



Policy:

NPCS 004 Section 136 Mental Health Act 1983 (as amended)

Executive Director Lead	Executive Medical Director
Policy Owner	Head of Mental Health Legislation
Policy Author	Head of Mental Health Legislation

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Summary of policy

This policy sets out what s136 Mental Health Act 1983 (as amended) is and what powers, and limitations, it gives to Trust staff. It sets out a range of factors which Trust staff need to be aware of. This includes when s136 can be used, how long it lasts for, and circumstances when it can potentially be extended. The policy covers additional matters such pre-136 consultation, protective searching, and transfers between places of safety.

Target audience	Staff working into the Health Based Place of Safety; practitioners involved in carrying out Mental Health Act assessments of those detained under s136.
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Keywords	S136; Section 136; Mental Health Act; MHA; Health based place of safety; HBPoS
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Storage & Version Control

Version 1 of this policy is stored and available through the SHSC intranet/internet.

This policy replaces the South Yorkshire Section 136 Pathway & Standard Operating Procedures for Places of Safety, issued by the South Yorkshire and Bassetlaw Integrated Care System, dated June 2020 (v17).

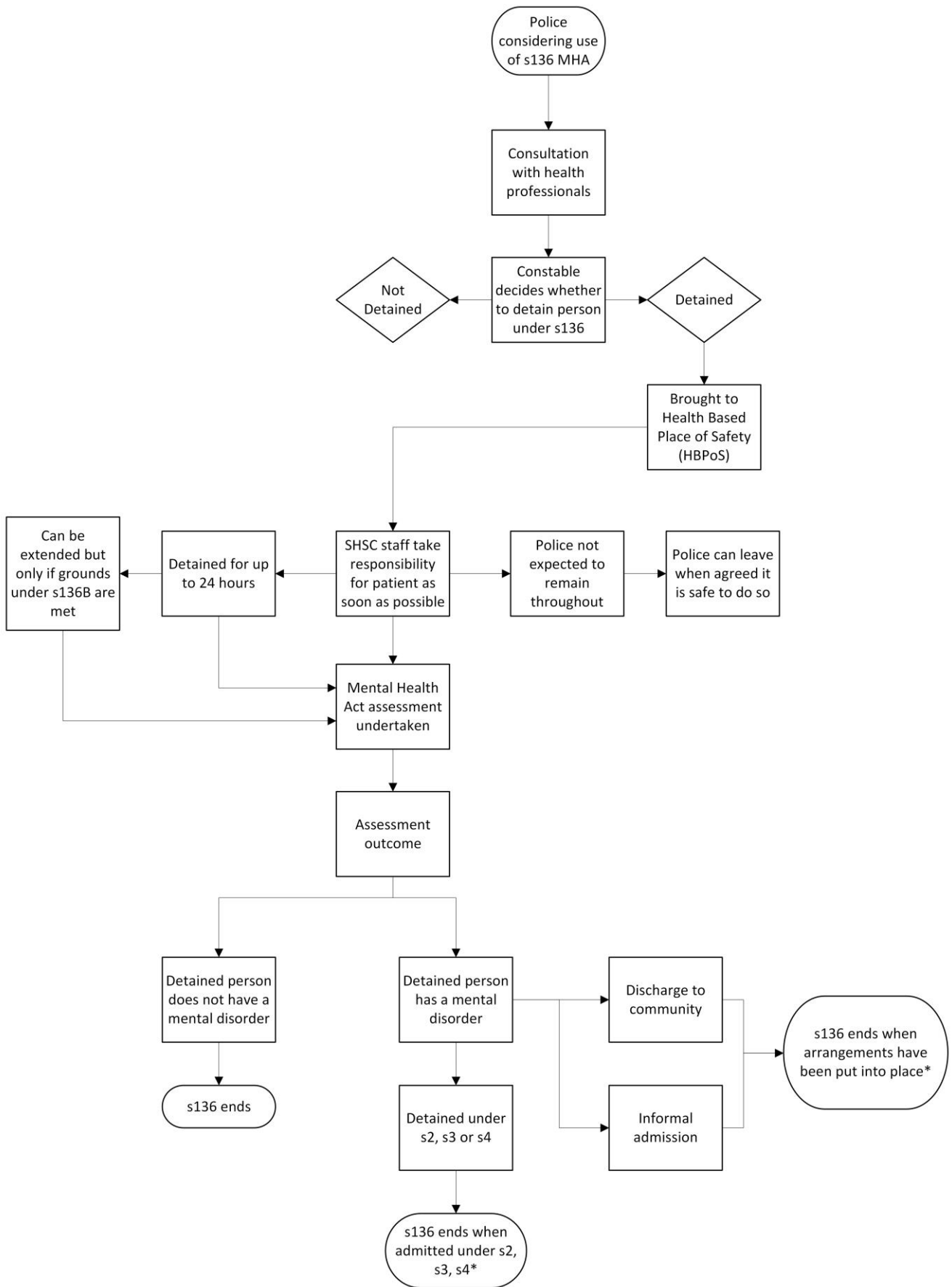
Version Control and Amendment Log

Version No.	Type of Change	Date	Description of change(s)
1.0	New local policy to replace ICS wide policy	07/2024	All content new.

Contents

Section		Page
	Version Control and Amendment Log	
	Flow Chart	4
1	Introduction	5
2	Scope	5
3	Purpose	6
4	Definitions	6
5	Details of the Policy	6
6	Duties	7
7	Procedure	7
8	Development, Consultation and Approval	12
9	Audit, Monitoring and Review	13
10	Implementation Plan	14
11	Dissemination, Storage and Archiving (Control)	14
12	Training and Other Resource Implications	15
13	Links to Other Policies, Standards, References, Legislation and National Guidance	15
14	Contact details	15
	APPENDICES	
	Appendix 1 – Equality Impact Assessment Process and Record for Written Policies	16
	Appendix 2 – New/Reviewed Policy Checklist	18

Flowchart



* Up to the maximum detention period of 24 hours, or 36 hours if the detention had pre-assessment been extended under s136B; times taken from time of arrival to place of safety

1 Introduction

