

MENTAL HEALTH ACT 2007

EXPLANATORY NOTES

COMMENTARY

Part 1 – Amendments to Mental Health Act 1983

Chapter 6 - Cross-Border Patients

Section 39: Cross-border arrangements

159. [Section 39](#) covers the cross-border leave and transfer of patients. Section 39(1) adds two new subsections to section 17 of the 1983 Act. They will apply to patients from Scotland, Northern Ireland, the Isle of Man and the Channel Islands who are given leave of absence to visit England and Wales and whom the clinician has determined must (for the patient's own interests, or for the protection of others) remain in custody during the leave of absence. The new subsections will ensure that patients from these jurisdictions who visit England and Wales on escorted leave may be conveyed, kept in custody or detained by their escort while in England and Wales, and re-taken in the event that they escape.
160. [Section 39\(2\)](#) gives effect to Schedule 5. The 1983 Act already provides for detained patients to be transferred from England and Wales to Scotland, Northern Ireland, the Channel Islands, and the Isle of Man and vice versa (except Scotland). The removal of patients from Scotland is dealt with under the Mental Health (Care and Treatment) (Scotland) Act 2003, regulations made under that Act and the [Mental Health \(Care and Treatment\) \(Scotland\) Act 2003 \(Consequential Provisions\) Order 2005 \(SI 2005/2078\)](#) ("the Consequential Provisions Order").
161. The amendments in Schedule 5 to the 2007 Act provide for community patients to be similarly transferred. It also provides for detained patients to be transferred from Scotland to England and Wales and accordingly revokes the relevant provisions in the Consequential Provisions Order dealing with transfers from Scotland.
162. Transfers are only undertaken when they are in the patient's interests. For example, a patient may be transferred from Scotland to England when he or she is detained under mental health legislation in Edinburgh but normally lives in London and a transfer would enable friends and family to visit him or her on a more regular basis.
163. No provision is made in respect of the transfer of patients under guardianship in England and Wales as Scotland no longer has the equivalent of mental health guardianship.
164. For patients transferring from Scotland to England and Wales the date of their hospital admission in England or Wales (for detained patients) and their date of arrival at their place of residence (for community patients) will be the date on which an application is deemed to have been made in England and Wales. As soon as practicable after the arrival of a community patient in England and Wales a CTO should be made and it will be deemed to be dated from the day of the patient's arrival. A community patient transferred from Scotland to England and Wales will not be detained in hospital following their transfer prior to becoming a community patient in England and Wales.

*These notes refer to the Mental Health Act 2007
(c.12) which received Royal Assent on 19 July 2007*

For example if a patient detained under section 3 in hospital in Scotland is transferred to England or Wales on 5 April, they will be treated as if they had been admitted to hospital in England or Wales on 5 April. A community patient transferred from Scotland to England or Wales and arriving at their place of residence in England or Wales on 10 April will be treated as though he had been admitted to hospital in England or Wales on 10 April, and then a community treatment order made on the same date, discharging him from hospital. The dates of 5 April and 10 April will therefore be the start dates under the 1983 Act for each patient. This date is significant because it determines when, for example, a patient's case must be referred by the hospital managers to the MHRT (under section 68 of the 1983 Act as amended by section 37 of the 2007 Act).

165. No provision is made in the Act for the transfer of community patients from Northern Ireland as there is currently no provision for community patients in Northern Ireland.
166. [Schedule 5](#) also amends sections 83 and 85 of the 1983 Act (which provide for detained patients to be transferred from England and Wales to the Channel Islands and the Isle of Man and vice versa) to provide for community patients to be transferred from England and Wales to the Channel Islands and the Isle of Man and vice versa. Similar arrangements to those set out for patients transferring from Scotland will apply to patients transferring to England and Wales from the Channel Islands or the Isle of Man for deeming their date of arrival and the date of the CTO. At present the Channel Islands and the Isle of Man do not have legislation enabling patients to be treated in the community under arrangements similar to SCT so this provision would not, as things stand, have any effect in relation to the Channel Islands and the Isle of Man.
167. [Schedule 5](#) also amends section 88 of the 1983 Act, which provides for patients absent from hospitals in England and Wales to be taken into custody and returned to England and Wales, to apply to Northern Ireland only. The Channel Islands and the Isle of Man have powers of their own, which they can use to return patients from England and Wales. In Scotland regulations can be made on such matters under section 309 (patients from other jurisdictions) of the Mental Health (Care and Treatment) (Scotland) Act 2003.