Humber Teaching
NHS Foundation Trust

STANDARD OPERATING PROCEDURE
REPATRIATION OF PATIENTS UNDER SECTION 86 (MHA 1983) ('REMOVAL OF ALIEN PATIENTS')

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VALIDITY – All local SOPs should be accessed via the Trust intranet

CHANGE RECORD

Version	Date	Change details
1.0	*05/03/19*	*New SOP*
2.0	*17/11/21*	*Full review*
2.1	*23.05.23*	*Full review with minor amends. Approved at Mental Health Legislation Steering Group (21.06.23).*

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1. INTRODUCTION

This SOP sets out the processes for the repatriation and removal of foreign nationals who are subject to detention under the Mental Health Act 1983 (The MHA 1983) to their States of nationality, whether as detained patients or following a discharge decision by the Secretary of State for Justice.

The primary purpose of repatriation is to enable a foreign national restricted patient to continue their treatment in their country of origin so that they can be near to their family, in a culturally and linguistically familiar environment. The repatriation to their country of origin will also aid their social rehabilitation which will be more effectively managed in the health system of their own country. The same principles apply to British nationals who are detained for treatment in a hospital abroad following a conviction for a criminal offence or a diversion to hospital after committing a criminal offence. (*Ministry of Justice (MoJ) Mental Health Casework Section Guidance: 'The Repatriation and Removal or Restricted Patients to and from England and Wales, November 2021).*

While each case needs to be considered individually, patients may be dealt with just as effectively in their country of origin as they can be here. Even if the overseas clinical facilities are not as developed as in this country, this factor may be outweighed by the benefit to the patient of being in a familiar environment and speaking their first language.

It is also worth bearing in mind that foreign national restricted patients – as offenders – may be liable for deportation from the UK by the immigration authorities as long as they are fit to travel, and that the immigration authorities may not be able to arrange for care to be available to the patient in the destination country. It may therefore be appropriate for each Responsible Clinician (RC) who has responsibility for a restricted patient whom the Home Office confirm might be liable to deportation, to consider whether it would better to consider that patient for repatriation to their home country, either voluntarily or under section 86 of the Mental Health Act.

Section 86 of the Mental Health Act 1983 empowers the Secretary of State to authorise the removal to any country abroad of certain detained inpatients who do not have the right of abode in this country and who are receiving inpatient treatment for mental disorder. Before they exercise their powers the Secretary of State must have obtained the approval of the appropriate tribunal.

If it appears to the Secretary of State that proper arrangements have been made for the removal of a patient to whom this section applies to a country or territory outside the United Kingdom, the Isle of Man and the Channel Islands and for his care and treatment there and that it is in the interests of the patient to remove him, the Secretary of State may:

a) by warrant authorise the removal of the patient from the place where he is receiving treatment, and
b) give such directions as the Secretary of State thinks fit for the conveyance of the patient to his destination in that country or territory and for his detention in any place or on board any ship or aircraft until his arrival at any specified port or place in any such country or territory.

The main purpose of this section is to "enable patients who are either irrationally opposed to their removal, or are unable to express a view, to be compulsorily removed to another country when this is judged to be in their best interests. It is also used to enable patients to be kept under escort on their journey home if this is necessary".

This SOP also applies to unrestricted detained patients.

2. SCOPE

This Standard Operating Procedure relates to the repatriation of patients detained under the Mental Health Act 1983 where Britain is not their country of origin.

It applies to all Trust staff, contracted agency staff and supporting agencies that have a responsibility for patients detained under the MHA.

This Trust-wide procedure sets out procedural requirements, where these are explicit in the Act or Code, but guidelines may be produced locally which, while complying with this protocol, provide advice on more specific matters.

3. DUTIES AND RESPONSIBILITIES

It is the responsibility of all staff who are involved with the repatriation of a detained patient to be fully conversant with both this document and s86 of the Mental Health Act 1983.