Section 136 Mental Health Act 1983 (as amended) ('the Act') allows a Police Constable, if particular legal criteria are met, to detain a person on the grounds of concerns for their mental health and take them to a place of safety.

In order for a Constable to detain the person under s136, all of the following must be met:

- The Constable must believe that the person is suffering from a mental disorder;
- The person must be in need of immediate care or control;
- The Constable must be of the view that the person needs to be removed to a Place of Safety; and
- Removal to a Place of Safety must be necessary in the interests of the person or protection of others

There are limits in respect of where a Constable can use their power under s136. Section 136 states that the power given to a Constable can only be used where the person is at any place apart from

Section 136 can be used	Section 136 cannot be used
<ul style="list-style-type: none">• At any place (other than those places listed opposite)	<ul style="list-style-type: none">• In any house, flat, or room where that person, or any other person, is living; or• In a yard, garden, garage, or outhouse that is used in connection with the house, flat or room (apart from one that is used in connection with one or more other houses, flats, or rooms)

A Place of Safety is defined within s135(6). Insofar as is relevant for the purposes of this policy, a Place of Safety includes a hospital.

Whilst s135(6) also defines a Place of Safety as potentially being a Police station, the use of a Police station as a Place of Safety is heavily restricted by the Mental Health Act 1983 (Place of Safety) Regulations 2017 (SI 2017/1036). In brief, a Police station can only be used as a Place of Safety for the purposes of s136 if the person's behaviour poses an imminent risk of serious injury or death, and because of the level of this risk no Place of Safety other than a Police station could be reasonably expected to detain the person. An officer of inspector rank or above must also approve a Police station to be used as a Place of Safety. There are a range of additional regulations and safeguards related to using a Police station as a Place of Safety which fall outside of the remit of this policy.

In Sheffield, should the Police detain a person using their powers under s136 and the person is an adult, the detained person should ordinarily be taken to the Health Based Place of Safety based on Trust premises at the Longley Centre.

