

# Section 136 of the Mental Health Act

## **Emergency police powers to take you from a public place to a place of safety**

This factsheet looks at Section 136 of the Mental Health Act. It looks at when police can use emergency powers to take you from a public place to a place of safety. It explains what your rights are on this section and what could happen after it ends. This information is for people who live with severe mental illness and their carers.

### Key Points.

- Section 136 is part of the Mental Health Act that gives police emergency powers.
- Police can use these powers if they think you have a mental disorder, you're in a public place and need immediate help. They can take you or keep you in a place of safety, where your mental health will be assessed.
- The assessment helps professionals decide on the next steps.
- A place of safety could be your home, your friend's or relative's home, a hospital, or a police station.
- You can be detained in a place of safety for up to 24 hours. This can sometimes be extended for another 12 hours.
- After your mental health assessment, you may be discharged. Or you may be detained in hospital under a different section of the Mental Health Act.
- You have the right to be told why you have been detained and be helped to get legal advice if you ask for it. You can also ask the police or hospital to tell someone where you are. You can get treatment for your mental health, but only if you want it.
- This section doesn't apply if you're in your home, or someone else's home. But police have separate emergency powers regarding this under Section 135 of the Mental Health Act.

## This factsheet covers:

1. [What is section 136 of the Mental Health Act and when do police use it?](#)
2. [How long will I be detained under section 136?](#)
3. [What are my rights?](#)
4. [Can I be treated without my consent?](#)
5. [What will happen next?](#)

## What professionals might I meet?

You may meet some, or all, the following professionals if police detain you under section 136 of the Mental Health Act:

**Police officer:** they will decide if police emergency powers under section 136 should be used. They could decide to hold you where you are or take you to another place of safety.

**Registered medical practitioner:** they are a doctor with special experience in the diagnosis or treatment of mental disorders. They will assess your mental health whilst you are detained in a place of safety.

**Approved mental health professional (AMHP):** an AMHP is a mental health professional who is trained to use the Mental Health Act. They are usually social workers but can also be a psychologist, nurse or occupational therapist. They help to decide if you should be detained under the Mental Health Act. The role of the AMHP is to give a social, rather than a medical opinion.<sup>1</sup>

**Custody sergeant:** you might come across this person if you are taken to a police station. They are responsible for the safety of everyone at the police station. They will make sure you understand why you are there and what your rights are.

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## 1. **What is Section 136 of the Mental Health Act and when do police use it?**

Section 136 is part of the Mental Health Act that gives police emergency powers.<sup>2</sup>

Police can use these powers if they think you have a mental disorder, you're in a public place and need immediate help. Section 136 says police must think you need immediate 'care or control'.<sup>3</sup>

A public place could be somewhere like a street or a park.

A mental disorder can include mental illness and things like dementia, and developmental disorders including autism.

Police can take you or keep you in a place of safety, where you'll be detained so your mental health will be assessed.<sup>4</sup> The assessment helps professionals decide on the next steps.

While you're being detained in the place of safety you can't leave unless police agree. If you try to leave the police can stop you.

Police can use these emergency powers if they think it's in your, or other people's, best interests.<sup>5</sup> For example, they might be worried that you're going to harm yourself.

The police officer doesn't need medical evidence to keep you in a public place or take you to another a place of safety. But before they use their emergency powers to detain you, they must check with a health professional if possible.<sup>6</sup>

The health professionals they could speak to are:<sup>7,8</sup>

- a medical practitioner, like a doctor,
- a nurse,
- an approved mental health professional (AMHP),
- an occupational therapist, or
- a paramedic.

Before detaining you under section 136, police should consider other less restrictive alternatives. So, they might ask your consent to be assessed by a doctor so arrangements can be made for your care. Police should consider consulting with relatives or friends who care for you.<sup>9</sup>

### **How will my mental health be assessed?<sup>10</sup>**

You should be interviewed by an approved mental health professional (AMHP) and assessed by a doctor as soon as possible.

They'll decide on the next actions. See [section 5](#) for more information.

### **What is a place of safety?**

A place of safety could be:<sup>11</sup>

- your home,
- the home of someone you know,
- a healthcare setting, such as a hospital ward or accident and emergency (A&E) department, or
- a police station.

A police station should only be used if there is no better option. You may be taken to a police station if you are thought to be a high risk to people in a healthcare setting.<sup>12</sup>

If you are taken to the police station, it doesn't mean that you have done something wrong. This should be clearly explained to you.<sup>13</sup> The police can arrange for you to be seen by a medical assessor.

The police can move you from one place to another. For example, from the police station to a hospital. You should be taken from the police station to a more suitable place as soon as possible. Unless it is in your best interests to not move.<sup>14</sup>

A police station can't be used as a place of safety if you are under the age of 18.<sup>15</sup>

### **When can a home not be used as a place of safety?**

Your home shouldn't be used as a place of safety if you don't want it to be.<sup>16</sup>

You might live in shared accommodation. Both you and at least one of your housemates need to agree that police can use your home as a place of safety.<sup>17</sup>

Your friend's or relative's home shouldn't be used as a place of safety if:<sup>18</sup>

- you don't agree to it being used, or
- someone who lives in the property doesn't agree to it being used.

