Title: Policing and Crime Bill – Amend Police Powers under the Mental Health Act 1983 **IA No:** HO0231 **Lead department or agency:** Home Office **Other departments or agencies:** Department of Health	**Impact Assessment (IA)** **Date:** 26/05/2016 **Stage:** Final **Source of intervention:** Domestic **Type of measure:** Primary legislation **Contact for enquiries**: Ben Bryant (0207 035 3016)

Summary: Intervention and Options

RPC Opinion: N/A

Cost of Preferred (or more likely) Option				
Total Net Present Value	**Business Net Present Value**	**Net cost to business per year** (EANCB on 2009 prices)	**In scope of Business Impact Target?**	**Measure qualifies as**
-£80.4m	£0	£0	No	IN

What is the problem under consideration? Why is government intervention necessary?

The police have powers under sections 135 and 136 of the Mental Health Act 1983 to remove a person who is believed to be suffering from a mental disorder and is in need of immediate care or control to a place of safety for the purposes of a mental health assessment.

A Government review of the operation of sections 135 and 136, published in 2014, identified a number of issues, in particular the over-use of police cells as places of safety, which evidence shows can have a serious impact on the person concerned, especially young people. It also highlighted that detainees were not necessarily receiving as timely a response from health services as they should, and that there were significant variations in practice across the country.

What are the policy objectives and the intended effects?

- To eliminate the use of police stations as places of safety for children and young people aged under 18 detained under s135 or s136 and significantly cut their use for adults, ensuring more people receive the treatment they need in the most appropriate setting.
- To reduce the maximum length of detention from 72 hours to 24 hours unless there are clinical/medical reasons for a delay, so that a person's fundamental rights are not restricted for longer than is absolutely necessary.
- Enable the police to use their s136 powers promptly in a range of locations, ensuring that people in crisis get the treatment they need as quickly as possible.
- Reduce the number of inappropriate s136 detentions.
- Remove the legal ambiguity around conducting s135 assessments in a person's home.

What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)

Option 0 (do nothing)

Option 1 Change legislation to: eliminate use of police custody as a place of safety for under 18s; ensure police custody is only used for adults in cases where criteria to be prescribed in secondary legislation are judged to have been met; reduce the maximum length of detention from 72 hours to 24 hours; allow s136 to be used to detain individuals in any location other than a private home; and require the police where feasible to obtain advice from a health professional before detaining a person under s136.

Option 1 is Preferred: If we opt to do nothing, the work already being undertaken at national and local level would continue to bring partner agencies together and improve joint working practices. However, some areas require primary legislative change, either because there is a technical change to permit best practice, or to reinforce the policy intention that people should not be taken to police cells and should be assessed as quickly as possible.

Will the policy be reviewed? It will not be reviewed. **If applicable, set review date: -**

Does implementation go beyond minimum EU requirements?			N/A		
Are any of these organisations in scope? If Micros not exempted set out reason in Evidence Base.	**Micro** No	**< 20** No	**Small** No	**Medium** No	**Large** No
What is the CO_2 equivalent change in greenhouse gas emissions? (Million tonnes CO_2 equivalent)			**Traded:** N/A	**Non-traded:** N/A	

I have read the Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs

Signed by the responsible Minister: ..... Date: .....

Summary: Analysis & Evidence

Proposals 1 & 2

Description: *Change legislation so that under 18s and adults are not detained in police custody under s135/s136 of the Mental Health Act 1983, unless an adult's behaviour is so extreme that they cannot be safely managed outside of police custody.*

FULL ECONOMIC ASSESSMENT

Price Base Year 15/16	PV Base Year 15/16	Time Period Years 10	Net Benefit (Present Value (PV)) (£m)		
			Low: -169.4	**High: 8.7**	**Best Estimate: -80.4m**

COSTS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Cost (Present Value)
Low	5.1	1	0.3	**7.3**
High	5.1		20.9	**185.4**
Best Estimate	5.1		10.7	**96.4**

Description and scale of key monetised costs by 'main affected groups'

- Cost of building and staffing 33 additional beds to accomodate all detainees in Health Based Places of Safety (HBPOS), estimated to be £94.2m (10 year NPV).
- Cost to police of waiting whilst a detainee is booked in to a HBPOS, estimated to be £2.2m (10 year NPV).

Other key non-monetised costs by 'main affected groups'

- Potential transportation costs if transportation to HBPOS takes longer on average than transportation to police custody.

BENEFITS (£m)	Total Transition (Constant Price)	Years	Average Annual (excl. Transition) (Constant Price)	Total Benefit (Present Value)
Low				
High				
Best Estimate	NK		1.9	**16.0**

Description and scale of key monetised benefits by 'main affected groups'

- Savings to the police from reduced cell use, estimated to be £8.0m (10 year NPV).
- Savings to the police from reduced officer time looking after s136 detainees, estimated to be £8.0m (10 year NPV).

Other key non-monetised benefits by 'main affected groups'

- Detainees will experience considerable benefits from no longer having the emotional stress of being detained in police custody following a mental health crisis.

Key assumptions/sensitivities/risks **Discount rate** 3.5%

- We examine the impact on cost if all additional HBPOS must be set up from scratch or if they can be added to existing facilities (see central, upper and lower estimates in section E).
- We also examine the impact on cost if beds in HBPOS can each accommodate on average 120 to 65 detainees per year (see best, stretch and generous estimates in section E).
- We assume that the number of s136 detentions in future years will fall by 16% as a result of increased use of street triage.
- We assume that force areas are able to share the additional beds required without a loss of efficiency.
- We assume that all force areas will be able to operate as efficiently as West Midlands, Hertfordshire, Suffolk and Northumbria do currently.

BUSINESS ASSESSMENT (Option 1)

Direct impact on business (Equivalent Annual) £m:			In scope of BIT?	Measure qualifies as
Costs: 0	**Benefits:** 0	**Net:** 0	No	NA

Summary: Analysis & Evidence Proposals 3-8

Description: *Change legislation so that anywhere considered suitable and safe can be used to detain individuals under s135(6), s136 can be used to detain individuals in any location other than a private home, reduce the maximum length of detention from 72 hours to 24 hours, require the police where feasible to obtain advice from a health professional before detaining a person under s136, allow s135 assessments to take place in the person's home, and i**ntroduce** a **police power to carry out protective searches** under s135 or s136(2) or (4).*

FULL ECONOMIC ASSESSMENT

Price Base Year 15/16	**PV Base Year** 15/16	**Time Period Years** 10	**Net Benefit (Present Value (PV)) (£m)**		
			Low:	**High:**	**Best Estimate: NK**

COSTS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Cost** (Present Value)
Low				
High				
Best Estimate	NK		NK	**NK**

Description and scale of key monetised costs by 'main affected groups'

- Cost to health services of dealing with detainees more quickly so that none are detained for more than 24 hours, estimated to be £173,000 per year. This cost is not included in the overall figure as it represents only a small fraction of the overall costs of these proposals.

Other key non-monetised costs by 'main affected groups'

- By allowing s136 detention to be used in additional locations, it is possible that the number of s136 detainees will increase causing higher costs to the health service.
- By ensuring that the police use street triage services where they are available, it is possible that street triage services will need to devote more resources to dealing with potential s136 detentions.

BENEFITS (£m)	**Total Transition** (Constant Price)	Years	**Average Annual** (excl. Transition) (Constant Price)	**Total Benefit** (Present Value)
Low				
High				
Best Estimate	NK		NK	**NK**

Description and scale of key monetised benefits by 'main affected groups'

It was not possible to monetise any of the benefits of these proposals.

Other key non-monetised benefits by 'main affected groups'

- Providing a greater number of types of place which can be considered a place of safety will provide health commissioners with greater flexibility in allocating s135(6) detainees.
- Savings to police time and prevention of suicides as s136 detentions can now be used anywhere except for a private home (eg. on a railway line).
- Reduced stress to detained individuals by ensuring that they are dealt with within 24 hours.
- By ensuring that the police use street triage services where they are available, individuals are more likely to receive the most appropriate response to their needs. It is also possible that fewer unwarranted s136 detentions will occur, which will reduce costs to health services.
- By allowing s135 detentions to take place within a person's home, we will hopefully reduce pressure on HBPOS and provide a less distressing outcome for some individuals.
- Giving the police the power to conduct protective searches of s135/136(2) or (4) detainees will help maintain the safety of all concerned (particularly detainees, police officers and health staff).

Key assumptions/sensitivities/risks **Discount rate** 3.5%

- Clear guidance will be needed on the issues to be considered when deciding whether a place other than a HBPOS or police station is safe and suitable to be used as a PoS.

BUSINESS ASSESSMENT (Option 2)

Direct impact on business (Equivalent Annual) £m:			**In scope of BIT?**	**Measure qualifies as**
Costs: 0	**Benefits:** 0	**Net:** 0	No	NA

Evidence Base (for summary sheets)

A. Strategic Overview

A.1 Background

The police have powers under the Mental Health Act 1983 to remove a person who is believed to be suffering from a mental disorder and is in need of immediate care or control to a place of safety for the purposes of a mental health assessment. Section 135(1) warrants provide police officers with a power of entry to private premises for the purposes of removing the person to a place of safety, while section 136 is an emergency power which allows for the removal of a person who is in a public place to a place of safety.

Between March and November 2014, the Home Office and Department of Health jointly undertook a review of the operation of sections 135 and 136 (hereafter s135 and s136) of the Mental Health Act 1983, in order to improve the outcomes for people in mental health crisis who may be detained under these provisions.[1]

The review, which was published on 18 December 2014, explored a range of issues including:

- How do these sections work in practice?
- Does the present legislation provide a balance between flexibility and safeguards?
- Is it appropriate for police stations to be used as a place of safety?
- Is the maximum length of detention of 72 hours too long?
- If a person is experiencing a mental health emergency in their own home, does the legislation support their receiving help as quickly as possible?
- Would there be any benefit in extending the powers to others as well as the police?

The review found there were a number of issues with the operation of s135 and s136. In particular, the over-use of police cells as places of safety was widely cited as an issue, especially for children and young people, and there is evidence that this has a serious impact on the people being detained, who often felt the experience was criminalising. Furthermore, there were concerns that some people detained under sections 135 and 136 were not necessarily receiving as timely response from health services as they should, and the review identified variations in practice in different parts of the country. The review made a series of recommendations, including for legislative changes.

A.2 Groups Affected

- People who are detained under s135 and s136 of the Mental Health Act 1983
- Police forces
- NHS Commissioners
- Health service providers, including ambulance trusts
- Third sector organisations
- Doctors approved under section 12(2) of the Mental Health Act 1983
- Approved Mental Health Professionals (AMHPs)

[1] Review of the operation of sections 135 and 136 of the Mental Health Act 1983
https://www.gov.uk/government/consultations/review-of-the-operation-of-sections-135-and-136-of-the-mental-health-act

A.3 Consultation

Within Government

The review of s135 and s136 of the Mental Health Act 1983 was jointly undertaken by the Home Office and the Department of Health. The recommendations in the review and the resulting legislative proposals set out in this impact assessment have therefore been developed through close working between both Departments.

The review was signed off by the Cabinet Home Affairs Committee in advance of its publication in December 2014.

Public Consultation

The development of the review involved engagement with a range of external stakeholders via dedicated practitioner workshops and an online survey which received over 1000 responses. These include academic experts, professionals in mental health, ambulance services and policing, people who have experienced being detained under these parts of the Mental Health Act and their carers, families and friends. The review was informed by evidence from a range of sources, a summary of which was published alongside the review.