Division leads ensure dissemination of Mental Health Policy and associated standard operating procedures.

All staff involved in delivery of clinical care must ensure compliance with the requirements of the Mental Health Act code of Practice (2015), associated Trust policies and standard operating procedures.

4. PROCEDURES

4.1. Formal repatriation under section 86

If the Responsible Clinician feels that repatriation would be in the best interests of the patient but the patient does not wish to return to their home country, he/she can consider repatriation under section 86. This section can only be used where a patient has a mental disorder and is detained for inpatient treatment and still has at least six months of the sentence to serve or they are not likely to be discharged from hospital in the next six months.

Under the provisions of s86, the consent of the patient is not required for repatriation where the patient is either irrationally opposed to their removal or unable to express a view. Repatriation under s86 must however be approved by the Mental Health Review Tribunal. Repatriation for restricted patients is effected by way of conditional discharge by the Justice Secretary under section 42 of the Act, see full guidance: *Ministry of Justice (MoJ) Mental Health Casework Section Guidance: 'The Repatriation and Removal or Restricted Patients to and from England and Wales, November 2021.*

4.2. Proposals for removal

Before deciding whether to seek the agreement of the Tribunal, the Department of Health and Social Care (DHSC) or the Ministry of Justice (for restricted patients) will need to have details of the reasons for the proposed transfer and the arrangements that have or could be made for the patient's transport (in the UK and abroad) and for the patient's subsequent care and treatment. In practice, the departments will expect the managers of the hospital in which the patient is detained to provide this information and (if the case is referred to the Tribunal) to provide any further information which the Tribunal requires (MHA reference guide 38.8).

Written evidence will be required for every stage of this process in order that it can be furnished to either the DHSC or Ministry of Justice (MoJ).

a) Undertake via the MDT an assessment of whether the patient needs to be transferred under the MHA or not and ensure that a full risk assessment is undertaken and documented accordingly;
b) If a decision is made to request a transfer under the MHA, ensure that approval is granted from the Commissioners to them agreeing to fund the cost of the transfer (get this agreement in writing);

c) It is preferable that the patient agrees to the transfer however, if the patient lacks capacity to make this decision, ensure that a capacity assessment form is completed as well as a Best Interest Decision form is completed to record the Best Interest Decision Meeting;
d) Make contact with the DHSC or MoJ caseworker and have an initial discussion/communication about the facts of the case - mentalhealthact2007@dhsc.gov.uk (DHSC) or public_enquiry.mhu@justice.gov.uk (MoJ)
e) The relevant department will then forward a form for completion (MHA Section 86 DHSC request form for part II patients or an Annex C form (Application to Discharge and Repatriate Restricted Patients) for part III patients). which will include a list of instructions regarding additional information that they will require to be submitted with the formal request:
   - Contact will need to have been made with the hospital in the receiving country and written confirmation given that they have a bed available and will accept the patient on arrival;
   - Contact will need to have been made with the consulate for the receiving country, to understand any requirements their side and ensure that there are no problems at immigration, or at any of the controls when they arrive (a face-to-face meeting with them is advisable);
   - Agreement will need to be sourced for secure transport arrangements via a specialist company;
   - Contact will need to have been made with the airport from where they are leaving from and British immigration (this may be undertaken by whoever is providing the secure transporting of the patient);
   - Part of the agreement (above) needs to state that the transfer will be “door to door”, that the transport is either a ship or a flight and that there will be qualified mental health trained staff accompanying the patient.
f) The DHSC/MoJ will also forward a T111 form in order to arrange a Tribunal. This is for the purpose of seeking their approval to repatriate as required under section 86 of the MHA, rather than to make a request for the FTT to hold an appeal hearing.
g) Once all this is in place the completed MHA Section 86 request form and the completed T111 form should be forwarded to the DHSC/MoJ, who will submit the T111 to the Tribunal;
h) Following this the DHSC/MoJ would then consider the case and, if appropriate, issue a Section 86 Warrant to the Trust;
i) The Trust will have 14 days in which to enact the Warrant by:
   - Contacting the specialist secure transport service and advising them that the Section 86 Warrant has been issued and the date that this needs to be enacted by;
   - The company will then make the necessary arrangements for the transfer of the patient out of the country and will liaise with the airport and Immigration.
j) Following confirmation of a date of transfer being agreed with the company the Trust will need to make contact with the hospital in the receiving country to advise of the date and time of arrival of the patient and who will be transferring them (i.e. which specialist secure transport company).
k) Arrangements will need to be made with the hospital as to where the “handover“ of the patient will occur (i.e. where specifically within the airport building) and this will then need to be relayed to the company providing the transfer, to ensure a smooth handover process.
l) Further actions may need to be undertaken following the conversation with the specialist secure transport company however they will be on a specific case by case basis.