2 Scope

The scope of this policy is Trustwide.

Whilst its content will be more applicable to staff who work in, and into, the Health Based Place of Safety, staff across the Trust may need to refer to the policy for guidance and information.

3 Purpose

The purpose of this policy is to ensure:

- The Trust is compliant with relevant legal frameworks;
- That staff are aware of their role and responsibilities when dealing with a person who has been detained under s136;
- That the rights of those detained under s136 are both protected and promoted. This includes rights under the Mental Health Act 1983 (as amended) and the Human Rights Act 1998.

This policy replaces the South Yorkshire Section 136 Pathway document, produced by the South Yorkshire and Bassetlaw Integrated Care System dated June 2020.

It should be noted that because of changes to Trust services and governance, this policy is being further developed and expanded upon. Should any further support be needed in the interim, please contact the Acute and Community Senior Leadership Team, the Head of Mental Health Legislation, or Mental Health Act office manager.

4 Definitions

AAA report	'Alert, advise, assure' report written by the Mental Health Legislation Committee (MHLC) and submitted to Trust Board
HBPoS	See Health Based Place of Safety
Health Based Place of Safety	A place of safety, for the purposes of s135(6) MHA, which is based within a health setting.
MHA	Meaning the Mental Health Act 1983 (as amended)
MHA 1983 (as amended)	The Mental Health Act 1983 (as amended)
MHLC	Mental Health Legislation Committee – the Trust's Board sub-committee with a specific responsibility for assurance in respect of the Trust's compliance with mental health legislation. MHLC is chaired by one of the Trust's Non-Executive Directors and reports to the Trust Board with AAA report.
MHLOG	Mental Health Legislation Operational Group – a group within the Trust which has more day-to-day and operational oversight in respect of the Trust's compliance with mental health legislation. The group reports to the Mental Health Legislation Committee.
Part IV Mental Health Act	Part 4 of the Mental Health Act 1983 (as amended). This part of the MHA sets out the legal parameters in which treatment for mental disorder can be given to a person who is subject to the Act.
The Act	Meaning the Mental Health Act 1983 (as amended)

5 Detail of the policy

Detail of this policy is set out in section 7 below.

6 Duties

Mental Health Legislation Committee	To receive written reports in respect of compliance with mental health legislation from the Mental Health Legislation Operational Group (MHLOG). Holds Committee members to account in respect of compliance, and will report to the Trust Board on matters related to mental health legislation compliance via the 'AAA' report.
Mental Health Legislation Operational Group	To review incidents of concern in respect of s136 compliance and seek assurance that appropriate actions are being taken to resolve any issues that arise. Reports to the Mental Health Legislation Committee.
Police constable	To decide whether to detain a person under s136, or otherwise. Is required to consult with specified health professionals prior to detaining under s136 if practicable to do so. The constable has to be satisfied that the legal grounds for detention under s136 are met.

7 Procedure

Purpose of detaining a person under s136

The purpose of detaining a person under s136 is to enable the detained person to be examined by a registered medical practitioner, and to be interviewed by an Approved Mental Health Professional (AMHP), so that any necessary arrangements for their treatment or care can be made.

Section 136 decision maker

The decision whether to detain a person under s136, or not, is ultimately the decision of the constable who considers that the person in question is suffering from a mental disorder and needs immediate care or control.

Whilst mental health professionals may take the view that a person should, or should not, be detained under s136, and may make their opinion/recommendation known to a constable, a constable cannot be directed by mental health professionals to either use, or not use, their s136 power.

Pre-s136 consultation requirement

The Act places a statutory requirement upon the constable, prior to removing a person under s136, to consult:

- A registered medical practitioner;
- A registered nurse;
- An Approved Mental Health Professional; or
- Another person of a description which has been specified in regulations issued by the Secretary of State (eg. Paramedic; occupational therapist)

This consultation must take place but only if it is practicable to do so. It is a matter for the constable to determine whether such consultation is practicable under the circumstances and context they are faced with.