Following publication of the review, a formal public consultation was published in March 2015 by the Department of Health, 'No voice unheard, no right ignored – a consultation for people with learning disabilities, autism and mental health conditions'. The consultation sought to explore views on a range of proposals including the recommendations in the review. Almost 500 responses were received. The Government responded to this consultation in November 2015.

B. Rationale

Reducing the use of police stations as places of safety

1. Section 135(6) of the Mental Health Act 1983 includes police stations as a place of safety for people detained under s135 and s136. Other places of safety comprise local authority social services residential accommodation, a hospital, a care home or any other suitable place if the occupier is willing to receive the patient. The Act is supplemented by statutory guidance prepared in accordance with s118 of the Act – the Mental Health Act 1983 Code of Practice, the revision of which came into effect on 1 April 2015 following parliamentary approval[2]– that makes clear that a police station should only be used as a place of safety (for a person detained under section 136 of any age) in 'exceptional circumstances'.

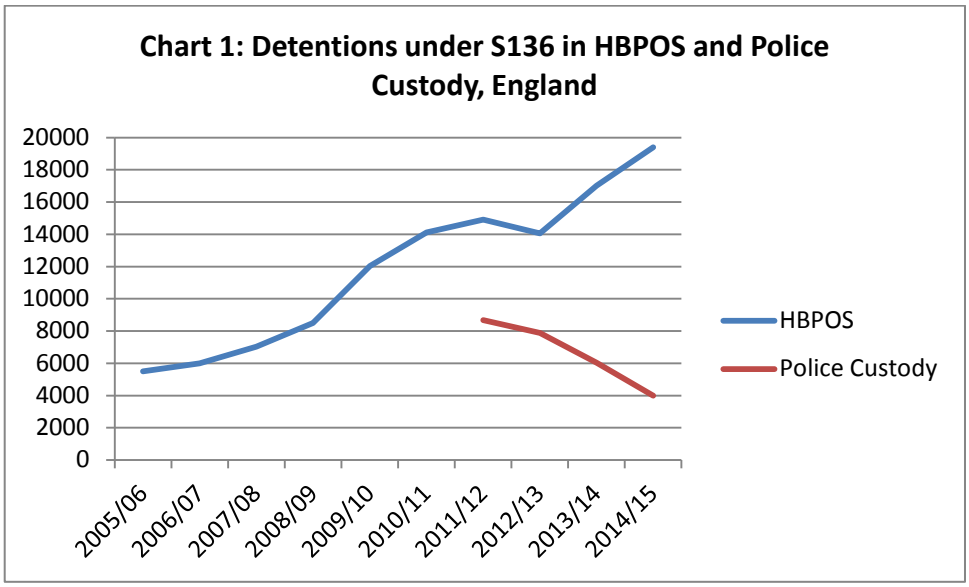
2. This position echoes that outlined in the Government's Mental Health Crisis Care Concordat for England, published in February 2014, which is a statement about how public services should work together to respond to people who are in mental health crisis thathas now been signed by over 25 national organisations including the Department of Health and the Home Office. The Concordat set an expectation for the use of police cells as places of safety for people detained under s136 to fall rapidly, dropping below 50% of the 2011/12 figure by 2014/15. The work of national Concordat partners has led to the establishment of 96 local multi-agency groups covering the entirety of England, consisting of health, policing and local authority partners who have pledged to work together to improve mental health crisis care and have set out detailed, publicly available action plans. In addition, NHS England has commissioned a major piece of work through the National Collaborating Centre for Mental

[2] Mental Health Act 1983 Code of Practice https://www.gov.uk/government/publications/code-of-practice-mental-health-act-1983

Health as part of its crisis care programme to develop access and quality standards, best practice clinical pathways and commissioning guidance. This builds on the best local Concordat work and specifically includes consideration of ideal pathways for people detained under s135 and s136.

3. However, there are concerns that police stations are still being used too often as a place of safety. As Table 1 (at the end of this document) shows, there is wide variation in the use of police cells across forces in England and Wales. There are particular concerns over the use of police stations to hold children and young people detained under s136. Feedback from detainees is that being taken to a police station and kept in a police cell is likely to exacerbate distress and can be perceived to have a criminalising effect, especially if disclosed through a DBS check (see below).

4. The following chart shows the number of s136 detentions in health and police based places of safety in England from 2005/6 to 2014/15.



Data sources: Health and Social Care Information Centre KP90 data on use of HBPOS; National Police Chiefs' Council data on use of police custody suites.

5. Data on the use of police cells as places of safety has only been systematically collected from forces for the last four years. Since 2011/12 this data has shown a decrease in the number of people detained in police cells in England under s136 of around 54%, which is a significant achievement and surpasses the 50% expectation set out in the Concordat. Police data covering the period 2014-15 indicates that police stations were used as a place of safety on just under 4,000 occasions (17%) in England.[3] As shown in Table 2 (at this end of this document), data published by the Health and Social Care Information Centre for the same period indicates that a hospital was used as a place of safety on 19,403 occasions in England.[4] Police data also shows that under-18s were detained in police stations on 145 occasions.

6. Despite improvements, the police and their partners acknowledge that police stations are used more frequently than would be expected if the Code of Practice was being adhered to and such use was genuinely exceptional. There are still large variations in the use of police custody across the country, with forces such as Lincolnshire and Devon and Cornwall sending almost 60% of s136 detainees to police custody according to the latest annual

[3] Police data on use of s136, published by the NPCC, June 2015 http://www.npcc.police.uk/documents/edhr/2015/Section%20136%20MHA%20201415%20Data.pdf

[4] Inpatients Formally Detained in Hospitals Under the Mental Health Act 1983 and Patients Subject to Supervised Community Treatment, England - 2014-2015, Annual figures. Published by the Health and Social Care Information Centre, October 2015

figures that are available from 2014/15[5]. There is a risk that, without changing legislation and relying solely on guidance, the wide variation across forces will continue.

7. There is also a risk that recent reductions in the use of police custody have come about largely because of public attention on the issue. It is feasible that without changing legislation, once public attention has died down, the number of detentions in police custody could rise again.

8. There is qualitative evidence that there is a negative emotional impact on the people detained under s136 in police cells. There have been a small number of peer reviewed journal articles examining patient experiences of s136, using qualitative methods.[6] A small study of 16 all-male patients detained under s136 during 1998 found that those in hospital said they felt more safe and secure and part of the 'real world', while those taken to a police cell reported a more negative experience. It was expressed that the police custody procedure removed not just their personal possessions, but also their sense of being an individual in the real world: 'Feeling dehumanised and being treated as a criminal was a common theme in this group and [This] created a feeling of being 'out of touch with normality' and feeling 'not quite human''.[7] They felt punished for being mentally disordered and for taking up police time[8], and moreover reported that this was simply what they expected, with one person commenting that 'being detained, handcuffed and thrown into a cell is part and parcel of mental illness these days' (*ibid.*).

9. A further piece of research was published in 2011, based on detailed interviews with 18 people who had experienced detention in police custody under s136 and their 6 carers.[9] It found that many of the detainees felt that the police lacked the skills needed to meet their needs, and 16 out of the 18 felt that the police station was an inappropriate setting. They found their experiences distressing, and it made them feel like criminals. Some commented there was no-one to talk to or who would help calm them down. Others reported being cold and hungry, and unable to sleep because of noise from other people in the cells. One reported being kept in the dark as the light-bulb had been removed, presumably as a precaution against self-harm. All the detainees interviewed recalled being frightened by their experiences of being detained in a police cell. Some were handcuffed prior to being taken to custody, which made them more agitated, and a few reported being forced into a police van. Some had their personal possessions removed which had a 'dehumanising' effect (*ibid.*). Some said they had wanted to make a phone call but it was some hours before they were allowed to do so. Only a few said the police had treated them well and had calmed them down quickly.

10. A report produced by the Centre for Mental Health to accompany the review provided further insight into the views of various stakeholders. Most service users said that the use of police vehicles and custody made them feel criminalised. Several of them reported spending lengthy periods in a place of safety and this was worse when it was a police cell with the door locked. There were several examples where people had been locked in a cell for hours without company, food or fluids.[10]

11. The review also found evidence of a longer-term negative impact on detainees held in police cells, because their detention may be subsequently disclosed by the police in an enhanced DBS check, which could therefore have long-term consequences and potential loss of earnings. The Home Office has subsequently published additional statutory guidance to

[5] Based on 2014/15 data, Lincolnshire – 58% of s136 detainees to police custody, Devon and Cornwall – 58% of s136 detainees to police custody
[6] Borschmann et al. (2010a)
[7] Jones and Mason (2002), p.78
[8] *Ibid.*, Katsakou and Priebe (2007)
[9] Riley et al. (2011b)
[10] Centre for Mental Health (2014) https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/389199/S135_and_s136_professionals_service_users_and_carers.pdf

ensure that mental health information is only disclosed when it is relevant and proportionate. This will help mitigate against the risk of inappropriate disclosures.

12. There is also a strong ethical argument for change. People detained by the police under s136 have not committed any crime, and have not at that stage been assessed by a health professional to determine whether they require treatment. They may be detained for up to 72 hours, without any requirement for review during this period (in contrast, a person arrested for a criminal offence may generally only be detained for up to 24 hours, with their detention regularly reviewed to ensure that it is still appropriate).

13. There are a number of reasons why police cells are either unavoidably or inappropriately used as a place of safety for people detained under s136, the main reasons being:

i. The availability of health-based places of safety

14. A lack of available health-based places of safety (HBPOS) was widely cited in the evidence gathered as part of the review (including practitioner workshops and an online survey) as one of the main barriers to reducing the numbers of people who are held in police cells. Availability is affected by capacity, staffing levels, opening hours and exclusion criteria such as not taking under 18s or intoxicated/violent people. The recent CQC report 'A Safer Place to Be', based on a survey conducted in January 2014, stated that "in some areas, difficulty in accessing health-based alternatives is one of the likely reasons for relying on police stations as a place of safety", noting that in many instances people were unable to go to the HBPOS because they were already full, or were excluded because they were aged under 18, or intoxicated, or their behaviour was considered unmanageable and a potential risk to health staff.[11]

15. The availability of HBPOS for under-18s, and access to Children and Adolescent Mental Health Services (CAMHS) was seen as a particular issue by those who contributed to the review. Recently the Health Select Committee recommended that 'section 136 of the Mental Health Act 1983 be amended to ensure that no child or young person is detained in police custody under this Act by 2017, with a commitment to ensure health services provide suitable accommodation'.[12]

16. The Conservative Manifesto included a commitment to increase the number of HBPOS for all ages generally, and the Home Secretary announced in May that up to £15million was to be made available to support reducing the use of police cells as places of safety in 2016/17. DH, HO and NHS England are currently working up proposals in respect of this. For children and young people specifically, there is also a work programme being led by DH to improve mental health crisis care, including developing more and better HBPOS.

ii. Health-based places of safety do not always accept the detainee

17. HBPOS have often declined to admit patients on the grounds of violent behaviour, a (real or perceived) threat of violence or intoxication through drink or drugs. The CQC's 2014 report on health-based places of safety found that: 'Too many providers operate policies which exclude young people, people who are intoxicated, and people with disturbed behaviour from all of their local places of safety, which in many cases leaves the police with little choice but to take a vulnerable individual in their care to a police station'. Two-thirds of health-based places of safety reported that their trust policy and/or inter-agency policy contained exclusion criteria for some or all of the following: intoxication, disturbed behaviour, a history of violence, or having committed a criminal offence. The Mental Health Act Code of Practice states that intoxication should not be used as a basis for excluding a person from places of

[11] CQC 2014, online at: http://www.cqc.org.uk/sites/default/files/20141021%20CQC_SaferPlace_2014_07_FINAL%20for%20WED.pdf
[12] Available online at: http://www.ncb.org.uk/media/1164355/appgc_children_and_police_report_-_final.pdf

safety, other than in circumstances that should be set out in local policies regarding availability of places of safety.[13]

iii. Inappropriate use of s136 powers

18. Concerns have been raised by health professionals that the police sometimes detain people under s136 who, following a mental health assessment, are released without any further action taken. This is often referred to as the 'conversion rate', i.e. the proportion of people detained under s136 by the police who go on to be further detained under sections 2 or 3 – longer-term provisions – of the Mental Health Act. Figures from the HSCIC suggest this has remained steadily below 15-20% over the past few years. Whatever the reason for this finding, high levels of use of the power can put undue pressure on both the Mental Health Act assessment process, which requires a doctor with appropriate experience and Approved Mental Health Professionals, as well as the availability of HBPOS, which may in turn lead to the person being taken to a police station due to lack of capacity in the HBPOS.

iv. A lack of clarity in current legislation

19. It is also possible that part of the problem stems from the fact that there is no explicit definition of 'exceptional circumstances' in legislation. This means that it is subject to individual interpretation, which may explain, at least partially, the variations mentioned above. Police colleagues have reported that the end result of legislation not specifying the circumstances in which police stations can be used is that police stations are the 'fall-back' place of safety that have to be used when other places of safety more appropriate to addressing the detainee's mental health needs are not available for the reasons above.

