

PATIENTS REMANDED TO HOSPITAL FROM COURT

Summary

1. This CEL provides guidance on patients remanded to hospital from Court under the Criminal Procedure (Scotland) Act 1995 ("the 1995 Act"), and in respect of whom Scottish Ministers have a statutory role.

Patients remanded to hospital from court pre-conviction

2. Patients may be remanded to hospital from court for assessment or treatment pending trial or sentence under:

- an assessment order (sections 52B-J of the 1995 Act);
- a treatment order (sections 52K-S of the 1995 Act);
- an interim compulsion order (section 53 of the 1995 Act).

3. Guidance and best practice points relating to use of these orders is currently set out in the Code of Practice on the Mental Health (Care and Treatment) (Scotland) Act 2003, at Volume 3 (compulsory powers in relation to mentally disorder offenders).

4. This CEL provides further guidance and should be followed in cases where a patient has been remanded to hospital while awaiting trial. It replaces and supersedes HDL (2000) 7 dated 5th September 2000.

Action

5. This letter should be drawn to the attention of those persons whose duties involve patients detained under the 2003 Act and the 1995 Act.

Yours sincerely

GEOFF HUGGINS
Head of Mental Health Division

CEL 9 (2009)

10 March 2009

Addressees

For action

General Managers, NHS Health Boards
Chief Executives, NHS Boards
General Manager, State Hospitals Board for Scotland
Manager, Ayr Clinic
Medical Directors (to cascade to RMOs)

For information

Crown Agent, Crown Office
Chief Executive, Scottish Prison Service
Director, Mental Welfare Commission for Scotland
NHS Health Scotland
Chief Executive, Mental Health Tribunal for Scotland
RCPsych(Scotland)
Directors of Social Work / Chief Social Work Officers
Medical Director, Forensic Network

Enquiries to:

Joanna Keating
3.ER
St Andrew's House
Regent Road
Edinburgh EH1 3DG

Tel: 0131-244 2599

Fax: 0131-244 5076

joanna.keating@scotland.gsi.gov.uk

<http://www.scotland.gov.uk>

PATIENTS REMANDED TO HOSPITAL FROM COURT PRE-SENTENCE FOR ASSESSMENT OR TREATMENT

1. This guidance is for the attention of psychiatrists concerned with the assessment and management of patients who are remanded to hospital by the courts for mental health assessment or treatment pre-sentence under sections 52B-U (assessment and treatment orders) or section 53 (interim compulsion orders) of the Criminal Procedure (Scotland) Act 1995 (“the 1995 Act”). This CEL has been prepared in conjunction with the Crown Office.

Background: Code of Practice & Memorandum of Procedure

2. This guidance supplements that already contained in:

- Volume 3 of the Code of Practice which was made under, and accompanies, the Mental Health (Care and Treatment) (Scotland) Act 2003 (“the 2003 Act”). Chapter 2 (paragraphs 57 to 160) of Volume 3 deals with assessment orders and treatment orders, whilst interim compulsion orders are covered at Chapter 4 of Volume 3.
- the Memorandum of Procedure on Restricted Patients, which accompanies the 2003 Act.

3. More detailed guidance and best practice points on these orders may therefore be found in Volume 3 of the Code <http://www.scotland.gov.uk/Publications/2005/09/16121646/16474> and in the Memorandum <http://www.scotland.gov.uk/Publications/2005/10/0584334/43364> (NB a new version of the MoP will be issued shortly, updating and replacing the current October 2005 version).

Background: overview and supervision levels for remand patients

4. Patients who are remanded to hospital from prison pre-sentence under an assessment order, a treatment order or an interim compulsion order are made subject to special restrictions under the 2003 Act. This means that although not “restricted patients” (ie patients made subject to a compulsion order with restriction order by the court at sentencing) Scottish Ministers nevertheless have a similar statutory role in relation to their management and care.

5. A person who is involved in criminal justice proceedings and detained in hospital, as set out in paragraph 1 above, should be subject, at least initially, to a high level of supervision. The patient should not be allowed to leave the ward or place of supervised occupation without an escort. In some cases this level of supervision will require to be maintained throughout the remanded person's stay in hospital. In other cases, where for example the previous history of the accused is well known, or where his or her mental condition improves, the psychiatrist may think it appropriate to allow some relaxing in supervision.

Role of Scottish Ministers: suspension of detention for remand patients

6. Suspension of detention (“SUS”) means very simply that detention in hospital is suspended. Liability to detention is, however, maintained as are any other measures authorised under the order in question. A certificate authorising SUS is required for all occasions when any detained patient is to leave the hospital, including any medical treatments at a hospital, compassionate visits and attendance at any court proceedings (including the ongoing criminal

proceedings). For remand patients, due to the high level of supervision that is recommended in respect of such patients, SUS should be the exception rather than the rule.

