Section 135 Mental Health Act 1983
[As amended by the Mental Health Act 2007]
# CONTENTS

<table>
<thead>
<tr>
<th>SECTION</th>
<th>PAGE NO</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. INTRODUCTION</td>
<td>3</td>
</tr>
<tr>
<td>2. PURPOSE</td>
<td>4</td>
</tr>
<tr>
<td>3. SCOPE</td>
<td>4</td>
</tr>
<tr>
<td>4. RESPONSIBILITIES, ACCOUNTABILITIES AND DUTIES</td>
<td>4</td>
</tr>
<tr>
<td>5. PROCEDURE/IMPLEMENTATION</td>
<td>5</td>
</tr>
<tr>
<td>5.4 When should an application under 135(1) be made?</td>
<td>6</td>
</tr>
<tr>
<td>5.6 When should an application under 135(2) be made?</td>
<td>7</td>
</tr>
<tr>
<td>5.7 Obtaining a Warrant</td>
<td></td>
</tr>
<tr>
<td>• Doncaster Metropolitan Borough Council process</td>
<td>6</td>
</tr>
<tr>
<td>• Rotherham Metropolitan Borough Council Process</td>
<td>7</td>
</tr>
<tr>
<td>• North Lincolnshire Process</td>
<td>7</td>
</tr>
<tr>
<td>5.12 Place of Safety</td>
<td>8</td>
</tr>
<tr>
<td>5.15 Application to the Court</td>
<td>8</td>
</tr>
<tr>
<td>5.19 Police Response</td>
<td>9</td>
</tr>
<tr>
<td>5.20 Execution of s.135(1)</td>
<td>9</td>
</tr>
<tr>
<td>5.24 Conveyance to Hospital or Care Home</td>
<td>10</td>
</tr>
<tr>
<td>5.27 Rights of Person Detained in a Place of Safety</td>
<td>10</td>
</tr>
<tr>
<td>5.28 Consent to Treatment</td>
<td>11</td>
</tr>
<tr>
<td>5.31 Ending section 135(1)</td>
<td>11</td>
</tr>
<tr>
<td>5.33 Execution of S.135(2)</td>
<td>11</td>
</tr>
<tr>
<td>5.34 Supervised Community Treatment</td>
<td>11</td>
</tr>
<tr>
<td>5.38 Application under section 135 Out of Hours</td>
<td>12</td>
</tr>
<tr>
<td>6. TRAINING IMPLICATIONS</td>
<td>12</td>
</tr>
<tr>
<td>7. MONITORING ARRANGEMENTS</td>
<td>12</td>
</tr>
<tr>
<td>8. EQUALITY IMPACT ASSESSMENT SCREENING</td>
<td>13</td>
</tr>
<tr>
<td>8.1 Privacy, Dignity and Respect</td>
<td></td>
</tr>
<tr>
<td>9. LINKS TO OTHER TRUST PROCEDURAL DOCUMENTS</td>
<td>15</td>
</tr>
<tr>
<td>10 REFERENCES</td>
<td>15</td>
</tr>
<tr>
<td>11 APPENDICES</td>
<td></td>
</tr>
</tbody>
</table>
1. **INTRODUCTION**

1.1 The aim of this policy is to provide guidance, which relates to the detention and assessment of individual who are made subject to the powers under section 135 of the Mental Health Act 1983.

1.2 **The Human Rights Act 1998**

Under section 115 Approved Mental Health Professionals may at any reasonable time enter and inspect any premise (other than a hospital) in which a mentally disordered patient is living, if they have reasonable cause to believe that the patient is not under proper care. This power can only be exercised after the Approved Mental Health Professional has produced, if asked to do so, duly authenticated identification showing that he/she is an Approved Mental Health Professional.

1.3 If entry is refused, or the Approved Mental Health Professional is asked leave the premises without reasonable cause the Approved Mental Health Professional should consider whether the facts of the case justify making an application to the justice of the peace under section 135 (1) of the Mental Health Act.

1.4 Entering a private premises and if necessary removing a person to a place of safety under the section 135 of the Mental Health Act interferes with a mentally disordered person’s home and private life (Article 8 (2) of the European Convention of Human Rights). Consequently, when an Approved Mental Health Professional is required to discharge their duty under this section 135 it is important that they are able to clearly justify their actions, what they are trying to accomplish and whether the use of section 135 is the appropriate and proportionate way to achieve this.

1.5 **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 individual if deemed fit, to a place of safety to enable a Mental Health Act assessment to be undertaken. The warrant provides a means by which entry, which would otherwise be a trespass become a lawful act. The warrant is executed once a constable has achieved entry to the premises; either by invitation or by force.

