



Ministry  
of Justice



HM Prison &  
Probation Service

## **Mental Health Casework Section Guidance**

### **Transfers between Hospitals in England and Wales**

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# TRANSFERS WITHIN ENGLAND AND WALES

## LEGAL PROVISIONS

### The role of the Secretary of State in relation to Transfer

1. Section 19 of the Mental Health Act 1983 (MHA) and regulations made under it, enable a patient who is detained in hospital to be transferred to another hospital and to be detained in that hospital on the same basis. By virtue of section 41(3)(c) of the Act, where the patient is subject to a restriction order, the consent of the Secretary of State is needed to transfer any restricted patient between hospitals under section 19.

### Internal Transfers and “Named” Wards

2. Under section 47 of the Crime (Sentences) Act 1997 the court, when making a restricted hospital order or a hospital direction with limitation direction, and the Secretary of State, when transferring a prisoner to hospital when he also attaches a restriction direction, may direct that the patient be detained in a specific hospital unit. This will normally be to a named ward to prevent patients being moved to lower levels of security within a hospital without the Secretary of State’s agreement. Where a hospital unit is named, the Secretary of State’s agreement is needed for movement out of that unit, even if the transfer is to the same level of security. If however, the transfer involves no change to either the named unit/hospital, prior agreement from the Secretary of State is not required. The Mental Health Casework Section (MHCS) , should, however, be informed of the move.

## POLICY ON SECTION 19 TRANSFERS FOR RESTRICTED PATIENTS

3. The Secretary of State recognises the importance of patients being placed in appropriate levels of security at all stages of their detention, and that the ultimate goal, where possible, is the patient’s safe rehabilitation back into the community. The Secretary of State’s role is to ensure that transfers between hospitals preserve public safety, and, where appropriate, respect the feelings and fears of victims and others who may have been affected by the offences. The Secretary of State will not agree to a transfer unless he is satisfied that the move will not put the public or victims at risk.
4. To help responsible clinicians (RCs) provide all the information required to enable the Secretary of State to properly risk assess transfer proposals, a form is provided with this guidance at:  
<https://www.gov.uk/government/collections/mentally-disordered-offenders>

5. The Secretary of State expects transfer proposals to include a full account of all the information required in the application form to enable an informed decision to be made.
6. When sufficient evidence has been received, the proposal will be considered within 5 working days for a level or upgrade transfer and 10 working days for a downgrade or trial transfer. These timescales run from the date all the required information has been received by MHCS. Although no guarantees can be given, every effort is made to meet these targets. If there is an urgent need for transfer (most likely to be when an increase in the level of security is required), the RC should speak with the relevant Casework Manager. Proposals for transfer to lower levels of security are given additional scrutiny to ensure that the proposed place of detention does not increase the potential risk to the public.
7. Once the RC's proposal has been considered and a decision reached, the RC will be informed by letter. If the proposal is being refused or the patient is to be transferred to a higher level of security, the Secretary of State's reasons will be clearly set out. If the Secretary of State consents to the formal transfer of the patient (in some cases following a period of trial leave), we will inform the applicant and the RC at the current hospital, copied to the Chief Executive of the relevant NHS Trust, or manager of independent hospital. The Chief Executive/Manager's copy should be retained by the current hospital and the RC's copy should be forwarded, with all the relevant documents concerning the patient's detention, including the police reports, to the RC at the receiving hospital.
8. MHCS must be informed once the patient has moved. MHCS will then inform the police that the transfer has taken place.
9. Once transfer has taken place, the Secretary of State expects the care team to constantly review the patient's suitability for that level of security and, if in any doubt, to contact MHCS staff without delay.

## **TRIAL LEAVE**

10. In situations in which a period of testing in another hospital is considered necessary to ensure that the patient can be managed appropriately in the proposed hospital, the Secretary of State will give permission for "trial leave" as a precursor to consent for transfer under s19. Trial leave is effected by means of granting permission for s17 leave for the sole purpose of temporary transfer to the proposed hospital. A trial transfer is the default arrangement for movement out of high secure hospitals as it leaves responsibility for the patient with the responsible clinician in the high secure hospital. It also leaves the responsible clinician free to revoke the transfer instantly in the event that it is seen not to be working until such time as the Secretary of State has given consent to the s19 transfer. The RC should specify the duration of the trial leave sought and in most cases 6 months should be sufficient to determine whether a full transfer is appropriate. MHCS will agree to extensions, not usually exceeding 12 months in total, to

enable further testing to take place.

