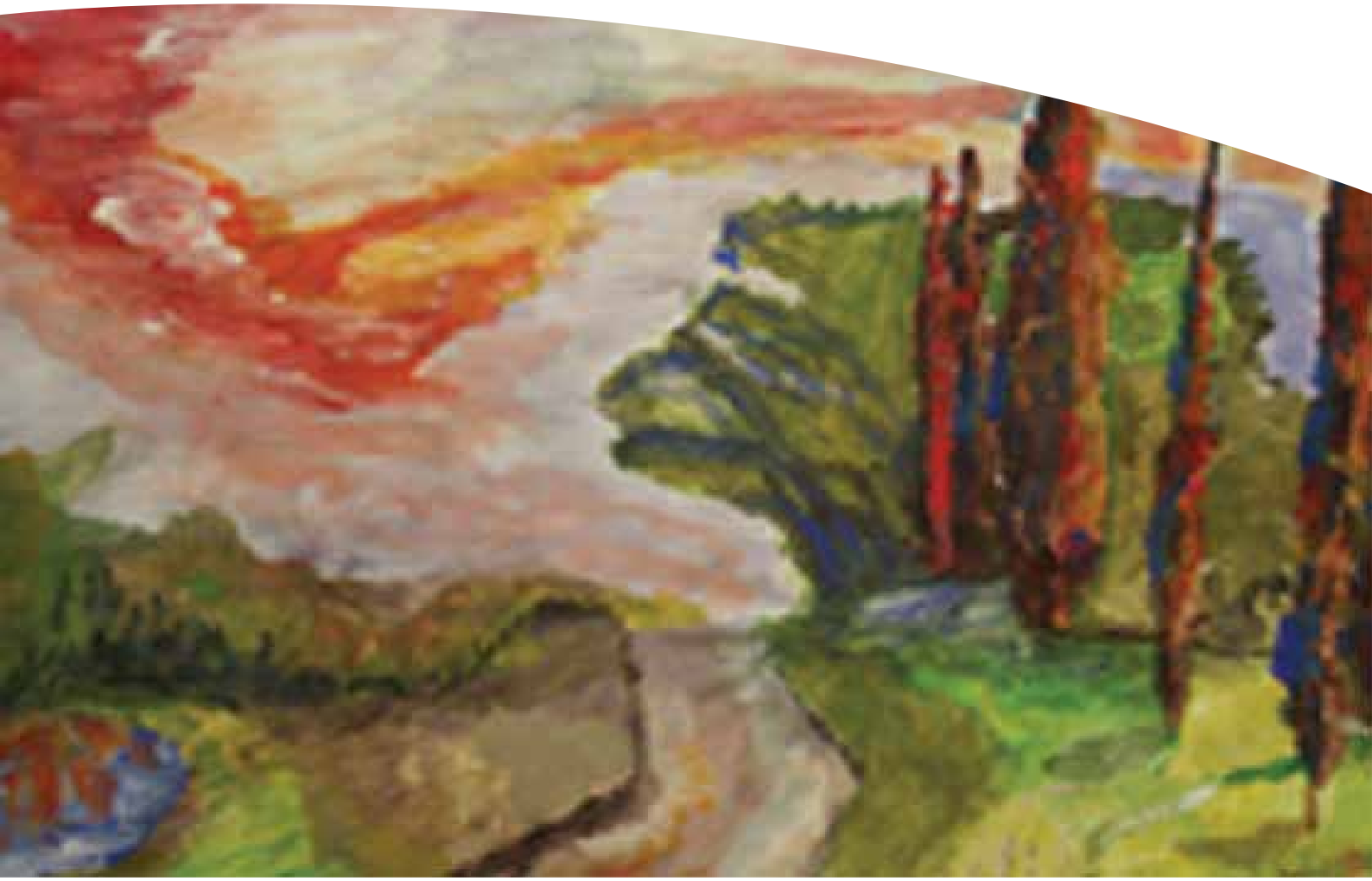
DH Department of Health

Procedure for the Transfer from Custody of Children and Young People to and from Hospital under the Mental Health Act 1983 in England



YJB

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Procedure for the Transfer from Custody of Children and Young People to and from Hospital under the Mental Health Act 1983 in England

This document details the procedure for transferring to and from hospital under the Mental Health Act 1983 any child or young person who is:

- detained in custody[1] in pursuance of any sentence or order for detention (by a court in criminal proceedings); or
- remanded in custody (by a court in criminal proceedings) or who is otherwise detained in custody.

1 The terms 'custody' and 'youth detention accommodation' have the same meanings for children and young people as 'prison' and 'imprisonment' have for adults. In section 107, Powers of Criminal Courts (Sentencing) Act 2000 defines 'youth detention accommodation' as:

- a secure training centre (STC);
- a young offender institution (YOI);
- accommodation provided by or on behalf of a local authority for the purpose of restricting the liberty of children and young people;
- accommodation provided for that purpose under subsection (5) of section 82 of the [1989 c. 41.] Children Act 1989 (financial support by the Secretary of State); or
- such other accommodation or descriptions of accommodation as the Secretary of State may by order specify.

Foreword

There are currently some unacceptable delays in the transfer to and from hospital of certain children and young people in custody who are suffering from mental disorder.

The *Procedure for the transfer from custody of children and young people to and from hospital under the Mental Health Act 1983 in England* aims to help colleagues to work together more effectively in order to ensure timely transfer of mentally disordered young people and avoid unacceptable delays. With the recent expansion in the number of secure psychiatric beds for children and young people nationally, **good practice indicates that transfers should be completed within seven days**.

The document is based on the procedure for adults with two important differences. First, parents should be involved as much as possible in decisions about the hospitalisation of their children. Second, children and young people are on the whole more vulnerable because of their youth and lack of maturity. It is not acceptable that they remain in a custodial setting without the health oversight and expertise that their mental disorder requires. Hence the expectation of a shorter time frame, seven days, to effect the transfer.

We encourage those involved in the process of transferring children and young people to and from hospital under the Mental Health Act 1983 to use this document to support them in enabling children and young people in custody to have access to the same timely care and treatment as service users accessing mental health services in the community.