1.6 **Section 135 (2)** is also covered by this policy. The s.135 (2) warrant is applied for and issued in the same way as a 135(1), but has the additional specification to ‘retake’ a patient who is already detained under the Mental Health Act or subject to recall under Supervised Community Treatment.

1.7 **The Provisions under The Police and Criminal Evidence Act 1984**
Although police assistance requests can be provided without a warrant it is important to remember that police powers are extremely limited and restricted.

1.8 **Section 17(1)(d)**

Allows a constable to enter and search a premises without a warrant, for the purposes of recapturing a person who is unlawfully at large, and whom he is pursuing. (This includes a person subject to an order to be detained under the Mental Health Act, but the pursuit must be an immediate one)

1.9 **Section 17 (1)(e)**

Allows a constable to enter and search a premises without a warrant, for the purpose of saving life or limb, or preventing serious damage to the property

1.10 **Section 17 (6)**

Allows a constable to enter and search a premise in order to deal with or prevent a breach of the peace

2. **PURPOSE**

2.1 The purpose of this policy is to:

- Provide guidance to Approved Mental Health Professionals acting on behalf of the Local Authority who have occasion to request a warrant under section 135 of the Mental Health Act 1983,

- Ensure that when an application for a warrant is made that it is done within a legal and best practice framework, whereby assurance can be given to the service users that if s.135 is used it will be used correctly and in accordance with the law

3. **SCOPE**

3.1 This policy applies to Approved Mental Health Professionals of Rotherham Metropolitan Borough Council, Doncaster Metropolitan Borough Council, North Lincolnshire Council, South Yorkshire Police, Humberside Police, MHA co-ordinators and where appropriate all qualified Mental Health and Learning Disability staff within the Rotherham Doncaster and South Humber NHS Foundation Trust.

4. **RESPONSIBILITIES, ACCOUNTABILITIES AND DUTIES**

4.1 **Local Social Services Authorities:**

Have a duty to ensure that guidance is available to Approved Mental Health Professionals on how and when to make an application to the court for a warrant under s.135 of the Mental Health Act 1983.

4.2 **The Local Social Services Authorities and Hospital Managers:** should
ensure that there are procedures in place for obtaining a warrant, both
during normal working hours and outside court hours. These should include
the process to be followed, the evidence which individuals may be
reasonably expected to produce and the documents that should be prepared
to help the process run smoothly.

4.3 **Approved Mental Health Professionals**: must obtain the warrant from a
Magistrate and is responsible for coordinating the assessment under s.135
(1) & (2) and, where necessary ensure the patient is conveyed to hospital in
a lawful and humane manner.

4.4 **Mental Health and Learning Disability Staff**: All registered mental health
and learning disability hospital and community staff must be aware of, and,
comply with the contents of the policy.

4.5 **Mental Health Act Office**: Staff who work within each of the Trust Mental
Health Act Offices are responsible for:
- Maintaining a record of all Section 135 warrants
- Monitoring the use of Section 135

4.6 **Police Officers**: have a primary responsibility for executing the warrant and
remaining with the Approved Mental Health Professional until such time as
the assessment has been completed or at the request of the Approved
Mental Health Professional convey the service user to a place of safety
(section 135 (1)) or in the case of executing a section 135(2) returning the
detained person back to hospital.

4.7 **The Ambulance Service** has a responsibility to provide transport where
appropriate, to convey the person to a place of safety or hospital.

5. **PROCEDURE/IMPLEMENTATION**

5.1 **Entry to Private Premises Without a Warrant**
Approved Mental Health Professionals should bear in mind their powers
under Section 115 to enter and inspect premises where a mentally
disordered person is believed to be living if they have reasonable cause to
believe that the person is not under proper care and the person denying
access. On occasion, this may provide an alternative to Section 135, but
does not permit entry in the absence of consent. Approved Mental Health
Professionals should carry authenticated documents to prove their Approved
Mental Health Professional status.

5.2 If an Approved Mental Health Professionals receives a request to undertake
a Mental Health Act assessment in a private property, it is essential to
determine the method of entry as part of the planning process. The
Approved Mental Health Professional should remember that:

- It is unnecessary to apply for a warrant under Section 135 if the owner or co-occupier gives permission for mental health professionals to enter the premises, providing access by invitation.

5.3 However it may still necessary to apply for a warrant if a key or other means of entry is available, but there is no permission from the owner/occupier or co-owner/co-occupier to use it to gain entry.

