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Author(s) <i>(name and designation)</i>	Simon Rowland, Mental Health Legislation Lead Nurse
Sponsor <i>(name and designation)</i>	Michael Laing Associate Director, Community Services

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Section 136: Mental Health Act 1983 Policy

1. Introduction

The Mental Health Act 1983 (MHA) provides a framework for the compulsory admission to hospital and subsequent treatment of patients with a mental disorder.

All health professionals who are considering a course of action under the MHA must ensure they proceed in accordance with the guiding principles set out in the Code of Practice.

This Policy outlines the process to be followed when police bring a person to the Queen Elizabeth Hospital under Section 136 of the MHA as a place of safety.

2. Policy scope

There is no minimum age limit for detention in hospital under the Act therefore this policy applies to all frontline staff, locums, bank staff and voluntary workers involved in delivery of care of patients who are detained, or liable to be detained, under the MHA.

3. Aim of policy

The aim of this policy is to protect patients and the public, provide staff with guidance to ensure compliance with the provisions of the MHA.

The policy includes procedural guidelines (as appendices). These are based on the MHA (as amended by the MHA 2007), the MHA Code of Practice, the MHA Regulations, DOH circulars and established best practice.

4. Duties – Roles and responsibilities

Trust Board

The Trust Board is responsible for implementing a robust system of corporate governance within the organisation. This includes having a systematic process for the development, management and authorisation of policies.

Chief Executive

The Chief Executive is ultimately responsible for ensuring effective corporate governance within the organisation and therefore supports the Trust-wide implementation of this policy.

Mental Health Act Compliance Group

The Mental Health Act Compliance Group monitor the responsibilities of hospital managers under the MHA, ratify policy and review Trust compliance within the legal framework of the MHA.

Mental Health Act Administration Team

The MHA Admin Team are responsible for the scrutiny of legal paperwork on behalf of the Hospital Managers and ensure rectification of errors. The team will provide written information to patients and their nearest relative. The Team has delegated responsibility to co-ordinate Hospital Managers Hearings and Mental Health Review Tribunals. Capture and present Mental Health Act data, audit compliance with the legislation, inform CQC of the

death of a detained patient, a detained patient who is Absent Without Leave (AWOL) and any other functions delegated to them by the Hospital Managers.

Trust Managers

The Trust Managers are responsible for ensuring staff are aware of and adhere to this policy and that their actions comply with the MHA.

All Clinical Staff

All clinical staff will adhere to this policy when assessing or providing care and treatment (directly or indirectly) to individuals suffering from a mental illness.

5. Definition of Terms in the Act

Terms used under the MHA are described in Appendix 1.

6. Provisions of the Mental Health Act 1983

6.1 Section 136 (S136)

If a person appears to a constable to be suffering from mental disorder and to be in immediate need of care or control, a 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.

If the person is already at a place of safety the constable may keep them at that place of safety or remove them to another one.

The constable may enter any place, using force if necessary, other than a place where the power cannot be exercised as set out below:

- Any house flat or room where that person, or any other person is living, and
- Any yard, garden, garage or outhouse used in connection with the house, flat or room, other than one that is also used in connection one or more other houses, flats or rooms.

Before deciding to remove a person to, or to keep a person at, a place of safety the constable must, if it is practicable to do so, consult:

- A registered medical practitioner
- A registered nurse
- An Approved Mental Health Professional (AMHP)
- An occupational therapist
- A paramedic

The purpose of the consultation is for the officer considering use of their powers under S136 to obtain timely and relevant mental health information and advice that will support them to decide a course of action. The nature of the consultation may vary across areas and in terms of individual circumstances. The police officer retains ultimate responsibility for the decision to use, or not, their powers under S136.

6.2 Place of safety

The Policing and Crime Act 2017 has changed the definition of a place of safety. The definition and guidance as to which place of safety should be used in chapter 16 of the Code of Practice are superseded by the definition and guidance below.