### **Can I be taken from my home under section 136?**

A police officer can't take you from the following places using section 136 of the Mental Health Act:<sup>19</sup>

- your home,
- someone else's home, or
- a yard, garden, garage, or outhouse that is used in connection with the home.

But they can remove you from a shared space, such as a communal garden or yard.<sup>20</sup>

The police would need to use section 135 of the Mental Health Act to remove you from your home. Or the other places mentioned in the list above.

Under section 135, professionals would need a warrant to come into these places to take you to a place of safety.<sup>21</sup> The police can use force to come in, if they need to.<sup>22</sup>

In an emergency, the police can force entry without a warrant. This would be under a different law.<sup>23</sup>

You can find more information about '**Section 135 of the Mental Health Act**' at [www.rethink.org](http://www.rethink.org). Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

## 2. How long will I be detained under section 136?

You can be on this section for up to 24 hours.<sup>24</sup>

During this time, a doctor will assess your mental health as soon as they can. They can extend the section for up to 12 hours if:<sup>25</sup>

- it isn't possible for the assessment to be done before the end of the 24 hours, or
- your assessment is still going on at the end of the 24 hours.

This rule only applies if they haven't been able to assess you sooner because of the condition you are in.

A police officer at superintendent rank, or above, will need to agree to the extension if you are in a police station.<sup>26</sup>

## 3. What are my rights?

### What if I'm being detained in hospital?

If you are in hospital, the hospital managers must make sure that you:<sup>27,28</sup>

- understand why you have been detained,
- have information about your detention,
- are helped to get legal advice if you ask for it, and
- get information on use of force by staff.<sup>29</sup>

### What if I'm being detained in a police station?

If the police take you to a police station, it doesn't mean that you have done anything wrong. Your rights in the police station are the following.<sup>30,31</sup>

- You should be told why you have been detained.
- The police should tell someone where you are, and what's happened, if you want them to.
- You should be told about your right to get free legal advice from a solicitor, if you want it.
- You should get medical treatment from an appropriate healthcare professional, if you need it.
- Someone called an 'appropriate adult' should be available to support you. But they have no role in the doctor's assessment or AMHP's interview, and they don't need to be there while they're done.<sup>32</sup>

You can find more information about the '**Appropriate adult – At the police station**' at [www.rethink.org](http://www.rethink.org). Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

## **Can I appeal my detention?**

You can't appeal your detention if you're detained under section 136 of the Mental Health Act.<sup>33</sup>

But if professionals decide to detain you under another section, such as 2 or 3, you can appeal.

You can find more information about:

- The Mental Health Act, and
- Discharge from the Mental Health Act.

at [www.rethink.org](http://www.rethink.org). Or you can call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheets.

## **Can I speak to an independent mental health advocate (IMHA)?**

When you're detained under section 136 of the Mental Health Act you have no right to speak to an IMHA.<sup>34</sup>

## **Can I be searched?**

You can only be searched if a police officer believes that you:<sup>35</sup>

- may be a danger to yourself or other people, and
- are hiding something on you that could be used to hurt yourself or other people.

Your mouth can also be searched.<sup>36</sup>

If you are searched, you shouldn't be asked to take off your clothes. But you can be asked to take off your:<sup>37</sup>

- outer coat,
- jacket, and
- gloves.

A police officer can keep anything they find on you. They can do this if they believe that you might use it to cause harm to yourself or other people.<sup>38</sup>

## **Can I complain if I'm unhappy with how the police or the NHS have dealt with me?**

If you're I'm unhappy with how the police or the NHS have dealt with you, you can complain if you want to.

You can find more information about:

- Complaints about the NHS and social services, and
- Complaints about the police.

at [www.rethink.org](http://www.rethink.org). Or you can call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheets.

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#### 4. Can I be treated without my consent?

You can be offered treatment for your symptoms if you're detained under section 136 of the Mental Health Act.

But you can't be forced to take medication, or to have any other treatment.<sup>39</sup>

You can only be treated without your consent if you're later detained under a different section of the Mental Health Act. Such as section 2, section 3 or section 37.

You can find more information about the '**Mental Health Act**' at [www.rethink.org](http://www.rethink.org). Or call our General Enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

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#### 5. What will happen next?

You should be interviewed by an approved mental health professional (AMHP) and assessed by a doctor. They'll then decide on the next actions.

The AHMP and doctor will decide that one of the following things will happen.<sup>40</sup>

- They decide you no longer need to be detained and you're fine to go back to into the community. You are free to leave. They may arrange support for you from your GP, NHS mental health services or social services. You don't have to accept the support if you don't want to.
- They might decide to offer you a place in hospital as a voluntary patient. This means it's your choice to go to, or stay in, hospital.
- They think you need to be detained in hospital under the Mental Health Act. They will only decide this if they think you're a serious risk to yourself or others. An additional doctor will need to agree that you need to be detained. In an emergency, the AMHP and doctor could detain you in hospital for 72 hours, without the agreement of an additional doctor.<sup>41</sup>

You can find more information about:

- Mental Health Act
- NHS Mental Health Teams (MHTs)
- GP's - what to expect from your doctor

at [www.rethink.org](http://www.rethink.org). Or call our general enquiries team on 0121 522 7007 and ask them to send you a copy of our factsheet.

