



FINAL VERSION Section 135 of the Mental Health Act 1983/2007 Policy, Procedure and Guidance: Warrant to Search for and Remove Patients

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Revisions History

Version	Date	Author(s)	Principal Changes
1.0 Final version (noted earlier versions existed but not in this format)	26/2/15	Karl Gluck	<ul style="list-style-type: none"> • Amalgamated previous s135 (1) and s135 (2) polices into single policy. • Reviewed revised policy against the s135 recommendations contained in 'Review of the Operation of Sections 135 and 136 of the Mental Health Act 1983 : Review Report and Recommendations' (DoH, 2014) • Reviewed policy following publication of the revised MHA Code of Practice (DoH, 2015)
2.0	January 2018	David Pugh Karl Gluck	<p>Amendments to bring policy in line with the Sections 80-83 of the Policing and Crime Act 2017 which amend S135/6 MHA in the following ways. The three highlighted changes have the most significant implications for Section 135:</p> <ul style="list-style-type: none"> <input type="checkbox"/> Section 136 powers may be exercised anywhere other than in a private dwelling; <input type="checkbox"/> it is unlawful to use a police station as a place of safety for anyone under the age of 18 in any circumstances; <input type="checkbox"/> a police station can only be used as a place of safety for adults in specific circumstances, which are set out in regulations; <input type="checkbox"/> the previous maximum detention period of up to 72 hours will be reduced to 24 hours (unless a doctor certifies that an extension of up to 12 hours is necessary); <input type="checkbox"/> before exercising a Section 136 power police officers must, where practicable, consult a health professional; <input type="checkbox"/> where a Section 135 warrant has been executed, a person may be kept at their home for the purposes of an assessment rather than being removed to another place of safety (in line with what is already possible under Section 136); <input type="checkbox"/> a new search power will allow police officers to search persons subject to Section 135 or 136 powers for protective purposes. <p>These changes primarily relate to police powers to act in respect of people experiencing a mental health crisis for the purpose of ensuring their care and safety. They came into force on 11 December 2017. See multi-agency Section 136 Policy (2018) for details of changes to Section 136.</p>
3.0	May 2020	David Pugh Karl Gluck	<ul style="list-style-type: none"> <input type="radio"/> Review date of June 2018 overdue <input type="radio"/> AMHP Hub developments and implications <input type="radio"/> Creation of new Trust GHCHSFT merging 2gether NHSFT and Gloucestershire Care Services NHSFT

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1 Policy statement and purpose

- 1.1 The following are the key local policy statements driving implementation of Section 135 in Gloucestershire:
- 1.1.1 To minimise the need for intrusive interventions in line with the principles of the MHA as outlined in the Code of Practice
 - 1.1.2 Partners will work together to ensure that warrants of entry are only sought when all reasonable alternatives have been explored, dependent upon risk and the circumstances of the individual
 - 1.1.3 When entering the person's property, the AMHP will ensure the minimum number of professionals necessary to execute the provisions of Section 135 in line with good practice
 - 1.1.4 All people subject to Section 135 will receive an information leaflet on Section 135 of the MHA plus an explanation of the legal provisions from the AMHP
 - 1.1.5 Patients subject to S135(2) are the responsibility of the inpatient or community team with support from the AMHP Hub if needed.

2 Scope

All staff working as Approved Mental Health Professionals (AMHPs) within Gloucestershire, registered medical practitioners, the police, ambulance staff and GHC NHSFT staff.

3 Definitions

The Act / MHA	Mental Health Act 1983 as amended by the Mental Health Act 2007
AMHP	Approved Mental Health Professional.
Authorised person	Within this context this is any officer on the staff of the hospital at which the patient is liable to be detained, any person authorised in writing by the hospital managers to act on their behalf, an AMHP, or in the case of a guardianship patient, any member of staff of the LSSA, any person authorised in writing by the LSSA or the private guardian (if there is one)
AWOL	Absent without leave
CRHTT	Crisis Resolution and Home Treatment Team
Liable to be detained	Within this context this includes people who are actually detained under the MHA (such as people who can be lawfully stopped from leaving hospital) and people who could be detained but for some reason are not (such as people on Section 17 leave or for whom an application for detention has been completed but they have not yet been admitted to hospital).
LSSA	Local Social Services Authority
PaCA	Policing and Crime Act

POS	Place of Safety (as defined by the Mental Health Act 1983 as amended 2007)
Recall	Requirement that the patient, who is subject to the Act returns to hospital. This can apply to patients who are on Section 17 leave of absence, who are on a Section 17A Supervised Community Treatment Order or who have been Conditionally Discharged from hospital under Section 37/41.
Subject to the Act	Includes people who are not liable to be detained but whose treatment and care is provided within the context of an order under the MHA (such as Guardianship and Supervised Community Treatment) as well as those who are as above.

