Section 135 Mental Health Act 1983
[As amended by the Mental Health Act 2007]
Policy
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1. **INTRODUCTION**

This section of the Mental Health Act 1983 provides for a magistrate to issue a warrant authorising a constable to enter premises, using force if necessary, for the purpose of removing a mentally disordered person to a place of safety for a period not exceeding 72 hours. It provides a means by which entry which would otherwise be trespass, becomes a lawful act.

1.1 **Article 8: The Human Rights Act 1998**

Article 8(2) of the European Convention on Human Rights provides protection from interference with private and family life, home and correspondence. Consequently, when an Approved Mental Health Professional is required to discharge their duty under 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 an appropriate and proportionate way to achieve this.

2. **PURPOSE**

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 so within the legal and best practice framework.

2.1 **Definitions:**

**Section 135(1)** The purpose of a section 135(1) warrant is to provide police officers with a power of entry to private premises, for the purpose of searching for or removing a person to a place of safety for a mental health assessment or for other arrangements to be made for their treatment or care.

**Section 135(2)** The purpose of a section 135 (2) warrant is to provide police officers with the power of entry to private premises for the purpose of searching for or removing a patient who is liable to be taken and returned hospital or any other place, or into custody under the Act.

**Section 44** A person detained at a place of safety can be transferred to one or more places of safety, subject to the time limit of 72 hours.

2.2 **Guiding Principles**

It is essential that all individuals undertaking functions under the Mental Health Act 1983 understand the five sets of overarching principles which should always be considered when making decisions in relation to the care, support or treatment provided under the act. Although all are of equal importance the weight given to each principle in reaching a particular decision will depend on the context and nature of the decision being made.

The principles are:

**Least restrictive option and maximising independence:** where it is possible to treat a patient safely and lawfully without detaining them under the Act, the patient
should not be detained. Wherever possible a patient’s independence should be encouraged and supported with a focus on promoting recovery.

**Empowerment and involvement:** patients should be fully involved in decisions about care, support and treatment. The views of family, carers and others, if appropriate, should be fully considered when taking decisions. Where decisions are taken which are contradictory to the views expressed, professionals should explain the reasons for this.

**Respect and dignity:** patients, their families and carers should be treated with respect and dignity and listened to by professionals.

**Purpose and effectiveness:** decisions about care and treatment should be appropriate to the patient, with clear therapeutic aims, promote recovery and should be performed to current national guidelines and/or current available best practice guidelines.

**Efficiency and equity:** providers, commissioners and other relevant organisations should work together to ensure that the quality of commissioning and provision of mental health care services are of high quality and are given equal priority to physical health and social care services. All relevant services should work together to facilitate timely, safe and supportive discharge from detention.

### 3. SCOPE

This policy applies to Approved Mental Health Professionals who are authorised to undertake the statutory duties under the Mental Health Act 1983 on behalf of Rotherham Metropolitan Borough Council, Doncaster Metropolitan Borough Council and North Lincolnshire Council.

### 4. RESPONSIBILITIES, ACCOUNTABILITIES AND DUTIES

**Local Social Services Authority:** the local authority has 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 section 135 of the Mental Health Act 1983.

**The Local Social Services Authorities and the 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.

**Approved Mental Health Professionals:** must obtain the warrant from the magistrate’s court under section 135 (1) & 135 (2) and they are responsible for coordinating the assessment under section 135(1) and, where necessary ensure that the patient is conveyed to hospital in a lawful and appropriate manner.

**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 this policy. Where a warrant under section 135 (2) has been obtained by the Approved Mental Health Professional to return a patient to hospital, who is absent without leave, a person authorised to take or retake the patient will accompany the police officer.

**Police Officers:** section 135 of the Mental Health Act 1983 provides for a magistrate
to issue a warrant authorising a constable to enter the premises, using force if necessary, for the purpose of removing a mentally disordered person to a place of safety for a period not exceeding 72 hours. It is the primary responsibility of the police officer to execute the warrant.

**Ambulance Service:** when requested by either the police officer or the Approved Mental Health Professional the ambulance service have a responsibility to provide transport to convey the person to a place of safety (section 135 (1)) or hospital (section 135 (2))

## 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 Mental Health Act 1983, to enter and inspect premises where a mentally disordered person is believed to be living. This power can be used if there is reasonable cause to believe that the person is not under proper care and that person is denying access. On occasions, 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 approval status.