A place of safety is defined by section 135(6) MHA 1983 as:

- Residential accommodation provided by a local social services authority under Part 1 of the Care Act 2014
- A hospital, as defined by section 145 MHA 1983
- A police station, for those aged 18 years and over only
- An independent hospital or care home for mentally disordered persons
- Any other suitable place

Under section 135(7) a house, flat or room where a person is living may not be regarded as a suitable place unless the officer believes that the environment and presentation of the person is such that it is suitable, and appropriate agreement is given as below:

- If the person believed to be suffering from a mental disorder is the sole occupier of the place, that person agrees to the use of the place as a place of safety;
- If the person believed to be suffering from a mental disorder is an occupier of the place but not the sole occupier, both that person and one of the other occupiers agree to the use of the place as a place of safety; or
- If the person believed to be suffering from a mental disorder is not an occupier of the place, both that person and the occupier (or, if more than one, one of the occupiers) agree to the use of the place as a place of safety

Any place, other than listed above, or a house, flat or room where the person is living (as set out above), may not be regarded as a suitable place unless a person who appears to the constable exercising powers under this section to be responsible for the management of the place agrees to its use as a place of safety.

6.3 Police presence at the place of safety

The Police officer should remain in attendance to provide a safe handover to hospital staff, and to allow for a joint assessment of any potential risks to the person, staff or public.

The risk assessment outcome will determine the level of Police response.

If green or amber risk level is identified, police officers should remain for a period agreed between them and Hospital staff.

If red risk level is identified, police officers should remain until the risk is jointly re-assessed and has diminished, or, there are sufficient hospital based staff present to manage the risk.

Risks should be jointly reviewed on a regular basis. If risks require prolonged Police attendance, or if there are any disputes regarding the continuing need for Police

attendance, the constable will discuss continuing attendance with the Nurse in Charge.

Where risks escalate after police leave the premises, they may be requested to return and assist until the risk reduces.

6.4 Period of Detention and extension

Section 136(2) sets out the time limits for detention. The person may be detained at the place of safety for no more than 24 hours beginning with:

- If the person is taken to a place of safety, the time when the person physically enters that place of safety
- If the person is kept at a place of safety, the time when the officer takes the decision to keep them at that place
- A person may be moved from one place of safety to another, and the clock continues to run

The registered medical practitioner who is responsible for examining the patient detained under S136 may, at any time before the 24 hour period expires, extend the period of detention by a further period of up to 12 hours commencing immediately from the end of the initial 24 hours, Section 136(B).

This extension can only be given if it is necessary because the condition of the person detained is such that it would not be practicable for the assessment to be carried out before the end of the 24 hours, or, if the assessment began, for it to be completed. An extension cannot be given to allow for delays in the attendance of assessors, or delays in identifying a suitable available bed if admission is required.

6.5 Assessment

The assessment should commence as soon as possible after the arrival of the person at the Hospital by a Registered Medical Practitioner (RMP), and an Approved Mental Health Professional (AMHP).

A 'second' doctor should only be contacted by the AMHP after the initial assessment by the RMP and interview by the AMHP has concluded that admission under MHA 1983 is indicated.

Where possible, the assessment should be undertaken jointly by the RMP and the AMHP. However, medical staff should not delay their arrival to coincide with the arrival of the AMHP, and AMHPs should not delay their arrival to await the outcome of the medical examination.

- The individual must be both assessed by a RMP and interviewed by an AMHP.
- If the RMP examines the person before the AMHP arrives and concludes that they are suffering from mental disorder, but may not need to be admitted, the person must still remain at the place of safety until interviewed by the AMHP

- If the RMP examines the individual before the arrival of the AMHP and concludes that they are not mentally disordered, they can no longer be detained under section 136 and must be immediately discharged from detention. The AMHP must be informed of this if they have not yet arrived. If the person appears to have 'other' needs for care and support they should be signposted to an appropriate service for assessment under the Care Act 2014, or offered the opportunity to wait and discuss with the AMHP.

If the person detained under S136 is under the age of 18 years or has a learning disability/difficulty, the assessment team will contact a section 12 Approved Doctor with experience in working with Children and Young People or Learning Disabilities, either to carry out the assessment or to provide telephone advice to the RMP and AMHP carrying out the assessment.

6.5.1 Assessment Outcome

Once the S136 assessment has been completed and mental disorder is confirmed, a decision must be made regarding the need for further care or treatment; this could be as an in-patient (either in the acute hospital or a mental health hospital) or as an out-patient.