Richard Bradshaw
Director of Offender Health, Department of Health

John Drew
Chief Executive
Youth Justice Board

Contents

Flow chart for children and young people

The following flow chart is adapted from the adult procedure and ties in with the existing National Commissioning Group (NCG) *Admission Criteria and Process Following Referral to the National Secure Forensic Mental Health Service for Young People.*

1

Who

Child and adolescent psychiatrist working/visiting the secure estate establishment (refer to page 6 for definition of youth detention accommodation)

↓

Procedure

Initial medical and risk assessment supported by information from the secure estate establishment's residential and/or healthcare staff as to whether transfer to a hospital is necessary.

2

Who

HC Admin responsible to the secure estate establishment's HHC (or equivalent senior manager responsible for the secure estate establishment's healthcare services)

↓

Procedure

Informs:

- responsible commissioner
- Mental Health Casework Section (fax form H1003 (C&YP) and Asset) form
- YJBPS
- YOT supervising officer
- parent/guardian/responsible LA (if child is 'looked after').

↓

Experiencing difficulties

Contact Mental Health Casework Section for guidance to give indicative view (e.g. on the level of security required).

3

Who

HHC (or equivalent responsible senior manager)

Procedure

Secures clearance from responsible commissioner to pay for NCG assessment or placement in independent sector.

Refers to National Secure Forensic Mental Health Service for Young People via local or most appropriate unit (refer to list at paragraph 4, page 8).

Second medical assessment to be provided by National Secure Forensic Mental Health Service for Young People.

Where admission to the National Service is inappropriate or no bed is available, the responsible commissioner should be informed and refer to appropriate independent sector provision (refer to paragraph 4, page 8).

If responsible commissioner is the Welsh Health Specialised Services Committee, the second medical assessment is required from a child psychiatrist designated by the Welsh Health Specialised Services Committee before a transfer can proceed.

Experiencing difficulties

Difficulty in establishing responsible commissioner (refer to chapter 4).

Difficulty in finding appropriate bed after all options have been exhausted – contact responsible commissioner.

4

Who

National Secure Forensic Mental Health Service for Young People

Procedure

If application is not accepted by the national service, provide appropriate advice to referring secure estate establishment.

If the two medical reports do not agree, refer to step 4.

If the two medical reports agree, proceed to step 5 overleaf.

5

Who

HHC and HC Admin (or equivalent responsible senior manager and admin team)

Procedure

Inform:

- Mental Health Casework Section (fax form HT014 from each doctor)
- YJBPS
- YOT supervising officer
- parent/guardian/responsible LA
- responsible commissioner.

6

Who

HHC

Procedure

Liaises with the hospital and YJB to agree movement of young person (including transportation and escort arrangements).

7

Who

Hospital service provider

Procedure

Arranges section 117 (S117) meeting to consider aftercare, if ready for transfer to custody.

8

Who

Hospital service provider

Procedure

Informs Mental Health Casework Section and YJBPS that S117 meeting is planned to consider transfer back to secure estate establishment.

Provides summary of mental state, risk assessment and aftercare needs (to inform placement decision).

Invites YOT supervising officer, YJBPS and parent/guardian/responsible LA to S117 meeting.

Provides them with summary of meeting decisions.

9

Who

YJB P&CWS

Procedure

Informs Mental Health Casework Section and YJBPS that S117 meeting is planned to consider transfer back to secure estate establishment.

Provides summary of mental state, risk assessment and aftercare needs (to inform placement decision).

Invites YOT supervising officer, YJBPS and parent/guardian/responsible LA to S117 meeting.

Provides them with summary of meeting decisions.

10

Who
Hospital service provider

Procedure
Liaises with the receiving HHC and YJBPS to agree movement of the patient after the S117 meeting (including transportation and escort arrangements). Ensures discharge summary and updated Asset go with the young person for the attention of the HHC or senior manager equivalent. Provides copies of relevant documents to YJBPS. Informs YOT supervising officer and parent/guardian/responsible LA the same day.

Key: HC Admin – Healthcare administration staff
HHC – Head of Healthcare
LA – Local authority
NCG – National Commissioning Group
YJBPS – Youth Justice Board Placement Service
YOT – Youth \ Offending Team

Key contacts (refer also to Appendix 3)

	Name	Phone	Fax	Email
Mental Health Casework Section, Ministry of Justice	Lindsay McKean	020 7035 0814	020 7035 8074	lindsay.mckean@noms.gsi.gov.uk
YJBPS	Peter Minchin	0845 36 36 363 (24-hour number)		peter.minchin@yjb.gov.uk **All communications and information to:** mentalhealthtransfers@yjb.gov.uk.cjsm.net
NCG – Senior Commissioner	Matthew Johnson	020 7932 3700		matthew.johnson@london.nhs.uk

Time frame

The transfer process should usually take **no longer than seven calendar days from the medical and initial risk assessment until the transfer is effected**.

Definitions

Categories of custody

Sections 47 and 48 of the Mental Health Act 1983 apply to children and young people (under the age of 18) within the following categories of custody:

- detention and training orders – section 100, Powers of Criminal Courts (Sentencing) Act 2000;
- detention during Her Majesty's Pleasure – section 90, Powers of Criminal Courts (Sentencing) Act 2000;
- detention for life – section 91, Powers of Criminal Courts (Sentencing) Act 2000;
- determinate sentence for specified 'serious' offences – section 91, Powers of Criminal Courts (Sentencing) Act 2000;
- detention for public protection – section 226, Criminal Justice Act 2003;
- extended sentence for certain violent or sexual offences – section 228, Criminal Justice Act 2003; and
- remand in custody – section 128, Magistrates' Courts Act 1980.

Youth detention accommodation

The terms 'custody' and 'youth detention accommodation' have the same meanings for children and young people as 'prison' and 'imprisonment' have for adults. In section 107, Powers of Criminal Courts (Sentencing) Act 2000 defines 'youth detention accommodation' as:

- a secure training centre (STC);
- a young offender institution (YOI);
- accommodation provided by or on behalf of a local authority for the purpose of restricting the liberty of children and young persons;
- accommodation provided for that purpose under subsection (5) of section 82 of the [1989 c. 41.] Children Act 1989 (financial support by the Secretary of State); or
- such other accommodation or descriptions of accommodation as the Secretary of State may by order specify.