If an Approved Mental Health Professional 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 it is unnecessary to apply for a warrant under section 135 if the owner or co-occupier of the property gives permission for the mental health professionals to enter the premises, providing access by invitation.

However, it may still be 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.

### 5.2 When Should an Application Under Section 135(1) Be Made?

An Approved Mental Health Professional should make an application to the Magistrates Court under section 135(1) where there is reasonable cause to suspect that a person believed to be suffering from a mental disorder:

- has been, or is being, ill-treated, neglected, kept otherwise than under proper control, in any place with the jurisdiction of the Justice; or
- being unable to care for himself, is living alone in any such place.

The Magistrate may issue a warrant authorising a police constable to enter any premises specified in the warrant, using force if necessary and if thought fit, to remove the person to a place of safety, with a view to making an application under Part II of the Mental Health Act 1983, or for other arrangements for the persons care and treatment.

Although an application is most often made when no access to the premises can be gained, this type of warrant can also be used when access does not appear to be an issue. For example, if there is a significant risk of the patient absconding or evidence of current or historical violence and/or aggression. In these circumstances a warrant may be necessary to provide a clear legal framework for attending police officers to restrain the patient or restrict their movements in order to safely facilitate the initial assessment and determine whether the person should be removed to a place of
safety.

Case law would indicate that the use of force in the execution of the warrant can include restricting the movement of persons - not just the person to be assessed (Guidance on Responding to People with Mental Ill Health or Learning Disabilities’, National Police Improvement Agency (2010), para 6.8.7).

When there is an immediate risk to ‘life or limb’ (e.g. an imminent risk of serious injury or a very serious or potentially fatal deterioration in the person’s condition) and it does not appear safe to wait for an application for a warrant to be made, the police should consider using their power of entry under section 17 (1) (e) of the Police and Criminal Evidence Act (1984). However, Approved Mental Health Professionals need to be mindful that s.17 (1) (e) does not provide the police with the power to remove a person from the premises. (COP 16.13).

However, where a person is in urgent need of medical treatment (e.g. because they have taken an overdose or seriously injured themselves) and that person lacks capacity to consent to medical treatment, the person may be restrained and removed by the police to the A&E Department if this in their best interests.

**Note:** In such circumstances it needs to be clear (following R (Sessay) v South London and Maudsley NHS Foundation Trust (2011)) that the person is being removed from their home by the police for urgent medical treatment, and not removed specifically for an assessment of their mental health.

### 5.3 Place of Safety

Before an application under section 135 is made the Approved Mental Health Professional with responsibility for coordinating the assessment will identify a preferred place of safety to be used in the event that the assessment cannot occur within the premises accessed by the warrant. This location will be used unless it becomes apparent to the police officer executing the warrant that the detainee requires urgent physical health assessment and management, in which case they will be taken to the nearest appropriate A&E Department.

### 5.4 Obtaining A Warrant Under Section 135

On receipt of a request to obtain a warrant under section 135 the Approved Mental Health Professional should consider the facts of the case to establish that an application for a warrant is necessary under the circumstances and that all reasonable attempts have been made to gain entry to the premises.. Where it is deemed appropriate to make an application to the Magistrates Court the Approved Mental Health Professional must arrange a hearing and payment as follows:

### 5.5 Doncaster Metropolitan Borough Council process

Contact Richard Parker richard.parker@doncaster.gov.uk, Tel:1302 737307 and make a request for payment of the 135 warrant stating the patient’s details and premises for which the warrant is required. The timeframe for the execution of the warrant may vary considerably therefore; each request should be actioned on its own merits.

**Payment process**

On receipt of the telephone call and subsequent email confirmation from the Approved Mental Health Professional, the above-named will contact the Yorkshire
Payment Centre (which is open between 08.30–16.00) on 0113 307 6600 and make the payment. They will be given a reference number, which will be forwarded on to the Approved Mental Health Professional to enable them to contact the Magistrates’ Court and arrange the hearing.

5.6 **Rotherham Metropolitan Borough Council process:**

Contact Melissa Jolley, melissa.jolley@rdash.nhs.uk, Tel: (01709) 302670 and make a request for payment of the 135 warrant stating the patient’s details and premises for which the warrant is required. The timeframe for the execution of the warrant may vary considerably therefore; each request should be actioned on its own merits.

**Payment process**

On receipt of the telephone call and subsequent email confirmation from the Approved Mental Health Professional, the above-named will contact the Yorkshire Payment Centre (which is open between 08.30–16.00) on 0113 307 6600 and make the payment. They will be given a reference number, which will be forwarded on to the Approved Mental Health Professional to enable them to contact the Magistrate’s Court and arrange the hearing.

