



# Ministry of JUSTICE

Mental Health Unit  
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## **GUIDANCE FOR RESPONSIBLE MEDICAL OFFICERS**

This guide, leave application and report back form can also be found on the Ministry of Justice website: [www.noms.justice.gov.uk/news-publications-events/publications](http://www.noms.justice.gov.uk/news-publications-events/publications)  
(Search Mental Health Unit)

### **ALL LEAVE APPLICATIONS SHOULD BE FAXED TO 020 7035 8979**

#### **LEAVE OF ABSENCE FOR PATIENTS SUBJECT TO RESTRICTIONS**

(Restrictions under Mental Health Act 1983 sections 41, 45a & 49 and under the Criminal Procedure (Insanity) Acts)

**Under the Mental Health Act 1983<sup>1</sup> responsible medical officers (RMOs) need the Secretary of State's consent before granting leave from hospital to detained restricted patients. The role of the Ministry of Justice in the management of restricted patients is to protect the public from serious harm.**

#### **Leave for restricted patients – the Ministry of Justice's approach**

1. The Ministry of Justice recognises that well thought out leave, which serves a definable purpose and is carefully and sensitively executed, has an important part to play treating and rehabilitating restricted patients. It also provides valuable information to help RMOs, and the Ministry of Justice, in managing the patient in hospital, and to all parties, including the Mental Health Review Tribunal, when considering discharge into the community.
2. To help RMOs provide all the information we need to assess escorted or unescorted leave proposals, we have provided an application form (which is attached to this guidance). RMOs may supplement this with as much additional information as each case requires in order to help our understanding of the request.
3. When requesting leave for a restricted patient, RMOs should make clear:
  - the aims of the leave and its planned benefits to the patient's treatment and/or rehabilitation.
  - the risks of harm to the public it brings, and what safeguards will be taken against any specific identified risk. We attach a useful checklist of some of the risk factors to consider. RMOs should address all other risk factors which apply individually to the patient, including victims and victims' families,
  - what contribution the leave will make to future assessments of the patient's likely behaviour and to plans for managing the patient's rehabilitation;

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<sup>1</sup> Section 41(3)(c)(i) of the Mental Health Act 1983

- any reasonable public concerns which the leave would be likely to arouse, and any measures proposed in response;
- 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. This also means anyone who, on account of their relationship with the patient, may have reasonable cause to be concerned about the patient's presence in the community. We will need to know about any measures proposed in response to such concerns; and
- a plan for the proposed leave. Leave for rehabilitation purposes should relate to the overall care and treatment programme to which the RMO and the care team are working, and set personal objectives for the patient. So RMOS should show:
  - the destinations of the leave;
  - length of absences from the hospital;
  - the escorting arrangements where applicable;
  - the part which the individual leaves will play in the overall treatment plan;
  - what, specifically, each leave will seek to achieve;
  - how the leave will be monitored, whether by escorting staff or through the patient's own report or both; and
  - how the success or otherwise of the leave will be assessed and measured.

4. The Ministry of Justice expects leave programmes to be designed and conducted in such a way as to preserve public safety, sustain public confidence in the arrangements as a whole, and respect the feelings and possible fears of victims and others who may have been affected by the offences.

5. Despite our preference for granting leave at the RMO's discretion, there will be times when we must give some patients more limited amounts of leave with reports back more frequently: for instance, when a patient needs to visit a proposed discharge placement, or where leave at the RMO's discretion is not appropriate for reasons of risk or sensitivity.

6. We will sometimes approve "occasional" leave for a patient. We do not strictly define the word "occasional" in the context of our guidance on leave, as we feel that its effectiveness would be reduced if it were too tightly defined. However, in practice, we generally regard "occasional" as being no more than up to two or three days a week, probably not on consecutive days.

7. Once agreed, our consent to leave remains in operation unless the circumstances of the patient's health or other factors change the risk assessment. This means that the RMO, or someone nominated by him who knows the patient well, should make a careful risk assessment of the patient before each leave. If there are any doubts that the leave should take place, it should be stopped.

8. The RMO should inform the Mental Health Unit should any change occur that affects the basis on which our consent has been given, particularly any factor that changes a patient's risk.