N.B. This does not include a child or young person who is 'remanded in local authority accommodation' under the provisions of section 23 of the Children and Young Persons Act 1969, regardless of whether that child or young person is placed in any form of youth detention accommodation. These are 'looked after' children, for whom care planning and placement decisions (including the decision to place a young person in youth detention accommodation) are matters for the responsible local authority, and in respect of whom arrangements for hospital admission/treatment will be made within the framework of section 22 of the Children Act 1989 and sections 2 and 3 of the Mental Health Act 1983.

Therefore this protocol does not apply for those young people remanded to local authority accommodation. The YJB will often be able to advise and facilitate the transfer but the responsibility for decisions about the transfer rests with the local authority.

Summary

Purpose

1. This guidance outlines the procedure for transferring children and young people to and from hospital under the Mental Health Act 1983. It sets out mandatory requirements for establishments regarding the identification and transfer of children and young people, and explains the procedures to be followed by the other agencies involved in the process.

Output

2. Children and young people who may need treatment in hospital under sections 47 or 48 of the Act are identified and the appropriate referrals made.

3. Where the Secretary of State directs a transfer to hospital, the transfer is implemented in accordance with the direction (which is valid for 14 days). However, good practice indicates that children and young people ought to be transferred within seven calendar days starting from the medical and risk assessment.

Secure hospital placements for children and young people – the National Commissioning Group

4. For children and young people, the commissioning responsibility for secure forensic services lies with the National Commissioning Group (NCG). The current healthcare units for young offenders are the Roycroft Clinic, Newcastle upon Tyne (males and females including those with a learning disability), the Gardener Unit, Manchester (males only), Ardenleigh, Birmingham (males and females), the Malcolm Arnold Unit, Northampton (for young people with learning disabilities), the Wells Unit, West London (males only), the Bill Yule Unit, South London (males only) and Bluebird House, Southampton (males and females). Funding has been top sliced from NHS specialist funding to pay for these services. The services must receive a psychiatrist's referral and, where known, the child or young person's home psychiatrist should be notified of the arrangement, after which the NCG units will arrange visits and further assessment of the possible future patient. The cost of this assessment is funded by the responsible PCT.

5. The processes set out in this document are based on the NHS commissioning structures, arrangements and national guidance in place at the time of publication and may therefore be subject to future changes. In particular, the coalition government has recently set out its proposals for changing the way that NHS services are commissioned in England'

Required action

6. Support from governors of YOIs/directors of STCs/heads of secure children's homes or any other secure estate establishment in which children and young people in lawful custody are detained, to ensure that healthcare, reception and custody office staff are aware of, and comply with, the attached procedure.

7. In particular:

- The Head of Healthcare (HHC) or equivalent at the secure estate establishment, in conjunction with their mental health specialist advisors, must ensure that children and young people who may need treatment in hospital are identified as soon as possible.
- The second medical assessment is to be provided by the National Secure Forensic Mental Health Service for Young People.
- Each doctor must prepare a separate report, as it is not considered adequate for the opinion of one doctor to be endorsed on the report of the other doctor.
- A completed form HI003 (C&YP) giving the young person's particulars must be attached (refer to Appendix A). Failure to provide children and young people's details will cause a serious delay in the transfer procedure. Reports must be up to date and in no circumstances more than two months old. Doctors are expected to complete the report no more than 14 days after the date of examination. While these are the maximum times, it is the aim of this protocol that transfers of children and young people are completed within seven calendar days.
- In order to eliminate delays, the Mental Health Casework Section must be informed whenever a child or young person has been assessed as needing a transfer (by the first doctor) by means of a faxed copy of form HI003 (C&YP). Healthcare administration staff must arrange with the secure estate establishment's residential/discipline/custody staff to fax details of index offence, previous convictions, an up-to-date Asset, pre-sentence report, and the sentencing warrant. Secure estate establishments must have systems in place to ensure that this is done without delay. The young person's responsible commissioner and the Youth Justice Board Placement Service (YJBPS) will also need to be informed at this time.
- In the first instance the secure estate establishment's HHC will lead, in conjunction with their mental health team or advisors, to oversee the transfer of children and young people and ensure that an established structure is in place within their health centre to facilitate transfer; this includes providing readily available contacts able to advise how to identify the responsible commissioner, and a list of approved local medical practitioners.

- On receipt of the Secretary of State's warrant directing transfer, the secure estate establishment, in conjunction with the YJBPS, must make arrangements directly with the named hospital in order for the transfer to be carried out as soon as possible. The transfer direction ceases to have effect 14 days after the date it was made.

8. The secure estate establishment's HHC or equivalent must contact the Mental Health Casework Section and the YJBPS in the following instances:

- whenever a child or young person is identified for transfer by a GP or psychiatrist working in the secure estate establishment (i.e. after first assessment), fax form HI003 (C&YP) with relevant information and a copy of the up-to-date Asset;
- after the two medical practitioners have examined the child or young person and their separate reports agree that the criteria are met, fax form HT014 to the Mental Health Casework Section, with an attached form HI003 (C&YP) noting the child's or young person's particulars. If the second medical practitioner does not have access to form HT014 then a letter containing the required information is also acceptable;
- if there is uncertainty about the appropriate hospital with regard to security levels;
- if the young person is awaiting transfer and is moved to a different secure estate establishment. Any such transfers should only be undertaken in consultation with the YJBPS and the establishment's healthcare and mental health staff or advisor(s); and/or
- in the case of continued difficulty in finding a bed in an appropriate health unit (i.e. after consulting with the appropriate PCT and/or Regional Forensic Commissioner (RFC)/Secure Services Commissioner (SSC) to no avail).

Records

9. The Mental Health Casework Section will require information from the child's or young person's custodial records on form H1003 (C&YP), details of the index offence or alleged offence, previous convictions, pre-sentence reports, the court warrant of detention (as applicable) and an up-to-date Asset. It is best practice to designate a single point of contact in the healthcare centre for the establishment's dealings with the Mental Health Casework Section and the YJBPS. There are no data protection issues which prevent this information from being shared with healthcare staff for these purposes.

Advice, information and contact points

Refer to Appendix 3.