20. The above factors all play a part in explaining the variation in use of police stations as places of safety across forces. Conversely, good partnership arrangements between police, health and social care agencies and use of schemes such as street triage can significantly reduce the use of police cells. Triage schemes have been testing different ways in which mental health professionals can provide support and advice to the police when they are responding to people at the point of crisis. Nine formal pilot schemes were centrally funded by the Department of Health up to the end of 2014, eight of which are now locally-funded, while other locally-funded schemes are running in twenty forces. Therefore there are currently 28 of 40 police force areas with triage schemes; 10 others are in the process of actively reviewing or planning for triage and 2 report that they do not currently have formal triage arrangements but they do have a local agreement in place to provide requisite health support to police officers. Initial signs indicate that a significant proportion of s136 detentions can be averted through triage – over 50% in the case of the West Midlands pilot – because the health professional can access health records to help to assess risk, and use their professional expertise to assist the police in deciding whether or not the person needs to be detained in the first place or whether an alternative resolution would be appropriate. However, currently different models exist across the country as partners have commissioned and configured their triage services according to local needs, circumstances and geographies, and most services do not yet cover entire force areas. NHS England has commissioned a formal evaluation of the pilots and different models which we expect to report in 2016. As a result of local variation, a reduction in use of s136 detentions has yet to be seen consistently across England.

Maximum length of detention (72 hours)

21. Sections 135 and 136 currently allow a person to be detained up to a maximum period of 72 hours. The 72 hour period begins when the person has arrived at a place of safety and ends once the mental health assessment has been completed and further arrangements have been made for the person's care or treatment, if needed. If the assessment determines that

[13] Paragraph 16.44, *Mental Health Act 1983: Code of Practice*,, published by the Department of Health, April 2015.

the person does not have a mental disorder that requires further treatment they must be immediately released. The assessment and any necessary further steps should take place as soon as possible and should not exceed the minimum length of time required for this to happen.

22. Lengthy periods of detention have been particularly contentious, and a concern for Ministers, in cases where the person has been taken to police custody. Long periods of time spent in custody unnecessarily add to the patient's distress.

23. According to the CQC report 'A safer place to be', the time taken to begin and complete a s135/136 assessment can vary considerably. According to feedback from places of safety, the main reasons for this include the availability of AMHPs to carry out assessments (in particular out of hours availability), the availability of appropriate mental health practitioners, clinical grounds for delaying the assessment (e.g. the detainee is intoxicated) and the lack of an appropriate bed once the assessment has been completed. Evidence from police custody records shows that when a custody suite is used as a place of safety, the length of time before starting an assessment can be considerably longer than in a HBPOS. Delays also occurred when the person was required to be transferred to hospital from a custody suite.[14]

24. It has been widely noted that the 72 hour maximum period is out of line with the 24 hour period allowed for detaining a person under arrest for a criminal offence. The majority of EU countries with comparable mental health legislation permit detention up to a maximum of 24 hours. In the Centre for Mental Health's report, it noted that among practitioners who attended the workshops, 'the vast majority considered that 24 hours was ample time for an assessment to take place'.

25. The length of detention was also raised as a key concern during the review. Some 86% of respondents to the survey said that 72 hours was too long as the maximum length of detention in police custody; 72% said it was too long for a person to wait in any place of safety. It is generally agreed that the majority of detentions are of less than 24 hours duration but a small proportion do last longer, usually due to very unusual circumstances. The Mental Health Act Code of Practice, revised in April 2015, now states that "wherever practicable, detention in a police station under section 136 should not exceed a maximum period of 24 hours".

Other problems discussed as part of the review process

26. During the review, a range of other issues were raised, including:

- The need to use alternative places of safety so a police cell is not always the back-up option;
- Lack of clarity over where s136 can apply ('a place to which the public have access') and the need for police to be able to use s136 for example on railways lines, workplaces with restricted access, and other private premises (other than a private home) where a vulnerable person may be in urgent need of assistance;
- Inappropriate use of s136 and increasing numbers of s136 detentions;
- Delays in obtaining a s135 warrant and the need for police and AMHPs to have the right to remain present, and to be able to undertake an assessment in the person's home rather than removing them.

C. Objectives

[14] CQC 2014, online at: http://www.cqc.org.uk/sites/default/files/20141021%20CQC_SaferPlace_2014_07_FINAL%20for%20WED.pdf

27. The policy objectives are to improve the quality of life and experience of care of people detained under s135/s136 of the Mental Health Act 1983 by:

    1. **Eliminating the use of police stations as places of safety for children and young people aged under 18 detained under s135 or s136. This means that one of the other places of safety defined under the Act is used when an under 18 is detained.** This implies further work to ensure that other places of safety have sufficient capacity and they are equipped to safely manage under 18s who may be violent or display other particularly challenging behaviour. As indicated above, additional provision for under 18s is being put in place to support this objective.

    2. **Ensuring that police stations are only used as a place of safety for adults in genuinely exceptional circumstances.** This means that police stations would only be used when certain conditions are met, for example, where the person's behaviour is such that they cannot be safely managed in a health-based place of safety. From a different perspective, the aim is to ensure that adults are taken to any place of safety other than a police station.

    3. **Enabling police and health partners to use anywhere which is considered suitable and safe as a place of safety.** The aim is to remove barriers to using community-run places of safety or other alternatives which could not be said to have a single 'occupier'. It could provide greater flexibility to local commissioners and could increase the range of practical options for frontline professionals to use in times of particular urgency.

    4. **Enabling s136 to apply anywhere except a private home (including railway lines, private vehicles, hospital wards, rooftops of buildings).** This ensures that people who are in mental health crisis can be promptly taken to a place of safety and widens the scope of existing legislation.

    5. **Ensuring detentions under s135 and s136 do not exceed 24 hours unless there are clinical/medical reasons for a delay, so that a person's fundamental rights are not restricted for longer than is absolutely necessary.**

    6. **Requiring the police to consult a suitable health professional prior to detaining a person under s136 provided it is feasible and possible to do so (for example if neither the police officer nor the person is put at risk by waiting for a clinical opinion).** The aim is for local areas to have arrangements in place to ensure there would always be somebody available from whom the police can obtain advice. This could, for example, include having triage arrangements in place, whether that involves calling the mental health nurse or on-duty doctor in the custody suite, or having arrangements in place to call the crisis service.

    7. **Clarifying that assessment under s135 can take place in the home.** If deemed safe and appropriate by the AMHP, a mental health assessment should be able to take place in a person's home once entry has been gained through a s135 warrant. This ratifies existing practice in many areas (where a person consents), can be a much more practicable option for professionals as well as desirable for the individual being assessed, and can ultimately reduce unnecessary pressure on health-based places of safety.

    8. **Maintaining the safety of all concerned during the execution of a s135 warrant and a person's detention under s135 or s136(2) or (4).** This means enabling officers to conduct protective searches if they have reasonable grounds for believing that the person is concealing a dangerous item and poses a threat to themselves or others.

D. Options

28. The review of the operation of sections 135 and 136 of the Mental Health Act was part of a wider programme of work outlined in the Mental Health Crisis Care Concordat, and both the review and the Concordat informed the revision of the Mental Health Act Code of Practice, the revised version of which came into effect in April 2015. The review considered a range of legislative and non-legislative recommendations. The table below explains why legislation is the preferred option for achieving these particular policy objectives.

Objective	Option 0	Option 1
1. Eliminating use of police stations as a place of safety for under-18s	Do nothing. The risk is that children and young people continue to be held in police custody. The Crisis Care Concordat and Mental Health Act Code of Practice both state that it is unacceptable for a child to be held in a police cell while awaiting a Mental Health Act assessment and reinforce the duty on the NHS to make sure that under 18s are treated in an environment suitable for their age and needs. Also, continued availability of police stations as places of safety could unduly influence decisions about acceptance to health based places of safety and lead to further disputes between police and health partners.	Amend legislation to remove police stations as a place of safety for under 18s. One of the other places of safety defined under the Act (other than a police station) would need to be used when an under 18 is detained. This was the recommendation in the review and is considered the best option for eliminating use of police stations for under 18s.
2. Ensuring police stations are only used as a place of safety for adults in genuinely 'exceptional circumstances'.	Do nothing. In which case local s136 policies around the use of police stations may continue to be inconsistent and 'exceptional circumstances' remain open to interpretation by police officers and health professionals. Also, health-based places of safety may continue to provide a limited service in some areas.	As per the review's recommendation, amend legislation to ensure that police stations can only be used as a place of safety for adults in certain specific circumstances to be prescribed in regulations. We would expect this to lead to police stations being used as places of safety for adults on fewer occasions than is currently the case and is therefore the preferred option.
3. Remove barriers to health commissioners using a wider range of places of safety	Do nothing. Under s135(6) of the current legislation there are some options available to provide alternative models of provision, but it does not easily allow for use of premises owned by private or third sector organisations. As a result, commissioners are not able to fully explore alternative approaches.	The review recommended that the Government change legislation to amend the list of possible places of safety under s135(6) so that anywhere which is considered suitable and safe can be a place of safety. This could enable health commissioners to use community-run places of safety or other alternatives which could not be said to have a single 'occupier'.