4 Legal Context and Guidance

- 4.1 This policy incorporates changes to the police powers and places of safety provisions in the Mental Health Act 1983 ("the 1983 Act") made by the Policing and Crime Act 2017 ("the 2017 Act"). These changes primarily relate to police powers to act in respect of people experiencing a mental health crisis for the purposes of ensuring their care and safety.
- 4.2 The main legislative changes are:
- 4.2.1 amendments to sections 135, 136 and 138;
 - 4.2.2 insertion of new sections 136A, 136B and 136C;
 - 4.2.3 making of new regulations: The Mental Health Act 1983 (Places of Safety) Regulations 2017. ¹
- 4.3 These changes came into force on 11 December 2017.
- 4.4 S135 interferes with a mentally disordered person's home and private life. This must be justified under Article 8(2) of the European Convention on Human Rights i.e.

"There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others"

(Human Rights Act 1998, Schedule 1, Part 1 The Articles)

- 4.5 Article 8 is a qualified right, which means that there are circumstances in which interference is permissible. The test of proportionality applies, which requires that, in

all the circumstances, the action taken was proportionate to the aim to be achieved. (Human Rights Act 1998 Guidance for Departments, 2nd ed. 63).

- 4.6 Under Section 115 an Approved Mental Health Professional is permitted to enter and inspect any premises (other than a hospital) in which a mentally disordered patient is living, if (s)he considers that there is reasonable cause to believe that the patient is not under proper care
- 4.7 Force cannot however be used to effect entry unless the police are present and can use powers at their disposal. If entry is refused, the AMHP should point out that this is an obstruction and could constitute an offence under S.129 of the Act.
- 4.8 The Police and Criminal Evidence Act 1984 has not removed the common law power of police constables to enter private premises without a warrant to prevent a breach of the peace occurring if it is reasonably believed that an imminent breach of the peace is likely to occur on the premises. It is not uncommon for police to assist local social services authorities with MHA assessments carried out on private premises.
- 4.9 Police constables may also wish to consider their powers under s17 (1) Police and Criminal Evidence Act 1984, namely that '**a constable may enter and search any premises for the purpose of ...recapturing [any person whatsoever] who is unlawfully at large and whom he is pursuing, or ...of saving life or limb or preventing serious damage to property.**' Police officers should note that s17 (1)(e) Police and Criminal Evidence Act 1984 does not however provide authority to remove any person from the premises.
- 4.10 Where an AMHP receives a request to obtain a warrant they should review the request to ensure that all reasonable attempts have been made to gain entry. There is no minimum number of attempts required prior to requesting a warrant.
- 4.11 It may not be necessary to require a warrant if the co-owner or owner of the premises gives permission to enter. This would apply to hotel rooms.
- 4.12 Section 135 (1) states:

"If it appears to a justice of the peace, on information on oath laid by an approved mental health professional, that there is reasonable cause to suspect that a person believed to be suffering from mental disorder:

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

(b) being unable to care for himself, is living alone in such a place,

the justice may issue a warrant authorising any constable to enter, if need be by force, any premises specified in the warrant in which the 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.” The Policing and Crime Act 2017 inserted a new subsection (1) 2(1A) namely if the premises specified in the warrant are a place of safety, the constable executing the warrant may, instead of removing the person to another place of safety, keep the person at those premises for the purposes mentioned in subsection (1). This is order that an MHA assessment of their mental state can take place.

4.13 This Section 135 (1) provides for a magistrate to issue a warrant authorising a police officer to enter premises, using force if necessary, for the purpose of removing a mentally disordered person to a Place of Safety (PoS) in specific circumstances or enabling them to be kept within what constitutes a PoS. Under the Act these are when the AMHP has reasonable cause to suspect that a person who is believed to be suffering from mental disorder has been, or is being, ill-treated, neglected or not kept under proper control, within the county or that they are not able to care for themselves or are living alone in such a place. The warrant provides a means by which an entry, which would otherwise be a trespass become a lawful act. The warrant is executed once entry to the premises has been affected by a constable; either by invitation or by force.

