

MENTAL HEALTH (CARE AND TREATMENT) (SCOTLAND) ACT 2003

EXPLANATORY NOTES

COMMENTARY ON SECTIONS

Part 7 – Compulsory Treatment Orders

Chapter 6: transfers

Sections 124 to 126: transfers between hospitals

171. This chapter sets out the procedures which must be followed when a patient, who is detained in hospital on the authority of a compulsory treatment order, is to be transferred to a hospital, including to a state hospital.
172. Subsection (2) of section 124 vests the power to transfer a patient in the managers of the hospital in which the patient is detained, but under subsection (3) the transfer to a different hospital may proceed only where the managers of the receiving hospital have consented to the transfer. Subsection (4) requires the managers of the hospital who propose to transfer the patient to give seven days' notice of the transfer to the persons listed in subsection (8) except where it is necessary to transfer the patient urgently (subsection (5)) and where the patient consents to the transfer (subsection (7)), no notice to that patient is required.
173. Subsection (9) of section 124 provides that where notice has been given of a proposed transfer under subsection (4) or (6)(a) but that transfer does not take place within three months of the notice being given, the transfer may only take place if the managers of the hospital comply with the conditions set out in subsection (10).
174. Subsection (12) of section 124 provides that where a patient is transferred the managers of the hospital from which the patient is transferred must notify the Commission of the matters specified in subsection (13) within 7 days of the transfer taking place.
175. **Section 125** makes provision for a patient or a patient's named person to appeal to the Tribunal against a transfer, or a proposed transfer, to a hospital other than a state hospital. Subsection (3) sets out the time limits within which appeals must be made. Where the patient has been given notice of the transfer before it takes place, he or she may appeal at any time between being given notice and 28 days after the transfer has occurred. Where the patient is given notice of the transfer only on or after the date of the transfer, the time limit for the appeal is 28 days from the point when notice was given. If the patient has not been given notice, the time limit is 28 days beginning with the day on which the patient is transferred. Similar time limits apply in the case of an appeal by the patient's named person.
176. Subsection (4) provides that if an appeal is made against a transfer, and if the transfer has not yet taken place, the transfer may not go ahead unless the Tribunal gives its approval in advance of the appeal being determined. Subsection (4)(b) provides that

the Tribunal may make an order that the patient be transferred as proposed pending the determination of the appeal

177. Subsection (5) makes provision for the Tribunal to make an order on an appeal made under subsection (2) that the transfer should not take place if it has not already taken place. Where the transfer has already taken place, the Tribunal may make an order that the patient should be returned to the hospital from which the patient was transferred.
178. Where a patient is transferred to a state hospital, or receives notice of a proposed transfer to a state hospital, the patient or the patient's named person may appeal to the Tribunal under section 126. Where the patient has been given notice of the transfer before it takes place, he or she may make an appeal at any time between being given notice and 12 weeks after the transfer has occurred. Where the patient is given notice of the transfer only on or after the date of the transfer, the time limit placed on the patient's right of appeal is 12 weeks from the point when notice was given. If the patient has not been given notice, the time limit is 12 weeks beginning with the day on which the patient is transferred. Again, similar time periods for appeal are allowed to the patient's named person.
179. Where the appeal is made before the transfer has taken place, the transfer should not then proceed unless the Tribunal makes an order that it should do so. If the transfer has already taken place, the Tribunal may make an order that the patient be returned to the transferring hospital unless satisfied that the patient requires to be kept under conditions of special security that only the state hospital can provide