Good Practice Procedure Guide

The transfer and remission of adult prisoners under s47 and s48 of the Mental Health Act

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Good Practice Procedure Guide

The transfer and remission of adult prisoners under s47 and s48 of the Mental Health Act

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Contents

Executive summary

A large proportion of the prison population will experience some form of mental illness during their period in custody, either because of a relapse in a pre-existing condition or because they become unwell for the first time. Some prisoners may have been sent to prison whilst experiencing active symptoms of mental illness.

The vast majority of prisoners who experience mental illness whilst in custody are successfully treated by prison health services. However, some acutely mentally ill prisoners will require inpatient care as their clinical treatment needs cannot be met in a prison setting, and they have been assessed by doctors as meeting the criteria for detention under the Mental Health Act (MHA).

Historically, some prisoners have experienced delays at various stages in the process to transfer them to secure mental health inpatient treatment. The aim of this good practice procedure is to facilitate timely access to appropriate treatment under the Mental Health Act and reduce the likelihood of these delays.

Once clinicians decide the transferred prisoner no longer meets the criteria for detention under the Mental Health Act, and depending on their status (sentenced, remand, unsentenced) the prisoner may return to prison, be returned to the court for completion of the criminal justice process, or be discharged into the community.

The following guidance sets out the process for both the transfer to secure inpatient treatment and where appropriate, remission to prison.

The appendices provide process flowcharts, templates for the H1003 transfer form, advice for doctors and good practice points for commissioners, service providers and prison health services.

Introduction

Context

1.1 Prisoners with mental illness who require inpatient treatment in secure mental health services can only be transferred to hospital under the Mental Health Act (MHA) with the agreement of the Secretary of State for Justice.

1.2 Sentenced prisoners are transferred under s47 of the MHA; prisoners who are on remand or unsentenced are transferred under s48. In addition, people subject to detention under the Immigration Act (IA) who meet the Mental Health Act criteria may be admitted to hospital under s48.

1.3 Historically prisoners and detainees have faced delays in accessing inpatient treatment. It is anticipated that by providing appropriate, timely treatment the risk of harm to self and others and the risk of re-offending where this is linked to mental illness is reduced.

1.4 This procedure sets out a good practice timeframe for completing transfers to inpatient treatment. In some cases, given the level of risk and severity of need, the transfer should be completed more quickly.

1.5 Similarly, there will be cases where although unwell or experiencing a chronic mental illness, the prisoner will not require transfer as there is no immediate risk of harm within the prison environment and/or appropriate treatment is available within the prison itself.

1.6 Providing appropriate intervention and treatment at the right time and in the right place is vital to improving outcomes for people with mental illness. For some prisoners with severe mental illness, a transfer to inpatient treatment will be an important element in supporting better outcomes in the longer term.

1.7 This good practice procedure guide has been developed after extensive engagement and collaboration with partners from the NHS, the Care Quality Commission, HM Prisons Inspectorate, the Royal College of Psychiatrists, The Royal College of Nurses, the National Offender Management Service, HM Prison Service and the Ministry of Justice.

1.8 This guidance supersedes and replaces the guidance on transfers[1] published by DH in 2007.

Purpose and scope

1.9 The purpose of this procedure is to promote good practice and support effective joint working between the agencies involved in transfer and remission processes.

1.10 The good practice procedure applies to adult prisoners (sentenced, unsentenced or on remand) or detainees aged 18 and over.

[1] Procedure for the transfer of prisoners to and from hospital under sections 47 and 48 of the Mental Health Act (1983) DH 2007

1.11 The procedure applies to transfers to and remission from high, medium and low secure services and psychiatric intensive care services in general adult mental health services.

1.12 The procedure contains guidance on

- determining commissioning responsibility
- defining the transfer clock start and stop times
- late in sentence transfers
- access to the prison estate for visiting health professionals
- the legal framework governing prison transfers and remission to prison
- the requirements of the Secretary of State for Justice

1.13 The procedure provides flowcharts setting out the steps required to achieve a good practice timeframe for the completion of transfer and remission processes.

1.14 Although not a definitive guide to the Mental Health Act, this procedure sets out the elements that are applicable to prison transfers and remissions. Information about the wider application of the MHA is contained in

- A Reference Guide to the Mental Heath Act[2]
- The Code of Practice for the Mental Health Act[3]

1.15 The procedure relates to transfers from prisons and hospitals in England and Wales. It does not cover procedures in Scotland or Northern Ireland and is for use by

- Prison Healthcare Teams and Mental Health In-reach services
- NHS commissioners
- Mental health service staff and clinicians
- Regional Case Managers
- Regional Offender Health Teams
- Strategic Health Authorities
- Regional Offender Health Partnerships
- UK Borders Agency and Immigration Removal Centre staff
- National Offender Management Services
- HM Prison Service

Additional relevant guidance

1.16 The process for transferring prisoners or Immigration Act detainees can uncover complex issues particularly in terms of commissioning responsibility. Whilst the good practice procedure aims to be comprehensive, a number of other national guidance documents are relevant

- Who Pays? Establishing the Responsible Commissioner (DH 2007)[4]

[2] Reference Guide to the Mental Health Act 1983
[3] Code of Practice Mental Health Act 1983 Department of Health 2008
[4] Who Pays? Establishing the Responsible Commissioner Department of Health 2007

- A Guide for the Management of Dual Diagnosis for Prisons[5]
- Refocusing the Care Programme Approach: policy and positive practice guidance[6]
- Managing high risk of serious harm offenders with severe personality disorder[7]
- Guidelines for the clinical management of people refusing food in immigration removal centres and prisons[8]

Implementation

1.17 The effective implementation of prison transfers is dependent on close working and cooperation between a number of organisations and agencies in the NHS, HM Prison Service, NOMS, UK Borders Agency (in some cases) and the independent sector.

1.18 The NHS is responsible for agreeing and managing contracts relating to the provision and performance of mental health services. The NHS mental health contract includes meeting the requirements for prison transfers and remissions under the Mental Health Act.

1.19 The NHS is also responsible for agreeing pathways of care and gatekeeping arrangements governing access to secure mental health services with service providers.

[5] A Guide for the Management of Dual Diagnosis for Prisons Department of Health 2009
[6] Refocusing the Care Programme Approach DH 2008
[7] Managing high risk of serious harm offenders with severe personality disorder Probation Circular PC21/2008 National Probation Service
[8] Guidelines for the clinical management of people refusing food in immigration centres and prisons DH January 2010

Commissioning Issues

Establishing the responsible commissioner

2.1 The Coalition Government is committed to revising NHS commissioning structures. The processes set out below are based on the NHS commissioning structures, arrangements and national guidance in place at the time of publication and may be subject to change.