Community follow-up

Where the person has a mental disorder but does not require admission to hospital, the AMHP will make arrangements for subsequent care and treatment. For example by informing the Care Coordinator, if the person is already known and open to services, arranging follow up appointments or Crisis Team involvement. If the person is not known to services but appears to the AMHP to meet the criteria, they should be offered advice regarding an assessment under the Care Act 2014.

The AMHP must ensure that the person is aware of what follow up arrangements have been made.

Appropriate arrangements must be made for the person to be returned to the community. This may include Hospital staff arranging transport.

Admission to Hospital

Admission to hospital could either be under the MHA or with the capable consent of the person. If the person is to be admitted to hospital without detention, then their capable consent is required and a capacity assessment must be carried out to establish the necessary capacity is present and that they are actually consenting, and recorded. If the person is to be detained under the Mental Health Act 1983, the AMHP will arrange for the attendance of a second registered medical practitioner to provide the second medical recommendation and the AMHP may then make the application for detention. A RMP who is not section 12 approved may be used as the second doctor if the AMHP feels that this is appropriate and the first doctor should be available to discuss the assessment with the second doctor and the AMHP. Once the decision to admit, either informally or under the MHA, is made, then dependent on clinical need the appropriate hospital must be identified. This could be admission to the acute hospital if the physical healthcare needs take precedence over the mental healthcare needs. If admission to a mental health facility is

appropriate the relevant service provider must be involved, if not already, and an appropriate bed must be identified.

If the person is to be admitted to hospital as an informal patient, transport that is appropriate to the needs of the patient must be used.

Section is discharged

The section ends when one of three things happens:

- The assessing Doctor decides the patient is not mentally disordered within the meaning of the Mental Health Act
- An Approved Mental Health Professional has made necessary arrangements for that persons treatment or care
- 24hrs expires after their arrival at the first place of safety to which they were taken after detention.

6.6 Treatment

Section 136 is excluded from Part IV MHA 1983.

If the person requires urgent treatment while subject to Section 136 this can only be given:

- With the consent of the patient, if they have the capacity to consent; or
- Under the MCA 2005, if the patient lacks the capacity to give consent and the treatment is in their best interests

6.7 Rights

A person detained under S136 must receive a verbal and written explanation of their rights. The S136 Patient Information Leaflet (Appendix 4) will be made available to provide a copy to the person, and to explain the contents to the person.

7 Training

Staff working within Mental Health Wards/Departments/Emergency Care Centre	Update training every three years provided in-house.
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8 Diversity and Inclusion

The Trust is committed to ensuring that, as far as is reasonably practicable, the way we treat members of staff and patients reflects their individual needs and does not discriminate against individuals or groups on the grounds of any protected characteristic (Equality Act 2010). An equality analysis has been undertaken for this policy.

9 Monitoring compliance/effectiveness of the policy

Monitoring compliance with this policy will be the responsibility of the Mental Health Act Compliance Group

Standard / process / issue	Monitoring and audit			
	Method	By	Committee	Frequency
The principles of best practice as set out in the Mental Health Act 1983 will be embedded into the practice of employees within the organisation who provide care and treatment for those who are detained or liable to be detained under the Act.	Regular monitoring of all Section paperwork will be routinely carried out.	Mental Health Act Administration Team	Mental Health Act Compliance Group	Each time a section is applied.
	Audit will be carried out.	Mental Health Act Administration Team	Mental Health Act Compliance Group	Yearly

10 Consultation & Review

This policy has been reviewed against the Mental Health Act 1983, The Code of Practice 2015 and the Reference Guide to the Mental Health Act 1983 2015 and in discussion with the Mental Health Act Compliance Group.

11 Implementation of policy

This policy will be implemented in accordance with policy OP27 “Policy for the development, management and authorisation of policies” and policy training will be included in the programme of training as detailed in section 7.

