



NHS Management Executive  
St. Andrew's House  
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Dear Colleague

**AMENDMENTS TO THE MENTAL HEALTH  
(SCOTLAND) ACT 1984 BY THE CRIME (SENTENCES)  
ACT 1997  
TRANSFERS OF CONDITIONALLY DISCHARGED  
PATIENTS BETWEEN JURISDICTIONS**

**Summary**

1. The purpose of this circular is to inform you of the coming into force on 1 October 1997 of provisions in the Crime (Sentences) Act 1997 which introduce new powers enabling conditionally discharged restricted patients to be transferred between jurisdictions in the United Kingdom, Channel Islands and Isle of Man without any interruption in their supervision or potential liability to recall to hospital.

2. The provisions are intended to help patients wishing to move **permanently** to another jurisdiction eg for family reasons. The effect of the transfer will be to make the patient subject to the relevant mental health legislation in the receiving jurisdiction as if their conditional discharge had been from a hospital in that jurisdiction. The provisions will not affect temporary visits by conditionally discharged patients to other jurisdictions, eg for holidays, which may still be authorised without using the new powers. Responsible Medical Officers and Social Work Supervisors should continue to consult The Scottish Office, Public Health Policy Unit, in the normal way about such visits.

3. The attached Annex A sets out in more detail the changes in procedure as a result of the new legislation and Annex B sets out the legislative amendments in full.

**Action**

4. This letter should be drawn to the attention of those whose duties require knowledge of restricted patients and the relevant Mental Health (Scotland) Act 1984

Yours sincerely

**DR KEVIN WOODS**  
Director of Strategy and Performance Management

FRP03129

2nd October 1997

**Addressees**

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## **Introduction**

Schedule 3, Part II of the Crime (Sentences) Act 1997 comes into force on 1 October 1997 and amends the Mental Health (Scotland) Act as set out in Annex B

## **New Powers**

Schedule 3 introduces new sections 77A and 80A to the Mental Health (Scotland) Act 1984 which enable patients conditionally discharged in Scotland to be transferred to England, Wales or Northern Ireland and a corresponding provision in the Mental Health Act 1983 will enable patients conditionally discharged in England and Wales to be transferred to Scotland.

The Schedule also introduces new provisions relating to the transfer of patients to or from the Channel Islands and Isle of Man. At present these provisions cannot be used as no corresponding legislation has yet been introduced in the Islands, but transfers may be made following procedures adapted from the guidance given below as soon as the necessary powers are in place.

## **Transfers to England and Wales or Northern Ireland**

Sections 77A and 80A enable the Secretary of State to transfer responsibility for a patient conditionally discharged under section 64(2) or 68(2) of the Mental Health (Scotland) Act 1984 to the Home Secretary or the relevant Minister of State for Northern Ireland. A transfer may be authorised only where the Secretary of State considers it to be in the interests of the patient, and where the Minister in the receiving jurisdiction has given prior consent to the transfer. Once responsibility has been transferred, the patient becomes subject to the corresponding mental health legislation in the receiving jurisdiction so that supervision will be undertaken by the relevant agencies there, and recall, if required, will be to a hospital there. The patient will have the rights of appeal against restrictions applicable in that jurisdiction, and may be given absolute discharge in accordance with the legislation there.

Before a request is made to The Scottish Office for a transfer under section 77A or 80A, the patient's Responsible Medical Officer and Social Work Supervisor should liaise with the relevant agencies in the receiving jurisdiction in order to agree arrangements for the patient's residence and supervision there, including a provisional date for the transfer and the conditions of discharge which it is proposed should be applied. Written agreement should be sought from the appropriate health authority and local authority social services department in the receiving jurisdiction confirming their willingness to take responsibility for the patient if transfer is approved. The Scottish Office Public Health Policy Unit will then consider the proposals for transfer in consultation with the Department's Psychiatric Adviser and, if content, seek formal agreement from the Home Office or Northern Ireland Office. If necessary, the proposals will be discussed further with the Responsible Medical Officers and Social Work Supervisors before this stage is reached.

Once the Home Office or Northern Ireland Office has given its consent, The Scottish Office will confirm to the Responsible Medical Officer and Social Work Supervisor that it is willing

to approve the transfer. As formal approval has the effect of disapplying the relevant provisions of the Mental Health (Scotland) Act 1984, this will not be issued until confirmation is received that the patient has arrived in the receiving jurisdiction. The arrangements for this will need to be made through liaison between the Responsible Medical Officer and Social Work Supervisor and The Scottish Office.

The Scottish Office, Public Health Policy Unit is willing to discuss proposals for transfers informally with the Clinical Team at any stage in the process in order to ensure that suitable arrangements are made.

A psychopathic disorder is not included in the legal definition of mental disorder in Scotland or Northern Ireland. Therefore it will not be possible for patients categorised only as psychopaths to be transferred to Scotland under Sections 80A or 81A of the Mental Health Act 1983.

### **Transfers from England, Wales or Northern Ireland**

Similar procedures to those set out above will be followed by the agencies in England and Wales or Northern Ireland in making arrangements for a transfer to this jurisdiction under section 80A of the Mental Health Act 1983 or section 81A of the Mental Health (Scotland) Act 1984. NHS Trusts/Health Boards and local authority social work departments will be asked to give written agreement to the proposed transfer following the initial liaison between the relevant professionals in each jurisdiction. The Scottish Office will then be asked by the Home Office or Northern Ireland Office to give formal consent to accept responsibility for the transferring patient.