A range of factors should be considered and shared as part of this consultation. For example:

- Whether the person's presentation appears to be a mental health issue;
- Whether the person's presentation may be associated with, or attributed, to a physical health issue eg. Physical injury, illness.
- Whether the person is known to mental health services.
- To establish any possible strategies for appropriately managing the person's mental health and mental health crisis.
- Whether the use of s136 would be appropriate.
- If s136 is appropriate, identification of a suitable health-based place of safety;
- If s136 is not appropriate, identifying and implementing alternative support and care arrangements.

It is reiterated that the final decision whether to use, or not use, s136 is that of the constable.

Detention period

A person can be detained under s136 for a period of up to 24 hours (subject to a potential extension, see below).

If, during assessment, the registered medical practitioner concludes that the individual does not have a mental disorder, the authority to detain ends immediately.

Detention under s136 continues, up until the 24-hour period, so that suitable arrangements can be arranged for the person's care or treatment. For instance, if two registered medical practitioners make recommendations for admission under s2 or s3, and the Approved Mental Health Professional (AMHP) intends on making an application for the person's admission, the person remains subject to s136 until the admission arrangements have been put in place, or the 24-hour detention periods ends.

Commencement of the detention period

The 24-hour maximum detention period starts from the time the person arrives at the Place of Safety.

If a constable detains a person under s136 and the person is already at a place of safety, the 24-hour maximum detention period starts from the time the constable makes the decision to detain the person at that place.

If a person is detained by a constable under s136 and is taken to the Accident and Emergency Department (A&E) for the physical consequences of a mental disorder (such as self-harm), the 24-hour detention period should start from the time the person arrived at A&E.

Extending the period of detention under s136

Under certain circumstances, a person can be detained under s136 for a longer period than 24 hours. These circumstances are set out in s136B of the Act.

If the condition of the person who has been detained is such that it would not be practicable to assess them, the registered medical practitioner conducting the assessment may extend the period of detention for up to a further 12 hours. Examples of such instances include if the person is too mentally distressed, or significantly under the influence of substances.

The additional 12 hours would apply from the expiry of the initial 24-hour period.

Extensions to the period of detention can only be undertaken during the original 24-hour period. They cannot be implemented after the 24-hour period has expired.

Any extension to the 24-hour period must only be applied owing to the condition of the person. It cannot be applied on the grounds of resources.

If an Approved Mental Health Professional intends on making an application for the person to be admitted under the Act (being in receipt of the pre-requisite medical recommendations) and admission of the person under the Act has not been possible by the end of the 24-hour detention period, the s136 cannot be extended to enable the arrangements to be made.

Section 136B of the Act is clear in that the decision to extend the period of detention is that of the registered medical practitioner undertaking the examination of the person. Hospital managers have no legal authority to extend the period of detention. Similarly, a registered medical practitioner cannot be directed to authorise an extension.

If a person's detention under s136 has been extended, it cannot be extended again and nor could powers under s5(4) or s5(2) be used at the end of the extension period.

Searches of a patient detained under s136

The Act makes provision for the searching of a person who has been detained under s136. These are referred to as being 'protective searches'. Searching can only take place under certain circumstances.

Section 136C gives authority for a police constable to search a person who has been detained under s136. This authority given to a constable lasts for whilst ever the person is detained under s136.

A constable can only search a person who has been detained under s136 if the constable has reasonable grounds to believe that the detained person:

- May pose a danger to either self or others; and
- Is concealing on their person an item that could be used to cause physical injury to self or others.

This means that searches of persons detained under s136 are not routine and the Police is not required in law to search every person they detain under this provision.

Any protective search undertaken by a constable must be proportionate. The search which takes place can only be to such an extent that is reasonably required to discover the item that the constable believes is being concealed.

In addition to the circumstances when a protective search can be undertaken by a constable, the Act places limits on how the search can be undertaken.

Any person being subject to a protective search by a constable can only be searched to the extent that the constable cannot remove any of the person's clothing apart from their outer coat, jacket or gloves. The Act does, however, allow the constable to search the detained person's mouth.

Administration of medical treatment to a person detained under s136

A person who is detained under s136 does not fall under the treatment rules as set out under Part IV of the Act.