4.14 The warrant need not name the person, but must specify the premises to which it relates. In using the warrant the police officer must be accompanied by an AMHP and a registered medical practitioner. As the result of a House of Lords decision (Ward v Commissioner of Police), Magistrates may not apply additional requirements, e.g. naming the AMHP, doctor or police officer who would have to attend.

4.15 Consideration should always be given to whether it is desirable, practicable and in the interests of the person who has been subject to the S135 warrant to remain within their current location if it constitutes a PoS. If this is not possible, practicable and desirable they should be removed to another PoS where they can be assessed under the MHA

4.16 The place of safety to which the person is taken could be residential accommodation provided by the LSSA under Part III of the National Assistance Act 1948, a hospital as defined in the Act, a police station, an independent hospital or care home for mentally disordered persons or any other suitable place where the occupier is willing to temporarily receive the person (Sect 135 (6)). Currently the only Places of Safety in Gloucestershire are the Maxwell Centre or a police station (outside of contingency arrangements). A police station may now only be used as a Section 136 PoS where all 3 criteria below are met and with the approval of an officer of the rank of Inspector or above:

- a) the behaviour of the person poses an imminent risk of serious injury or death to themselves or another person **AND**
- b) Because of that risk, no other PoS in the relevant police area can reasonably be expected to detain them, **AND**
- c) So far as reasonably practicable, a healthcare professional will be present at the police station and available to them.

4.17 Section 44 of the Mental Health Act 2007 allows a person to be conveyed to one or more places of safety. They can be taken there by an AMHP, police officer or somebody authorised by them. The person can be kept legally for up to 24 hours or until the assessment is completed, whichever is sooner. This period of detention of 24 hours can be extended by up to a further 12 hours – to a maximum of 36 hours, but only in very limited circumstances. These are that, because of the person's condition (physical or mental), it is not practicable to complete a Mental Health Act assessment within the 24 hour period. For further details see Section 10.8 of the multi-agency Section 136 Policy, Procedure and Guidance (September 2020)

4.18 Under Regulation 10 of The Mental Health (Hospital, Guardianship and Treatment) (England) Regulations 2008 and S114 (10) of the Act an AMHP acting on behalf of Gloucestershire County Council, can apply for a warrant to a magistrates court in England or Wales with respect to a Gloucestershire patient.

4.19 Section 135 (2) states

"If it appears to a justice of the peace, on information on oath laid by any constable or other person who is authorized by or under this Act or under section 83 of the [Mental Health (Scotland) Act 1984] 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 section 83 to be so taken or retaken:

that there is reasonable cause to believe that the patient is to be found on premises within the jurisdiction of the justice; and

- (a) that admission to the premises has been refused or that a refusal of such admission is apprehended,*
- (b) the justice may issue a warrant authorizing any constable [...] to enter the premises, if need be by force, and remove the patient*

4.20 Under S135 (2), a constable or any other person who is authorised by or under the Act can seek a warrant to enter a premises to search and take a patient who is liable under the Act to hospital, any place or into custody or can retake a patient by providing information on oath or affirmation to a justice when there is reasonable cause to believe that the patient is to be found within the justice's area admission to the premises has been refused or it is expected to be refused. If the justice issues a warrant, it gives any constable the right to enter any premises named in the warrant, using force if necessary, to remove the patient to where they should be.

5 Legal Rights and Section 135

- 5.1 Detaining a service user in a place of safety under Section 135 **does not** confer any power under Part IV of the Mental Health Act to treat them without their consent.
- 5.2 If the patient is assessed as having the capacity to make decisions about treatment they can refuse to be treated. If the person is assessed as lacking capacity to make decisions regarding treatment can be provided under the Mental Capacity Act (MCA) if it is deemed to be in their best interests (see Multi-Agency MCA Policy for further details)
- 5.3 The duration of the detention is 24 hours and it is not renewable although it can be a maximum of 36 hours in very limited circumstances. The patient or the patient's nearest relative cannot apply to the Mental Health Review Tribunal. There will not be an automatic Mental Health Review Tribunal hearing.
- 5.4 Section 136C of the Policing and Crime Act enables a police officer to search a person subject to section 135, 136(2) or 136(4) who they reasonably believe may present a

danger to themselves or others and is concealing a dangerous item, for the purpose of discovering and seizing that item.