4.3. Power to authorise the Section 86 Warrant

A proposal for the removal of Part II patients should be emailed to:

mentalhealthact2007@dhsc.gov.uk

A proposal for the removal of Part III patients should be emailed to:

MHCSMailbox@justice.gov.uk

4.4. Effect of Secretary of State's warrant

If the Secretary of State obtains the Tribunal's approval and decides to authorise the patient's transfer, the Secretary of State will issue a warrant which directs that the patient is taken directly to the point of embarkation and which may also include any appropriate directions to allow the patient to be conveyed, while remaining in legal custody, out of the UK. This includes being kept in custody while en route to another country, e.g. on a plane or ship. But the Secretary of State cannot authorise the patient being kept in custody or detained once the patient has arrived in another country – so any escort arrangements for the rest of the journey would have to be made under the law of that country, if that is allowed (MHA reference guide 38.9).

A removal warrant under the Act is only necessary where patients are not willing to travel or need to be kept in custody on the journey. A warrant is not necessary if patients are willing to travel and it is safe for them to do so without being in legal custody (MHA reference guide 38.2).

4.5. Travel/conveyance

If the patient is not a restricted patient, the patient will be granted leave of absence under s17 by the RC to travel to the port of embarkation. The Secretary of State will use their power under s42 to conditionally discharge a restricted patient, subject to the condition that he is taken directly to the port of embarkation.

In most cases, when patients are removed from England and Wales under these arrangements, the authority for their detention ceases to have effect when they are received into hospital (or another institution) in the country to which they have been removed. But where the patient is subject to a restricted hospital order, it will remain in force so that it will apply again should the patient return to England or Wales, unless the restriction order is for a fixed period, in which case both it and the hospital order will expire at the end of that period (MHA reference guide 38.10).

4.6. Funding arrangements

On funding, there is no fixed expectation for these cases. The matter would need to be raised with colleagues in the patient's home country at the appropriate point. Generally, the expectation would be for the NHS trust and/or the receiving country to fund or part fund the repatriation. On that basis the matter should be raised with Trust finance department so they are aware early on and to check on any local guidance in place that may need to be considered.

4.7. Voluntary repatriation (restricted patients)

As an alternative to the use of section 86, the voluntary repatriation of restricted patients can be considered. Voluntary repatriation is an arrangement whereby the Ministry of Justice conditionally discharges the patient, subject to the condition that the patient is taken directly to a port of embarkation and from there to their home country. The process is largely in the hands of the RC, and allows the RC the opportunity to contact and liaise with psychiatric services abroad to ensure that suitable care would be available for the patient on their return home. In order for a patient to be repatriated in this way the RC needs to be satisfied that:

- The patient is willing to return;
- The authorities in his home country are prepared to accept them;
- There are acceptable arrangements for continued treatment, including detention if appropriate;
- There are suitable transport arrangements.