1. Transferring sentenced children and young people (section 47 transfer)

Definition of a child or young person sentenced to custody

1.1 For the purposes of section 47(1) of the Mental Health Act 1983, children and young people serving custodial sentences are defined by section 47(5) to include those who are:

- sentenced to a detention and training order under section 100 of the Powers of Criminal Courts (Sentencing) Act 2000, or long-term detention, including detention during Her Majesty's Pleasure, under sections 90 and 91 of the Powers of Criminal Courts (Sentencing) Act 2000, or detention for public protection and extended sentences under sections 226 and 228 of the Criminal Justice Act 2003;
- committed to custody under section 115(3) of the Magistrates' Courts Act 1980, for failing to enter into recognisances to keep the peace or be of good behaviour (in all other respects these persons will be treated as civil cases); or
- detained in custody in default of payment of any sum adjudged to be paid on conviction.

Conditions for transfer under section 47

1.2 A child or young person serving a custodial sentence may be transferred to hospital by warrant under a direction from the Secretary of State (through the Mental Health Casework Section under section 47(1) of the Mental Health Act 1983 if the Secretary of State is of the opinion, having regard to the public interest and all the circumstances, that it is expedient so to do, and if he/she is satisfied by reports from at least two medical practitioners that:

- the child or young person is suffering from mental disorder;
- the child or young person's disorder is of a nature or degree which makes it appropriate for the child or young person to be detained in a hospital for medical treatment; and
- appropriate medical treatment is available for the child or young person.

1.3 At least one of the medical practitioners must be approved under section 12(2) of the Mental Health Act 1983 in either England or Wales. Doctors who have been approved as 'approved clinicians' under the Act are automatically treated as being section 12 approved.

1.4 Once section 47 action is pending, the child or young person should not be transferred to another secure estate establishment unless absolutely necessary. If, in the interim, the child or young person requires 24-hour care in a suitable healthcare facility within the secure estate in order to reduce the risk to themselves and/or others, this will be arranged by the Youth Justice Board Placement Service (YJBPS). The Mental Health Casework Section must be informed immediately if this results in the child or young person being moved to a new location.

2. Transferring unsentenced children and young people (section 48 transfer)

Definition of a child or young person in custody but not serving a custodial sentence

2.1 For the purposes of section 48 of the Mental Health Act 1983, children in custody other than those serving a custodial sentence are defined as follows:

- children detained in custody not serving a custodial sentence or children in any of the three categories below (section 48(2)(a))[2];
- children and young people remanded in custody[3] by a magistrates' court (section 48(2)(b));
- civil children and young people (but not persons committed for failing to enter into recognisances to keep the peace or be of good behaviour) (section 48(2)(c)); or
- persons detained under the Immigration Act 1971 (section 48(2)(d)) or section 62 of the Nationality, Immigration and Asylum Act 2002.

Conditions for transfer under section 48

2.2 A child or young person other than one serving a sentence of imprisonment may be transferred to hospital by warrant under a direction from the Secretary of State under section 48 of the Act if he/she is satisfied by reports similar to those required under section 47 that:

- the child or young person is suffering from a mental disorder;
- the child or young person is in urgent need of treatment;
- the child or young person's disorder makes it appropriate that he be detained in hospital for medical treatment; and
- appropriate treatment is available for the child or young person.

2 s48(2)(a) does not include young persons under the age of 18 who have been remanded in custody by the Crown Court to a Secure Training Centre or Secure Children's Home.

3 This does *not* include children and young people remanded in local authority accommodation under section 23 of the Children and Young Persons Act 1969, regardless of whether they are placed in youth detention accommodation (refer to note on paragraph 2.2, page 7).

2.3 As with section 47, at least one of the medical practitioners must be approved under section 12(2) of the Act. Once section 48 action is pending, the child or young person should not be transferred to another secure estate establishment unless absolutely necessary. If, in the interim, the child or young person requires 24-hour care in a suitable healthcare facility within the secure estate in order to reduce the risk to themselves and/or others, this will be arranged by the YJB. The Mental Health Casework Section must be informed immediately if this results in the child or young person being moved to a new location.

3. General overview of transfer procedure

Secure hospital placements for children and young people – the National Secure Forensic Mental Health Service for Young People

3.1 For children and young people under the age of 18, the commissioning responsibility for secure forensic services lies with the National Commissioning Group (NCG). The current healthcare units for children and young people in custody are the Roycroft Clinic, Newcastle upon Tyne (males and females including those with a learning disability), the Gardener Unit, Manchester (males only), Ardenleigh, Birmingham (males and females), the Malcolm Arnold Unit, Northampton (for young people with learning disabilities), the Wells Unit, West London (males only), the Bill Yule Unit, South London (males only) and Bluebird House, Southampton (males and females). In England funding has been top sliced from NHS specialist funding to pay for these services. The services must receive a psychiatrist's referral and, where known, the child or young person's home psychiatrist should be notified of the arrangement, after which the NCG units will arrange visits and further assessment of the possible future patient. The cost of this assessment is funded by the responsible PCT.

Parental involvement

3.2 It is good practice to involve parents and those with parental responsibility in decisions made about children and young people in custody, i.e. their assessment, treatment and placement. Where a child or young person is in the care of a local authority, that authority has parental responsibility and should be involved in decision-making.

Need for urgency

3.3 The designated Head of Healthcare (HHC) at the secure estate establishment in which the child or young person is placed, in conjunction with their mental health team,[4] must ensure that children and young people in custody who may need treatment in hospital are identified as soon as possible. It is government policy that children and young people suffering from mental disorder and who require specialist medical treatment need to receive it from appropriate health and social services. The fact that the child or young person is in custody must not prevent or delay access

4 The term 'mental health team' has been used as a generic description of mental health services available to children and young people in custody as different titles for mental health services are used across the YJB's secure estate.

to appropriate care and treatment, in hospital if necessary. Once a child or young person is identified as possibly needing a transfer under the Mental Health Act 1983 (for example, after their first medical examination by the secure estate establishment's GP or visiting psychiatrist), the Mental Health Casework Section must be informed of the child's or young person's details immediately, by fax, using form HI003 (C&YP) or form HT014 completed as fully as possible, together with a copy of any previous convictions, the young person's Asset, sentence plan and progress reports.

Time frame

3.4 The aim should always be that the transfer process should take no longer than seven calendar days from the medical and initial risk assessment until the transfer is effected.

Transfer on receipt of two medical reports

3.5 Under the terms of the Act, the Secretary of State may direct the transfer of a child or young person serving a custodial sentence, or similarly in custody or remand (or for other reasons), to hospital for psychiatric treatment on receipt of two separate medical reports stating that the child or young person is suffering from mental disorder and is in need of inpatient treatment. One of the two doctors must be approved under section 12(2) of the Act (i.e. have recognised special expertise in the diagnosis or treatment of mental disorder).