2.2 The identification of who is responsible for meeting the costs of inpatient treatment can be a complex process and disputes between commissioners regarding responsibility can arise.

2.3 In 2007, DH issued national guidance Who Pays? Establishing the Responsible Commissioner[9] setting out the processes for identifying who should meet the costs of treatment. DH updated the guide in 2008.

2.4 The guide makes specific references to

- transferred prisoners and people detained under the Mental Health Act
- people of no fixed abode
- those who have moved between areas/GP practices

2.5 The DH guidance Who Pays? Establishing the Responsible Commissioner sets out an important principle that should be adhered to when disputes regarding funding arise

'No treatment should be refused or delayed due to ambiguity as to which PCT is responsible for funding an individual's healthcare provision'

2.6 The transfer process should continue during the process to resolve any disputes over funding responsibility, access to inpatient treatment should not be delayed.

2.7 Commissioners should agree interim arrangements for meeting the costs of inpatient treatment whilst the dispute is resolved.

2.8 In some circumstances, the Secretary of State may decide to direct admission to a specific service regardless of who is responsible for meeting the costs of the admission.

Process for identifying responsibility

2.9 There are three steps to determining who has responsibility for funding inpatient treatment.

Step 1 GP registration

If this cannot be established, responsibility is determined by

[9] Who Pays? Establishing the Responsible Commissioner DH 2007

Step 2 Usual residence/address including consideration of where the person identifies they are usually resident

Alternatively, if neither of these can be established

Step 3 PCT where the offence was committed

2.10 For prisoners not usually resident in the UK, commissioning responsibility is primarily determined by the location of the prisoner at the time; this will therefore be the location of the prison.

2.11 For people detained under the Immigration Act, the location of where they are detained will determine which organisation has funding responsibility.

Regional commissioning arrangements

2.12 It is important to understand the arrangements for commissioning secure mental health services as this dictates responsibility for agreeing to meet the costs of inpatient treatment.

2.13 Whilst a particular local commissioner will be responsible for an individual prisoner, the mental health service they require may be commissioned under regional or national commissioning arrangements.

2.14 Where the inpatient service required for the transfer is within the national specialised services definition set, it will be commissioned at a regional or national level.

Cross-border issues within the UK

2.15 For people who are resident in Scotland and registered with a GP in England, Scotland is the responsible commissioner.

2.16 In respect of prisoners from Wales, the Welsh Assembly Government advises

- the planning and provision of specialised and tertiary services previously commissioned by Health Commission Wales, are now the responsibility of Local Health Boards in Wales
- the planning of some of these specialised and tertiary services is executed via a joint committee, i.e. the Welsh Health Specialised Services Committee (WHSSC), which was established on 1 April 2010
- WHSSC commissions secure mental health beds in Wales.

Definitional issues

Acute, severe mental illness

3.1 The definition of mental illness for the purposes of the Mental Health Act is 'any disorder or disability of the mind'.

3.2 The Mental Health Act Code of Practice[10] states that 'the relevant professionals should determine whether a patient has a disorder or disability of the mind in accordance with good clinical practice and accepted standards of what constitutes such a disorder or disability'.

3.3 It is important to note that there will be prisoners who require ongoing observation and assessment before a decision is made to start the formal transfer process. Not all of these prisoners will continue on the transfer pathway; some may undergo a number of assessments before clinicians agree that the criteria for detention under the MHA are met.

3.4 Two doctors (at least one of which must be s12 approved) must determine if the prisoner meets the criteria for detention under the Mental Health Act.

3.5 The reports of the doctors' assessments must confirm that the prisoner requires treatment and that treatment is available. It must be clear that the required treatment cannot be provided in a prison healthcare setting.

Definition of transfer clock start and stop times

3.6 The transfer clock starts when the first doctors' assessment identifies that the criteria for detention under the Mental Health Act is met. This assessment will provide one of the medical reports required by the Secretary of State and triggers the formal referral to the responsible mental health provider to undertake the second doctor's assessment.

3.7 The transfer clock stops

- if the second doctors assessment concludes that inpatient treatment is not required as the criteria for detention are not met
- when the prisoner has been transferred to hospital
- if the prisoner has been transferred to another prison before completion of the assessment process

3.8 The transfer clock does not stop during processes to

- resolve differences of clinical opinion
- resolve disputes over commissioning responsibility

[10] Mental Health Act Code of Practice DH 2008

Applications for s47 transfer late in sentence

3.9 The timing of applications for a Secretary of State direction to transfer is crucial particularly in cases where the prisoner's sentence is short, or the prisoner is close to their automatic release date (ARD).

3.10 The Mental Health Casework Section (MHCS) in the Ministry of Justice (MoJ) advise that where a prisoner is sufficiently close to their release date that admission to hospital could be appropriately achieved using civil powers of the 1983 Mental Health Act, it is unlikely that a directing a transfer under s47 can be justified.

3.11 Judgements in the High Court following judicial reviews of prison transfers have clarified the legal position on applications made late in sentence; the most notable ruling was made in December 2008 in respect of SoS vs. TF[11].

3.12 The TF judgement established that

- prison transfers cannot be used solely for public protection purposes
- s47 transfers late in sentence should only be used in very exceptional circumstances

3.13 The TF judgement accepts that late in sentence transfers may be necessary but only in very exceptional circumstances. The Secretary of State may consider late in sentence applications if the case can be made that

- admission to hospital is an urgent necessity
- it is necessary for the prisoner's own health and/or safety and
- the urgency of need is such that it is not safe to wait until the release date for admission to hospital

3.14 It is essential that the MHCS be involved in the process at a very early stage in these circumstances, as this will support effective decision-making regarding the most appropriate application of the Mental Health Act.

3.15 If the Secretary of State has rejected a late-in-sentence s47 transfer application, it may be appropriate to consider admission under s2 or s3 on completion of sentence.

3.16 In these circumstances, the assessments and applications can be made whilst the prisoner is in custody and arrangements made for post-release admission.

3.17 Time limits for applications under s2 and s3 are set out in the table below.

[11] TF, R (on the application of) v Secretary of State for Justice [2008] EWCA Civ 1457 (18 December 2008) www.bailii.org/ew/cases/EWCA/Civ/2008/1457.html

Action	Time limit
Application	Applicant must have personally seen the patient within the 14 days ending on the date of application
Examination for purposes of medical recommendation for application	No more than 5 clear days must have elapsed between the days on which the separate examinations took place
Medical recommendations in support of applications	Must be signed on date of application
Conveyance and admission to hospital	Patients can only be conveyed and admitted to hospital within the period of 14 days starting with the day on which the patient was last examined by a doctor for the purpose of the application

Satisfying the conditions for transfer

3.18 The Secretary of State for Justice must be satisfied that the prisoner meets the criteria for detention under the Mental Health Act before any decision is made to allow a transfer to hospital. The decision to authorise a transfer will also take account of the circumstances of the case, risk and public protection.