4. Enabling s136 to apply anywhere except a private home.	Do nothing. Under current legislation, s136 powers can be used in places 'to which the public can have access.' However, this excludes places such as railway lines (which are privately owned by the network) and workplaces (which often have restricted access). There are continuing legal concerns about police using s136 powers in such locations where s135 is not appropriate. As a result, police are not able to promptly remove people in mental health crisis to a place of safety. It can also cause people to become criminalised by being arrested instead for a criminal offence.	As per the review's recommendation, amend legislation so that police can use s136 powers anywhere except a private home, including railway lines, workplaces with restricted access and police custody. This will improve operation of these powers and ensure that people who are in mental health crisis can be promptly taken to a place of safety.
5. Reducing the maximum length of detention	Do nothing. A proportion of detentions may continue to exceed 24 hours. Lengthy periods of detention have been particularly contentious and a concern for Ministers in cases where the person has been taken to police custody. Long periods of time spent in custody are widely seen as often unnecessarily adding to the patient's distress, and further criminalising them. It has been widely noted that the 72 hour maximum period is out of line with the 24 hour period allowed for detaining a person under arrest for a criminal offence.	As per the recommendation in the review, change legislation to reduce the maximum length of detention from 72 hours to 24 hours in any place of safety, with the possibility of an extension authorised in unavoidable cases where an assessment cannot be carried out in the timeframe due to the condition of the person concerned. This will ensure that a person's fundamental rights are not restricted beyond 24 hours. It will also make the maximum period consistent with PACE in relation to arrest for a criminal offence.
6. Ensure police seek advice from a health professional before detaining under s136, if feasible.	Do nothing. The wider Concordat programme of work may help to improve the police use of existing triage-type services. However, mental health professionals are still concerned that police will not seek advice and continue to detain people who do not need to be detained. This creates an avoidable burden on policing, health and social care resources that need to be employed once the decision to detain has been made.	The review recommended placing a statutory requirement on the police to obtain advice where feasible (i.e. the situation is not so urgent that the patient, police officer or others are put at risk). This will ensure best use of existing triage-type services.
7. Enabling assessments under s135 to take place in the person's home.	S135 as currently drafted does not include a person's home as a place of safety. S135 (6) states 'any other place the occupier of which is willing to receive them'	Change legislation so that it clearly states that the assessment can take place in the person's home if deemed safe and appropriate by the AMHP. In some circumstances, this

	which implies a third party rather than the person's own home. It is therefore left unclear in the current drafting of the legislation that a person's own home could be used as a place of safety in this way. Also, there continues to be a lack of clarity around the legal basis for officers to remain while the assessment is carried out. In cases where the person exhibits violent and/or unmanageable behaviour, it is important that police can remain present in case their urgent assistance is required by health professionals (recognising that a private home is not a properly equipped or secure health setting). If we do nothing, the legality of conducting assessments under s135 in the person's own home will continue to be unclear. This will lead to ongoing inconsistency in the operation of s135 across local areas.	will mean a better outcome for the person since transportation to a place of safety can cause additional distress. It will also clarify that police, paramedics and AMHPs are able to remain present during the assessment in the person's home if necessary/appropriate. Additionally, increased use of people's homes as places of safety would reduce pressure on formally commissioned HBPOS.
8. Maintaining the safety of all concerned during the execution of a s135 warrant and a person's detention under s135 or 136(2) or (4).	Do nothing. At present a person removed under section 136(1) may be searched under a general power to search upon arrest. This is because section 136(1) of the 1983 Act was specifically preserved under Schedule 2 to the Police and Criminal Evidence Act 1984 ("PACE") as a police power of arrest. Therefore an officer can search a person 'arrested' under section 136(1), under existing search powers (s32 PACE 1984). However, s32 PACE search powers do not apply to s136(2) or (4) or s135 – because they are not arrest powers. This presents a particular problem in light of objective 3 (above) which enables the use of a wide range of potential places of safety that are unlikely to be covered by existing powers of search and, without action, would undermine objective 7 by providing no means to search people when assessments are carried out in private homes.	Introduce a new police power of 'protective searches' that enables the police to search a detainee if they have reasonable grounds to believe that the person presents a danger to themselves or to others and is concealing a dangerous item that could be used to cause physical injury. The police would be able to use this power at any point during the execution of a warrant, removal and the period of detention at a place of safety. This is the preferred option as it addresses the current gap in legislation and ensures officers have a power of search at any stage during a s135 or s136 detention, including in any place of safety used. It therefore compliments the other mental health measures in the Bill.

29. Overall, if we opt to do nothing, the work already being undertaken at national and local level as part of the Crisis Care Concordat would continue to bring partner agencies together and to improve joint working practices. However, it is clear that some areas require primary legislative change, either because there is a technical change to permit best practice, or to reinforce policy intentions that people should not be taken to police cells and should be assessed as quickly as possible.

E. Appraisal (Costs and Benefits)

Option 0 – Do nothing

30. There are no additional costs or benefits associated with this option. For the issue each proposal seeks to address, the situation will remain the same as under the Option 0 column in Section D.

Option 1 – Implement proposals 1 to 8, as outlined in Section D.

31. Before assessing the impact of each of the proposals, it is important to take into account that overall use of s136 is likely to decline in the future due to the continuing improvement of mental health crisis care services, including availability 24/7, suicide prevention initiatives, and the increasing use of street triage services. All of these improvements are aimed at ensuring people reach the support they need at the earliest opportunity and reduce the risk of being "found in a public place in need of care and control" by the police. It has not been possible to estimate the impact of all of these wider improvements on the future use of s136.

32. Greater expected use of street triage services, whether mobile services or the provision of health information from emergency control rooms, will both reduce the use of s136 and the time that police are involved with people with mental health problems who have not committed any crime. There is a growing number of local Concordat areas[15] which currently have some form of street triage service for s136 detentions. Evidence from street triage services currently in use suggests that in places where the police use street triage services, the number of s136 detentions can fall by 40-50%[16].

33. We used the Action Plans submitted to the Government as part of the Mental Health Crisis Care Concordat in order to gather information on which Concordat areas are likely to introduce street triage in the future and divide them into 3 categories:

    A. Planning to implement area-wide street triage service;
    B. Considering area-wide options/ evaluating pilot; and
    C. Not planning street triage service/ unclear.

34. We then produced two estimates, by:

    i) Assuming a 40% reduction in s136 use in category A local authorities and no change in s136 use in category B+C Concordat areas.

    ii) Assuming a 40% reduction in s136 use in category A+B local authorities and no change in s136 use in category C Concordat areas.

[15] Local Concordat action plans sometimes cut across the boundaries of local authorities and police forces. We have therefore used the term 'Concordat areas'.

[16] Based on a 39.5% reduction from the pilot scheme in Thames Valley, and a 50% reduction from the pilot scheme in West Midlands.

35. Neither i) nor ii) seems realistic as it is likely that some but not all local authorities in category B will introduce area-wide street triage services. As a result of this, our best estimate for the future reduction in s136 use takes the midpoint of i) and ii). In other words it assumes a 40% reduction in s136 use in category A Concordat areas, and a 20% reduction in s136 use in category B Concordat areas. This best estimate suggests a 16% reduction in total s136 use as a result of future street triage. This estimate will be used in particular for the first appraisal listed (proposals 1 and 2), when considering how many additional beds may be required in HBPOS in order to accommodate all detainees (including those currently sent to police custody).

36. Of the seven proposals in this impact assessment, the most significant impacts that can be quantified relate to proposals 1 and 2, which will ensure that people detained under sections 135 and 136 – who, under current legislation, would most likely be taken to a police station – are taken to health based places of safety. Therefore, the methodology used in relation to proposals 1 and 2 has been designed to calculate that change as accurately as possible with the data available.

37. Each proposal will be assessed in turn. However, as proposals 1 and 2 both impact similarly in terms of costs and benefits, they will be assessed together.

1. **Amend legislation so that under 18s are never taken to a police station if detained under s135 and s136.**

2. **Ensuring that police stations can only be used as a place of safety for adults if the person's behaviour is so extreme they cannot otherwise be safely managed, including a formal definition of 'exceptional circumstances' under which custody detainment is allowed.**

Costs

Approach to methodology

38. The methodology used to calculate the impacts of proposals 1 and 2 is based on the principle that, in advance of the proposed legislation being brought in, police stations are used as places of safety for too many people who are detained under section 136. An assumption has been made that only 4%[17] of detainees should need to be taken to a police station (and that will be the effect created by the change to legislation).

39. The methodology requires a baseline; a point in time from which the changes can be calculated. In order for this Impact Assessment to calculate costs and benefits resulting from different places of safety being used, the baseline requires comprehensive data on the total use of section 136 and, within that total figure, the frequency with which police stations or health based places of safety were used. The most up-to-date such data is for the financial year 2014-15[18].

40. This methodology is based on the principle that the efficiency with which health based place of safety beds are currently used varies by police force area. As explained in greater detail below, the 'exemplar' police force areas are those in which both:

    - police stations are used as a place of safety for fewer than 4% of those detained; and

[17] In 2013/14, only 17% of Thames Valley mental health detainments in police cells were due to extreme behaviour, i.e. three exceptional circumstances which the current legislation would still provide for. Therefore we assume that, under the changes, the remaining 83% would be taken to health-based places of safety. Calculated across all forces for all s136 detentions (including those to HBPOS) and we conclude that 96.1% of detainees should be taken to HBPOS.

[18] Data published by the National Police Chiefs' Council, June 2015, and the Health and Social Care Information Centre, October 2015.

- detainees are managed in health based places of safety with a high ratio of detainees per bed.

41. The purpose of identifying exemplar police force areas is to set a benchmark of efficiency that can be expected from each police force area. For areas in which that benchmark is not currently met, the method calculates the number of health based place of safety detentions that should be accommodated through (i) more efficient use of existing beds and (ii) the provision of additional beds.

Assumptions

42. This methodology also includes a number of assumptions to account for the limits of the existing available data and inform expectations about future demand. Those assumptions are as follows:

- the number of health based place of safety beds available in England and Wales based on the Care Quality Commission report (which covers England), *A safer place to be*, published in October 2014 remains constant until these legislative changes are in place[19];
- police force areas which have a lower ratio of detainees to beds can improve that ratio to match that of the exemplar forces before any new beds are required;
- any reduced use of police stations as a place of safety subsequent to 2014-15 and before the legislation comes into force have been achieved by those forces with lower detention: bed ratios; and
- force areas are able to share the additional beds such that a small fraction of an additional bed can be attributed to different police forces without a loss of efficiency. This is an important assumption and if it is not realistic in practice, then the analysis below may substantially underestimate the number of additional beds that are required.

<u>Health-based places of safety</u>

43. To carry out proposals 1 and 2, force areas will require a sufficient number of beds to be available in HBPOS to accommodate the majority of those detained (both under 18s and adults) under s135 and s136 of the Act. S135 detentions very rarely involve taking detainees to police custody, often being more pre-arranged in nature due to involving entry into a private home. The analysis for proposals 1 and 2 therefore focuses on s136 detentions.

44. The CQC HBPOS survey on s136 detentions makes it clear that one of the main reasons why detainees are taken to police custody is because of difficulty in accessing HBPOS.[20] As a result of this, in order for proposals 1 and 2 to be carried out, additional beds will be required in HBPOS.

i) Number of additional beds required

45. In order to estimate how many additional beds will be required in England, 2014/15 police data on the number of s136 detentions in each force area has been used alongside CQC data on the capacity of HBPOS in each local authority.[21] We use this to calculate the

[19] CQC report 2014: A safer place to be

[20] "Over one in 10 places of safety reported that people were not able to access the unit at least once a week because it was already occupied." CQC report: A safer place to be, 2014.

[21] http://www.cqc.org.uk/content/map-health-based-places-safety-0

number of annual s136 detainees who must be accommodated by each bed. Proposal 2 states that police custody may only be used as a place of safety for adults in 'exceptional circumstances' and estimates based on evidence from Thames Valley police suggest that "exceptional circumstances" would apply in 4% of cases[22]. This figure is based on data from just a single force, and therefore to allow for uncertainty we assume that any police force which sent fewer than 5% of detainees to police custody is already operating within the requirements of proposals 1 and 2. In 2014/15 this applied to 9 police forces. The number of s136 detentions they were required to deal with per bed in a HBPOS is set out in the following table.