## Specific types of leave

### Ground Leave

9. Any concerns or queries regarding the authority for ground leave for your specific hospital / ward / unit should be directed to the case work manager for the relevant region. Contact details for the case work manager can be found on the Ministry of Justice website (as above).

### Unescorted daytime leave

10. While RMOs may assume that the Ministry of Justice will routinely grant unescorted leave at their discretion, they should bear in mind the general principles for leave set out in the paragraphs above and maintain the highest standards of risk management. Proposals for unescorted leave should be especially subject to a thorough risk assessment. As with escorted leave, unescorted leave should relate to the patient's overall care and treatment plan and should set goals for the patient. We expect unescorted leave to be fully structured and planned and, particularly at the outset, limited by the RMO to a number of hours and days each week.

### Overnight leave

11. Please make all requests for leave that requires an overnight stay separately, even if we have already granted unescorted or escorted leave at the RMO's discretion. We will consider such cases against the usual criteria, including any potential risk to the public and any reasonable concerns that might be relevant, given the circumstances of the patient and/or the activity. The proposal must identify clearly any likely concerns on the part of the public and any concerns expressed by the victims or their families.

12. Please make any requests for overnight leave in good time so that the Ministry of Justice has enough time to consider and weigh up the proposal, to seek clarification or further information where necessary.

13. We are unlikely to agree to occasions of overnight leave being taken consecutively until it has been shown that the patient has taken individual occasions of leave without incident, or if the leave is requested in order to help a deferred conditional discharge to be effected. Please see **Annex A** for further clarification of our policy on leave and deferred conditional discharge.

### Holiday type leave

14. The Ministry of Justice will scrutinise requests for holiday-type leave very carefully. We regard holiday type leave to mean visits (whether overnight or not) to (for example):

- an activity centre;
- an adventure park;
- a theme park;
- any facility offering "holidays" or whose description gives the impression that it is a holiday centre; and
- any leave involving an overnight stay for the purpose of activities that might broadly be described as holiday activities.

15. We would expect a convincing clinical case to be made for any such leave for restricted patients, particularly where the patient has committed a serious offence and whose presence on such a leave might raise legitimate concerns among the general public. The leave must be part of a carefully thought-out treatment or rehabilitation plan.

**Compassionate leave - Please ensure that a member of Mental Health Unit is informed by telephone prior to sending a fax, which should cover all risk elements and include addresses where applicable.**

16. We understand the need for a rapid decision on leave required for compassionate reasons. We can respond to such requests at short notice, especially if our caseworkers are telephoned in advance. For compassionate cases, a request should be made even if leave has already been granted at the RMO's discretion, although you need not submit another application for leave unless there has been a material change or if the leave request is substantially different from what has been agreed previously.

#### **Short-term leave to Scotland**

17. We can no longer grant permission for short-term leave to Scotland for restricted patients. This applies to both escorted and unescorted leave. Section 17 leave cannot be used for this purpose as there is no power to keep patients in legal custody once they enter Scotland, and no power to re-take them if they abscond in Scotland. We have previously given effect to leave requests through short-term transfers but, following a change in the Scottish regulations regarding cross-border transfers, the Scottish Executive will not accept requests for a patient to remain in Scotland for less than 21 days before being transferred back to England or Wales.

#### **Reports on completed leave**

18. We expect to receive a report on escorted and unescorted leave approved at the RMO's discretion no later than 3 months after the date of consent, or sooner if required. **It is unlikely that we will give our permission for the next stage of leave (e.g. unescorted, overnight) until we have received a report on the leave we have previously granted. The guidance includes a proforma for these reports.**

The form should also be used to report on leaves as part of the annual statutory report.

#### **Rescinding of leave**

19. We should be told immediately if leave is suspended by the RMO. We will then notify you as to whether we expect to be asked before leave is reinstated or whether we are content for the RMO to reinstate it (while at the same time letting us know that you intend to do so).

#### **The Ministry of Justice response**

20. We aim to give RMOs a decision on every leave within 3 weeks of receipt of the request, subject to the proposal for leave containing all the information we require, such as a satisfactory risk assessment together with leave plan along the lines set out above. We therefore recommend that requests for leave should be made in writing to reach MHU at least 3 weeks before the leave is required. This does not apply to leave for compassionate reasons, to which we can usually reply urgently.

