



HM Prison &
Probation Service

Mental Health Casework Section

Guidance:

Section 17 – Leave of Absence

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1. Introduction

1.1 The Secretary of State for Justice (SoS) recognises that leave has an important part to play in the treatment and rehabilitation of restricted patients. It also provides valuable information to help ensure the safe management of restricted patients whilst detained in hospital and help prepare them for subsequent life in the community when discharged. The SoS recognises the need to balance the protection of the public with the rights of patients to receive treatment. This guidance sets out the SoS's approach to applications for community leave under section 17 of the Mental Health Act 1983 (MHA).

1.2 Mental Health Casework Section (MHCS) and NHS England (NHSE) have agreed joint performance management framework and target timescales for decisions setting out the roles and responsibilities of both parties (see: [Performance Management Framework](#)). The same principles and procedures will apply by MHCS to applications from patients under NHS Wales care.

2. Legal Provisions

2.1 Section 41(3)(c)(i) of the MHA requires a Responsible Clinician (RC) to obtain consent from the SoS before granting section 17 leave to a restricted patient. No such patient may leave the hospital or unit named on the detention authority (DA – see Glossary) without such consent. In practice, decisions are taken by officials from MHCS within Her Majesty's Prison and Probation Service (HMPPS), an executive agency of the Ministry of Justice (MOJ), on behalf of the SoS under delegated arrangements.

3. Types of Restricted Patients

3.1 Restricted patients are mentally disordered offenders who are detained in hospital for treatment and who are subject to special controls by the SoS. They include offenders diverted from the Courts into the hospital system, and those transferred to secure hospitals from prison (or Immigration Centre) and made subject to a restriction direction. For full details of the types of Restricted Patient see [Mentally disordered offenders - the restricted patient system](#).

4. Specific Categories of Patients

Patients Considered Unfit to Plead at their Trial

4.1 Patients identified by the Court as unfit to plead at the time of trial, and made subject to a Hospital Order made under section 5 of the Criminal Procedure (Insanity) Act 1964 (as substituted by s24 of the Domestic Violence Crime and Victims Act 2004), are subject to regular review by MHCS to establish whether they are now considered to be fit to plead (see guidance available [here](#)). In response to applications for leave on behalf of these patients, however, MHCS case managers may ask RCs again whether they think the patient is fit to plead their offence prior to making a decision. Applications are treated on their merits and decisions made following risk assessment irrespective of the patient's fitness to plead at any time but the overall context is that if the patient has recovered to the extent that they are considered suitable to have leave from hospital, then a question should also be asked about their suitability to stand trial for the offences for which they were originally considered unfit to plead.

Discharged Patients Recalled to Hospital

4.2 Restricted Patients who have previously been conditionally discharged into the community but recalled by warrant of the SoS, are detained under the terms of their original Hospital and Restriction Orders and controls on their leave in the community are resumed at the point they are admitted to hospital again. Such patients will not have any community leave and RCs will need to apply for leave in the usual way.

Transferred Prisoners

4.3 When making decisions on prisoners (and s45A patients), the SoS expects the RC to have considered whether, if the patient has recovered sufficiently well to be suitable for leave, they continue to meet the MHA detention criteria, and whether a return (remission) to prison should be sought. This is the case even if there have been previous indications that there is no intention to return the patient to prison, as remission is an option which remains open to the SoS at any time whilst the prison sentence is extant and the patient's condition subject to change at any time.

4.4 The SoS takes the view that, in general, transferred prisoners, and s45A patients, should not have unescorted leave in the community from secure hospitals where they would not be eligible to be considered for such leave from prison (under [Release on Temporary Licence](#)). However, each application will be treated on its merits and a risk assessment undertaken before a decision is made. RCs should consult with a transferred prisoner's Offender Manager prior to submitting an application to the SoS for consideration. Please refer to section 8 on victims below which also applies to applications from transferred prisoners.