3.6 It is important that the relevant consultant psychiatrist or equivalent from the child's or young person's home is informed at the earliest possible stage. This is especially important when the home area service has not been involved in the initial decision to transfer the child or young person (for example, when a transfer is initiated by a GP working in the secure estate establishment and a private sector section 12 approved doctor).

3.7 The completion of form H1003 (C&YP) (refer to Appendix 1) is imperative for the processing of the transfer by the Mental Health Casework Section at the Ministry of Justice.

3.8 Where a secure estate establishment's in-house or visiting section 12 approved doctor does not concur with the view of the clinical team supporting the child that transfer under the Act is required, local resolution and agreement must be sought in the first instance. Where agreement has still not been reached, the clinical team may request a second opinion from a different section 12 approved doctor.

4. The role of primary care trusts

Establishing the appropriate PCT

4.1 The 'appropriate PCT' for children or young people in custody in England, in the case of transfers to hospital under sections 47 and 48 of the Mental Health Act 1983, is the one where the child or young person was registered with a GP prior to being placed in custody. If the child or young person was not previously registered with a GP, the appropriate PCT is where the child habitually resided before entering custody. (This is in contrast to the majority of other healthcare services for children in custody, for which the appropriate PCT is the one in which the secure estate establishment is located.[5]) The Youth Offending Team (YOT) from the child's or young person's home area should be able to help identify the responsible PCT commissioner. If the young person is 'looked after' by a local authority, that local authority should be able to identify the responsible PCT commissioner.

4.2 If a child or young person is not registered with a GP, is not a 'looked after child' or is someone for whom a previous address cannot be determined, the responsibility normally lies with the PCT area in which the offence, or alleged offence, took place.[6] However, if the child or young person is usually resident outside the UK, responsibility lies with the responsible commissioner area in which the secure estate establishment is situated, regardless of where the offence, or alleged offence, took place.

4.3 Similarly, in the case of children and young people who are not usually resident in the UK and are detained because of their immigration status, the responsible commissioner should be determined by the address of the unit providing treatment. In this context the responsible commissioner area is the one in which the facility is located.[7]

4.4 In respect of children and young people whose last known residence or habitual residence was in Wales and who are deemed to require transfer to hospital under the Act, practitioners should contact the Welsh Health Specialised Services Committee in the first instance.

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5 In Wales, the responsible commissioner is determined by the usual residence of the child or young person rather than GP registration prior to entering prison.

6 *Who Pays? Establishing the Responsible Commissioner* (DH 2007), paragraph 82.

7 Ibid., paragraph 95.

Contact details: Susan Thompson
Telephone: 02920 807573/807571; Fax: 02920 807579

Immigration Act detainees

4.5 For those children and young people detained under the Immigration Act 1971 or section 62 of the Nationality, Immigration and Asylum Act 2002, the HHC will initially have to approach the UK Border Agency (UKBA) caseworkers, as well as the YJBPS, for a decision on whether temporary admission is appropriate.

4.6 Admission may be by sections 2 or 3 of the Mental Health Act 1983 if the caseworker decides on temporary admission. Where continued detention is required, transfer will be by section 48 of the Act. If section 48 is used it is imperative that the UKBA caseworker is informed by the HHC and that there is good subsequent communication between the caseworker and the patient's responsible clinician. If the UKBA caseworker decides that a person admitted under section 48 is no longer to be detained, it is important that the psychiatrist involved is given notice, so that s/he can consider whether section 2 or 3 is required. Once ready for discharge from hospital, the individual will be liable to be re-detained in the removal centre. It will be important for the receiving team to request an invitation to attend the section 117 (S117) aftercare plan meeting or, if unable to attend, at minimum request copies of the aftercare plan in accordance with the Care Programme Approach (CPA).

4.7 It is imperative that the HHC informs the receiving hospital and Mental Health Casework Section of the immigration status of the young person.

4.8 If, for some reason, the background information is not accessible, the responsibility lies with the responsible commissioner area where the young person is in custody. When this occurs, the responsible PCT is often confirmed through the appeal and arbitration process which is led by the relevant strategic health authorities.

4.9 **In no case should disagreements or confusion about establishing the responsible commissioner delay or adversely affect treatment. An arrangement can be sought for payment while responsibility is being determined.**

Contacting mental health commissioners

4.10 When contacting commissioners, providing the following information is helpful:

- the type of service likely to be required (for example, mental illness, learning disability);

- whether the child or young person is known to local health or children's services or has a history of mental disorder; and
- whether a referral has been made to the National Secure Forensic Mental Health Service for Young People.

4.11 **Safe and effective commissioning by responsible PCTs incorporates:**

- encouraging timely assessments;
- willingness to fund assessments and placement in the independent sector promptly in the event of NCG provision being unavailable;
- promoting the necessity of CPA care plans, S117 requirements and the completion of YJB Asset and sentence planning documentation on the patient's return to custody; and
- in situations of urgency, where the responsible commissioner is in dispute, one or other parties should agree to pay for inpatient services in order to identify and ameliorate immediate risk, then proceed to arbitration for resolution.

Payment of transfer

4.12 The role of responsible commissioner encompasses local commissioning procedures (i.e. gate-keeping), providing assistance to healthcare staff in locating a bed, and paying the appropriate healthcare costs of the transferred child or young person. (Paragraph 3.1, page 15, explains that NCG units are funded from a top sliced specialist NHS funding but the PCTs remain responsible for assessments for the NCG units and for independent sector placements.) With regard to financing a transfer, the necessity for immediate action may require moving the child or young person before the finances have been fully resolved.

Transfers to independent sector providers (non-NHS providers)

4.13 The only possible exception may be transfer to independent sector healthcare providers whereby the receiving healthcare unit may have a policy of payment upfront. It is important that delays in transfer are not caused by the lack of available placements in the NCG units when, in the interim, a private facility has assessed and accepted the patient for transfer. When the need of the child or young person is urgent (i.e. the child or young person is acutely mentally ill), the PCT is obliged to find an appropriate placement whether the placement offered is in the independent sector or an NCG unit. When funding issues in isolation are inhibiting placement (i.e. reluctance of the PCT to fund a private, interim placement), the Mental Health Casework Section may direct a patient in order to prevent delay.