- 5.5 The AMHP should provide an explanation of Section 135 (1) to ensure the subject of Section 135 (1) understands the process. This must also be provided in writing – see Appendix 2 'Warrant To Search For Patients – Place of Safety'.
- 5.6 Further Guidance can be found in the following sources:

- 5.6.1 MHA Code of Practice 2015
- 5.6.2 Reference Guide to the Mental Health Act
- 5.6.3 Section 136 Multi-agency Policy and Procedure
- 5.6.4 Police Assistance for AMHPs Policy and Procedure
- 5.6.5 Conveyance Policy and Procedure
- 5.6.6 Protection of Property Policy and Procedure
- 5.6.7 Policing and Crime Act 2017
- 5.6.8 Guidance for the implementation of changes to police powers and places of safety provisions in the mental health act 1983' (October 2017)
Implementing changes to police powers and places of safety provisions.

6 S135 – Nearest Relative/Carers

- 6.1 Law on confidentiality is the same for patients subject to the Act as it is for any other patient except where the Act states otherwise (MHA Code of Practice).
- 6.2 Prior to obtaining the warrant and in line with the MHA Code of Practice the AMHP (See chapter, para 4.37-4.47, chapter 10, para 10.15-10.17, chapter 14, para 14.66-14.70 and 14.100-14.102), the AMHP may choose to liaise with the Nearest Relative/Carer. This need not constitute a breach of confidentiality. Nearest relatives/Carers may be in a position to facilitate access to premises thereby removing the need for a warrant or through supporting the assessing team if a warrant is required to minimise disruption to the individual in question (e.g. provision of keys to enter).

7 Obtaining a s135 (1) Warrant (See appendix 1 flowchart)

- 7.1 All request for S135 (1) or (2) should come via the AMHP Hub. Consideration must be given by the AMHP in consultation with the registered medical practitioner as to the following:
 - 7.1.1 Identify risks and consider what might be an appropriate Place of Safety, including where the person is living if possible, practicable and desirable.
 - 7.1.2 Consider the benefits of taking a second registered medical practitioner.
- 7.2 The AMHP must create a police incident number by informing the police that a warrant is to be sought which will require their assistance at a later point.
- 7.3 Prior to the warrant being executed, consideration must be given to securing the premises after entry has been made. This will need to be discussed beforehand by the AMHP, police and relatives. The **Care Act 2014 section 47** places a duty on the local authority in this respect. Arrangements should be made for any damage to be made good, or the landlord/ housing association informed so that they can arrange for this. If a forced entry is needed then careful consideration should be given to make sure the least damaging means has been chosen and to agree who is to arrange and or pay for any short term or full repair e.g. owner, occupier, police, Social Services, or NHS Trust.
- 7.4 The AMHP must ensure that they have a supply of forms; '**Information In Support Of Application For Warrant To Enter Premises And Remove patient**' and '**Warrant to Search for and Remove Patient.**' The warrant itself is made up of four carbonated sheets. Both forms are ordered and stocked in GHC NHSFT hospital health records offices. Out of Hours/Weekends the GHACNHSFT Mental Health and Learning Disabilities On Call Manager will be able to access these documents if required.
- 7.5 The AMHP must contact Gloucestershire Magistrates Service on **01452 334400** and select **option 1** followed by **option 2**. in order to arrange to see a Justice of the Peace. Ideally this should be in the normal way via Court with the Court Clerk accompanying the Justice of the Peace. Where possible AMHPs should obtain warrants during normal working hours (between 8.30 and 17.00 on weekdays). If the need arises out of these hours then the local police (non emergency number 101) should provide a contact number for the duty Court Clerk. In such a situation or in an emergency the meeting with the Justice of Peace can take place anywhere.

7.6 When meeting with the Justice of the Peace, the following is needed:

- 7.6.1 The written information, which must be provided before a Justice of the Peace can consider the issues of a warrant. This should not be signed until the oath has been sworn, or an affirmation has been made, using the words, "*I do solemnly, sincerely and truly declare and affirm that the evidence I shall give shall be the truth, the whole truth and nothing but the truth*"
 - 7.6.2 A warrant, but it is not necessary to name the police officer. AMHPs should attend with the completed information on the warrant.
 - 7.6.3 Identification/ AMHP authorisation card.
- 7.7 All the three documents named above must be taken to the Justice of the Peace and an oath sworn or affirmed stating the reason why it is believed that the person is suffering from mental disorder. The AMHP may include information received from other people. This information can be given verbally.
- 7.8 A photocopy of the information must be taken before the AMHP meets with the Justice of the Peace and the copy placed on the file. If the Justice of the Peace agrees to issue the warrant, *they sign and keep* the information sheet, showing their acceptance of the information. They also sign the warrant which has four carbonated sheets. These are the original, and copies (a), (b), and (c) whose use is detailed in 6.6.