3.19 The MHCS makes the decision to authorise a transfer, and the decision to impose additional restrictions where necessary, under the delegated powers of the Secretary of State for Justice.

3.20 The decision to direct a transfer to a particular level of security can only be made once in any transfer. This means that where clinical views and public protection issues indicate that for example, medium security is required and the Secretary of State agrees, the direction will be to a medium secure service.

3.21 In cases where treatment in a specialist service is required for example, for an eating disorder, a pragmatic decision is made balancing clinical treatment requirements, risk and public protection issues.

3.22 The Secretary of State's decision to direct a transfer is informed by reports from at least two doctors detailing the prisoners' disorder and the requirement for treatment. At least one doctor must be approved under s12 of the MHA.

3.23 The medical reports must demonstrate the following:

- the prisoner is suffering from mental disorder
- the mental disorder is of a nature or degree which makes it appropriate for the prisoner to be detained in hospital for medical treatment
- appropriate medical treatment is available
- an urgent need for treatment for unsentenced prisoners

3.24 In this context, mental disorder does not include learning disability unless it is associated with abnormally aggressive or seriously irresponsible behaviour. However, prisoners with learning disabilities may also be suffering from a mental disorder. The guidance, therefore, applies to these prisoners.

3.25 The Secretary of State does not have to agree to transfer; the decision is based on whether it is expedient and in the public interest.

3.26 The Secretary of State takes account of

- any risks associated with the prisoner (escape risk, nature and history of offending, notoriety, victim issues), and the public protection implications
- whether public confidence could be undermined by allowing the transfer
- the court's intention at the time of sentencing to imprisonment
- the effect of any pending appeal
- whether appropriate treatment can be provided in prison
- the length of time the prisoner still has to serve, behaviour and current security category
- medical opinion, past and presenting symptoms and level of clinical risk (e.g. actively suicidal, assaultive).

Information sharing and confidentiality

3.27 It is important that staff involved in transfers understand the rules governing the appropriate sharing of confidential information. This is particularly the case where information is held by different parts of the prison system for example, case summaries, court reports or custody management information.

3.28 All information connected to prison transfers that is exchanged electronically must only be done using secure email systems. Personal email accounts must never be used for this purpose.

3.29 Assessments and transfers under the MHA cannot be completed without information held by custody staff being shared with prison healthcare staff and visiting healthcare professionals conducting assessments.

3.30 There are no data protection issues preventing custody staff from passing information about a prisoner's conviction and offending history to prison healthcare staff for the purposes of a transfer to hospital under the MHA.

3.31 Similarly, MHCS can only make an accurate assessment of risk if all the relevant information about the prisoner is provided.

3.32 Section 4.6 to 4.8 of this document sets out the information requirements for assessments in addition to the information required by MHCS.

Access to the prison estate

3.33 HM Prison Service operates procedures governing access to prisons for professional visitors.

3.34 A distinction is made between professional visitors who are not directly employed but may work in the prison over a period of time, and those who make one-off visits for professional purposes.

3.35 Visitors in the latter category are classed as occasional, professional visitors and include:

- psychiatrists attending on instruction from the court to assess prisoners
- other healthcare specialists called in to assist prison healthcare staff on an ad-hoc and non-regular basis
- any category of professional attending meetings in the prison

3.36 Visitors must meet the following criteria in order to ensure they are able to access the prison

- the visit must be pre-booked with a full time member of prison staff authorised to book such visits. The prison Governor should have agreed the type/grade of staff that are authorised to do this
- when booking the visit, the visitor must provide the name of the organisation/company they represent
- the visitor must produce one or more official forms of identification that
  - Contains a photograph with the visitors name and
  - demonstrates that the named person works for the organisation stated on the pre-booked visit (on the same or a separate form of identification)

3.37 In addition, visitors must allow sufficient time to complete prison security procedures and must understand the rules on restricted items such as mobile phones.

3.38 The facilities required to conduct clinical assessments broadly match the requirements for visits by legal representatives:

- visits should be conducted within sight but out of hearing of prison service staff.
- where possible, visits should be conducted within the prison health services suite.

3.39 Prisons will have specific operational policies governing access arrangements, whoever is arranging prisoner assessment visits must check on the particular requirements of the establishment.

3.40 In all cases, the Governor is responsible for ensuring the safety of staff, prisoners and visitors in the prison and may decide according to the level of risk, to terminate the assessment or disallow the visit.

The transfer process

4.1 The Good Practice Transfer Flowchart provided in Appendix 1 a detailed guide to the three stages of the transfer process with a suggested timescale for each element.

4.2 Guidance notes or templates are provided in the appendices for the information required throughout the transfer (and remission) process

- medical reports for both s47 and s48 applications
- form H1003 information on offence and sentencing
- application for remission to prison

4.3 It is important that prison health services involve the prisoner in the transfer process, inform prisoners of their rights under the Mental Health Act, and explain what to expect during each stage of the transfer itself.

Transfers of children and young people

4.4 The process for transferring children and young people under the age of 18 is set out in separate guidance.

The transfer process

4.5 The transfer process is summarised below, and a detailed flowchart is provided in Appendix 1.

Stage one Suggested timeframe within 2 days

- The first doctor assessment generates one of the required medical reports
- The Prison Healthcare Team
    - contacts MHCS to get advice on the level of secure mental health service likely to be required and sends in H1003 form (see appendix 3)
    - works with custodial staff to gather all offending, security and medical information to support transfer process
    - contacts the responsible commissioner to alert to the need for an assessment and funding for inpatient treatment. Medium secure gatekeeping process activated if treatment in high secure service is indicated
    - makes a formal referral to the responsible mental health provider and an appointment for the second doctors assessment
    - should keep the prisoner informed about the process and what they can expect to happen throughout each stage

Stage Two suggested timeframe up to 7 days

- Second doctors' assessment completed, medical report generated and appropriate bed identified

- MHCS sent all remaining information needed for transfer with confirmation of bed availability in appropriate service

Stage three suggested timeframe up to 5 days

- MHCS approves and issues warrant
- Mental health service provider confirms admission date to prison
- Prison service arranges appropriate escorts and transports prisoner to hospital

Information required by the Secretary of State

4.6 Prison and healthcare staff are responsible for gathering a range of information to support and inform the transfer process. The person coordinating the transfer process within the prison healthcare team is responsible for passing this information to the MHCS and the assessing doctor.

4.7 Prison staff coordinating the transfer process should ensure that they discuss and agree with MHCS how information should be provided. If it is agreed that information is to be provided electronically this must be via a secure email system.