If all of these provisions were met, a request for repatriation should be made to the Mental Health Casework Section. Once satisfied that the conditions are met, the Justice Secretary can issue a conditional discharge under section 42 of the Mental Health Act. The patient can then be conveyed, in accordance with the conditions of the discharge, to their destination country.

4.8. Consenting non-restricted patients

A similar approach to that of voluntary repatriation, which would not involve either the Mental Health Casework Section or the Secretary of State, can be adopted for the voluntary repatriation of consenting non-restricted patients.

Points for consideration:

- For capacitous consenting non-restricted patients it is the RC's responsibility to manage the process of repatriation.
- If capacity to consent to the process is doubted a full capacity assessment must be undertaken:
  - if the patient lacks capacity there will be a need to contact the UK Border agency, who would make arrangements for the transfer and may refer to the Court of Protection (due to human rights issues)
  - if the patient has capacity and consents then they can be repatriated voluntarily, there is no need for a Managers' Hearing or Tribunal
- Consideration needs to be given to the patient's country of origin (has the patient got a passport for the country they are to be repatriated to?) or the country may refuse entry if not.
- RC should contact the hospital in the locality of the country where patient is from/was living (the one perhaps previously detained in) to discuss treatment, security etc. with that hospital's doctor
- Consider whether the patient has medical insurance in their home country. If so, the insurers will have a repatriation policy and will finance the patient's travel; if not the Trust must pay the bill
- Organise a CPA meeting in the first instance in order to ensure robust planning is in place with all involved parties including professionals, patient, family, IMHA etc.
- Draft a repatriation plan and share with the legal team to gain agreement to move forward with the plan
- Make sure appropriate travel arrangements are in place - patient should travel through the day rather than night
- Make sure the patient is given a week of medication
- Once satisfied the patient can be given s17 leave
- Trust staff must travel with the patient and ideally should be a nurse who knows the patient the best
- The s3 ends on arrival in the country of destination – flight is still under British jurisdiction
- Pass on copies of detention papers to hospital staff in country of destination (may need to organise an interpreter for transfer over).

5. REFERENCES

Mental Health Act Policy

Department of Health: (2015) Mental Health Act Code of Practice. London TSO

Jones R (2022) Mental health act manual. 25th Edition. London. Sweet & Maxwell

Mental Capacity Act 2005: Code of Practice.

Ministry of Justice (MoJ) Mental Health Casework Section Guidance: 'The Repatriation and Removal or Restricted Patients to and from England and Wales, November 2021

Repatriation of foreign national restricted patients - GOV.UK (www.gov.uk)

Rotherham, Doncaster and South Humber NHS Foundation Trust guidance notes for the procedure for gaining a Section 86 Warrant (removal of alien patients)

Department of Health (2015) Reference Guide to the Mental Health Act 1983 London TSO

APPENDIX 1: EQUALITY IMPACT ASSESSMENT

Screening pro forma for strategies, policies, procedures, processes, tenders, and services

1. Document or Process or Service Name: SOP for Repatriation of patients under section 86 (MHA 1983) ('removal of alien patients').
2. EIA Reviewer (name, job title, base and contact details): Michelle Nolan, Mental Health Act Clinical Manager
3. Is it a Policy, Strategy, Procedure, Process, Tender, Service or Other? SOP

Main Aims of the Document, Process or Service
The main purpose of this section is to "enable patients who are either irrationally opposed to their removal, or are unable to express a view, to be compulsorily removed to another country when this is judged to be in their best interests. It is also used to enable patients to be kept under escort on their journey home if this is necessary".
Please indicate in the table that follows whether the document or process has the potential to impact adversely, intentionally or unwittingly on the equality target groups contained in the pro forma

Equality Target Group	Is the document or process likely to have a potential or actual differential impact with regards to the equality target groups listed?	How have you arrived at the equality impact score?
1. Age 2. Disability 3. Gender 4. Race 5. Religion or belief 6. Sexual Orientation 7. Transgender, Transsexual	Equality Impact Score Low = Little or No evidence or concern (Green) Medium = some evidence or concern(Amber) High = significant evidence or concern (Red)	a) who have you consulted with b) what have they said c) what information or data have you used d) where are the gaps in your analysis e) how will your document/process or service promote equality and diversity good practice