High Profile Patients

4.5 There are some patients designated as 'High Profile' on, or after, entry into the system if, for example, it is considered that: they present an unusually high risk of harm; there are particularly sensitive victim issues; or they committed a noteworthy offence which has generated substantial media attention. For a full list of the criteria please see the guidance [here](#). To help ensure public protection, senior managers within MHCS make the decisions on all applications for these patients in order to ensure that an added level of scrutiny is given. However, this does not mean that there is a different threshold or are different criteria which apply to considering applications for leave from patients designated as "high profile".

Foreign National Patients

4.6 The Home Office may have an interest in patients who are nationals of countries outside the UK particularly those who are suitable for deportation or have an outstanding deportation order

against them. Leave is not automatically denied to these patients but account will be taken of their immigration status and their risk of absconding assessed.

Patients who Lack Capacity (and who may be subject to a DOLS Order following discharge)

4.7 There are a number of patients who, following assessment, are thought to lack capacity and who, if they were to be discharged into the community, would need, in their best interests, to be constantly supervised in a residential care home (or similar) under a Deprivation of Liberty Safeguards (DOLS) Order ([Liberty Protection Safeguards](#)) made under the Mental Capacity Act, as they are not able to live independently without the support such arrangements provide. When considering applications for leave for these patients the SoS will carefully consider the circumstances and assess the level of risk presented by the patient alongside the longer-term plans to discharge them into the community. Further details of the options available to patients who lack capacity can be found [here](#).

5. Applications for Community Leave

5.1 The SoS accepts that the mental health of the majority of patients will, at some stage in their treatment, improve to the point where the risk they pose is considered sufficiently low to enable their progress toward recovery to be tested out with leave in the community (usually with certain restrictions or conditions in place).

The Standard Application Form

5.2 To help ensure that the SoS receives all of the information necessary to take a decision, an [application form](#) for leave (apart from leave for medical treatment – see below) is available to RCs to use.

Risk Assessment

5.3 Officials within MHCS take decisions on applications following a risk assessment of the proposal. This system helps ensure that the SoS makes decisions which balance the need to protect the public, whilst recognising the rights of patients to receive treatment for their mental disorders under the MHA.

Leave within the Grounds of the Specified Detention Authority (DA)

5.4 The RC cannot allow the patient beyond the boundaries of the hospital or unit named on the DA without the SoS's agreement. However, it is accepted that the layout of each hospital or unit is unique and there are differences in the security arrangements at each site. RCs are free to contact MHCS to establish or discuss the practical effects of the DA on the patient at any time but should be familiar with the contents of the DA prior to allowing patients to access the grounds of their unit.

6. Types of Leave authorised by the SoS

Leave for Medical Treatment

6.1 On entry into hospital either from Court, Immigration Centre or Prison (unless the patient is designated as High Profile), authority for leave outside the hospital will automatically be granted to allow patients access to either emergency treatment or to attend routine medical appointments. MHCS will set out the conditions applying to the authority in the letter sent to RCs following the imposition of the Hospital Order or transfer direction or following recall. Only if the RC wishes to seek a derogation from the conditions set on entry need they apply to the SoS for medical leave (apart from

emergency treatment). For derogations and for all High Profile patients, there is a separate [application form for medical leave](#).

6.2 In emergency situations, prior SoS permission does not need to be sought for any patient but RCs should inform the MHCS as soon as possible via email giving brief details and expected or actual date of return to their detaining unit.

Escorted Day Leave

6.3 In most cases following treatment for their patient's disorder, the RC will wish to test the efficacy of that treatment by proposing leave in the community in order to give access to a greater range of rehabilitative activities. For many patients, this may be the first time they will experience life outside the hospital for some considerable time. The SoS recognises the importance of community leave as part of treatment but must balance the interests of public protection with any possible therapeutic benefits. Escorting the patient whilst on leave in the community is *normally* – i.e., where no concerns arise then or subsequently - the first stage in a graduated programme on the path to discharge in the longer term.