7.9 All requests for a warrant should come via the AMHP Hub which has an account with HMCTS. A cost code will be sent in a confirmation email once the application has been booked.

8. Executing the s135 (1) Warrant

- 8.1 Under Section 135 (1) as amended by the Policing and Crime Act 2017 the patient can be assessed on the premises. However "if thought fit" the patient can be removed by the police to a place of safety, *accompanied by the AMHP and the registered medical practitioner with a view to completing an assessment, or for other arrangements to be made for the person's treatment or care*. Paragraph 16.7 of the MHA Code of Practice states that the determination of whether or not to remove to a POS is a joint responsibility between the AMHP and the doctor.
- 8.2 The police have the right to authorise others to take the person to a place of safety (e.g. ambulance service). With regards to the choice of transport the AMHP and registered medical practitioner must comply with the requirements of the Mental Health Act Code of Practice (chapter 17).

- 8.3 If it is deemed necessary to remove to the POS then immediate consideration should be given to calling an ambulance, the preferred method of transport under the MHA Code of Practice (16.32 and 16.41). Police vehicles should only be used where there is extreme urgency, or where there is an immediate risk of violence. An ambulance should always be used where there is risk of collapse and death or prolonged restraint. Where police transport has to be used a member of the ambulance crew can be asked to be present in the police vehicle and the ambulance requested to follow behind to enable a response to any medical emergency.
- 8.4 It is important to note that the warrant allows entry to the premises concerned on one occasion only. If the person is not found there, and at a later date the person again denies access, a further warrant will be needed. If on arrival at the premises with the warrant access is then given, the warrant should be retained as evidence in any future dispute that a right to entry had been obtained.
- 8.5 Whenever a warrant is executed the AMHP should make every attempt to explain to the person what is happening and why.
- 8.6 The original should be kept by the AMHP until it is executed or expired.
- 8.7 The Warrant is endorsed by the police officers. The AMHP must ensure that the police officers complete the endorsement section of the form.
- 8.8 Copy (a) should be left with the occupier of the premises or in their absence left with a person in charge of the premises. If no such person is present it must be left in a prominent place at the premises. The police will retain copy (b); copy (c) is given to the person in charge of the place of safety.

9 Assessment under the Act and s135 (1)

- 9.1 If it is deemed appropriate then the assessment can take place in the premises identified in the warrant then this should take place and should be in line with the relevant sections of the Code of Practice (Chapter 14). The continued presence of the police should be based on a joint assessment of risk, threat and harm.

10 Identifying the Place of Safety for purposes of s135 (1)

- 10.1 This should normally be the Maxwell Centre though other venues can be legitimate as in 4.15 above. Where consideration is given to the use of a private dwelling as a PoS

it should not be assumed that the person might prefer to remain at, or be taken to a family home. In some circumstances, for example, relationships within the home may contribute to mental distress.

10.2 In cases where a section 135(1) warrant has been used to enter a private address, the use of that same address as a place of safety – with the person subject to the warrant thereby remaining in familiar surroundings – may avoid any distress that the person might otherwise experience if transported to another place of safety. In such cases a mental health professional will already be present and it may be in the best interests of the person that an assessment be carried out on the spot. The intended place of safety should be contacted in advance of the assessment to ensure it is prepared to receive the patient.

10.3 Transfer to an alternative place of safety. A person can be moved from one place of safety to others before the expiry of the maximum of 24 hours detention.

10.4 The detention period for those detained under section 135 begins:-

- (i) where a person is removed to a place of safety under section 135 or 136 – at the point when the person physically enters a place of safety. Time spent travelling to a place of safety or spent outside awaiting opening of the facility does not count;
- (ii) where the person is kept at the address specified in the warrant under section 135 - the time at which the police officer first enters the premises; and

10.5 The clock continues to run during any transfer (if this is necessary) of a person between one place of safety and another.