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## References

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<sup>1</sup> Department of Health. *Code of Practice Mental Health Act 1983*. Norwich: TSO; 2015. Paragraph 14.52.

<sup>2</sup> s136 Mental Health Act 1983 c20.

<sup>3</sup> s136(1) Mental Health Act 1983 c20.

<sup>4</sup> s136 Mental Health Act 1983 c20.

<sup>5</sup> s136(1) Mental Health Act 1983 c20.

<sup>6</sup> s136(1C) Mental Health Act 1983 c20.

<sup>7</sup> s136(1C) Mental Health Act 1983 c20.

<sup>8</sup> Reg. 8(1), *The Mental Health Act 1983 (Places of Safety) Regulations 2017*. SI 2017/1036. London: TSO; 2017.

<sup>9</sup> Department of Health. *Code of Practice Mental Health Act 1983*. Norwich: TSO; 2015. Paragraph 16.22

<sup>10</sup> Department of Health. *Code of Practice Mental Health Act 1983*. Norwich: TSO; 2015. Paragraph 16.27.

<sup>11</sup> s135(6) Mental Health Act 1983 c20.

<sup>12</sup> Department of Health. *Code of Practice Mental Health Act 1983*. Norwich: TSO; 2015. Paragraph 14.52. paragraph 16.38.

<sup>13</sup> Department of Health. *Code of Practice Mental Health Act 1983*. Norwich: TSO; 2015. Paragraph 14.52. paragraph 16.43

<sup>14</sup> Department of Health. *Code of Practice Mental Health Act 1983*. Norwich: TSO; 2015. Paragraph 16.40.

<sup>15</sup> s136A(1) Mental Health Act 1983 c20.

<sup>16</sup> s135(7)(a)(i) Mental Health Act 1983 c20.

<sup>17</sup> s135(7)(a)(ii) Mental Health Act 1983 c20.

<sup>18</sup> s135(7)(a)(iii) Mental Health Act 1983 c20.

<sup>19</sup> s136(1A) Mental Health Act 1983 c20.

<sup>20</sup> s136(1A)(b) Mental Health Act 1983 c20.

<sup>21</sup> s135 (1) Mental Health Act 1983 c20.

<sup>22</sup> s135(1) Mental Health Act 1983 c20.

<sup>23</sup> s17(1)(e) Police and Criminal Evidence Act 1984 c60.

<sup>24</sup> s136(2A) Mental Health Act 1983 c20.

<sup>25</sup> s136B (1) Mental Health Act 1983 c20.

<sup>26</sup> s136B(3) Mental Health Act 1983 c20.

<sup>27</sup> s132, Mental Health Act 1983 c20.

<sup>28</sup> Department of Health. *Code of Practice Mental Health Act 1983*. Norwich: TSO; 2015. Paragraph 16.69.

<sup>29</sup> s4, *Mental Health Units (Use of Force) Act 2018* c27.

<sup>30</sup> Home Office. *Police and Criminal Evidence Act 1984 (PACE) Code of Practice*. Norwich: TSO; February 2017. Code C, Paragraph 3.1.

<sup>31</sup> Home Office. *Police and Criminal Evidence Act 1984 (PACE) Code of Practice*. Norwich: TSO; February 2017. Code C, Paragraph 3.2 (a)(vii).

<sup>32</sup> Department of Health. *Code of Practice Mental Health Act 1983*. Norwich: TSO; 2015. Paragraph 16.67.

<sup>33</sup> Department of Health and Social Care. *Removal of mentally disordered persons without a warrant (Section 136 of the Mental Health Act 1983)/ Cai I appeal?* [www.gov.uk/government/publications/mental-health-act-1983-patient-information-leaflets](http://www.gov.uk/government/publications/mental-health-act-1983-patient-information-leaflets) (accessed 21 October, 2021)

<sup>34</sup> Department of Health. *Code of Practice Mental Health Act 1983*. Norwich: TSO; 2015. Paragraph 6.9

<sup>35</sup> s136C(3) Mental Health Act 1983 c20.

<sup>36</sup> s136C (5(b) Mental Health Act 1983 c20.

<sup>37</sup> s136C(5)(a) Mental Health Act 1983 c20.

<sup>38</sup> s136C(6) Mental Health Act 1983 c20.

<sup>39</sup> s56(3)(b) Mental Health Act 1983 c20.

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<sup>40</sup> Department of Health. Code of Practice Mental Health Act 1983. Norwich: TSO; 2015.

Paragraph 16.27.

<sup>41</sup> s4(4) Mental Health Act 1983 c20.

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(excluding bank holidays)**

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**or write to us at Rethink Mental Illness:**

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B91 9BA

**or call us on** 0808 801 0525

We're open 9:30am to 4pm

Monday to Friday (excluding bank holidays)

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### Don't have access to the web?

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### Need to talk to an adviser?

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