7. Section 221(3) of the 2003 Act requires the RMO of a patient subject to an assessment order to obtain the consent of Scottish Ministers prior to granting a certificate of SUS. Section 224(3) of the 2003 Act makes identical provision as regards the RMO requiring the consent of Scottish Ministers for any SUS for a patient subject to a treatment order or an interim compulsion order. This means that all such patients who are remanded to hospital from court under one of these orders cannot be granted SUS to leave the hospital, whether escorted or unescorted, without the approval of Scottish Ministers.

8. There is no equivalent statutory requirement for the Procurator Fiscal to consent to SUS. However, in practice, Scottish Government Mental Health Division will always liaise with the Procurator Fiscal before a decision is taken as to whether or not to consent to the proposed SUS. This is on the basis that Scottish Ministers cannot consent to SUS without being fully satisfied on the risks and could not be so satisfied without consulting the Procurator Fiscal in the first instance. It also reflects an agreed protocol between the Scottish Government and Crown Office in this regard.

9. Therefore, in terms of an agreed procedure for RMOs seeking the necessary statutory consent for any SUS for patients subject to an assessment order, a treatment order or an interim compulsion order, it is clarified as follows:

- immediately after admission to hospital, the RMO should contact the Scottish Government marked “Remand Patients SUS”, for the attention of Andy Lawson, Mental Health Division, Branch 3, St Andrews House, Area 3ER, Edinburgh EH1 3DG.
- urgent clinical / court appearances: the initial request should seek consent for urgent clinical appointments and court hearings in order to minimise delay in considering these requests. SGHD do not require to liaise with the Procurator Fiscal in these circumstances, and nor is there any need for the RMO to separately contact the Procurator Fiscal to seek their view.
- other SUS requests: on receipt of a SUS request for any *other* purposes, such as dental appointments and other non-urgent medical appointments, SGHD Mental Health Division will liaise with the Procurator Fiscal direct to seek their views on risk. There is no need for the RMO to separately contact the Procurator Fiscal to seek their view.
- SGHD Mental Health Division will then revert to the RMO with their decision as to whether or not Scottish Ministers’ consent is given to the SUS request.

10. Scottish Ministers’ responsibilities require that proper consideration be given to each SUS request, that any risk to the public has been properly identified and evaluated, and that sound measures have been taken to guard against it. As a general rule, the longer or more unusual the freedoms sought, then the more advance notice the SGHD requires to consider the request. It is important that, where possible, SGHD is given as much time as possible of a request for SUS. For remand patients, as a guideline, 5 working days notice (in writing) of a non-urgent SUS request will normally be sufficient for routine cases, but more notice should be given if possible. Urgent clinical appointments / court appearances will of course be processed quicker.

Role of Scottish Ministers: transfers

11. It should be noted that as regards transfers between hospitals, patients subject to an

assessment order, treatment order or interim compulsion order are in a different statutory position to the other categories of restricted patients (who may be transferred between hospitals, provided that Scottish Ministers' consent is obtained, under section 218 of the 2003 Act):

- an assessment order or treatment order will specify the hospital in which the patient is to be detained. There is then a window of 7 days in which if, “by reason of emergency or other circumstances”, it is not reasonably practicable for the patient to be admitted to the specified hospital, then either Scottish Ministers or the court may direct that the patient be admitted to the hospital specified in the direction; if such a direction is given, the original court order is then treated as though it had specified the hospital named in that direction. Once admitted to the specified hospital, the patient cannot be transferred to another hospital without going back to court to have the AO or TO amended.
- an interim compulsion order will also specify the hospital in which the patient is to be detained. Again, there is then a window of 7 days in which if, “by reason of emergency or other circumstances”, it is not reasonably practicable for the patient to be admitted to the specified hospital, then either Scottish Ministers or the court may direct that the patient be admitted to the hospital specified in the direction; if such a direction is given, again the court order becomes treated as though it had originally specified the hospital named in the direction. It is emphasised that, although ICOs may last up to 12 months, there is no equivalent provision to section 218 to enable hospital managers to transfer those subject to an ICO to another hospital. Patients subject to an ICO therefore cannot be transferred to another hospital without going back to court to have the ICO amended, and it should be noted that the statutory authority to detain the patient continues to be for the hospital specified in the court order.

12. Any follow up queries on the contents of this letter should be addressed to Joanna Keating, Head of Policy & Legislation Team, Mental Health Division, Scottish Government, St Andrews House, Edinburgh EH1 3DG.