



# Policing and Crime Act 2017

## 2017 CHAPTER 3

### PART 4

#### POLICE POWERS

#### CHAPTER 4

##### POWERS UNDER THE MENTAL HEALTH ACT 1983

#### **80 Extension of powers under sections 135 and 136 of the Mental Health Act 1983**

- (1) The Mental Health Act 1983 is amended as follows.
- (2) In section 135 (warrant to search for and remove patients), after subsection (1) insert—
  - “(1A) If the premises specified in the warrant are a place of safety, the constable executing the warrant may, instead of removing the person to another place of safety, keep the person at those premises for the purpose mentioned in subsection (1).”
- (3) In subsection (3) of that section—
  - (a) for “under this section” substitute “ under subsection (1) ”;
  - (b) before “may” insert “ , or kept at the premises specified in the warrant under subsection (1A), ”.
- (4) In section 136 (mentally disordered persons found in public places), for subsection (1) substitute—
  - “(1) If a person appears to a constable to be suffering from mental disorder and to be in immediate need of care or control, the constable may, if he thinks it necessary to do so in the interests of that person or for the protection of other persons—
    - (a) remove the person to a place of safety within the meaning of section 135, or

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- (b) if the person is already at a place of safety within the meaning of that section, keep the person at that place or remove the person to another place of safety.
- (1A) The power of a constable under subsection (1) may be exercised where the mentally disordered person is at any place, other than—
  - (a) any house, flat or room where that person, or any other person, is living, or
  - (b) any yard, garden, garage or outhouse that is used in connection with the house, flat or room, other than one that is also used in connection with one or more other houses, flats or rooms.
- (1B) For the purpose of exercising the power under subsection (1), a constable may enter any place where the power may be exercised, if need be by force.”
- (5) After subsection (1B) of that section (inserted by subsection (4) above) insert—
  - “(1C) Before deciding to remove a person to, or to keep a person at, a place of safety under subsection (1), the constable must, if it is practicable to do so, consult—
    - (a) a registered medical practitioner,
    - (b) a registered nurse,
    - (c) an approved mental health professional, or
    - (d) a person of a description specified in regulations made by the Secretary of State.”
- (6) In subsection (2) of that section, for “removed to” substitute “ removed to, or kept at, ”.
- (7) For the heading of that section substitute “ Removal etc of mentally disordered persons without a warrant ”.

#### **Commencement Information**

- I1** S. 80 in force for specified purposes at Royal Assent, see s. 183
- I2** S. 80 in force at 11.12.2017 in so far as not already in force by S.I. 2017/1017, reg. 3(a) (with reg. 4)

## **81 Restrictions on places that may be used as places of safety**

- (1) The Mental Health Act 1983 is amended as follows.
- (2) In section 135 (warrant to search for and remove patients), in subsection (6), omit the words “the occupier of which is willing temporarily to receive the patient”.
- (3) After subsection (6) of that section insert—
  - “(7) For the purpose of subsection (6)—
    - (a) a house, flat or room where a person is living may not be regarded as a suitable place unless—
      - (i) if the person believed to be suffering from a mental disorder is the sole occupier of the place, that person agrees to the use of the place as a place of safety;
      - (ii) if the person believed to be suffering from a mental disorder is an occupier of the place but not the sole occupier, both that

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person and one of the other occupiers agree to the use of the place as a place of safety;

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

(b) a place other than one mentioned in paragraph (a) may not be regarded as a suitable place unless a person who appears to the constable exercising powers under this section to be responsible for the management of the place agrees to its use as a place of safety.”

(4) After subsection (7) of that section (inserted by subsection (3) above) insert—

“(8) This section is subject to section 136A which makes provision about the removal and taking of persons to a police station under this section.”

(5) In section 136, after subsection (4) insert—

“(5) This section is subject to section 136A which makes provision about the removal and taking of persons to a police station, and the keeping of persons at a police station, under this section.”

(6) After section 136 insert—

**“136A Use of police stations as places of safety**

(1) A child may not, in the exercise of a power to which this section applies, be removed to, kept at or taken to a place of safety that is a police station.

(2) The Secretary of State may by regulations—

- (a) provide that an adult may be removed to, kept at or taken to a place of safety that is a police station, in the exercise of a power to which this section applies, only in circumstances specified in the regulations;
- (b) make provision about how adults removed to, kept at or taken to a police station, in the exercise of a power to which this section applies, are to be treated while at the police station, including provision for review of their detention.

(3) Regulations under this section—

- (a) may make different provision for different cases;
- (b) may make provision that applies subject to specified exceptions;
- (c) may include incidental, supplementary or consequential provision or transitional, transitory or saving provision.

(4) The powers to which this section applies are—

- (a) the power to remove a person to a place of safety under a warrant issued under section 135(1);
- (b) the power to take a person to a place of safety under section 135(3A);
- (c) the power to remove a person to, or to keep a person at, a place of safety under section 136(1);
- (d) the power to take a person to a place of safety under section 136(3).

(5) In this section—

- (a) “child” means a person aged under 18;

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(b) “adult” means a person aged 18 or over.”