Table 3: *Number of s136 detainees accommodated by each bed in a HBPOS for police forces sending fewer than 5% of detainees to police custody.*

Police Force	**s136 detentions per bed (2014/15)**
Metropolitan Police Service	25
Greater Manchester	29
Lancashire	33
Merseyside	51
Leicestershire	65
West Midlands	111
Hertfordshire	121
Suffolk	122
Northumbria	123

46. Hertfordshire, Suffolk and Northumbria all manage to send fewer than 5% of detainees to police custody despite needing to accommodate on average more than 120 detainees in each bed over the course of the year.

47. In order to calculate how many additional beds are required in other police force areas so that all detainees (other than in "exceptional circumstances") can be taken to a HBPOS, we therefore assume that on average there must be at least one bed per 120 detainees in a year. Any force areas with more than 120 detainees per bed will need additional beds to bring down their ratio to this level so that only exceptional cases are taken into police custody. As mentioned above, the forces sending fewer than 5% of detainees to police custody are assumed to be already operating within the requirements of the proposals and are therefore disregarded from this calculation. For example, a Force with 240 detainees and one bed is assumed to be able to accept 120 detainees, and so would need another bed to meet its requirement. This value is calculated for each Force, with the sum of them giving the total additional bed requirement. To achieve this across all police force areas in England would require 24 additional beds to be made available, either in existing or new HBPOS[23].

[22] In 2013/14, only 17% of Thames Valley mental health detainments in police cells were due to extreme behaviour, i.e. three exceptional circumstances which the current legislation would still provide for. Therefore we assume that, under the changes, the remaining 83% would be taken to health-based places of safety. Calculated across all forces for all s136 detentions (including those to HBPOS) and we conclude that 96.1% of detainees should be taken to HBPOS.

[23] Breakdown of 24 additional beds required by force area (England only):

Wiltshire	0.07	Kent	3.08	Surrey	3.39
Cleveland	0.49	Nottinghamshire	2.57	Lincolnshire	3.62
Staffordshire	0.31	West Yorkshire	3.84		
Devon & Cornwall	1.57	Sussex	4.52		

48. The estimate must be adjusted to include Wales which is more difficult as we do not have data on the number of existing HBPOS in Wales. In order to estimate the number of beds required in Welsh police force areas, we find the most similar English police forces based on the number of s136 uses and the percentage of detainees taken to police custody.

Welsh police force[24]	**s136 use (14/15)**	**% to police custody**	**Most similar English force(s)**	**s136 use (14/15)**	**% to police custody**
Dyfed Powys	197	39%	Derbyshire	219	36%
Gwent	310	40%	Cleveland	299	40%
South Wales	749	44%	Nottinghamshire	668	23%
			Lincolnshire	554	54%

49. Using Derbyshire as a proxy for Dyfed Powys, Cleveland as a proxy for Gwent and the average of Nottinghamshire and Lincolnshire as a proxy for South Wales leads to a total of 4 additional beds required for Wales. These forces in Wales are unlikely to be operating in exactly the same way as the corresponding forces in England and so this estimate will not be accurate. However as Wales makes up only a small proportion of all s136 uses[25] this is unlikely to cause a large bias to the estimate.

50. Adding the estimates together leads to a total of **28 additional beds** required to carry out proposals 1 and 2 in England and Wales, which we will describe as our 'stretch' estimate.

51. This estimate is unlikely to be reliable for a number of reasons:
    - There are a number of other factors that enable Hertfordshire, Suffolk and Northumbria to achieve low use of police custody as a place of safety and efficient use of their HBPOS. For example, they all have stringent, well-defined joint s136 protocols on use of police custody and all three forces operate mental health triage services which can help to secure the most appropriate medical care pathway. HBPOS opening hours and adequate staffing in HBPOS may also differentiate these three forces from some others. As a result, there may be additional costs for some local areas, in addition to improving HBPOS capacity, in order to achieve a similar level of performance.
    - The capacity of some HBPOS may have changed since the CQC survey. The data used here was last updated in November 2014, and it may be the case that some HBPOS have reduced/expanded capacity since then causing our results to be inaccurate.

52. As these factors may cause bias to our previous "stretch" estimate of 28 beds, two further estimates are made which assume that forces cannot be as efficient as Hertfordshire, Suffolk and Northumbria (one bed required per 120 detainees in a year).

53. The first of these estimates uses West Midlands police force as the benchmark for others. In 2014/15 West Midlands sent fewer than 5% of detainees to police custody and had a capacity in HBPOS of one bed per 111 detainees. This assumes that force areas are able to be at least 92% as efficient as Hertfordshire, Suffolk and Northumbria in terms of how many detainees can be accommodated by each bed. It is not unreasonable to expect this to be a more realistic assumption and therefore this estimate is described as our "best" estimate. In order for all forces in England to have a ratio of one bed per 111 detainees, 29

[24] North Wales has been excluded from our calculations as it currently sends fewer than 3.9% of detainees to police custody

[25] Welsh police forces accounted for less than 8% of all s136 uses in 2014/15.

additional beds are required. Using the same method as before to include Welsh forces and the total number of additional beds required in England and Wales is **33**[26].

54. The second of these estimates uses Leicestershire police force as the benchmark for others. In 2014/15 Leicestershire sent fewer than 5% of detainees to police custody and had a capacity in HBPOS of one bed per 65 detainees. This assumes that force areas are able to be at least 55% as efficient as Hertfordshire, Suffolk and Northumbria in terms of how many detainees can be accommodated by each bed. This is likely to be more beds than are in fact required and therefore this estimate is described as our "generous" estimate. In order for all forces in England to have a ratio of one bed per 65 detainees, 90 additional beds are required. Using the same method as before to include Welsh forces and the total number of additional beds required in England and Wales is **100**[27].

ii) Cost of additional beds

55. In order to calculate the cost of these additional beds, NHS England have provided a unit cost of establishing and running 1 additional bed in a stand alone health based place of safety. This model assumes that the bed is built in a non-mental health facility and therefore staff cannot deal with other patients when not required in the HBPOS. In reality, many of the beds may be added to existing facilities and therefore the additional staffing costs are likely to be smaller. These estimates should therefore be treated as an upper bound. The costs are presented below and scaled to include all beds in our "best", "stretch" and "generous" estimates.

Table 4: *Upper bound cost of additional beds required in HBPOS.*

	Cost of 1 assessment space (bed) (£K)	**Cost of 28 beds (Stretch)** (£K)	**Cost of 33 beds (Best)** (£K)	**Cost of 100 beds (Generous)** (£K)
Clinician cost (annual)	73	2,044	2,409	7,300
Nursing Cost (annual)	498	13,944	16,434	49,800
Unqualified staff (annual)	25	700	825	2,500
Recurrent cost (annual)	**596**	**16,688**	**19,668**	**59,600**
Capital Costs (one-off)	**150**	**4,200**	**4,950**	**15,000**
TOTAL	**746**	**20,888**	**24,618**	**74,600**

56. These costs represent the cost of adding a bed in a new facility, employing all relevant staff required to run the facility. It is difficult to come up with an estimate for the cost of adding more beds to existing facilities to allow them to accommodate more detainees. This is

[26] Breakdown of 29 additional beds required by force area (England only):

Northampton	0.03	Cleveland	0.69	Surrey	3.82
Gloucestershire	0.03	Devon & Cornwall	2.19	Lincolnshire	3.99
Wiltshire	0.32	Nottinghamshire	3.02	West Yorkshire	4.56
Staffordshire	0.58	Kent	3.74	Sussex	5.29

[27] Breakdown of 90 additional beds required by force area (England only):

Derbyshire	1.37	Warwickshire & West Mercia	2.23	Kent	9.92
South Yorkshire	0.51	North Yorkshire	0.49	Nottinghamshire	7.28
Northampton	1.46	Cleveland	2.60	West Yorkshire	11.39
Dorset	1.46	Staffordshire	3.12	Sussex	12.58
Wiltshire	2.66	Bedfordshire	1.38	Surrey	7.85
Thames Valley Police	2.54	Gloucestershire	1.47	Lincolnshire	7.52
Avon & Somerset	3.40	Devon & Cornwall	7.98		

largely because we have no evidence as to how many additional staff would be required. If we assume that existing facilities would be able to accommodate more people without the need for additional staff then the only costs incurred will be the initial capital costs. In reality it is likely that at least some of the facilities will require additional staff and therefore this estimate should be treated as a lower bound. This leads to the following costs which are scaled to include all beds in our "best", "stretch" and "generous" estimates.

Table 5: *Lower bound cost of additional beds required in HBPOS.*

	Cost of 1 assessment space (bed) (£K)	**Cost of 28 beds (Stretch)** (£K)	**Cost of 33 beds (Best)** (£K)	**Cost of 100 beds (Generous)** (£K)
Capital Costs (one-off)	**150**	**4,200**	**4,950**	**15,000**
TOTAL	**150**	**4,200**	**4,950**	**15,000**

57. The values in these tables have then been inflated by NHS England to reflect inflation in healthcare provision to the year 2015/16[28]. The 'best' upper bound Year 1 cost of 33 additional beds in places of safety across England is therefore £25.2m (with £5.1m in capital costs), with a recurrent annual cost from Year 2 onwards of £20.1m. The "best" lower bound Year 1 cost is £5.1m in capital costs, with no additional recurrent annual cost.

58. To generate our central scenario we take the mid point of these two estimates. Each of the upper, lower and central scenarios is then adjusted for projected year on year population growth, with recurrent annual costs increasing from the previous year based on the rate of growth.[29] For each of the scenarios, the resulting cost profile over ten years is presented below in Table 5.

Table 6: *Upper, central and lower bound costs over ten years (capital costs in Year 1, followed by annually recurrent costs adjusted for population growth).*

Total Costs (£m, 2015/16 prices)										
Year	**2016**	**2017**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**	**2025**
Upper bound (Best)	25.2	20.2	20.4	20.5	20.7	20.8	20.9	21.1	21.2	21.3
Lower bound (Best)	5.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Central estimate (Best)	15.2	10.1	10.2	10.3	10.3	10.4	10.5	10.5	10.6	10.7

59. Based on these values, cost in net present values over ten years of the "best" scenarios under proposals 1 and 2 are estimated to be:

	Net Present Cost (10 years, £m)
Upper bound	183.2
Lower bound	5.1

[28] Estimated increase in price of 2.44%. (Based on estimates from HMT).

[29] Year on year population growth from Office for National Statistic Subnational Population Projections. Available online at: [http://www.ons.gov.uk/ons/rel/snpp/sub-national-population-projections/2012-based-projections/stb-2012-based-snpp.html

Central estimate	94.2

60. The figure of 33 additional beds required is based on the assumption that other proposals do not affect the number of patients who are detained in HBPOS. This is unlikely to be realistic as proposal 3, for example, is designed to enable health commissioners to use a wider range of places of safety and therefore reduce the costs of expanding the capacity of non-police station places of safety. Proposal 6 may increase the use of triage-type approaches which can reduce the use of s136 and, as a result, reduce pressure on HBPOS. More broadly, ongoing work at national and local level to embed the principles of the Crisis Care Concordat is also contributing to the better operation of s136 powers.