5.7 **North Lincolnshire Council process:**

Contact should be made with either:

Vicki Crossley - vicki.crossley@nothlincs.gov.uk; (01724) 297284
Veronica Hall - veronica.hall@northlincs.gov.uk; (01724) 296339
Dawn Grundy - dawn.grundy@nothlincs.gov.uk; (01724) 297172

To ask for the payment of the 135 warrant stating they require an Application for Warrant of Entry and the code –C09.1. The Approved Mental Health Professional must also provide the patient’s details and premises for which the warrant is required. The timeframe for the execution of the warrant may vary considerably therefore; each request should be actioned on its own merits.

**Payment process**

On receipt of the telephone call and subsequent email confirmation from the Approved Mental Health Professional, the above-named will contact the Yorkshire Payment Centre (which is open between 08.30–16.00) on 0113 307 6600 and make the payment. They will be given a reference number, which will be forwarded on to the Approved Mental Health Professional to enable them to contact the magistrate’s court and arrange the hearing.

5.8 **Arranging a Court Hearing**

The Approved Mental Health Professional should contact the relevant Magistrates Court:

- Doncaster Magistrates Court – (01302) 366711
- Rotherham Magistrates Court – (01709) 839339
- Scunthorpe Magistrates Court – (01724) 281100

The Approved Mental Health Professional will need to take with them the duplicated copy of the warrant and two copies of the written evidence to be given on oath or affirmation.
5.9 Written Evidence

Although there is no specific form or format for the Approved Mental Health Professional’s statement of evidence, wherever possible this should be typed on Doncaster Metropolitan Borough Council, Rotherham Metropolitan Borough Council, North Lincolnshire Council or Rotherham Doncaster and South Humber NHS Foundation Trust headed paper. However, in cases of urgency it is acceptable to handwrite the statement on plain paper. The statement itself must include the reasons for seeking a warrant and where previous attempts to gain access to the patient have not been made the rationale for this should also be included in the statement (COP 16.11).

5.10 Executing Warrant Under Section 135(1)

Although the Approved Mental Health Professional is responsible for obtaining the warrant and has the overall responsibility for co-ordinating the process of assessment under section 135(1) it is the police officers that have the authority to enter the premises, if need be by force and remove the patient. However, when executing the warrant under section 135(1) the police officer MUST be accompanied by an Approved Mental Health Professional and a Doctor (COP 16.4), in practice this would usually be the consultant psychiatrist or the patients GP.

Note: It is the Approved Mental Health Professional’s responsibility to arrange for at least one doctor to be present when the warrant is executed.

Given that the execution of a section 135(1) assessment will involve multiple agencies and as a consequence of this it is possible that the patient’s Article 8 Rights may be infringed, it is essential there is clear and transparent communication between attending professionals. Therefore, it is good practice for all attending professionals to share information about risk (COP 16.6), be clear about their identified role and responsibilities and to discuss particular approaches aimed at promoting engagement/ adherence to the least restrictive principle (COP chapter 1). It may also be necessary to discuss the legal context, potential conveyance arrangements and to ensure everyone in attendance is aware of possible outcomes.

The existence of a warrant does not mean that it has to be executed the decision to do so is that of the attending police officer. ‘The warrant is executed once entry to the premises has been affected by the attending police officer, either by force, or by invitation, if the occupier is aware of the warrant. However, if the occupier of the premises allows entry without knowledge of the existence of the warrant and without the police officer producing the warrant, it is submitted that the warrant has not been executed, as long as the occupier’s consent to enter is not withdrawn’ (Jones18th Edition; 2015 p.591). If during the course of the assessment, the person starts to object to the process of assessment, it will then be necessary to execute the warrant at this stage.

When the warrant is executed, the Approved Mental Health Professional and the Doctor between them should determine whether the person needs to be taken to a place of safety for further assessment or to facilitate arrangements to be made for their treatment or care (COP 16.7).

However, it may still be possible to carry out a Mental Health Act assessment or any further assessment with respect to the person’s care and treatment in the person’s own home, if:

- it is safe and appropriate to do so; and
- the patient consents.
If consent is withdrawn and the patient is ‘thought fit’ to be removed from the premises, then they should be removed and transported to the designated Place of Safety.