5.4 **When Should An Application Under Section 135 (1) Be Made?**

An Approved Mental Health Professional, should make an application to the court under section 135 (1) where 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 any place within the jurisdiction of the justice

or

b) Being unable to care for himself, is living alone in any such place,

5.5 The magistrate may issue a warrant authorising a police constable to enter any premises specified on the warrant, using force if necessary, and if thought fit, to remove him/her to a place of safety, with the view to making an application under Part II of the Act, or for other arrangements for his care and treatment.

5.6 **When Should An Application Under Section 135 (2) Be Made?**

An Approved Mental Health Professional should make an application to the court under section 135(2) where it is necessary to take or retake a patient who is already liable to be detained and has absented themselves from hospital or under guardianship from their place of residence or following recall from Supervised Community Treatment.

5.7 **OBTAINING A WARRANT UNDER SECTION 135 (1) & (2)**

Doncaster Metropolitan Borough Council process

On receipt of a request to obtain a warrant under section 135 the Approved Mental Health Professional should first establish that all reasonable attempts have been made to gain entry to the premises. If they have then the Approved Mental Health Professional should in the first instance make telephone contact with either:

Richard Parker: 01302 737307  richard.parker@doncaster.gov.uk or
George Bagshore: 01302 737646  george.bagshore@doncaster.gov.uk

or nominated deputy in their absence and make a request for payment of
135 warrant stating details and timeframe. The time frame will vary considerably as some Warrants may be needed within hours, others may be the day after. Therefore, each requested should be action on its own merit.

5.8 **Payment process:**
On receipt of telephone call and subsequent email confirmation from the Approved Mental Health Professional, the above named will contact The Yorkshire Payment Centre/South Yorkshire Payment team (Payment Centre open between 08.30 – 16.00) on 0113 3076600 and make the payment. They should be given a reference number, which should be forwarded on to Approved Mental Health Professional to enable them to contact the magistrates and arrange the hearing.

5.9 **Rotherham Metropolitan Borough Council Process**
On receipt of a request to obtain a warrant under section 135 the Approved Mental Health Professional should first establish that all reasonable attempts have been made to gain entry to the premises. If they have then the Approved Mental Health Professional should in the first instance make telephone contact with either:

- Melissa Jolley 01709 302670 melissa.jolley@rdash.nhs.uk
- or nominated deputy in their absence

- Request payment of 135 warrant stating details and timeframe.
- Follow this request up with email as process can not proceed until email confirmation is received
- Phil or Stevan will then contact the Yorkshire Payment Centre/South Yorkshire Payment team and pay for the warrant.
- They will then ensure that the reference number, which the Magistrates Court needs to enable them to process your Court Appearance time is forwarded on to the AMHP.

5.10 **Payment process:**
On receipt of telephone call and subsequent email confirmation from the AMHP, the above named will contact The Payment Centre/South Yorkshire Payment team (Payment Centre open 08.30 – 16.00) on 0113 3076600 and make the payment. They should be given a reference number which should be forwarded on to AMHP to enable them to contact the Magistrates and arrange the hearing.

5.11 **North Lincolnshire's Process**
On receipt of a request to obtain a warrant under section 135 the Approved Mental Health Professional should first establish that all reasonable attempts have been made to gain entry to the premises. If they have then the Approved Mental Health Professional should in the first instance make
telephone contact with:

Louisa Redhead: 01724 275959  louisa.redhead@rdash.nhs.uk or nominated deputy in her absence

- Request payment of 135 warrant stating details and timeframe.
- Follow this request up with email as process can not proceed until email confirmation is received
- Louisa will then contact the Payment Centre Team and pay for the warrant.
- She will then ensure that the reference number, which the Magistrates Court needs to enable them to process your Court Appearance time, is forwarded on to the AMHP.

Payment process:

5.12 On receipt of telephone call and subsequent email confirmation from the AMHP, the above named will contact The Payment Centre/Team (Payment Centre open 08.30 – 16.00) on 0113 3076600 and make the payment. They should be given a reference number which should be forwarded on to AMHP to enable them to contact the Magistrates and arrange the hearing.

PLACE OF SAFETY

5.13 Before an application under s.135 is made, the AMHP with responsibility for co-ordinating the assessment will identify a preferred place of safety to be used in the event that assessment cannot occur within the premises. This location will be used unless it becomes apparent to officers executing the warrant that the detainee requires urgent physical health assessment and management, in which case they will be taken to the nearest appropriate Emergency Department.

The Approved Mental Health Professional should contact the local police station to inform them that they intend to make an application and request that police assistance be made available. Please note: contact with the local police station. The AMHP should provide the police with the name of the person, if known, and the address to which the warrant will apply.