The police

61. The police are typically required to remain at a HBPOS while the detainee is booked in, and may in certain instances be required to remain longer if behaviour needs to be managed or if there is a lack of staff with the place of safety. Based on a sample of nearly 1600 s135/6 detentions by 13 forces collected by the Home Office during 2015/16, the average time burden of this on the detaining officer(s) is 2 hours and 15 minutes.[30]

62. Assuming the hourly cost of a police officer is equal to £37,[31] and based on the volumes of individuals who would be taken to health-based places of safety over police custody (which are presented in the subsequent section), this time represents a cost of £256,000 per annum. This is a cost with a NPV of £2.2m over ten years.

Transportation costs

63. Transportation costs may rise if transferring mental health detainees to health-based places of safety takes longer than transferring them to police custody. Equally, the costs may be lower in the opposite scenario. We do not have any specific evidence to suggest costs will move in either direction and assuming that the police response to mental health incidents is fairly random in geographical distribution, we do not expect any substantial transportation costs to arise.

Total

64. The total cost in present values over ten years of the central scenario is therefore estimated to be **£96.4m[32].**

Benefits

[30] This is based on experimental data collected by the Home Office as part of the Police Mental Health Data Toolkit, April-June 2015.

[31] The estimates were calculated using the Annualised Survey of Hours Earnings (ASHE), Chartered Institute of Public Finance and Accounting (CIPFA) Police Actuals, Association of Chief Police Officers (ACPO) Mutual Aid Rates and Police Workforce statistics. The estimates represent an average of all wage and non-wage costs, including national insurance and pension contributions, of a police officer ranked Sergeant or below.

[32] This is the NPV of the cost of additional beds (£160.0m) plus the cost to police time (£2.7m).

Police custody

65. As proposal 1 and 2 are expected to require an increase in the number of beds in HBPOS, in parallel, we would expect the proposals to lead to police stations in England and Wales being used as places of safety on fewer occasions. This would come from a 100% reduction in the detention of under 18s in police stations and, based on unpublished evidence from Thames Valley Police, an 80% reduction with respect to adults.[33] Published National Police Chiefs Council estimates[34] of the use of s136 of the Mental Health Act suggest that 4,537 individuals were detained in police stations in England and Wales in 2014/15, 161 of whom were under 18. Out of the 4,376 adults detained, we expect that 3,501 would now be transferred to HBPOS under the change. Including 161 under 18s, a total of 3,662 individuals would therefore no longer be held in police stations. Given the anticipated 16% reduction in s136 use as a result of increasing use of street triage, this gives a revised estimate of 3,076 individuals who will no longer be held at police stations.

66. s136 detainees are on average held in police custody for 8 hours[35] and multiplying this by the anticipated 3,076 fewer detainees[36], means that an estimated total of 25,000 hours fewer will be spent by people in police custody. This represents approximately 0.12% of the total hours of detention spent by people in police custody in England and Wales over the course of a year[37]. In order to calculate the potential savings to the police we use data from the Metropolitan Police Service on the average annual cost of running a police cell (£116K). We do not have information on the total number of police cells across England and Wales, however we estimate it based on the number of cells which the MPS have. The MPS have a total of 740 police cells which are contained in 40 separate custody suites to cover a population of 7.2 million. In order to estimate the number of cells across England and Wales we calculate two alternative estimates using the MPS ratio of (i) cells to population, (ii) the MPS ratio of cells to suites.

    i. The MPS have 740 cells to cover 7.2 million people. There are approximately 56 million people in England and Wales which suggests that there are a total of 5,800 cells.

    ii. The MPS have 740 cells contained within 40 custody suites. There are 397 custody suites in England and Wales which suggest that there are a total of 7,300 cells.

67. Given that 0.12% of total custody hours are from s136 detainees suggests that up to (i) 7 cells could be closed, (ii) 9 cells could be closed. Given that the average cell costs £116k per year to run, then this represents annual savings of (i) £0.8m, (ii) £1.0m. Taking the average of these two estimates leads to a best estimate of savings to the police from reduced cell use of £0.9m per year. In reality it is unlikely that these savings could be obtained as the analysis assumes that small fractions of cells could be closed in different forces which is not realistic.

68. Furthermore, discussions with the Metropolitan Police Service suggest that, officers are then usually required to keep watch over the detainee for the duration of their time in custody to ensure that they do not cause harm to themselves. Based on the estimate that the average

[33] In 2013/14, only 17% of Thames Valley mental health detainments in police cells were due to extreme behaviour, i.e. the exceptional circumstances which the current legislation would still provide for. Therefore we assume that, under the changes, the remaining 83% would be taken to health-based places of safety. Calculated across all forces this figure becomes 80%.

[34] http://www.npcc.police.uk/documents/edhr/2015/Section%20136%20MHA%20201415%20Data.pdf

[35] Based on the weighted average of 4 forces whom we have s136 detention data (GMP: 10hrs, Leicestershire: 7.5hrs, Cumbria: 8.75hrs, Cleveland: 5.75hrs).

[36] This figure comes from the 2014/15 figure of 3,662 adjusted for the expected reduction in s136 detentions of 16% as a result of greater use of street triage.

[37] Based on 1.5 million notifiable arrests per year (IPCC report on Deaths in Police Custody) and an average detention time of 14 hours (based on figures from the Metropolitan Police Service).

s136 detainee spends 8 hours in police custody[38], and assuming that one police officer is required to keep constant watch on each detainee at an hourly cost of £37,[39] we estimate that the saving to police officer time is worth £0.9m per year.

69. Therefore the annual saving to the police from proposals 1 and 2 is around £1.9m per year. This represents £16.0m in present values over ten years.

70. In addition, people who are detained in a police station will frequently require a physical assessment by a custody healthcare professional. We would expect proposals 1 and 2 to free up the time of health professionals working in custody suites. However, due to lack of evidence we have been unable to quantify the potential saving in terms of time and cost.

Detainees

71. Detainees will benefit from no longer being taken to police custody at what is likely to be a distressing time for them. The benefits to detainees are more fully assessed under the heading "Quality of Life Improvements" at the end of this appraisal section.

3. Change legislation to amend the list of possible places of safety under s135(6) so that anywhere which is considered suitable and safe can be a place of safety.

Costs

72. This proposal is an enabling power and imposes no additional costs. It may encourage local commissioners to work with third sector and voluntary organisations in order to increase HBPOS provision, but it is assumed that any new local arrangements created as a result of this proposal are done so on a local value for money basis.

Benefits

73. We would expect this change to benefit both police and health partners. It provides local health commissioners with the flexibility to explore the broadest possible range of suitable places that are not police stations. Some local areas may therefore benefit from increased HBPOS capacity, which may reduce the likelihood of police stations being used as places of safety. It could also help to extend the role of third sector organisations. More effective partnerships with the third sector may provide health commissioners with opportunities to achieve better value for money. As this is an enabling power and will not impose any change, we are not able to quantify the extent to which value for money savings may be made under this provision.

4. Amend legislation under s136 to apply to any location except a private home.

Costs

74. This proposal gives police the power to detain people under s136 in a range of private places such as railway lines, workplaces with restricted access and hotel rooms. As situations in which this would apply must already be attended by the police, the proposal is unlikely to impose any additional costs on them.

[38] Based on the weighted average of 4 forces whom we have s136 detention data (GMP: 10hrs, Leicestershire: 7.5hrs, Cumbria: 8.75hrs, Cleveland: 5.75hrs).

[39] The estimates were calculated using the Annualised Survey of Hours Earnings (ASHE), Chartered Institute of Public Finance and Accounting (CIPFA) Police Actuals, Association of Chief Police Officers (ACPO) Mutual Aid Rates and Police Workforce statistics. The estimates represent an average of all wage and non-wage costs, including national insurance and pension contributions, of a police officer ranked Sergeant or below.

75. Under existing legislation, the police may decide to: do nothing (because they cannot legally use their s136 powers, although in the case of a threat to life or safety it is highly unlikely that a 'do nothing' approach would be adopted); take a different form of action (for example, arrest the person for a criminal offence); or wait until the person is in a location where they can be legally detained under s136. As we do not have any evidence on the number of people this affects or how the police currently respond in these situations, it is difficult to say to what extent the proposal would increase the number of s136 detentions, but we believe it is likely to be minimal. In turn, it is difficult to estimate any resulting additional costs to health services but, again, this is likely to be minimal. As it is not possible to estimate the impact, we do not attempt to quantify this cost.

Benefits

76. This will enable the police to use their s136 powers in a range of places other than a private home and ensure that people in crisis get the treatment they need as quickly as possible. Streamlined procedures may represent some time savings or reduced bureaucracy to the police but again these are difficult to quantify.

77. Currently, the police sometimes have little choice but to arrest the person for a criminal offence in the absence of a Mental Health Act power for certain types of location. This proposal should allow the appropriate course of action to be taken and reduce criminalisation. For example, British Transport Police will be able to act quickly to detain a vulnerable person on a railway line for assessment under the Mental Health Act rather than initially arresting them for trespass. This measure could potentially contribute to preventing suicides or at least providing individuals with suicidal ideation with a more appropriate policing response; we know, for example, that there were almost 300 suicide fatalities on the railways in 2014/15.

78. In September 2015, the Minister for Policing, Crime and Criminal Justice Mike Penning approved the creation of a new power of entry in relation to this measure. The new power of entry wil**l** enable an officer to enter any place, other than a private dwelling, to remove a person to a place of safety without a requirement to seek a warrant. This measure, together with the amendment to s136 powers, should help to reduce the demand on police officer time.

5. Change legislation to reduce the maximum length of detention from 72 hours to 24 hours in any place of safety, with the possibility of an extension authorised in unavoidable cases where an assessment cannot be carried out in the timeframe.

Costs

79. We have very little evidence on how many people spend more than 24 hours in HBPOS and police cells. According to an assessment carried out in January 2014 by the North East London NHS Foundation Trust in 4 local authorities, provided to the Home Office as part of the policy formulation process, around 10% wait more than 24 hours in police cells – of these, the length of detention average is around 48 hours.

80. Some of this time is spent waiting for the doctor and AMHP to arrive at the police station to do an assessment and interview the patient. If the patient is held at a HBPOS, this may reduce the travelling time and mean that the doctor and AMHP are more readily available for the assessment, reducing the length of time spent waiting.

81. Considering proposals 1 and 2, we would expect individuals to be detained in police custody only in genuinely exceptional circumstances. It is therefore fair to assume that any costs associated with this proposal will relate to health services ensuring that detainees are not held for more than 24 hours.

82. HBPOS are equipped and staffed to carry out s136 assessments more efficiently than police stations, particularly if the individual detained and assessed is deemed in need of ongoing care or treatment in an inpatient setting on the same site. Also, as previously mentioned, AMHPs and doctors may already be on site which reduces travel time and waiting times for assessments. Therefore, if approximately 10% of people wait longer than 24 hours in police cells, we can assume that less than 10% will wait longer than 24 hours in a HBPOS.

83. Furthermore, the legislation states that there can be exceptions when it is necessary to go over 24 hours, such as for someone who is very intoxicated and an assessment cannot be done more quickly for clinical reasons. Taking this into account, we have assumed that around 5% will wait more than 24 hours in a HBPOS, with a maximum wait of 36 hours.

84. As detailed in the CQC report, additional cost will come from the need to deal with patients more quickly and therefore an increase in use of call outs for a s12 approved GP. The cost of these call outs is estimated by NHS England to be £188.

85. If we assume that 5% of detainees will now require a second health professional – a s12 doctor - to be called out, then this means that the £188 additional charge would have applied to 920 cases in 2014/15[40]. We have very little evidence on which to base estimates of the number of future s136 uses so we will assume that this number will be roughly constant in the future. As a result, this policy will lead to an estimated additional cost of £173,000 per year[41].