Note: When executing section 135(1) the warrant only gives authority for the police officer, an Approved Mental Health Professional and one Doctor to enter the premises. If there is a need for others (e.g. second Doctor, back up AMHP) to enter for the purpose of undertaking a MHA assessment, the person must give their consent.

When entry is gained but the patient is not present, the AMHP should ensure a copy of the warrant is left in a prominent place ideally with an explanatory note. When locks are changed a note should also be left for the returning patient in order to advise where the new keys have been left therefore the Approved Mental Health Professional will need to consider where the patient may be able to pick up the keys out of hours, being mindful of confidentiality, for example, with family or friends, Police Station, etc. and will also need to be mindful of confidentiality issues.

5.11 Section 135(1) - Transporting the Patient to the Place of Safety

In practice, a comprehensive risk assessment should be undertaken to assist the Approved Mental Health Professional and the police in deciding upon the most appropriate type of transport to be used.

Where it is agreed that the patient requires removal from the premises the Approved Mental Health Professional should ensure an ambulance or other transportation is available to take the person to the place of safety or the place where they ought to be. Transportation by ambulance should be considered in the first instance; however, the police should remain in attendance until the patient has been removed from the premises and into the ambulance. The police should also follow the ambulance in case the situation changes and their assistance is required.

Note: If there is a clear history of risk and/or the patient 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 patient, using police transport if necessary.

5.12 Rights of the Person Detained in a Place of Safety

Where a hospital is used as a place of safety under section 135(1), it is the responsibility of the staff within the place of safety, on behalf of the Hospital Managers, to ensure that the provisions of section 132 rights are complied with (see Trust Section 132 policy).

5.13 Consent to Treatment

Detaining a patient in a place of safety under section 135(1) does not confer any power under Part IV of the Mental Health Act to treat the patient without their consent.

In an emergency, it may be possible to provide treatment if the patient lacks capacity to consent, if it is in the patient’s best interests under the provisions of the Mental Capacity Act 2005 (please refer to the Trusts Mental Capacity Act Policy).
5.14 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. Where a decision is made that admission to hospital is not required the Trust (ward staff) should arrange for the person to be returned to their home.

Note: A person who has been removed to a place of safety under section 135(1) cannot have their detention extended by the use of section 5(2) or section 5(4).

5.15 Section 135(2) - When Should an Application Under 135(2) be Made?

This type of warrant may be needed to return a patient liable to be detained in a hospital under the Mental Health Act 1983 who is absent from a hospital ward without leave (AWOL) under section 18 of the Mental Health Act 1983.

It may also be used to assist the recall or return of AWOL patients subject to community treatment orders (CTO’s) or guardianship and may be used to retake a patient who is liable to be detained and who has escaped from legal custody under section 137 (when a patient has absconded after an application for admission to hospital has been completed in the community).

When a section 135 (2) warrant to authorise a police officer to enter a private premises and remove the patient is required, there must be reasonable cause to believe that the patient:

- is to be found on the premises; and
- that admission to the premises has been refused or refusal is anticipated.

Note: section 135 (2) warrants are not required if a co-occupier/co-owner of the premises will give permission to enter. Furthermore, they are not required to enter rooms in premises where a mentally disordered person is occupying that room, if that person has no exclusive right of occupation, for example, hotels or residential care homes.

5.16 Which Professionals Should Apply for a Section 135(2)

The Mental Health Act 1983 states that either “any constables or other persons authorised by or under the Mental Health Act to take or re-take patients to a hospital or particular place may attend court and make a warrant application.

In practice within the Trust it is agreed that warrant applications under section 135(2) will be made by Approved Mental Health Professionals.

5.17 Executing Warrants Under Section 135(2)

When executing a warrant under s.135(2) the police officer MAY be accompanied by:

- by a registered medical practitioner; or
- by any person authorised to take or retake the patient.

Persons authorised to take or retake a patient within the Trust include:
• Ward based Registered Mental Health Nurse (or other suitably qualified professional from the hospital);

• Approved Mental Health Professionals;

• Care co-ordinator or other professionally qualified staff from community teams (if authorised in writing to do so by either the responsible clinician or the Managers of the Hospital.

Once entry to the premises has been secured under section 135(2) the police officer can take the patient into custody and return them to the Hospital or to the place where they ought to be.

Where the warrant under section 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.

5.18 APPLICATION UNDER SECTION 135 OUT OF HOURS:

Doncaster and Rotherham

If the Approved Mental Health Professional requires a warrant out of hours they will need to contact their local police custody suite, who have an up to date list of available out of hours Magistrates.