4.8 MHCS will require

- H1003 prisoner details
- 2 separate doctors' reports no more than 2 months old
- previous conviction history
- case summary (details of index offence (s47) or alleged offence (s48))
- court indictment
- court results sheet (s47)
- pre-sentence reports
- sentencing warrant (s47)

4.9 The Secretary of State requires that prisoners transferred to hospital be detained as effectively as if they were in custody and be produced at the direction of the Court.

4.10 The MHCS risk assessment is based primarily on public protection issues, and the need to preserve the sentence of the Court, or to produce the defendant in Court, as appropriate.

4.11 It takes account of any offending history, security issues (i.e. risk/history of escape or absconding), and the nature and severity of the offence. The risk assessment also takes account of clinical and treatment issues provided in the medical reports.

4.12 MHCS assess all cases individually against a number of criteria, including

- the offence charged/convicted
- the full offending history
- the propensity or not to cooperate with the needs of criminal justice
- the nature of the mental disorder

- the state of mental disorder at the time of application for transfer
- the risk of harm to others if unlawfully at large
- the harm to public confidence if unlawfully at large
- proximity to release date for sentenced prisoners.

Information required by doctors to inform assessments

4.13 The person in the prison healthcare team coordinating the transfer process is responsible for collating the information doctors require in advance of making their assessment of the prisoner. This information includes

- previous psychiatric history and diagnosis
- discharge summaries (if available)
- case summary and offence history (if available)
- current and past behaviour and custody management issues
- details of risk issues and symptomotology
- NHS information: responsible PCT/Commissioner/GP

4.14 Providing this information will support doctors and other mental health practitioners in determining if services can meet the treatment and security needs of individual prisoners so minimising the likelihood of inappropriate referrals.

4.15 MHCS will decide whether a proposed treatment facility offers adequate security. If in any doubt, clinicians should consult MHCS at an early stage to avoid the risk of proposals being rejected later in the process.

Medical reports

4.16 Transfer applications must be supported by two medical reports from separate doctors, and should meet the following criteria

- at least one report must be from a doctor approved under s12 of the MHA
- reports from the assessments must not be more than two months old

4.17 MHCS advise that one of the reporting doctors should represent the service provider that will admit and treat the patient. This will reduce the need for multiple assessments and make it more likely that only appropriate referrals are admitted.

4.18 Guidance on the requirements for medical reports for s47 and s48 transfers is provided in Appendix 3 and 4.

Transport and escort costs

4.19 In 2006, NHS commissioners assumed responsibility for commissioning all prison health services including mental health in-reach services. Under these arrangements, HMPS provides suitable transport and escorts for prisoners transferring to secure mental health care and for returning prisoners to prison custody.

4.20 The prison is responsible for

- conveying the prisoner to hospital from the prison with appropriate escorts
- returning the prisoner to prison from Court and from hospital.

4.21 The mental health service provider admitting the prisoner for treatment is responsible for arranging appropriate transport and escorts for producing the prisoner at Court and returning them to hospital where required.

Referral and admission to secure services

High secure services

4.22 High secure mental health services are for people posing a grave and immediate danger to themselves and/or others and cannot be safely managed in a less secure environment. The physical security measures in high secure hospitals are equivalent to Category B prisons.

4.23 Regional NHS medium secure services provide a gatekeeping function for referrals to high secure services. Prisoners referred to high secure services will usually be assessed in prison by regional secure services prior to referral to a high secure service. In a few cases, this will not be required given the particular circumstances, risk, and clinical treatment and security requirements.

4.24 Three main issues are considered for all referrals

- presence or absence of a recognisable mental disorder
- liability to detention
- risk of harm to others

4.25 In addition, the emphasis is on immediacy and gravity of risk. Factors that constitute a grave and immediate danger may include some or all of the following

- serious unprovoked or random assaults
- serious sexual assaults
- serious displaced aggression resulting in violence against others
- psychotic symptoms that could lead to violent acts against specific people
- arson
- the use of poison or drugs to harm others
- persistent, scheming, determined absconding
- sadistic behaviour
- use of firearms, knives, explosive devices, missiles and other weapons
- hostage taking

4.26 High secure services for men are provided against nationally determined catchment areas

- Broadmoor: London and the south of England

- Rampton: East Midlands, East of England, North East and Yorkshire & Humber
- Ashworth: North West, West Midlands and Wales

4.27 In addition, Rampton Hospital provides national services for women, deaf people and for men and women with learning disabilities.

Medium secure services

4.28 Medium secure services provide treatment for people who present a serious but not grave and immediate danger to others. They are expected to operate within best practice principles governing physical and procedural security arrangements aimed at minimising the opportunity for and means to escape or abscond. Admission criteria include but are not limited to:

- risk predominantly to others including serious risk to the public
- significant risk of and/or attempts to escape/abscond
- present or history of violent behaviour that cannot be managed in less secure conditions.

Low secure services

4.29 Patients in low secure units typically require treatment in conditions with a higher level of physical and relational security than open wards because of the level of risk they pose to themselves or others. The physical security is less than provided in a medium secure unit. Admission criteria may include

- history of non-violent offending behaviour
- low risk of abscond or escape
- offending behaviour connected to mental disorder
- risk of self neglect, challenging behaviour and/or self-harm
- risk of lower level violent offending e.g. common assault, actual bodily harm

Psychiatric intensive care in general adult services

4.30 In some circumstances, MHCS will agree to transfers to psychiatric intensive care wards in general adult mental health services. These services provide a degree of physical security in addition to intensive treatment programmes.

4.31 Local commissioners commission psychiatric intensive care in general adult mental health services.

Emergency and out of hours transfers

4.32 Transfers for prisoners who require hospital admission can be made under the Prison Act 1952; this is usually applied to prisoners who require treatment for physical health issues but can, in some circumstances be used for mentally disordered prisoners.

4.33 In extreme circumstances where for example, a prisoner is refusing fluid and hospital treatment is urgently required, prison healthcare services must alert the MHCS and arrange for a s12-approved doctor to assess the prisoner.

4.34 Mental health services should not be expected to treat prisoners refusing food or fluid unless this is a direct result of a severe mental disorder[12]. The priority in such cases is to ensure that the prisoner receives appropriate hospital treatment for their physical health needs.

4.35 When an urgent transfer is required out of normal office hours the MHCS can provide a verbal authorisation for transfer, the prison Governor will also need to agree to the transfer.

Resolving differences of clinical opinion

4.36 In cases where there is a difference of clinical opinion on the need for transfer and a resolution cannot be agreed by the two doctors undertaking the assessments, an agreement should be made about seeking a third party view.