Equality Target Group	**Definitions**	**Equality Impact Score**	**Evidence to support Equality Impact Score**
Age	Including specific ages and age groups: Older people Young people Children Early years	Low	The MHA specifies who the Law relates to and the legal age thresholds where they exist. This SOP is consistent in its approach regardless of age.
Disability	Where the impairment has a substantial and long term adverse effect on the ability of the person to carry out their day to day activities: Sensory Physical Learning Mental health (including cancer, HIV, multiple sclerosis)	Low	The MHA Code of Practice details the need for non-discriminatory practice and application of the Act as well as highlighting the requirement for awareness of, sensitivity to any special needs or requirements relating to any form of disability. This SOP is consistent in its approach regardless of disability. For patients who have a communication need or have English as their second language consideration must be given to providing information in an accessible format.
Sex	Men/Male Women/Female	Low	The MHA Code of Practice details the need for non-discriminatory practice and application of the MHA as well as highlighting the requirement for awareness of, sensitivity to any gender related

			preferences, needs or requirements. This SOP is consistent in its approach regardless of gender.
Marriage/Civil Partnership		Low	This SOP is consistent in its approach regardless of partnership status.
Pregnancy/ Maternity		Low	This SOP is consistent in its approach regardless of pregnancy status. Staff should always ensure that any use of force is used only after having due regard to the individual's maternity status and having taken full account of their physical, emotional and psychological wellbeing.
Race	Colour Nationality Ethnic/national origins	Low	The MHA Code of Practice details the need for non-discriminatory practice and application of the MHA as well as highlighting the requirement for awareness of, sensitivity to any preferences, needs or requirements related to race or ethnicity. This SOP is consistent in its approach regardless of race. It is acknowledged however that for any patient whose first language is not English, as information needs to be provided and understood, staff will follow the Trust interpretation procedure.
Religion or Belief	All religions Including lack of religion or belief and where belief includes any religious or philosophical belief	Low	The MHA Code of Practice details the need for non-discriminatory practice and application of the MHA as well as highlighting the requirement for awareness of, sensitivity to any preferences, needs or requirements related to religious or other belief systems. This SOP is consistent in its approach regardless of religion or belief.
Sexual Orientation	Lesbian Gay men Bisexual	Low	The MHA Code of Practice details the need for non-discriminatory practice and application of the MHA as well as highlighting the requirement for awareness of, sensitivity to any preferences, needs or requirements related to sexual orientation. This SOP is consistent in its approach regardless of sexual orientation.
Gender Reassignment	Where people are proposing to undergo, or have undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attribute of sex	Low	The MHA Code of Practice details the need for non-discriminatory practice and application of the MHA as well as highlighting the requirement for awareness of, sensitivity to any gender identity related preferences, needs or requirements. This SOP is consistent in its approach regardless of the gender the individual wishes to be identified as. We recognise the gender that people choose to live in hence why the terms gender identity and gender expression ensure we are covering the full spectrum of LGBT+ and not excluding trans, gender fluid or asexual people.

Summary

Is a FULL Equality Impact Assessment required?	Yes	**No**
Please describe the main points arising from your screening that supports your decision above: This Standard Operating Procedure relates to the repatriation of patients detained under the Mental Health Act 1983 where Britain is not their country of origin. It applies to those patients who are either irrationally opposed to their removal, or are unable to express a view, and allows for compulsorily removal to another country when this is judged to be in their best interests. Significant attention has been paid to ensure that no groups are discriminated against either directly or indirectly.		
EIA Reviewer: Michelle Nolan, Mental Health Act Clinical Manager		
Date completed: 24 May 2023	Signature: M Nolan	