12 References

The Mental Health Act 1983 (as amended by the 2007 Act)
 Department of Health (2015) Mental Health Act 1983 Code of Practice
 Mental Capacity Act 2005 & Deprivation of Liberty Safeguards

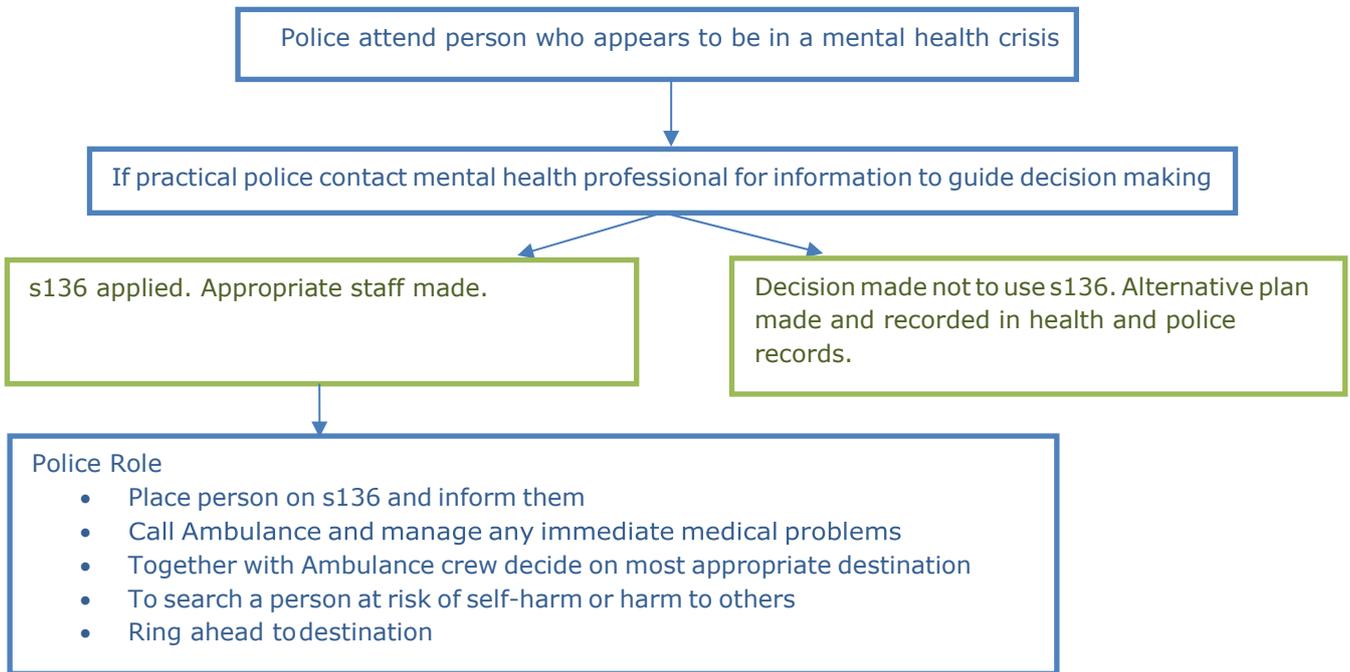
13 Associated Documents

DH Guidance for the implementation of changes to police powers and places of safety provisions in the mental health act 1983 (October 2017)
 Policing and Crime Act 2017
 Royal College of Emergency Medicine: Guide to Section 136 for Emergency Departments (2017)

