

Consultation on proposed changes to ‘The transfer and remission of adult prisoners under the Mental Health Act 1983 good practice guidance 2019’ and introduction of ‘The transfer and remission of immigration removal centre detainees under the Mental Health Act 1983 good practice guidance 2019’

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NHS England and NHS Improvement



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Prepared by: Andrea Collins, Head of Communications and Engagement Health and Justice, Armed Forces, and Sexual Assault Services

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1. Introduction

A significant number of adults who end up in the criminal justice system have a mental health problem. Many offenders present with a combination of mental ill health, substance misuse and personality disorder, as well as a range of other issues, such as trauma and homelessness.

Most of these people will be treated successfully by prison or immigration removal centre (IRC) mental health services. Some people, however, will need to be transferred to mental health inpatient services as their needs cannot be met in a prison or IRC setting. When this happens, they require detention under the [Mental Health Act 1983](#) in order for their mental health needs to be assessed and treated.

In accordance with the [Mental Health Act 1983: Code of Practice 2015](#), actions to access appropriate mental health services should be taken quickly. This process is supported by '[The transfer and remission of adult prisoners under the Mental Health Act 1983 good practice guidance](#)', which sets out the process for both the transfer to mental health inpatient services and remission back to prison. It applies to adult prisoners (sentenced, un-sentenced or on remand) who are aged 18 and over.

The aim of the guidance is to support timely access to appropriate assessment and treatment under the Mental Health Act where indicated and reduce delays in the pathway.

The guidance is aimed at:

- offender personality disorder (OPD) services
- prison mental health services
- NHS England and NHS Improvement
- clinical commissioning groups
- inpatient mental health providers
- Her Majesty's Prison and Probation Service.

There is currently no guidance for those held in an IRC who require detention under the Mental Health Act 1983 in order for their mental health needs to be assessed and treated.

2. The case for change

'The transfer and remission of adult prisoners under the Mental Health Act 1983 good practice guidance' provides information on the process for the transfer and remission of individuals in the criminal justice system, however, does not have any

provision for more urgent referrals and transfer for those in crisis. This was recognised in the June 2017 [National Audit Office report into prison mental health services in prisons](#), which looked in part at delays in the transfer and remission to mental health hospitals. Findings from the report recommended that:

‘The Ministry of Justice and NHS England should review the process for transferring prisoners to hospital. The Ministry of Justice and NHS England should routinely report how many prisoners are waiting to be transferred to hospital, and start to move prisoners who have been waiting longer than 14 days as quickly as possible. They should review procedures for transferring prisoners, identify reasons for the delays, and put work in place to simplify the process so acutely unwell people are not held in unsuitable conditions for prolonged periods of time in future.’

In addition, [The Five Year Forward View for Mental Health](#) discusses the need for the development of pathways for prisoners to and from secure care. Consideration also needs to be taken in relation to the updated NHS England and NHS Improvement [access assessment service specification](#) for prison mental health and adult secure services.

In December 2018, the ‘[Modernising the Mental Health Act, increasing choice, reducing compulsion, final report of the Independent Review of the Mental Health Act 1983](#)’ was published and as part of its recommendations, it stated:

‘The time from referral for a first assessment to transfer should have a statutory time limit of 28 days. We suggest that this could be split into two new, sequential, statutory time limits of 14 days each: i) from the point of initial referral to the first psychiatric assessment; ii) from the first psychiatric assessment until the transfer takes place (this incorporates the time between the first and second psychiatric assessment and the time to transfer).’

As mentioned in section one, there is currently no guidance for those held in an IRC who require detention under the Mental Health Act 1983 in order for their mental health needs to be assessed and treated.

Taking the above into consideration, it is important to update the current guidance to help ensure safe and timely care and treatment are provided for offenders presenting with mental health difficulties. It is also important to introduce guidance for those held in an IRC who require detention under the Mental Health Act 1983 in order for their mental health needs to be assessed and treated.

As part of these proposed changes, we are committed to undertaking a public consultation.

3. What you have already told us

To help inform these proposed changes, NHS England undertook a period of engagement from January 2018 to September 2018 to find out people's views on the transfer and remission of prisoners and immigration detainees under the Mental Health Act 1983.

As part of this, we spoke to service users; family members; carers; mental health clinicians; partner organisations, including Her Majesty's' Prison and Probation Service, the Home Office and the Ministry of Justice; commissioners and providers; as well as third sector organisations.

Key findings from this engagement are as follows:

- There is a need to reduce the length of delays to transfer and remission, particularly in the case of urgent detentions.
- It can take too long to transfer individuals to hospital and remit them back to prison or an IRC after successful treatment.
- The requirements for IRCs and prisons are different and it would be helpful to have different guidance for both type of establishments.
- Where there is disagreement and a solution cannot be achieved, there needs to be a clear resolution process.