## TRANSFER APPLICATION FORMS

11. To help ensure that the Secretary of State receives all of the information necessary to make a decision, transfer request forms are provided for RCs (see **attachment**). The RC at the current hospital should complete the form entitled “*Application for trial leave or full transfer to another hospital*”. The RC at the proposed hospital should either fill in the Annex entitled “*Assessment of patient by proposed Responsible Clinician at accepting hospital*” or provide written confirmation of acceptance and include an outline of the proposed treatment plan for the patient. It is the current RC’s responsibility to ensure that we receive the views of the receiving hospital, including their consent to the proposed transfer.
12. These forms should be combined and sent to MHCS by the requesting RC, and supplemented with any additional information that the RC considers would assist the Secretary of State. Examples of such information would include additional material which explores the reasons for recommending transfer at this stage of the patient’s rehabilitation/treatment (this may take the form of reports prepared for a CPA meeting, for example). Requests for further information may be made by MHCS if the caseworker considers this necessary to conduct a full risk assessment, and consideration of the proposal will be delayed until this has been received.
13. As part of any request for trial leave or transfer for a restricted patient, the Secretary of State requires the following information:

**Section 1** requires the patient’s and clinicians’ details (both proposing and accepting) along with reasons for the transfer and any victim issues. It is important to be clear on the aims of the proposal and the anticipated benefits for the patient’s treatment and/or rehabilitation, both in the long and short term.

**Section 2** requires specific details of the patient’s current presentation and behaviour including a full risk assessment of the current mental state, compliance with medication, insight, attitude to his/her offending and abscond risk. Also included should be any assessment of the level of risk in terms of harm to the public, taking into account the nature and adequacy of safeguards and any other risk factors, particularly to victims and their families, consulting with the Victim Liaison Officer where appropriate. MHCS would additionally like to be notified if there are any potential public concerns or media attention and any measure proposed in response to such concerns, to assist with the management of the patient’s case.

Generally, the form should also note any concerns which have been expressed, or are likely to be expressed, by victims of the offences committed by the patient or by families of the victims. In addition, information about anyone who, on account of their relationship with the patient, may have reasonable cause to be concerned about the patient’s transfer, especially if a reduction of security is involved and/or the move

brings the patient nearer to the venue of the index offence or the home area of the victim(s), or both, is required plus details of any measures proposed in response to such concerns.

14. Where a number of patients are to be transferred within the same trust, it may be possible to treat these as a group transfer. The criteria for a group transfer are as follows:
- Five or more patients to be transferred.
  - The transfer is within the same hospital Trust.
  - The security level of the patients remains unchanged.
  - There is a minimum of five weeks notice of the date of transfer.

If the RC considers that a group transfer is appropriate, there is no need to complete an application form and the request can be made by sending a letter setting out the following information to the MHCS QA & Casework Systems Team at: [mhcsqacs@justice.gov.uk](mailto:mhcsqacs@justice.gov.uk)

- List of all restricted patients:
  - Full name
  - DOB
  - Current ward and security level.
  - Current address
  - Current responsible clinician
  - Details of current Detention Authority
  - Full details of proposed location, including ward, security level and responsible clinician.
  - Details of proposed Responsible Clinician
  - Contact details, including person co-ordinating the move and email addresses
  - Any additional information e.g. media interest.

15. MHCS aims to make a decision on all requests for transfer within 10 working days of the receipt of all relevant information

## **TRANSFER OF PERMISSION FOR s17 COMMUNITY LEAVE**

16. The default position is that consent for s17 leave will remain when a patient transfers from one hospital to another. However, this will be considered on a case by case basis, and permission may be rescinded should the Secretary of State have concerns that leave is no longer appropriate. Situations in which permission for leave may be rescinded include upwards transfers as a result of increase in risk, or if there is evidence that the patient will have particular difficulty settling in a new environment such that risk may temporarily increase.

## **PRISON TRANSFER AND HOSPITAL DIRECTION CASES**

17. Requests for transferred prisoners to move hospitals will be considered in line with the policy set out above. The only exception is that the Secretary of State will usually not consent to the transfer of a prisoner to an open unit, unless the transferred prisoner would be likely to be eligible for transfer to open conditions in prison and he is otherwise satisfied that treatment in an open unit is appropriate.