Benefits

Detainees

86. Reducing the maximum period of detention, not least because detention represents a significant intrusion into the life of an individual, will reduce distress for the individual. Since the purpose of such detention is to provide for an assessment of what further steps may be necessary for the care of the individual, it is appropriate that every effort should be made to establish this in as short a time scale as possible so that the person may either be released with appropriate support or receive inpatient care if required at the earliest opportunity.

87. As a result of this proposal, some people detained under s136 will benefit from a quicker assessment as they cannot be detained for longer than 24 hours. They may receive inpatient care or be released sooner, resulting in better health outcomes.

HBPOS

88. Given that some individuals detained under s136 will be dealt with more quickly, HBPOS may experience a small benefit from beds being freed up more quickly and therefore an increase to their capacity. It is unlikely, but if this impact was sufficiently large, some HBPOS may require fewer beds and would realise significant cost savings. This benefit would depend on the extent to which a HBPOS is accommodating additional s136 detainees as a result of proposals 1 and 2.

6. Require the police to obtain advice from a health professional before detaining a person under s136, if feasible.

Costs

[40] Based on 21,880 cases with a 16% reduction multiplied by 5%.

[41] Calculated as number of cases (920) multiplied by the additional charge per case (£188).

89. There would only be a requirement on forces to obtain the advice of a health professional where it is already possible to do so. In other words, where triage-type arrangements are already in place, or where the police have access to properly staffed helplines. As a result, it is not anticipated that any set up costs for new systems will be created.

90. As the proposal does not require an increase in provision of triage-type or help line services, the main cost likely to arise from this proposal is through the police using existing services to obtain advice more frequently. Depending on the type of advice service in place in a given area, health professionals providing advice to the police on more occasions may involve diverting resources away from other issues. However, such advice is intended to avoid the more costly consequences of an inappropriate detention. Furthermore, as previously stated, this is already happening in many areas and work towards creating single points of access for other public service professionals to seek advice from mental health staff on a 24/7 basis across England is well underway. As it is not possible to quantify the potential increase in police use of these services, we have not attempted to estimate the costs.

Benefits

91. The Government's street triage pilots have shown that, when the police have the benefit of advice on the scene or over the telephone from a mental health nurse, a proportion of s136 detentions can be averted because the health professional can access medical records to help to assess risk, and use their professional expertise to assist the police in deciding whether or not the person needs to be detained or whether an alternative resolution would be appropriate.

92. Reducing unnecessary use of s136 should reduce the burden on policing, health and social care resources that need to be employed once the detention has been made e.g. ambulance transportation with police escort, use of the place of safety facilities and associated staff resource and attendance at the place of safety by a doctor and approved mental health professional. Moreover, this fundamental partnership working between public service professionals means that an individual is much more likely to receive the most appropriate response based on their needs, and arrangements can be made for an assessment, care and support as necessary in less restrictive circumstances than those that would be precipitated by the use of detention powers.

93. Given that this proposal may increase police use of existing triage-type services, it may reduce the number of inappropriate s136 detentions. This would offset some of the costs to health services resulting from proposals 1 and 2. However, as it is difficult to quantify the increase in use of such services, it is not possible to estimate the saving.

7. Amend legislation to enable assessments under s135 to take place in the person's home

Costs

94. By clarifying in legislation that s135 assessments can take place in a person's home, the police will no longer be obliged to remove the person to a health based place of safety. Therefore, this will impose no additional costs.

Benefits

95. In some circumstances this would provide a better outcome for the person, since transportation to a HBPOS may cause additional distress compared with it happening in a/ their private home (and since the outcome of the assessment may be that the person need not be removed from their home). This change would also reduce pressure on HBPOS and reduce travel costs associated with taking a person to a HBPOS.

8. Introduce police power to carry out protective searches

Costs

96. The purpose of this power is to enable officers to maintain the safety of all concerned during the execution of a warrant, removal and detention at a place of safety under s135 or 136 (where there were previously no such powers, specifically under s135 or s136(2) or (4) and the detainee is not in a police station). The power will be limited to circumstances where the police have reasonable grounds to believe that the person is concealing a dangerous item and presents a danger to themselves or others. The new clause also requires that the search is only to the extent that is reasonably required to discover the item, and it would be limited to a search of the person's outer clothing and mouth. These safeguards are comparable to those in section 32 of PACE.

97. Given the purpose of the search power, and the conditions around its use, it is not expected to impose additional costs as the search will be carried out by the police alongside the normal process of detaining the individual.

Benefits

98. The primary benefit of this proposal is that it would help to prevent detainees from causing physical harm to themselves or others who may be present, including officers and health professionals. By removing a potentially dangerous item from the detainee the potential for them to harm themselves and others is reduced.

99. An additional possible benefit is that, if the police discover a dangerous item on the person at an early stage i.e. during the execution of the warrant or the person's removal, then it may save time dealing with the issue at a HBPOS. For example, at present the police may be called to return to a HBPOS if a detainee is found to have an offensive weapon on their person and health professionals need assistance in order to remove that item. If the police are able to remove the item early on then this situation can be prevented, thus reducing the impact on time both for police officers and health professionals.

100. Given a lack of evidence on how often s135/136 detainees conceal dangerous items, the amount of harm that will be prevented or time savings which may arise as a result of this proposal, it is not feasible to quantify these benefits.

All proposals

Overall benefits

Quality of Life Improvements

101. The proposals in this IA represent improvements to the operation of s135 and s136 powers that should lead to better health outcomes for people detained under the Act. In particular, more people should get the treatment they need in a proper healthcare setting instead of a police station and as quickly as possible.

102. According to the review 'A Criminal Use of Police Cells? The use of police custody as a place of safety for people with mental health needs'[42], many of those detained remarked that their experience had made them feel like criminals, and they described many aspects of the custody process as de-personalising. Police stations are often crowded and chaotic places and station cells appear a far cry from a place of safety[43]. Unfortunately, we were not able to

[42] https://www.justiceinspectorates.gov.uk/hmic/media/a-criminal-use-of-police-cells-20130620.pdf

[43] The police and mental health, Briefing paper, Sainsbury's Centre for Mental Health, 2008

find any studies that tried to measure the impact of this in people's quality of life and therefore we are unable to monetise this.

103. There is qualitative evidence that there is a negative emotional impact on the people detained under s136 in police suites. As discussed in the background section, research has shown the negative impact on individuals detained in police custody under s136, in terms of deteriorating their mental condition and reducing wellbeing (Borschmann et al., 2010a; Jones and Mason, 2002; Riley et al., 2011b). A small study of 16 all-male patients detained under s136 during 12 months in 1998 showed a contrast between those who had been detained in hospital as a place of safety compared to those held in police cells. Those in hospital felt more safe and part of the 'real world', in comparison to those who were detained in police cells who had a more negative experience (Jones and Mason 2002, p.78).

F. Risks

Sensitivity analysis

104. There is significant uncertainty around some of our assumptions. This section discusses the impact on costs and benefits when variation in those assumptions occurs.

105. As is discussed in the appraisal section of proposals 1 and 2 there is a lot of uncertainty around both the number of beds that will be required and the costs of building each bed. The sensitivity analysis for these proposals is discussed in detail in the appraisal section however the financial implications of the stretch and generous estimates were not fully examined.

106. The following table shows the financial implications of the stretch and generous estimates under the "central" cost scenario.

	Cost of 1 assessment space (bed) (£K)	**Cost of 28 beds (Stretch)** (£K)	**Cost of 100 beds (Generous)** (£K)
Clinician cost (annual)	37	1,022	3,650
Nursing Cost (annual)	249	6972	24,900
Unqualified staff (annual)	13	350	1,250
Recurrent cost (annual)	**298**	**8,344**	**29,800**
Capital Costs (one-off)	**150**	**4,200**	**15,000**
TOTAL	**448**	**12,544**	**44,800**

Under the stretch estimate there will be capital costs (year 1 only) of £4.2m alongside £8.3m recurrent annual costs[44]. Similarly under the generous estimate there will be capital costs (year 1 only) of £15m alongside £29.8m recurrent annual costs.

107. Proposal 4 does not attempt to quantify the potential costs if the proposal leads to greater use of s136 and therefore the need for additional beds in HBPOS. We have no evidence on which to base figures for the increase in use of s136, so we fairly arbitrarily estimate additional bed costs if the proposal leads to a 1%, 5% or 10% increase in s136 use. Based

[44] These costs do not take into account population growth or price inflation.

on our "best" estimate calculated in the appraisal of proposals 1 and 2, of 111 detainees per bed, the following table shows the expected additional costs.

% Increase in Use	Additional beds required under "Best" estimate	Additional annual costs under the central estimate*	Additional costs under the central estimate (10 year NPV)
1%	0	£0m (£0m)	£0m
5%	4	£1.8m (£1.2m)	£13.6m
10%	10	£4.5m (£3.0m)	£34m
*Number outside of brackets represents initial cost, number inside brackets represents recurrent cost.			

108. Depending on the % increase in use, these costs become fairly substantial, however we have no evidence as to where in this range (1% - 10%) the true figure is likely to lie.

109. Proposal 5 assumes that were it not for the call out of a second health professional, 5% of detainees would be unlawfully detained for longer than 24 hours. This figure comes from some potentially unsound logic based on the results of an NHS assessment into police custody s136 detentions. If we theorise that the actual proportion of detainees affected might vary between 1% and 25%, then the cost of this proposal ranges from £44,400 and £1,109,000 per year. Whilst this reflects a wide range of uncertainty, even the upper bound of £1.1m per year is small relative to the costs associated with other proposals.

H. Summary and Recommendations

Summary of costs and benefits by main affected groups:

Group	Costs	Benefits
Health Services	• Cost of building and staffing 33 additional beds in HBPOS estimated to be £94.2m (10 year NPV). *(Proposal 1+2)* • Cost of dealing with detainees more quickly so that none are detained for more than 24 hours, estimated to be £1.5m (10 year NPV). *(Proposal 5)* • By allowing s136 detention to be used in additional locations, it is possible that the number of s136 detainees will increase causing additional costs to the health service. *(Proposal 4)*	• Providing a greater number of types of place which can be considered a place of safety will provide health commissioners with greater flexibility in allocating s135(6) detainees. *(Proposal 3)* • Ensuring that the police use street triage services where they are available, it is possible that fewer unwarranted s136 detentions will occur, which will reduce health service costs. *(Proposal 6)* • Police power of search should help maintain safety of health professionals
Police Forces	• Cost of waiting whilst a detainee is booked into a HBPOS, estimated to be £2.2m (10 year NPV). *(Proposal 1+2)*	• Savings from reduced cell use, estimated to be £8.0m (10 year NPV). *(Proposal 1+2)* • Savings from reduced officer time looking after s136 detainees, estimated to be £8.0m (10 year NPV). *(Proposal 1+2)* • Savings to police time as s136 detentions can now be used anywhere except for a private home (eg. on a railway line). *(Proposal 4)* • Police power of search should help maintain their own safety
Street Triage Services	• By ensuring that the police use street triage services where they are available, it is possible that street	

	triage services will need to devote more resources to dealing with potential s136 detentions. *(Proposal 6)*	
Detainees		• Detainees will experience considerable benefits from no longer having the emotional stress of being detained in police custody following a mental health crisis. *(Proposal 1+2)* • Prevention of suicides as s136 detentions can now be used anywhere except for a private home (eg. on a railway line). *(Proposal 4)* • Reduced stress to detained individuals by ensuring that they are dealt with within 24 hours. *(Proposal 5)* • By ensuring that the police use street triage services where they are available, individuals are more likely to receive the most appropriate response to their needs. *(Proposal 6)* • Prevention of suicides and other harms as the police can now conduct protective searches for dangerous items when needed. *(Proposal 8)*

The Home Secretary made clear the primary purpose of these changes to legislation when she announced them at the Police Federation Annual Conference in May 2015 (see https://www.gov.uk/government/speeches/home-secretarys-police-federation-2015-speech). She said that the purpose of these measures is to ensure that people detained under section 135 or 136 receive the care they need from the right agency, and to reduce the amount of time the police spend dealing with people with mental health problems so that officers can focus on cutting crime. Those were the overriding reasons for the Home Secretary and the Secretary of State for Health agreeing the recommendations of the 2014 Review that has formed the basis of the proposals being considered.