6.4 Escorts are defined as employees of the hospital Trust or those engaged on a formal contract basis or individuals authorised for this purpose by the hospital under s17(3) of the MHA. Generally, the number and ratio of escorts to patients will be left to the RC to determine but the SoS may, on occasion, specify a number and type of escort.. Patients should be within a reasonable distance of escorts at all times so as to enable them to intervene quickly, if so required, to ensure public safety and security (and that of the patient).

Escorted Overnight Leave

6.5 RCs can apply for patients to have escorted leave which involves the patient spending one or more nights away from the hospital in which they are detained. Officials will give particular scrutiny to the expected therapeutic benefits of such leave, the proposed arrangements for any escorts and the availability of support for the patient should they become unwell (also see section on long-term escorted leave below).

Unescorted Day Leave

6.6 The SoS will consider applications for unescorted community leave at the point where the RC believes the patient is sufficiently fit and rehabilitated enough to be able to respect the conditions of leave, behave safely in the community and abide by the limits set for return to hospital without being escorted.

6.7 As with escorted community leave, the SoS will consider the particular circumstances of the request carefully and in particular will consider the patient's offence history, any incidents of abscond or escape, progress in hospital, the therapeutic benefit of the leave and the potential risk posed by the patient to themselves or others. As this decision involves the patient being in the community alone, perhaps for the first time since being detained in hospital, decisions are taken by senior officials within MHCS normally based on recommendations made by Case Managers thus ensuring added scrutiny is given to applications in the interests of public safety.

Unescorted Overnight Leave

6.8 As patients approach the stage of their rehabilitation where they are close to potential discharge, it is common for RCs to ask for unescorted overnight leave. As with any application for leave, the SoS will only consent to overnight leave if satisfied the proposal does not put the public, or

patient, at undue risk. The SoS will consider each application for overnight leave on its merits, but may require that the number of nights away from the detaining hospital is limited where this is necessary for the safe rehabilitation and testing of the patient or the appropriateness of their accommodation. For such leave to be approved, a specified address will need to be given. Normally this will be the accommodation where the patient will live following their discharge. Particular attention will be paid to the level of professional support available to the patient in the proposed accommodation.

6.9 Where the Tribunal has made a deferred conditional discharge and the proposed discharge address is a hostel or other housing placement, which insists on a minimum period of overnight assessment of the patient, the SoS will consider any request for overnight leave in the context of that decision, so as not to frustrate the proposed discharge. Nonetheless, the SoS will not grant permission for leave unless satisfied that it does not put the public, or patient, at an undue level of risk.

Long-Term Escorted Leave (Extended Leave of Absence)

6.10 There are a small number of restricted patients who it is difficult to discharge from hospital because of the risks associated with their mental disorder. In order to continue their treatment and rehabilitation, the SoS will consider applications for long-term (i.e. more than seven consecutive nights per week) escorted leave of absence in a community-based setting. Authority for such leave will be periodically reviewed at least annually and leave suspended if there is an escalation of risks presented by the patient. In considering such applications, the SoS will carefully assess what existing authority for leave exists and may rescind other types of leave in favour of this type. Further details are in section 6 of the guidance on [Discharge Conditions which amount to a Deprivation of Liberty](#).

Compassionate Leave

6.11 Leave may sometimes be sought for compassionate reasons for patients who would not otherwise qualify, either because it does not involve any treatment or rehabilitation activity; on risk grounds; or because they have been in hospital for too short a time to have been assessed for community leave. Examples of this are to visit a terminally ill relative or to attend their funeral. The SoS will look sympathetically on such requests, but must still be satisfied with the risk control measures suggested by the hospital.

Leave to Attend Court

6.12 Where a Court directs the attendance of a patient, the SoS will rarely refuse consent to leave and for transferred prisoners remanded to prison (s48), escorted leave to attend Court in relation to the offence(s) under trial will be granted at the time of their transfer. However, applications for other types of patient should be submitted so that adequate arrangements are made to ensure the safety and security of the public. Existing leave authorisations can be used for this purpose but patients without such authority should not attend a court hearing without escort and will need the SoS's express agreement.