The Act is clear that the warrant does not need to name the person, but must specify the address to which it relates.

5.14 APPLICATION TO THE COURT
The Approved Mental Health Professional should contact the relevant Magistrates Court to arrange for the application to be heard.

Magistrates Courts During Office Hours are:
01302 366711
01709 839339
5.16 The Approved Mental Health Professional will need to take the duplicated copy of the warrant form and two copies of the evidence to be given on oath. There is no specific form or format for the statement of evidence. Ideally, this should be typed on DMBC, RMBC, NL’s or RDaSH headed paper; however, in cases of urgency it is acceptable to handwrite the statement on plain paper. The reasons for the application must be presented concisely and the Approved Mental Health Professional presenting the application must sign the statement.

5.17 At the hearing, the Approved Mental Health Professional will be required to give their evidence orally under oath and this should cover the same points as contained in their written statement. The Magistrate may then ask the Approved Mental Health Professional questions before deciding whether to grant the warrant.

5.18 If the justice agrees to issue the warrant, one copy of the Warrant is left with the Court, and the original and two further copies are given to the AMHP. The Police and Criminal Evidence Act, 1984 (s15) requires that one copy of the warrant is given to the Police and the other to the occupier of the premises named in the warrant (this may be the patient). The fourth copy should be given to the Place of Safety to confirm their authority to detain the patient (this is good practice but is not a legal requirement.). The original warrant must be retained by the AMHP but will need to be shown to the constable executing it. The statement of evidence will be retained by the Magistrate and the Approved Mental Health Professional.

5.19 **Police Response**

A warrant under Section 135 (1) gives the power of entry to the Police but it does not require them to force entry to the premises or convey the service user to hospital if the service user is cooperating with the assessment. Professionals involved should use their judgment and discretion depending on the circumstances. However, if the assessment is to be conducted at the premises the police should remain in attendance as they are not only responsible for the execution of the warrant but they are also responsible for ensuring that any identified risks to self or others are minimised. The number of police present and how closely they control the assessment will vary according to the level of assessed risk.

5.20 **EXECUTING WARRANT UNDER SECTION 135 (1)**

When executing a warrant under s.135 (1) the constable **MUST** be accompanied by an **Approved Mental Health Professional and a Responsible Clinician**. In practice, this is usually a consultant psychiatrist or the patient’s GP. It is often preferable if two doctors attend the execution of the warrant as this may enable the assessment of the patient to be
completed at the patient’s home without the need to remove them to a Place of Safety.

**Note; It is the responsibility of the Approved Mental Health Professional to arrange that at least one doctor is present when the warrant is executed.**

5.21 Whenever the Warrant under s.135(1) is executed the Approved Mental Health Professional should make every attempt to explain to the person what is happening and why.

5.22 Once entry to the property has been secured s.135(1) allows a person to be assessed and, if their mental state and general condition warrants it, to be removed to a place of safety for up to 72 hours for an assessment to take place. The place of safety will be in line with the arrangements for Section 136.

5.23 The 72 hours starts from the time the person arrives at the place of safety. If the person escapes from the place of safety they can be retaken but not after the 72 hours have expired.

5.24 **CONVEYANCE TO HOSPITAL OR CARE HOME**
Under Section 135 (1) the AMHP has responsibility to ensure that the patient is conveyed to hospital in a lawful and humane manner and should give guidance to those asked to assist.

5.25 When it is agreed that the patient requires removal to the place of safety, conveyance by an ambulance should be considered in the first instance. The Police should remain in attendance until the service user has been removed from the premises and into the ambulance. The police should follow the ambulance in case the situation changes and their assistance is required.

5.26 If there is a clear history of risk and/or the service user is likely to be violent or dangerous, the police should manage the whole process of entering, securing the premises and the safe removal of the service user, using police transport if necessary.

5.27 **RIGHTS OF THE PERSON DETAINED IN A PLACE OF SAFETY**
Where a hospital is used as a place of safety, it is the responsibility of staff on behalf of the hospital managers to ensure that the provisions of Section 132 rights are complied with. (See Trust 132 Policy).

5.28 **CONSENT TO TREATMENT**
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.
5.30 In an emergency, it may be possible to provide treatment if the service user lacks capacity to consent. If it is in the best interests of the service user to do so, treatment could be provided under the provisions of the Mental Capacity Act. **This must be documented clearly** (see Trust MCA Policy)

5.31 **ENDING SECTION 135 (1)**
The authority for detention under this section ends when the assessment process has been completed and a decision has been made. A person who is detained in hospital under Section 135 (1) pending completion of their assessment cannot have their detention extended by the use of a Section 5(2) or Section 5(4).