It should be borne in mind that whilst ever a person is detained in the Health Based Place of Safety, the Trust has a duty of care to that person.

A person who is detained under s136 and who is need of medical treatment should be provided with such medical treatment. If a person does not receive the medical treatment they require, there is a risk that the person could begin to experience a regime which is tantamount to inhuman and degrading treatment, and a potential breach under Article 3 of the European Convention on Human Rights (ECHR).

In the event that a person requires some form(s) of medical treatment but it/they is/are not provided, the reasons why need to be clearly documented.

Given that a person who is held under s136 is not subject to the Part IV treatment rules, different treatment rules apply. These are broadly based upon the mental capacity of the patient.

Mentally capacitous individuals

If the detained person requires some form of medical treatment and has mental capacity in respect of whether, or not, to accept such treatment, then those wishes must be respected.

This means that a mentally capacitous person who is subject to s136 detention can refuse medical treatment.

Mentally incapacitous individuals

If a detained person requires some form of medical treatment, be it for physical or mental health reasons, and they lack mental capacity in respect of that treatment, a best interests decision should be made in respect of whether to give the treatment, or otherwise. If a person has a valid Power of Attorney for health and welfare decisions, it will be the Attorney(ies) who will decide whether the treatment should be given, or not.

Powers to restrain persons who are detained under s136

The Mental Health Act 1983 (as amended) contains an implied power for staff to exercise some degree of control over those in their care. There is also a range of both statute and common law which gives legal authority to restrain persons.

In the case of *R (on the application of Munjaz) v Mersey Care NHS Trust* [2003] EWCA Civ 1036, the Court held that:

There is a general [common law] power to take such steps as are reasonably necessary and proportionate to protect others from the immediate risk of significant harm. This applies whether or not the person has capacity to make decisions for himself.

Current legal opinion is that this power would extend to sedating a person on an emergency basis if the sedation is necessary to restrain that person from causing harm to others.

If the person who is detained under s136 lacks mental capacity in respect of their care and safety needs, section 6 could potentially be relied upon to restrain the person. Section 6 can

only be relied upon, however, if the person intending to restrain reasonably believes that the restraint is necessary to protect harm to the person, and that the restraint is proportionate to the likelihood and seriousness of the harm the person would otherwise come to. As with other decisions under the Mental Capacity Act, the use of such restraint must also be in the person's best interests.

Under section 3(1) Criminal Law Act 1967,

A person may use such force as is reasonable in the circumstances in the prevention of crime, or in effecting or assisting in the lawful arrest of offenders or suspected offenders or of persons unlawfully at large.

This provision means that a member of staff would be entitled to use necessary and proportionate restraint in self-defence, the defence of others, or to protect property.

The use of any form of restraint should always be the last resort, and only used when it is necessary and proportionate to the risks posed. Any restraint used should be for the shortest period of time possible.

Any restraint used, and the reason(s) why, should always be documented in full.

Patient's rights whilst detained under s136

Under s132 of the Act, persons who are subject to the Act must be provided with information about their detention and given support to help them understand that information. Whilst there is a specific information leaflet in respect of s136 which is intended to be given to patients, the mere giving of an information leaflet will not by itself satisfy the requirements set by s132.

All staff have a responsibility to help a person to understand the information which is given to them.

Handover of responsibility from the Police to HBPoS staff

The Mental Health Act Code of Practice (2015) stipulates that healthcare staff should take responsibility for the detained person as soon as possible. There is no legal requirement that mandates the police to remain with the patient during the Mental Health Act assessment process. The Code goes on to state that the police should be able to leave when it has been agreed that it is safe for both the patient and staff.

Transfers between Places of Safety

A person who has been detained and taken to a place of safety under s136 can be transferred between places of safety during the 24-hour detention period.

Transfers should only take place if it is in the best interests of the person who has been detained.

When a person is transferred between places of safety, the maximum 24-hour detention period continues. This means that if a person is moved between places of safety, the 24-hour maximum does not start again.