6.13 The SoS's permission is also required for leave to attend Court for other legal proceedings. It is recognised that some restricted patients may be required to attend Court for purposes other than criminal proceedings, for example to attend the Family Court. Where a patient's attendance is not strictly required but is voluntary or may be seen as useful to the administration of justice, the SoS will consider all applications according to the same criteria as outlined above. Again, existing leave authorisations can be used for this purpose but patients without such authority should not attend a court hearing without escort and will need the SoS's express agreement.

Leave for Restricted Patients Subject to Police Investigation

6.14 A patient who is the subject of Police interest, for example if an alleged offence has taken place while in hospital, or if earlier allegations come to light and are then to be investigated, can be arrested and taken to a Police station for questioning. The consent of the SoS is not necessary but the Police should be informed that the person is a detained patient, subject to the provisions of the MHA, who must be returned to hospital at the conclusion of questioning. Hospitals should inform MHCS of the circumstances of the matter (in advance if possible) and advise them of the patient's return to hospital (or other conclusion). The SoS may apply additional scrutiny for requests for community leave for patients who are subject to ongoing police inquiry or who have outstanding criminal charges.

Leave outside England and Wales

- *Scotland*

6.15 Section 17 leave to Scotland from England and Wales can be authorised subject to appropriate assessments of risk. Escorts from both Scotland and England & Wales have the necessary powers of custody in both jurisdictions. For unescorted leave, the patient may similarly be taken into lawful custody should it become necessary, with the intention of returning them to England & Wales. Explicit agreement for the period of leave will be sought from the Scottish Government at RestrictedPatient@gov.scot

- *Northern Ireland*

6.16 Section 17 leave to Northern Ireland may also be permitted subject to appropriate assessments of risk with escorts from England & Wales having powers under the MHA to take into custody any patient who absconds or escapes. For unescorted leave, the patient may similarly be taken into lawful custody should it become necessary, with the intention of returning them to England & Wales.

- *Other Jurisdictions*

6.17 RCs should seek MHCS advice if seeking leave to other jurisdictions within the UK (the Channel Islands and the Isle of Man). Leave will not be authorised to locations outside the UK under any circumstances.

7. Rescinding Leave Authority

7.1 For all patients, once agreed, the SoS's consent to leave remains in operation unless the circumstances of the patient's health or other factors change the risk assessment. The RC should inform MHCS immediately should any change occur which materially affects the basis on which consent has previously been given, particularly any factor that changes a patient's risk. Based on that evidence, the SoS may rescind permission or suspend it for a period of time. The RC may also take action to suspend a patient's leave for similar reasons and should advise MHCS immediately if this occurs.

8. Victim Involvement

8.1 When considering an application for community leave, the risk assessment will take into account any known victim considerations concerning measures which will help set the conditions of leave. If the victim(s) has engaged with the Victim Contact Scheme (VCS), MHCS will seek representations from the patient's Victim Liaison Officer (VLO) when considering an application

(unless, as with a small number of applications for urgent medical or compassionate leave, time does not allow for this). It is anticipated that, where a victim has registered with the VCS, then conversations between the RC and the VLO will already have taken place and recorded on the application form. MHCS will also notify the VLO where leave is granted (although the VLO may be aware of this through contact with the clinical team). If the VLO is notified that a patient has been granted leave, it will be on the understanding that details of the timing and purpose of the leave should not be disclosed to the victim.

8.2 RCs are encouraged to develop and maintain their own contacts with the VLO and inform or consult them at important points during the patient's journey towards discharge notably any conditions the victims would wish to attach to any leave authorisation (see [guidance for clinicians](#) and [The Victims Code](#)).

8.3 If conditions requested by victims cannot be incorporated into the authority as proposed, then MHCS will explain the reasons why these have been rejected or amended to the VLO.