In considering this request, The Scottish Office Public Health Policy Unit will wish to satisfy itself that suitable arrangements have been made for the residence and supervision of the patient in Scotland. To avoid delays at this stage, the prospective Responsible Medical Officer and Social Work Supervisor in Scotland may wish to consult The Scottish Office at an earlier stage about the arrangements being made for the transfer.

Once transfer has been formally confirmed by the Home Office or the Northern Ireland Office, the patient becomes subject to the provisions of the Mental Health (Scotland) Act 1984 as if he or she had been conditionally discharged under Section 64(2) or 68(2). The supervisors will be responsible for submitting regular reports on the patient to The Scottish Office in accordance with the guidance on the Supervision and After-care of Conditionally Discharged Restricted Patients contained in the Memorandum of Procedure. Section 63 of the 1984 Act will have effect from the date of transfer of responsibility, so that a transferred patient may appeal to the Sheriff after 6 months have elapsed from the transfer date, and then once a year thereafter.

**Amendments of the 1984 Act***Transfers from Scotland to England and Wales*

6. After section 77 of the 1984 Act there shall be inserted the following section -

“Transfer of responsibility for patients to England and Wales.

77A.-(1) If it appears to the Secretary of State, in the case of a patient who-

(a) is subject to a restriction order under section 59 of the Criminal Procedure (Scotland) Act 1995; and

1995 c.46.

(b) has been conditionally discharged under section 64 or 68 of this Act,

that a transfer under this section would be in the interests of the patient, the Secretary of State may, with the consent of the Minister exercising corresponding functions in England and Wales, transfer responsibility for the patient to that Minister.

(2) Where responsibility for such a patient is transferred under this section, the patient shall be treated-

(a) as if on the date of the transfer he had been conditionally discharged under the corresponding enactment in force in England and Wales; and

(b) as if he were subject to a restriction order under the corresponding enactment in force in England and Wales.”

*Transfers from Scotland to Northern Ireland*

7. After section 80 of the 1984 Act there shall be inserted the following section -

“Transfer of responsibility for patients to Northern Ireland.

80A.-(1) If it appears to the Secretary of State, in the case of a patient who-

(a) is subject to a restriction order under section 59 of the Criminal Procedure (Scotland) Act 1995; and

(b) has been conditionally discharged under section 64 or 68 of this Act,

that a transfer under this section would be in the interests of the patient, the Secretary of State may, with the consent of the Minister exercising corresponding functions in Northern Ireland, transfer responsibility for the patient to that Minister.

(2) Where responsibility for such a patient is transferred under this section, the patient shall be treated-

(a) as if on the date of the transfer he had been conditionally discharged under the corresponding enactment in force in Northern Ireland; and

(b) as if he were subject to a restriction order under the corresponding enactment in force in Northern Ireland.”

*Transfer from Northern Ireland to Scotland*

8. After section 81 of the 1984 Act there shall be inserted the following section -

“Transfer of responsibility for patients to Scotland from Northern Ireland.

81A.-(1) If it appears to the relevant Minister, in the case of a patient who-

(a) is subject to a restriction order under Article 47(1) of the Mental Health (Northern Ireland) Order 1986; and

(b) has been conditionally discharged under Article 48(2) or 78(2) of that Order,

that a transfer under this section would be in the interests of the patient, that Minister may, with the consent of the Secretary of State, transfer responsibility for the patient to the Secretary of State.

(2) Where responsibility for such a patient is transferred under this section, the patient shall be treated-

(a) as if on the date of the transfer he had been conditionally discharged under section 64 or 68 of this Act; and

(b) as if he were subject to a restriction order within the meaning of this Act.

(3) Where a patient responsibility for whom is transferred under this section was immediately before the transfer subject to a restriction order of limited duration, the restriction order to which he is subject by virtue of subsection (2) above shall expire on the date on which the first-mentioned order would have expired if the transfer had not been made.

(4) In this section 'the relevant Minister' means the Minister exercising in Northern Ireland functions corresponding to those of the Secretary of State."

*Transfers from the Islands to Scotland*

9. After section 82 of the 1984 Act there shall be inserted the following section -

"Responsibility for patients transferred from Channel Islands or Isle of Man to Scotland. 82A.-(1) This section applies to any patient responsibility for whom is transferred to the Secretary of State by the authority exercising corresponding functions in any of the Channel Islands or the Isle of Man under a provision corresponding to section 82B of this Act.

(2) The patient shall be treated-

(a) as if on the date of the transfer he had been conditionally discharged under section 64 or 68 of this Act; and

(b) as if he were subject to a restriction order within the meaning of this Act.

(3) Where the patient was immediately before the transfer subject to an order restricting his discharge, being an order of limited duration, the restriction order to which he is subject by virtue of subsection (2) above shall expire on the date on which the first-mentioned order would have expired if the transfer had not been made."

*Transfers from Scotland to the Islands*

10. After section 82A of the 1984 Act there shall be inserted the following section -

"Transfer of responsibility for patients to Channel Islands or Isle of Man. 82B. If it appears to the Secretary of State, in the case of a patient who-

(a) is subject to a restriction order under section 59 of the Criminal Procedure (Scotland) Act 1995; and

1995.c.46.

(b) has been conditionally discharged under section 64 or 68 of this Act,

that a transfer under this section would be in the interests of the patient, the Secretary of State may, with the consent of the authority exercising corresponding functions in any of the Channel Islands or in the Isle of Man, transfer responsibility for the patient to that authority."