4.37 The emphasis must be on agreeing a rapid solution so the transfer process is not delayed because of a protracted resolution process.

Detainees

4.38 People detained under the Immigration Act meeting the criteria for detention under the Mental Health Act are transferred to inpatient treatment under s48.

4.39 The location of the Immigration Removal Centre where the person is detained determines which local commissioner is responsible for meeting the costs of secondary care including the costs of treatment under s48.

4.40 The local commissioner is responsible for ensuring that the necessary medical assessments are conducted and reports provided to MHCS and for meeting the costs of inpatient treatment.

4.41 The UK Borders Agency are responsible for assessing and informing MHCS about the detainee's level of risk, this will support the determination of what level of security is required during treatment.

4.42 The aim is to return detainees to the IRC when inpatient treatment is no longer required.

4.43 Where the person meets the criteria for detention under the Mental Health Act and is subject to Immigration Act bail conditions (i.e. not in lawful custody) or subject to temporary leave to remain, s2 or s3 should be used.

[12] Guidelines for the clinical management of people refusing food in immigration removal centres and prisons DH January 2010

Remission to prison

5.1 Once the clinical team providing treatment agrees that the criteria for detention under the Mental Health Act is no longer met or that no more treatment can be given and, where allowed under the legislative framework, remission to prison should be achieved with the minimum of delay.

5.2 Responsibility for coordinating, overseeing and managing the return process is shared between the secure mental health service provider and the receiving prison. The remission process is set out on the flowchart in Appendix 2

5.3 It is essential that the transferred prisoner understands and is involved in the remission or hospital discharge process particularly around s117 after care planning and knows what to expect at each stage.

5.4 It is important to note that not all transferred prisoners will return to prison, for example

- prisoners who require long-term inpatient care past release date
- civil prisoners, Immigration Act detainees
- prisoners transferred under s48 without a restriction direction

5.5 Remission (return) to prison of civil prisoners and IA detainees may be ordered under s53 of the Mental Health Act 1983 if the responsible commissioner, any other approved clinician or a mental health tribunal advises the Secretary of State for Justice that

- treatment in hospital is no longer required
- no effective treatment is available in the hospital where the prisoner is detained

5.6 Alternatively, if the First-tier Tribunal (Mental Health) concludes under s74 that a transferred prisoner would be entitled to a discharge if they were a restricted hospital order patient, then the hospital managers may return them to prison.

5.7 Additional, detailed information on remission is contained in the Reference Guide to the Mental Health Act.

Receiving prison

5.8 Prisoners returning to custody from secure mental health services will return to the local prison in that area unless there are exceptional circumstances that prevent this, or they are a Category A prisoner.

5.9 Where there are difficulties in securing the agreement of a prison to accept a returning prisoner the mental health service provider should alert the Regional Offender Management Office. Contact details are provided in Appendix 5.

5.10 In cases where the prisoner was transferred to hospital before their 21 birthday and they will be over 21 on their remission, they will return to the local adult prison in that area.

Aftercare arrangements – s117

5.11 Before the return to prison can be authorised by the Secretary of State, a multi-agency s117 meeting must be held to agree aftercare arrangements including a Care Plan to accompany the prisoner on their return to custody.

5.12 The mental health service provider treating the transferred prisoner will convene and host the s117 meeting.

5.13 The local receiving prison healthcare and custody staff are expected to attend the s117 meeting. If the prisoner has at least 6 months remaining on their sentence and fits the criteria for MAPPA involvement, a representative of the local MAPPA should also attend.

5.14 MHCS will only consider remission to prison without a completed s117 meeting in exceptional circumstances. In such cases, MHSC require confirmation of the date of the planned s117 meeting before the warrant can be agreed.

The legal framework

6.1 This section provides a brief overview of the legal framework governing the transfer of prisoners to inpatient care. The terminology, definitions and criteria used in this guidance are the same as those in the Reference Guide to the Mental Health Act 1983[13].

Definitions and criteria for transfer under the Mental Health Act

6.2 The status of the prisoner at the time of the mental health assessment determines the Mental Health Act section that is used.

6.3 Transfers for sentenced under s47

- person detained in pursuance of any sentence or order for detention made by a court in criminal proceedings
- detained in pursuance of any sentence or order for detention made by a court in the armed forces disciplinary proceedings (except a sentence of service detention)
- committed to custody under section 115 (3) of the Magistrates Courts Act 1980
- committed to prison or other institution to which the Prison Act 1952 applies in default of payment of any sum adjudged to be paid on the person's conviction

6.4 Transfers for unsentenced and remand prisoners under s48:

- People remanded in custody by magistrates' court ("magistrates remand prisoners")
- Civil prisoners i.e. people committed by a court to prison for a limited term, in respect of civil proceedings ("civil prisoners")
- People detained under the Immigration Act 1971 or under section 62 of the Nationality, Immigration and Asylum Act 2002 ("immigration detainees")

Restriction directions

6.5 The Secretary of State may impose a restriction direction (s49) applying the special restrictions in section 41 to the transferred prisoner. This may also specify the ward or unit to which the prisoner must be admitted.

6.6 A restriction direction also enables sentenced prisoners to be returned to prison on completion of treatment if this is before their scheduled release date.

Expiration of restriction directions

6.7 When the restrictions expire (e.g. on the prisoners release date, if there is one) the Secretary of State has no further responsibility for the case.

[13] Reference Guide to the Mental Health Act 1983 Department of Health 2008

6.8 However, if the responsible doctor considers that the patient still requires treatment in hospital, the patient may still be liable to detention in hospital.

6.9 This is equivalent to being detained under Section 37 of the Act (i.e. a hospital order without restrictions) and is often referred to as a 'notional s37 hospital order'.

Hospital and limitations directions

6.10 Orders issued by the court under s45A add the effect of a hospital order with limitations (restrictions) to the prison sentence.

6.11 As with s47/49 transfers, the prisoner is admitted to hospital for treatment and may subsequently be transferred to prison for completion of their sentence.