5. Returning a child or young person to custody from hospital and arrangements for aftercare (section 117 of the Mental Health Act 1983)

5.1 Under section 49 of the Act, the Secretary of State may impose on the transferred child or young person restrictions set out in section 41 of the Act. The order imposing the restrictions is known as a **restriction direction**. This ensures that the Secretary of State, through the Mental Health Casework Section, remains involved in the management of the case. A restriction direction makes it possible to return the child or young person to an appropriate custodial placement if they recover from their illness before their custody release date. This ensures that children and young people are not released earlier than would have been the case had they remained in custody. Where imposed, the restrictions, unless terminated by the Secretary of State, last until the date on which the child or young person would have been released from detention had they not been transferred to hospital, or in the words of the Act, 'the release date'.

5.2 A child or young person may be returned to custody by order of the Secretary of State under section 50, 51 or 53 of the Act, if the responsible clinician decides that the individual is no longer in need of medical treatment or that no effective treatment for the disorder can be given at the hospital to which they have been transferred.

5.3 The Crown Court has the power to return a young person to custody under Section 51 of the Act and Magistrates under Section 52 of the Act. In these cases, if the responsible clinician wanted to seek remission by the relevant court power, a direct approach to the court should be made.

5.4 **In order to return the child or young person to custody from hospital the following actions should be undertaken:**

- The responsible clinician writes to inform the Mental Health Casework Section and the YJBPS that the patient no longer requires treatment in hospital.
- A section 117 (S117) meeting is held (so called because section 117 of the Act is about the provision of aftercare for people who have been detained in hospital), involving the hospital, the YJBPS, the receiving secure estate establishment, the child's or young person's YOT supervising officer and parents/guardians/local authority, as appropriate.

- On confirmation of the S117 meeting being held (except in emergencies), the Mental Health Casework Section will issue the remission to custody transfer warrant.

5.5 Children and young people will generally be expected to return to the secure estate establishment where they were placed by the YJB prior to transfer to hospital; however, this must be discussed at the S117 meeting and agreed by all parties in advance of the transfer taking place. In the event of a young person attaining the age of 18 while in hospital, placement decisions will be guided by the need to meet the patient's mental health needs as well as other custodial considerations.

S117 aftercare plan

5.6 In keeping with best practice and the Act, children and young people returning to custody from hospital will be accompanied by a CPA care plan indicating whether or not the child or young person requires ongoing mental health services. This is in addition to updating the child's or young person's sentence plan and Asset. An S117 meeting should be held for this purpose. Healthcare providers working in the secure estate establishment receiving the transferred patient must be invited to attend the pre-discharge planning meeting and must make best efforts to attend. Where representation from the receiving secure estate establishment is not possible, this should not delay the child or young person returning there. The meeting should include planning and preparation for both return to custody and future release from custody, including transportation requirements.

5.7 Only in exceptional, emergency circumstances (for example, where there is a severe, non-containable risk) may a child or young person be returned to custody **before** an S117 plan has been agreed. In such circumstances an S117 meeting should be organised as soon as practicable afterwards, and always within 24 hours of the transfer. This will be reinforced by the YJB and the Mental Health Casework Section which will not issue a remission warrant unless such a meeting has been held, except in wholly exceptional circumstances. The Mental Health Casework Section must be advised which secure estate establishment the YJBPS has deemed the most appropriate for the child or young person before the remission warrant can be issued.

Expiry of restriction direction

5.8 When the restrictions expire (for example, at the end of a person's sentence), the Secretary of State has no further responsibility for the case. However, if the responsible clinician considers that the child or young person continues to need treatment, they may still be liable to detention in hospital under section 47 of the Act as if detained under section 37 (i.e., a hospital order without restrictions) which is known as a 'notional section 37 hospital order'.

5.9 For those children and young people remanded in custody by a magistrates' court and made subject to a transfer direction under section 48(2)(b) of the Act, the transfer direction will cease to have effect at the expiry of the period of remand unless the child or young person is then committed in custody to the Crown Court. However, if the magistrates' court further remands the child or young person under section 52(3) of the Act, the direction will not expire. Alternatively, if the court is satisfied that the child or young person no longer requires treatment in hospital, it may direct that the transfer direction ceases to have effect.

5.10 Where a court subsequently makes an order under sections 35, 36 or 38 of the Act, if the court makes a hospital order (s37) or hospital and limitation directions (s45a) or grants the child or young person bail, this takes precedence over an administrative direction from the Secretary of State and the transfer direction ceases to have effect.

5.11 In the case of a child or young person committed for trial in the Crown Court, the transfer direction remains in force unless it is terminated by the direction of the Secretary of State or the Crown Court, following the receipt of evidence that the child or young person no longer requires treatment in hospital.

5.12 Restriction directions made under section 49 of the Act in the case of children or young people originally in custody for reasons other than a custodial sentence or remand (civil or immigration detainees) cease to have effect, along with the transfer direction, on the expiration of the period during which the child or young person would, but for their removal to hospital, be liable to be detained in the place from which they were transferred.

6. Actions/responsibilities for staff involved in a section 47 or section 48 transfer

The role of healthcare staff (staff providing healthcare services to children and young people in secure estate establishments)

6.1 It is government policy that all those children and young people in custody who need hospital treatment must be transferred as quickly as possible. It is therefore important that healthcare and mental health staff seek assessment at the earliest moment that they think transfer is appropriate. Delays at this stage can mean that it becomes more difficult to effect transfer at a later stage. It can be particularly difficult for the receiving hospital if an assessment is completed close to the child's or young person's release date, when it was clear from earlier behaviour that an assessment would have been appropriate. After the initial medical assessment, if the GP or psychiatrist working in/visiting the secure estate establishment considers that the child or young person is suffering from a form of mental disorder which necessitates their transfer to a hospital for medical treatment, they must arrange for the child or young person to be examined by an appropriate medical practitioner. It is essential that the psychiatrist liaises with their medical and healthcare colleagues. They must also inform the YJB (P&CWS) and the Mental Health Casework Section at this point pending further notification that the second doctor is in agreement with the first doctor. If the first doctor is not approved under section 12(2) of the Mental Health Act 1983, the second doctor must be approved.