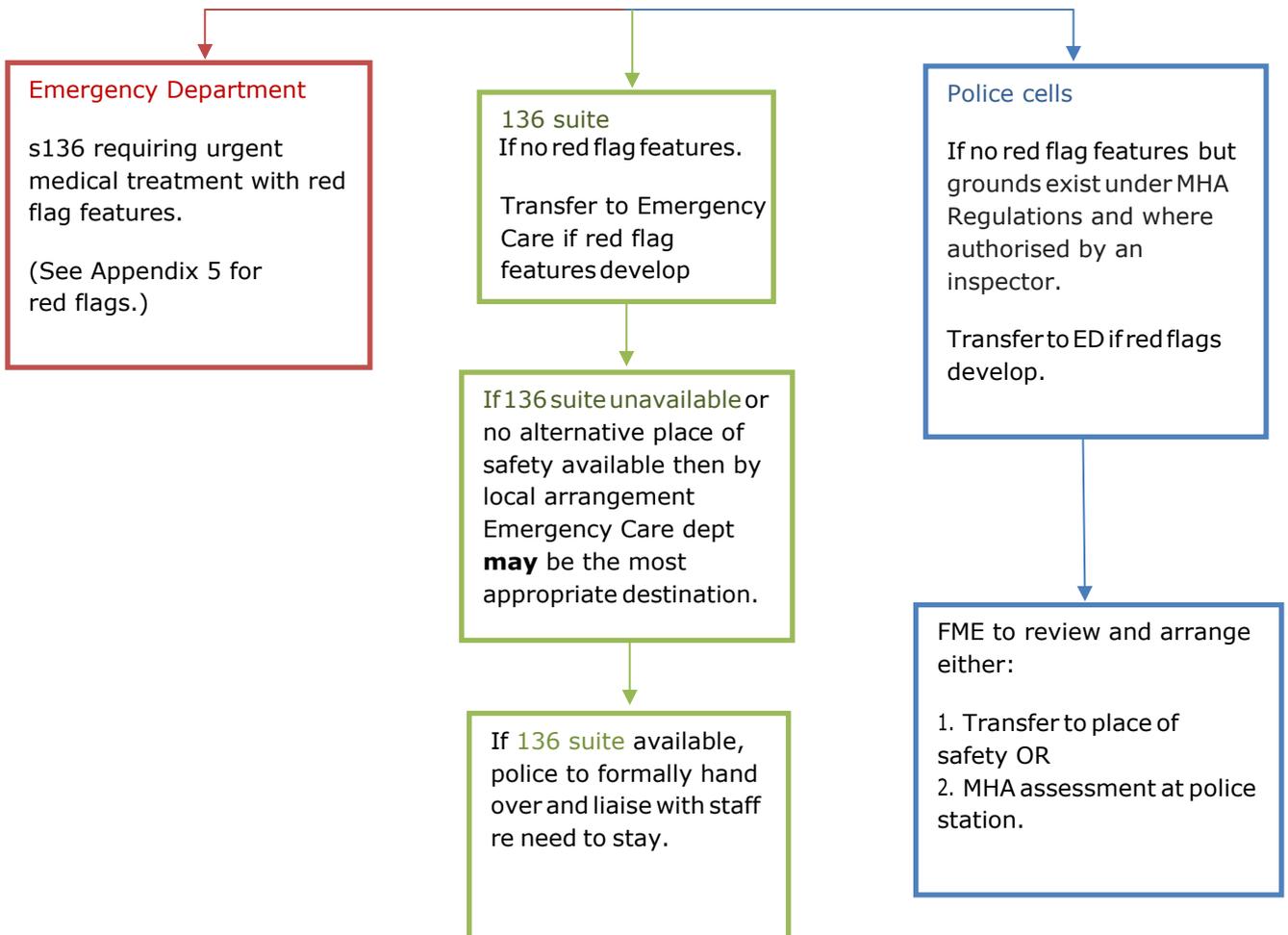
Definition of Terms

The Act	The Mental Health Act 1983, as amended over time
Application for admission	An application to the managers of a hospital for a patient to be detained there under Part 2 of the Act. As well as being a request for detention, the application becomes the legal authority on the basis of which the patient is detained.
Application for admission for treatment	An application for admission under Section 3 of the Act for a patient to be detained in hospital for medical treatment.
Approved Mental Health Professional (AMHP)	A social worker or other professional approved by a local social services authority (LSSA) to perform a variety of functions under the Act. Those functions include making applications for admission to hospital and guardianship applications, and agreeing that patients should become CTO patients.
Code of Practice	Under Section 118 of the Act, the Secretary of State must publish a Code of Practice for the guidance of certain people who make decisions under the Act.
Detained patient	A patient who is detained (or liable to be detained) in hospital against their wishes.
Discharge	Under the Act this usually means discharge from being liable to be detained under the Act.
Hospital Managers	The individual or body responsible for a particular hospital. It generally refers to the managers of the hospital in which a patient is (or is liable to be) detained.
Independent Mental Health Advocate (IMHA)	Means the advocacy services for detained patients and is provided under Sections 130A to 130D of the Act.
Mental Capacity Act (MCA)	Provides a legal framework for decision-making in relation to people who lack capacity to make particular decisions for themselves. The MCA does not apply to anyone under the age of 16.
Mental Disorder	The Act defines mental disorder as any disorder or disability of the mind (apart from dependence on alcohol or drugs).
Registered Medical Practitioner(RMP)	An RMP means a fully registered person within the meaning of the Medical Act 1983 who holds a licence to practise under the act.
Section 12 approved doctor	A doctor approved by a strategic health authority on behalf of the Secretary of State for Health to carry out certain functions under the Act.
Constable	Means the office of constable, and not the rank of constable. Therefore any police officer can exercise this power.

