannot be balanced against any public interest</p>	<ul style="list-style-type: none"> <li>- Right to life</li> <li>- Prohibition of torture</li> <li>- Prohibition of slavery and forced labour</li> <li>- No punishment without law</li> <li>- Right to free elections</li> <li>- Right to marry</li> <li>- Abolition of the death penalty</li> </ul>	<p><b>Limited-</b> these rights are subject to predetermined exceptions</p>	<ul style="list-style-type: none"> <li>- Right to liberty and security</li> <li>- Right to a fair trial</li> </ul>	<p><b>Qualified-</b> these rights can be challenged in order to protect the rights of other people</p>	<ul style="list-style-type: none"> <li>- Respect for private and family life</li> <li>- Right to Freedom of thought, conscience and religion</li> <li>- Freedom of expression</li> <li>- Freedom of assembly and association</li> <li>- Prohibition of discrimination</li> <li>- Protection of property</li> <li>- Right to education</li> </ul>
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<p><b>Where can I get more information about this?</b></p>	<p>More details can be found at the Department of Constitutional Affairs (DCA)  <a href="http://www.dca.gov.uk/peoples-rights/human-rights/publications.htm">http://www.dca.gov.uk/peoples-rights/human-rights/publications.htm</a>  <b>Publications</b>            DCA (Oct 2006) Human rights: human lives – a handbook for public authorities, crown copyright            DCA (Oct 2006) Making sense of human rights – a short introduction, crown copyright            DCA (Oct 2006) A Guide to the Human Rights Act 1998, crown copyright</p>						
<p><b>What should I do if I suspect my policy affects anyone's Human Rights?</b></p>	<p>You should forward for discussion at the Trustwide Equality and Diversity and Human Rights Group within the Trust- contact John Short, Chief Operating Officer, executive lead for Equality &amp; Diversity and Human Rights            mailto: <a href="mailto:john.short@cwpa.nhs.uk">john.short@cwpa.nhs.uk</a></p>						

Please tick one of the following

<p>The above has been considered and to the best of my knowledge my policy <b>does not affect</b> any of the human rights listed</p>	<input checked="" type="checkbox"/>
<p>The above has been considered and my policy does affect a human right article(s) but this has been discussed and 'qualified' at Trust Equality and Diversity and Human Rights Group</p>	<input type="checkbox"/>