Decisions as to whether a person should be transferred between places of safety should be based on individual cases and their circumstances.

A person should not be moved between places of safety (unless it is an emergency) without the agreement of an Approved Mental Health Professional, doctor, or other healthcare professional who is competent to determine whether such a transfer would put the health or safety of the person, or others, at risk.

The Mental Health Act Code of Practice states a person should never be moved between places of safety unless the new place of safety has confirmed that they are willing and able to accept them (para 16.58).

The retaking of patients who escape from custody

A person who escapes whilst being taken to a place of safety can be retaken but only up to 24 hours commencing from the time of the escape.

A person who escapes from custody after they have arrived and been detained at the place of safety can be retaken but only up until the expiry of the s136 detention period (ie. upto 24 hours from the time of arrival at the place of safety).

8 Development, Consultation and Approval

This policy has been written by the Head of Mental Health Legislation.

It has been circulated to the Mental Health Legislation Operational Group for comment.

9 Audit, Monitoring and Review

Monitoring Compliance Template						
Minimum Requirement	Process for Monitoring	Responsible Individual/group/committee	Frequency of Monitoring	Review of Results process (e.g. who does this?)	Responsible Individual/group/committee for action plan development	Responsible Individual/group/committee for action plan monitoring and implementation
Breaches of s136	Individuals to submit incident reports when breaches to s136 are identified. These will in turn be reviewed by service managers and reported to the Mental Health Legislation Operational Group (MHLOG)	Person identifying the breach	Ongoing.	Head of Mental Health Legislation; Mental Health Legislation Operational Group	Service managers; Head of Mental Health Legislation	Mental Health Legislation Operational Group in turn reporting to Mental Health Legislation Committee.
Commencement of assessments within 3 hours after arrival at HBPoS	Data reviewed by governance officers and reported to Head of Mental Health Legislation on a monthly basis	Governance officers; Head of Mental Health Legislation; Mental Health Legislation Operational Group	Ongoing	Head of Mental Health Legislation; Mental Health Legislation Operational Group	Service managers; Head of Mental Health Legislation; Mental Health in liaison with AMHP Team, Sheffield City Council	Mental Health Legislation Operational Group, in turn reporting to Mental Health Legislation Committee,

This policy should be reviewed 8 months after its approval. Given that Trust services and processes are undergoing change, further work will be required for this policy. It is for this reason that a shorter review period has been set.

10 Implementation Plan

No specific implementation plan is required in respect of this policy as it is a reflection and simplification of pre-existing legislation.

Action / Task	Responsible Person	Deadline	Progress update
Upload new policy to Jarvis, and remove the previous version	Corporate Governance		

11 Dissemination, Storage and Archiving (Control)

The approved version will be disseminated to members of the Mental Health Legislation Operational Group (MHLOG) for circulation to services.

Version	Date added to intranet	Date added to internet	Date of inclusion in Connect	Any other promotion/ dissemination (include dates)
1.0	August 2024	August 2024	August 2024	
2.0				
3.2				
4.0				

12 Training and Other Resource Implications

No specific training is required in respect of this policy as it simplifies pre-existing legislation specifically for Trust staff.

Separate training is however already available in respect of the Mental Health Act.

Should any specific training needs arise, this should be raised with service managers and the Head of Mental Health Legislation for consideration.

13 Links to Other Policies, Standards (Associated Documents)

- Human Rights Act 1998.
- Mental Health Act 1983 (as amended)
- Mental Health Act 1983 (as amended) Code of Practice
- Mental Health Act 1983 (Places of Safety) Regulations 2017.
- Department of Health & Home Office (2017). Guidance for the implementation of changes to police powers and places of safety provisions in the Mental Health Act 1983.

14 Contact Details

<i>Title</i>	<i>Name</i>	<i>Phone</i>	<i>Email</i>
Head of Mental Health Legislation	Jamie Middleton	271 8110	jamie.middleton@shsc.nhs.uk
Mental Health Act Office Manager	Mike Haywood	27 18102	mike.haywood@shsc.nhs.uk

Appendix A

Equality Impact Assessment Process and Record for Written Policies

Stage 1 – Relevance - Is the policy potentially relevant to equality i.e. will this policy potentially impact on staff, patients or the public? This should be considered as part of the Case of Need for new policies.