Useful links

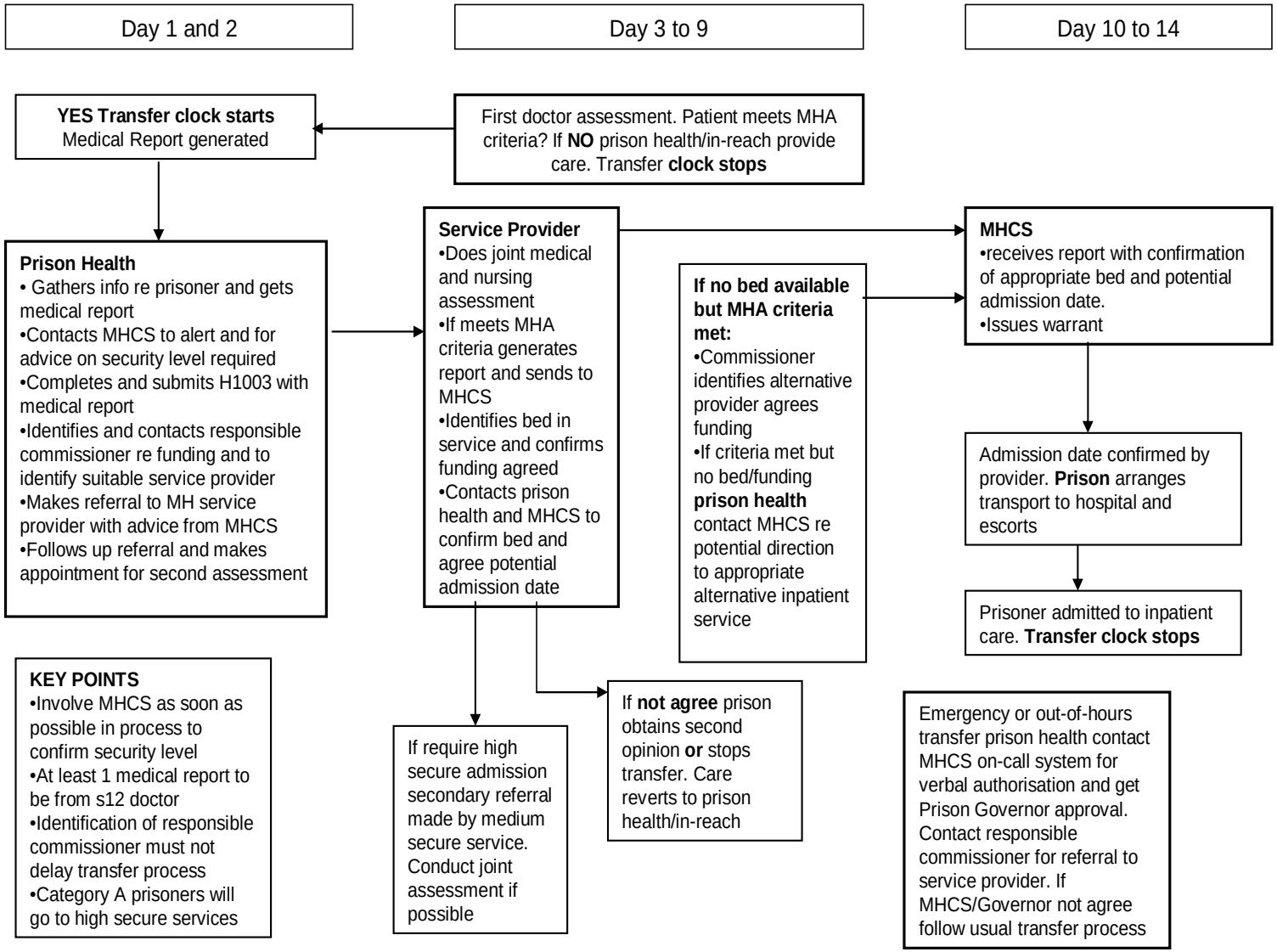
Information about secure mental health and personality disorder services is available on the DH website

http://www.dh.gov.uk/en/Healthcare/Mentalhealth/Secureservices/index.htm

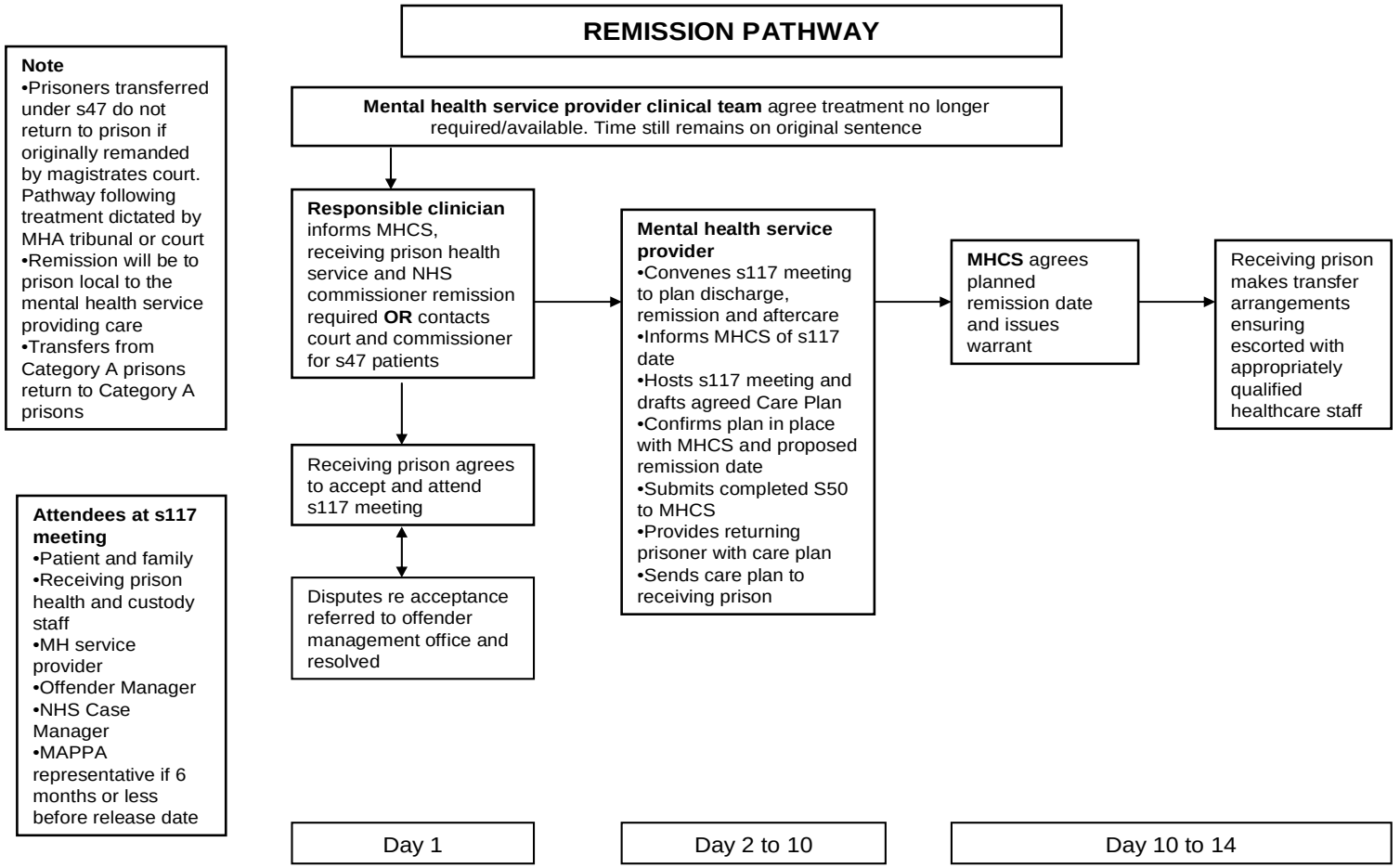
http://www.dh.gov.uk/en/Healthcare/Mentalhealth/Personalitydisorder/index.htm