6.2 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 (ADR). The Mental Health Casework Section (MHCS) 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 could be justified. It is essential that the MHCS is involved 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.

6.3 Where possible, the second doctor should be from a hospital able to make a bed available to the child or young person (refer to page 8 regarding obtaining the second doctor). If the referring medical practitioner is unsure about the appropriate level of security required for the child or young person, he should discuss the matter with the Mental Health Casework Section (for contact details refer to Appendix 3).

6.4 It is important that those co-ordinating the child's or young person's care keep relevant stakeholders informed as early in the process as possible (for example, the child or young person, parents/guardians, the YOT supervising officer, the responsible local authority, the YJBPS, the Mental Health Casework Section and, if the child or young person is a drug user, the relevant single point of contact under the Drug Interventions Programme).

Medical reports

6.5 Each doctor must prepare a **separate report**, as it is not considered adequate for the opinion of one doctor to be endorsed on the report of the other doctor. If the second doctor agrees that the criteria for a transfer are met, both doctors will then submit their reports (usually by fax) on form HT014 to the Mental Health Casework Section, copied to the YJBPS. If the second medical practitioner has time available, they should complete a form HT014. If time is not available, a non-standard report (such as a letter) may be accepted provided it includes information that meets the requirements of the Act.

Healthcare administration staff to inform the Mental Health Casework Section

6.6 In order to eliminate delays, the YJBPS and the Mental Health Casework Section must be informed by the first doctor, by means of a faxed copy of form HI003 (C&YP), whenever a child or young person in custody has been assessed as needing a transfer. Relevant healthcare and residential staff of the secure estate establishment must arrange to fax details of the custodial warrant and, if available, the Asset and sentence planning documentation. Governors of young offenders institutions, directors of secure training centres and heads of secure children's homes must have systems in place to ensure that this is done without delay. The administration staff must ensure that both medical practitioners complete all appropriate paperwork and must assist them in faxing the necessary forms to the Mental Health Casework Section if a transfer is deemed necessary.

Transfer warrant valid for 14 days

6.7 On receipt of the Secretary of State's warrant directing transfer, arrangements must be made directly with the named hospital in order for the transfer to be carried out as soon as possible. **The transfer direction ceases to have effect 14 days after the date it is made.** If, in exceptional circumstances, transfer within this time period is not possible, please contact the Mental Health Casework Section.

Out-of-hours transfers

6.8 If a transfer is deemed necessary out of office hours, it is possible for the Mental Health Casework Section duty officer to give verbal authority. This is sufficient to permit movement of the child or young person. The appropriate paperwork will be issued on the next working day. Please refer to the contact list at Appendix 3 for the out-of-hours phone numbers to reach the Mental Health Casework Section and the YJB 24-hour duty officer.

7. Responsibility of the Mental Health Casework Section

Government considerations regarding transfers

7.1 The Secretary of State **is not obliged** to act on a recommendation made under section 47 or section 48 of the Mental Health Act 1983. He/she needs to consider whether it is right and expedient in the public interest to transfer the child or young person to hospital. The factors that need to be considered in this context include:

- whether the child or young person presents such a risk that he/she should remain in the custodial institution for the protection of the public;
- whether the child or young person is so notorious that transfer could undermine public confidence;
- any expressed intentions of the court in sentencing the person to custody;
- the possible effects of a pending appeal;
- whether the medical treatment required can be adequately provided within the YJB and secure estate establishment; and
- the length of time in custody still to be served.

The Mental Health Casework Section's prime concern is to guard against danger to the public that may ensue should a patient escape from, or be improperly allowed out of, hospital. The factors taken into account by the Mental Health Casework Section include:

- the type and nature of the offence;
- the length of the sentence;
- notoriety;
- victim issues;
- previous convictions;
- behaviour in custody;
- any previous escapes or attempts to escape;
- views expressed by the court;
- the medical practitioners' recommendations; and
- the child's or young person's past and current presenting symptoms (for example, actively suicidal or self-harming).

Appendix 1: Revised form H1003 (C&YP)

INFORMATION ON CHILD OR YOUNG PERSON RECOMMENDED FOR TRANSFER FROM CUSTODY TO HOSPITAL UNDER SECTIONS 47 AND 48 OF THE MENTAL HEALTH ACT 1983

SECTION 1 – DETAILS OF YOI/STC/SCH/OTHER SECURE ESTATE ESTABLISHMENT (specify)

Name of secure estate establishment:
Contact name: **Tel no:** **Fax no:** **Email:**

SECTION 2 – DETAILS OF CHILD/YOUNG PERSON
(Please attach the young person's Asset form)

Surname:	**First names:**	
Home address:		
Prison number (if any):	**Date of birth:**	**Sex: M** ☐ **F** ☐
Nationality or place of birth (if known):		

ETHNIC ORIGIN

(a) White
☐ **British** ☐ **Irish** ☐ **Any other white background (please specify):**

(b) Mixed
☐ **White and Black Caribbean** ☐ **White and Black African** ☐ **White and Asian**

(c) Asian or Asian British
☐ **Indian** ☐ **Pakistani** ☐ **Bangladeshi**

(d) Black or Black British
☐ **Caribbean** ☐ **African** ☐ **Any other black background (please specify):**

(e) Chinese or other ethnic group
☐ **Chinese** ☐ **Any other (please specify):**

SECTION 3 – FAMILY DETAILS

Home address:
Name of father: **Name of mother:**

SECTION 4 – DETAILS OF DETENTION IN CUSTODY
(please attach relevant Court Order or Warrant of Committal)

(a)	**Name of court:**	
(b)	**Sentence** ☐ **Remand** ☐ **Other** ☐	
(c)	**Offences/charges:**	
(d)	**Total sentence and court order for each offence:**	
(e)	**Date of (i) conviction:**	**(ii) sentence (if different):**
	(iii) Remand from:	**until:**
(f)	**Release dates (please complete as appropriate):**	
	(i) Automatic Release Date (ARD):	
	(ii) Conditional Release Date (CRD):	
	(iii) Release on Temporary Licence Eligibility Date (ROTL):	
	(iv) Parole Eligibility Date (PED):	
	(v) Non-Parole Release Date (NPRD):	
	(vi) Licence Expiry Date (LED):	
	(vii) Sentence Expiry Date (SED):	
	(viii) Lifers – Tariff Date:	
(g)	**Details of responsible Youth Offending Team:**	
(h)	**Name of supervising officer:**	
(i)	**Has the child or young person lodged an appeal?:**	**Yes** ☐ **No** ☐
	If yes, Criminal Appeal Officer Number:	