Having received the request, the Clerk to the Justices will arrange for a hearing. 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.

North Lincolnshire

All Approved Mental Health Professionals in North Lincolnshire have been provided with an up to date confidential list of out of hours contact details. Therefore, should a warrant be required out of hours they will need to contact the legal advisers listed and explain the details of the application and they will arrange for a Scunthorpe Magistrate to hear the application at home.

Payment for Out Of Hours Warrants

The Approved Mental Health Professional must complete the emergency application undertaking form (Appendix 1) and take this with them when they make the application. They must also email their identified Local Authority payment contact (para. 5.5 - 5.7), giving details of the application and to request retrospective payment of the warrant.

6. TRAINING IMPLICATIONS

There is no specific training for Approved Mental Health Professionals on section 135 as this is covered during the Approved Mental Health Professional training (law exam and practical experience). They also receive regular legal updates through a variety of mediums as this forms part of the annual training requirement under the Approved Mental Health Professional regulations.

In general there are no specific training needs for other staff groups, however, the following staff will need to be familiar with this policy
- Police and Ambulance Personnel;
- Local Authority and Hospital Managers;
- Qualified ward and community based staff;
- Mental Health Act Administrators; and
- Any other individual or group with a responsibility for implementing the contents of this policy.

7. **MONITORING ARRANGEMENTS**

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<td>MHA Administrators</td>
<td>Mental Health Act Manager &amp; AMHP Lead</td>
<td>Monthly</td>
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<tr>
<td>The number of reported incidents where issues have been identified in the obtaining and execution of section 135 warrants.</td>
<td>On a case by case basis</td>
<td>Mental Health Act Manager &amp; AMHP Lead</td>
<td>Local Authority Mental Health Legislation Monitoring Group</td>
<td>Monthly</td>
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8. **EQUALITY IMPACT ASSESSMENT SCREENING**

8.1 Privacy, Dignity and Respect

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, ‘not just clinically but in terms of dignity and respect’.

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).

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<th>Indicate How This Will Be Achieved.</th>
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<td>All individuals involved in the implementation of this policy should do so in accordance with the Guiding Principles of the Mental Health Act Code of Practice 2015</td>
<td>All individuals involved in the implementation of this policy should do so in accordance with the Guiding Principles of the Mental Capacity Act 2005. (Section 1)</td>
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8.2 Mental Capacity Act

Central to any aspect of care delivered to adults and young people aged 16 years or over will be the consideration of the individuals capacity to participate in the decision making process. Consequently, no intervention should be carried out without either the individuals informed consent, or the powers included in a legal framework, or by order of the Court. Therefore, the Trust is required to make sure that all staff working with individuals who use our service are familiar with the provisions within the Mental Capacity Act 2005. For this reason all procedural documents will be considered, if relevant to reflect the provisions of the Mental Capacity Act 2005 to ensure that the interests of an individual whose capacity is in question can continue to make as many decisions for themselves as possible.
9. LINKS TO ANY ASSOCIATED DOCUMENTS

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

10. REFERENCES

- Mental Health Act 1983
- Mental Capacity 2005
- Mental Health Act 1983: Code of Practice 2015
- Human Rights Act 1998
- Police and Criminal Evidence Act 1984

11. APPENDIX

Appendix 1 - Emergency application undertaking form
Undertaking to apply for remission of a court fee or tribunal fee, or to pay a court fee or tribunal fee
Emergency applications only

Please complete this form using BLOCK LETTERS

To be completed by the claimant, petitioner, applicant, appellant, defendant, respondent, solicitor or representative

I am the ☐ claimant/petitioner/applicant/appellant ☐ solicitor/representative for the claimant/petitioner/applicant/appellant
☐ defendant/respondent ☐ solicitor/representative for the defendant/respondent

I have today issued the following:

I undertake to:
☐ pay £[ ] within 5 working days of the date of issue.
or
☐ provide an application for remission with full evidence of entitlement within 5 working days of the date of issue.

I understand the undertaking I have given, and that if I break my promise to the court or tribunal my case may be stopped, struck out or the order obtained revoked.

Signed

Date

Full name

Address

Phone number

For office use only
Delivered
☐ by hand to name, date
☐ through solicitor on name, date

Court or Tribunal Officer name

EX1608 Undertaking to apply for remission of a court fee or to pay a court fee (09.13) © Crown copyright 2013