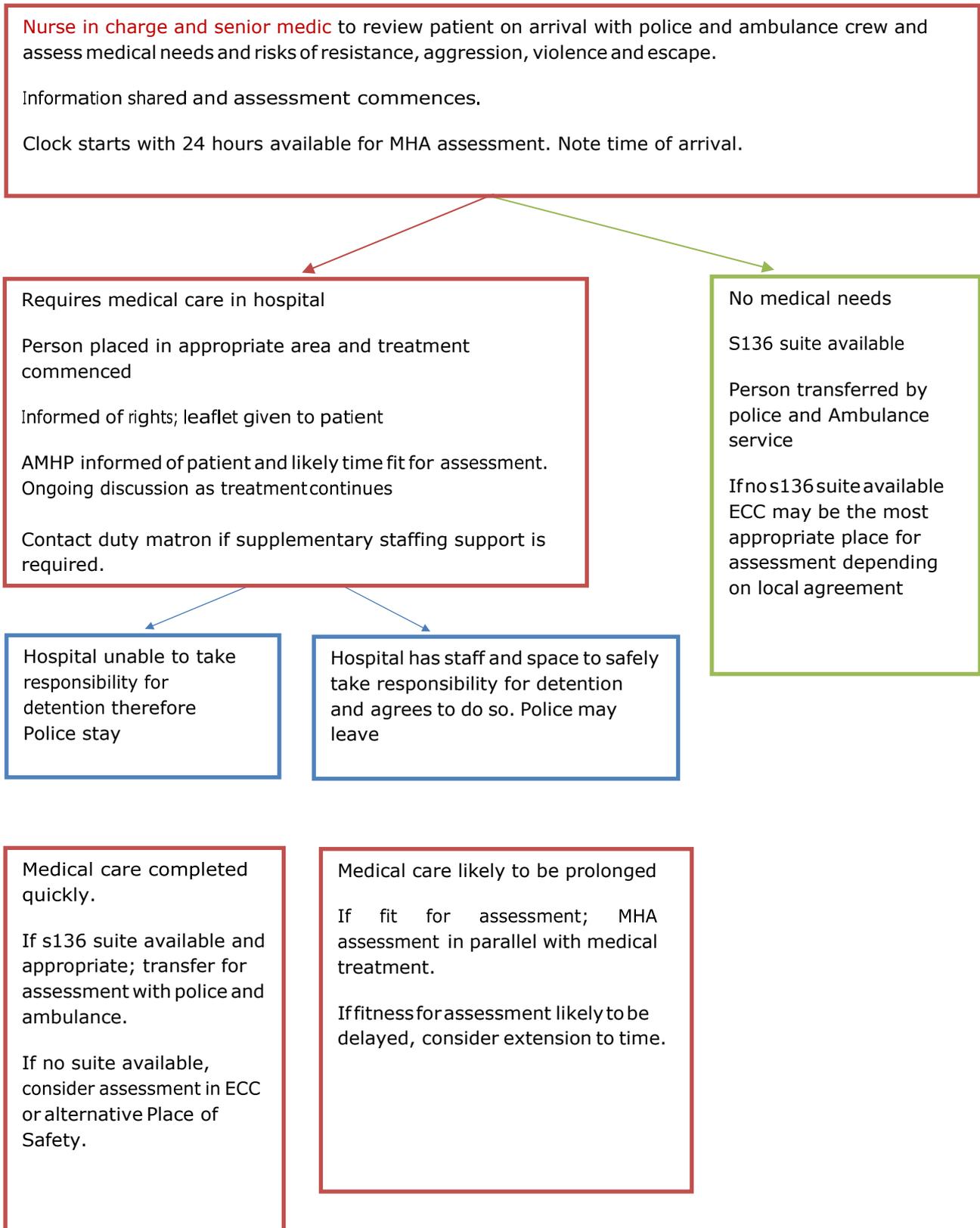
Section 136 flowchart - pre-hospital



----- NOTE once Place of Safety or 136 suite reached, the clock starts, MHA assessment must be complete by 24 hours -----



Section 136 flowchart- At the Hospital as a Place of Safety



REMOVAL OF MENTALLY DISORDERED PERSONS WITHOUT A WARRANT

(Section 136 of the Mental Health Act 1983)

1. Patient's name	
2. Name of hospital and ward	

Why am I in hospital?