Appendix 1

PRISON TRANSFER PROCESS



Appendix 2


REMISSION PATHWAY
Note
•Prisoners transferred under s47 do not return to prison if originally remanded by magistrates court. Pathway following treatment dictated by MHA tribunal or court
•Remission will be to prison local to the mental health service providing care
•Transfers from Category A prisons return to Category A prisons
Mental health service provider clinical team agree treatment no longer required/available. Time still remains on original sentence
Responsible clinician informs MHCS, receiving prison health service and NHS commissioner remission required OR contacts court and commissioner for s47 patients
Receiving prison agrees to accept and attend s117 meeting
Disputes re acceptance referred to offender management office and resolved
Mental health service provider
•Convenes s117 meeting to plan discharge, remission and aftercare
•Informs MHCS of s117 date
•Hosts s117 meeting and drafts agreed Care Plan
•Confirms plan in place with MHCS and proposed remission date
•Submits completed S50 to MHCS
•Provides returning prisoner with care plan
•Sends care plan to receiving prison
MHCS agrees planned remission date and issues warrant
Receiving prison makes transfer arrangements ensuring escorted with appropriately qualified healthcare staff
Attendees at s117 meeting
•Patient and family
•Receiving prison health and custody staff
•MH service provider
•Offender Manager
•NHS Case Manager
•MAPPA representative if 6 months or less before release date
Day 1
Day 2 to 10
Day 10 to 14

Appendix 3

FORM H1003

TRANSFER OF MENTALLY DISORDERED PRISONER TO HOSPITAL FOR TREATMENT UNDER THE MENTAL HEALTH ACT 1983

Complete and submit to the Mental Health Casework Section

SECTION 1: HMPS DETAILS

Establishment name: **Category:**	**Telephone:** **Fax:**
Contact Name: Position:	Email: Tel

SECTION 2: PRISONER INFORMATION

Surname:	**First Name:**
D.O.B.	**Aliases:**
Status: Remand/Unsentenced/Sentenced	
Prison No:	**Gender:**
Security Category:	**On escape list y/n**
Nationality: **Place of Birth:**	**Ethnic Origin**
Details of Offence(s)	
Name of Court	
Details of any scheduled Court appearances (if available)	

SECTION 3: SENTENCED PRISONER INFORMATION

Total sentence and order of court for each offence	
Date of conviction	**Date of sentence**
Release date information (complete as appropriate)	
Automatic Release Date (ARD)	**Conditional Release Date (CRD)**
Release on Temporary Licence Eligibility Date (ROTL)	**Parole Eligibility Date (PED)**
Non-Parole Release Date (NPD)	**Licence Expiry Date (LED)**
Sentence Expiry Date(SED)	**Lifers – Tariff Date**
Has the prisoner lodged an appeal (y/n)	
If yes, Criminal Appeal Officer number	
Details of responsible home probation service	
Name of Probation Supervising Officer	

SECTION 4: DETAILS OF MENTAL DISORDER

Type(s) of mental disorder identified	
Is the prisoner actively suicidal or is there a history of suicidal tendencies/attempts?	
Is the prisoner a danger to others, is there a history of violence?	

Is there a history of substance abuse (drugs/alcohol)?	
Is there a history of psychiatric treatment (inpatient or community treatment)	
Is the prisoner currently managed in Care and Separation?	

SECTION 5 – HOSPITAL TRANSFER INFORMATION

Contact details of consultant psychiatrist approached to provide inpatient bed for prisoner. **Outcome**	Name: Organisation Address Tel:
Details of hospital and service where prisoner is to be transferred	Name Address Tel
Name and address of reporting medical practitioner	Name Organisation Address Tel
Name and address of reporting medical practitioner	Name Organisation Address Tel
Strategic Health Authority Catchment Area	
Address of prisoner at time of arrest if known or police station which dealt with the case	

Name and address of Next of Kin	Name Address
Signed	**Medical Officer** **HMP** **Date**

Appendix 4

Transfer of sentenced prisoners under s47 of the Mental Health Act
Medical Report Guidance notes

i. Please provide a full report to support the application for the Secretary of State's agreement to transfer the prisoner to hospital, based on your assessment of the prisoner, clearly setting out the reasons for your conclusions and recommendations.

ii. The report should refer to the level of physical, relational and procedural security appropriate to the clinical needs of the prisoner and include a recommendation for the level of security (PICU, low, medium or high) in which treatment is required.

iii. If the prisoner has a learning disability, the report should demonstrate how this is associated with abnormally aggressive or seriously irresponsible conduct. In that case, the report should indicate if the prisoner is suffering from an associated mental disorder.

iv. The report must set out the nature and degree of mental disorder that makes detention for treatment in hospital appropriate. The report must make it clear that appropriate medical treatment is available to the prisoner and indicate where this treatment is available.

v. The Secretary of State's decision whether to direct transfer to hospital is based on an assessment of risk. It will take account of a range of issues including public protection, and the need to ensure that the remand or sentence of the Court is preserved.

vi. The physical security and clinical needs of the prisoner based on their individual circumstances, previous history, including offending history, and treatment requirements, are essential elements of the decision.

Appendix 5

Transfer of unsentenced or remand prisoners under s48 of the Mental Health Act Medical Report Guidance note

I. Please provide a full report to support the application for the Secretary of State's agreement to transfer the prisoner to hospital, based on your assessment of the prisoner, clearly setting out the reasons for your conclusions and recommendations.

II. The report should refer to the level of physical, relational and procedural security appropriate to the clinical needs of the prisoner and include a recommendation for the level of security (PICU, low, medium or high) in which treatment is required.

III. If the prisoner has a learning disability, the report should demonstrate how this is associated with abnormally aggressive or seriously irresponsible conduct. In that case, the report should indicate if the prisoner is suffering from an associated mental disorder.

IV. The report must set out the nature and degree of mental disorder that makes detention for treatment in hospital appropriate and indicate the urgency of the need for treatment. The report must make it clear that appropriate medical treatment is available to the prisoner and indicate where this treatment is available.