NO – No further action is required – please sign and date the following statement.
I confirm that this policy does not impact on staff, patients or the public.

I confirm that this policy does not impact on staff, patients or the public.

Name/Date:

YES, Go to Stage 2

Stage 2 Policy Screening and Drafting Policy - Public authorities are legally required to have 'due regard' to eliminating discrimination, advancing equal opportunity and fostering good relations in relation to people who share certain 'protected characteristics' and those that do not. The following table should be used to consider this and inform changes to the policy (indicate yes/no/ don't know and note reasons). Please see the SHSC Guidance and Flow Chart.

Stage 3 – Policy Revision - Make amendments to the policy or identify any remedial action required and record any action planned in the policy implementation plan section

SCREENING RECORD	Does any aspect of this policy or potentially discriminate against this group?	Can equality of opportunity for this group be improved through this policy or changes to this policy?	Can this policy be amended so that it works to enhance relations between people in this group and people not in this group?
Age	No	No	No
Disability	No	No	No
Gender Reassignment	No	No	No
Pregnancy and Maternity	No	No	No

Race	<p>a) National data shows there is an over representation of people from racialised communities who are detained under the Mental Health Act. This may mean there is a disproportionate number of people from racialised communities detained under s136.</p> <p>b) In order to conduct a Mental Health Act assessment of a person detained under s136, there needs to be no language barriers. When individuals need an interpreter, this may mean that those individuals have to be detained under s136 longer so that an interpreter can be sourced.</p>	<p>a) No. The decision to detain a person under s136 is made by the Police, not SHSC.</p> <p>b) No. Any problems identified in sourcing an interpreter should be incident reported and the Trust's Head of Equality should be notified.</p>	No
Religion or Belief	No	No	No
Sex	No	No	No
Sexual Orientation	No	No	No
Marriage or Civil Partnership	No		

No changes to the policy made in respect of this impact assessment.

Impact Assessment Completed by:
 Jamie Middleton, Head of Mental Health Legislation
 18 July 2024

Appendix B

Review/New Policy Checklist

This checklist to be used as part of the development or review of a policy and presented to the Policy Governance Group (PGG) with the revised policy.

		Tick to confirm
Engagement		
1.	Is the Executive Lead sighted on the development/review of the policy?	✓
2.	Is the local Policy Champion member sighted on the development/review of the policy?	N/A
Development and Consultation		
3.	If the policy is a new policy, has the development of the policy been approved through the Case for Need approval process?	N/A
4.	Is there evidence of consultation with all relevant services, partners and other relevant bodies?	✓
5.	Has the policy been discussed and agreed by the local governance groups?	✓
6.	Have any relevant recommendations from Internal Audit or other relevant bodies been taken into account in preparing the policy?	✓
Template Compliance		
7.	Has the version control/storage section been updated?	✓
8.	Is the policy title clear and unambiguous?	✓
9.	Is the policy in Arial font 12?	✓
10.	Have page numbers been inserted?	✓
11.	Has the policy been quality checked for spelling errors, links, accuracy?	✓
Policy Content		
12.	Is the purpose of the policy clear?	✓
13.	Does the policy comply with requirements of the CQC or other relevant bodies? (where appropriate)	✓
14.	Does the policy reflect changes as a result of lessons identified from incidents, complaints, near misses, etc.?	✓
15.	Where appropriate, does the policy contain a list of definitions of terms used?	✓
16.	Does the policy include any references to other associated policies and key documents?	✓
17.	Has the EIA Form been completed (Appendix 1)?	✓
Dissemination, Implementation, Review and Audit Compliance		
18.	Does the dissemination plan identify how the policy will be implemented?	✓
19.	Does the dissemination plan include the necessary training/support to ensure compliance?	✓
20.	Is there a plan to i. review ii. audit compliance with the document?	✓
21.	Is the review date identified, and is it appropriate and justifiable?	✓