



HM Prison &
Probation Service



Ministry
of Justice

Transfer of Mentally Disordered Offenders

Mental Health Casework Section

Ministry of Justice



What is a Mental Disorder?

UK legislative definition: “Mental disorder” means any disorder or disability of the mind

Three primary categories of mental disorder that are likely to result in detention:

- Psychotic Disorders (Such as schizophrenia, delusional disorders, schizoaffective disorders)
- Personality Disorders (Such as dissocial, narcissistic, emotionally unstable personality disorders)
- Learning Disabilities (mild to moderate but with seriously irresponsible conduct)

Types of Detention for Mentally Disordered Offenders.

- In the UK the criminal courts are empowered to order the admission to hospital and the compulsory detention for treatment of persons who have been convicted of serious offences punishable by imprisonment (except murder) but need to receive treatment in hospital. This is known as a hospital order.
- Hospital orders are about ensuring an offender receives treatment they are not a sentence of imprisonment and are not for the purposes of punishment or retribution.

There are three main types of hospital order:

- **‘Unrestricted’ hospital order** (Detention overseen by Department of Health and Independent Tribunal)
- **‘Restricted’ hospital order** (Detention overseen by Ministry of Justice and Independent Tribunal, with additional measures for protection of the public)
- **‘Hybrid’ hospital order** (These orders are only applied where the Court has medical evidence which would justify making a hospital order but where it also concludes that a prison sentence is nevertheless appropriate)

Prisoners Transferred to Hospital

- Where a serving prisoner has been assessed by two medical professionals as having a mental disorder of the nature and degree that treatment is required in hospital then they may be directed from prison to hospital by a warrant from the Ministry of Justice.
- The prisoner's sentence continues to run and their release from hospital can only be determined by the normal laws governing the release of prisoners in the UK.
- The detention of the prisoner will be overseen by the independent mental health tribunal, but their decision will be whether treatment continues in hospital or the patient returns to prison.
- Prisoners transferred to hospital or patients subject to restricted or hybrid hospital orders are commonly known as '**restricted patients**'.

Methods of transfer to and from the UK

- **From the UK:**

- Bi-lateral Prisoner Transfer Agreements (Where the definition of a 'sentence' allows)
- Convention on the Transfer of Sentenced Persons
- Council Framework Decision 2008/909/JHA
- Section 42 of the Mental Health Act 1983 (Voluntary transfer)
- Section 86 of the Mental Health Act 1983 (Compulsory transfer)

- **To the UK:**

- Bi-lateral Prisoner Transfer Agreements (Where the definition of a 'sentence' allows)
- Convention on the Transfer of Sentenced Persons
- Council Framework Decision 2008/909/JHA
- European Convention on Social and Medical Assistance

The challenges of transfer

Administrative:

- Accurate Translations.
- Information on detention.

Enforcement of detention:

- Is an equivalent form of detention available in the receiving state?
- Can the sentence/detention be upheld?
- Does the length of detention matter? (The UK hospital orders have no fixed periods of detention).
- Does the difference in the restrictive nature of detention matter? (Is the detention overseen by the Health Service or the Ministry of Justice).

Practical problems:

- Who escorts a detained patient? (Medics, Prison or Police).

The challenges of transfer

Legal problems;

- Does it matter what evidence a court has used to direct a patient to hospital or is it just the fact compulsory treatment has been imposed that matters?
- Have all member states promulgated the power to transfer and enforce compulsory treatment under the FD 909?
- Recognition of compulsory treatment for those declared unfit to plead at court but who are 'found guilty of the act'...what happens if they become fit to plead?
- Consent of a patient who lacks capacity.
- Greater chance of success for Article 3 challenges for compulsory transfers.

'Medical' problems:

- Exchanging medical information between clinicians. (Pre-transfer report?)
- Availability of beds in suitable hospitals.
- Do all member states recognise personality disorders as a mental disorder?



The Future



- The UK will be seeking to use the FD909/prisoner transfer arrangements, where possible, for the transfer all of detained patients.
- Review of UK Mental Health Legislation and the responsibility of the Ministry of Justice in the management of detained patients.
- Guidance to stakeholders about the use of FD909/prisoner transfer arrangements.
- BREXIT...

Fact and Figures

- As of 30 June 2018 there were 7,477 restricted patients.
- Of which 4,862 are detained and 2,615 are in the community.
- 1,319 are prisoners transferred to hospital.
- 6,158 are subject to restricted or hybrid hospital orders.
- Approximately 900 (150+ EU nationals) are self-declared foreign nationals or have no recorded nationality.
- Cost of detention in a secure hospital is approximately €150,000 per annum.
- Cost of detention in the three High Security Hospitals is approximately €330,000 per annum.
- Cost of a prison place €32,000 per annum