10.6 If a person subject to section 135 or 136 is taken first to an Emergency Department of a hospital for treatment of an illness or injury (before being removed to another place of safety) the detention period begins at the point when the person arrived at the Emergency Department (because a hospital is a place of safety).

10.7 The person can be taken to the other place(s) of safety by a police officer, an AMHP or somebody authorised by either the police or the AMHP. The benefit of the move should be weighed against any delay to the assessment and possible distress caused by the journey. The transfer can be arranged at any stage: before the assessment, during the assessment or after the assessment according to the circumstances. See the Code of Practice 2015 chapter: 16 (Police powers and places of safety), chapter

17 (Transport of patients) and the Multi-agency Conveyance Policy for further guidance.

11 Obtaining s135 (2) Warrant (See appendix 1, flowchart)

11.1 A warrant may be sought under this section if the patient is either:

- a) Absent without leave from detention in hospital or
- b) Subject to a Guardianship order and needs to be returned to the address specified in the order.
- c) Liable to be detained but has not yet been admitted to hospital.
- d) Subject of recall with respect to leave of absence under Section 17.
- e) Subject of recall under s17A.

11.2 Before seeking a warrant under section 135 (2) staff (community or inpatient) should consider the needs of the patient and the risks related to them not being in hospital or the address specified in the Guardianship Order in consultation with the Responsible Clinician and the patient's carers and nearest relative if practicable.

11.3 Consideration should be given to identifying the place to which the patient is to be taken and to the means of conveying the patient.

11.4 Attempts should be made to contact the patient, to reinforce their current status under the Act, the proposed plan for their care and treatment and to invite them to work with those responsible for their safety and wellbeing

11.5 **AWOL:** For those detained under sections 2, 3, 4, 37, 47 or 48 it is most appropriate if a member of the hospital staff, or another person authorised by the Hospital Managers, makes the application for the warrant. AMHPs based in inpatient units or duty AMHPs may be able provide advice but do not have to be the applicant. However, AMHP's are authorised to act in this situation and in very exceptional circumstances an AMHP may agree to a request from an NHS Trust for an AMHP to seek a warrant on their behalf.

11.6 **Liable to be detained but not yet admitted:** If a patient has absconded after being detained under s2, s3 or s4, but before being admitted to hospital, the responsibility for obtaining the s135 (2) warrant rests with the AMHP.

- 11.7 **Guardianship:** A warrant may be sought under this section if the patient is absent from the address at which they are required to reside under guardianship. The information for this will normally be provided by the person who is acting as the patient's Guardian on behalf of the LSSA (with authorisation by the LSSA) or privately.
- 11.8 **Recall from s17 Leave:** Regarding b) recall from Sect 17 leave, responsibility for information provision and warrant application may depend upon the length of the leave and consequent degree of involvement of community teams. Recall from very short term leave may rest largely with the hospital. Recall from longer periods will be the responsibility of care co-ordinators or CRHTT if involved.
- 11.9 **Recall from s17A:** A warrant may be sought under this section if the patient is the subject of recall with respect to a Supervised Community Treatment Order (Section 17A). The information for this will normally be provided by the community care coordinator, (authorised by the hospital managers) if the patient is liable to recall and by the inpatient named nurse if AWOL following recall to hospital.
- 11.10 A warrant may be sought under this section if a patient absconds while being transferred from one place of safety to another under Section 135 (1) or Section 136. The information for this will normally be provided by whoever has been authorised to convey the patient and usually the police.
- 11.11 The warrant may be applied for by any constable or any other person who is authorised to take or return the patient. In practice it is likely to be one of those listed in the preceding paragraphs.
- 11.12 The information to the Justice of the Peace should be in writing on the "**Information in Support of an Application for Warrant to Enter Premises and Remove Patient**" form which is stocked in Health Records offices in GHACNHSFT hospitals. Out of Hours/Weekends GHACNHSFT the Mental Health and Learning Disabilities On Call Manager will be able to access these documents if required.
- 11.13 The person requesting the warrant must contact Gloucestershire Magistrates Service on **01452 334400** and select **option 1 and then option 2**. This service will arrange for the informant to see a Justice of the Peace. Normally this would be via Court with the Court Clerk accompanying the Justice of the Peace during day time working hours (between 8.30 and 17.00 on weekdays). If a need arises outside these hours the police (non-emergency contact number 101) should provide a contact number for

the duty Court Clerk. In such a situation or in an emergency the meeting with the justice can be at any place.