## **Patients transferring to another hospital – effect on leave**

21. As a result of the differing risk perspective, we generally treat differently the leave of patients moving from or between high secure hospitals from the leave of those transferring to or between hospitals of lower security.

### Transfer from high to medium security or between high secure hospitals

22. When a patient is transferred from a high secure hospital to a medium secure hospital, or between high secure hospitals, any escorted or unescorted leave previously granted does not move with them. The new RMO should make a fresh request for leave enclosing a new risk assessment to reflect the changed circumstances.

### Transfers from medium to low security

23. We may allow patients transferring from medium security to low security to transfer with them any escorted leave already granted without the need for a fresh request. But this only applies when the patient is moving on a straight transfer and not when the move is on trial leave. In cases of trial leave we expect the RMO to make a new leave request.

24. Whether a patient may transfer unescorted leave from medium security to low security without fresh approval depends upon the circumstances of the case. We will normally allow a patient to take unescorted leave with them if:

- the patient has had full unescorted leave at RMO's discretion for some time (about 6 months or more),
- leave has been used regularly, and
- there have been no issues or concerns that might be relevant (such as substance abuse).

### Level transfers between hospitals

25. We generally allow any patient moving on level transfer, for example between medium secure hospitals, to take any leave entitlement with them, whether escorted or unescorted, unless there are good reasons why this should not happen.

**ESCORTED LEAVE FOR WHICH THE SECRETARY OF STATE'S CONSENT IS NOT REQUIRED**

1. Ministry of Justice consent is not needed for:
  - a patient who is fit to attend court in connection with:
    - any alleged or proven offence (for instance, for S48 remand patients to stand trial; or for other patients to face charges arising from further offences committed when in hospital; or to attend appeal proceedings); or
    - other criminal legal proceedings where he is entitled to attend or where he is required to do so; and
  - where he is entitled to be present and the Court has agreed to his attendance.
2. Restricted patients should not attend court hearings other than in connection with alleged offence(s) and should not attend court hearing unescorted unless Ministry of Justice consent has been obtained.

**Medical Treatment**

3. Temporary escorted leave may be given for patients detained under Section 37/41, 47/49 and 48/49 for the purpose of medical examination at a hospital or other urgent medical treatment. If there is any doubt, particularly with high profile patients, the Mental Health Unit should be consulted.

For all cases, the Ministry of Justice informed in writing as soon as possible that the patient has been granted leave for this purpose.

**LEAVE FOR PRISONERS TRANSFERRED UNDER SECTIONS 47 AND 48 OF THE MENTAL HEALTH ACT 1983**

**Attendance at court**

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

**Medical Treatment**

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

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

**Patients Transferred under Section 48**

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

**Patients Transferred under Section 47**

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

*Escorted leave*

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

### *Unescorted leave*

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

- 24 months before the prisoner's Parole Eligibility Date (PED) or, where applicable, 24 months before the conditional release date (CRD); or
- once they have served half the custodial period less half the relevant remand time.

8. Please note that, in order to save misunderstandings or difficulties in calculating the ROTL eligibility date, the Mental Health Unit will be obtaining these details from the prison when the prisoner is transferred. RMOs should contact the relevant MHU caseworker if in doubt.

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

### *Overnight leave*

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

### **Life Sentence Prisoners**

11. Transferred life sentence prisoners fall into 2 categories.

i) Technical Lifers.

These are prisoners who were recognised by the court at the time of sentencing as suffering from a mental disorder. They could not be made subject to a hospital order because, for example, satisfactory arrangements could not be made at the time of their trial. These prisoners can, with the concurrence of the trial judge and the Lord Chief Justice, be treated as if subject to a Hospital Order if the Secretary of State has agreed to change their status. **No new applications for technical lifer status can now be made.** Requests for leave for technical lifers will therefore be considered in the same way as those for patients subject to S37/41.

ii) Other Life Sentence Prisoners.

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

**MENTAL HEALTH UNIT  
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