SECTION 5 – DETAILS OF DISORDER

(a) Type(s) of mental disorder from which the child/young person is suffering:
(b) Is the child/young person suicidal, or has he/she a history of suicidal tendencies? **Yes ☐ No ☐** **If yes, please give details:**
(c) Does the child/young person have a history of self-harm? **Yes ☐ No ☐** **If yes, please give details:**
(d) Is the child/young person dangerous to others, or has he/she a history of violence? **Yes ☐ No ☐** **If yes, please give details:**
(e) Has the child/young person a history of alcohol/drug misuse? **Yes ☐ No ☐** **If yes, please give details:**
(f) Has the child/young person received psychiatric treatment previously? **Yes ☐ No ☐** **If yes, please give details:**

SECTION 6 – PROGRESS WITH ARRANGEMENTS FOR ADMISSION TO HOSPITAL

(a) Name the official address of any hospital consultant who has been approached with a view to providing a place for the child or young person: **Name:** **Address:** **Telephone number:** **Outcome, if known:**
(b) Address at which child/young person was living prior to detention in custody:
(c) Place where offence was committed or, if unknown, the name of the court or police station which dealt with the case:
(d) Home health area:
(e) Details of hospital to which child/young person is to be transferred:
Names and official addresses of reporting medical practitioners: **Dr** **Dr** **Address:** **Address:**
Governor/Director/Head of Healthcare/Medical Officer: **YOI/STC/SCH/Other:** **Date:**

Appendix 2: Guidance document for healthcare professionals entering secure accommodation

This guidance document is intended to assist members of professional bodies who are required to visit patients detained in Her Majesty's Prisons, young offender institutions (YOIs), secure training centres (STCs) or secure children's homes (SCHs) at the request of the Prisons Health Service with a) a view to assessing children and young people who are deemed to require transfer under the Mental Health Act 1983 from custody to a mental health facility or b) to prepare medico-legal reports on behalf of the defence, Crown Prosecution Service, or court. These may include professions such as Psychiatrists, GPs, Registered Mental Health Nurses, Approved Social Workers etc.

Issue

The Royal College of Psychiatrists (RCP) have identified issues where staff requiring to see a patient held in custody have been refused entry until they have produced a number of pieces of identification. This has resulted in patients who require immediate attention being disadvantaged. Problems have also been identified in the facilities provided for the interview and with access to clinical records.

Solution

Below is a guidance flow chart that should be followed to allow reasonable time for healthcare professionals to gain access to patients.

1. Contact establishment and speak to the head of the department (Healthcare) you need to visit.

2. Explain the reason for your visit.

3. Give the name and number (if you have it) of the child/young person you wish to visit.

4. Describe the nature and reason for any facilities, access to clinical information and access to those supporting the individual in the secure estate establishment that you require to assist your assessment, together with an estimate of the time you expect to need for the consultation. If you need to bring a laptop computer or other electronic equipment into the secure estate establishment for the consultation you should discuss this at the time of booking the visit.

5. Arrange a mutually agreeable date and time. It should be noted that while most secure estate establishments are unable to facilitate consultations during the lunchtime period, most do allow official visits to take place during the evenings especially in urgent cases.

6. Arrange to be met at reception at the allocated date and time.

7. Check with the head of department that you have the correct acceptable photo ID. On arrival you will normally be required to produce a recognised photographic identity document in the form of a photo driving licence, valid passport or photographic identity card issued by your employer. The latter will need to bear the name of the issuing authority.

8. Even when you are expected, security procedures may take a little time to complete, especially at busy periods, so please arrive allowing plenty of time for these procedures to be completed. Cash, keys, mobile phones etc. are not allowed, nor are laptop computers except by prior arrangement (see above). All visitors to secure estate establishments are searched – there are no exceptions. As a general rule, the less you carry with you, the quicker the security procedures will be completed.

9. You should be afforded the same facilities as legal representatives, namely that the interview or consultation will take place within sight but out of hearing of a member of staff.

10. The Governor/Director of the secure estate establishment is responsible for the safety of children and young people, as well as staff and visitors to the establishment. In exceptional circumstances he/she may refuse or terminate the interview or consultation if he/she feels this is necessary for your safety. His/her decision in this respect is final.

In order to complete comprehensive assessments of need, these procedures will support third party staff to gain robust access to patients and clinical information.

Appendix 3: Contact list

Ministry of Justice: Mental Health Casework Section

Ministry of Justice switchboard: 020 3334 3555
Ask for a member of Mental Health Casework Section staff.

Out-of-hours contact for transfers

Mental Health Casework Section switchboard: 020 7035 4848
Select option 5 and ask for the Mental Health Casework Section duty officer.

Only contact the Mental Health Casework Section for those instances listed on page 10, and/or after having contacted your local Youth Offending Team and primary care trust.

National Commissioning Group

General enquiries: 020 7932 3838
Fax: 020 7932 3800
Email: enquiries@ncg.nhs.uk

Welsh contacts

Local health boards for all Welsh Regions: **www.wales.nhs.uk/directory.cfm**

Welsh Health Specialised Services Committee – general contact number: 029 2080 7575

Youth Justice Board Placement Service

All communication and information should be sent to:
mentalhealthtransfers@yjb.gov.uk.cjsm.net

Main placements number: 0845 3 63 63 63
In office hours ask for the operations or casework manager; out-of-hours calls will be answered by a duty officer.

Appendix 4: Links and publications relating to the Mental Health Act 1983

Department of Health and Welsh Assembly Government, Procedure for Cross-border Healthcare Commissioning between England and Wales, 2007

www.wales.nhs.uk/documents/WHC(2007)036.pdf

Health of Wales Information Service (HOWIS), NHS Wales Directory

www.wales.nhs.uk/

Mental Health Act 1983: revised Code of Practice (for England), 2008

www.dh.gov.uk/en/Healthcare/NationalServiceFrameworks/Mentalhealth/DH_4132161

Reference Guide to the Mental Health Act 1983 (England), 2008

www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_088162

Department of Health, Who pays? Establishing the Responsible Commissioner, 2007

For clarification on the appropriate PCT.
www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_078466

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