This Impact Assessment reveals a number of savings that **can be monetised** and a potentially far greater number of savings for which there is insufficient information to accurately monetise. Both the monetised and non-monetised savings should be taken into consideration when weighing up the costs and benefits associated with these measures. The savings that have been monetised include reduced costs associated with fewer people being detained in a police cell – i.e. detained in a police station for less time or not at all – including the costs of 'booking-in', use of police custody healthcare staff, 'cell watch' and the need for police officers to organise the mental health assessment.

A number of the savings that **can not be monetised** directly resulting from these measures are set out above. These include the opportunities for additional savings from fewer inappropriate arrests (instead of using section 136), cutting inappropriate use of section 136 by consulting a mental health professional first, and less transportation of section 135 detainees to places of safety by conducting the assessment in their home instead. The impact of these savings can not be monetised because they relate to 'enabling' parts of the legislation, whereby the legislation will encourage health and policing professionals to improve practice, but it will not force changes. For example, while anecdotal feedback suggests professionals would prefer to have the option to conduct a section 135 assessment in the home – rather than having no choice but to remove the person to another place of safety – there is no available evidence to support an estimate of how often that will happen.

More broadly, there would be savings made in relation to the **wider benefits** that these measures will bring to each person affected by them.

These measures should assure better care for people at a time of crisis, for example being taken to a hospital instead of a police cell, being detained for less than 24 hours (and receiving quicker access to medical treatment), or being subject to section 136 not an inappropriate use of arrest for a criminal offence. The views of mental health crisis care service users bear out that people affected by these measures may feel better supported during and after their encounter with the police, experience less distress and stigma - although there is no empirical evidence of those benefits in financial savings terms. It is anticipated that those savings would include fewer instances of people being repeatedly detained under section 136, less incidence of suicide and other self harm following contact with the police and reductions in substance misuse.

In terms of **costs**, it has been possible to monetise the majority of the costs associated with these measures – in particular the additional costs resulting from the need for increased health based place of safety capacity in some areas. These are summarised in the table above. In addition, we have identified a potential cost that cannot be monetised in relation to proposal 6, in that increased police use of triage-type services as a result of this proposal may impact on health resources.

We have also taken into account a potential reduction in the **overall demand** for the use of section 135 and 136 powers. Such a reduction may occur through an increase in street triage-type approaches and other improvements to mental health crisis care services that are being introduced **regardless of this legislation**. This would reduce all of the costs calculated in this Impact Assessment.

I. Implementation

The proposals set out in this IA form part of the Home Office's Policing and Crime Bill, which is likely to receive Royal Assent by the end of 2016. The Government then plans to implement these changes in 2017 once the provisions come into effect.

The legislative changes will be supported by guidance in order to explain in more detail what they mean in operational terms. The guidance will be developed by the Home Office and Department of Health in parallel to the Bill's progress through Parliament and published in advance of the legislative changes coming into effect so that policing and health partners have adequate time to agree any changes to local systems or protocols. In the course of developing guidance, the Home Office and Department of Health will consult on and consider any associated requirements for additional training for practitioners and will continue to engage with key stakeholders more generally. NHS England's work through the National Collaborating Centre for Mental Health to develop access and quality standards, data specifications and commissioning guidance, including for the use of sections 135 and 136 of the Mental Health Act, is taking into account these proposals for legislative change.

On 20 May 2015, the Home Secretary announced that up to £15 million of Department of Health money would be allocated for investment in reducing the use of police custody as a place of safety in England. The funding will help to increase HBPOS capacity and therefore support proposals 1 and 2 in this impact assessment which seek to cut the use of police stations as a place of safety. This will be non-recurrent capital funding for the year 2016/17. Recurrent funding pressures will need to be met from baseline allocations to Clinical Commissioning Groups. The Home Office is currently working with the Department of Health and NHS England to establish how the money will be allocated, although –

broadly speaking – we can say that it will be focused on the places where police stations are currently used most regularly.

J. Monitoring and Evaluation

The effectiveness of the new regime would be monitored through a number of different mechanisms.

The National Police Chief's Council and the Health and Social Care Information Centre publish annual data in relation to detentions under s135 and s136. These collections capture data on the numbers detained under s136 and taken to police custody and health-based places of safety respectively.

In addition, the Home Office is currently working with police forces to improve the quality and transparency of the data they collect on their use of s135 and s136 detentions. This includes implementing a new Annual Data Requirement (ADR) that will capture: the number of s135 and s136 detentions, key personal characteristics, method of transportation (and if police vehicle, the reason why) and place of safety used (and if police custody, the reason why). The ADR is being piloted with volunteer forces in 2015-16 and will be mandatory for all forces in England and Wales from 1 April 2016. The data will be published by the Home Office on an annual basis.

The Home Office is also piloting with police forces a new mental health 'data toolkit' which enables forces to capture more detailed information about s135 and s136 detentions, including the way police and other agencies respond and the impact on police time. It is a voluntary exercise for the police and is primarily designed as a local tool to provide forces with the management information they need to monitor the use of s135 and s136 detentions more closely and inform local discussions with health and social care partners about improving mental health crisis care. Police forces are able to alter the toolkit to enable them to change the information they collect. Collecting data through this toolkit supports use of the aforementioned ADR on s135 and s136.

Further, in March 2015 the HMIC published a report 'The welfare of vulnerable people in police custody' which led to a review of its assessment criteria for custody inspections. As part of this, the HMIC plans to extend the scope of custody inspections to include the first point of contact, which would include s136 detentions. A public consultation on revised assessment criteria, launched in October, includes new expectations around the operation of police s136 powers, including that police custody should only be used in the most exceptional circumstances.

NHS England's work with the National Collaborating Centre for Mental Health on data specifications will examine whether changes need to be made to datasets reported nationally through the Health and Social Care Information Centre. Its recommendations will be considered by the Department of Health and its Arms-Length Bodies, including the Care Quality Commission.

K. Feedback

The Home Office is in regular contact with police force mental health leads across England and Wales in order to stay up-to-date on the key challenges for police and partners in relation to mental health crisis care. This includes any issues around the operation of s135

and s136, such as the use of police cells as a place of safety, the use of street triage-type approaches and the capacity of HBPOS to accommodate detainees.

Home Office contact with police forces takes place through a range of means, namely through a dedicated Home Office policy team and (more generally) police forces regularly raise issues around mental health with Ministers and civil servants they have contact with from across Crime and Policing Group.

The Mental Health Crisis Care Concordats for England and Wales provide national governance structures under which a full range of national stakeholders (including the Home Office for both England and Wales – along with the Welsh Government - and the Department of Health for England) provide mutual feedback on issues or barriers around crisis care, including section 135/ 136. In England, the 96 multi-agency local Concordat groups have regular contact with the central Government Departments. Elsewhere, there are established dedicated national forums, including the National Police Mental Health Forum (led by the National Policing Lead for Mental Health, with a standing invitation for the Home Office) and the Section 136 forum (led by the Royal College of Psychiatrists, with a standing invitation for the Department of Health).

Furthermore, the Home Office and Department of Health will expect professional bodies (such as the Royal College of Psychiatrists, College of Policing and others) to seek feedback from the professionals they represent and reflect that in future iterations of guidance and training packages.

Table 1: Police data on use of section 136 Mental Health Act 1983 in 2014-15 (England and Wales)

Key:
Greyed out boxes indicate categories in which data has not been provided for parts of the year

Police Force Area	Total s136 to police cells	Total s136 to police cells (under 18s)	Total s136 to HBPOS	Total s136 to HBPoS (under 18s)	Total use of s136	(Total use of s136 (under 18s))
Avon & Somerset	128	5	636	7	764	12
Bedfordshire	32	0	334	16	366	16
BTP	101	3	1670	94	1771	97
Cambridgeshire	43	0	142	11	185	11
Cheshire	21	0	234	10	255	10
City of London	0	0	97	1	97	1
Cleveland	119	0	180	2	299	2
Cumbria	52	3	177	7	229	10
Derbyshire	79	2	140	7	219	9
Devon & Cornwall	655	25	481	4	1136	29
Dorset	59	1	303	8	362	9
Dyfed Powys	76	2	121	2	197	4
Durham	37	1	97	8	134	9
Essex	155	5	332	10	487	15
Gloucestershire	73	1	303	21	376	22
GMP	2	0	400	14	402	14
Gwent	124	6	186	12	310	18
Hampshire	96	15	451	1	547	16
Hertfordshire	0	0	484	24	484	24
Humberside	10	1	109	7	119	8
Kent	70	2	900	36	970	38
Lancashire	4	0	585	18	589	18
Leicestershire	6	0	124	2	130	2
Lincolnshire	320	21	234	0	554	21
Merseyside	0	0	421	14	421	14
MET Police	20	1	806	22	826	23
Norfolk	17	0	329	13	346	13
Northampton	21	0	204	8	225	8
Northumbria	15	4	599	10	614	14
North Wales	11	1	455	38	466	39
North Yorkshire	97	5	228	11	325	16
Nottinghamshire	154	7	514	25	668	32
South Wales	330	7	419	22	749	29
South Yorkshire	127	5	579	14	706	19
Staffordshire	67	1	430	13	497	14
Suffolk	6	0	361	17	367	17
Surrey	33	0	600	36	633	36

Sussex	765		25		663		42	1428	67
Thames Valley Police	119		4		876		57	995	61
Warwickshire & West Mercia	58		1		745		27	803	28
West Midlands	6		0		855		39	861	39
West Yorkshire	384		6		938		48	1322	54
Wiltshire	45		1		323		8	368	9
TOTAL	**4537**		**161**		**19065**		**786**	**23602**	**947**

Sub-totals:

- England	3996		145		17884		712	21880	857
- Wales	541		16		1181		74	1722	90

Source: National Police Chiefs Council Lead for Mental Health. Data provided individually by police forces for Quarters 1 & 2, 3, and 4.

Table 2: HSCIC and NPCC data on uses of place of safety 2009/10 – 2014/15 (England only)

	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15
Section 136 detentions where place of safety was a hospital	12,038	14,111	14,902	14,053	17,008	19,403
Section 136 detentions in police custody suites	..	..	8,667	7,881	6,028	3,996
Section 135 detentions where place of safety was a hospital	262	288	338	243	307	315

Sources: Data published by the Health and Social Care Information Centre (where place of safety was a hospital) and National Police Chiefs' Council (where place of safety was a police custody suite).

NB: for the purposes of this IA, NPCC data has been used for figures on use of police custody and HSCIC data has been used for figures on the use of HBPOS.