5.32 Where a decision is made that admission to hospital is not required the Ward Staff should arrange for the service user to be returned their home.

5.33 **EXECUTING Warrant UNDER SECTION 135 (2)**
When executing a warrant under s.135 (2) the constable **MAY** be accompanied by Responsible Clinician and any person authorised to retake the patient.

**Note:** **For the purpose of this policy, a person authorised to take or retake the patient will accompany the constable.**

Whenever the Warrant under s.135(2) is executed the person authorised to take or retake the patient should make every attempt to explain to the person what is happening and why.

Once entry to the property has been secured under s.135(2) the police officer can take the patient into custody and return them to the hospital or care home where they ought to be.

5.34 **SUPERVISED COMMUNITY TREATMENT**
Where a patient is under SCT and compulsory admission is indicated the recall power should be used and consideration given to revoking the CTO.

5.35 However where the patient’s whereabouts is known but access to the patient cannot be obtained, Section 135 (2) can be used for a Supervised Community Treatment patient who has not returned to hospital following recall by the Responsible Clinician.

5.36 For patients under SCT it is good practice for the police officer executing the warrant to be accompanied, if possible, by a member of the multi-disciplinary team responsible for the patient’s care.

5.37 In exceptional circumstances, in the case of urgency and where it is necessary to manage a risk of violence or prevent escape, a police officer
may decide to expedite conveyance themselves. It may be necessary for the highest qualified member of an ambulance crew to ride in the same vehicle.

5.38 APPLICATION UNDER SECTION 135 OUT OF HOURS:
The Approved Mental Health Professional will need to refer to the List of available out of hours Magistrates (copies held locally by the Police). Having received the request, the Clerk to the Justices will arrange for a hearing, which entails the AMHP appearing before a justice of the peace to give information on oath. This will usually take place at the local Magistrate’s Court, but if the Court is not sitting the Clerk may arrange for a Magistrate to hear the application at the Magistrate’s home or place of business.

6. TRAINING IMPLICATIONS

Currently there are no training implications. However, Training is dependant on changes in case law

7. MONITORING ARRANGEMENTS

<table>
<thead>
<tr>
<th>Area for Monitoring</th>
<th>How</th>
<th>Who by</th>
<th>Reported to</th>
<th>Frequency</th>
</tr>
</thead>
<tbody>
<tr>
<td>MH Legislation</td>
<td>Initial AMHP Training</td>
<td>University</td>
<td>N/A</td>
<td>N/A</td>
</tr>
<tr>
<td>MH Legislation</td>
<td>Annual Refresher Training</td>
<td>Mental Health Legislation Training Officer</td>
<td>SW Consultant</td>
<td>As appropriate</td>
</tr>
</tbody>
</table>
8. EQUALITY IMPACT ASSESSMENT TEMPLATE

The completed Equality Impact Assessment for this Policy has been published on the Equality and Diversity webpage of the RDaSH website [click here].

8.1 Privacy, Dignity and Respect

<table>
<thead>
<tr>
<th>The NHS Constitution states that all patients should feel that their privacy and dignity are respected while they are in hospital. High Quality Care for All (2008), Lord Darzi’s review of the NHS, identifies the need to organise care around the individual, <em>not just clinically but in terms of dignity and respect</em>.</th>
</tr>
</thead>
<tbody>
<tr>
<td>As a consequence the Trust is required to articulate its intent to deliver care with privacy and dignity that treats all service users with respect. Therefore, all procedural documents will be considered, if relevant, to reflect the requirement to treat everyone with privacy, dignity and respect, (when appropriate this should also include how same sex accommodation is provided).</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Indicate how this will be met</th>
</tr>
</thead>
<tbody>
<tr>
<td>The completed Equality Impact Assessment for the Police Assistance and Conveyance of Patients Detained under the Mental Health Act 1983 policy has been published on the Equality and Diversity Web page of the RDaSH Website.</td>
</tr>
</tbody>
</table>

9. LINKS TO OTHER TRUST PROCEDURAL DOCUMENTS

Absent Without Leave  
Mental Capacity Act Policy  
Deprivation Of Liberty Policy  
Supervised Community treatment  
Consent to Treatment

10 REFERENCES

The Mental Health Act 1983  
The Mental Capacity 2005  
The Mental Health Act Code of Practice  
The Mental Health Referance Guide  
The Human Rights Act 1998  
The Police and Criminal Evidence Act 1984