9. Multi-Agency Public Protection Arrangements (MAPPA)

9.1 MAPPA is the set of arrangements through which the Police, Probation and Prison Services work together with other agencies to manage the risks posed by violent and sexual offenders and other offenders deemed dangerous living in the community in order to protect the public. The arrangements for Mentally Disordered Offenders are set out in chapter 26 of the [MAPPA guidance](#). Due to the type and nature of the offences committed by restricted patients, it is likely that almost all s37/41 and s45A patients will be MAPPA eligible though, depending on the age of the offence, they may not all be covered. It is the responsibility of the hospital to ensure their records are accurate as there is no central list of MAPPA registered offenders. Some s47/49 transferred prisoners may also be MAPPA eligible and registered.

9.2 On some applications, MHCS may ask for RCs to obtain a view from MAPPA agencies prior to considering the proposal. This applies, in particular, to transferred prisoners including those serving indeterminate sentences; those who have committed a particularly serious crime, or those patients subject to multi-Agency management at level 2 or 3.

9.3 In all cases where leave has been granted by the SoS (apart from medical leave) the MAPPA coordinator should be notified by the hospital so they are aware of the position.

Annex A: Glossary of Terms

MHA	Mental Health Act 1983	The primary legislation appertaining to the detention and treatment of mentally disordered people. Part 3 covers mentally disordered offenders (MDOs). See Mental Health Act 1983 and its associated Code of Practice
RC	Responsible Clinician	The RC has overall responsibility for care and treatment for restricted patients under the MHA
SoS	Secretary of State for Justice	The member of the Cabinet with responsibilities under part III of the MHA (transferred from the Home Secretary in 2007). Day to day decisions are delegated to officials within the MOJ (HMPPS) under the Carltona principle .
MOJ	Ministry of Justice	The MOJ is the government department responsible for the discharging the SoS's functions under the MHA. Many clinicians, social supervisors and other staff involved with patient care refer to the MOJ as shorthand for MHCS.
HMPPS	Her Majesty's Prison and Probation Service	HMPPS is an Executive Agency of the MOJ.
MHCS	Mental Health Casework Section	MHCS is the section within HMPPS Public Protection Group which oversees the practical management of Restricted Patients including making decisions on behalf of the SoS
Tribunal	The First-Tier (Mental Health) Tribunal and the Mental Health Review Tribunal for Wales	The Tribunals are the independent judicial bodies charged with reviewing patients' detention in hospital.
DA	Detention Authority	The DA means the Hospital Order (set by the Court), Hospital Direction, Transfer Direction, Recall Warrant or letter agreeing to trial leave or transfer to another hospital (set by the SoS). The DA may name a complete hospital, a named unit within a hospital, or a specific level of security within a hospital. So, for example, a patient whose order states a particular unit as the DA, cannot be allowed access to the grounds of the whole hospital to which the public have access, unless an application for section 17 leave into the community has been agreed by the SoS.
VCS	Victim Contact Scheme	Under the Domestic Violence, Crime and Victims Act 2004 (DVCVA), where a restricted patient was sentenced on or after 1 July 2005, victims of serious violent and sexual offences have the right to information on key developments in a patient's progress and to make representations about discharge conditions, from the National Probation Service (NPS) under the Victim Contact Scheme (VCS). Victims do not statutorily qualify may be accepted on to the scheme on a discretionary basis.

MCA	Mental Capacity Act	The Mental Capacity Act 2005, covering England and Wales, provides a statutory framework for people who lack capacity to make decisions for themselves, or who have capacity and want to make preparations for a time when they may lack capacity in the future. It sets out who can take decisions, in which situations, and how they should go about this. The MCA Code of Practice can be found here .
DOLS	Deprivation of Liberty Safeguarding (Order)	Deprivation of Liberty Safeguards is the procedure prescribed in law when it is necessary to deprive the liberty of a patient who lacks capacity to consent to their care and treatment in order to keep them safe from harm. Further information is available here