**Commencement Information**

- I3** S. 81 in force for specified purposes at Royal Assent, see s. 183  
**I4** S. 81 in force at 11.12.2017 in so far as not already in force by S.I. 2017/1017, reg. 3(b) (with reg. 4)

**82 Periods of detention in places of safety etc**

- (1) The Mental Health Act 1983 is amended as follows.
- (2) In section 135 (warrant to search for and remove patients)—
- (a) in subsection (3), for “72 hours” substitute “ the permitted period of detention ”;
- (b) after subsection (3) insert—
- “(3ZA) In subsection (3), “the permitted period of detention” means—
- (a) the period of 24 hours beginning with—
- (i) in a case where the person is removed to a place of safety, the time when the person arrives at that place;
- (ii) in a case where the person is kept at the premises specified in the warrant, the time when the constable first entered the premises to execute the warrant; or
- (b) where an authorisation is given in relation to the person under section 136B, that period of 24 hours and such further period as is specified in the authorisation.”;
- (c) in subsection (3A), for “the period of 72 hours” substitute “ the permitted period of detention ”;
- (d) in subsection (3B), for “the period of 72 hours” substitute “ the permitted period of detention ”.
- (3) In section 136 (mentally disordered persons found in public places)—
- (a) in subsection (2), for “72 hours” substitute “ the permitted period of detention ”;
- (b) after subsection (2) insert—
- “(2A) In subsection (2), “the permitted period of detention” means—
- (a) the period of 24 hours beginning with—
- (i) in a case where the person is removed to a place of safety, the time when the person arrives at that place;
- (ii) in a case where the person is kept at a place of safety, the time when the constable decides to keep the person at that place; or
- (b) where an authorisation is given in relation to the person under section 136B, that period of 24 hours and such further period as is specified in the authorisation.”;
- (c) in subsection (3), for “the period of 72 hours” substitute “ the permitted period of detention ”;
- (d) in subsection (4), for “the period of 72 hours” substitute “ the permitted period of detention ”.

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(4) After section 136A (inserted by section 81) insert—

**“136B Extension of detention**

- (1) The registered medical practitioner who is responsible for the examination of a person detained under section 135 or 136 may, at any time before the expiry of the period of 24 hours mentioned in section 135(3ZA) or (as the case may be) 136(2A), authorise the detention of the person for a further period not exceeding 12 hours (beginning immediately at the end of the period of 24 hours).
- (2) An authorisation under subsection (1) may be given only if the registered medical practitioner considers that the extension is necessary because the condition of the person detained is such that it would not be practicable for the assessment of the person for the purpose of section 135 or (as the case may be) section 136 to be carried out before the end of the period of 24 hours (or, if the assessment began within that period, for it to be completed before the end).
- (3) If the person is detained at a police station, and the assessment would be carried out or completed at the station, the registered medical practitioner may give an authorisation under subsection (1) only if an officer of the rank of superintendent or above approves it.”
- (5) In section 138 (retaking of patients escaping from custody), in subsection (3), for the words from “after the expiration of the period” to the end of the subsection substitute “—
  - (a) in a case where the person escapes while being removed to a place of safety in the execution of a warrant under section 135(1) or under section 136(1), after the end of the period of 24 hours beginning with the escape;
  - (b) in a case where the person escapes after the beginning of the period that is the permitted period of detention in relation to the person under section 135(3ZA) or 136(2A), after the end of that period (taking into account any authorisation under section 136B(1) that was given before the person escaped).”

**Commencement Information**

- I5** S. 82 in force for specified purposes at Royal Assent, see s. 183  
**I6** S. 82 in force at 11.12.2017 in so far as not already in force by S.I. 2017/1017, reg. 3(c) (with reg. 4)

**83 Protective searches: individuals removed etc under section 135 or 136 of the Mental Health Act 1983**

After section 136B of the Mental Health Act 1983 (inserted by section 82) insert—

**“136C Protective searches**

- (1) Where a warrant is issued under section 135(1) or (2), a constable may search the person to whom the warrant relates if the constable has reasonable grounds for believing that the person—
  - (a) may present a danger to himself or herself or to others, and

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- (b) is concealing on his or her person an item that could be used to cause physical injury to himself or herself or to others.
- (2) The power to search conferred by subsection (1) may be exercised—
- (a) in a case where a warrant is issued under section 135(1), at any time during the period beginning with the time when a constable enters the premises specified in the warrant and ending when the person ceases to be detained under section 135;
  - (b) in a case where a warrant is issued under section 135(2), at any time while the person is being removed under the authority of the warrant.
- (3) Where a person is detained under section 136(2) or (4), a constable may search the person, at any time while the person is so detained, if the constable has reasonable grounds for believing that the person—
- (a) may present a danger to himself or herself or to others, and
  - (b) is concealing on his or her person an item that could be used to cause physical injury to himself or herself or to others.
- (4) The power to search conferred by subsection (1) or (3) is only a power to search to the extent that is reasonably required for the purpose of discovering the item that the constable believes the person to be concealing.
- (5) The power to search conferred by subsection (1) or (3)—
- (a) does not authorise a constable to require a person to remove any of his or her clothing other than an outer coat, jacket or gloves, but
  - (b) does authorise a search of a person's mouth.
- (6) A constable searching a person in the exercise of the power to search conferred by subsection (1) or (3) may seize and retain anything found, if he or she has reasonable grounds for believing that the person searched might use it to cause physical injury to himself or herself or to others.
- (7) The power to search a person conferred by subsection (1) or (3) does not affect any other power to search the person.”

**Commencement Information**

**I7** S. 83 in force for specified purposes at Royal Assent, see s. 183

**I8** S. 83 in force at 11.12.2017 in so far as not already in force by S.I. 2017/1017, reg. 3(d) (with reg. 4)

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**Changes and effects yet to be applied to :**

- specified provision(s) amendment to earlier commencing S.I. 2017/1139, reg. 2 by [S.I. 2017/1162 reg. 2](#)