11.14 The person requesting the warrant should immediately contact Gloucestershire Constabulary (non-emergency contact number 101) to discuss with the Duty Sergeant for the location of the patient, the need to apply for a warrant and to clarify whether under all of the circumstances it is most appropriate for the police to seek the warrant. This should generate a police incident number and notification of a direct line phone number for future liaison. Preliminary decisions should be made at this stage regarding who would accompany the police when the warrant is executed.

11.15 When meeting with the justice the informant must have identification which demonstrates that they are authorised to apply for the warrant. This would be their ID issued by GHACNHSFT for inpatient staff, the written authorisation provided by the hospital managers for community staff, the AMHP authorisation warrant or, in the case of guardianship, authorisation by the LSSA.

11.16 The information should be made available to the justice and signed by the informant after the oath has been sworn or the affirmation made. Additional verbal information may be requested and provided.

11.17 The informant should also have the warrant, clearly issued under the Mental Health Act, completed with the name of the person making the application, deletions to the standard document to identify the grounds, on which the authority is sought, the name of the patient and the address at which it is expected that they will be found. The form should be used to provide relevant information regarding (e.g. risk to the patient or others) and the basis of the authority to take or retake the patient (e.g. an application having been completed for detention under Section 2 or for recall under S17). If the justice agrees to issue the warrant they will sign and keep the information sheet. The dated signature of the justice on the warrant provides the authority for any constable to search and remove the patient within one month from the date of issue. It should be kept by the applicant until it is executed or has expired

12 Executing the s135 (2) Warrant

12.1 The person who has obtained the warrant should liaise immediately with those who will be participating in the execution of the warrant. The constable should be accompanied, wherever possible by a registered medical practitioner or any person

with authority from the hospital managers or LSSA to take or retake the patient. The "Warrant to Search and Remove Patient" can be used on one occasion only.

- 12.2 When the warrant has been used the white top (original) copy should be completed by the constable and forwarded to the Clerk to the Justices at the above address. The pink copy A should be left with the occupier of the premises searched or in a prominent place at those premises if no occupier is present. A phone number and invitation to make contact could be left on behalf of the applicant. The green copy B should be taken by the constable for the police records. The yellow copy C should be provided to the person in charge of the place to which the patient has been taken (e.g. hospital or address named in the Guardianship Order).
- 12.3 With regards to the choice of transport the AMHP and registered medical practitioner must comply with the requirements of the Mental Health Act Code of Practice (chapter 17).
- 12.4 Immediate consideration should be given to calling an ambulance, the preferred method of transport under the MHA Code of Practice (16.32 and 16.41). Police vehicles should only be used where there is extreme urgency, or where there is an immediate risk of violence. An ambulance should always be used where there is risk of collapse and death or prolonged restraint. Where police transport has to be used a member of the ambulance crew can be asked to be present in the police vehicle and the ambulance requested to follow behind to enable a response to any medical emergency.
- 12.5 It is most likely that under s135 (2) the individual will be taken the hospital they were detained at or liable to be detained at or in the case of Guardianship the address specified on the Guardianship order. However, s135 (2) does allow the option to remove the person to the POS.
- 12.6 Please see appendix 1 for s135 (1) and (2) flowchart.

13 Unexecuted Warrants

13.1 If the warrant has not used within one calendar month, it should be returned by the applicant, with a brief explanation regarding why it has not been used, to the Clerk to the Justices at:

HMCTS
PO Box 9051
Gloucester
Gloucestershire
England
GL1 2XG

14 Implementation

14.1 This procedure will be formally introduced by the AMHP Service Lead for implementation from October 2020. There will be a series of briefing sessions for key staff groups across Gloucestershire.

14.2 The policy will be made available on the County Council and all partner websites.

14.3 Each partner agency should have in place a process for ensuring that the policy is disseminated to all relevant staff.

15 Monitoring and Review

15.1 The protocol will be reviewed via the Inter Agency Monitoring Group (IAMG) within 2 years of publication/ and/or in response to any legislative/case law changes which directly impact on s135 (1) and s135 (2).

15.3 Practical issues relating to s135 will be discussed at the IAMG.

15.09.20
D Pugh
K Gluck

Appendix 1: s135(1) and (2) Flowchart