4. How your views have helped to inform our proposals

Having considered this feedback, we are proposing the following changes to 'The transfer and remission of adult prisoners under the Mental Health Act 1983 good practice guidance 2019'.

- **Increase the timescale for transfers from 14 days to 28 days**
This proposed timescale would allow for a greater degree of assessment (up to 14 days) to ensure that individuals are transferred to the most suitable hospital to best meet their mental health needs. This proposed timeframe would also ensure alignment with the NHS England and NHS Improvement [access assessment service specification](#) and the recommendation set out in the ['Modernising the Mental Health Act, increasing choice, reducing compulsion, final report of the Independent Review of the Mental Health Act 1983'](#).

- **Set a timescale for the remission of prisoners of 14 days**

This proposed timescale would ensure that patients are remitted back to prison in a timely and appropriate way. Remission to prison may be requested under Section (s) 50, 51 or 53 of the Mental Health Act if the responsible clinician, any other approved clinician or a Mental Health Tribunal advises the Secretary of State for Justice that:

- treatment in hospital is no longer required or
- no effective treatment is available in the hospital where the patient is detained.

Alternatively, if the First Tier Mental Health Tribunal concludes that under s47 a transferred patient would be entitled to a discharge if they were a restricted hospital order patient, then the hospital manager may return them to prison subject to any comments made by the First Tier Tribunal and the decision of the Secretary of State for Justice.

- **Refreshed dispute resolution process**

The proposed updated dispute resolution process has been informed by clinicians to help embed it and make it easier to follow.

We are also proposing the introduction of new guidance for those held in IRCs, which would be considerate of the above proposed changes.

5. Who do we want to hear from?

We welcome views from anyone who has opinions to offer on the transfer and remission process for individuals held within prison and IRCs who have been detained under the Mental Health Act for assessment and treatment.

In particular, we want to hear from:

- individuals who have been or are in prison / an IRC and have been transferred under the Mental Health Act to mental health inpatient services
- family members and carers of these individuals
- organisations, clinicians and staff who are providing mental health care, treatment and support for these individuals
- commissioners of these services.

6. What do we want to hear about?

We want to hear about your views on the proposed changes to 'The transfer and remission of adult prisoners under the Mental Health Act 1983 good practice

guidance 2019' and the proposed 'The transfer and remission of immigration removal centre detainees under the Mental Health Act 1983 good practice guidance 2019'.

7. What do we want you to do?

We want you to share your views by filling in the questionnaire.

8. What is the timetable of the consultation?

The consultation opens on Thursday 23 May 2019 and will close at 11.59pm on Friday 19 July 2019.

9. What services does this involve?

The consultation is about NHS services for individuals held in a prison or IRC who have been detained under the Mental Health Act in England only.

10. Who is responsible for commissioning healthcare services within prison and IRC settings?

NHS England and NHS Improvement are responsible for commissioning all healthcare services delivered within prison and IRC settings, including mental health services.

Offender personality disorder services are commissioned jointly by NHS England and NHS Improvement specialised commissioning and Her Majesty's Prison and Probation Service.

NHS England and NHS Improvement specialised commissioning teams are responsible for commissioning adult low, medium and high secure mental health inpatient services, in addition to a wider range of other specialist services.

11. Please send us your comments and feedback?

We would like you to fill in our questionnaire and send it back to us as shown below. If you don't want to fill in the questionnaire, but would still like to give us your views please contact us:

By post: Health and Justice, Specialised Commissioning, Third Floor, NHS England and NHS Improvement, Skipton House, 80 London Road, London, SE1 6LU

By email: england.healthandjustice@nhs.net

On the internet: <https://www.engage.england.nhs.uk/consultation/transfer-and-remission-of-adult-prisoners/>

12. Confidentiality and next steps

All responses will be analysed by NHS England and NHS Improvement and will be handled in the strictest confidence.

- Responses from individuals will be made available to NHS England and NHS Improvement, but any identifiable data will be removed. No individual data will be shared or presented in any report. We may use quotations from responses in our final report about the consultation, but we will anonymise them.
- Responses made on behalf of an organisation may be made available to the public. Responses made on behalf of an organisation should not include any confidential or sensitive data.
- The responses provided will be used to create a consultation report which summarises people's views on the proposed changes to 'The transfer and remission of adult prisoners under the Mental Health Act 1983 good practice guidance 2019' and the proposed 'The transfer and remission of immigration removal centre detainees under the Mental Health Act 1983 good practice guidance 2019'.
- NHS England and NHS Improvement will provide feedback to patients, families, carers, clinicians, commissioners, other key stakeholders and the public regarding the results of this consultation activity. This feedback will reference clearly what may have changed as a result of the consultation and what the next steps are.