V. The Secretary of State's decision whether to direct transfer to hospital is based on an assessment of risk. It will take account of a range of issues including public protection, and the need to ensure that the remand or sentence of the Court is preserved.

VI. The physical security and clinical needs of the prisoner based on their individual circumstances, previous history, including offending history, and treatment requirements, are essential elements of the decision.

Appendix 6

LEAVE FOR TRANSFERRED PRISONERS

Attendance at court

1. The Secretary of State's consent is not required for attendance at court for alleged or proven offences.

Medical treatment

2. Escorted leave for medical treatment (including overnight) may be given without the Secretary of State's consent in the case of prisoners transferred under section 47. Appropriate security arrangements should be made to prevent absconding. The Ministry of Justice should be notified as soon as possible.

3. In the case of prisoners transferred under section 48, the Secretary of State's permission should always be sought where possible. In an emergency, the patient should be transferred to hospital and the Ministry of Justice notified at once.

Patients Transferred under Section 48

4. We do not usually grant leave (even escorted) for patients transferred under section 48, except to allow them medical treatment or to attend court (as above) or for other exceptional reasons.

Patients transferred under Section 47

5. Generally, a patient transferred under section 47 should not be allowed privileges in hospital, like community leave, he would not have enjoyed had he been in prison. We should also remember that the pathway for a rehabilitated Section 47 patient might not be into the community, but to prison to continue their sentence. However, we also recognise that, as a restricted patient, the prisoner requires treatment for a mental disorder. With this in mind, the Mental Health Casework Section policy on leave for prisoners (other than life sentence prisoners) transferred to hospital under Section 47 is as follows:

   Escorted Leave

   Subject to the points in paragraph 5, requests for escorted leave for transferred prisoners for therapeutic reasons and to counter institutionalisation may be appropriate. When applying for such leave, Responsible Clinicians should always have in mind the general principles set out in paragraph 3 of the main part of this leave guidance and must ensure, if granted, that the leave is conducted in a way to safeguard public confidence in the arrangements. RC's should also bear in mind that the granting of escorted leave to transferred prisoners should not be taken as an indication that unescorted leave will be granted at the appropriate eligibility date (see paragraph 7). It may also be that a transferred prisoner will be granted escorted leave may years before he is eligible to be considered for unescorted leave.

Unescorted Leave

6. In line with Prison Service policy on Release on Temporary Licence (ROTL) prisoners transferred to hospital will be eligible to be considered for unescorted leave on one of the following dates (which ever is later); either

   - 24 months before the prisoner's Parole Eligibility Date (PED) or, where applicable, 24 months before the Conditional Release Date (CRD); or
   - once they have serviced half the custodial period less half the relevant remand time

   Please note that, in order to save misunderstandings or difficulties in calculating the ROTL eligibility date, the Mental Health Casework Section will be obtaining these details from the prison when the prisoner is transferred. RC's should contact the relevant MHCS caseworker if in doubt.

   Requests for leave for compassionate reasons will always be considered on their merits

Overnight Leave

7. Transferred prisoners who are subject to the parole process will not be eligible to be considered for overnight leave until three months before their PED.

Life Sentence Prisoners

8. Transferred life sentence prisoners fall into 2 categories

   Technical Lifers

   These are prisoners who were recognised by the court at the time of sentencing as suffering from a mental disorder. They could not be made subject to a hospital order because, for example, satisfactory arrangements could not be made at the time of their trial. These prisoners can, with the concurrence of the trial judge and the Lord Chief Justice, be treated as if subject to a hospital order if the Secretary of State has agreed to change their status. **No new applications for technical lifer status can now be made**. Requests for leave for technical lifers will therefore be considered in the same way as those for patients subject to s37/41.

Other Life Sentence Prisoners

The second group of lifer sentence prisoners are those whose mental health has deteriorated since sentence. These patients are required to be detained for a minimum period – the tariff. We do not normally grant unescorted leave to transferred life sentence prisoners until they are within 3 years of their tariff date. However, requests for *escorted leave* for compassionate reasons, to counter institutionalisation or for other therapeutic reasons will be considered on their merits, particularly for long-stay patients judged to no longer pose any significant risk.

Appendix 7

Good practice points

- The process to gather the required information about individual prisoners can be time consuming and is dependent on establishing effective internal and external relationships and information sharing mechanisms.

- Prison healthcare teams will require sufficient administrative capacity at an appropriate level of seniority to deliver effective transfer processes. This capacity should be built into service specifications for mental health services delivered within prison settings.

- Mental health service providers play a crucial part in keeping the transfer process on track and are responsible for

    - providing appropriately qualified doctors to conduct assessments in prisons
    - conducting assessments within the timeframe indicated in this guidance
    - ensuring that assessment processes are streamlined so removing the need for multiple assessments
    - providing medical reports using the template provide in this guidance
    - appointing a key contact person to work in partnership with the prison healthcare team transfer lead to manage the transfer process including identifying an appropriate bed and agreeing admission dates
    - having adequate cover and handover arrangements for planned and unplanned absence of the key contact for the transfer process
    - arranging appropriate transport and escorts for return to prison and for production at Court
    - engaging with prison health and offender managers to effect appropriate remissions
    - convening, coordinating and attending s117 aftercare meetings prior to remission to prison devising the Care Plan and ensuring it accompanies the prisoner on their return to custody or discharge

- Mental health service providers can support reductions in waiting times throughout the process by conducting joint nursing and medical assessments or by accepting assessments by clinical colleagues working within the same service directorate.

- The MHCS will not agree remission to prison without agreement of aftercare arrangements unless there are exceptional circumstances. The requirement to provide aftercare for people detained in hospital is set out in s117 of the Mental Health Act. More detail on this is provided in the section on remission.

Prison health services should consider:

- establishing a comprehensive database of prison transfers and remissions under the Mental Health Act to inform the Prison Health Performance and Quality Indicators

- providing a single contact person for transfers to manage external relationships and oversee/conduct the transfer process

- developing effective working practices and protocols with NHS commissioners, the Mental Health Casework Section of MoJ and mental health service providers to support transfers
- developing appropriate internal and external information sharing mechanisms to support effective transfer processes
- how healthcare and custodial staff can maintain a working understanding of the Mental Health Act as it applies to prison transfer and remission
- operating effective access procedures for visiting healthcare professionals in their capacity as professional visitors so mental health assessments can be completed in a timely way
- providing appropriate facilities for visiting healthcare professionals that take account of the nature and purpose of mental health assessments
- working with mental health providers around the arrangements for and provision of appropriate and timely transport and escorts to secure mental health services
- how to ensure that information held by custodial services required as part of the transfer process is shared appropriately with healthcare staff
- actively participating in the remission process including attending s117 aftercare meetings and supporting the development of after care plans

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