You have been brought to this hospital by a police officer because they are concerned that you may have a mental disorder and should be seen by a mental health professional. The police officer thinks that you may be in need of immediate care and that it is necessary in your interest or for the protection of others for you to be brought to hospital to be assessed.

You are being kept here under section 136 of the Mental Health Act 1983, so that you can be assessed to see if you need treatment.

How long will I be here?

You can be kept here (or in another place where you will be safe) for up to 24 hours (extendable for up to 12 hours if you could not be assessed for clinical reasons) so that you can be seen by a doctor and an approved mental health professional.

An approved mental health professional is someone who has been specially trained to help decide whether people need to be kept in hospital.

During this time you must not leave unless you are told that you may. If you try to go, the staff can stop you, and if you leave you can be brought back.

If the doctor and the approved mental health professional agree that you need to remain in hospital, a second doctor may be asked to see you to confirm their decision. Further information will be provided if doctors assess that the patient needs to remain in hospital.

If the doctors and the approved mental health professional have not seen you by the end of the 24 hours (or 36 hours, if your detention has been extended), you will be free to leave. You may decide to stay on as a voluntary patient. But if you do want to leave, please talk to a member of staff first.

In your case the 24 hours end at:

Date:	Time:
Your detention has been extended for a further hours (maximum additional 12 hours). It now ends at:	
Date:	Time:

What happens next?

When the doctors and an approved mental health professional have seen you, they may say that you need to stay in hospital for longer. They will tell you why and for how long this is likely to be. You will be given another leaflet that explains what will happen.

If they decide that you do not have to stay, someone will talk to you about what other help is available to you.

If the assessment has been completed, and the doctor and the approved mental health professional say that you do not need to stay in hospital you will be free to leave, even if the 24 hours (or 36 hours if detention was extended) have not ended.

Can I appeal?

No. Even if you do not agree that you need to be in hospital, you cannot appeal against the decision to keep you here under section 136.

Will I be given treatment?

The hospital staff will tell you about any treatment they think you need. You have the right to refuse any treatment you do not want. Only in special circumstances, which would be explained to you, can you be given treatment you do not agree to.

Letting your nearest relative know

A copy of this leaflet will be given to the person the Mental Health Act says is your nearest relative.

There is a list of people in the Mental Health Act who are treated as your relatives. Normally, the person who comes highest in that list is your nearest relative. The hospital staff can give you a leaflet which explains this and what rights your nearest relative has in connection with your care and treatment.

In your case, we have been told that your nearest relative is:

If you do not want this person to receive a copy of the leaflet, please tell your nurse or another member of staff.

Changing your nearest relative

If you do not think this person is suitable to be your nearest relative, you can apply to the County Court for someone else to be treated as your nearest relative instead. The hospital staff can give you a leaflet that explains this.

Your letters

All letters sent to you while you are in hospital will be given to you. You can send letters to anyone except someone who has said they do not want to get letters from you. Letters to these people can be stopped by the hospital staff.

Code of Practice

There is a Code of Practice that gives advice to the staff in the hospital about the Mental Health Act and treating people for mental disorder. The staff have to consider what the Code says when they take decisions about your care. You can ask to see a copy of the Code, if you want.

How do I complain?

If you want to complain about anything to do with your care and treatment in hospital, please speak to a member of staff. They may be able to sort the matter out. They can also give you information about the hospital's complaints procedure, which you can use to try to sort out your complaint locally. They can also tell you about any other people who can help you make a complaint, for example an independent mental health advocate.

If you do not feel that the hospital complaints procedure can help you, you can complain to an independent Commission. This is called the Care Quality Commission and it monitors how the Mental Health Act is used, to make sure it is used correctly and that patients are

cared for properly while they are in hospital. The hospital staff can give you a leaflet explaining how to contact the Commission.

Further help and information

If there is anything you do not understand about your care and treatment, a member of staff will try to help you. Please ask a member of staff to explain if there is anything in this leaflet you do not understand or if you have other questions that this leaflet has not answered.

Please ask if you would like another copy of this leaflet for someone else.